



Agri-Center of the World

City of Tulare

City Council

Agenda

Mayor
Dennis A. Mederos, District 4

Vice Mayor
Terry A. Sayre, District 2

Councilmembers
Jose Sigala, District 1
Stephen C. Harrell, District 3
Patrick Isherwood, District 5

Tulare Public Library & Council Chamber
491 North M Street, Tulare
www.tulare.ca.gov

Tuesday, October 18, 2022
6:30 p.m. – Special Meeting
7:00 p.m. – Regular Meeting

Mission Statement

To promote a quality of life making Tulare the most desirable community in which to live, learn, play, work, worship and prosper.

Attending and Participating in Meetings

Regular Council Meetings are held on the first and third Tuesdays of each month in the Council Chamber located in the Tulare Public Library at 491 North M Street, Tulare. Additional meetings of the City Council may be called as needed.

Attend meetings in person or access the meeting live via YouTube. For those that wish to provide public comment while not physically in attendance, call **(559) 366-1849** during Citizen Comments and/or General Business items. Please note that there will be approximately a 20-second delay in broadcast for viewers. When calling in, please mute speakers if viewing the meeting via YouTube.

City of Tulare YouTube Channel:

https://www.youtube.com/channel/UCdWZiv2o7do1JY0OvGe1_aw/videos

Documents related to items on the agenda are accessible on the City's website at www.tulare.ca.gov and available for viewing at the entrance of the Council Chamber.



Rules for Addressing Council

- Members of the public may address the City Council on matters within the jurisdiction of the City of Tulare.
- If you wish to address Council, please complete one of the yellow speaker cards located at the entrance to the Council Chamber and provide to the Clerk.
- Persons wishing to address Council concerning an **agendized** item will be invited to address the Council during the time that Council is considering that particular agenda item. Persons wishing to address Council concerning a **non-agendized** issue will be invited to address Council during the Citizen Comments portion of the meeting.
- When invited by the Mayor to speak, please step up to the podium, state your name and city where you reside, and make your comments. Comments are limited to three minutes per speaker.

6:30 p.m. - SPECIAL MEETING**CALL TO ORDER**

PUBLIC COMMENTS PERTAINING TO CLOSED SESSION ITEMS - Comments are limited to items to be discussed in closed session. Limited to three minutes per speaker.

ANNOUNCEMENT OF CLOSED SESSION ITEMS

1. Conference with Legal Counsel
Initiation of litigation pursuant to § 54956.9(c): 3 cases

RECESS TO CLOSED SESSION**7:00 p.m. - REGULAR MEETING****RECONVENE CITY COUNCIL MEETING****PLEDGE OF ALLEGIANCE AND INVOCATION**

CLOSED SESSION REPORT - This is the time for Council to publicly report specified closed session action and the vote taken on those actions, if any.

PROCLAMATIONS & RECOGNITIONS

1. Proclamation for Disability Employment Awareness Month, October 2022.

PUBLIC COMMENTS - This is the time for the public to comment on matters within the jurisdiction of the Tulare City Council that are not on the agenda. The Council asks that comments are kept brief and positive. The Council cannot legally discuss or take official action on request items that are introduced tonight. This is also the time for the public to comment on items listed under the Consent Calendar or to request an item from the Consent Calendar be pulled for discussion purposes. Comments related to Public Hearing or General Business items will be heard at the time the Public Hearing is opened for comment or the General Business item is discussed. In fairness to all who wish to speak, each speaker will be allowed three minutes with a maximum time of 15 minutes per item unless otherwise extended by Council. Please begin your comments by stating your name and providing your city of residence.

COMMUNICATIONS - Communications are to be submitted to the City Manager's Office 10 days prior to a Council Meeting to be considered for this section of the Agenda. No action will be taken on matters listed under communications; however, the Council may direct staff to schedule issues raised during communications for a future agenda. Public comments will be limited to three minutes per topic unless otherwise extended by Council.

CONSENT CALENDAR - All Consent Calendar items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made, in which event the item will be removed from the Consent Calendar to be discussed and voted upon by a separate motion.

1. Authorization to read ordinances by title only.

2. Approve the minutes of the October 4, 2022, City Council meeting. [Submitted by: M. Hermann]
3. Adopt a resolution making an appointment to the Tulare Mosquito Abatement District Board of Directors. [Submitted by: M. Hermann]
4. Authorize the purchase of three LifePak15 cardiac monitor/defibrillators to replace in service monitors that have been deemed end of life by the manufacturer at a cost not to exceed \$84,854.91. [Submitted by: C. Long]
5. Award and authorize the City Manager to sign a contract with MRC GameTime of Sea Girt, NJ, in the amount of \$126,732.66 for Project PK2019-003 and PK2019-006 – Live Oak Park and Prosperity Sports Park Playground Replacement Project; and authorize the City Manager or designee to approve contract change orders in an amount not to exceed 10% (\$12,673.26) of the contract award amount. [Submitted by: J. Glick]
6. Final acceptance of public works improvements for Phases 2 and 3 of The Greens at Oak Creek subdivision, located along the east side of Mooney Boulevard (State Route 63) south of Seminole Avenue. [Submitted by: M. Miller]
7. Authorize the City Manager to execute a real property purchase and sale agreement, subject only to minor conforming or clarifying changes acceptable to the City Attorney and City Manager, to transfer City-owned property (APN 166-240-014) to Warren Mouw in exchange for right-of-way dedication for the future extension of Akers Street south of Cartmill Avenue. [Submitted by: M. Miller]
8. Authorize the City Manager to complete and execute the documents necessary to purchase property located on the north side of Prosperity Avenue west of West Street (portion of APN 164-150-026) needed for Project EN0088 – Prosperity Avenue & West Street Improvements Project in the amount of \$7,700, subject only to minor conforming and clarifying changes acceptable to the City Attorney and City Manager. [Submitted by: N. Bartsch]
9. Authorize the City Manager to complete and execute the documents necessary to purchase property and easements located at the northwest corner of Prosperity Avenue and West Street (portion of APN 164-150-027) needed for Project EN0088 – Prosperity Avenue & West Street Improvements Project in the amount of \$29,722, subject only to minor conforming and clarifying changes acceptable to the City Attorney and City Manager. [Submitted by: N. Bartsch]
10. Authorize the City Manager to complete and execute the documents necessary to purchase property and easements located on the west side of West Street south of Prosperity Avenue (portion of APN 168-240-069) needed for Project EN0088 – Prosperity Avenue & West Street Improvements Project in the amount of \$3,700, subject only to minor conforming and clarifying changes acceptable to the City Attorney and City Manager. [Submitted by: N. Bartsch]
11. Approve an amendment to City Manager Marc Mondell's Employment Agreement. [Submitted by: M. Zamora]

MAYOR/COUNCIL REPORTS OR ITEMS OF INTEREST

PUBLIC HEARINGS - Comments related to Public Hearing items are limited to three minutes per speaker, for a maximum of 30 minutes per item, unless otherwise extended by the Council.

- 1. Pass-to-print an ordinance amending Title 4 of the Tulare Municipal Code to adopt Appendix X of the latest edition of the California Residential Code and Appendix O of the latest edition of the California Building Code, and commencing on January 1, 2023, Appendix Z of the 2022 California Residential Code or Appendix P of the 2022 California Building Code, as applicable. [Submitted by: T. Myers]

GENERAL BUSINESS - Comments related to General Business items are limited to three minutes per speaker, for a maximum of 30 minutes per item, unless otherwise extended by the Council.

- 1. Receive an update and presentation of the 30% progress plans for the proposed Homeless Shelter facility (Project - FM0048) and provide direction regarding the proposed heating/cooling system alternatives thereto. [Submitted by: N. Bartsch]
- 2. Receive the Operational Plan for the Temporary Homeless Encampment Area and provide direction thereto. [Submitted by: M. Mondell]

STAFF UPDATES AND FUTURE AGENDA ITEMS

ADJOURNMENT

The next regularly scheduled meeting of the Tulare City Council is Tuesday, November 1, 2022, at 7:00 p.m. in the Council Chamber at the Tulare Public Library, 491 North M Street, Tulare, California.

Americans with Disabilities Act

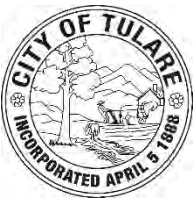
Pursuant to the Americans with Disabilities Act, persons with a disability who require a disability-related modification or accommodation in order to participate in a meeting, including auxiliary aids or services, may request such modification from the City Clerk’s Office at (559) 684-4200. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting.

AFFIDAVIT OF POSTING

State of California }
County of Tulare } ss.
City of Tulare }

I, Melissa Hermann, Chief Deputy City Clerk for the City of Tulare, hereby certify, under penalty of perjury, that I caused the posting of this agenda before 5:00 p.m. on Thursday, October 13, 2022, at City Hall, 411 E. Kern Avenue, as well as on the City’s website.

POSTED BY: Melissa Hermann, Chief Deputy City Clerk



To: Mayor and City Councilmembers
From: City Manager Marc Mondell
Subject: October 18, 2022 Agenda Memo
Date: October 13, 2022

Time Estimates - Time estimates are provided as part of the Council's effort to manage its time at Council meetings. Listed times are estimates only and are subject to change at any time, including while the meeting is in progress. The Council, by consensus, reserves the right to use more or less time on any item, to change the order of items and/or to continue items to another meeting. Particular items may be heard before or after the time estimated on the agenda. This may occur in order to best manage the time at a meeting or to adapt to the participation of the public.

6:30 p.m. - SPECIAL MEETING

CALL TO ORDER

PUBLIC COMMENTS PERTAINING TO CLOSED SESSION - Comments are limited to items to be discussed in closed session. Limited to three minutes per speaker.

ANNOUNCEMENT OF CLOSED SESSION ITEMS

- 1. Conference with Legal Counsel**
Initiation of litigation pursuant to § 54956.9(c): 3 cases

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7:00 p.m. - REGULAR MEETING

RECONVENE CITY COUNCIL MEETING

PLEDGE OF ALLEGIANCE AND INVOCATION

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Business item is discussed. In fairness to all who wish to speak, each speaker will be allowed three minutes with a maximum time of 15 minutes per item unless otherwise extended by Council. Please begin your comments by stating your name and providing your city of residence.

COMMUNICATIONS - [Time Estimate: 7:20-7:25 p.m.] Communications are to be submitted to the City Manager's Office 10 days prior to a Council Meeting to be considered for this section of the Agenda. No action will be taken on matters listed under communications; however, the Council may direct staff to schedule issues raised during communications for a future agenda. Public comments will be limited to three minutes per topic unless otherwise extended by Council.

CONSENT CALENDAR - [Time Estimate: 7:25-7:35 p.m.] All Consent Calendar items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made, in which event the item will be removed from the Consent Calendar to be discussed and voted upon by a separate motion.

1. **Authorization to read ordinances by title only.**
2. **Approve the minutes of the October 4, 2022, City Council meeting. [Submitted by: M. Hermann]** The minutes for the October 4, 2022, City Council meeting are submitted to approval. **Staff recommends Council approve the minutes as presented.**
3. **Adopt a resolution making an appointment to the Tulare Mosquito Abatement District Board of Directors. [Submitted by: M. Hermann]** The Tulare Mosquito Abatement District is governed by a six-member board of directors who are appointed to serve two or four-year terms. The board of directors is made up of four directors appointed by the County of Tulare, one member appointed by the City of Visalia, and one member appointed by the City of Tulare. The City of Tulare appointee serves a four-year term and is appointed by the Tulare City Council.

Patrick Nunes was originally appointed by the Tulare City Council to the Tulare Mosquito Abatement District Board of Directors on July 6, 2010. Mr. Nunes's most recent reappointment was June 7, 2022 with a term expiring on June 30, 2026. Since this date, Mr. Nunes has determined he is no longer able to serve on the Board and has resigned.

City staff posted a vacancy notice on the City's website, the kiosk in front of City Hall, and the public library. A notice was also posted by the Tulare Mosquito Abatement District. One application was received by Craig Smith (attached). The Tulare Mosquito Abatement District is in support of having Mr. Smith appointed to serve on this Board. Mayor Mederos has also discussed this appointment with the Board president. **Staff recommends Council adopt a resolution making an appointment to the Tulare Mosquito Abatement District Board of Directors.**

4. **Authorize the purchase of three LifePak15 cardiac monitor/defibrillators to replace in service monitors that have been deemed end of life by the manufacturer at a cost not to exceed \$84,854.91. [Submitted by: C. Long]** The

City of Tulare Fire Department paramedics use LifePak15 cardiac monitor/defibrillators to provide Advanced Life Support to citizens and visitors in our community. The department currently has six such monitors that are used on a daily basis for this purpose. Earlier this year we were notified by the manufacturer that some of these monitors are nearing end of life and service support will no longer be available.

These monitors were purchased in 2014 with grant funds and will reach the manufacturer expected end of life at the end of 2022. The manufacturer will no longer support service for these devices after this date, and will not guarantee the safety and efficacy of their use. The department is in the process of investigating grant opportunities to replace the rest of the LifePak15 inventory, however that time frame is uncertain.

We have one monitor that was purchased more recently and does not fall into the end of life window. Stryker is the sole-source provider of this monitor in our area. It is important for the department to maintain a consistent brand and model of cardiac monitor/defibrillators to ensure the necessary quality of care to patients.

Funding is available in the department's Fire Equipment Fund so no additional allocation is necessary. This purchase will ensure that the department can continue to operate Advanced Life Support units with cardiac monitor/defibrillators that are safe and provide the best level of service possible to our community. **Staff recommends Council authorize the purchase of three LifePak15 cardiac monitor/defibrillators to replace in service monitors that have been deemed end of life by the manufacturer at a cost not to exceed \$84,854.91.**

5. **Award and authorize the City Manager to sign a contract with MRC GameTime of Sea Girt, NJ, in the amount of \$126,732.66 for Project PK2019-003 and PK2019-006 – Live Oak Park and Prosperity Sports Park Playground Replacement Project; and authorize the City Manager or designee to approve contract change orders in an amount not to exceed 10% (\$12,673.26) of the contract award amount. [Submitted by: J. Glick]** Projects PK2019-003 and PK2019-006 – Live Oak Park and Prosperity Sports Park Playground Replacement Project is included in the City's approved fiscal year 2021/2023 CIP project list. These playground replacement projects will replace the obsolete and non-ADA compliant 2-5 and 5-12 playground structures at Live Oak Park and the 2-5 playground structure at the Prosperity Sports Park. These projects will incorporate an ADA ramp and ASTM F2223 standard ADA compliant fall safety surfacing at both playground locations.

Request for Bids #23-769 for the Live Oak Park and Prosperity Sports Park Playground Replacement Project was first advertised in the Tulare Advanced Register on August 30, 2022 and the City of Tulare website. Staff held a mandatory pre-bid meeting at Live Oak Park playground to provide a brief overview of the project and to answer questions and entertain contractor concerns. Only three bidders were present at the pre-bid meeting. The City Clerk's office received two proposals and the bids were opened on September 29, 2022.

The current CIP budget for both projects is \$155,000.00.

The City Clerk opened two (2) bids on September 29, 2022 for the subject request for proposals. The proposals received were:

	<u>Bid Total</u>
• MRC GameTime:	\$126,732.66
• Courts & Greens:	\$195,440.00

The contract amount, if approved includes the design, furnish and install of a new 2-5 and a 5-12 playground structure at Live Oak Park and a 2-5 playground structure at the Prosperity Sports Park within the existing play area boundaries. This also includes the installation of an ADA pour-in-place rubberized fall surfacing ramps at both project sites which will provide accessibility to and from the playground structure for handicap children.

There are sufficient funds in the Live Oak Park and Prosperity Sports Park Playground Replacement Project account to cover expected construction costs. The current balance is \$155,000.00. **Staff recommends Council award and authorize the City Manager to sign a contract with MRC GameTime of Sea Girt, NJ, in the amount of \$126,732.66 for Project PK2019-003 and PK2019-006 – Live Oak Park and Prosperity Sports Park Playground Replacement Project; and authorize the City Manager or designee to approve contract change orders in an amount not to exceed 10% (\$12,673.26) of the contract award amount.**

6. **Final acceptance of public works improvements for Phases 2 and 3 of The Greens at Oak Creek subdivision, located along the east side of Mooney Boulevard (State Route 63) south of Seminole Avenue. [Submitted by: M. Miller]**
On March 15, 2022, City Council approved the final map for Phases 2 and 3 of The Greens at Oak Creek subdivision, which created 54 single-family residential lots, as shown on the attached exhibit. Phases 2 and 3 of The Greens at Oak Creek are being developed as a single phase.

The Subdivider, D.R. Horton CA3, Inc., has completed construction of all required public works improvements in accordance with the approved plans and specifications for this subdivision, with the exception of Mooney Boulevard (State Route 63) frontage improvements. Due to delays being experienced with obtaining final construction permitting from Caltrans for improvements along the project's Mooney Boulevard frontage, the Subdivider has requested that these improvements be secured through a short-term deferred improvement agreement, which is the subject of a prior item on this agenda to be considered by Council. Completion of the Mooney Boulevard frontage improvements has been delayed by new Caltrans permitting requirements for the installation of Southern California Edison street lights within State right-of-way. The aforementioned short-term deferred improvement agreement includes all required Mooney Boulevard improvements along the frontage of Phase 2 and 3 of the Greens at Oak Creek subdivision that have not been completed.

An exhibit showing the location of The Greens at Oak Creek subdivision is attached for reference. **Subject to Council's prior approval of a short-term deferred**

improvement agreement for uncompleted frontage improvements across the project's Mooney Boulevard (State Route 63) frontage, staff recommends Council accept the required public works improvements for Phases 2 and 3 of The Greens at Oak Creek subdivision as complete, authorize the City Engineer to sign a Notice of Completion, and direct the City Clerk to file the Notice of Completion with the Tulare County Recorder's Office.

- 7. Authorize the City Manager to execute a real property purchase and sale agreement, subject only to minor conforming or clarifying changes acceptable to the City Attorney and City Manager, to transfer City-owned property (APN 166-240-014) to Warren Mouw in exchange for right-of-way dedication for the future extension of Akers Street south of Cartmill Avenue. [Submitted by: M. Miller]** The City owns property located at the southwest corner of Cartmill Avenue and Akers Street comprising 11,752 square feet and identified as Assessor's Parcel Map No. 166-240-014. The parcel is undeveloped and is a remnant of property originally acquired by the Redevelopment Agency and retained by the City for construction of the Cartmill Avenue Interchange Project. On March 15, 2022, City Council adopted Resolution 2022-09 declaring the property as surplus and directed staff to proceed with the process of selling or leasing the property. An appraisal of the property dated March 8, 2022 determined a fair-market value of \$95,000. As a former RDA property, the City was required to first provide notice to agencies and entities having jurisdiction over development of low- and moderate-income housing, open space, and school facilities that the property was being declared as surplus, and providing opportunity them with an opportunity to negotiate the purchase or lease of the property. The City received no responses to this notice, and is now free to negotiate with private parties.

Mr. Warren "Bud" Mouw is the owner of the parcel adjacent to the City parcel at the southwest corner of Cartmill Avenue and Akers Street. Mr. Mouw's property is zoned for commercial development, and he is actively processing development proposals through the City's Site Plan Review process. As a condition of development of Mr. Mouw's property, the extension of Akers Street south of Cartmill Avenue would be required. Due to the presence of a Tulare Irrigation District ditch, the established alignment of Akers Street both north and south of Cartmill Avenue is not centered on property lines, but is shifted westward. South of Cartmill Avenue, the Akers Street right-of-way will be located entirely on Mr. Mouw's property. As a result, a portion of the right-of-way dedication required for development of Mr. Mouw's property would be considered as oversized and subject to reimbursement by the City. The total right-of-way dedication required for development of the property is approximately 62,033 square feet. The portion that would be considered oversized and eligible for reimbursement by the City is 26,723 square feet. Based upon recent right-of-way acquisitions, the estimated value of the oversized dedication is \$107,000.

Mr. Mouw has expressed his desire to acquire the surplus City owned parcel. By doing so, the property could be incorporated into the planned development of his property, resulting in a more cohesive development plan for the southwest corner of Cartmill Avenue and Akers Street. Mr. Mouw has expressed a willingness to trade the portion of the right-of-way needed for the extension of Akers Street that would be subject to oversized reimbursement (26,723 square feet) for the surplus City owned property

(11,752 square feet). Based upon the appraised value of the City property and the estimated value of the oversize reimbursable right-of-way dedication, such a trade would be in the City's favor.

A draft Real Property Purchase and Sale Agreement has been prepared for the proposed transfer of property, and a copy is attached for reference. **Staff recommends Council authorize the City Manager to execute a real property purchase and sale agreement, subject only to minor conforming or clarifying changes acceptable to the City Attorney and City Manager, to transfer City-owned property (APN 166-240-014) to Warren Mouw in exchange for right-of-way dedication for the future extension of Akers Street south of Cartmill Avenue.**

8. **Authorize the City Manager to complete and execute the documents necessary to purchase property located on the north side of Prosperity Avenue west of West Street (portion of APN 164-150-026) needed for Project EN0088 – Prosperity Avenue & West Street Improvements Project in the amount of \$7,700, subject only to minor conforming and clarifying changes acceptable to the City Attorney and City Manager. [Submitted by: N. Bartsch]** A traffic study was performed for a proposed development on the southeast corner of Prosperity Avenue and West Street, which showed that warrants were met for a new traffic signal at this intersection. The City Council subsequently provided staff with direction to review the condition of this intersection, and to prioritize construction of improvements at this location. The resulting project, EN0088 – Prosperity Avenue & West Street Improvements Project, will construct the intersection to its ultimate width, install ADA compliant dual curb ramps at each corner, and install master-planned utility improvements within the project limits. Street improvements will include sufficient transitions from the full-width widening at the curb returns back down to the existing pavement width. An eight-phase traffic signal with emergency preemption, video detection for both vehicle and bicycle traffic, and associated appurtenances will be included in the project.

In order to widen the intersection and construct the ultimate improvements, the City needs to acquire approximately 2,174 square feet of additional property from the subject parcel at 1378 W. Prosperity Avenue. The property owner is Dorthy J. Martinho, trustee of the Survivor's Trust A, created under the Martinho Family Revocable Living Trust created January 24, 1994 and amended and restated November 20, 1998. The property owner has worked diligently with City Staff through the design, appraisal, and acquisition process for Project EN0088, and has agreed to sell the 2,174 square feet of property needed by the project for the amount of \$7,700. This amount is in accordance with an appraisal prepared by the City's right-of-way consultant dated February 3, 2022. **Staff recommends Council authorize the City Manager to complete and execute the documents necessary to purchase property located on the north side of Prosperity Avenue west of West Street (portion of APN 164-150-026) needed for Project EN0088 – Prosperity Avenue & West Street Improvements Project in the amount of \$7,700, subject only to minor conforming and clarifying changes acceptable to the City Attorney and City Manager.**

9. **Authorize the City Manager to complete and execute the documents necessary to purchase property and easements located at the northwest corner of Prosperity Avenue and West Street (portion of APN 164-150-027) needed for Project EN0088 – Prosperity Avenue & West Street Improvements Project in the amount of \$29,722, subject only to minor conforming and clarifying changes acceptable to the City Attorney and City Manager. [Submitted by: N. Bartsch]** A traffic study was performed for a proposed development on the southeast corner of Prosperity Avenue and West Street, which showed that warrants were met for a new traffic signal at this intersection. The City Council subsequently provided staff with direction to review the condition of this intersection, and to prioritize construction of improvements at this location. The resulting project, EN0088 – Prosperity Avenue & West Street Improvements Project, will construct the intersection to its ultimate width, install ADA compliant dual curb ramps at each corner, and install master-planned utility improvements within the project limits. Street improvements will include sufficient transitions from the full-width widening at the curb returns back down to the existing pavement width. An eight-phase traffic signal with emergency preemption, video detection for both vehicle and bicycle traffic, and associated appurtenances will be included in the project.

In order to widen the intersection and construct the ultimate improvements, the City needs to acquire approximately 3,108 square feet of additional property, and a temporary construction easement of approximately 856 square feet, from the subject property at 1343 N. West Street. The property owner is Dorothy J. Martinho, trustee of Exemption Trust C, created under the Martinho Family Revocable Living Trust. The property owner has worked diligently with City Staff through the design, appraisal, and acquisition process for Project EN0088, and has agreed to provide the property and temporary construction easement needed for the project for the amount of \$29,722. This amount is in accordance with an appraisal prepared by the City's right-of-way consultant dated February 3, 2022. Restoration of existing landscaping improvements is included in this amount. **Staff recommends Council authorize the City Manager to complete and execute the documents necessary to purchase property and easements located at the northwest corner of Prosperity Avenue and West Street (portion of APN 164-150-027) needed for Project EN0088 – Prosperity Avenue & West Street Improvements Project in the amount of \$29,722, subject only to minor conforming and clarifying changes acceptable to the City Attorney and City Manager.**

10. **Authorize the City Manager to complete and execute the documents necessary to purchase property and easements located on the west side of West Street south of Prosperity Avenue (portion of APN 168-240-069) needed for Project EN0088 – Prosperity Avenue & West Street Improvements Project in the amount of \$3,700, subject only to minor conforming and clarifying changes acceptable to the City Attorney and City Manager. [Submitted by: N. Bartsch]** A traffic study was performed for a proposed development on the southeast corner of Prosperity Avenue and West Street, which showed that warrants were met for a new traffic signal at this intersection. The City Council subsequently provided staff with direction to review the condition of this intersection, and to prioritize construction of improvements at this location. The resulting project, EN0088 – Prosperity Avenue & West Street

Improvements Project, will construct the intersection to its ultimate width, install ADA compliant dual curb ramps at each corner, and install master-planned utility improvements within the project limits. Street improvements will include sufficient transitions from the full-width widening at the curb returns back down to the existing pavement width. An eight-phase traffic signal with emergency preemption, video detection for both vehicle and bicycle traffic, and associated appurtenances will be included in the project.

In order to widen the intersection and construct the ultimate improvements, the City needs to acquire approximately 230 square feet of additional property, and a temporary construction easement of approximately 202 square feet, from the subject property at 1279 N. West Street. The property owner is Parmar Brothers, Inc., a California Corporation. The property owner has worked diligently with City Staff through the design, appraisal, and acquisition process for Project EN0088, and has agreed to provide the property and temporary construction easement needed for the project for the amount of \$3,700. This amount is in accordance with an appraisal prepared by the City's right-of-way consultant dated February 3, 2022. Restoration of existing landscaping improvements is included in this amount. **Staff recommends Council authorize the City Manager to complete and execute the documents necessary to purchase property and easements located on the west side of West Street south of Prosperity Avenue (portion of APN 168-240-069) needed for Project EN0088 – Prosperity Avenue & West Street Improvements Project in the amount of \$3,700, subject only to minor conforming and clarifying changes acceptable to the City Attorney and City Manager.**

- 11. Approve an amendment to City Manager Marc Mondell's Employment Agreement. [Submitted by: M. Zamora]** An amendment to City Manager Marc Mondell's Employment Agreement calls for a ten percent (10%) increase in salary which would bring his salary to two hundred, twenty-five thousand, three hundred, fifty-three dollars and seventy cents (\$225,353.70). The Amendment also provides an additional \$2,500 in deferred compensation bringing his total deferred compensation to an annual amount of \$13,400.00. **Staff recommends Council approve an amendment to City Manager Marc Mondell's Employment Agreement.**

MAYOR/COUNCIL REPORTS OR ITEMS OF INTEREST [Time Estimate: 7:35-7:40 p.m.]

PUBLIC HEARINGS - Comments related to Public Hearing items are limited to three minutes per speaker, for a maximum of 30 minutes per item, unless otherwise extended by the Council.

- 1. Pass-to-print an ordinance amending Title 4 of the Tulare Municipal Code to adopt Appendix X of the latest edition of the California Residential Code and Appendix O of the latest edition of the California Building Code, and commencing on January 1, 2023, Appendix Z of the 2022 California Residential Code or Appendix P of the 2022 California Building Code, as applicable. [Submitted by: T. Myers] [Time Estimate: 7:40-7:50 p.m.]** The City of Tulare has made progress towards managing its homeless situation. However, the City continues to find that the number of homes is insufficient, that a significant portion of homeless are without the ability to obtain shelter, and that the situation has resulted in a threat to

the health and safety of those persons. The City has also found that there is an ongoing need to expand the number of shelters within the City. The City of Tulare also affirms the City's commitment to managing homelessness and offering shelter and service options for those living without shelter in our communities.

During a declared shelter crisis, Government Code Section 8698.1 allows a local agency to suspend state and local statutes, regulations, or ordinances prescribing standards for housing, health, or safety to the extent reasonably necessary to mitigate impacts of the crisis. The statute also encourages agencies to adopt minimum local health and safety standards that will apply in lieu of the California Building Standards Code to additional public facilities used to provide emergency housing.

The proposed policy outlines the minimum fire and life safety requirements that will apply during a declared shelter crisis in the City of Tulare on properties or facilities owned or leased by the City of Tulare.

GENERAL BUSINESS - Comments related to General Business items are limited to three minutes per speaker, for a maximum of 30 minutes per item, unless otherwise extended by the Council.

- 1. Receive an update and presentation of the 30% progress plans for the proposed Homeless Shelter facility (Project - FM0048) and provide direction regarding the proposed heating/cooling system alternatives thereto. [Submitted by: N. Bartsch]** [Time Estimate: 7:50-8:20 p.m.] Over the past several years, the City has been discussing the issue of homelessness, its impacts on the community, and possible solutions. With the restrictions that resulted from the 2018 Martin vs. Boise court decision, cities cannot enforce anti-camping ordinances if there are not a sufficient number of shelter beds available for the homeless population.

At the May 17, 2022 City Council Meeting, Staff presented a memorandum outlining a conceptual plan, project phasing, potential lease options, and an operational plan for Council's review and consideration. The primary recommendation of the memorandum was that the City partner with the County of Tulare to design, construct, and operate an emergency homeless shelter located on the County's property at East O'Neal Avenue, east of "K" Street. The City Council approved and directed Staff to move forward with the project as presented.

On July 19, 2022, the City Council approved a contract with 4 Creeks for architectural and engineering design services for a permanent homeless shelter located on the vacant land at the Tulare County Health and Human Services facility. The initial intent of the project was to construct it in three phases. The first phase included a temporary encampment area with restroom facilities and a site office building. The permanent shelter structure with two separate training rooms and a food pantry were to be constructed in the second phase. The third and final phase was to add a modular village and additional amenities, such as storage containers, a kennel, a garden area, and an exercise court. However, due to concerns expressed by the County, the temporary homeless encampment will be constructed in a separate location. It is

anticipated that the construction of the permanent facility will now be completed in either one or two phases.

As promised, an update and presentation of the design and scope of work is being brought back to the Council for consideration and comment prior to proceeding with the completion of the design. Specifically, Staff is requesting feedback with regard to the proposed heating and cooling systems being designed in the main shelter building. The main building is planned to encompass approximately 20,000 square feet with a capacity of 200 beds easily scalable upwards to 400 beds. It will include both common areas and designated sleeping areas, with varying degrees of accommodations and privacy. To address the conditioning of such a large space, two major factors must be considered when evaluating alternatives. First, what is necessary for the alternatives to comply with Title 24 Energy Code requirements of the building code? Second, what are the resulting construction and operational costs associated with those alternatives?

Air Conditioning and Full Heating

To fully condition a space, Title 24 Energy Code requires certain building standards/ratings be met, including minimum levels of building insulation. For a building of this type and use, additional measures would need to be taken, such as constructing interior walls to enclose/protect the insulation from damage/vandalism. In regards to performance, on a 100-degree day a full air-conditioning system could be expected to cool a space of this size to 75 degrees. On a 45-degree night, this system could be expected to warm the building up to 72 degrees.

Evaporative Coolers and Reduced Heating

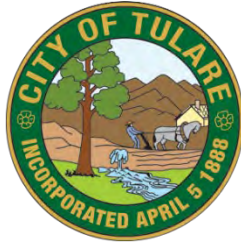
Alternatively, with the use of evaporative coolers, fully insulating the building could be avoided and Title 24 Energy Code requirements would not apply for the cooling system. However, the Title 24 Energy Code requirements would impact the design of the heating system. To meet the efficiency requirements of the code, the levels of heating that could be provided would be reduced. With regards to system performance, on a 100-degree day an evaporative cooling system can be expected to cool a space of this size to 80 degrees. With the reduced heating system, on a 45-degree night, this system would be expected to warm the building up to 55 degrees. While this system alternative would not achieve the same temperature differential as the air conditioning and full heating system, evaporative cooling systems are much more cost efficient to construct and operate, using as much as 50% less electricity.

Currently, the cost differential between the evaporative cooling and reduced heating system and an air conditioning and full heating system (with associated/required energy efficiency upgrades) is estimated at \$1.1 million. In either alternative, large ceiling fans will be utilized throughout the shelter space to provide air circulation. In weighing the alternatives, there is a need to consider the intent, function, and desired performance of the facility, while recognizing the significant difference in initial capital costs and ongoing operational costs. **Staff recommends Council receive an update and presentation of the 30% progress plans for the proposed Homeless Shelter facility (Project - FM0048) and provide direction regarding the proposed heating/cooling system alternatives thereto.**

2. **Receive the Operational Plan for the Temporary Homeless Encampment Area and provide direction thereto. [Submitted by: M. Mondell]** [Time Estimate: 8:20-8:50 p.m.] As discussed at the September 20, 2022, Council meeting, staff has prepared an operational plan for the temporary homeless encampment area to be located at the northeast corner of Walnut Avenue and O Street. The operational plan is attached for Council review and consideration. **Staff recommends Council receive the Operational Plan for the Temporary Homeless Encampment Area and provide direction thereto.**

STAFF UPDATES AND FUTURE AGENDA ITEMS [Time Estimate: 8:50-9:05 p.m.]

ADJOURNMENT



Proclamation

Disability Employment Awareness Month

Whereas, October 2022 marks the seventy-seventh anniversary of National Disability Employment Awareness Month; and

Whereas, the purpose of National Disability Employment Awareness Month is to educate about disability employment issues and celebrate the many and varied contributions of America's workers with disabilities; and

Whereas, recognition of the contributions of persons with disabilities is an effective way to overcome negative stereotypes and eliminate physical and attitudinal barriers to full participation in all aspects of community life, including education, recreation and employment; and

Whereas, people with disabilities are an important, vital part of our community as valued workers, civic leaders, business owners, veterans, family members, and friends, and they are innovative and valued contributors in the workplace, the classroom, and the community; and

Whereas, the City of Tulare is committed to ensuring that City programs and employment practices effectively serve and benefit persons of all abilities in order to support individual dignity, self-reliance and productive lives for all people; and

Whereas, Tulare is proud to renew its dedication to fostering equal access and demonstrating commitment to full inclusion of people with disabilities.

Now, therefore we, the Council of the City of Tulare, do hereby proclaim the month of October 2022 as

Disability Employment Awareness Month in the City of Tulare

Dated this 18th day of October, 2022

Dennis A. Mederos, Mayor

Terry A. Sayre, Vice Mayor

Jose Sigala, Councilmember

Stephen C. Harrell, Councilmember

Patrick Isherwood, Councilmember

**ACTION MINUTES
CITY COUNCIL OF THE CITY OF TULARE**

October 4, 2022

A special meeting of the City Council of the City of Tulare was held on Tuesday, October 4, 2022, at 6:15 p.m. in the Tulare Public Library and Council Chamber located at 491 North M Street.

COUNCIL PRESENT: Dennis A. Mederos, Terry A. Sayre, Stephen C. Harrell, Patrick Isherwood, Jose Sigala

STAFF PRESENT: Marc Mondell, Mario Zamora, Janice Avila, Diego Ibanez, Clay Roberts, Justin Patananan, Melissa Hermann

I. CALL TO ORDER

Mayor Mederos called the meeting to order at 6:15 p.m.

II. CITIZEN COMMENTS

There were no citizen comments.

III. ADJOURN TO CLOSED SESSION FOR DISCUSSION OF THE FOLLOWING:

- 1. Public Employee Performance Evaluation (Government Code § 54957)
Title: City Manager**

Mayor Mederos adjourned to closed session at 6:16 p.m.

IV. RECONVENE FROM CLOSED SESSION

Mayor Mederos reconvened from closed session at 7:11 p.m.

V. CLOSED SESSION REPORT

City Attorney Mario Zamora advised there was no reportable action.

VI. ADJOURNMENT

Mayor Mederos adjourned the meeting at 7:11 p.m.

A regular meeting of the City Council of the City of Tulare was held on Tuesday, October 4, 2022, at 7:00 p.m. in the Tulare Public Library and Council Chamber located at 491 North M Street.

COUNCIL PRESENT: Dennis A. Mederos, Terry A. Sayre, Stephen C. Harrell, Patrick Isherwood, Jose Sigala

STAFF PRESENT: Marc Mondell, Mario Zamora, Josh McDonnell, Traci Myers, Janice Avila, Michael Ott, Fred Ynclan, Diego Ibanez, Michael

Miller, Trisha Whitfield, Jason Glick, Manny Correa, Clay Roberts, Justin Patananan, Melissa Hermann

VII. CALL TO ORDER

Mayor Mederos called the meeting to order at 7:11 p.m.

VIII. PLEDGE OF ALLEGIANCE AND INVOCATION

Mayor Mederos led the pledge of allegiance and an invocation was given by Pastor Susan Henard.

IX. PROCLAMATIONS & RECOGNITIONS

1. **Spotlight on Excellence – Employee Recognition.** City Manager Marc Mondell introduced Public Works Director Trisha Whitfield who presented Gary Karas with the Spotlight on Excellence Employee Recognition Award.
2. **Proclamation for Support Your Local Chamber of Commerce Day, October 19, 2022.** Mayor Mederos presented a proclamation proclaiming October 19, 2022, as Support Your Local Chamber of Commerce Day in the City of Tulare to Tulare Chamber of Commerce CEO Donnette Silva-Carter and members of the Chamber Board.
3. **Proclamation for Fire Prevention Week, October 9-15, 2022.** Mayor Mederos presented a proclamation proclaiming the week of October 9-15, 2022 as Fire Prevention Week in the City of Tulare to Fire Chief Michael Ott.

- X. CITIZEN COMMENTS** - Mayor Mederos requested those who wish to speak on matters not on the agenda within the jurisdiction of the Council, or to address or request a matter be pulled from the Consent Calendar to do so at this time. He further stated comments related to General Business matters would be heard at the time that matter is addressed on the agenda.

There were no citizen comments.

XI. COMMUNICATIONS

City Manager Marc Mondell stated there were no communications.

XII. CONSENT CALENDAR

It was moved by Councilmember Sigala, seconded by Councilmember Harrell, and unanimously carried that the items on the Consent Calendar be approved as presented.

1. **Authorization to read ordinances by title only.**
2. **Approve minutes of the September 20, 2022, regular meeting. [Submitted by: M. Hermann]**

3. **Adopt Ordinance 2022-13 amending Title 2, Chapter 2.04 (Parks and Recreation Commission), Section 2.04.030 (Appointments and Qualifications) of the Tulare Municipal Code to be consistent with the adopted Boards, Commissions, and Committee Handbook in regard to residency requirements and make clear the appointment process. [Submitted by: M. Hermann]**
4. **Accept the monthly investment report for August 2022. [Submitted by: D. Ibanez]**
5. **Authorize the Mayor to execute a license, subject only to minor conforming or clarifying changes acceptable to the City Attorney and City Manager, to allow Correa Land Company LLC to maintain an existing decorative wrought iron and block wall fence within the City's Walnut Avenue and Marion Street rights-of-way along a portion of their adjacent residential property. [Submitted by: M. Miller]**
6. **Confirm Vice Mayor Sayre's appointment of Ralph Cantu to the Committee on Aging with a term ending December 31, 2023. [Submitted by: M. Hermann]**
7. **Conditionally approve the final map for Hidden Ridge subdivision for recordation, and accept all easements and dedications offered to the City on the final map, subject to receipt of the signed final map, all fees, and other required items prior to December 4, 2022. [Submitted by: M. Miller]**

XIII. MAYOR/COUNCIL REPORTS OR ITEMS OF INTEREST – G.C. 54954.2(a)(3)

Council reported out on recent events and discussed items of interest.

XIV. SCHEDULED PRESENTATIONS

1. **Community and Economic Development Update. [Submitted by: T. Myers]** Community and Economic Development Director Traci Myers provided an update on economic development in the City of Tulare.

XV. GENERAL BUSINESS - Comments related to General Business items are limited to three minutes per speaker, for a maximum of 30 minutes per item, unless otherwise extended by the Council.

1. **Authorize advance of cash in the amount not to exceed \$1,500,000.00 to the Tulare County Regional Transit Authority (TCRTA); and authorize the mayor to sign the Cash Advance and Repayment Agreement. [Submitted by: D. Ibanez]** City Manager Marc Mondell provided a report for Council consideration. Tulare County Regional Transit Authority Executive Director Rich Tree provided additional information. Public comment was received from Alma Serrano who requested consideration for free transportation. Following discussion, it was moved by Councilmember Sigala, seconded by Vice Mayor Sayre, and unanimously carried to authorize advance of cash in the amount not to exceed \$1,500,000.00 to the Tulare County Regional Transit Authority

(TCRTA); and authorize the mayor to sign the Cash Advance and Repayment Agreement subject to minor changes by the City Attorney.

2. **Receive an update on the Keep Tulare Beautiful project. [Submitted by: M. Correa]** Office of Safety, Compliance, and Facilities Officer Manny Correa provided a presentation to the Council. Public comment was received by Tulare Downtown Association John Harman who praised the work and staff. This was an informational item; no action was taken.
3. **Receive an update on the cooling center operations for the summer of 2022 and provide direction for future operations. [Submitted by: M. Ott]** Fire Chief Michael Ott provided an overview of the item. Public comment was received by Tulare Downtown Association Director John Harman regarding the number of those who took advantage of the center and the need for signage. This was an informational item; no action was taken.

XVI. STAFF UPDATES AND FUTURE AGENDA ITEMS – GC 54954.2(a)(3)

Staff provided updates to Council.

Vice Mayor Sayre requested and received consensus to have staff place an item on a future agenda to review the mobile vendor ordinance.

Councilmember Sigala requested a future item to consider writing a letter to CalTrans requesting a traffic signal at Inyo and West. Staff stated they would reach out to CalTrans requesting they provide a presentation to Council.

Councilmember Sigala requested and received consensus to have staff schedule a future study session on Keep Tulare Beautiful regarding policy changes that may need to occur. City Manager Marc Mondell stated staff will schedule a session in the beginning of 2023.

Mayor Mederos requested and received consensus to work with staff and place an item on a future agenda to formalize the process for adding items to Council agendas.

XVII. ADJOURN REGULAR MEETING

Mayor Mederos adjourned the regular meeting at 9:27 p.m.

President of the Council and Ex-Officio
Mayor of the City of Tulare

ATTEST:

Chief Deputy City Clerk and Clerk of the
Council of the City of Tulare

AGENDA ITEM: Consent 3

**CITY OF TULARE
AGENDA ITEM TRANSMITTAL SHEET**

Submitting Department: City Manager

For Council Meeting of: October 18, 2022

Documents Attached: Ordinance Resolution Other None

AGENDA ITEM:

Adopt a resolution making an appointment to the Tulare Mosquito Abatement District Board of Directors.

IS PUBLIC HEARING REQUIRED: Yes No

BACKGROUND/EXPLANATION:

The Tulare Mosquito Abatement District is governed by a six-member board of directors who are appointed to serve two or four-year terms. The board of directors is made up of four directors appointed by the County of Tulare, one member appointed by the City of Visalia, and one member appointed by the City of Tulare. The City of Tulare appointee serves a four-year term and is appointed by the Tulare City Council.

Patrick Nunes was originally appointed by the Tulare City Council to the Tulare Mosquito Abatement District Board of Directors on July 6, 2010. Mr. Nunes’s most recent reappointment was June 7, 2022 with a term expiring on June 30, 2026. Since this date, Mr. Nunes has determined he is no longer able to serve on the Board and has resigned.

City staff posted a vacancy notice on the City’s website, the kiosk in front of City Hall, and the public library. A notice was also posted by the Tulare Mosquito Abatement District. One application was received by Craig Smith (attached). The Tulare Mosquito Abatement District is in support of having Mr. Smith appointed to serve on this Board. Mayor Mederos has also discussed this appointment with the Board president.

STAFF RECOMMENDATION:

Adopt a resolution making an appointment to the Tulare Mosquito Abatement District Board of Directors.

CITY ATTORNEY REVIEW/COMMENTS: Yes N/A

IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED: Yes No N/A

FUNDING SOURCE/ACCOUNT NUMBER:

N/A

Submitted by: Melissa Hermann

Title: Chief Deputy City Clerk

Date: October 3, 2022

City Manager Approval: _____

Boards, Commissions, and Committees Application

NAME Craig W. Smith		ADDRESS [REDACTED]	
MAILING ADDRESS (if different from above) [REDACTED]		EMAIL ADDRESS craig@craigsmithandassoc.com	
PRIMARY PHONE [REDACTED]	SECONDARY PHONE [REDACTED]	YEARS IN TULARE 40 +	
EMPLOYER Craig Smith & Associates, Inc.			

BOARDS, COMMISSIONS, AND COMMITTEES:

To be considered for appointment to a board, commission, or committee, candidates must reside within the city limits of the City of Tulare with the exception of the Aviation Committee, Parks and Recreation Commission, and the Planning Commission. Candidates may reside within the sphere of influence for those three bodies. Please indicate which boards, commissions, and committees you are interested in serving on.

- | | |
|--|--|
| <input type="checkbox"/> Aviation Committee* | <input type="checkbox"/> Board of Public Utilities |
| <input type="checkbox"/> Committee on Aging | <input type="checkbox"/> Library Board |
| <input type="checkbox"/> Measure I Citizen Oversight Committee | <input type="checkbox"/> Parks & Recreation Commission* |
| <input type="checkbox"/> Planning Commission* | <input type="checkbox"/> Police Depart. Citizen Complaint Review Board |
| <input checked="" type="checkbox"/> Tulare Mosquito Abatement District | |

*Sphere of Influence

Please provide a brief statement about yourself, background and why you are interested in serving on the above. Attach additional sheets if more space is needed.

I was born in Tulare and raised on a farm in Pixley. I attended grade school in Pixley, High School in Tulare, and I have an Ag Business Management degree from Cal Poly San Luis Obispo. I am the owner of Craig Smith & Associates, Inc. with my wife, Karen, and our two sons work along side us as well.

The retiring member of the Tulare Mosquito Abatement District, Pat Nunes, asked me if I would be interested in serving on this Board. I feel it would give me an opportunity to serve the City of Tulare and I would very much like to be considered for this position.

Date: 9-16-22

Signature: 

Return to: Office of City Clerk, 411 East Kern Ave, Tulare CA 93274 Fax (559) 366-1701

RESOLUTION 2022-

**A RESOLUTION OF THE COUNCIL OF THE CITY OF TULARE
MAKING AN APPOINTMENT TO THE TULARE MOSQUITO ABATEMENT DISTRICT
BOARD OF DIRECTORS**

WHEREAS, the City of Tulare is authorized to appoint one member of the Board of Directors of the Tulare Mosquito Abatement District; and

WHEREAS, the term for the current unscheduled vacancy expires on June 30, 2026.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Tulare, as follows, to wit:

Section 1. Craig Smith is hereby appointed as director representing the City of Tulare on the Tulare Mosquito Abatement District Board of Directors.

Section 2. The City Clerk shall forward a certified copy of this resolution to the Tulare Mosquito Abatement District.

PASSED AND ADOPTED this 18th day of October, 2022.

President of the Council and Ex-Officio
Mayor of the City of Tulare

ATTEST:

Chief Deputy City Clerk and Clerk of the
Council of the City of Tulare

AGENDA ITEM: Consent 4

**CITY OF TULARE
AGENDA ITEM TRANSMITTAL SHEET**

Submitting Department: Fire

For Council Meeting of: October 18, 2022

Documents Attached: Ordinance Resolution Other None

AGENDA ITEM:

Authorize the purchase of three LifePak15 cardiac monitor/defibrillators to replace in service monitors that have been deemed end of life by the manufacturer at a cost not to exceed \$84,854.91.

IS PUBLIC HEARING REQUIRED: Yes No

BACKGROUND/EXPLANATION:

The City of Tulare Fire Department paramedics use LifePak15 cardiac monitor/defibrillators to provide Advanced Life Support to citizens and visitors in our community. The department currently has six such monitors that are used on a daily basis for this purpose. Earlier this year we were notified by the manufacturer that some of these monitors are nearing end of life and service support will no longer be available.

These monitors were purchased in 2014 with grant funds and will reach the manufacturer expected end of life at the end of 2022. The manufacturer will no longer support service for these devices after this date, and will not guarantee the safety and efficacy of their use. The department is in the process of investigating grant opportunities to replace the rest of the LifePak15 inventory, however that time frame is uncertain.

We have one monitor that was purchased more recently and does not fall into the end of life window. Stryker is the sole-source provider of this monitor in our area. It is important for the department to maintain a consistent brand and model of cardiac monitor/defibrillators to ensure the necessary quality of care to patients.

Funding is available in the department’s Fire Equipment Fund so no additional allocation is necessary. This purchase will ensure that the department can continue to operate Advanced Life Support units with cardiac monitor/defibrillators that are safe and provide the best level of service possible to our community.

STAFF RECOMMENDATION:

Authorize the purchase of three LifePak15 cardiac monitor/defibrillators to replace in service monitors that have been deemed end of life by the manufacturer at a cost not to exceed \$84,854.91.

CITY ATTORNEY REVIEW/COMMENTS: Yes N/A

IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED: Yes No N/A

FUNDING SOURCE/ACCOUNT NUMBER:

623-4623-7702

Submitted by: Cameron Long

Title: Fire Division Chief

Date: October 3, 2022

City Manager Approval: _____

AGENDA ITEM: Consent 5

**CITY OF TULARE
AGENDA ITEM TRANSMITTAL SHEET**

Submitting Department: Community Services - Parks

For Council Meeting of: October 18, 2022

Documents Attached: Ordinance Resolution Other None

AGENDA ITEM:

Award and authorize the City Manager to sign a contract with MRC GameTime of Sea Girt, NJ, in the amount of \$126,732.66 for Project PK2019-003 and PK2019-006 – Live Oak Park and Prosperity Sports Park Playground Replacement Project; and authorize the City Manager or designee to approve contract change orders in an amount not to exceed 10% (\$12,673.26) of the contract award amount.

IS PUBLIC HEARING REQUIRED: Yes No

BACKGROUND/EXPLANATION:

Projects PK2019-003 and PK2019-006 – Live Oak Park and Prosperity Sports Park Playground Replacement Project is included in the City’s approved fiscal year 2021/2023 CIP project list. These playground replacement projects will replace the obsolete and non-ADA compliant 2-5 and 5-12 playground structures at Live Oak Park and the 2-5 playground structure at the Prosperity Sports Park. These projects will incorporate an ADA ramp and ASTM F2223 standard ADA compliant fall safety surfacing at both playground locations.

Request for Bids #23-769 for the Live Oak Park and Prosperity Sports Park Playground Replacement Project was first advertised in the Tulare Advanced Register on August 30, 2022 and the City of Tulare website. Staff held a mandatory pre-bid meeting at Live Oak Park playground to provide a brief overview of the project and to answer questions and entertain contractor concerns. Only three bidders were present at the pre-bid meeting. The City Clerk’s office received two proposals and the bids were opened on September 29, 2022.

The current CIP budget for both projects is \$155,000.00

The City Clerk opened two (2) bids on September 29, 2022 for the subject request for proposals. The proposals received were:

	<u>Bid Total</u>
• MRC GameTime:	\$126,732.66
• Courts & Greens:	\$195,440.00

The contract amount, if approved includes the design, furnish and install of a new 2-5 and a 5-12 playground structure at Live Oak Park and a 2-5 playground structure at the Prosperity Sports Park within the existing play area boundaries. This also includes the installation of an ADA pour-in-place rubberized fall surfacing ramps at both project sites which will provide accessibility to and from the playground structure for handicap children.

There are sufficient funds in the Live Oak Park and Prosperity Sports Park Playground Replacement Project account to cover expected construction costs. The current balance is \$155,000.00.

STAFF RECOMMENDATION:

Award and authorize the City Manager to sign a contract with MRC GameTime of Sea Girt, NJ, in the amount of \$126,732.66 for Project PK2019-003 and PK2019-006 – Live Oak Park and Prosperity Sports Park Playground Replacement Project; and authorize the City Manager or designee to approve contract change orders in an amount not to exceed 10% (\$12,673.26) of the contract award amount.

CITY ATTORNEY REVIEW/COMMENTS: Yes N/A

IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED: Yes No N/A

FUNDING SOURCE/ACCOUNT NUMBER:

601 General Fund

Submitted by: Jason Glick

Title: Community Services Director

Date: October 7, 2022

City Manager Approval: _____

CITY OF TULARE
RFB #23-769 PK2019-003 & PK2019-006 Live Oak Park and Prosperity Sports Park Playground Replacement Project
BID OPENING: 09/29/2022

ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST: PK2019-003 \$117,000.00/PK2019-006 \$38,000.00
BID SUMMARY

		Engineer's Estimate	MRC - GameTime	Courts & Greens	
Item No.	Item Description	Amount	Amount	Amount	Amount
PK2019-003	Live Oak Park Playground Replacement Project	TOTAL \$ 117,000.00	TOTAL \$ 79,934.85	TOTAL \$ 195,440.00	TOTAL \$ -
		Engineer's Estimate	MRC - GameTime	Courts & Greens	
Item No.	Item Description	Amount	Amount	Amount	Amount
PK2019-006	Prosperity Sports Park Playground Replacement Project	TOTAL \$ 38,000.00	TOTAL \$ 46,797.81	TOTAL \$ 68,400.00	TOTAL \$ -
		TOTAL \$ 155,000.00	TOTAL \$ 126,732.66	TOTAL \$ 263,840.00	TOTAL \$ -
NOTES:					

NAME OF COMPANY: Playcore Wisconsin Inc. d/b/a/ GameTime, c/o MRC Inc.
Address: P.O. Box 225250, San Francisco, CA. 94122

Main Contact:

KEITH DAVIS
CENTRAL CALIFORNIA DESIGN CONSULTANT
TELEPHONE: 800-922-0070 x 1025
kdavis@mrcrec.com

1. Proposal Summary:

GameTime and MRC Inc. feel confident that our experience and design approach will make us successful in fulfilling the products and services required by the City of Tulare Office of the Community Services Department, Parks Division.

GameTime designs and manufactures play equipment and surfacing that goes beyond safety and ADA compliance. Since 1929, GameTime has sought to enrich childhood through play, and to create play spaces that eliminate barriers to the play experience. Our goal is to help communities design environments that allow all people to participate in play, regardless of age or ability, and to prove that play has no limit.

We believe the team we have assembled, described below, will partner to create destination play spaces for both Live Oak and Prosperity Sports Park.

2. Team Composition:

Since 1929, GameTime has been the leading designer, manufacturer for park and recreation products. Our factory is located in the heartland of Fort Payne, Alabama. Throughout our history, we've designed industry changing standards in safety, inclusion focused products that have brought the world's children a little closer, and together with our parent company, Playcore, we have elevated play and programming to a whole new level.

We hold an ISO 9001 certification, meaning our processes are standardized so that things are done right, made right, and shipped right. Our ISO 14001 certification supports our dedication to the environment, ensuring that we work with the goal of eliminating waste and recycling in our manufacturing facility and offices, as well as offering recycled and recyclable products.

MRC Inc has been representing GameTime for over 30 years. During that time we have been offering and installing playground and recreation equipment in New Jersey, New York, Massachusetts, New Hampshire, Vermont, Maine, Connecticut, Rhode Island, and Pennsylvania. As of 2012 we've expanded and begun installing playgrounds in Northern California and Oregon on the west coast as well. We presently have offices in both San Francisco and New Jersey. We have a current permanent staff of 38 employees.

MRC Inc and GameTime will be represented locally by Keith Davis. He will be involved from start to finish working closely with the city, architect and installers to assure all operations run smoothly and the cities' needs are met. Keith Davis is a CPSI Certified Playground Inspector with heavy concentration on compliance and safety issues centered around Public Playground Equipment. Keith is an expert in playground design, function and construction of public playgrounds. His team is committed to providing turnkey personal service throughout all phases of your play and recreation project. Keith is authentic and committed to thinking outside the box and enjoys customizing one-of-a-kind play spaces through community engagement. Keith's priority is to ensure the client's needs are met with high standards. Keith brings a wealth of experience and works closely with an effective team of designers, researchers and individuals that are known throughout North America providing thoughtful design and a unique perspective and passion for enriching childhood through Play. Keith Davis has a BS degree from Towson State University in Maryland and 30 years' experience in the playground and sports equipment industry. Keith has been with MRC since 2010 and specializes in creating inclusive playgrounds that have garnered recognition as national demonstration sites.

3. Statement of Experience:

MRC Inc and GameTime have an abundance of experience designing and building playgrounds that ensure all abilities and skill levels have exceptional recreational opportunities. On any given day of the week in our offices in San Francisco and New Jersey our sales associates are always at work on a new playground project.

Below is a list of references, complete with some photographs and contact information for locally installed projects. All of these projects were completed by the staff from MRC and GameTime listed here.

RECENT PROJECTS

Steve Carli Park
City of Santa Clara, CA
Dale Seale 408-615-3711
dseal@santaclara.gov

National Demonstration Site For PlayOn and NatureGrounds
<https://gametime.box.com/s/5hzeqmgkrhmoq72l999t5717ja2qcivi>

CURRENT INCLUSIVE PLAYGROUNDS

Woodward Park
City of Fresno, CA
Tony Hernandez
Me2 Inclusive

Veterans Park
City of Brentwood
Brain Johnson
925-584-5241
Me 2 inclusive/ Playworx

Strike Park
Park and Maintenance Superintendent
North Highlands Recreation and Park District
Scott Graham 916.332.7440
scott@nhrpd.org
Me2 Inclusive

CURRENT WITHIN 5 YEARS

Rivercats Playground- Raley Field
Sacramento, CA
Chip Maxsom- General Manager Rivercats
916.376.4710
CMaxson@RIVERCATS.com
Playworx

Larsen Park
City of San Francisco
Melinda Stockman, PM
415-806-3615
Melinda.stockmann@sfgov.org
Custom Playworx

4. Key Personnel Licenses:

Keith Davis is a Certified Playground Safety Inspector. They will ensure that all playground designs meet the latest ASTM, CPSC and ADA guidelines. Recreation Project Services holds a California Contractors License # 1065561 with DIR number 1000588722 and our Installation crew is Certified by our factory, professionally trained to install our playground equipment and has been certified by GameTime for over 25 years.

5. Unspecified Value-Added Offerings:

One of the main value-added offerings you receive by working with MRC Inc is our dedicated, full-time office staff. Our field representative Kelly is supported by a full time office staff. This staff can assist with tracking shipments, providing cad details and accounting In addition MRC employs a full-time dedicated person to service our replacement part request. This person has 20 year's experience and lead our team in this effort to get equipment back into service in a fast and efficient manner.

6. General Statement of Compliance:

GameTime, c/o MRC Inc. will comply with all contracting requirements of the City, including Insurance, Department of Industrial Relations submittal information, Prevailing Wage Requirements, background checks and all other requirements specified.

7. Insurance Compliance:

GameTime c/o MRC Inc can comply with the listed insurance requirements. See attached certificate of insurance.



Live Oak Park - Tulare, CA
View A



play.site.sport.
170 / www.mrcrc.com



4PLAY



Live Oak Park - Tulare, CA
View B



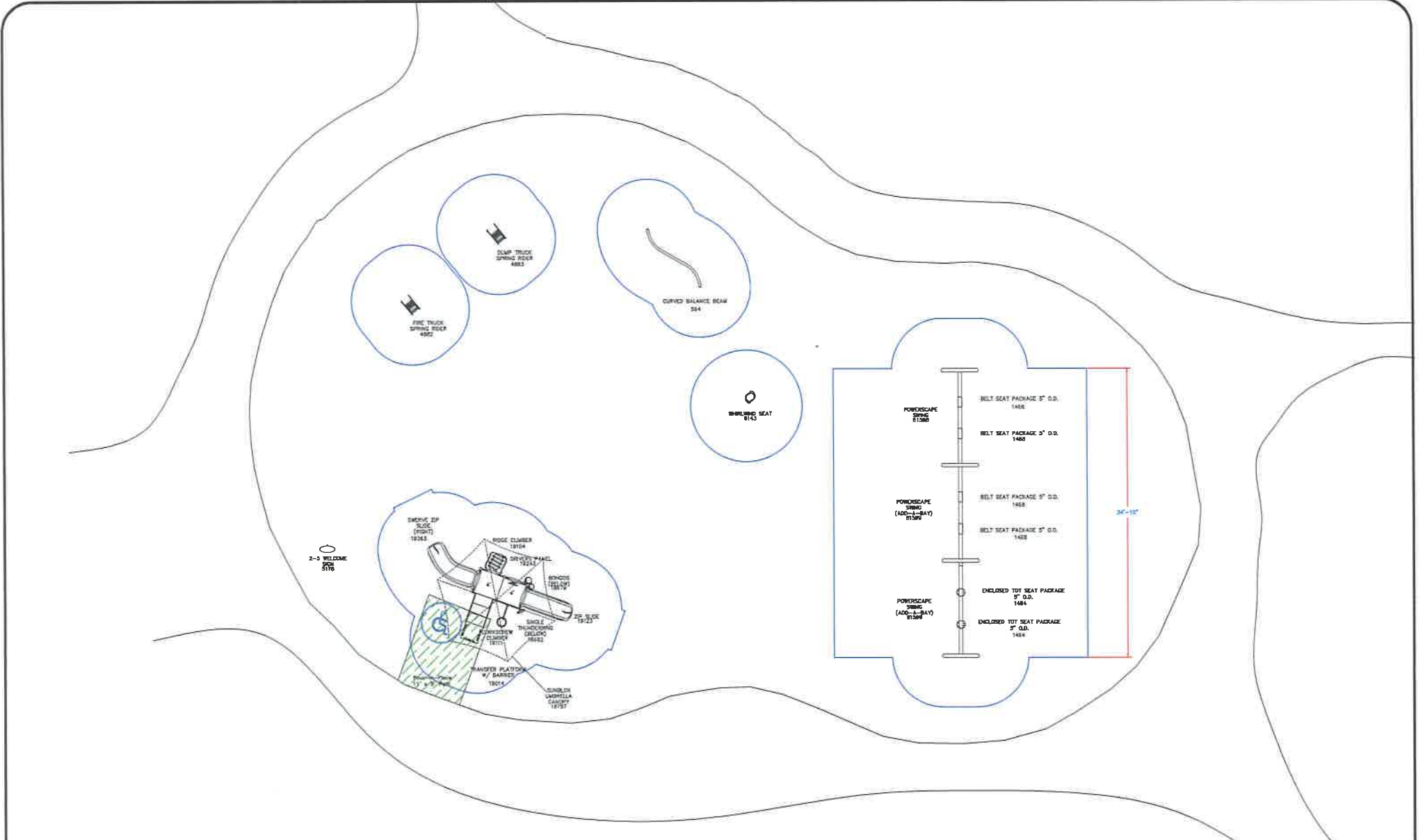
Live Oak Park - Tulare, CA
View C



play.site.sport.
170 / www.mrcrc.com



*PLAY



150 PlayCore Drive SE
Fort Payne, AL 35967
www.gametime.com

Live Oak Park
Tulare CA

Representative
MRC

This play equipment is recommended for children ages 2-5

Minimum Area Required:
Scale: 1" = 5'-0"
This drawing can be scaled only when in an 24" x 36" format

IMPORTANT: Soft resilient surfacing should be placed in the use zones of all equipment, as specified for each type of equipment, and at depths to meet the strict fall heights as specified by the U.S. consumer Product Safety Commission, ASTM standard F 1483 and Canadian standard CANCSA-T-514.

Drawn By: DH JP af
Date: 8/27/22
Drawing Name: 1



C/O MRC
 PO Box 106
 Spring Lake, NJ 07762
 Ph: 732-458-1111
 Fx: 732-974-0226
 Em: MRC@GAMETIME.COM
 Web: www.mrcrec.com

10/03/2022
 Quote #
 108769-01-02

CA Tulare City of Live Oak Park

Tulare City of
 Attn: Ivan Nicar
 600 N. Laspina Street
 Tulare, CA 93274
 Phone: 559-684-4333
 Fax: 559-685-2323
 inicar@tulare.ca.gov

Ship to Zip 93274

Quantity	Part #	Description	Unit Price	Amount
LIVE OAK PARK				
1	5178	GameTime - Welcome Sign (2-5)	\$561.00	\$561.00
1	RDU	GameTime - PrimeTime Custom Designed 2-5 Unit	\$22,381.00	\$22,381.00
1	564	GameTime - Curved Balance Beam	\$867.00	\$867.00
2	4880	GameTime - Inground Mount For Spring Rider	\$123.00	\$246.00
1	4882	GameTime - Fire Truck Spring Rider	\$1,059.00	\$1,059.00
1	4883	GameTime - Dump Truck Spring Rider	\$1,059.00	\$1,059.00
1	6143	GameTime - Whirlwind Seat Straight (F/S)	\$737.00	\$737.00
1	5179	GameTime - Welcome Sign (5-12)	\$561.00	\$561.00
1	RDU	GameTime - PowerScape 3 Bay Swing, 4 Belt Seats and 2 Enclosed Tot Seats	\$6,746.00	\$6,746.00
1	EM092822	GT-Impax - Supply and Installation 266 sf Total 100% Standard Color (50/50 Green and Beige) Pour in Place Safety Surfacing- <u>Live Oak Park</u> 133 sf, 3' CFH (88 sf PLUS 30 lf t.down x 1.5) Installed over concrete sub base Includes 100% Std color mix (50/50 green and beige) Price is based on both Live Oak Park & Prosperity Sport Park being awarded and installing as one project	\$12,550.00	\$12,550.00
1	Notes	GT-Impax - - Includes Aromatic Binder, Prevailing Wages Based on good job access, no design, no graphics Borders / Sub base / Site prep BY OTHERS		
1	INSTALL	GameTime - by a certified GameTime installer- Installation of GT equipment - includes transport from corp yard to site \$14,600 Fencing \$950 Concrete 8' x 11' pad \$3,200 Installation of Engineered Wood Fiber \$15,240	\$33,990.00	\$33,990.00
			Sub Total	\$80,757.00
			Discount	(\$14,071.87)
			Material Surcharge	\$4,916.14
			Freight	\$6,266.03
			Tax	\$2,067.55
			Total	\$79,934.85

Comments

JP af



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Em: MRC@GAMETIME.COM
Web: www.mrcrec.com

10/03/2022
Quote #
108769-01-02

CA Tulare City of Live Oak Park

CHOOSE YOUR COLOR SCHEME: IT IS VERY IMPORTANT THAT YOU CHOOSE A COLOR SCHEME FOR YOUR MODULAR PLAYGROUND UNIT AT TIME OF ORDER. PLEASE SELECT FROM ONE OF THE MANY "PLAY PALETTES" LISTED IN THE BACK OF THE GAMETIME CATALOG OR ON OUR WEBSITE: www.gametime.com. INDICATE YOUR SELECTION BELOW. **GAMETIME PLAY PALETTE:**

NOTE: COLOR SELECTION FOR ALL OTHER EQUIPMENT SHOULD BE ENTERED IN THE SPACE PROVIDED UNDER THAT SPECIFIC ITEM.

This quotation is subject to policies in the current GameTime Park and Playground Catalog and the following terms and conditions. Our quotation is based on shipment of all items at one time to a single destination, unless otherwise noted, and changes are subject to price adjustment. Purchases in excess of \$1,000.00 to be supported by your written purchase order made out to **GAMETIME, c/o Marturano Recreation**. Kindly issue one order for the equipment and a separate order for surfacing and/or equipment installation services. Customer is responsible for any required permits and fees pertaining to such permits.

PRICING / PAYMENT: Pricing f.o.b. factory, firm for 30 days from date of quotation. Payment terms: Purchase order made payable to GameTime. 75% due Net 30 days after ship date and 25% balance due upon completion of project for tax supported governmental agencies. A 1.5% per month finance charge will be imposed on all past due accounts. Equipment shall be invoiced separately from other services and shall be payable in advance of those services and project completion. Retainage not accepted.

TAXES: State and local taxes, if applicable, will be added at time of invoicing unless a tax exempt certificate is provided at the time of order entry.

FREIGHT/SHIPMENT: Freight charges: Prepaid and added at time of invoicing. Shipment: order will ship within 8-10 weeks after GameTime's receipt and acceptance of your PURCHASE ORDER, signed quotation and color selections.

RECEIPT OF GOODS: Customer is responsible for unloading and uncrating equipment from truck. Customer shall receive, unload and inspect goods upon arrival, noting any discrepancies on the Delivery Receipt prior to written acceptance of the shipment.

INSTALLATION: *Installation by a Gametime Certified Installer.*

- Installation assumes a flat, dirt surface with no grading preparation required.
- Gametime's installer is not responsible for any site preparation, and/or grading.
- Customer is responsible for calling **888-DIG-SAFE** a minimum of 72 hours before installation is to begin.
- Direct access is required for large construction vehicles.
- All work is to be done in one move.
- All excavated material is to remain on site.
- If the equipment is stored at Customers Corporate Yard, the installer will be responsible for hauling the material and equipment from the Corporate Yard to the project site as they progress with their install. Storing the equipment at the project site is not recommended.
- Customer will be responsible for unloading the truck and disposal of packaging.
- The installation of border timbers is not included in the above price.
- Unforeseen subsurface obstructions may incur additional charges.

EXCLUSIONS: unless specifically included, this quotation excludes all site work and landscaping; removal of existing equipment; acceptance of equipment and off-loading; storage of goods prior to installation; safety surfacing; borders and drainage provisions.

TO ORDER: Please complete the acceptance portion of this quotation and provide color selections, PURCHASE ORDER and other key information requested. Acceptance of this proposal indicates your agreement to the terms and conditions stated herein.

Sales Representative: Jenn Peterson



C/O MRC
 PO Box 106
 Spring Lake, NJ 07762
 Ph: 732-458-1111
 Fx: 732-974-0226
 Em: MRC@GAMETIME.COM
 Web: www.mrcrec.com

10/03/2022
 Quote #
 108769-01-02

CA Tulare City of Live Oak Park

Acceptance of quotation: (ALL INFORMATION REQUIRED)

Accepted By (printed): _____ P.O. No: _____

Signature: _____ Date: _____

Title: _____ Phone: _____

Email: _____ Facsimilie: _____

Purchase Amount: **\$79,934.85**

Order Information: (ALL INFORMATION REQUIRED)

Bill To: _____ Ship To: _____

Bill To Contact: _____ Ship To Contact: _____

Bill To Email: _____ Ship To Email: _____

Bill To Phone: _____ Ship To Phone: (Office): _____

(Cell): _____

Bill to Address: _____ Ship To Address: _____

Bill To City, State, Zip: _____ Ship To City, State, Zip: _____

SALES TAX EXEMPTION CERTIFICATE #: _____

(PLEASE PROVIDE A COPY OF CERTIFICATE)



Prosperity Sports Park - Tulare, CA
View A



play.site.sport.
70 / www.mcrec.com



#PLAY



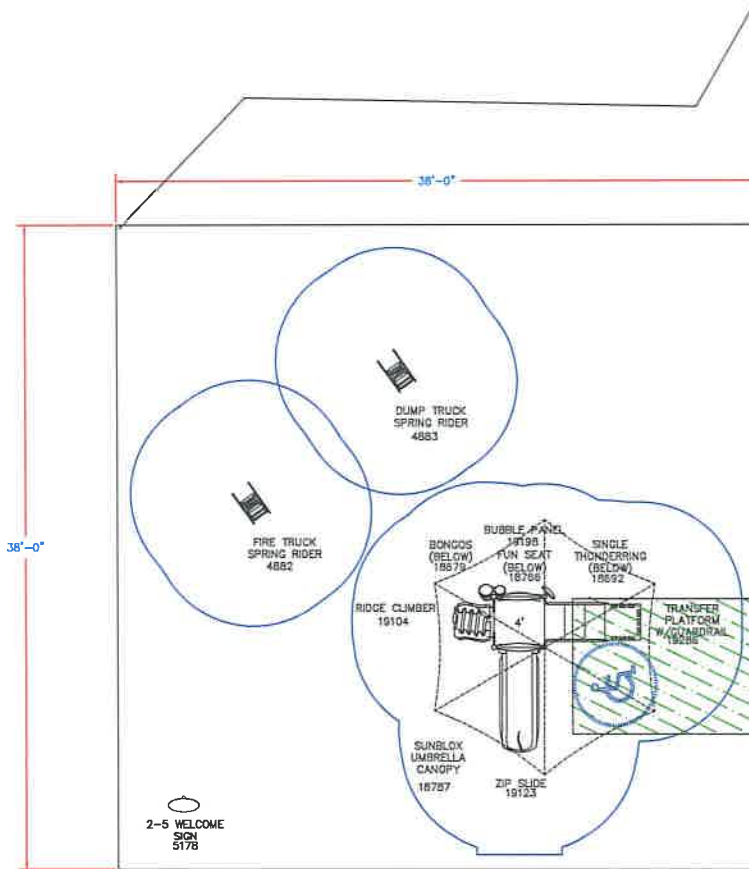
Prosperity Sports Park - Tulare, CA
View B



play.site.sport.
170 / www.mrcrc.com



PLAY



150 PlayCore Drive SE
Fort Payne, AL 35967
www.gametime.com

PROSPERITY SPORTS PARK
TULARE CA

Representative
MRC

This play equipment is recommended for children ages
2-5

Minimum Area Required:
Scale: 1" = 5'-0"
This drawing can be scaled only when in an 18" x 24" format

IMPORTANT: Soft resilient surfacing should be placed in the use zones of all equipment, as specified for each type of equipment, and at depths to meet the critical fall heights as specified by the U.S. consumer Product Safety Commission, ASTM standard F 1487 and Canadian Standard CAN/CSA-Z-614

Drawn By:
DH JP AF
Date:
9.27.22
Drawing Name:
1



C/O MRC
 PO Box 106
 Spring Lake, NJ 07762
 Ph: 732-458-1111
 Fx: 732-974-0226
 Em: MRC@GAMETIME.COM
 Web: www.mrcrec.com

10/03/2022
 Quote #
 108769-01-03

CA Tulare City of Prosperity Sport Park

Tulare City of
 Attn: Ivan Nicar
 600 N. Laspina Street
 Tulare, CA 93274
 Phone: 559-684-4333
 Fax: 559-685-2323
 inicar@tulare.ca.gov

Ship to Zip 93274

Quantity	Part #	Description	Unit Price	Amount
PROSPERITY SPORTS PARK				
1	5178	GameTime - Welcome Sign (2-5)	\$561.00	\$561.00
1	4882	GameTime - Fire Truck Spring Rider	\$1,059.00	\$1,059.00
1	4883	GameTime - Dump Truck Spring Rider	\$1,059.00	\$1,059.00
2	4880	GameTime - Inground Mount For Spring Rider	\$123.00	\$246.00
1	RDU	GameTime - PrimeTime Custom designed 2-5 Unit	\$16,984.00	\$16,984.00
1	EM092822	GT-Impax - Supply and Installation 266 sf Total 100% Standard Color (50/50 Green and Beige) Pour in Place Safety Surfacing- <u>Prosperity Sports Park</u> 133 sf, 3' CFH (88 sf PLUS 30 lf t.down x 1.5) Installed over concrete sub base Includes 100% Std color mix (50/50 green and beige) Price is based on both Live Oak Park & Prosperity Sport Park being awarded and installing as one project	\$12,550.00	\$12,550.00
1	Notes	GT-Impax -- Includes Aromatic Binder, Prevailing Wages Based on good job access, no design, no graphics Borders / Sub base / Site prep BY OTHERS		
1	INSTALL	GameTime - by a certified GameTime installer- Installation of GT equipment - includes transport from corp yard to site \$7,900 Fencing \$950 Concrete 8' x 11' pad \$3,200 Installation of Engineered Wood Fiber \$3,240	\$15,290.00	\$15,290.00
			Sub Total	\$47,749.00
			Discount	(\$8,926.10)
			Material Surcharge	\$2,806.11
			Freight	\$4,031.21
			Tax	\$1,137.59
			Total	\$46,797.81

Comments

JP af
CHOOSE YOUR COLOR SCHEME: IT IS VERY IMPORTANT THAT YOU CHOOSE A COLOR SCHEME FOR YOUR MODULAR PLAYGROUND UNIT AT TIME OF ORDER. PLEASE SELECT FROM ONE OF THE MANY "PLAY PALETTES" LISTED IN THE BACK OF THE GAMETIME CATALOG OR ON OUR WEBSITE: www.gametime.com. INDICATE YOUR SELECTION BELOW. **GAMETIME PLAY PALETTE:**
 _____ **NOTE: COLOR SELECTION FOR ALL OTHER EQUIPMENT SHOULD BE ENTERED IN THE SPACE PROVIDED UNDER THAT SPECIFIC ITEM.**



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10/03/2022
Quote #
108769-01-03

CA Tulare City of Prosperity Sport Park

This quotation is subject to policies in the current GameTime Park and Playground Catalog and the following terms and conditions. Our quotation is based on shipment of all items at one time to a single destination, unless otherwise noted, and changes are subject to price adjustment. Purchases in excess of \$1,000.00 to be supported by your written purchase order made out to **GAMETIME, c/o Marturano Recreation**. Kindly issue one order for the equipment and a separate order for surfacing and/or equipment installation services. Customer is responsible for any required permits and fees pertaining to such permits.

PRICING / PAYMENT: Pricing f.o.b. factory, firm for 30 days from date of quotation. Payment terms: Purchase order made payable to GameTime. 75% due Net 30 days after ship date and 25% balance due upon completion of project for tax supported governmental agencies. A 1.5% per month finance charge will be imposed on all past due accounts. Equipment shall be invoiced separately from other services and shall be payable in advance of those services and project completion. Retainage not accepted.

TAXES: State and local taxes, if applicable, will be added at time of invoicing unless a tax exempt certificate is provided at the time of order entry.

FREIGHT/SHIPMENT: Freight charges: Prepaid and added at time of invoicing. Shipment: order will ship within 8-10 weeks after GameTime's receipt and acceptance of your PURCHASE ORDER, signed quotation and color selections.

RECEIPT OF GOODS: Customer is responsible for unloading and uncrating equipment from truck. Customer shall receive, unload and inspect goods upon arrival, noting any discrepancies on the Delivery Receipt prior to written acceptance of the shipment.

INSTALLATION: *Installation by a Gametime Certified Installer.*

- Installation assumes a flat, dirt surface with no grading preparation required.
- Gametime's installer is not responsible for any site preparation, and/or grading.
- Customer is responsible for calling **888-DIG-SAFE** a minimum of 72 hours before installation is to begin.
- Direct access is required for large construction vehicles.
- All work is to be done in one move.
- All excavated material is to remain on site.
- If the equipment is stored at Customers Corporate Yard, the installer will be responsible for hauling the material and equipment from the Corporate Yard to the project site as they progress with their install. Storing the equipment at the project site is not recommended.
- Customer will be responsible for unloading the truck and disposal of packaging.
- The installation of border timbers is not included in the above price.
- Unforeseen subsurface obstructions may incur additional charges.

EXCLUSIONS: unless specifically included, this quotation excludes all site work and landscaping; removal of existing equipment; acceptance of equipment and off-loading; storage of goods prior to installation; safety surfacing; borders and drainage provisions.

TO ORDER: Please complete the acceptance portion of this quotation and provide color selections, PURCHASE ORDER and other key information requested. Acceptance of this proposal indicates your agreement to the terms and conditions stated herein.

Sales Representative: Jenn Peterson



C/O MRC
 PO Box 106
 Spring Lake, NJ 07762
 Ph: 732-458-1111
 Fx: 732-974-0226
 Em: MRC@GAMETIME.COM
 Web: www.mrcrec.com

10/03/2022
 Quote #
 108769-01-03

CA Tulare City of Prosperity Sport Park

Acceptance of quotation: (ALL INFORMATION REQUIRED)

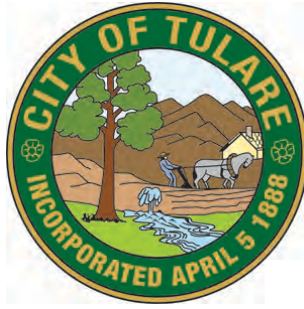
Accepted By (printed): _____ P.O. No: _____
 Signature: _____ Date: _____
 Title: _____ Phone: _____
 Email: _____ Facsimilie: _____

Purchase Amount: **\$46,797.81**

Order Information: (ALL INFORMATION REQUIRED)

Bill To: _____ Ship To: _____
 Bill To Contact: _____ Ship To Contact: _____
 Bill To Email: _____ Ship To Email: _____
 Bill To Phone: _____ Ship To Phone: (Office): _____
 (Cell): _____
 Bill to Address: _____ Ship To Address: _____
 Bill To City, State, Zip: _____ Ship To City, State, Zip: _____

SALES TAX EXEMPTION CERTIFICATE #: _____
 (PLEASE PROVIDE A COPY OF CERTIFICATE)



**CITY OF TULARE
STATE OF CALIFORNIA**

**CONTRACT
PK2019-003 & PK2019
Live Oak Park & Prosperity Sports Park
Playground Replacement Project**

GENERAL PROVISIONS

SECTION ONE: DEFINITION OF TERMS

101.1 **Terms:** Wherever used in the General Provisions, or in the other Contract Documents, the following terms have the meanings indicated, applicable both to the singular and plural thereof:

AASHTO: Latest revised specifications of the American Association of State Highway and Transportation Officials.

ASTM: Latest revised specifications of the American Society for Testing Materials.

Amendment: Written or graphic instrument issued which clarifies, corrects or changes the solicitation.

Architect/Engineer: The person licensed to practice Architecture/Engineering by the State of California and who is identified as the Architect/Engineer of Record by affixing his/her seal upon the Contract.

Bonds: Bid, performance, and payment bonds as well as any other instruments of security.

Change Order: A document approved by the City Contract Representative and which is signed by the Contractor and the City Manager or his/her duly authorized designee and authorizes an addition, deletion, or revision to the Work, or an adjustment in the Contract Price, Completion time, issued on or after the effective date of the Contract.

City: The City of Tulare, California, a Municipal Corporation and Charter City.

City Contract Representative: The City official administering the Contract for the City of Tulare. CITY

- Completion Time:** The number of working days agreed to by the City and Contractor for completion of the Work, which may be revised by written Change Order.
- Construction:** The process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any real property.
- Contract:** General Terms and Conditions, the written included/attached Construction Services Agreement and all associated Attachments, Drawings, Amendments and Change Orders executed between the City and the Contractor covering the Work to be performed.
- Contract Price:** The amount payable by the City to the Contractor for satisfactory completion of the Work, and as specified in the Contract as may be amended by written Change Order.
- Contractor:** Person, firm, or corporation, duly licensed to complete the Work, specifically identified in the Contract as a party thereto with whom the City has contracted for Construction services herein.
- Department:** Engineering Department of the City of Tulare.
- Drawings:** The graphic and pictorial portions of the contract, wherever located and whenever issued, showing the configuration, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
- Engineer:** City Engineer of the City of Tulare acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.
- Field Order:** Written order or directive issued by the City Contract Representative that orders non-substantial changes in the Work.
- Final Completion Date:** The calendar date upon which the Work is deemed one hundred percent (100%) complete, as determined by the City.
- Laboratory:** Designated laboratory authorized by the City of Tulare, to test materials and work involved in the contract.
- Liquidated Damages:** A sum set forth in the Contract documents to be deducted from any monies due the Contractor, not as a penalty, but in lieu of actual damages for late completion of the work and/or as otherwise outlined in the Contract and allowable by law.
- Notice to Proceed:** A written notice given by the City to the Contractor fixing the date on which the Completion time will commence and upon which the Contractor shall start to perform the Contractor's obligations under the Contract, unless otherwise specified in the Construction Services Agreement in Article 12.
- Public Inspector(s):** The person or persons provided by the public authorities having code jurisdiction and who perform day-to-day inspections of the Work for compliance with applicable codes, statutes, rules, and regulations.

Schedule of Values: A schedule submitted by Contractor setting forth the values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City Contract Representative may require. This schedule must be submitted before the Contractor submits its first application for progress payment and shall be used as a basis for reviewing and approving payments to the Contractor.

Shop Drawings: Drawings, diagrams, illustrations, schedules, and other data specifically prepared by or for the Contractor to illustrate, in detail, how some portion of the Work shall be fabricated and/or installed, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by a supplier and submitted by Contractor to illustrate material or equipment for some portion of the Work.

Specifications: Those portions of the Contract, Notice to Proceed, or Change Order(s), consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

State: State of California

Substantial Completion: A written declaration of the date upon which the City, in its sole discretion, determines the Work is substantially complete such that the City has beneficial use and/or occupancy. Upon substantial completion, the right of the City to assess liquidated damages for time after the date of substantial completion ceases, except as allowed for failure to meet final completion within the time specified in the Construction Services Agreement.

Tulare Municipal Code/City Charter: In addition to applicable State statutes, Federal regulations and requirements, the Municipal Ordinance(s), and City Charter that govern the construction services contracting and contract administration processes, including the resolution of contract claims, disputes, and controversies.

The Work: The entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract, or, in the case of a job-order contract, within individual Notices to Proceed. Work is the result of performing services, furnishing labor, furnishing and incorporating materials and equipment into the construction, all as required by the Contract and/or Notice to Proceed, as appropriate.

Other terms appearing in the Standard Specifications, the General Provisions, and the Special Provisions shall have the intent and meaning specified in Section 1, Definition of Terms of the Standard Specifications.

SECTION TWO: PROPOSAL REQUIREMENTS

201.1 **Examination of Plans, Specifications, and Site of Work:** The bidder is required to examine carefully the plans, specifications, special provisions and site of the work of proposed construction. The Bidder and Contractor must examine, at Contractor's own risk and expense, the location of all surface and subsurface structures of all character, which may require alterations

in the progress of the work. The Bidder and Contractor shall make on Contractor's own behalf and at Contractor's own expense, all necessary arrangements for interference with existing public utilities structures and at Contractor's own risk and expense make the necessary alterations of such structures as required for the progress of the work. The Contractor shall give due and reasonable notice to public utilities in such a manner as to cause the least amount of inconvenience and expense.

201.2 **Proposal Form:** All proposals must be made upon blank forms to be obtained from the City. All proposals must give the prices proposed, both in writing and figures, and must be signed by the bidder, with bidder's address. If an individual makes the proposal, individual's name and post office address must be shown. If made by a firm or partnership, the name and post office address of each member of the firm or partnership must be shown. If made by a corporation, the proposal must show the name of the state under the laws of which the corporation was chartered and the names, titles and business addresses of the president, secretary, and treasurer.

201.3 **Required Listing of Subcontractors:** On the Subcontractor List form, list each subcontractor to perform work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont. Code §4100 et seq.).

For each subcontractor listed, the Subcontractor List form must show:

1. Business name and the location of its place of business.
2. California contractor license number for a non-federal-aid contract.
3. Public works contractor registration number.
4. Portion of work it will perform. Show the portion of the work by:
 - 4.1. Bid item numbers for the subcontracted work
 - 4.2. Percentage of the subcontracted work for each bid item listed
 - 4.3. Description of the subcontracted work if the percentage of the bid item listed is less than 100 percent

201.4 **Bidder's Guarantee:** All bids shall be presented under sealed cover and shall be accompanied by cash, cashier's check, certified check, or bidder's bond, made payable to the City of Tulare, for an amount equal to at least ten percent (10%) of the amount of said bid, and no bid shall be considered unless such cash, cashier's check, certified check, or bidder's bond is enclosed therewith.

201.5 **Rejection of Proposals:** Proposals may be rejected if they show any alterations of form, additions not called for, conditional or alternative bids, incomplete bids, erasures or irregularities of any kind.

THE RIGHT IS RESERVED TO REJECT ANY AND ALL PROPOSALS

SECTION THREE: CONTRACT - AWARD AND EXECUTION

301.1 **The Contract:** The documents in the Contract and its Attachments include the solicitation contents, any amendments, drawings, change orders, and approved Contractor submittals.

The Contract comprises the entire agreement between the City and the Contractor concerning the Work and supersedes any prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by an instrument in writing and fully executed by the authorized parties to the Contract.

301.2 **Intent of the Contract:** The intent of the Contract is to include all labor, materials, equipment, transportation, and all other costs and expenses necessary for the proper execution and completion of the Work by the Contractor.

Notwithstanding anything in these general provisions, full compensation for performing all work as shown, as specified, and as directed by the City is considered to be included in the various bid items, and no additional payment will be made.

The Contractor shall not take advantage of any apparent error or omission in the plans, estimated quantities or specifications. In the event Contractor discovers an error or omission after contract execution, the Contractor shall immediately notify the City Contract Representative. The City Contract Representative shall make any corrections necessary to fulfill the intent of the contract.

The Contract shall be construed in accordance with the laws of the State of California, the City of Tulare, and all laws regulating the construction of public works by the City, which are hereby incorporated by reference and made a part of the Contract as if fully set forth herein.

Materials or work described in words, which have a well-known technical or trade meaning, shall be held to refer to such recognized standards.

The organization of the Contract into divisions, sections or articles is solely for convenient reference and ease of review. Neither the headings nor divisions have any legal or contractual significance and shall not control division of the Work by the Contractor.

The Contractor shall include the cost of all reasonably anticipated utility fees, permits, licenses, etc. in each estimate or proposal submitted to City and hereby represents that all such costs have been included to the greatest extent feasible in any documents, projections, estimates, or proposals that formed the basis of negotiations and eventual execution of the Contract.

301.3 **Award of Contract:** The award of the contract, if it were awarded, shall be made to the responsive, responsible bidder meeting the specifications and requirements of the bid, having the lowest bid and satisfactory qualifications and performance record as determined by the City Contract Representative. Such award will be made within thirty (30) days after the opening of proposals.

301.4 **Return of Bidder's Guaranties:** Within ten (10) working days after the award of the contract, the City Clerk will return the proposal guaranties accompanying the proposals which are not to be considered in making the award. All other proposal guaranties will be held until the contract has been finally executed, after which they will be returned to the respective bidders whose proposals they accompany.

301.5 **Contract Bonds:** The successful Contractor shall furnish two copies of the bonds required by the State Contract Act. Each of said bonds shall be executed in a sum equal to one hundred percent (100%) of the contract price. One of the said bonds shall guarantee the faithful performance of said contract by the Contractor; and the other bond shall secure the payment of claims for labor and materials. The Contractor shall also furnish a Maintenance Bond as specified in the Special Provisions. All contract bonds shall originate from a California Admitted Surety Insurer.

301.6 **Execution of Contract:** Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly examined the Contract. The Contract shall be signed by the successful bidder and returned, together with the contract bonds, within ten (10) working days, after the

bidder has received notice that the contract has been awarded. No proposal shall be considered binding upon the City until the execution of the contract.

Failure to execute a contract and file acceptable bonds as provided herein within ten (10) working days after the bidder has received notice that the contract has been awarded, shall be just cause for the annulment of the award and the forfeiture of the proposal guarantee.

- 301.7 **Ownership of the Contract:** The Contract, including, but not limited to, the drawings and specifications, is the property of the City and is not to be used by the Contractor, or any subcontractor, on other projects outside the scope of the Work without the express written consent of the City.

SECTION FOUR: CONTRACT – ADMINISTRATION

- 401.1 **Lines of Authority and Communications:** The City Manager is the City official with overall authority and responsibility for the award and administration of City Contracts. The City Manager and/or his/her designated representative, after consultation with the City Contract Representative has the ultimate authority to resolve disputes concerning Contract performance and to stop the Work whenever that stoppage may be necessary to ensure the proper execution of the Work.

The City Contract Representative is the designated representative of the particular City department for which the Work is being constructed (the "user department") or the City department which is responsible for oversight of the work.

Day-to-day administration of the Contract is the responsibility of the City Contract Representative. The City Contract Representative shall act as surveillant and technical advisor for the City.

The Contractor shall supervise and direct the Work, shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, procedures, and for coordinating all portions of the Work, unless the Contract gives contradictory specific instructions concerning these matters.

Except where the Contract otherwise provides or where direct communication has been specifically authorized, the Contractor shall communicate with the City Contract Representative regarding all matters relating to the Work and the Contract. Only upon unsuccessful communication or attempts at communication shall the Contractor communicate with the City Manager or his/her designee regarding the same.

SECTION FIVE: SCOPE OF WORK

- 501.1 **Work to Be Done:** The work to be done consists of furnishing all labor, materials, methods and processes, implements, tools, and machinery except as otherwise specified which are necessary and required to construct and put in complete order for use in the work designated in the contract, and to leave the grounds in a neat condition.
- 501.2 **Bid Prices:** The bidder shall include the entire cost of the work in the bidder's bid prices, and it is understood and agreed that there is included in such prices the cost of all labor, materials and equipment and all incidental expense of whatever nature necessary to complete the work contemplated in the plans, drawings, Technical Specifications and Special Provisions, and that

no further payment will be made therefore, except where force account work is authorized by the City Contract Representative.

- 501.3 **Alterations:** By mutual consent in writing of the parties signatory to the contract, alterations or deviations, increases or decreases, additions or omissions, in the plans and specifications may be made and the same shall in no way affect or make void the contract.

The City of Tulare reserves the right to increase or decrease the quantity of any item or portion of the work, or to omit portions of the work as may be deemed necessary or expedient by the City Contract Representative.

- 501.4 **Extra Work:** The City Contract Representative may order extra work or make changes by altering, adding to, or deducting from the Work via Change Order. New and unforeseen work will be classed as extra work when such work cannot be covered by any of the various items or combination of items for which there is a bid price. All Change Order work shall be performed under the same terms and conditions of the original description of the Work, except for any extension of completion times necessitated by said Change Order(s).

The value of any additional work ordered by the City shall be determined as follows:

- a. By estimate and acceptance in a lump sum; or
- b. By unit prices in the Construction Services Agreement or the Contract; or
- c. By a fixed fee; or
- d. By force account.

The Contractor shall do no extra work except upon written order from the City Contract Representative. For such extra work, the Contractor shall receive payment as previously agreed upon in writing, or Contractor shall be paid on force account.

If the work is done on force account, the Contractor shall receive actual cost of all materials furnished by him as shown by his paid vouchers plus fifteen percent (15%), and for all labor and equipment that are necessary, Contractor shall receive the current prices in the locality which shall have been previously determined and agreed to in writing by the City Contract Representative and by the Contractor, plus fifteen percent (15%), provided, however, that the City reserves the right to furnish such materials required as it deems expedient and the Contractor shall have no claim for profit on the cost of such materials. For all equipment that is necessary, Contractor shall receive current prices in the locality which shall have been previously determined and agreed to in writing by the Engineer and by the Contractor, plus fifteen percent (15%). For all labor that is necessary, Contractor shall receive the actual amount paid for labor including benefits as shown on certified payrolls or the current prices in the locality which shall have been previously determined and agreed to in writing by the Engineer and the Contractor, whichever is less, plus fifteen (15%) percent. The price paid for labor shall also include compensation insurance paid by the Contractor on the labor supplied as evidenced by a billing from the insurance carrier. Certified payrolls shall be submitted with each billing for extra work.

All extra work and force account shall be adjusted daily upon report sheets prepared by the City Contract Representative, furnished by the Contractor, and signed by both parties, which daily reports shall thereafter be considered the true record of extra work or force account work done. Daily reports shall be submitted no later than the second working day following the work for labor and equipment involved and no later than the fifth working day for material invoices and specialized forces. Unless otherwise permitted by the Engineer, no payment will be made for

extra work on a force account basis if it has not been reported within the time and in the manner specified.

- 501.5 **Substandard Work**: The Contract price may be adjusted via Change Order. The City may, in its sole discretion, determine the Work to be acceptable, but of diminished value rather than require removal, repair, or replacement of non-conforming work or materials. If the City elects this option, the City Contract Representative shall issue a Change Order incorporating the necessary revisions in the Contract, including any appropriate reduction in the contract price. Any such Change Order does not require the signature or approval of the Contractor, but does require the signature and approval of the City Manager or designee. Acceptance of non-conforming work shall not constitute a waiver relating to any portion of the Work other than that specifically identified in the Change Order.
- 501.6 **Removal of Obstructions**: The Contractor shall remove and dispose of all structures, debris, or other obstructions of any character to the construction of the proposed work, as required by the City Contract Representative.
- 501.7 **Public Utilities**: The Contractor shall cooperate with the public utility companies who may be engaged on related or adjacent work and Contractor shall so conduct operations so as not to interfere with such work, nor to injure or damage such work.

The locations in public streets of pipes, conduits, and other facilities as furnished by the public utility companies and by the City, are indicated on the plans. However, the City makes no representation as to the accuracy of said locations, and Bidders are herewith instructed to apply to companies and City departments concerned, for any additional information which may be required.

The fact that any underground facility is not shown on the plans shall not relieve the Contractor of his responsibility in protecting such underground facilities from injury or damage. It shall be the Contractor's responsibility to ascertain the existence of any underground improvements or facilities which may be subject to damage by reason of his operations.

- 501.8 **Final Cleaning Up**: Upon completion and before making application for acceptance of the work, the Contractor shall clean the facility, street or road, borrow pits, and all ground occupied by him in connection with the work, of all rubbish, excess materials, temporary structures and equipment; all parts of the work shall be left in a neat and presentable condition.
- 501.9 **As-Built Record**: The Contractor shall keep an accurate record of horizontal alignment, type, or location of improvements on the approved plans by neatly marking the changes on a set of construction plans. Said plans shall be submitted to the City for review prior to project acceptance and shall become the property of the City if approved. As-built plans shall be in good condition, free of tatters, soil marks, etc., when submitted for City review.

In the event the Contractor provided his own surveying to set vertical control and grade, then any changes to vertical elevations of improvements shall also be marked on the plans.

Full compensation for keeping this "as-built record" shall be included in the amount bid for mobilization, and no separate payment will be made therefor.

- 501.10 **Maintenance**: The Contractor shall at Contractor's own expense make all necessary repairs and replacements to remedy in a satisfactory manner any and all defects due to faulty materials or workmanship, or due to disturbance of or damage to City improvements by the Contractor's operations under the contract and contrary to the specifications, or due to other failure to comply with the specifications, when such defects occur in any part of the work done under the contract,

or in surface improvements of the City such as pavements, curbs, gutters, driveway approaches, walks, tracks, poles, wires, walls, stairways, or other surface structures provided that such defect or defects be detected within one (1) year following the date of acceptance of the work.

Should the Contractor, after written notification by the City Contract Representative, fail to remedy promptly any such defect occurring as set forth above, or should the best interest of the City require an immediate remedy without delay incident of such notification, the City Contract Representative may cause such repairs, replacements or any other remedy to be made, and the expense so incurred shall be chargeable to, and shall be paid by, the Contractor.

Nothing in this section shall be construed as a waiver, or impairment of any of the City's rights under the contract, or of any other recourse provided by law.

SECTION SIX: CONTROL OF WORK

601.1 **Responsibilities of the City Contract Representative:** The City Contract Representative shall decide any and all questions which may arise as to the quality or acceptability of materials furnished and work performed, and as to the manner of performance and rate of progress of the work; all questions which arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the contract on the part of the Contractor, and all questions as to claims and compensation.

The City Contract Representative's decision shall be final and the City Contract Representative shall have executive authority to enforce and make effective such decisions and orders that the Contractor fails to carry out promptly.

Unless the Contractor is responsible for design of the Work, the City Contract Representative shall furnish to Contractor, free of charge, up to three (3) copies of the project plans, specifications, and available instructions. The City Contract Representative may furnish additional clarifications or interpretations, in writing or by drawings, as may be necessary for the proper progress of the Work. Such additional clarifications and interpretations shall be furnished with reasonable promptness, and the Contractor shall not do work without drawings or written clarifications, where needed. All drawings, specifications, and copies thereof, furnished by the City Contract Representative are City property. They are not to be used on other work and, with the exception of the signed Contract, are to be returned to the City Contract Representative at the completion of the Work.

The City Contract Representative shall engage in general surveillance of the Work. By making sufficient periodic visits to the site of the Work, the City Contract Representative shall become thoroughly familiar with the progress and quality of completed portions of the Work, and will assess if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract.

The City Contract Representative will decide all questions which may arise as to the quality and acceptability of materials furnished, work performed, rate of progress, and all questions which may arise as to the interpretation of the drawings and specifications.

The City Contract Representative shall have the authority to reject work that is not in conformity with the Contract and to order additional inspections and testing of the Work. The City Contract Representative's failure to discover/reject materials or work not in accordance with the plans, specifications, or Contract Documents shall not be considered acceptance thereof or a waiver of any sort. Any failure of the City Contract Representative to properly perform inspections, tests, approvals, or other responsibilities under the Contract shall not relieve the Contractor

from its contractual responsibilities or its obligation to perform and complete the Work in strict accordance with the Contract Documents.

The City Contract Representative shall conduct an initial review of written Change Orders submitted by the Contractor and approve or deny the same, in writing. The City Contract Representative may prepare Change Orders, provide field clarifications and connections. All Change Orders shall be approved by the City Manager/designee prior to work being performed pursuant to the Change Orders. In the event of safety emergencies that may cause injury or loss of life to any person, or circumstances reasonably anticipated to cause damage to private or public property, the City Contract Representative may issue Change Orders necessary to avert, or mitigate to the greatest extent possible, any loss of life, injury, or property damage. Any Change Orders issued pursuant to this section shall be clearly labeled "Emergency Change Order" upon approval by City Contract Representative and Contractor may immediately begin work pursuant upon receipt of said order, without waiting for City Manager/designee approval.

The City Contract Representative, pursuant to Section 13 of these General Provisions, shall make recommendations to the City Manager as to all claims of the Contractor.

The City Contract Representative will review and process the Contractor's monthly Estimates for Payment, Invoices, etc. as more fully set forth in Section 10 of these General Provisions.

The City Contract Representative will conduct inspections to determine the dates of Substantial Completion and Final Completion and will certify such dates to the City Manager.

The City Contract Representative will not have control over or responsibility for construction means, methods, techniques, sequences or procedures, or for safety precautions/programs in connection with the Work, since these are solely the Contractor's responsibility. Failure of the City Contract Representative to note unsafe working conditions, conditions dangerous to the general public, or to stop work on account of such conditions, shall not be deemed approval of such conditions and shall not relieve the Contractor of sole responsibility for such conditions.

- 601.2 **Responsibilities of the Contractor:** It shall be the duty of the Contractor to carefully study and compare all drawings, specifications, and instructions. If any discrepancies, errors, omissions or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or if there are any conflicts between existing site conditions and the requirements of the drawings or specifications, the Contractor shall immediately call all discrepancies to the attention of the City Contract Representative. If the Contractor performs any construction activity knowing it involves an error, inconsistency, or omission in the Contract without notice to the City Contract Representative, the Contractor shall assume full responsibility for such performance and shall pay a proportionate share of the attributable costs for correction.

The Contractor shall be required to use, for data and dimensions, figures marked on the drawings in reference to what the drawings may measure to scale; but in the absence of figured dimensions, scaled dimensions may be used with the prior written concurrence of the City Contract Representative. The Contractor shall verify all dimensions shown and check all measurements relating to any present building or buildings, level or grades, walks, driveways, or other existing conditions before executing any work. Errors or inconsistencies shall be reported to the City Contract Representative immediately.

Change Orders will not be issued to cover any cost, loss, or expense for additional labor or materials required to rectify any error or inconsistency in the drawings and specifications unless prior notification is given by the Contractor to the City Contract Representative.

The Contractor shall perform the Work in accordance with the Contract and with shop drawings, product data, and samples that have been approved by the City Contract Representative.

Notwithstanding the above provisions, if the Contractor is responsible for the design of the Work, the Contractor shall ensure the accuracy and completeness of the drawings, specifications, and instructions. If any discrepancies, errors, omissions, or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or there are any conflicts between existing site conditions and the requirements of the drawings or specifications, the Contractor shall immediately call all such discrepancies to the attention of the City Contract Representative and the Contractor shall be responsible for any required corrective action.

601.2.1 **Contractor's Supervision:** The Contractor shall efficiently and continuously supervise and direct the Work, using its best skill and attention. Unless the Contract specifically provides otherwise, the Contractor shall be solely responsible for and shall exercise control over construction means, methods, techniques, and procedures and shall coordinate the sequences of all portions of the Work.

The Contractor shall provide an experienced and capable superintendent/project manager, approved by the City Contract Representative, who shall physically be present at the project site during all times in which work is being performed. The superintendent/project manager shall not be changed without concurrence of the City Contract Representative, unless she/he ceases to be in the Contractor's employ. The superintendent/project manager shall represent the Contractor and all notifications given to him/her shall be as binding as if given to the Contractor.

The Contractor hereby expressly agrees that, to the same extent that Contractor is responsible for acts or omissions of its agents, representatives, and direct employees, Contractor shall be responsible to the City and any other injured party for acts and/or omissions of Contractor's subcontractors and/or of any persons either directly or indirectly employed by the Contractor.

601.3 **Plans:** All authorized alterations affecting the requirements and information given on the approved Plans shall be in writing. No changes shall be made of any plan or drawing after the same has been approved by the City Contract Representative, except by direction of the City Contract Representative.

Working drawings or Plans for any structure not included in the Plans furnished by the City shall be approved by the City Contract Representative before any work involving these Plans shall be performed, unless approval is waived in writing by the City Contract Representative.

It is mutually agreed, however, that approval by the City Contract Representative of the Contractor's working plans does not relieve the Contractor of any responsibility for accuracy of dimension and details, and that the Contractor shall be responsible for agreement and conformity of Contractor's working plans with the approved plans and specifications.

601.4 **Conformity with Plans:** Finished surfaces in all cases shall conform to the lines, grades, cross sections, and dimensions shown on the approved plans. Deviations from the approved plans, as may be required by the exigencies of construction, will be determined in all cases by the City Contract Representative and authorized in writing.

601.5 **Coordination of Plans and Specifications:** These specifications, plans, special provisions, and all supplementary documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary, cooperative, and to describe, and to provide for a complete work.

If a discrepancy exists:

1. Governing ranking of Contract parts in descending order is:
 - 1.1 Any and all Amendments.
 - 1.2 Special Provisions
 - 1.3 The Contract, including this Agreement.
 - 1.4 Project Specifications
 - 1.5 Project Plans
 - 1.6 City Standard Specifications
 - 1.7 City Standard Plans
 - 1.8 Supplemental project information and specifications
 - 1.9 Bonds and Insurance
2. Written numbers and notes on a drawing govern over graphics
3. Detail drawing governs over a general drawing
4. Specific specification governs over a general specification
5. Specification in a section governs over a specification referenced by that section

If a discrepancy is found or confusion arises, the Contractor shall immediately notify the City Contract Representative in writing.

601.6 **Interpretation of Plans and Specifications:** Should it appear that the work to be done, or any matter relative thereto, is not sufficiently detailed or explained in these specifications, plans, and the special provisions, the Contractor shall apply to the City Contract Representative for such further explanation as may be necessary, and shall conform to such explanation or interpretation as part of the contract, so far as may be consistent with the intent of the original specifications. In the event of doubt or question relative to the true meaning of the specifications, reference shall be made to the City Contract Representative whose decisions thereon shall be final.

601.7 **Lines and Grades:** All distances and measurements are given and will be made in a horizontal plane. Grades are given from the top of stakes or nails, unless otherwise noted on the plan or cut sheets.

Three consecutive points shown on the same rate of slope must be used in common, in order to detect any variation from a straight grade, and if any discrepancy is not reported to the City Contract Representative, the Contractor shall be responsible for any error in the finished work.

The Contractor shall give at least two (2) working days' notice in writing when Contractor will require the services of the Engineer for laying out any portion of the work. The Contractor shall furnish the Engineer such facilities and labor necessary for marking and maintaining points and lines as Contractor may require.

The Contractor shall preserve all stakes and points set for lines, grades, or measurements of the work in their proper places until authorized to remove them by the City Contract Representative. All expenses incurred in replacing stakes that have been removed without proper authority shall be paid by the Contractor.

601.8 **Inspection:** The City shall at all times have access to the work during construction, and shall be furnished with every reasonable facility for ascertaining full knowledge respecting the progress, workmanship, and character of materials used and employed in the work. Unless otherwise specifically provided in the Contract, City Inspectors who perform day-to-day inspections of the Work for compliance with applicable codes will have authority to require compliance with drawings, specifications, applicable codes, and may provide clarification of any unspecified or unclear item or situation.

If the drawings or specifications, laws, ordinances, or any public authority requires any work to be specially tested or approved, the Contractor shall give the City Contract Representative timely notice of its readiness for inspection. If the inspection is by an individual, authority, or entity other than the City Contract Representative or the Public Inspectors, the Contractor shall advise the City Contract Representative of the date fixed for such inspection.

Piping, wiring, ducts, etc., shall not be covered before any required inspection, approval, and certificate issuance. In the event that any work designated for inspection is covered prior to inspection, it must be uncovered by the Contractor when inspection is ordered. The Contractor shall be responsible for any expenses relating to said uncovering and re-covering.

Whenever the Contractor varies the period during which work is carried out on each day, Contractor shall give due notice to the City Contract Representative, so that proper inspection may be provided. Any work done in the absence of the City Contract Representative will be subject to rejection.

The inspection of the work shall not relieve the Contractor of the obligation to perform the Work in accordance with the Contract. Defective work shall be made good and unsuitable materials may be rejected, notwithstanding the fact that such defective work and unsuitable materials have been previously overlooked by the City Contract Representative and accepted or estimated for payment.

601.9 **Special Inspections and Testing of Materials:** All equipment and materials used in the construction of the Work, especially those upon which the strength and durability of the structure may depend, will be subject to adequate inspection and testing in accordance with accepted standards, to establish conformance with specifications and suitability for the use intended, as determined by the City Contract Representative.

The performance of tests and the engagement of testing laboratories or agencies must have the prior approval of the City Contract Representative. Required testing will be made at City expense when the Contractor notifies the City Contract Representative the item is ready for testing. If the initial test for an item fails, all subsequent re-testing shall be at the Contractor's expense, and the costs of subsequent re-testing shall be deducted from City payments made to the Contractor. All tests will be taken at the direction of the City Contract Representative.

601.10 **Removal of Defective and Unauthorized Work:** The Contractor shall promptly replace, correct, or complete all work which is defective in its construction or deficient in any of the requirements of these specifications and shall bear the expense of correcting the work of other contractors destroyed or damaged by removal or replacement of any materials or portion of the Work rejected as non-compliant. The City shall provide written notice of rejection for non-compliance and the deadline for removal. Upon failure on the part of the Contractor to comply forthwith with any order of the City Contract Representative made under the provisions of this article, the City Contract Representative shall have authority to cause defective work to be remedied or removed and replaced, and unauthorized work to be removed, and to deduct the costs thereof from any monies due or to become due the Contractor.

Any failure on the part of the City to condemn defective work or material at the time of construction shall not be deemed an acceptance. The Contractor shall be required to remove, correct, or replace any defective work or material at any time prior to final completion and upon demand by the City.

Any work done beyond the lines and grades shown on the plans or established by the City Contract Representative, or any extra work done without written consent, will be considered as

unauthorized and will not be paid for. Upon order of the Engineer, unauthorized work shall be remedied, removed or replaced at the Contractor's expense.

601.11 **Final Inspections:** Whenever the work provided and contemplated by the contract has been satisfactorily completed and the final cleaning up performed, the City Contract Representative will make the final inspection. When the City Contract Representative is satisfied that the contract has been fulfilled, the City Contract Representative will recommend that the City of Tulare accept the project as completed.

601.12 **Correction of Work After Final Payment:** If any work or material is found to be defective or non-compliant with Contract requirements, the City shall give written notice thereof to the Contractor and the Contractor shall promptly correct the defect or non-compliant work or material. This section shall survive acceptance of the Work or termination of the Contract. The Contractor's responsibility to remove, correct, or replace, under this section shall extinguish upon expiration of the applicable time period. The applicable time period shall be that which provides for the latest date in time out of the following:

- a. twelve (12) months following the date of Final Completion of the Work; or
- b. the period of time prescribed by any special warranty required by the Contract; or
- c. the period of time prescribed by local, state, or federal law.

If the Contractor fails to remove, repair, or replace within seven (7) calendar days following written notice by the City, or any longer period of time as may be provided for in the notice, the City may perform the work and charge to the Contractor or the Contractor's surety all expenses incurred, including the actual cost of labor, equipment, and materials.

SECTION SEVEN: CONTROL OF MATERIALS

701.1 **Samples and Tests:** At the option of the City Contract Representative, the City Contract Representative shall approve the source of supply of each of the materials before delivery is started and before such material is used in the work. The Contractor or producer of all materials to be used in the work for testing shall submit representative preliminary samples of the character and quality prescribed or examination as desired by the City Contract Representative.

All tests of materials furnished by the Contractor shall be made in accordance with commonly recognized standards of national organizations, and such special methods and tests as are prescribed in these specifications.

The Contractor shall furnish such samples of materials as are requested by the City Contract Representative, without charge. No material shall be used until the City Contract Representative has approved it. Samples will be secured and tested whenever necessary to determine the quality of material.

The Contractor may be required to test and furnish test results for up to five tenths of one percent (0.5%) of the materials used in this contract. Materials shall be tested for strength by methods described in ASTM Specifications or as identified in the Special Provisions and Technical Specifications.

701.2 **Defective Materials:** All materials not conforming to the requirements of these specifications shall be considered as defective, and all such materials, whether in place or not, shall be removed immediately from the site of the work unless otherwise permitted by the City Contract Representative. No rejected materials, the defects of which have been subsequently corrected,

shall be returned to the work site unless and until approval for its use has been given by the City Contract Representative in writing.

Upon failure on the part of the Contractor to comply with any order of the City Contract Representative made under the provisions of this article, the City Contract Representative shall have authority to remove and replace defective material and to deduct the cost of removal and replacement from any monies due or to become due the Contractor.

701.3 **Standard of Materials:** The Contractor warrants to the City that all materials and equipment furnished under the Contract will be new unless otherwise specified, and that all and any part of the Work will be of good quality, free from faults and defects, and in conformance with the Contract. All work not conforming to these standards, including substitutions not properly approved and authorized, may be considered defective.

Materials not conforming to the specifications shall be rejected and promptly removed from the work site, unless otherwise directed by the City Contract Representative.

Wherever the name or brand of a manufactured article is used herein, it is intended to indicate a standard or measure of quality and utility. After the Contract Price for the Work has been agreed to by the City, changes of brand-named, trade-named, trademarked, or patented articles, or any other substitutions will be allowed only by written order signed by the City Contract Representative. Unless otherwise agreed to via Change Order, the City shall receive all benefits of the difference in costs. Materials incorporated in the work and not specifically covered in the specifications shall be of high quality and the best of their kind.

The Contractor shall furnish all materials required to complete the work, except those expressly specified to be furnished by the City. The Contractor shall receive, inventory, store, inspect, protect, distribute, and install City furnished material, unless otherwise specified. The cost of handling and placing all materials after they are delivered to the Contractor shall be considered as included in the contract price. The Contractor shall be responsible for all material delivered to the Contractor. Deductions shall be made from any monies due the Contractor as reimbursement for any shortages or deficiencies, from any cause whatsoever, for any damage which may occur after delivery, and for any charges relating to late delivery.

SECTION EIGHT: LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC

801.1 **Laws to be Observed:** It shall be the Contractor's responsibility to be fully informed of all existing and future State and Federal Laws and all municipal ordinances and regulations of the City of Tulare which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

801.2 **Alien Labor:** The Contractor shall forfeit as penalty to the City of Tulare, ten dollars (\$10.00) for each alien knowingly employed in the execution of the contract, by Contractor or by any subcontractor under Contractor on any part of the work herein mentioned, for each calendar day, or portion thereof, during which such alien is permitted or required to labor in violation of the provisions of the Labor Code and in particular, Sections 1850 and 1854 thereof, inclusive.

801.3 **Hours of Labor:** The Contractor shall forfeit, as penalty to the City of Tulare, twenty-five dollars (\$25.00) for each laborer, workman or mechanic employed in the execution of the contract by Contractor, or by any subcontractor under Contractor, upon any of the work hereinbefore

mentioned, for each calendar day during which said laborer, workman or mechanic is required or permitted to labor more than eight (8) hours in violation of the provisions of the Labor Code, and in particular, Sections 1810 and 1816 thereof inclusive.

- 801.4 **Labor Discrimination:** No discrimination shall be made in employment of persons upon Public Works because of the race, color, or religion of such persons and every contractor for public works violating this section is subject to all the penalties imposed for a violation of Chapter I of Part VII in accordance with the provisions of Section 1735 of the Labor Code.
- 801.5 **Prevailing Wage:** The Contractor shall forfeit as penalty, to the City of Tulare, fifty dollars (\$50.00) for each laborer, workman, or mechanic employed for each calendar day or portion thereof, if such laborer, workman or mechanic is paid less than the general prevailing rate of wages hereinafter stipulated for any work done under the attached contract, by Contractor, or by any subcontractor under Contractor, in violation of the provisions of the Labor Code and in particular Sections 1770 to 1781 thereof, inclusive.

The City of Tulare has ascertained the general prevailing rate of wages applicable to the work to be done as set forth in the **Request for Proposals/Qualifications.**

- 801.6 **Registration of Contractors:** The contractor shall be dually licensed and qualified to perform the work addressed under the provisions of this contract. Before submitting bids, contractors shall be licensed in accordance with the provisions of Chapter 9 of Division III of the Business and Professions Code. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.
- 801.7 **Permits and Licenses:** The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work.
- 801.8 **Patents:** The Contractor shall assume all responsibilities arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the work.
- 801.9 **Programming Work and Maintaining Traffic:** The Contractor shall so conduct Contractor's operations as to cause the least possible obstruction and inconvenience to the public.

The Contractor shall furnish, erect and maintain such fences, barriers, lights and signs as are necessary to give adequate warning to the public at all times that work is under construction and of any dangerous conditions to be encountered as a result thereof, and Contractor shall also erect and maintain such warning and directional signs as required by the Inspector.

Residents along the road or street shall be provided access to driveways, houses and buildings, as directed by the City Contract Representative. Temporary crossings shall be provided and maintained in good condition.

Not more than one cross or intersecting street or road shall be closed at any one time without the approval of the City Engineer. In order to protect the public from dust nuisance, or damage to

property along the line of work, the Contractor shall adequately sprinkle the grade with water as often as necessary to control the dust.

801.10 **Protection of Persons and Property:** The Contractor shall be responsible for initiating, maintaining, supervising, and directing all safety precautions and programs while performing the Work.

The Contractor shall be responsible for the protection of all Work until completion and final payment is made, including any material or equipment to be incorporated, whether in storage on or off the Work site.

The Contractor shall, at their own expense, replace damaged or lost material, or repair damaged parts of the Work or of other property at the work site or adjacent thereto, and the Contractor and their sureties shall be liable therefor.

The Contractor shall assume all risks from floods and casualties and shall make no claim for damages for delay from such causes. However, a reasonable extension of time on account of such delays may be allowed, subject to the conditions contained in Section 9 of these General Provisions.

In the event the Contractor encounters material reasonably believed to be a hazardous material, such as asbestos or polychlorinated biphenyl (PCB), the Contractor shall immediately stop work in the area affected and report the condition to the City Contract Representative.

The Contractor shall take all necessary precautions for the safety of employees and other persons who may be affected thereby, and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building codes to prevent accidents or injury to persons.

The Contractor warrants it is fully familiar and shall comply with all safety requirements of the Occupational Safety and Health Act (29 U.S.C. Sections 641-678, or as amended or re-codified from time to time). Also, the Hazard Communication Act relating to the use of hazardous materials (29 C.F.R. 1910-1200, or as amended or re-codified from time to time), as promulgated by the Federal Government and as implemented by the State of California, and that it will be solely responsible for all fines and penalties provided for by law for any violation of such Act and, furthermore, shall require all subcontractors to comply with such Acts and with the provisions of this section. Any claims arising out of alleged violations of such Acts are covered by the indemnification set forth in Section 801.11.

801.11 **Indemnification:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tulare, its agents, representatives, officers, directors, officials and employees from any and all liability, claims or damages of whatsoever kind or character, and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claims adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor, Contractor's independent contractors, employees, representatives, agents and invitees, and the passive or active negligent acts or omissions of the City of Tulare or its officers, employees and agents while acting within the scope of their duties regarding the work to be performed pursuant to this Agreement.

The Contractor agrees that the use of any and all public streets and improvements, which are part of or subject to this Agreement shall be at all times, prior to the final acceptance by the City of Tulare, the sole and exclusive risk of the Contractor. The Contractor further specifically agree

that Contractor shall indemnify and hold free of any liability the City of Tulare for any accident, loss, or damage to the work which is the subject of this Agreement prior to its completion and acceptance by the city.

801.12 **Public Liability Insurance:** The insurance requirements for Contractor together with the special endorsement forms, which the Contractor is expected to deliver, are annexed into this specification booklet and are considered a part of the contract. Said insurance requirements for Contractor require naming the City of Tulare, its officers, employees and agents as co-insured's and shall protect them from claims for personal injury, death or property damage suffered by third persons or by officers, employees and agents of the Contractor, and arising out of or in connection with the work which is the subject of this Agreement. As a condition precedent and prior to commencement of the work to be performed pursuant to this Agreement, the Contractor agrees to:

- a. Obtain insurance coverage of the types and amounts required in this subsection and keep such insurance coverage in force throughout the life of the Contract. The Contractor will provide satisfactory certificates of the required coverage to the Contracting Officer before beginning the Work. All policies will contain an endorsement providing that written notice be given to the City at least thirty (30) calendar days prior to termination, cancellation or reduction in coverage in any policy; and
- b. Include the City as an additional insured on the General Liability Insurance and Automobile Liability Insurance policies with respect to liability arising out of the performance of the Work. The Contractor agrees that the insurance required hereunder will be primary and that any insurance carried by the City will be excess and not contributing; and
- c. Provide and maintain minimum insurance coverage as follows:

<u>Coverage Afforded</u>	<u>Limits of Liability</u>
Workers' Compensation	Statutory
Commercial General Liability Insurance including: (a) Products & Completed Operations (b) Blanket Contractual (c) Explosion, Collapse & Underground Hazard	\$2,000,000 Bodily Injury and Property Damage, Combined Single Limit
Automobile Liability Insurance including: (a) Non-owned (b) Leased (c) Hired Vehicles	\$2,000,000 Bodily Injury and Property Damage, Combined Single Limit
<input type="checkbox"/> Checked If Applicable: Builder's Risk Insurance Including:	Contract Value (Less site preparation)

Fire, Extended Coverage, Vandalism and Malicious Mischief, and Theft. Builder's Risk insurance shall be required on all vertical construction.

- d. The City reserves the right, at its sole option, to furnish Builder's Risk Insurance at the City's expense.
- e. Notwithstanding any inconsistent statement in the insurance policy or certificate or any subsequent endorsement attached thereto, the City of Tulare shall be insured or named as additionally insured, covering the work which is the subject of this Agreement, whether liability is attributable to the Contractor or to the passive or active negligence of the City of Tulare. Said insurance shall be in effect on the date the work is commenced and shall expire no sooner than one (1) year after the date on which the work is completed and accepted by the City of Tulare. The cost of providing this insurance requirement shall be borne by the Contractor.
- f. All liability insurance policies shall bear an endorsement or shall have attached a rider whereby it is provided that in the event of expiration, cancellation or any reduction in scope or coverage of such policies for any reason whatsoever, the City of Tulare shall be notified by registered mail, return receipt requested, giving it sufficient time before the date thereof to comply with any applicable law or statute, but in no event less than thirty (30) days before the cancellation or any reduction in scope or coverage is effective.

801.12 **Contractor's Responsibility:** Except as provided above, until the formal acceptance of the work by the City of Tulare, the Contractor shall have the charge and care thereof and shall bear the risk of injury or damage of any other cause whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof, except such injuries or damages occasioned by acts of the federal government or the public enemy.

801.13 **Responsibility of City:** The City of Tulare shall not be held responsible for the care or protection of any material or parts of the work prior to final acceptance, except as expressly provided in these specifications.

SECTION NINE: PROSECUTION AND PROGRESS

901.1 **Subletting and Assignment:** The Contractor shall give personal attention to the fulfillment of the contract and shall keep the work under Contractor's control. The Contractor shall ensure that the subcontractors assigned to this Contract are available throughout the term of the Contract. In the event that Contractor requests substitution of subcontractors, the Contractor shall obtain prior written approval from the City for subcontractor substitution. The Contractor shall ensure that substituted subcontractors are equally qualified and capable.

The Contractor agrees that each subcontractor shall be bound by the terms of the Contract. In the event of a conflict between the substance of a written subcontract and the language of this Contract, the language of this Contract shall prevail.

The Contractor shall ensure that each subcontractor preserves and protects the rights of the City under the Contract with respect to the work to be performed by the subcontractor.

Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. In this connection, the Contractor shall make available to each subcontractor, prior to execution of any subcontract, copies of the Contract provisions to which the subcontractor will be bound. Subcontractors shall also make copies of applicable portions of the Contract available to their respective subcontractors.

Each subcontract will require the subcontractor to submit to the Contractor, invoices for payment in such reasonable time as to enable the Contractor to apply for payment to the City in a timely manner. Invoices shall include any claims for extras, extensions of time, and damages for delays or otherwise to the Contractor in the same manner provided in the Contract for like claims by the Contractor upon the City.

Subcontractors will not be recognized as such, and all persons engaged in the work of construction shall be considered as employees of the Contractor, and their work shall be subject to the provisions of the contract and these specifications.

Where a portion of the work sublet by the Contractor is not being prosecuted in a manner satisfactory to the City Contract Representative, the subcontractor shall be removed immediately on the requisition of the City Contract Representative and shall not again be employed on the work.

The Contractor further agrees:

- a. To be bound to the subcontractor by all the obligations that the City assumes to the Contractor under this Contract, and by all provisions thereof affording remedies and redress to the Contractor from the City.
- b. To promptly pay the subcontractor in accordance with applicable State statute.
- c. That, at all times, the subcontractors' total payments shall be proportionate to the value of the labor and materials provided by them. Payment may be preconditioned upon the subcontractors providing the Contractor with requested significant partial or final lien waivers.
- d. To pay the subcontractor to such extent as may be provided by the Contract or the subcontract, if either of these provides for earlier or larger payments than the above.
- e. To ensure timely payment to subcontractors for their work as performed and for materials fixed in place, less any applicable retention, despite any delay by the City in making payments to the Contractor for any cause not the fault of the subcontractor.
- f. To share or forward, as appropriate, with its subcontractors or, as appropriate, with the City, any fire insurance money received by the Contractor under the insurance provisions of the Contract.
- g. That no claim for services rendered or materials furnished by the Contractor to the subcontractor shall be valid unless written notice thereof is given by the Contractor to the subcontractor during the first ten (10) days of the calendar month following that in which the claim originated.

- h. To give the subcontractor an opportunity to be present and to submit evidence in any contractual claim, controversy or dispute.

Nothing in this Article shall create any obligation or responsibility on the part of the City to ensure payments to any subcontractor(s), except as may be required by law.

Each subcontract agreement for a portion of the Work is hereby assignable by the Contractor to the City, provided that:

- a. Assignment is effective at the sole option of the City and only upon termination of the Contract for cause pursuant to Section 1202 of these General Provisions, and only for those subcontract agreements which the City chooses to accept by notifying the subcontractor in writing; and
- b. Assignment is subject to the prior rights of the surety obligated under Bonds relating to the Contract.

901.2 **Separate Contracts:** The City reserves the right to perform construction or operations related to the Work with the City's own forces and to enter into separate Contracts in connection with other portions of the Work or other construction or operations on the Work site.

The Contractor shall afford other Contractors on the Work site reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs.

The City Contract Representative shall coordinate the activities of the City's own forces and of each separate Contractor connected with the Work. The Contractor and all other Contractors on the work site shall review their construction schedules and cooperate with the City Contract Representative in coordinating various portions of the Work with the schedules of such separate contractors.

If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the City Contract Representative any defects in such work that render it unsuitable for continuance of the Contractor's Work. Failure to inspect and report may constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's Work, except as to defects not then reasonably discoverable.

Costs caused by the Contractor because of delays or by improperly timed activities or defective construction shall be borne solely by the Contractor.

If the Contractor causes damage to any separate contractor on the site, the Contractor, upon due notice, agrees to settle with such separate contractor by agreement or arbitration, if he will so settle. If such separate contractor sues the City on account of any damage alleged to have been so sustained, the City shall notify the Contractor, who shall defend such proceedings and, if any judgment against the City arises therefrom, the Contractor shall pay or otherwise satisfy it.

Should separate contractors on the Work cause any damage, cost or loss to the Contractor, the City shall not be held responsible or liable therefore in any way other than

extensions of completion time in accordance with Section 901.10 of these General Provisions.

- 901.3 **Progress and Completion:** The Contractor shall begin work within ten (10) working days after receiving "Notice to Proceed," and shall diligently prosecute the same to completion before the expiration of the number of working days indicated in the Special Provisions, beginning on the date that work begins or beginning on the ninetieth (90th) calendar day after approval of the contract, whichever occurs first. The date shall not be postponed on account of the Contractor's failure to take any action required to commence the Work.

The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the agreed upon time frame. If the Contractor is delayed on any portion of the Work for any reason whatsoever, it shall expeditiously proceed on other portions of the Work which are not affected by such delay.

By execution of the Contract documents, the Contractor acknowledges that the time is of the essence and the time described and allotted for in the contract documents for the Work to occur is a reasonable period for a competent Contractor to complete the Work.

The City of Tulare reserves the right to extend the time of completion beyond the designated completion date.

- 901.4 **Character of Workmen:** If any subcontractor or person employed by the Contractor shall fail or refuse to carry out the directions of the City Contract Representative or shall appear to the City Contract Representative to be incompetent or to act in a disorderly or improper manner, said person shall be discharged immediately on the requisition of the City Contract Representative, and such person shall not again be employed on the Work.

- 901.6 **Partial Utilization:** The City may occupy or use any portion of the Work that the City and Contractor agree constitutes a separately functioning and usable part of the Work, if the City can occupy without significant interference with completion of the remainder of the Work. Such use or occupancy may commence whether or not the portion is substantially complete, provided that the City and Contractor have accepted, in writing, their mutual responsibilities regarding the occupied/used portion, including but not limited to insurance coverage, maintenance, and utilities.

Partial use or occupancy of the Work by the City shall not constitute acceptance of any work not in compliance with the Contract requirements and standards.

- 901.7 **Substantial Completion:** When the Contractor determines that the Work, or any portion thereof that the City has agreed to accept separately, is ready for its intended use, it shall notify the City Contract Representative in writing of substantial completion and request an inspection to certify the same. Within a reasonable time thereafter, the City Contract Representative will inspect the Work, or the designated portion thereof, in the presence of the Contractor or Contractor's designee. If the inspection discloses any item not in compliance with the Contract, the City Contract Representative shall notate the deficiency, in writing. Following correction of any deficiencies noted, the Contractor shall submit a request for re-inspection by the City Contract Representative, to be conducted in the presence of the Contractor or Contractor's designee. The Contractor may be responsible for additional re-inspection costs, should re-inspections become excessive. When the Work or designated portion thereof is determined to be substantially complete by the City

Contract Representative, the same shall prepare a Certificate of Substantial Completion. Said Certificate shall be signed by both parties and state the date of Substantial Completion and the date of inspection or re-inspection. The Certificate shall list the remaining obligations of the City and the Contractor relating to security, maintenance, utilities, damage to the Work, and insurance, as well as the date upon which said obligations shall be met.

Once Substantial Completion is certified, the Contractor shall achieve final completion within thirty (30) calendar days, unless otherwise agreed upon in writing.

901.8 **Final Completion:** Upon receipt of notice from the Contractor that the Work is ready for final inspection and upon receipt of a request for final payment, the City Contract Representative will inspect the Work, or the designated portion that the City agreed to accept separately, in the presence of the Contractor or Contractor's designee. The Contractor may be responsible for additional re-inspection costs, should re-inspections become excessive. Upon confirmation that all items noted as outstanding in the Certificate of Substantial Completion have been completed or corrected, the City Contract Representative shall issue Certificate of Final Completion and certify the request for final payment, including identification of any adjustments or amounts to be retained.

901.9 **Time of Completion and Liquidated Damages:** It is agreed by the parties of the contract that in case all the work called for under the contract is not completed before or upon the expiration of the time limit as set forth in these specifications, damage will be sustained by the City of Tulare, and that it is and will be impracticable to determine the actual damage which the City will sustain in the event of and by reason of such delay. Therefore, by execution of the contract, the Contractor agrees the amount of liquidated damages specified in the Special Provisions represents a fair and equitable approximation of the City's damages, and the Contractor will pay the City of Tulare the specified amount for each and every day's delay beyond the time prescribed to complete the work; and the Contractor agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that the City of Tulare may deduct the amount thereof from any money due or that may become due the Contractor under the contract; not as penalty, but as liquidated damages.

It is further agreed that in case the work called for under the contract is not finished and completed in all parts and the requirements within the time specified, the City of Tulare shall have the right to extend the time for completion or not, as may seem best to serve the interest of the City; and if it is decided to extend the time limit for the completion of the contract, the City of Tulare shall further have the right to charge to the Contractor, Contractor's heirs, or assignor's sureties, and to deduct from the final payment for the work, all or part as it may deem proper, of the actual cost of engineering, inspection, superintendence and other overhead expenses which are directly chargeable to the contract, which accrue during the period of such extension except that the cost of final surveys and preparation of final estimate shall not be included in such charges.

Permission allowing the Contractor to continue and finish any part of the Work after the time fixed for its completion or after the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of the City of any of its rights under the Contract.

The Contractor shall not be assessed with liquidated damages nor the cost of engineering and inspection during any delay in the completion of the work caused by acts of God or of

the public enemy, acts of the City, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors due to such causes, provided that the Contractor shall within ten (10) days from the beginning of any such delay notify the City Contract Representative in writing of the causes of delay. The City Contract Representative shall ascertain the facts and the extent of delay and his findings of the facts thereon shall be final and conclusive.

Once Substantial Completion is certified, the Contractor shall achieve final completion within thirty (30) calendar days, unless otherwise agreed upon in writing. If final completion does not occur within the agreed upon number of days, liquidated damages will commence on the first calendar day following the agreed upon deadline, until final completion occurs.

901.10 **Force Majeure:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means a major occurrence that is beyond the control of the parties affected and occurs without their fault or negligence. Force Majeure shall not include late performance by a sub-contractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall immediately notify the other party in writing of such delay of the commencement thereof, and shall specify the causes of such delay. Notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this section. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that the delayed party was prevented from performing in accordance with the Contract.

The completion time shall be extended when delay in completion of the Work by either the Contractor or the subcontractors is due to any preference, priority, or allocation order issued by the Federal Government.

Should a dispute arise between the Contractor and the City regarding a delay or time extension, the Contractor shall continue progress on the Work until the dispute is resolved.

901.11 **Right-Of-Way:** The City will provide the right-of-way for the work to be constructed. The Contractor shall make Contractor's own arrangements, and pay all expenses for additional area required by Contractor outside the limits of right-of-way unless otherwise provided in the Special Provisions.

SECTION TEN: MEASUREMENT AND PAYMENT

1001.1 **Measurement:** Payment for work done under this contract shall be made on the basis of the sums as calculated from the finally measured quantities of work done and the agreed unit and lump sum prices as set forth on the Bidder's Sheet of the Proposal. Payments shall include full compensation for furnishing all labor, materials, tools, and equipment and doing all work necessary to construct the item for which payment is being made, complete in place as shown on the plans, drawings and as described in the Technical Specifications and Special Provisions.

Whenever work called for and described in the Contract Documents is not specifically covered in the bid items, payment for such work shall be considered as being included in the contract price. No additional payment will be made for any work shown or described in the plans, drawings, Technical Specifications and Special Provisions but not covered under bid items.

1001.2 **Progress Payments:** During the course of construction, the Contractor shall request payment for work actually performed during the preceding thirty (30) day time period or some other time period as mutually agreed to. Invoices or Requests for Payment shall be submitted to the City Contract Representative. A schedule of values and an updated project schedule shall accompany the request for payment.

Contractor shall pay to the Contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven (7) days of receipt of each progress payment, unless otherwise agreed between the parties, in writing.

If any periodic or final payment to a subcontractor is delayed by more than seven (7) days after receipt of the periodic or final payment by the Contractor or subcontractor, the Contractor or subcontractor shall pay the subcontractor or material supplier interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction of a month on the unpaid balance.

The City may make progress payments on Contracts of less than ninety (90) days and shall make monthly progress payments on all other Contracts as provided for in this paragraph. Payment to the Contractor on the basis of a duly certified and approved invoice or request for payment for work performed during the preceding thirty (30) days may include payment for material and equipment, but to ensure the proper performance of the Contract, the City shall retain five percent (5%) of such estimated value of the work done and fifty percent (50%) of the value of the materials so estimated to have been furnished and delivered and unused, until final completion and acceptance of all material, equipment, and work covered by the Contract. The City may withhold an amount from any progress payment sufficient to pay expenses the City reasonably anticipates it will incur relating to necessary corrections of deficiencies. Withholding of the anticipated costs may only occur if the City provides written notice of the deficiency to the Contractor. The progress payments shall be paid within thirty (30) days following receipt by the City Contract Representative.

No such estimate or payment shall be made, when, in the judgment of the City Contract Representative, the work is not proceeding in accordance with the provisions of the contract.

Nothing in this Section prevents the Contractor or subcontractor from withholding application and certification for payment to the subcontractor or material supplier for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed, reasonable evidence that claims will soon be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the Contractor or another subcontractor, reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum, or a reasonable amount for retention that does not exceed the actual percentage retained by the City.

When the Contract is fifty percent (50%) complete, one-half of the amount retained, including any substituted securities, shall be paid to the Contractor on the Contractor's request, provided the Contractor is making satisfactory progress on the Contract and there is no specific cause or claim requiring a greater amount to be retained.

On completion and acceptance of each separate building, public work, or other division of the Contract on which the price is stated separately in the Contract, payment may be made in full, including retained percentages, less authorized deductions.

The City Contract Representative shall review the contents of any invoice or Request for Payment submitted by the Contractor, satisfy himself that the City has received full value, certify the estimate and submit it through normal channels for payment.

Neither the certification for payment, nor payment made to the Contractor, nor partial or entire use of the Work by the City, shall constitute an acceptance of any portion of the Work.

1001.3 **Payment Withheld:** If the City Contract Representative is unable to certify a request for payment in whole or in part because, after observing the Work and the data comprising the Invoice or Request for Payment, the City Contract Representative determines that the Work has not progressed or the quality of the Work is not in accordance with the Contract, the City Contract Representative shall promptly notify the Contractor. If the City Contract Representative and the Contractor cannot agree on a revised amount, the City Contract Representative will promptly issue a certificate for payment in an amount he/she determines is justified, given all circumstances.

The City Contract Representative, as a result of subsequently discovered evidence, may withhold or nullify, in whole or in part, any certification of invoices or Requests for Payment to the extent necessary for protection of the City from loss on account of:

- a. Defective work, not remedied; or
- b. Third-party claims filed or reasonable evidence indicating probable filing of such claims; or
- c. Contractor's failure to make payments to subcontractors or other third parties for labor, materials, or equipment; or
- d. Reasonable doubt the Work can be completed for the remaining unpaid contract balance; or
- e. Reasonable evidence the Work will not be complete within contract completion time and the remaining unpaid contract balance will be insufficient to pay for actual or liquidated damages resulting from the anticipated delay; or
- g. Damage to another contractor or to the City by the Contractor; or
- h. Damage to the real or personal property of another and failure to repair or replace the same; or
- i. Persistent failure to carry out the Work in accordance with the Contract.

When the grounds for withholding payment have been corrected to the satisfaction of the City Contract Representative, the City shall immediately proceed to process any amounts due to the Contractor.

1001.4 **Final Payment:** The City Contract Representative shall, after the completion of the contract, make a final estimate of the amount of work done hereunder, and the value of such work, and the City of Tulare shall pay the entire sum so found to be due after deducting therefrom all previous payments and all amounts to be kept and all amounts to be retained under the provisions of the contract. All prior partial estimates and payments shall be subject to correction in the final estimate and payment. The final payment shall not be due and payable until the expiration of thirty-five (35) days from the date of acceptance of the work by the City of Tulare.

Retention of payments by the City longer than sixty (60) days after final completion and acceptance requires a specific written finding by the City of the reasons justifying the delay in payment. The City may not retain any monies after sixty (60) days that are in excess of the amount reasonably anticipated to be necessary for payment of remaining costs or miscellaneous expenses. In lieu of payment retention, as provided for in this section, and at the option of the Contractor, the City shall accept an assignment of Certificates of Deposit with banks licensed by the State of California, securities of or guaranteed by the United States of America, securities of this state, securities of counties, municipalities, and school districts within this state, or shares of savings and loan institutions authorized to transact business in this state. Any such substitute security shall be in an amount equal to five percent (5%) of all invoices submitted to the City and retained as a guarantee for complete performance of the Contract. Contractor is entitled to receive all interest or income earned by this security as it accrues and all such security in lieu of retention shall be returned to the Contractor by the City within sixty (60) days after final completion and acceptance of the Work by the City, if the Contractor has furnished the City satisfactory receipts for all labor and material billed and waivers of liens from any and all persons holding claims against the Work. In no event shall the City accept substitute securities unless they are accompanied by a signed waiver from the bank, savings and loan association, or any other interested party, of any right to set off against either the City or the Contractor in relationship to the securities.

In any instance where the City has accepted substitute security, any subcontractor undertaking to perform any part of this public work is entitled to provide substitute security to the Contractor on terms of this agreement.

It is mutually agreed between the parties to the contract that no certificate given or payments made under the contract, except the final certificate or final payment, shall be conclusive evidence of the performance of the contract, either wholly or in part, against any claim of the party of the first part, and no payment shall be construed to be an acceptance of any defective work or improper materials.

Neither the final payment, nor any part of the retained percentage, shall become due and payable until the Contractor provides to the City a Consent of Surety Certificate from the bonding company, any necessary lien waivers, and any as-built drawings requested by the City.

The Contractor further agrees that the payment of the final amount due under the contract, and the adjustment and payment for any work due in accordance with any alterations of

the same, shall release the City of Tulare from any and all claims, or liability on account of work performed under the contract or any alteration thereof.

- 1001.5 **Extra and Force Account Work:** Extra work as hereinbefore defined, when ordered and accepted, shall be paid for under a written work order in accordance with the terms therein provided. Payment for extra work will be made at the unit price or lump sum previously agreed upon by the Contractor and the City Contract Representative, or by force account.

SECTION ELEVEN: WORKER'S COMPENSATION INSURANCE

- 1101 In accordance with the provisions of Section 3700 of the Labor Code, every Contractor will be required to secure the payment of worker's compensation to its employees (Labor Code Section 1860).

- 1102 Prior to the start of work, the Contractor shall provide the City of Tulare with a certificate reading as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract." (Labor Code Section 1861).

- 1103 Prior to the start of work the Contractor shall provide the City of Tulare with a valid Worker's Compensation Insurance Certificate.

SECTION TWELVE: SUSPENSION OR TERMINATION OF THE WORK

- 1201 **Suspension of the Work for Cause; City's Right to Perform the Work:** The City Contract Representative shall have authority to suspend the work wholly or in part for such period as the Contractor may deem necessary, due to unsuitable weather, or such other conditions as are considered unfavorable for the prosecution of the work, or for such time as the City Contract Representative may deem necessary, due to the failure on the part of the Contractor to carry out orders given, or to perform any provisions of the work. The Contractor shall immediately obey such order of the City Contract Representative.

If the performance of all or any portion of the work is suspended or delayed by the City Contract Representative in writing for an unreasonable period of time, greater than ten (10) working days, (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation or contract time is due as a result of such suspension or delay, the Contractor shall submit to the City Contract Representative in writing a request for adjustment within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the City Contract Representative will evaluate the Contractor's request. If the City Contract Representative agrees that the cost or time or cost and time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of, and not the fault of, the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the City Contract Representative will make an adjustment (excluding profit) and

modify the contract in writing accordingly. The City Contract Representative will notify the Contractor of the determination whether or not an adjustment of the contract is warranted.

No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

No contract adjustment will be allowed under the provisions specified in this section to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any term or condition of this contract.

If at any time, in the opinion of the City of Tulare, the Contractor has failed to supply an adequate working force, or material of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in and by the terms of the contract, notice thereof in writing will be served upon the Contractor and should the Contractor neglect or refuse to provide means for a satisfactory compliance with the contract, as directed by the City Contract Representative, within the time specified in such notice, the City of Tulare in any such case shall have the power to suspend the operation of the contract. Upon receiving notice of such suspension, the Contractor shall discontinue said work under the Contract, or such parts of it as the City of Tulare may designate, until the cause for the stop work order has been remediated or eliminated. The Contractor shall not resume the work until ordered in writing by the City Contract Representative.

If the Contractor fails to properly perform services or fails to perform under any provision of this Contract, the City may, seven (7) calendar days following written notice to the Contractor, and without prejudice to any other remedy the City may have, remediate any deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover the cost, the Contractor and/or its surety shall be liable to the City for the difference.

In the determination of the question whether there has been any such non-compliance with the contract as to warrant the suspension, the decision of the City of Tulare shall be binding on all parties to the contract.

1202 **Termination by the City for Cause:** Upon certification by the City Contract Representative, without prejudice to any other right or remedy of the City, and after giving the Contractor written notice of no less than seven (7) calendar days, the City may terminate the Contract as to all or any part of the Work for any of the following reasons:

- a. If the Contractor abandons or unnecessarily delays the Work; or
- b. If the Contractor persistently or repeatedly refuses or fails to supply sufficient quantity of laborers, sufficiently skilled laborers, proper materials, proper equipment, or competent subcontractor(s); or
- c. If the Contractor fails to make payment to subcontractor(s) for materials or labor, in accordance with the Contract or the respective agreements between the Contractor and subcontractor; or
- d. If the Contractor persistently disregards laws, ordinances, rules, regulations, or orders of the City or any other public authority having jurisdiction, or persistently violates the conditions or covenants of this Contract; or

- e. If the Contractor is adjudged bankrupt by a court of law; or
- f. If the Contractor makes a general assignment for the benefit of its creditors or if a receiver is appointed as a result of being insolvent; or
- g. If the Contractor is otherwise in substantial breach of the Contract, as determined by the City.

Upon termination of the Contract for any of the above reasons and subject to any priority rights of the Surety, the City may:

- a. Take possession of the Work and any of the Contractor's materials, tools, construction equipment, and/or machinery located at the work site or adjacent thereto; or
- b. Accept assignment of subcontracts pursuant to Section 9 of these General Provisions; or
- c. Finish the Work by whatever reasonable method the City may deem most expedient. In completing the Work itself or through an alternate contractor, the City may use any equipment, materials, supplies, machinery, and tools of the Contractor that are in the City's possession.

If the City terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive any further payment.

The cost of fully completing the Work provided for under any new contract shall include the sum or sums of money to be paid by the City to other Contractors, all costs of repairs and replacements of machinery, implements, tools and plant of the Contractor hereunder, and also all sums of money paid for additional management and administrative services, including, but not limited to, the cost of the City Contract Representative's additional services and added expenses made necessary by the termination of the Contract.

If the unpaid balance of the Contract price exceeds costs of finishing the Work, such excess may, at the City's discretion, be paid to the Contractor. If such costs exceed the unpaid balance, the City may sell all materials, supplies, machinery, implements, tools and plant of the Contractor's then on hand, at public sale, on giving the Contractor twenty (20) day notice of the time and place of such sale, and the net proceeds derived from the sale of said property shall be applied against such costs. Should the amount received from the sale be insufficient to pay the deficiency, the Contractor and its surety shall be liable to pay the amount of the deficiency.

1203 **Termination by the City for Convenience:** The performance of the Work under this Contract may be terminated by the City, in whole or in part, in accordance with this clause whenever the City reasonably determines that such termination is in the best interest of the City. Any such termination shall be affected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of the Work is terminated, and the date upon which such termination becomes effective.

If the Contract is terminated by the City, as provided herein, the Contractor shall receive compensation for any Work performed and accepted, together with profit in proportion to

the Work performed and accepted, to the extent proven through reasonable evidence provided by the Contractor. The compensation shall include payment for contractual obligations reasonably incurred prior to termination. No amount shall be allowed for anticipated or speculative profit on unperformed Work.

In the event the City terminates the Work, in whole or in part, for cause pursuant to Section 1202 and the termination is later deemed to be unjustified, then such termination shall be automatically deemed a termination for convenience and the provisions of this Section 1203 shall apply.

Termination of the Contract, or any portion thereof, by the City for convenience shall not relieve the Contractor of their contractual responsibilities for the Work completed, nor shall it relieve the surety of its obligation for and concerning any just claim arising out of the Work completed.

1204 **Contractor's Right to Terminate Contract:** The Contractor may terminate the Contract for any of the following reasons:

- a. If the Work should be stopped under an order of any court of competent jurisdiction or other public authority for a period in excess of one (1) month, through no act or fault of the Contractor or of anyone directly or indirectly employed by him; or
- b. If the City has failed to pay the Contractor within sixty (60) days after the date when any sum is certified for payment by the City Contract Representative; or
- c. If repeated suspensions or interruptions ordered by the City pursuant to Section 1203 total (in aggregate) more than one hundred percent (100%) of the total number of days scheduled for completion or more than one hundred twenty (120) work days during any three hundred sixty-five (365) day period.

If one of the above reasons exists, the Contractor may, upon seven (7) day written notice to the City Contract Representative, stop Work, terminate the Contract, and recover payment from the City for all Work executed and accepted by the City and any loss sustained upon any plant or materials, including provable reasonable profit and damages.

SECTION THIRTEEN: CLAIMS AND DISPUTES

1301 **City Contract Representative's Resolution of Claims and Disputes; Review by City Manager:** This Section relates to claims for additional compensation and any other differences or disputes between the parties arising under, and by virtue of, the Contract. Any such claims are to be resolved at the earliest possible time and at the first responsible level so as to increase the possibility that such matters will be resolved without the vexation of an administrative hearing process, arbitration, or litigation.

All claims, including but not limited to, claims relating to adjustments or interpretations of the Contract, payments of money, or other relief with respect to the terms of the Contract, shall be referred initially in writing to the City Contract Representative for action. The responsibility/legal burden to substantiate claims shall rest with the party making the claim.

Claims by the Contractor must be made within twenty-one (21) calendar days after the event giving rise to the claim or within twenty-one (21) calendar days after the claimant first becomes aware or should have become aware of the condition giving rise to the claim, whichever is later.

Pending final resolution of a claim, the Contractor shall proceed diligently with performance of the Contract and the City shall continue to make payments in accordance with the Contract.

The City Contract Representative shall, within twenty-one (21) calendar days following receipt of a written claim, issue one of the following in writing:

- a. A decision either rejecting or approving the claim.
- b. A suggestion as to an equitable compromise of the claim.
- c. A schedule to the Contractor indicating when the City expects to be able to take action on the claim, which shall be within a reasonable time.

The City Contract Representative may require the submission of additional documentation from the Contractor to facilitate a decision.

The Contractor shall have ten (10) working days from the date of the City Contract Representative's final decision rejecting or approving a claim, or suggesting a compromise, within which to accept or object to the decision. Failure of the Contractor to accept or object to the decision in writing within such ten (10) working day period shall be deemed an acceptance of the decision. If the Contractor rejects the decision of the City Contract Representative in writing within such ten (10) working day period, the matter shall be referred to the City Manager for de novo review.

The City Manager, or designated hearing officer, shall have sixty (60) days from receipt of a written objection by the Contractor to the City Contract Representative's final decision, or such longer period as the parties may stipulate in writing, to review the matter and issue a written response. During such period, the City Manager, or designated hearing officer, may require such additional documentation or testimony as deemed necessary to support his/her response.

SECTION FOURTEEN: MISCELLANEOUS PROVISIONS

1401 **Governing Law:** The Contract shall be governed and construed according to the laws of the Tulare City Charter, Tulare City Code of Municipal Ordinances, and the State of California.

1402 **Written Notice:** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last known business address known to the party giving notice. Date of service shall be the date of receipt. If no certification from the delivering party proving date of receipt is available, then date of service shall be five (5) calendar days following the date of mailing.

SECTION FIFTEEN: CONSTRUCTION SERVICES AGREEMENT

This Agreement is entered into by the City of Tulare (Owner) and MRC GameTime (Contractor), with its principal place of business located at 2130 NJ-35, Sea Girt, NJ 08750. This Agreement is subject to all terms and conditions in the Contract Documents and is for the performance of services as generally described hereinafter as “the Work” and as more specifically described or defined in the Contract Documents.

Contract Name: Live Oak Park and Prosperity Sports Park Playground Replacement Project

Contract Number: RFP 23-769

Contract Price not to exceed: \$139,405.92 (including a 10% contingency)

1500 The Parties

Unless otherwise designated in writing, herein or hereafter, the parties to the Agreement have designated the parties below as their respective representatives under the Contract. The City Park Manager shall serve as the Contract Representative, unless otherwise specified below. The parties' representatives are vested with authority to conduct all necessary activities to ensure proper and efficient performance of the Work under the Contract, as more specifically described in Sections 1-14, above.

For the City: Ivan Nicar – Parks Manager

For the Contractor: Keith Davis – Central California Design Consultant

1501 The Work and The Project

The Work for which the Contractor is retained under this Agreement, is generally described as design, furnish and installation of a new play system to include a shaded composite structure, slides, climbers, swings and play features with ADA compliant fall safety surfacing within the existing boundaries with no alterations to existing concrete curbs.

The Project, of which the Work is a part, is known and described as PK2019-003 – Live Oak Park & Prosperity Sports Park Playground Replacement Project – Design Build Services.

1502 Contract Time

1502.1 **Notice to Proceed.** It is agreed that the Contract Representative will issue the Notice to Proceed with the Work to be performed under this Agreement within ten (10) working days, or some other mutually agreed upon time period, after complete execution of this Contract, except in job order contracts where a separate Notice to Proceed will be issued for each individual job order.

1502.2 **Completion Time.** It is agreed that the Work shall be substantially completed not later than **one hundred twenty (120) calendar days** after the project starting day, as designated in the Notice to Proceed. The Contractor agrees that the Work shall be performed promptly, regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly agreed

that the time for completion is a reasonable time, considering average climatic conditions and usual industrial conditions prevailing in the Central Valley of California.

1502.3 **Liquidated Damages.** Completion times will be specified in the Notice to Proceed. Applicable liquidated damages may be assessed for each CALENDAR day the Work remains incomplete after the scheduled completion date. This amount is agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the City will sustain on account of late completion. If substantial completion does not occur within the agreed upon number of days, liquidated damages in the amount of five hundred dollars **(\$500)/calendar day** will commence on the first day after the agreed days, until substantial completion is certified.

1503 **Miscellaneous**

1503.1 **Guarantee.** The Contractor shall guarantee all Work under this Agreement against defects of material and Workmanship for a minimum of one year (12 calendar months) from the date of Final Completion.

1503.2 **Assignment.** Neither party to this Contract shall assign the Contract without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder without the previous written consent of the City.

1503.3 **Contract Documents.** The following listed documents constitute the Contract Documents and they are all as fully a part of this Contract as if repeated herein:

1. Any and all Amendments
2. Special Provisions
3. The Contract, including this Agreement
4. Project Specifications
5. Project Plans
6. City Standard Specifications
7. City Standard Plans
8. Supplemental project information and specifications
9. Bonds and Insurance

1503.4 **Precedence.** In the event of any inconsistency between any of the terms of the documents enumerated above, such inconsistency shall be resolved according to the hierarchy of documents as listed in Section 601.5 -Coordination of Plans and Specifications of the General Provisions, or as identified in the Special Provisions. Anything in these Contract Documents to the contrary notwithstanding, the provisions of all pertinent Charter provisions of the City of Tulare and applicable laws of the State of California in effect at the time of the execution of this Contract shall be a part of the Contract between the parties and shall take precedence over all of the other Contract Documents.

IN WITNESS, THEREOF, the parties hereto have executed three (3) identical counterpart copies of this Agreement on the date and year first written above, each of which copies shall for all purposes be deemed an original hereof.

City of Tulare, A Municipal Corporation and Charter City

By: _____
Mr. Marc Mondell
City Manager, City of Tulare

Contractor,

By: _____
Keith Davis
Central California Design Consultant

APPROVED AS TO FORM this ____ day of _____, 2020.

By: _____
Mr. Mario Zamora
City Attorney

MISCELLANEOUS FORM

A. Clean Air and Water Pollution Control Certification

CLEAN AIR AND WATER POLLUTION CONTROL CERTIFICATION

(AIR: 42 U.S.C. § 7401 et seq.,

WATER: 33 U.S.C. § 1251 et seq; 49 CFR, Part 18, Section 18.36)

To Accompany Statement of Qualification

PROPOSER agrees that any facility to be used in the performance of the contract, or to benefit from the contract, is not listed on the Environmental Protection Agency List of Violating Facilities.

PROPOSER also agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. relating to the inspection, monitoring, entry, reports and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued there under.

PROPOSER agrees that as a condition for award of the contract, the PROPOSER will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of, or benefit from, the contract is under consideration to be listed on the EPA List of Violating Facilities.

Company: PlayCore Wisconsin, Inc. dba GameTime c/o MRC, Inc

Business Address: 150 PlayCore Drive SE, Fort Payne, AL 35967

Signature: 

Name of Signing Official: James Marturano

Title of Signing Official: Exclusive GameTime Representative

Date: 09/28/22

Company Seal:

B. Lobbying Restrictions Certification

**LOBBYING RESTRICTIONS CERTIFICATION
(FOR AWARDS OF \$100,000 OR MORE)
(31 U.S.C. § 1352; 24 CFR Part 87 as amended by 2 U.S.C § 1601, et seq.)**

To Accompany Statement of Qualification

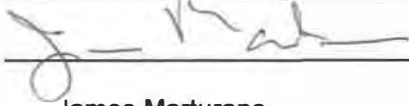
The undersigned certifies, to the best of his knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification to be included in the award documents for all sub awards at all tiers (including SUBBIDDERS, sub grants, and contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction (if the award is \$100,000 or more) imposed by Section 1352, Title 31, U.S. Code, as amended by 2 U.S.C. 1601, et seq.. Any persons who fail to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Company: PlayCore Wisconsin, Inc. dba GameTime c/o MRC, Inc
Business Address: 150 PlayCore Drive SE, Fort Payne, AL 35967
Signature: 
Name of Signing Official: James Marturano
Title of Signing Official: Exclusive GameTime Representative
Date: 09/28/22
Company Seal:

C. Debarment and Suspension Certification

DEBARMENT AND SUSPENSION CERTIFICATION
TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The Proposer, under penalty of perjury, certifies that, except as noted below, he/she or any person associated therewith in the capacity of owner, partner, director, officer, manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgement rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space:

No Exceptions

Exceptions will not necessarily result in denial of award, but will be considered in determining Proposer's responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action:

Note: Providing false information may result in criminal prosecution or administrative sanctions.

The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of the Certification.

By my signature on this proposal, I certify, under penalty of perjury under the laws of the State of California and the United States of America, that the Title 23 United States Code, Section 112 Non-Collusion Affidavit and the Title 49 Code of Federal Regulations, Part 29 Debarment and Suspension Certification are true and correct.

Company (Proposer): PlayCore Wisconsin, Inc. dba GameTime c/o MRC, Inc

Business Address: 150 PlayCore Drive SE, Fort Payne, AL 35967

Signature:  Date: 09/28/22

Name of Signing Official: James Marturano

Title of Signing Official: Exclusive GameTime Representative

D. Non-Collusion Affidavit

NON-COLLUSION AFFIDAVIT

To Accompany Statement of Qualification

TO: THE CITY OF TULARE

The undersigned, in submitting a proposal for performing the following work by contract, being duly sworn, deposes and says:

That he/she has not, either directly or indirectly, entered into any agreement, participate in any collusion, or otherwise taken any action in restraint of free competition in connection with such contract.

Work to be Done:

RFP for Live Oak Park and Prosperity Sports Park Playground Replacement Project

Proposer's Name: PlayCore Wisconsin, Inc. dba GameTime c/o MRC, Inc

Signature of Proposer: *[Handwritten Signature]*

Title: Exclusive GameTime Representative

Business Address: 150 PlayCore Drive SE, Fort Payne, AL 35967

Place of Residence: N/A

Subscribed and sworn to before me this 28th day of September, 2022.

[Handwritten Signature] Notary Public in and for
the County of Ocean, State of New Jersey.

My commission expires: _____



E. Workers' Compensation Insurance Certificate

WORKERS' COMPENSATION INSURANCE CERTIFICATE

STATE OF CALIFORNIA)
) ss
CITY OF TULARE)

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work under this contract.

Company: PlayCore Wisconsin, Inc. dba GameTime c/o MRC, Inc

Business Address: 150 PlayCore Drive SE, Fort Payne, AL 35967

Signature: 

Name of Signing Official: James Marturano

Title of Signing Official: Exclusive GameTime Representative

Date: 9.28.22

Company Seal:

F. Equal Employment Opportunity Compliance Certificate

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE CERTIFICATE

Equal Opportunity Clause

Unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Executive Orders 28925, 11114 or Section 204 of Executive Order 11246 of September 24, 1965, during the performance of each contract with the City of Tulare, the consultant agrees as follows:

1. The consultant will not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin or political affiliation. The consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, gender, national origin or political affiliation. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The consultant will, in all solicitations or advertisements for employees, placed by or on behalf of the consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, national origin or political affiliation.
3. The consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or the workers' representative of the consultants' commitments under Section 202 of Executive order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevancy orders of the Secretary of Labor.
5. The consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and relevant orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the consultant's non-compliance with the non-discrimination clauses of this subcontract or with any of such rules, regulations or orders, this subcontract may be canceled, terminated or suspended, in whole, or in part and the consultant may be declared ineligible for further government contracts in accordance with the procedures authorized in accordance with Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or otherwise provided by law.
7. The consultant will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subconsultant or vendor. The consultant will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that in the event the consultant becomes involved in, or is threatened with litigation with a subconsultant or vendor as a result of such direction by the contracting agency, the consultant may request the United States to enter into such litigation to protect the interest of the United States.

Certification on Non-Segregated Facilities

The consultant hereby certifies that it does not or will not maintain segregated facilities nor permit its employees to work at locations where facilities are segregated on the basis of race, color, religion, gender, national origin or political affiliation.

PlayCore Wisconsin, Inc. dba GameTime c/o MRC, Inc

Name of Firm


Authorized Signature

09/28/22

Date

G. Debarment and Suspension Certification

**LIVE OAK PARK AND PROSPERITY SPORTS PARK
PLAYGROUND REPLACEMENT PROJECT
CITY OF TULARE
PROJECT: RFP#23-769**

**DEBARMENT AND SUSPENSION CERTIFICATION
TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29**

The bidder PlayCore Wisconsin, Inc. dba GameTime c/o MRC, proposed subcontractors _____, under penalty of perjury, certifies that, except as noted below, he/she or any person associated therewith in the capacity of owner, partner, director, officer, manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgement rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space:
 No Exceptions

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action:

Note: Providing false information may result in criminal prosecution or administrative sanctions.

The above certification is part of the Proposal. Signing the Proposal on the signature portion thereof shall also constitute signature of the Certification.

By my signature on this proposal, I certify, under penalty of perjury under the laws of the State of California and the United States of America, that the Title 23 United States Code, Section 112 Non-Collusion Affidavit and the Title 49 Code of Federal Regulations, Part 29 Debarment and Suspension Certification are true and correct.

Bidder/Subcontractor: PlayCore Wisconsin, Inc. dba GameTime c/o MRC Inc

By: James Marturano Date: 09/28/22

Title: Exclusive GameTime Representative

H. PREVAILING WAGES CERTIFICATION

**LIVE OAK PARK AND PROSPERITY SPORTS PARK
PLAYGROUND REPLACEMENT PROJECT
CITY OF TULARE
PROJECT: RFP#23-769**

**CONTRACTOR'S/SUBCONTRACTOR'S CERTIFICATIONS
CONCERNING STATE LABOR STANDARDS AND PREVAILING WAGES**

All contractors and subcontractors shall give the following certifications to the Owner and forward this certification to the Owner within ten days after the execution of any contract or subcontract.

A. "I am aware of the provisions of Section 1720 et seq. of the California Labor Code which requires that the state prevailing wage rate shall be paid to employees where this rate exceeds the federal wage rate."

B. "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this contract."

C. "It is further agreed that, except as may be provided in Section 1815 of the California Labor Code, the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the contractor/subcontractor shall forfeit, as a penalty, twenty-five dollars for each worker employed in the execution of the subcontract for each calendar day during which a worker is required or permitted to labor more than 8 hours in any calendar day or more than 40 hours in any calendar week."

PlayCore Wisconsin, Inc. dba GameTime c/o MRC, Inc
(Contractor/Subcontractor)

By: 
(Signature)

Exclusive GameTime
James Marturano, Representative
(Typed Name and Title)

I. GUARANTEE

(This guaranty shall be executed by the successful bidder in accordance with the instructions in the Special Provisions. The bidder may execute the guaranty on this page at the time of submitting his bid).

**LIVE OAK PARK AND PROSPERITY SPORTS PARK
PLAYGROUND REPLACEMENT PROJECT
CITY OF TULARE
PROJECT: RFP#23-769**

The undersigned guarantees the constructions and installation of the following work included in this project:

Should any of the materials or equipment prove defective or should the work as a whole prove defective, due to faulty workmanship, material furnished or methods of installation, or should the work or any part thereof fail to operate properly as originally intended and in accordance with the plans and specifications, due to any of the above causes, all within twelve (12) months after date on which this contract is accepted by the Owner, the undersigned agrees to reimburse the Owner, upon demand, for its expenses incurred in restoring said work to the condition contemplated in said project, including the cost of any such equipment or materials replaced and the cost of removing and replacing any other work necessary to make such replacement or repairs, or, upon demand by the Owner, to replace any such material and to repair said work completely without cost to the Owner so that said work will function successfully as originally contemplated.

The Owner shall have the unqualified option to make any needed replacement or repairs itself or to have such replacements or repairs done by the undersigned. In the event the Owner elects to have said work performed by the undersigned, the undersigned agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from the Owner. If the undersigned shall fail or refuse to comply with his obligations under this guaranty, the Owner shall be entitled to all costs and expenses, including attorney's fees, reasonably incurred by reason of the said failure or refusal.


Contractor PlayCore Wisconsin, Inc. dba GameTime c/o MRC, Inc

09/28/22
Date

BIDDER'S LIST OF SUBCONTRACTORS

**PROJECT: LIVE OAK PARK AND PROSPERITY SPORTS PARK
PLAYGROUND REPLACEMENT PROJECT
CITY OF TULARE
CONTRACT: RFQ#22-747**

BIDDER: PlayCore Wisconsin, Inc. dba GameTime c/o MRC Inc.

SUBCONTRACTORS

The bidder hereby designates below the names and business addresses of each subcontractor to whom the bidder proposes to subcontract portions of the work in the amount of 1/2 of one percent of his total bid or \$10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code. The bidder's attention is directed to other provisions of said Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized subcontractors or by making unauthorized substitutions.

Please fill out as completely as possible when submitting your bid. Use subcontractor's business name style as registered with the License Board.

SUBCONTRACTOR 1: Recreation Project Services Inc.
Business Address: 7121 Pine View Drive, Folsom CA 95630
Class: _____ License No. 1000588722
Item No. or Description of Work: Installation of playground equipment, concrete pad, and EWF
Dollar Amount or Percentage of Total Bid: \$49,280.00

SUBCONTRACTOR 2: _____
Business Address: _____
Class: _____ License No. _____
Item No. or Description of Work: _____
Dollar Amount or Percentage of Total Bid: _____

SUBCONTRACTOR 3: _____
Business Address: _____
Class: _____ License No. _____
Item No. or Description of Work: _____
Dollar Amount or Percentage of Total Bid: _____

SUBCONTRACTOR 4: _____
Business Address: _____
Class: _____ License No. _____
Item No. or Description of Work: _____
Dollar Amount or Percentage of Total Bid: _____

SUBCONTRACTOR 5: _____
Business Address: _____
Class: _____ License No. _____
Item No. or Description of Work: _____
Dollar Amount or Percentage of Total Bid: _____

SUBCONTRACTOR 6: _____
Business Address: _____
Class: _____ License No. _____
Item No. or Description of Work: _____
Dollar Amount or Percentage of Total Bid: _____

SUBCONTRACTOR 7: _____
Business Address: _____
Class: _____ License No. _____
Item No. or Description of Work: _____
Dollar Amount or Percentage of Total Bid: _____

SUBCONTRACTOR 8: _____
Business Address: _____
Class: _____ License No. _____
Item No. or Description of Work: _____
Dollar Amount or Percentage of Total Bid: _____

SUBCONTRACTOR 9: _____
Business Address: _____
Class: _____ License No. _____
Item No. or Description of Work: _____
Dollar Amount or Percentage of Total Bid: _____

AGENDA ITEM: Consent 6

**CITY OF TULARE
AGENDA ITEM TRANSMITTAL SHEET**

Submitting Department: Engineering Services / Engineering

For Council Meeting of: October 18, 2022

Documents Attached: Ordinance Resolution Other None

AGENDA ITEM:

Final acceptance of public works improvements for Phases 2 and 3 of The Greens at Oak Creek subdivision, located along the east side of Mooney Boulevard (State Route 63) south of Seminole Avenue.

IS PUBLIC HEARING REQUIRED: Yes No

BACKGROUND/EXPLANATION:

On March 15, 2022, City Council approved the final map for Phases 2 and 3 of The Greens at Oak Creek subdivision, which created 54 single-family residential lots, as shown on the attached exhibit. Phases 2 and 3 of The Greens at Oak Creek are being developed as a single phase.

The Subdivider, D.R. Horton CA3, Inc., has completed construction of all required public works improvements in accordance with the approved plans and specifications for this subdivision, with the exception of Mooney Boulevard (State Route 63) frontage improvements. Due to delays being experienced with obtaining final construction permitting from Caltrans for improvements along the project’s Mooney Boulevard frontage, the Subdivider has requested that these improvements be secured through a short-term deferred improvement agreement, which is the subject of a prior item on this agenda to be considered by Council. Completion of the Mooney Boulevard frontage improvements has been delayed by new Caltrans permitting requirements for the installation of Southern California Edison street lights within State right-of-way. The aforementioned short-term deferred improvement agreement includes all required Mooney Boulevard improvements along the frontage of Phase 2 and 3 of the Greens at Oak Creek subdivision that have not been completed.

An exhibit showing the location of The Greens at Oak Creek subdivision is attached for reference.

STAFF RECOMMENDATION:

Subject to Council’s prior approval of a short-term deferred improvement agreement for uncompleted frontage improvements across the project’s Mooney Boulevard (State Route 63) frontage, accept the required public works improvements for Phases 2 and 3 of The Greens at Oak Creek subdivision as complete, authorize the City Engineer to sign a Notice of Completion, and direct the City Clerk to file the Notice of Completion with the Tulare County Recorder’s Office.

CITY ATTORNEY REVIEW/COMMENTS: Yes N/A

IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED: Yes No N/A

FUNDING SOURCE/ACCOUNT NUMBER:

N/A

Submitted by: Michael Miller

Title: City Engineer

Date: October 10, 2022

City Manager Approval: _____

RECORDING REQUESTED BY:

City of Tulare

WHEN RECORDED MAIL TO:

City Clerk
City of Tulare
411 East Kern Avenue
Tulare, CA 93274-4257

**PURSUANT TO GOVERNMENT CODE SECTION 6103,
NO RECORDING FEE REQUIRED.**

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN THAT:

1. The City of Tulare, a Municipal Corporation, whose address is 411 East Kern Avenue, Tulare, California, 93274, is the owner of the real property, public works or structure hereinafter described.
2. The nature of the title of the stated owner is: In Fee.
3. On the 18th day of October, 2022, a work of improvement on real property hereinafter described was completed by D.R. Horton CA3, Inc., the Subdivider of record, whose address is 711 North Court Street Suite R, Visalia, CA 93291.
4. The name of the surety for the work of improvements is SureTec Insurance Company, 1330 Post Oak Blvd., Suite 1100, Houston, TX 77056.
5. The real property or public work or structure is described as follows:

Public Works Improvements for Phases 2 and 3 of The Greens at Oak Creek, except Mooney Boulevard (State Route 63) frontage improvements secured by deferred improvement agreement.
6. The public works improvements were accepted as complete by the City Council of the City of Tulare on October 18, 2022.

Dated: _____

CITY OF TULARE
A Municipal Corporation,

By: _____
Michael W. Miller, City Engineer

VERIFICATION:

I am the City Engineer of the City of Tulare and am authorized to make this verification on behalf of the City. I have read the foregoing Notice of Completion, know the contents thereof, and believe it to be true and correct to the best of my knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, 2022 at Tulare, California.

By: _____
Michael W. Miller, City Engineer

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE LEGAL OWNERS OF, OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE BOUNDARIES OF THE SUBDIVISION SHOWN UPON THIS SUBDIVISION MAP...

- 1. STREET RIGHT OF WAY FOR BETHPAGE AVENUE, ERIN HILLS CIRCLE, CHAMBERS EAT AVENUE, FERRELL BEACH COURT, SHADOW CREEK COURT, AND SAWGRASS AVENUE IN FEE TO THE CITY OF TULARE.
2. LOT A & B IN FEE TO THE CITY OF TULARE FOR LANDSCAPING, BLOCK WALL, AND THE MAINTENANCE THEREOF.
3. 2-1/2" WIDE BLOCK WALL EASEMENT TOGETHER WITH ANY AND ALL APURTENANCES PERTAINING THERETO TO THE CITY OF TULARE.

WE ALSO HEREBY WAIVE ALL DIRECT ACCESS RIGHTS AS SHOWN WITHIN THE BOUNDARIES OF THE MAP HEREON.

BY: D.R. HORTON CAS, INC., A DELAWARE CORPORATION

Signature: David Hatch, Division President

THE GREENS AT OAK CREEK PHASE 2 AND 3

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF TULARE, COUNTY OF TULARE, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS: LOT 34 OF THE GREENS AT OAK CREEK NO. 1, IN THE CITY OF TULARE, COUNTY OF TULARE, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED AUGUST 5, 2020, IN BOOK 44 PAGE 54 OF MAPS.

NOTARY ACKNOWLEDGMENT

A NOTARY PUBLIC OF OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA, COUNTY OF Tulare. Notary Public: A.E. Pulido-Munoz. Signature: A.E. Pulido-Munoz, My Commission No. 2348358, Commission Expires Feb 22, 2025.

LANDSCAPE & LIGHTING ASSESSMENT DISTRICT

ALL THE REAL PROPERTY INCLUDED IN THE BOUNDARIES OF THE SUBDIVISION UPON THIS MAP IS INCLUDED IN ASSESSMENT DISTRICT NO. 18-020, CITY OF TULARE, TULARE COUNTY, CALIFORNIA, ESTABLISHED PURSUANT TO THE LANDSCAPE AND LIGHTING ACT OF 1972.

NOTICE TO HOMEOWNERS

THIS SUBDIVISION IS WITHIN A LANDSCAPE MAINTENANCE DISTRICT AND MAINTENANCE FEE FOR LANDSCAPING, SIDEWALK, AND BLOCKWALL MAINTENANCE IS SUBJECT TO AN ANNUAL REVISION BASED ON ACTUAL MAINTENANCE COSTS.

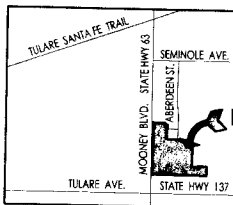
SOIL ENGINEER'S STATEMENT

I HEREBY CERTIFY THAT A SOIL REPORT WAS PREPARED BY ME ON 03/12/2018 IN CONFORMANCE WITH THE PROVISIONS OF STATE AND LOCAL STATUTES.

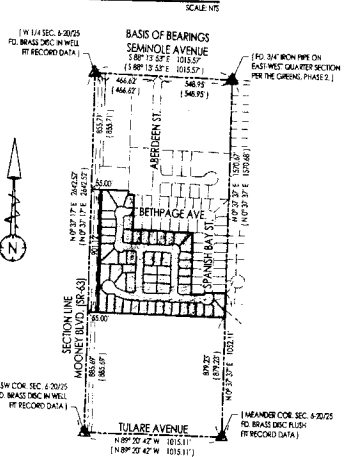
Witness My Hand and Official Seal This 1st DAY OF 03, 2022. Signature: Sammi Saleem, PE, GE. License No. 52742 / REGS 2549 EXP. DEC. 31, 2022.

RIGHT TO FARM NOTICE

IN ACCORDANCE WITH SECTION 10.160.040 OF THE CITY OF TULARE ORDINANCE CODE, AND AS A CONDITION OF APPROVAL OF THE ABOVE REFERENCED PARCEL MAP, SUBDIVISION MAP, OR USE PERMIT, THE OWNERS HEREBY ACKNOWLEDGE THAT THE PROPERTY IN WHICH YOU ARE TAKING AN INTEREST IS LOCATED ADJACENT TO AGRICULTURAL LANDS OR OPERATIONS...



VICINITY MAP



THUMBNAIL SKETCH SW 1/4 SEC. 6-20/25

LEGEND

- () RECORD DATA PER THE GREENS AT OAK CREEK PHASE 1, VOLUME 44 OF MAPS, AT PAGE 54, TULARE COUNTY RECORDS, OR CALCULATED THEREFROM. ALL DISTANCES SHOWN IN US SURVEY FEET AND DECIMALS THEREOF.

BASIS OF BEARINGS

THE EAST-WEST QUARTER SECTION LINE OF SECTION 6, TOWNSHIP 30 SOUTH, RANGE 25 EAST, TAKEN TO BE S86°13'05"E PER THE GREENS, PHASE 2, RECORDED MARCH 30, 2006 IN VOLUME 42 OF MAPS, AT PAGE 5, TULARE COUNTY RECORDS.

ABANDONMENT NOTICE

THE RECORDING OF THIS MAP DOES HEREBY CONSTITUTE THE ABANDONMENT OF THE TEMPORARY TURNAROUND EASEMENTS AND EASEMENT FOR TEMPORARY RUN-OFF POND SHOWN ON THE MAP OF THE GREENS AT OAK CREEK NO. 1, RECORDED IN BOOK 44 OF MAPS AT PAGE 54, OF TULARE COUNTY RECORDS.



SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME, OR UNDER MY DIRECTION, AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF D.R. HORTON CAS, INC., A DELAWARE CORPORATION, ON FEBRUARY 22, 2022. I HEREBY STATE THAT THE SUBDIVISION MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP...

CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP THAT THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF, AND THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH...

CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE CAREFULLY EXAMINED THIS MAP AND AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT, PURSUANT TO THE PROVISIONS OF THE SUBDIVISION MAP ACT.

PLANNING COMMISSION'S STATEMENT

APPROVED AUGUST 28, 2017, CITY OF TULARE PLANNING COMMISSION. TRANSMITTED TO SECRETARY DATE 3/22/2022

CITY CLERK'S STATEMENT

THIS IS TO CERTIFY THAT AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TULARE HELD ON THE 15th DAY OF March, 2022, AN ORDER WAS DULY AND REGULARLY MADE AND ENTERED APPROVING THIS SUBDIVISION MAP AND ACCEPTING ON BEHALF THE PUBLIC...

WITNESS MY HAND AND OFFICIAL SEAL OF THE CITY OF TULARE THIS 17th DAY OF March, 2022.

MARC MONDELL, CITY MANAGER/CITY CLERK

Signature: Marc Mondell, City Clerk

BOARD OF SUPERVISOR'S STATEMENT

JASON T. BRITT, COUNTY ADMINISTRATIVE OFFICER/CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT SAID BOARD OF SUPERVISORS HAS APPROVED THE PROVISIONS MADE FOR THE PAYMENT OF TAXES AS PROVIDED IN DIVISION 2, OF TITLE 7 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA.

DATED THIS 5th DAY OF April, 2022.

JASON T. BRITT, COUNTY ADMINISTRATIVE OFFICER/CLERK OF THE BOARD OF SUPERVISORS

Signature: Jason T. Britt, Deputy Clerk

RECORDER'S STATEMENT

DOCUMENT NO. 2022-0021421. FEE PAID: 187.00. FILED THIS 6th DAY OF April, 2022 AT 11:41 A.M. IN VOLUME 44 OF MAPS AT PAGE 54 AT THE REQUEST OF BRIAN S. BROWN, LAND SURVEYOR, TULARE COUNTY RECORDS. TARA FREITAS, CPA, TULARE COUNTY ASSESSOR/CLERK - RECORDER. Signature: Tara Freitas, Recorder.

Handwritten note: 17-5-2022

THE GREENS AT OAK CREEK PHASE 2 AND 3

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF TULARE, COUNTY OF TULARE, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS: LOT 34 OF THE GREENS AT OAK CREEK NO. 1, IN THE CITY OF TULARE, COUNTY OF TULARE, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED AUGUST 5, 2020, IN BOOK 44 PAGE 54 OF MAPS.

OCTOBER 2020

PREPARED BY: AW ENGINEERING
724 N. BEN MADDOX WAY STE. A, VISALIA, CA 93274
PHONE: (559) 713-6139

PREPARED FOR: D R HORTON
419 W. MURRAY AVE, VISALIA, CA 93291
PHONE: (559) 636-9850

BASIS OF BEARINGS

THE EAST-WEST QUARTER SECTION LINE OF SECTION 6, TOWNSHIP 20 SOUTH, RANGE 25 EAST, TAKEN TO BE S. 89° 15' 55" E PER THE GREENS AT OAK CREEK PHASE 2, RECORDED IN VOLUME 42 OF MAPS, AT PAGE 5, TULARE COUNTY RECORDS.

LEGEND

- SET 3/4" X 1/8" LONG IP TAGGED LS 8006 AT ALL LOT CORNERS AND POINTS OF CURVATURE CORNERS WHICH FALL ON A BLOCK WALL WILL BE SET ON A 5.00' OFFSET INTO THE LOT ON THE PROPERTY LINE
- FOUND AND ACCEPTED MONUMENT (BRASS DISC IN CONC.) STAMPED LS. 8006
- FOUND BRASS DISC FLUSH - TAGGED LS 5358 PER THE GREENS AT OAK CREEK PHASE 1
- RECORD DATA PER THE GREENS AT OAK CREEK PHASE 1, VOLUME 44 OF MAPS, AT PAGE 54, T.C.R. OR CALCULATED THEREFROM.
- RECORD DATA PER RIGHT OF WAY ABANDONMENT PER RESOLUTION 2021-32 RECORDED AS INSTRUMENT NO. 2021-0050347 T.C.R.
- C CURVE
- L LINE
- R RADIAL
- PUE PUBLIC UTILITY EASEMENT OFFERED TO PUBLIC PER THIS MAP
- SNF SEARCHED, NOTHING FOUND
- T.C.R. TULARE COUNTY RECORDS
- LIMITS OF SUBDIVISION

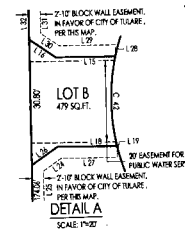
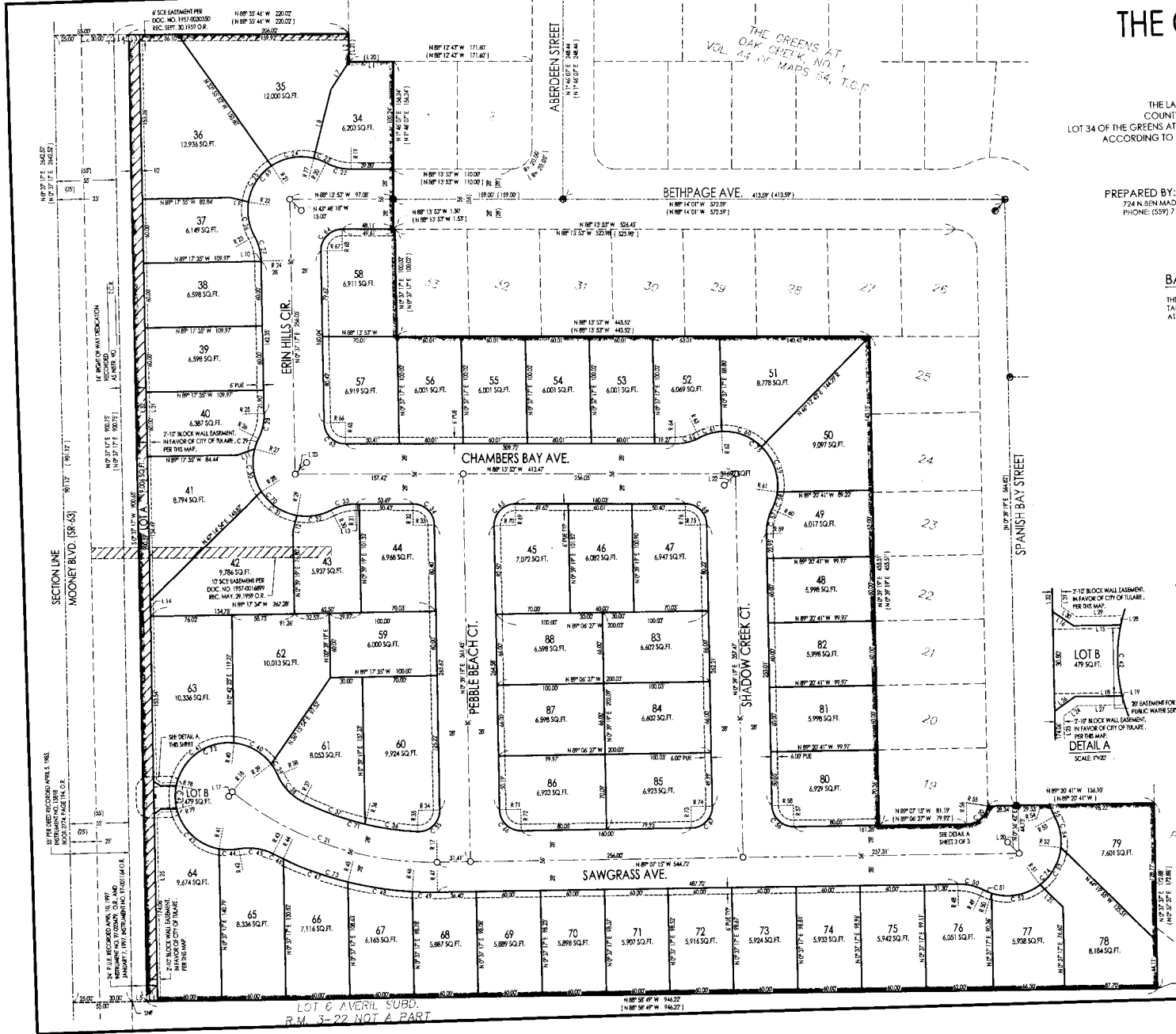
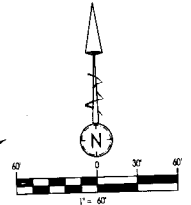
VARIOUS EASEMENTS AS DESCRIBED

NOTES

- ALL DISTANCES ARE MEASURED AND IN US SURVEY FEET OR DECIMALS THEREOF UNLESS NOTED OTHERWISE
- SEE SHEET 1 FOR SECTIONAL BREAKDOWN AND FOUND MONUMENTS
- SEE SHEET 3 FOR ALL TABLE DATA

NON-PLOTTABLE EASEMENT

EASEMENT DOCUMENT NO. 2020-0043745. EXPLAINS A 10.00 FOOT STRIP OF LAND, LYING 5.00 FEET ON EACH SIDE OF THE GAS PIPELINE AS INSTALLED BY GRANTEE, LYING WITHIN THAT CERTAIN REAL PROPERTY AS DESCRIBED IN THE GRANT DEED, RECORDED APRIL 04, 2018, INSTRUMENT NO. 2018-0017207 IN THE O.T.C.R.



THE GREENS, NO. 1
FM 5202 BK. 53, PG.
3 T.C.R.

4-5-2022

THE GREENS AT OAK CREEK PHASE 2 AND 3

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF TULARE, COUNTY OF TULARE, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS, LOT 34 OF THE GREENS AT OAK CREEK NO. 1, IN THE CITY OF TULARE, COUNTY OF TULARE, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED AUGUST 5, 2020, IN BOOK 44 PAGE 54 OF MAPS.

OCTOBER 2020

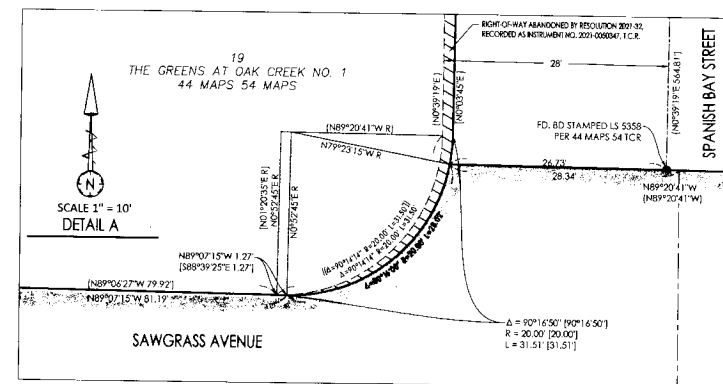
PREPARED BY: AW ENGINEERING
724 N.BEN MADDOX WAY STE. A, VISALIA, CA 93274
PHONE: (559) 713-6139

PREPARED FOR: D.R. HORTON
419 W. MERRAY AVE. VISALIA, CA. 93291
PHONE: (559) 636-9850

TABLE DATA

LINE DATA			LINE DATA			LINE DATA		
SEGMENT	LENGTH	DIRECTION	SEGMENT	LENGTH	DIRECTION	SEGMENT	LENGTH	DIRECTION
L3	10.02	N 88° 33' 44" W	L15	14.97	S 89° 16' 52" E	L27	14.03	S 89° 17' 35" E
L4	14.00	N 88° 33' 44" W	L16	7.79	S 84° 48' 42" E	L28	2.85	N 09° 43' 07" E
L5	14.00	N 88° 36' 49" W	L17	3.22	N 49° 19' 45" E	L29	14.04	N 89° 15' 53" W
L6	10.00	N 88° 36' 49" W	L18	14.91	N 89° 17' 35" W	L30	5.47	N 54° 48' 47" W
L7	31.17	N 35° 10' 30" E	L19	2.81	N 09° 43' 07" E	L31	66.20	N 09° 37' 18" E
L8	46.12	N 19° 43' 33" E	L20	16.08	N 44° 14' 53" W	L32	65.73	S 89° 27' 17" W
L9	17.02	N 74° 24' 33" W	L21	29.55	N 43° 54' 32" W			
L10	22.45	N 40° 37' 17" E	L22	15.00	N 44° 12' 42" E			
L11	17.00	N 71° 57' 52" E	L23	15.00	N 44° 11' 42" E			
L12	15.62	S 15° 30' 11" W	L24	5.37	N 56° 11' 48" E			
L13	3.26	N 89° 13' 38" W	L25	17.59	N 09° 37' 12" E			
L14	14.40	S 00° 37' 17" W	L26	7.24	S 54° 11' 48" W			

RADIAL TABLE		RADIAL TABLE		RADIAL TABLE		RADIAL TABLE		RADIAL TABLE		RADIAL TABLE	
RADIAL #	BEARING	RADIAL #	BEARING	RADIAL #	BEARING	RADIAL #	BEARING	RADIAL #	BEARING	RADIAL #	BEARING
R17	S 7° 52' 45" W	R29	S 12° 02' 34" W	R41	S 12° 15' 40" W	R53	S 42° 57' 44" W	R65	S 17° 46' 07" W	R77	N 12° 38' 48" E
R18	S 47° 19' 42" W	R30	N 25° 43' 02" W	R42	N 19° 04' 17" W	R54	S 76° 20' 35" W	R66	N 89° 22' 42" W	R78	S 78° 35' 03" E
R19	S 11° 40' 07" W	R31	N 17° 40' 07" E	R43	N 28° 44' 27" E	R55	S 77° 23' 15" E	R67	N 89° 22' 42" W	R79	S 77° 39' 52" W
R20	S 29° 31' 02" W	R32	N 11° 43' 29" E	R44	S 28° 52' 22" W	R56	S 77° 52' 45" W	R68	N 17° 46' 07" E		
R21	N 02° 00' 58" W	R33	S 89° 18' 02" E	R45	S 15° 39' 19" W	R57	S 77° 52' 45" W	R69	N 17° 46' 07" E		
R22	N 79° 09' 58" W	R34	S 89° 20' 41" E	R46	S 57° 02' 24" W	R58	N 89° 20' 41" W	R70	N 89° 20' 41" W		
R23	N 62° 52' 22" E	R35	S 44° 41' 49" W	R47	S 7° 52' 45" W	R59	N 89° 20' 41" W	R71	N 89° 20' 41" W		
R24	S 89° 38' 15" E	R36	S 12° 04' 31" W	R48	N 02° 52' 45" E	R60	N 61° 51' 17" W	R72	S 7° 52' 45" W		
R25	S 89° 22' 42" E	R37	S 28° 56' 02" W	R49	N 28° 31' 31" E	R61	S 81° 10' 23" E	R73	S 7° 52' 45" W		
R26	S 61° 53' 03" E	R38	S 89° 22' 36" W	R50	S 19° 07' 36" W	R62	N 11° 53' 19" W	R74	S 89° 20' 41" E		
R27	N 73° 48' 42" W	R39	N 54° 23' 07" E	R51	S 51° 38' 58" E	R63	S 29° 43' 14" E	R75	S 89° 20' 41" E		
R28	S 59° 09' 57" W	R40	N 71° 54" E	R52	S 82° 31' 02" E	R64	S 17° 46' 07" W	R76	N 17° 46' 07" E		



CURVE DATA					
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD
C 20	89° 16' 00"	20.00	28.00	14.86	23.76
C 21	39° 24' 57"	300.00	206.56	107.56	222.50
C 22	24° 44' 55"	50.00	24.22	12.35	23.98
C 23	1° 22' 15"	50.00	12.54	6.30	12.51
C 24	47° 09' 23"	50.00	41.15	21.82	40.00
C 25	47° 09' 23"	50.00	41.15	21.82	40.00
C 26	37° 57' 42"	50.00	33.13	17.29	32.52
C 27	27° 29' 23"	50.00	23.99	12.23	23.76
C 28	27° 29' 10"	50.00	23.99	12.23	23.76
C 29	11° 47' 08"	50.00	10.28	5.16	10.27
C 30	47° 09' 23"	50.00	41.15	21.82	40.00
C 31	47° 09' 23"	50.00	41.15	21.82	40.00
C 32	37° 43' 37"	50.00	32.92	17.08	32.33
C 33	27° 29' 10"	50.00	23.99	12.23	23.76

CURVE DATA					
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD
C 34	89° 53' 11"	50.00	31.25	15.62	28.01
C 35	84° 02' 30"	50.00	33.82	17.46	29.26
C 36	10° 22' 02"	272.00	49.30	24.72	49.25
C 37	19° 01' 09"	272.00	61.81	31.54	61.67
C 38	49° 16' 38"	50.00	35.15	18.34	34.47
C 39	19° 59' 31"	50.00	12.21	6.14	12.18
C 40	47° 09' 24"	50.00	41.15	21.82	40.00
C 41	89° 46' 46"	50.00	73.14	44.87	66.79
C 42	52° 22' 05"	50.00	22.18	11.28	22.03
C 43	45° 44' 07"	50.00	57.56	30.31	54.27
C 44	21° 19' 59"	50.00	18.42	9.42	18.31
C 45	37° 48' 40"	50.00	33.07	17.12	32.40
C 46	1° 52' 04"	238.00	10.49	5.35	10.49
C 47	11° 13' 05"	388.00	64.22	32.21	64.12

CURVE DATA					
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD
C 48	10° 38' 55"	388.00	60.95	30.57	60.87
C 49	47° 09' 30"	388.00	226.3	118.82	224.2
C 50	27° 36' 46"	50.00	24.13	12.30	23.89
C 51	17° 23' 53"	50.00	8.22	4.11	8.19
C 52	54° 30' 13"	50.00	47.85	25.94	44.05
C 53	44° 52' 25"	50.00	40.90	21.66	39.77
C 54	34° 27' 17"	50.00	30.07	15.50	29.42
C 55	13° 22' 49"	50.00	11.66	5.86	11.45
C 56	89° 44' 34"	50.00	31.34	19.92	28.29
C 57	27° 27' 07"	50.00	23.94	12.21	23.79
C 58	19° 14' 49"	50.00	16.83	8.49	16.73
C 59	19° 36' 57"	50.00	45.92	24.72	44.22
C 60	47° 28' 07"	50.00	41.42	21.96	40.25
C 61	24° 57' 57"	50.00	21.31	10.84	21.19

CURVE DATA					
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD
C 62	27° 29' 24"	50.00	23.99	12.23	23.76
C 63	89° 51' 10"	20.00	31.02	15.62	28.00
C 64	51° 08' 52"	20.00	31.82	20.40	28.57
C 65	91° 06' 49"	20.00	31.80	20.39	28.56
C 66	89° 44' 34"	20.00	31.34	19.92	28.29
C 67	93° 13' 25"	20.00	31.49	20.38	28.34
C 68	89° 58' 21"	20.00	31.06	19.46	28.00
C 69	144° 38' 40"	50.00	123.97	144.89	93.79
C 70	144° 49' 22"	50.00	125.51	150.09	95.06
C 71	29° 24' 11"	272.00	111.10	56.34	110.32
C 72	20° 26' 51"	50.00	254.67	62.36	76.02
C 73	27° 51' 43"	388.00	159.20	81.36	157.93
C 74	149° 32' 46"	50.00	127.23	141.34	95.52

Handwritten signature or initials: X-5-20202

AGENDA ITEM: Consent 7

**CITY OF TULARE
AGENDA ITEM TRANSMITTAL SHEET**

Submitting Department: Engineering Services / Engineering

For Council Meeting of: October 18, 2022

Documents Attached: Ordinance Resolution Other None

AGENDA ITEM:

Authorize the City Manager to execute a real property purchase and sale agreement, subject only to minor conforming or clarifying changes acceptable to the City Attorney and City Manager, to transfer City-owned property (APN 166-240-014) to Warren Mouw in exchange for right-of-way dedication for the future extension of Akers Street south of Cartmill Avenue.

IS PUBLIC HEARING REQUIRED: Yes No

BACKGROUND/EXPLANATION:

The City owns property located at the southwest corner of Cartmill Avenue and Akers Street comprising 11,752 square feet and identified as Assessor’s Parcel Map No. 166-240-014. The parcel is undeveloped and is a remnant of property originally acquired by the Redevelopment Agency and retained by the City for construction of the Cartmill Avenue Interchange Project. On March 15, 2022, City Council adopted Resolution 2022-09 declaring the property as surplus and directed staff to proceed with the process of selling or leasing the property. An appraisal of the property dated March 8, 2022 determined a fair-market value of \$95,000. As a former RDA property, the City was required to first provide notice to agencies and entities having jurisdiction over development of low- and moderate-income housing, open space, and school facilities that the property was being declared as surplus, and providing opportunity them with an opportunity to negotiate the purchase or lease of the property. The City received no responses to this notice, and is now free to negotiate with private parties.

Mr. Warren “Bud” Mouw is the owner of the parcel adjacent to the City parcel at the southwest corner of Cartmill Avenue and Akers Street. Mr. Mouw’s property is zoned for commercial development, and he is actively processing development proposals through the City’s Site Plan Review process. As a condition of development of Mr. Mouw’s property, the extension of Akers Street south of Cartmill Avenue would be required. Due to the presence of a Tulare Irrigation District ditch, the established alignment of Akers Street both north and south of Cartmill Avenue is not centered on property lines, but is shifted westward. South of Cartmill Avenue, the Akers Street right-of-way will be located entirely on Mr. Mouw’s property. As a result, a portion of the right-of-way dedication required for development of Mr. Mouw’s property would be considered as oversized and subject to reimbursement by the City. The total right-of-way dedication required for development of the property is approximately 62,033 square feet. The portion that would be considered oversize and eligible for reimbursement by the City is 26,723 square feet. Based upon recent right-of-way acquisitions, the estimated value of the oversize dedication is \$107,000.

Mr. Mouw has expressed his desire to acquire the surplus City owned parcel. By doing so, the property could be incorporated into the planned development of his property, resulting in a more cohesive development plan for the southwest corner of Cartmill Avenue and Akers

Street. Mr. Mouw has expressed a willingness to trade the portion of the right-of-way needed for the extension of Akers Street that would be subject to oversize reimbursement (26,723 square feet) for the surplus City owned property (11,752 square feet). Based upon the appraised value of the City property and the estimated value of the oversize reimbursable right-of-way dedication, such a trade would be in the City's favor.

A draft Real Property Purchase and Sale Agreement has been prepared for the proposed transfer of property, and a copy is attached for reference.

STAFF RECOMMENDATION:

Authorize the City Manager to execute a real property purchase and sale agreement, subject only to minor conforming or clarifying changes acceptable to the City Attorney and City Manager, to transfer City-owned property (APN 166-240-014) to Warren Mouw in exchange for right-of-way dedication for the future extension of Akers Street south of Cartmill Avenue.

CITY ATTORNEY REVIEW/COMMENTS: Yes N/A

IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED: Yes No N/A

FUNDING SOURCE/ACCOUNT NUMBER:

N/A

Submitted by: Michael Miller

Title: City Engineer

Date: October 10, 2022

City Manager Approval: _____

REAL PROPERTY PURCHASE AND SALE AGREEMENT

This Real Property Purchase and Sale Agreement is entered into on [REDACTED], 2022 (the “Effective Date”), by and between the City of Tulare, a municipal corporation (“Grantee”), Cartmill Commons, LLC (“Grantor”).

By and through this Agreement, Grantor agrees to sell and convey, and Grantee agrees to purchase, the below described property (“Grantor Property”) as public right-of-way for the future extension of Akers Street on the following terms and conditions. In exchange for the Property, Grantee shall convey to Grantor real property owned by Grantee (“Grantee Property”).

ARTICLE I PROPERTY

1.1 The “Grantee Property” is more particularly described in the attached Exhibit “A”, which is incorporated herein by reference, and is comprised of totaling 11,752 square feet of undeveloped land situated in the City of Tulare, Tulare County, California, designated as Assessor’s Parcel Number 166-240-014.

1.2 The “Grantor Property” is hereinafter defined as the 26,723 square foot portion of the Grantor-owned property situated in the City of Tulare, Tulare County, California, designated as Assessor’s Parcel Number 166-240-010 (portion), and more particularly described in Exhibit “B”, which is attached to this Agreement and hereby incorporated by reference, required for the future extension of Akers Street.

ARTICLE II EXCHANGE OF PROPERTIES

As full consideration for the Property, Grantee shall convey the Grantee Property to Grantor. Grantor and Grantee acknowledge that Grantor is conveying the Grantor Property to Grantee, and Grantee further acknowledges that his acceptance of the Grantee Property shall constitute full and just compensation for his conveyance of the Grantor Property to Grantee. Grantor shall not be entitled to any further consideration from Grantee for Grantor’s conveyance of the Grantor Property to Grantee.

ARTICLE III ESCROW AND DELIVERY OF DOCUMENTS

3.1 **Escrow.** This Agreement is contingent upon (i) preliminary title reports having been approved by Grantor and Grantee for the properties that each will receive from the other; and (ii) Grantor’s and Grantee’s assurances to one another, to each party’s satisfaction, that all liens and encumbrances of record on the Grantor Property and the Grantee Property have been or will be removed.

3.2 **Opening of Escrow.** The escrow shall be opened to consummate the sale of the Grantee Property according to the terms of this Agreement at the office of Chicago Title Company, 1905 Hillman Street, Tulare, CA, 93274 (“Escrow Holder”), Order No. [REDACTED].

3.3 **Grantor’s Deliverables.** Within five (5) days after this Agreement is executed by Grantee and Grantor, Grantor shall complete, execute and deliver to Escrow Holder (i) an affidavit executed by Grantor certifying that Grantor is not a “foreign person” within the meaning of Internal Revenue Code Section 1445(f)(3), and meeting the requirements of Internal Revenue Code Section 1445(b)(2), and (ii) an original Withholding Exemption Certificate (California Form 590 or 590-RE, as applicable), fully executed by Grantor as required by the California Taxation and Revenue Code, certifying that Grantor is not subject to tax withholding under applicable California law.

3.4 **Grantee’s Deliverables.** Within five (5) days after this Agreement is executed by Grantee and Grantor, Grantee shall complete, execute, and deliver to Escrow Holder the documents required to complete Grantee’s obligations hereunder.

3.5 **Delivery of Documents.** Grantor and Grantee shall deposit with Chicago Title Co. all instruments and documents, including but not limited to the Grant Deeds, and all other items (i) identified in the escrow instructions, or (ii) reasonably required by the Escrow Holder to close the sale on the Closing Date. Chicago Title Co. shall place all such documents into escrow. The Deeds shall be delivered in the manner described in the previous sentence solely for the convenience of the parties. Grantor and Grantee shall not be deemed to have accepted delivery of the Deeds until such time as the Deeds are recorded in the Official Records of Tulare County, California in accordance with written escrow instructions delivered to escrow by Grantee and Grantor.

3.6 **Closing Date.** The escrow shall be closed on the date the Deeds are recorded. The escrow shall be in a condition to close when the Escrow Holder is authorized under the escrow instructions, and when the Escrow Holder is otherwise able, to record the Deeds. The escrow shall be closed no later than thirty (30) days following the escrow opening date, unless the closing date is extended pursuant to the terms of this Agreement.

3.7 **Prorations.** The following shall be prorated between Grantor and Grantee based on a thirty-day month as of the date on which escrow closes: real property taxes and special assessments.

3.8 **Closing Costs.** Grantee shall pay all costs of recording the Grant Deed and any other instruments required to convey title to the Property to Grantee; the cost of preparing, executing, and acknowledging such Deeds and all other instruments necessary to convey title to Grantee. Grantor shall pay all costs of recording the Grant Deed for the Grantee Property and any other instruments required to convey the Grantee Property to Grantor; and the cost of preparing, executing, and acknowledging such Deed and all other instruments necessary to convey the Grantee Property to Grantor. Escrow fees will be divided evenly between Grantor and Grantee.

3.9 **Vesting of Title.** On the close of escrow, title to the Grantor Property shall be vested in the City of Tulare, a municipal corporation, and title to the Grantee Property shall be vested in Grantor.

ARTICLE IV
ADDITIONAL TERMS AND CONDITIONS

4.1 **Preliminary Title Report.** Within fifteen (15) days after the execution of this Agreement: (i) Grantor shall obtain a preliminary California Land Title Association (CLTA) report of the title for the Grantor Property and each document shown as an exception or encumbrance in the report (the “Grantor Report”); and (ii) Grantee shall obtain a preliminary CLTA report of title for the Grantee Property and each document shown as an exception or encumbrance in the report (the “Grantee Report”). This Grantor Report shall be done at the expense of the Grantor, and the Grantee Report shall be done at the expense of Grantee. Within fifteen (15) days after the delivery of the Grantor Report and related documents to Grantee, Grantee shall notify Grantor in writing of any new objection to any exception therein. If Grantee makes a timely objection to any exception and the exception is not eliminated within ten (10) days of the Grantor’s receipt of the objection, this Agreement shall be terminated. Grantee’s failure to object in this manner to any exception shall be an approval by Grantee of that exception. Likewise, within fifteen (15) days after the delivery of the Grantee Report and related documents to Grantor, Grantor shall notify Grantee in writing of any new objection to any exception therein. If Grantor makes a timely objection to any exception and the exception is not eliminated within ten (10) days of the Grantee’s receipt of the objection, this Agreement shall be terminated. Grantor’s failure to object in this manner to any exception shall be an approval by Grantor of that exception.

4.2 **Miscellaneous Conditions.** The close of escrow opened pursuant to ARTICLE III, and the parties’ purchase obligations hereunder, are subject to the satisfaction of the following conditions:

4.2.1 **Marketable Title.**

4.2.1.1 The conveyance to Grantee of good and marketable title to the Grantor Property, as evidenced by a California Land Title Association standard coverage title insurance policy issued by Chicago Title Company in the full amount of the value identified herein, insuring that title to the Grantor Property is vested in Grantee free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, and other adverse interests of record or known to Grantor, subject only to those exceptions approved by Grantor in writing.

4.2.1.2 The conveyance to Grantor of good and marketable title to the Grantee Property, as evidenced by a California Land Title Association standard coverage title insurance policy issued by Chicago Title Company in the full amount of the value identified herein, insuring that title to the Grantee Property is vested in Grantor free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, and other adverse interests of record or known to Grantee, subject only to those exceptions approved by Grantee in writing.

4.2.2 **Delivery of Possession of the Property.** The delivery of possession of the Grantor Property and the Grantee Property shall commence on the close of escrow.

4.3 **Failure of Condition and Grantor's Breach of Warranty.** If any of the conditions set forth in this Agreement fails to occur, or if a party notifies the other in writing prior to the close of escrow of a breach of any of any warranties set forth in this Agreement, then the non-breaching party

may cancel the escrow and terminate this Agreement. The terminating party shall exercise this power to terminate by complying with any applicable notice requirements specified in the relevant condition and, in all other cases, by providing written notice to the other party and the Escrow Holder within ten (10) days of the failure or breach. The exercise of this power shall not waive any other rights of the non-breaching party may have against the breaching party for breach of this Agreement. The non-breaching party shall instruct the Escrow Holder, in the instructions delivered pursuant to this section, to return to the non-breaching party all instruments deposited in escrow by that party pursuant to this Agreement upon failure of a condition or conditions or breach of a warranty or warranties and receipt of a termination notice. This instruction shall be irrevocable.

ARTICLE V
RIGHTS, RELEASES, WARRANTIES, AND INDEMNIFICATIONS

5.1 **Right of Grantee to Enter Property.** Grantor grants to Grantee, or Grantee's agent, the right, at any time and from time to time within thirty (30) days after the opening of the escrow for this transaction, to enter onto the Grantor Property to conduct tests or investigations, including but not limited to tests necessary to determine engineering, geological, soils, environmental, and other conditions of the Grantor Property, provided that:

- A. The acts shall be conducted at the sole cost and expense of Grantee;
- B. The acts do not unreasonably interfere with Grantor's possession;
- C. Grantee shall indemnify and hold Grantor harmless from any costs or liability resulting from the acts, and, if the escrow is canceled for a reason that is not the fault of the Grantor, for any physical damage to the Grantor Property resulting from the acts; and
- D. Grantee shall give Grantor written notice of their intention to enter two (2) days prior to the date of the planned entry.

5.2 **Warranties and Representations of Grantor.** Grantor represents and warrants that:

- A. As to the Grantor Property, Grantor owns the Grantor Property, free and clear of all liens, leases, licenses, claims, encumbrances, easements, and encroachments of the Grantor Property from adjacent properties, encroachments by improvements on the Grantor Property onto adjacent properties, and rights of way of any nature, not disclosed by the public record.
- B. Grantor has no knowledge of any pending litigation involving the Grantor Property.
- C. Grantor has no knowledge of any violations of, or notices concerning defects or noncompliance with, any applicable building code or other code, statute, regulation, ordinance, judicial order, or judicial holding pertaining to the Grantor Property.

D. Grantor is not in default under any contract, note, or encumbrance relating to the Grantor Property.

E. Grantor will maintain the Grantor Property in good repair and in the same condition, reasonable wear and tear excepted, as on the date of this Agreement.

F. Grantor has no knowledge of any material defects in the Grantor Property.

G. Grantor makes the following environmental representations and warranties:

- (1) No notices of any violation of any environmental laws have been received by Grantor and Grantor is not aware of any existing or pending requirements of any governmental authority relating to environmental matters requiring any remedial actions or other work, repairs, construction, or capital expenditures with respect to the Grantor Property.
- (2) There is no fact pertaining to the current physical condition of the Grantor Property known to Grantor (i) which has not been disclosed to Grantee in writing by Grantor prior to the date of this Agreement or herein, and (ii) which adversely affects the Grantor Property or the use or enjoyment or the value thereof.

H. Grantor makes the following hazardous waste material representations and warranties:

- (1) During the period of Grantor's ownership of the Grantor Property, there have been no disposals, releases or threatened releases of hazardous substances on, from, or under the Grantor Property. Grantor further represents and warrants that Grantor has no knowledge of any disposal, release, or threatened release of hazardous substances, on, from, or under the Grantor Property which may have occurred prior to Grantor taking title to the Grantor Property.
- (2) The consideration for the Grantor Property reflects the fair market value of the Grantor Property without the presence of contamination. If the Grantor Property being acquired are found to be contaminated by the presence of hazardous substances which requires mitigation under Federal or State law, the Grantee reserves the right to recover its clean-up costs from those who caused or contributed to the contamination, including but not limited to the Grantor.
- (3) Grantor shall indemnify, defend with counsel acceptable to Grantee and hold harmless Grantee and Grantee's officers, representatives, agents and employees from and against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys' fees, arising in conjunction with or as a result of

Grantor's breach of any of its representations or warranties set forth in this Section, which representations and warranties shall survive close of escrow and recordation of the Deeds. As used in this Agreement the term "hazardous substances" means any and all chemicals, substances, wastes or materials which have been or are hereafter determined by any federal, state, or local governmental authority to be capable of posing risk of injury to health or safety, including, without limitation, petroleum, asbestos, polychlorinated biphenyls, radioactive materials, and radon gas. Grantor's obligations pursuant to this Section shall survive the close of escrow and recordation of the Deeds.

I. Grantor hereby agrees to hold harmless and indemnify and defend Grantee from and against any well-founded claim, liability, or other obligation or expenses related thereto which Grantee incurs by reason of any material misrepresentation made by Grantor of any construction, alterations, additions, or improvements carried on by Grantor prior to closing. Grantee hereby agrees to hold harmless, indemnify, and defend Grantor from and against any and all claims, liability, loss, or other obligations and expenses related thereto which Grantor may incur by reason of any liability arising out of Grantee's ownership of the Grantor Property after the closing, except to the extent that Grantor is otherwise found liable at law for such liability.

5.3 **Warranties and Representations of Grantee.** Grantee represents and warrants that:

A. As to the Grantee Property, Grantee owns the Grantee Property, free and clear of all liens, leases, licenses, claims, encumbrances, easements, and encroachments of the Grantee Property from adjacent properties, encroachments by improvements on the Grantee Property onto adjacent properties, and rights of way of any nature, not disclosed by the public record.

B. Grantee has no knowledge of any pending litigation involving the Grantee Property.

C. Grantee has no knowledge of any violations of, or notices concerning defects or noncompliance with, any applicable building code or other code, statute, regulation, ordinance, judicial order, or judicial holding pertaining to the Grantee Property.

D. Grantee is not in default under any contract, note, or encumbrance relating to the Grantee Property.

E. Grantee will maintain the Grantee Property in good repair and in the same condition, reasonable wear and tear excepted, as on the date of this Agreement.

F. Grantee has no knowledge of any material defects in the Grantee Property.

G. Grantee makes the following environmental representations and warranties:

- (1) No notices of any violation of any environmental laws have been received by Grantee and Grantee is not aware of any existing or pending requirements of any governmental authority relating to environmental matters requiring any remedial actions or other work, repairs, construction, or capital expenditures with respect to the Grantee Property.
- (2) There is no fact pertaining to the current physical condition of the Grantee Property known to Grantee (i) which has not been disclosed to Grantor in writing by Grantee prior to the date of this Agreement or herein, and (ii) which adversely affects the Grantee Property or the use or enjoyment or the value thereof.

H. Grantee makes the following hazardous waste material representations and warranties:

- (1) During the period of Grantee's ownership of the Grantee Property, there have been no disposals, releases or threatened releases of hazardous substances on, from, or under the Grantee Property. Grantee further represents and warrants that Grantee has no knowledge of any disposal, release, or threatened release of hazardous substances, on, from, or under the Grantee Property which may have occurred prior to Grantee taking title to the Grantee Property.
- (2) The consideration for the Grantee Property reflects the fair market value of the Grantee Property without the presence of contamination. If the Grantee Property being acquired is found to be contaminated by the presence of hazardous substances which requires mitigation under Federal or State law, the Grantor reserves the right to recover its clean-up costs from those who caused or contributed to the contamination, including but not limited to the Grantee.
- (3) Grantee shall indemnify, defend with counsel acceptable to Grantor and hold harmless Grantor and Grantor's officers, representatives, agents and employees from and against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys' fees, arising in conjunction with or as a result of Grantee's breach of any of its representations or warranties set forth in this Section, which representations and warranties shall survive close of escrow and recordation of the Deed for the Grantee Property. As used in this Agreement the term "hazardous substances" means any and all chemicals, substances, wastes or materials which have been or are hereafter determined by any federal, state, or local governmental authority to be capable of posing risk of injury to health or safety, including, without limitation, petroleum, asbestos, polychlorinated biphenyls, radioactive materials, and radon gas. Grantee's obligations pursuant to this Section shall survive the close of

escrow and recordation of the Deeds.

I. Grantee hereby agrees to hold harmless and indemnify and defend Grantor from and against any well-founded claim, liability, or other obligation or expenses related thereto which Grantor incurs by reason of any material misrepresentation made by Grantee of any construction, alterations, additions, or improvements carried on by Grantee prior to closing. Grantor hereby agrees to hold harmless, indemnify, and defend Grantee from and against any and all claims, liability, loss, or other obligations and expenses related thereto which Grantee may incur by reason of any liability arising out of Grantor's ownership of the Property after the closing, except to the extent that Grantee is otherwise found liable at law for such liability.

5.4 **Survival of Warranties.** All warranties, covenants, and other obligations described in this article and elsewhere in this Agreement shall survive delivery of the Deeds.

ARTICLE VI MISCELLANEOUS PROVISIONS

6.1 **Risk of Loss.** The parties agree that the following provision shall govern the risk of loss:

A. If, before Grantor transfers legal title or possession of the Grantor Property to Grantee, all or a material part of the Grantor Property is destroyed without fault of Grantee, Grantee shall be entitled to terminate this Agreement, and Grantor shall not have the right to enforce this Agreement.

B. If, before Grantee transfers legal title or possession of the Grantee Property to Grantor, all or a material part of the Grantee Property is destroyed without fault of Grantor, Grantor shall be entitled to terminate this Agreement, and Grantee shall not have the right to enforce this Agreement.

6.2 **Insurance.** Grantor and Grantee shall, at the close of escrow, cancel all policies of insurance on the property that they are conveying to the other party. Each party shall, at the close of escrow, be responsible for obtaining insurance on the property that they are receiving hereunder.

6.3 **Time of Essence.** Time is of the essence in this Agreement.

6.4 **Notices.** Any notice, tender, delivery, or other communication pursuant to this Agreement shall be in writing and shall be served on the parties at the following address.

If to Grantee:

Michael Miller
411 East Kern Ave.
Tulare, CA 93274
Email: mmiller@tulare.ca.gov

If to Grantor:

Mr. Warren Mouw
General Manager,
Cartmill Commons, LLC
20799 RD 132
Tulare, CA 93274

Either party may change that party's address for these purposes by giving written notice of the change to the other party in the manner provided in this Section.

Any such notices shall be in writing and delivered through: (a) overnight Federal Express or priority U.S. Mail, in which case notice shall be deemed delivered one (1) business day after deposit for next business day delivery with such courier, or (b) electronic mail, in which case the notice shall be deemed delivered upon transmission provided that the sender does not receive a delivery failure notification from the recipient's electronic mail server and; provided, further, that the electronic or facsimile transmission is followed by the contemporaneous sending of such notice to the addresses set forth above by another one of the methods permitted above. Any electronic mail transmission initiated after 5:00 PM on a weekday, or at any time on a Saturday, Sunday, or legal holiday, shall be deemed given on the following business day. The above addresses may be changed by written notice to the other Party; provided that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Any notice sent by the attorneys representing a Party pursuant to this section shall qualify as notice under this Agreement.

6.5 **Entire Agreement.** This Agreement and the attached Exhibits constitute the entire agreement between the parties relating to the exchange of the Grantor Property and the Grantee Property. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by Grantee and Grantor.

6.6 **Settlement of Disputes.** In the event of any dispute under the terms of this Agreement, the aggrieved party shall first give written notice (a "Dispute Notice") to the other party setting forth the nature of the dispute and the relief requested. The parties shall then attempt to resolve the dispute by escalating the dispute within their respective organizations.

6.7 **Severability.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force without being impaired or invalidated in any way.

6.8 **Attorneys' Fees.** If any action, proceeding, or arbitration arising out of or relating to this Agreement is commenced by either party to this Agreement or by the Escrow Holder, then as between Grantee and Grantor, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration by the prevailing party.

6.9 **Binding Effect.** Grantor and Grantee have the right, power, legal capacity, and authority to enter into and perform their obligations under this Agreement without further approval or consent. Those persons executing this Agreement on behalf of Grantor and Grantee are authorized to do so, and by so executing this Agreement, they thereby bind Grantor and Grantee to the terms hereof. Except as otherwise expressly provided herein, this Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns.

6.10 **Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California.

6.11 **Headings.** The headings of the articles and sections of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

6.12 **Execution.** Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation, or trustee, that such partnership, corporation, or trustee has full right to enter into this Agreement and perform all of its obligations hereunder.

6.13 **Execution and Counterparts.** This Agreement, as well as any amendments and supplements thereto, may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Real Property Purchase and Sale Agreement the day and year first written above.

GRANTEE:
CITY OF TULARE,
a municipal corporation

Marc Mondell, City Manager

Date

GRANTOR:
CARTMILL COMMONS, LLC

Warren Mouw, General Manager

Date

APPROVED AS TO FORM:

City Attorney, City of Tulare

AGENDA ITEM: Consent 8

**CITY OF TULARE
AGENDA ITEM TRANSMITTAL SHEET**

Submitting Department: Engineering Services / Project Management

For Council Meeting of: October 18, 2022

Documents Attached: Ordinance Resolution Other None

AGENDA ITEM:

Authorize the City Manager to complete and execute the documents necessary to purchase property located on the north side of Prosperity Avenue west of West Street (portion of APN 164-150-026) needed for Project EN0088 – Prosperity Avenue & West Street Improvements Project in the amount of \$7,700, subject only to minor conforming and clarifying changes acceptable to the City Attorney and City Manager.

IS PUBLIC HEARING REQUIRED: Yes No

BACKGROUND/EXPLANATION:

A traffic study was performed for a proposed development on the southeast corner of Prosperity Avenue and West Street, which showed that warrants were met for a new traffic signal at this intersection. The City Council subsequently provided staff with direction to review the condition of this intersection, and to prioritize construction of improvements at this location. The resulting project, EN0088 – Prosperity Avenue & West Street Improvements Project, will construct the intersection to its ultimate width, install ADA compliant dual curb ramps at each corner, and install master-planned utility improvements within the project limits. Street improvements will include sufficient transitions from the full-width widening at the curb returns back down to the existing pavement width. An eight-phase traffic signal with emergency preemption, video detection for both vehicle and bicycle traffic, and associated appurtenances will be included in the project.

In order to widen the intersection and construct the ultimate improvements, the City needs to acquire approximately 2,174 square feet of additional property from the subject parcel at 1378 W. Prosperity Avenue. The property owner is Dorthy J. Martinho, trustee of the Survivor’s Trust A, created under the Martinho Family Revocable Living Trust created January 24, 1994 and amended and restated November 20, 1998. The property owner has worked diligently with City Staff through the design, appraisal, and acquisition process for Project EN0088, and has agreed to sell the 2,174 square feet of property needed by the project for the amount of \$7,700. This amount is in accordance with an appraisal prepared by the City’s right-of-way consultant dated February 3, 2022.

STAFF RECOMMENDATION:

Authorize the City Manager to complete and execute the documents necessary to purchase property located on the north side of Prosperity Avenue west of West Street (portion of APN 164-150-026) needed for Project EN0088 – Prosperity Avenue & West Street Improvements Project in the amount of \$7,700, subject only to minor conforming and clarifying changes acceptable to the City Attorney and City Manager.

CITY ATTORNEY REVIEW/COMMENTS: Yes N/A

IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED: Yes No N/A

FUNDING SOURCE/ACCOUNT NUMBER:

EN0088-030-0230

021 – Measure R – Local

022 – Gas Tax (HUTA)

010 – Water Bonds

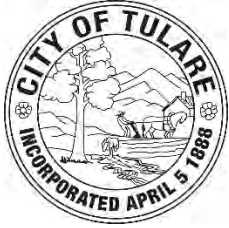
615 – Sewer Wastewater CIP

Submitted by: Nick Bartsch

Title: Senior Project Manager

Date: October 10, 2022

City Manager Approval: _____



OFFICE OF THE CITY CLERK

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY, that the interest in real property conveyed by the **Grant Deed** dated _____, from **Dorthy J. Martinho, trustee of the Survivor's Trust A, created under the Martinho Family Revocable Living Trust created January 24, 1994 and amended and restated November 20, 1998**, to the City of Tulare, Municipal Corporation of the State of California, was duly accepted by the City Council of the City of Tulare on **October 18, 2022**, and by the same order of the City Council of the City of Tulare, the City Manager was authorized to execute this Certificate of Acceptance to be recorded with the **Grant Deed**.

CITY OF TULARE

By: _____
Marc Mondell, City Manager

ATTEST:

Chief Deputy City Clerk



Approval of Just Compensation

CFR Part 24, Subpart B Section 24.102(d) states that before the initiation of negotiations, the Agency shall establish an amount which it believes is Just Compensation for the real property. The amount shall not be less than the approved appraisal of the Fair Market Value of the property, taking into account the allowable damages or benefits to any remaining property.

Date: March 3, 2022	Agency: City of Tulare
To: Nick Bartsch, Sr. Project Manager	Project: Prosperity & West Traffic Signal Project

The following parcel(s) is proposed to be partially acquired for the subject project and was appraised by **Renee E. Hendrick and Keith J. Hopper** of **Hopper Company**, State Certified General Appraisers:

Parcel Information	
Owner(s)	Assessor's Parcel Number
Martinho 7, LLC, a California Limited Liability Co.	164-150-026
Address: 1378 W. Prosperity Ave., Tulare, CA 93274	

Appraisal Information		
Appraisal Report Date	Property Take Type	Appraised Value
February 3, 2022	Partial Acquisition in fee for road purposes	\$7,700.00

The appraised value is believed to be the full amount of just compensation for the property interest to be acquired.

Prepared By:

**Jesse Ortiz, R/W-RAC
Monument**

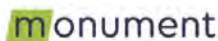
Approved By:

Signature: _____

Date: _____

By: Nick Bartsch

Its: Sr. Project Manager



MARTINHO 7 PROPERTY

1378 W. Prosperity Ave.



HopperCompany
Real Property Valuation

MARTINHO 7 PROPERTY
1378 W. Prosperity Avenue
Tulare, California

Subject Property Identification

Acquisition Type: Partial acquisition of new road right-of-way in fee title.

Date of Value / Inspection: February 3, 2022

Assessor's Parcel Number: Tulare County APN 164-150-026

Street Address: 1378 W. Prosperity Avenue
Tulare, California 93274

Property Owner: Martinho 7, LLC, a California Limited Liability Company
1343 N. West Street
Tulare, California 93274

Ownership History: Title to the subject property has been held by the current owners or various members of the Martinho family for many years and no sales or transfers of title have taken place in the past five-year period. The property does not appear to be listed for sale at this time.

Larger Parcel Description

Legal Description of the Larger Parcel: The land referred to herein below is situated in the City of Tulare, County of Tulare, State of California and is described as follows;

Parcel 4 of Parcel Map 4001, per Map recorded in Book 41 of Parcel Maps at Page 5, Tulare County Records, situated in a portion of the southeast quarter of Section 33, Township 19 South, Range 24 East, Mount Diablo Base and Meridian, in the County of Tulare, State of California.

Site Description: The subject larger parcel property consists of a single parcel of land that is located along the north side of Prosperity Avenue, west of West Street, in northwest Tulare, California. The property is an interior parcel that has a rectangular shape and according to the recorded parcel map it contains 47,823 square feet or 1.10 acres of total land area, more or less.

The land has a generally level topography and is at-grade with the height of the fronting street. There is no curb, gutter, or sidewalk installed along the road frontage. Public utility services available to the property include water, sewer, and trash from the City of Tulare; electricity from Southern California Edison; natural gas from SoCalGas; and telephone from AT&T. The property is in an 'X' flood zone, which denotes areas determined to be outside the 0.2% annual chance flood plain (500-year flood), and this is not a special flood hazard area that typically requires flood insurance. The parcel map indicates the existence of a Tulare Irrigation Ditch easement that traverses the property, but no open ditch is noticed on the site so it is assumed to have either been piped underground.

Easements & Encumbrances: A title report prepared by Chicago Title Company dated December 15, 2020 has been reviewed as part of this assignment and it identifies the following items of significance. An easement was granted in 1961 between Jack Canby and Tulare Irrigation District and is believed to correlate to the piped irrigation ditch that traverses the property. A zoning variance was granted in 1989 by the County of Tulare, prior to the property be annexed into the City of Tulare. A long-term deferred improvement agreement was executed in June 1991 when the property was subdivided into smaller parcels with Parcel Map. 4001. The parcel map also identifies ingress and egress for the property as well as a water line, pressure tank, domestic well service, and maintenance agreement.

Improvements Description: The subject property is improved with a single-family residence. According to the public records, the house contains 1,472 square feet of living space with a 3-bedroom/2-bath floor plan. It was originally constructed in 1962 and there does not appear to be any garage.

Zoning & Property Restrictions: The subject property is zoned R-1-8 by the City of Tulare as part of a single-family residential district. The purpose of this zone is to provide living areas within the city where development is limited to low-density concentrations of one-family dwellings. The objective of the zone is to facilitate the development of a suitable environment for family life, create neighborhoods that exhibit high standards of design, provide space for community facilities that complement residential areas, and minimize traffic congestion.

Allowable uses in this zone include one-family dwellings, licensed day care homes, licensed group homes, community care facilities, one manufactured home, raising of fruit and nut trees, raising of horticultural specialties, accessory structures, home occupations, employee housing, and public water well sites and drainage basins. With a conditional use permit, it is also possible to have nursery schools, educational or religious facilities, private clubs or lodges, public administrative or recreational facilities, utility installations, mobile home parks, and condominiums.

Development standards for the R-1-8 zone require a minimum lot size of 8,000 square feet with a minimum width of 70 feet for corner lots and minimum depth of 100 feet. No more than one dwelling unit per site is allowed and the maximum lot coverage by structures is 50%. Required yard setbacks include 20 feet in the front, 10 feet for the street side on a corner lot, and 5 feet at the rear. A minimum of two covered parking spaces are to be provided for single-family dwellings.

The current use of the property as single-family residence is allowed in the R-1-8 zone and the improvements appear to be in compliance with the development standards.

Highest & Best Use of Larger Parcel: The R-1-8 zoning applied to the subject property is intended for single-family residential uses. The physical characteristics of the parcel are well suited to supporting a residential use. Local real estate conditions are some of the best that have been seen in many years and it is financially feasible to construct a new house at this time. Therefore, the highest and best use of the land as though vacant is to construct a new single-family house on the site.

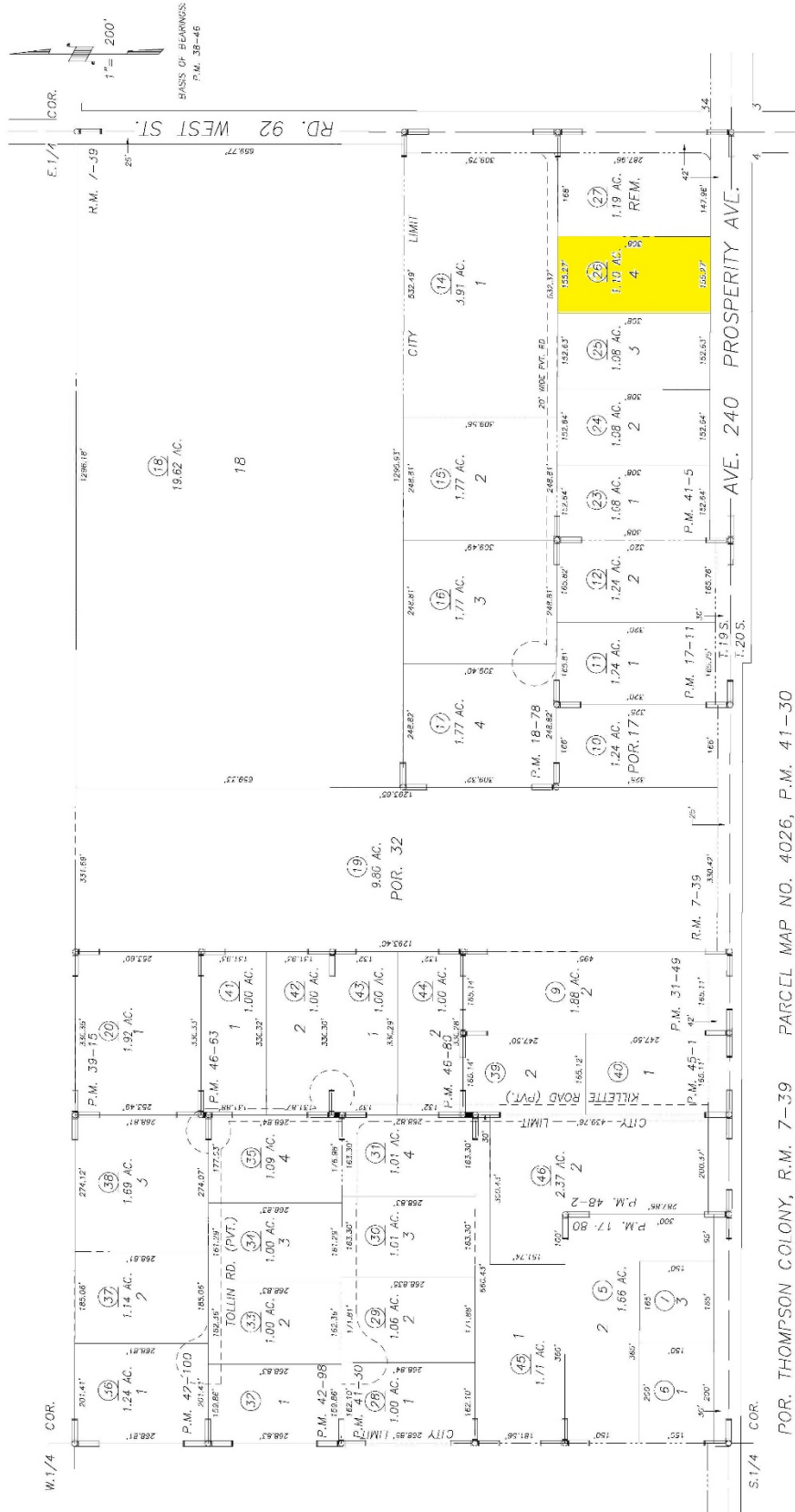
The existing use of the property as a single-family residence is allowed in the R-1-8 zone and the improvements seem to comply with the development standards, so the property is believed to be legally conforming with the zoning. The house is aging and appears to be in only fair condition, so it is nearing the end of its economic life with only a minimal contributory value to the property as a whole. While it can continue to be occupied for now, the time is coming when it would be appropriate to demolish the

existing structure and redevelop the site with a new house. In the end, the highest and best use of the property as improved is to continue to occupy it as a single-family residence for an interim period while waiting for an appropriate time to redevelop the property.

Reference: This individual appraisal is part of a larger report covering multiple properties associated with the *Prosperity and West Traffic Signal and Improvements Project*. All items discussed in the introductory sections of the report apply to this appraisal.

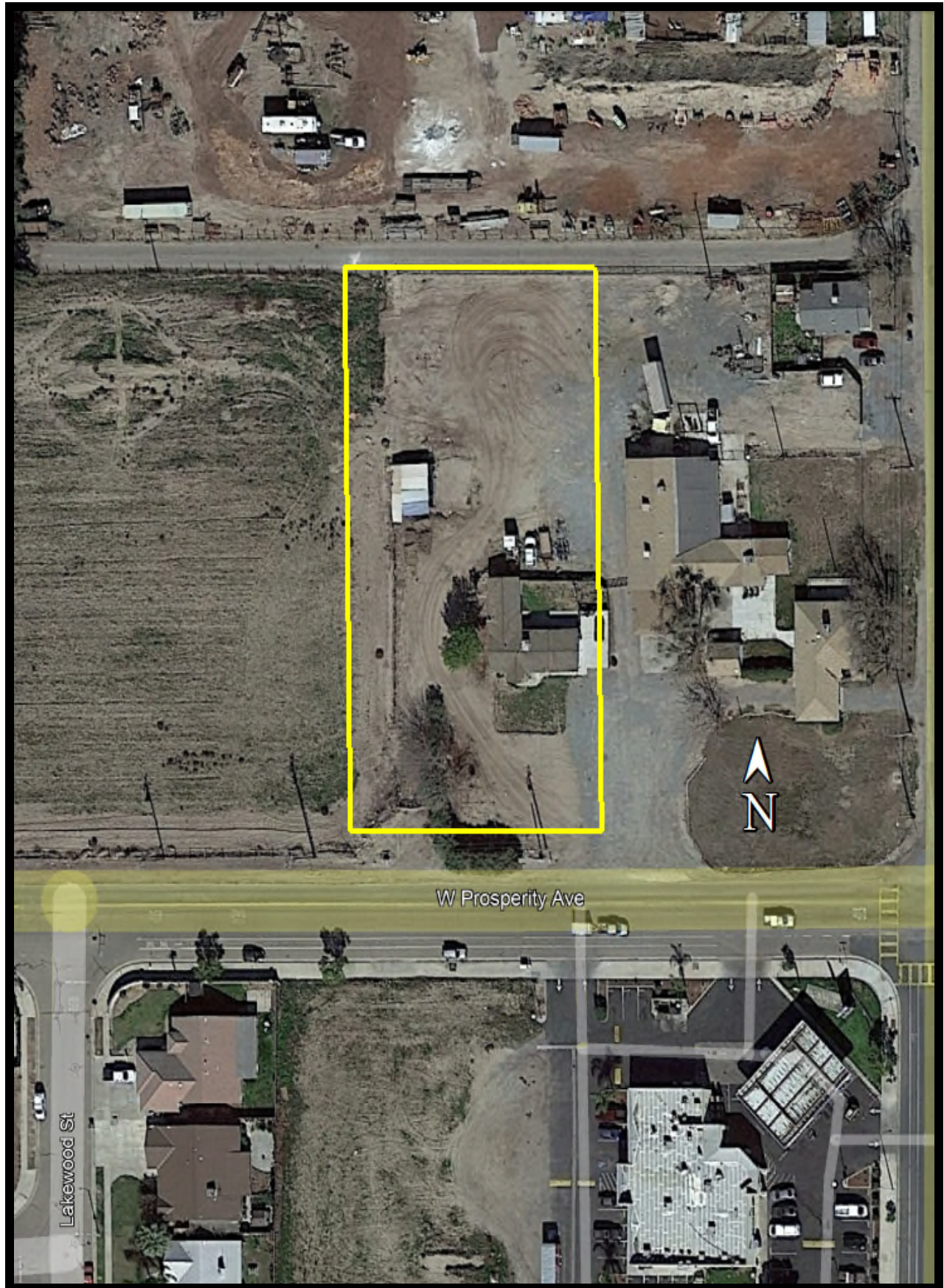
164-15

S1/2 OF SE1/4 SEC.33, T.19S., R.24E., M.D.B.&M.



- PARCEL MAP NO. 4026, P.M. 41-30
- PARCEL MAP NO. 4194, P.M. 42-98
- PARCEL MAP NO. 4196, P.M. 42-100
- PARCEL MAP NO. 4396, P.M. 45-1
- PARCEL MAP NO. 4558, P.M. 46-63
- PARCEL MAP NO. 4575, P.M. 46-80
- PARCEL MAP NO. 4697, P.M. 48-2
- PARCEL MAP NO. 7-39
- PARCEL MAP NO. 1610, P.M. 17-11
- PARCEL MAP NO. 1679, P.M. 17-80
- PARCEL MAP NO. 1777, P.M. 18-78
- PARCEL MAP NO. 3018, P.M. 31-49
- PARCEL MAP NO. 3812, P.M. 39-15
- PARCEL MAP NO. 4007, P.M. 41-5
- PARCEL MAP NO. 4026, P.M. 41-30
- PARCEL MAP NO. 4194, P.M. 42-98
- PARCEL MAP NO. 4196, P.M. 42-100
- PARCEL MAP NO. 4396, P.M. 45-1
- PARCEL MAP NO. 4558, P.M. 46-63
- PARCEL MAP NO. 4575, P.M. 46-80
- PARCEL MAP NO. 4697, P.M. 48-2

ASSESSOR'S PARCEL MAP



AERIAL PHOTOGRAPH



View of the single-family residence looking north across the site.



View of the subject looking north from the parcel's southwest corner along the Prosperity Avenue frontage.

Partial Acquisition Description

Description of Right-of-Way Taking: The proposed acquisition of new road right-of-way (ROW) will be a partial taking in fee title. It is a linear strip of land that is 14 feet wide and extends across the entire south property line fronting Prosperity Avenue. It contains 2,174 square feet of total land area. The only improvements located within this area are a mailbox, a few oleander shrubs, and two metal gates.

Legal of Right-of-Way Taking: All that real property located in the City of Tulare, State of California, described as follows;

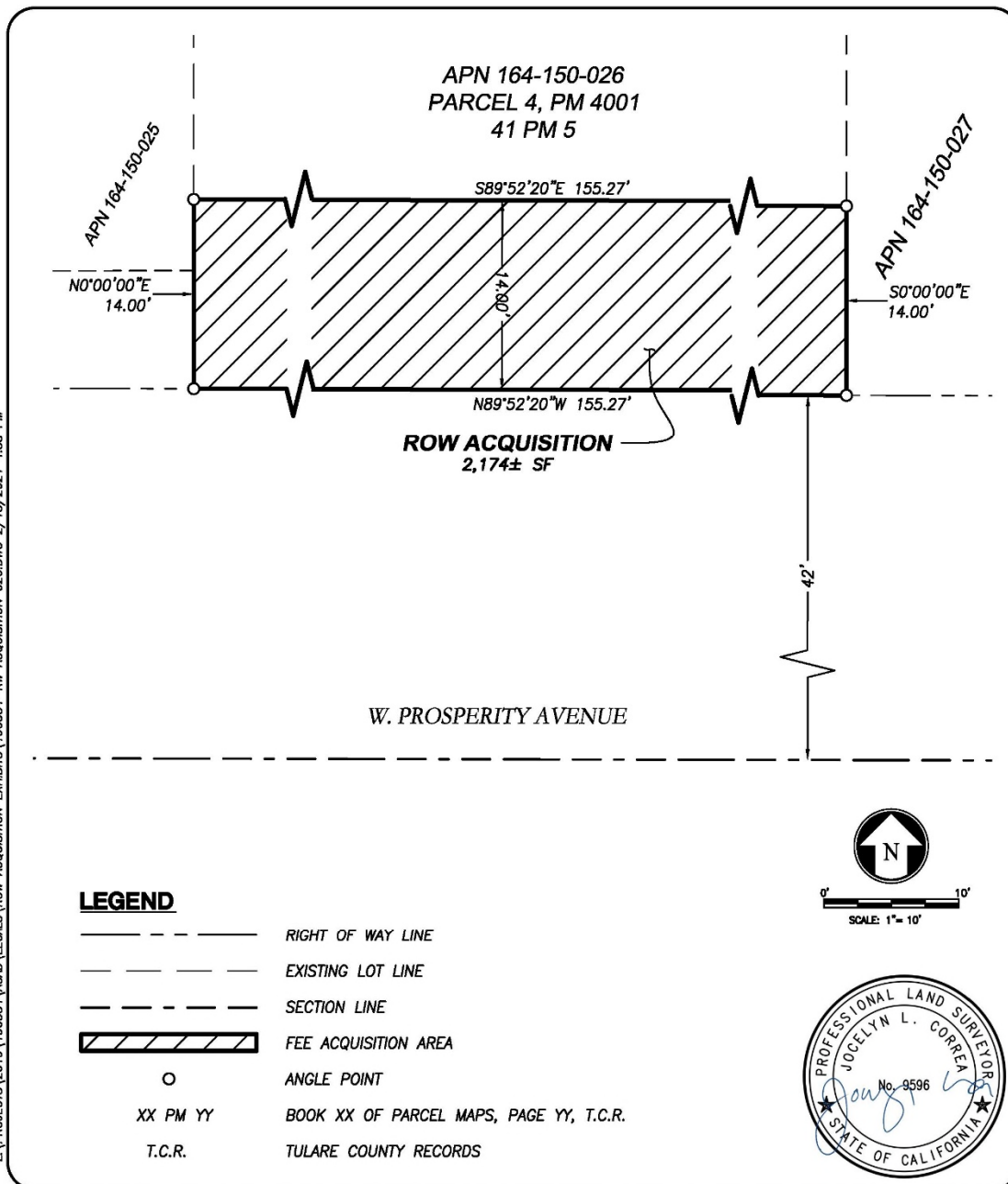
The South 14.00 feet of Parcel 4 of Parcel Map 4001, per map recorded in Book 41 of Parcel Maps at Page 5, Tulare County Records, situated in a portion of the Southeast Quarter of Section 33, Township 19 South, Range 24 East, Mount Diablo Base and Meridian.

Construction Contract Work: Sometimes it is necessary to do certain work, either inside the right-of-way or on the owner's private property, in order to restore the utility and value of the remainder property, and this work may be most economically and/or practically performed by the project's contractor. This is known as construction contract work. For this subject property, the contractor is expected to relocate the mailbox and metal gates.

Analysis of the Remainder: In the after condition, the remainder property will be slightly smaller at 45,649 square feet, which is still a large homesite parcel that complies with the minimum lot size standard for the R-1-8 zone. The rectangular shape of the site will not be altered and it will continue to have the same visibility and access from Prosperity Avenue. The house is set back a considerable distance from the property line and will still greatly exceed the front yard setback requirement.

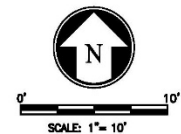
The mailbox and two gates will be relocated by the project contractor. The project improvements are intended to improve traffic control and intersection safety. While this will be generally beneficial to properties in the area, the project is not likely to measurably increase the value of the subject remainder.

Highest & Best Use of the Remainder: The highest and best use of the remainder property is not expected to change significantly as a result of the partial acquisition or project construction and use. The highest and best use of the land as though vacant will continue to be to construct a new single-family house on the site. The highest and best use of the property as improved will also be to continue to occupy the house on an interim basis until redevelopment with a new residence is appropriate.



LEGEND

- RIGHT OF WAY LINE
- EXISTING LOT LINE
- SECTION LINE
- FEE ACQUISITION AREA
- ANGLE POINT
- XX PM YY BOOK XX OF PARCEL MAPS, PAGE YY, T.C.R.
- T.C.R. TULARE COUNTY RECORDS



PROJECT NO.: 190384
 DRAWN BY: MAH
 QA/QC BY: JLC
 SCALE: AS SHOWN
 SHEET NO.:
1 of 1

EXHIBIT "B"

RIGHT OF WAY ACQUISITION
APN 164-150-026

901 EAST MAIN STREET TEL: (559) 733-0440
 VISALIA, CA 93292 WWW.QKINC.COM
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PLAT OF THE RIGHT-OF-WAY TAKING



View of the ROW take area looking west from the property's east side.



View of the ROW take area looking east from the property's west side.

Property Valuation Summary

The estimate of fair market value plus net severance damages for the subject is summarized below followed by a narrative discussion of the pertinent data and details:

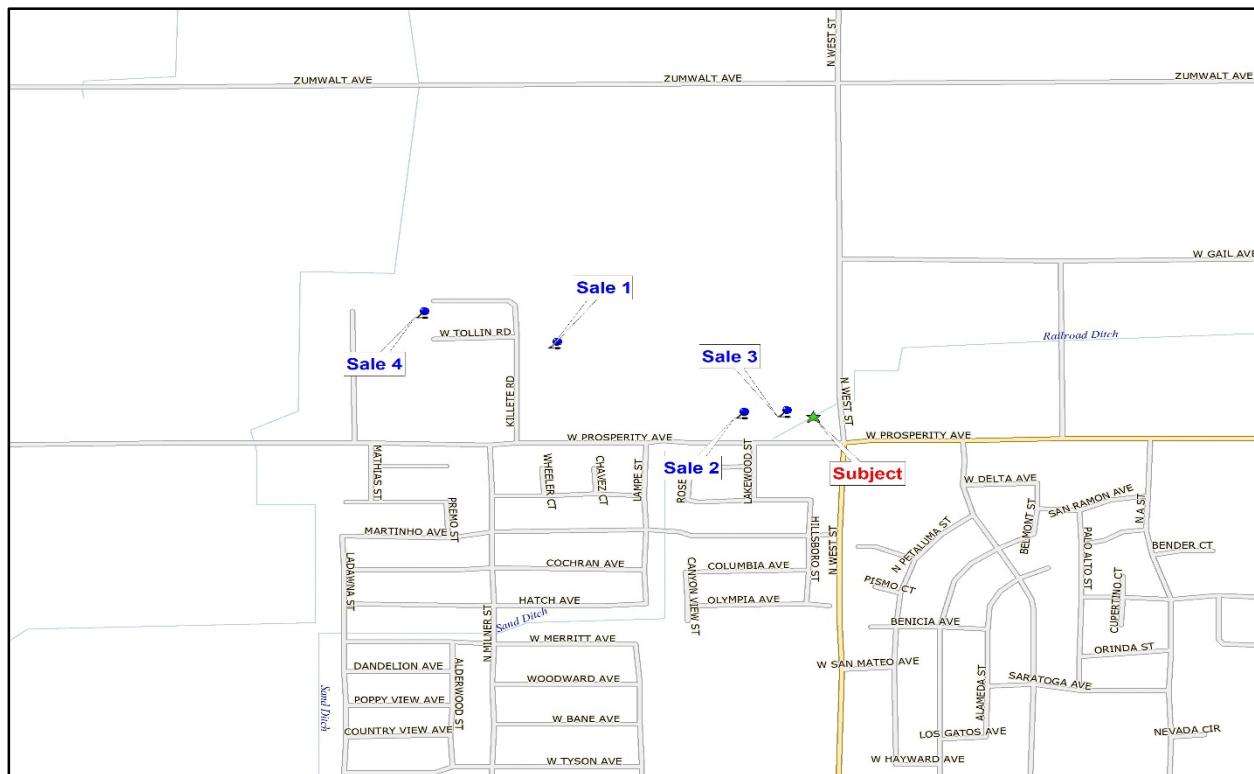
1 – Value of Larger Parcel Before Taking:		
Value of Land	\$167,381	
Contributory Value of Improvements	+ \$0	
		\$167,381
2 – Value of Part Taken as Part of Whole:		
Value of Right-of-Way Taking	\$7,609	
Contributory Value of Improvements	+ \$0	
		– \$7,609
3 – Value of Remainder as Part of Whole:		
Land Value	\$159,772	
Contributory Value of Improvements	+ \$0	
		= \$159,772
4 – Value of Remainder Without Benefits:		
Remainder Property Value	\$159,772	
Curable Damages	\$0	
Permanent Damages	– \$0	
		– \$159,772
5 – Severance Damages:		
Step Three Value	\$159,772	
Step Four Value	– \$159,772	
Total Severance Damages		= \$0
6 – Value of Remainder With Benefits:		
Property Value	\$159,772	
Benefits	+ \$0	
		\$159,772
7 – Benefits to the Remainder:		
Step Six Value	\$159,772	
Step Four Value	– \$159,772	
		\$0
8 – Net Damages to the Remainder:		
Step Five Value	\$0	
Step Seven Value	– \$0	
		\$0
9 – Estimate of Just Compensation:		
Step Two Value	\$7,609	
Step Eight Value	+ \$0	
Final Total Value Opinion		\$7,609
	Rounded to	<u>\$7,700</u>

Property Valuation Discussion

Value of Larger Parcel: The subject larger parcel is valued using the sales comparison approach. The cost and income capitalization approaches are of little usefulness in the valuation of single-family residences like the subject, and they are excluded from this appraisal. Because the impacts to the property’s improvements are limited, a strip appraisal is performed that focuses on the valuation of the underlying land and only those improvements that affect the proper estimate of compensation.

Four sales of comparable residential land parcels are selected for use in valuing the subject larger parcel. These data items are narratively discussed below followed by a grid that analyzes the data and shows how each item compares to the subject.

Sale no. 1 is located along the east side of Killelte Road, north of Prosperity Avenue, in northwest Tulare. The 43,570-square-foot parcel is situated in a rural residential area that is just north of the Tulare city limits. Public utility services are available, including city water which is in the fronting street, but no off-site improvements were installed. The zoning is R-A-43 by the County of Tulare, which is a rural residential district with a one-acre minimum lot size. The property had been on and off the market for many years, and most recently it was listed in July 2019 for \$159,900. A buyer was eventually found and a sale took place in March 2020 at a price of \$135,000 or \$3.10 per square foot.



Sale no. 2 represents a vacant residential land parcel that is located on the north side of Prosperity Avenue, west of West Street, in northwest Tulare. The 47,013-square-foot lot has no off-site improvements in place, but all public utilities are readily available to serve it. It is rectangular in shape and has an interior lot orientation. The zoning is R-1-8 by the City of Tulare for single-family residential

uses. The property was put up for sale in March 2021 at an asking price of \$175,000, and after three months of exposure it sold in June 2021 for \$150,000. This is equal to \$3.19 per square foot. The buyer paid all cash for the property and plans to construct a new residence on the site.

Sale no. 3 is adjacent to sale no. 2 and it is also a rectangular lot that is located on the north side of Prosperity Avenue, just to the west of West Street, in Tulare. This parcel contains 47,010 square feet of land area. It is unfinished with no curb or gutter off-site improvements installed, but all public utility services are available. The City of Tulare has zoned the property R-1-8 for single-family residential uses. In March 2021, the property was offered for sale at a list price of \$175,000. Two months later a buyer was found and the sale closed in June 2021 at a price of \$155,000 or \$3.30 per square foot. The buyer is planning to build a new house on the lot.

Sale no. 4 refers to a vacant land parcel that is located along the south side of Tollin Road, east of Killette Road, in northwest Tulare. The property is just outside of the Tulare city limits and is zoned R-A-43 by the County for rural residential uses. The parcel has 41,939 square feet of land area. It is raw land with no off-site improvements in place, but most public utilities are available to serve it. A listing of the property hit the market in February 2021 at an asking price of \$174,900, and this was later reduced to \$160,000 in May 2021. After two more months the property sold in July 2021 for \$145,500 or \$3.47 per square foot in an all-cash transaction.

In comparing these sales to the subject property, consideration is given to various elements of comparison that market participants recognize as having an impact on the prices that are paid for this type of property. The comparison grid summarizes how each data item is compared to the subject. A “+” is shown if the data item is inferior to the subject, a “-” is used if the sale is superior, and an “=” sign is indicated if the data item is generally comparable. Not all elements of comparison are weighted equally by the market and in some instances a greater magnitude of difference is appropriate for a symbol.

Based on these comparisons, the subject land should be valued above the \$3.10 to \$3.30 per square foot indicated by sale nos. 1 through 3, and at a level similar to the \$3.47 per square foot reflected in sale no. 4. Considering the definition of market value that applies in this appraisal, which calls for the “highest price” that is reasonable in the marketplace, a unit value of \$3.50 per square foot is concluded for the subject property. When applied to the 47,823 square feet in the subject larger parcel, a total land value of \$167,381 results.

Land Size x Value per S.F. = Value of Larger Parcel Land

$$47,823 \text{ s.f.} \times \$3.50 = \$167,381$$

LAND SALES COMPARISON GRID <i>Comparable Residential Land Sales</i>				
	Sale No. 1	Sale No. 2	Sale No. 3	Sale No. 4
Location	Killette Rd.	1876 W. Prosperity	1826 W. Prosperity	Tollin Rd.
City	Tulare	Tulare	Tulare	Tulare
APN	164-150-041	164-150-024	164-150-025	164-150-032
Buyer	Gomez	Montano & Zavala	Gamero & Garnica	Plascencia-Salas
Document No.	20-15954	21-40418	21-44491	21-54244
Recording Date	3/17/2020	6/1/2021	6/16/2021	7/26/2021
Sale Price	\$135,000	\$150,000	\$155,000	\$145,500
Land Area – SF	43,570	47,013	47,010	41,939
Price / SF	\$3.10	\$3.19	\$3.30	\$3.47
Topography	Level	Level	Level	Level
Zoning	R-A-43	R-1-8	R-1-8	R-A-43
Utilities	W-E-G	W-S-E-G	W-S-E-G	W-E-G
Off-Sites	None	None	None	None
Property Rights	=	=	=	=
Financing	=	=	=	=
Conditions of Sale	=	=	=	=
Market Conditions	+	+	+	=
Interim Value	> \$3.10	> \$3.19	> \$3.30	= \$3.47
Location	=	=	=	=
Zoning	=	=	=	=
Parcel Size	=	=	=	=
Topography	=	=	=	=
Utilities	=	=	=	=
Off-Sites	=	=	=	=
Final Indication	> \$3.10	> \$3.19	> \$3.30	= \$3.47

None of the subject’s improvements are situated within the take area, so under the strip appraisal concept no value is included in the appraisal for any improvements.

Value of Taking: The same unit value that has been estimated for the larger parcel is also applied to the portion of the site that is to be acquired in fee title for use as permanent right-of-way. This leads to a total value for the permanent taking of \$7,609.

$$\text{Land Size} \times \text{Value per S.F.} = \text{Value of Permanent Taking}$$

$$2,174 \text{ s.f.} \times \$3.50 = \$7,609$$

Severance Damages: The damages to the subject property are minor and they will be corrected through construction contract work, so no compensation for any losses in value are necessary.

Benefits: No benefits that will enhance the value of the remainder property are anticipated as a result of the project. Therefore, the net severance damages to the remainder are \$0.

Final Total Value Opinion: The final total value opinion is equal to the value of the takings plus the net severance damages to the remainder, which totals \$7,609 and is rounded to \$7,700.

Value of Takings + Net Severance Damages = Final Total Value Opinion

$$\$7,609 + \$0 = \$7,609 \approx \$7,700$$

AGENDA ITEM: Consent 9

**CITY OF TULARE
AGENDA ITEM TRANSMITTAL SHEET**

Submitting Department: Engineering Services / Project Management

For Council Meeting of: October 18, 2022

Documents Attached: Ordinance Resolution Other None

AGENDA ITEM:

Authorize the City Manager to complete and execute the documents necessary to purchase property and easements located at the northwest corner of Prosperity Avenue and West Street (portion of APN 164-150-027) needed for Project EN0088 – Prosperity Avenue & West Street Improvements Project in the amount of \$29,722, subject only to minor conforming and clarifying changes acceptable to the City Attorney and City Manager.

IS PUBLIC HEARING REQUIRED: Yes No

BACKGROUND/EXPLANATION:

A traffic study was performed for a proposed development on the southeast corner of Prosperity Avenue and West Street, which showed that warrants were met for a new traffic signal at this intersection. The City Council subsequently provided staff with direction to review the condition of this intersection, and to prioritize construction of improvements at this location. The resulting project, EN0088 – Prosperity Avenue & West Street Improvements Project, will construct the intersection to its ultimate width, install ADA compliant dual curb ramps at each corner, and install master-planned utility improvements within the project limits. Street improvements will include sufficient transitions from the full-width widening at the curb returns back down to the existing pavement width. An eight-phase traffic signal with emergency preemption, video detection for both vehicle and bicycle traffic, and associated appurtenances will be included in the project.

In order to widen the intersection and construct the ultimate improvements, the City needs to acquire approximately 3,108 square feet of additional property, and a temporary construction easement of approximately 856 square feet, from the subject property at 1343 N. West Street. The property owner is Dorothy J. Martinho, trustee of Exemption Trust C, created under the Martinho Family Revocable Living Trust. The property owner has worked diligently with City Staff through the design, appraisal, and acquisition process for Project EN0088, and has agreed to provide the property and temporary construction easement needed for the project for the amount of \$29,722. This amount is in accordance with an appraisal prepared by the City’s right-of-way consultant dated February 3, 2022. Restoration of existing landscaping improvements is included in this amount.

STAFF RECOMMENDATION:

Authorize the City Manager to complete and execute the documents necessary to purchase property and easements located at the northwest corner of Prosperity Avenue and West Street (portion of APN 164-150-027) needed for Project EN0088 – Prosperity Avenue & West Street Improvements Project in the amount of \$29,722, subject only to minor conforming and clarifying changes acceptable to the City Attorney and City Manager.

CITY ATTORNEY REVIEW/COMMENTS: Yes N/A

IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED: Yes No N/A

FUNDING SOURCE/ACCOUNT NUMBER:

EN0088-030-0230

021 – Measure R – Local

022 – Gas Tax (HUTA)

010 – Water Bonds

615 – Sewer Wastewater CIP

Submitted by: Nick Bartsch

Title: Senior Project Manager

Date: October 10, 2022

City Manager Approval: _____



OFFICE OF THE CITY CLERK

CERTIFICATE OF ACCEPTANCE

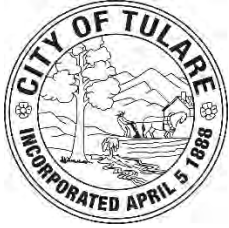
THIS IS TO CERTIFY, that the interest in real property conveyed by the **Temporary Construction Easement Deed** dated _____, from **Dorothy J. Martinho, trustee of Exemption Trust C, created under the Martinho Family Revocable Living Trust**, to the City of Tulare, Municipal Corporation of the State of California, was duly accepted by the City Council of the City of Tulare on **October 18, 2022**, and by the same order of the City Council of the City of Tulare, the City Manager was authorized to execute this Certificate of Acceptance to be recorded with the **Temporary Construction Easement Deed**.

CITY OF TULARE

By: _____
Marc Mondell, City Manager

ATTEST:

Chief Deputy City Clerk



OFFICE OF THE CITY CLERK

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY, that the interest in real property conveyed by the **Grant Deed** dated _____, from **Dorothy J. Martinho, trustee of Exemption Trust C, created under the Martinho Family Revocable Living Trust**, to the City of Tulare, Municipal Corporation of the State of California, was duly accepted by the City Council of the City of Tulare on **October 18, 2022**, and by the same order of the City Council of the City of Tulare, the City Manager was authorized to execute this Certificate of Acceptance to be recorded with the **Grant Deed**.

CITY OF TULARE

By: _____
Marc Mondell, City Manager

ATTEST:

Chief Deputy City Clerk



Approval of Just Compensation

CFR Part 24, Subpart B Section 24.102(d) states that before the initiation of negotiations, the Agency shall establish an amount which it believes is Just Compensation for the real property. The amount shall not be less than the approved appraisal of the Fair Market Value of the property, taking into account the allowable damages or benefits to any remaining property.

Date: July 14, 2022	Agency: City of Tulare
To: Nick Bartsch, Sr. Project Manager	Project: Prosperity & West Traffic Signal Project

The following parcel(s) is proposed to be partially acquired for the subject project and was appraised by **Renee E. Hendrick and Keith J. Hopper** of **Hopper Company**, State Certified General Appraisers:

Parcel Information	
Owner(s)	Assessor's Parcel Number
Martinho Family Revocable Living Trust	164-150-027
Address: 1343 N. West Street, Tulare, CA 93274	

Appraisal Information		
Appraisal Report Date	Property Take Type	Appraised Value
February 3, 2022	Partial Acquisition in fee for road purposes, & temporary construction easement	\$28,200.00

The appraised value is believed to be the full amount of just compensation for the property interest to be acquired.

Prepared By:

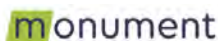
**Jesse Ortiz, R/W-RAC
Monument**

Approved By:

Signature: _____

Date: _____

By: Nick Bartsch
Its: Sr. Project Manager



City of Tulare	CONFIDENTIAL	Caltrans Exhibit
APPRAISAL SUMMARY STATEMENT	The document contains personal information and pursuant to Civil Code 1798.21, it shall be kept confidential in order to protect against unauthorized disclosure.	8-EX-15A
		Page 1 of 17

Dist.	Co.	Rte.	P.M.	Parcel No.	Federal Aid Project No.	Date / Revised Date
				164-150-027		February 3, 2022

Owner: Dorothy J. Martinho, Trustee of Exemption Trust C, created under the Martinho Family Revocable Living Trust
Date Acquired: 1994

Property Address: 1343 N. West St., Tulare, CA 93274
Property to be acquired: Part All

Locale: The subject larger parcel property consists of a single parcel of land that is located at the southwest corner of Prosperity Avenue and West Street, in northwest Tulare, California.

Total Property Area: 51,658 Sq. Ft. (larger parcel) Including Access Rights Yes No

STATUTORY BASIS OF VALUATION

The market value for the property to be acquired by The City of Tulare (the "City") is based upon an appraisal prepared in accordance with accepted appraisal principles and procedures.

Code of Civil Procedure Section 1263.320 defines Fair Market Value as follows:

- a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.
- b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

Code of Civil Procedure Section 1263.321 defines the Value for Nonprofit, Special Use Property as follows:

A just and equitable method of determining the value of nonprofit, special use property for which there is no relevant, comparable market is as set forth in Section 824 of the Evidence Code, but subject to the exceptions set forth in subdivision (C) of Section 824 of the Evidence Code.

The market value for the property to be acquired by the City is based upon Code of Civil Procedure Section 1263.320 as defined above.

BASIC PROPERTY DATA

Interest valued: Fee Simple & Temporary use
Date of valuation: February 3, 2022 Original Updated
Applicable zoning: C-1 (Neighborhood Commercial)
Area to be acquired: 3,108 Sq. Ft.
Highest and best use: Develop new commercial improvement
Current use: Residential

AREAS WITHIN THE RIGHT OF WAY

The proposed acquisition of new road right-of-way (ROW) will be a partial taking in fee title. The take area is situated at the southeast corner of the larger parcel and is irregular in shape as it wraps around the corner. It is 14 feet wide at its west end along the Prosperity Avenue frontage, angles at the corner intersection, and then narrows to 12 feet in width on the West Street exposure. Altogether, this take area encompasses 3,108 square feet of land area.

Total Area = 3,108 Sq. Ft.

New Road Right-of-Way

3,108 Sq. Ft. x \$8.65/Sq. Ft. x 100%	=	<u>\$26,884.20</u>
Total	=	\$26,884.20

IMPROVEMENTS WITHIN THE RIGHT OF WAY

The only improvement situated in this area is some grass landscaping with sprinkler irrigation

Landscaping Improvements

Lump sum	=	<u>\$500</u>
Total	=	\$500

TEMPORARY CONSTRUCTION EASEMENT (TCE)

The valuation of the temporary construction easement acquisitions utilizes a somewhat different methodology because this take area will not be permanently taken and will only be needed for a relatively short period of time. During this time, the larger parcel will be without the use of this area though, and the owner must be compensated accordingly. The most appropriate method of valuing this temporary easement area is to estimate the rental value of the property within the take area over the specified term.

Ground leases for commercial properties in the local market are often structured with the annual rent being equal to 10% of the value of the underlying land. Multiplying the size of the TCE takings by the fee value of the land times the 10% rate of return and the 12-month term leads to a value for the temporary easement taking of \$740.44.

Total Area = 856 Sq. Ft.

TCE

856 Sq. Ft. x \$8.65/Sq. Ft. x 10% X 12 months	=	<u>\$740.44</u>
Total	=	\$740.44

Lump Sum Total = \$28,124.64

THE FOLLOWING INFORMATION IS BASED ON THE PARTIAL ACQUISITION ONLY

Value of the property being
acquired including the following
improvements:

Land:	\$ <u>26,884.20</u>
Imps:	\$ <u>500</u>
TCE:	\$ <u>740.44</u>

\$ 28,124.64

Severance Damages (see page 4):

Cost to Cure Damages: \$ 0

Incurable Damages: \$ 0

Total Damages: \$ 0

Benefits (see page 4): \$ 0

Net Damages: \$ 0

The total amount of any other compensation: \$ 0

JUST COMPENSATION FOR ACQUISITION \$ 28,124.64

*** Rounded To** \$ 28,200

Construction Contract Work \$ 0

SEVERANCE DAMAGES

COST TO CURE DAMAGE ITEMS

None \$ 0

Lump Sum Total \$ 0

INCURABLE DAMAGES

(Narrative explanation and calculations, if applicable)

Lump Sum Total \$ 0

TOTAL DAMAGES \$ 0

BENEFITS

(Narrative explanation and calculations, if applicable)

Lump Sum Total \$ 0

NET DAMAGES (Total Damages less Benefits) \$ 0

CONSTRUCTION CONTRACT WORK ITEMS

For the subject property, no construction contract work is planned.

SUMMARY OF THE BASIS FOR JUST COMPENSATION

Selected Market Data

Four sales of comparable commercial land parcels are selected for use in valuing the subject larger parcel. These data items are narratively discussed below followed by a grid that analyzes the data and shows how each item compares to the subject.

LAND SALES COMPARISON GRID				
Comparable Commercial Sales				
	Sale No. 1	Sale No. 2	Sale No. 3	Sale No. 4
Location	Mooney & Bardsley	Mooney & Bardsley	Prosperity & 'J' St.	Mooney & Tulare
City	Tulare	Tulare	Tulare	Tulare
APN	172-150-021	182-060-061	164-090-020	172-100-002
Buyer	Shedid & Feghali	Encinas Norte	Ramirez & Bernal	Mega 3 LLC
Document No.	20-12957	20-45002	20-53875	22-10726
Recording Date	3/3/2020	7/30/2020	9/9/2020	2/16/2022
Sale Price	\$300,000	\$250,000	\$440,000	\$625,000
Land Area – SF	34,727	37,645	29,266	204,732
Price / SF	\$8.64	\$6.64	\$15.03	\$3.05
Topography	Level	Level	Level	Level
Zoning	C-3	C-3	C-4	C-4
Utilities	W-S-G-E	W-S-G-E	W-S-G-E	W-S-G-E
Orientation	Interior	Landlocked	Interior	Interior
Property Rights	=	=	=	=
Financing	=	=	=	=
Conditions of Sale	=	=	=	=
Market Conditions	=	=	=	=
Interim Value	= \$8.64	= \$6.64	= \$15.03	= \$3.05
Location	–	+	–	=
Zoning	=	=	=	=
Parcel Size	=	=	–	+
Topography	=	=	=	=
Utilities	=	=	=	=
Orientation	+	+	+	+
Final Indication	= \$8.64	> \$6.64	< \$15.03	> \$3.05

City of Tulare	CT Exhibit 8-EX-15A
APPRAISAL SUMMARY STATEMENT (CONT.)	Page 6 of 17

In comparing these sales to the subject property, consideration is given to various elements of comparison that market participants recognize as having an impact on the prices that are paid for this type of property. The comparison grid summarizes how each data item is compared to the subject. A “+” is shown if the data item is inferior to the subject, a “-” is used if the sale is superior, and an “=” sign is indicated if the data item is generally comparable. Not all elements of comparison are weighted equally by the market and in some instances a greater magnitude of difference is appropriate for a symbol.

Based on these comparisons, the subject land should be valued above the \$3.05 to \$6.64 per square foot indicated by sale nos. 2 and 4, below the \$15.03 per square foot reflected in sale no. 3, and at a level similar to the \$8.64 of sale no. 1. Thus, a unit value of \$8.65 per square foot is concluded. This is applied to the 51,658 square feet in the subject larger parcel, which results in a total land value of \$446,841.70.

Land Size x Value per S.F. = Value of Larger Parcel Land

$$51,658 \text{ s.f.} \times \$8.65 = \$446,841.70$$

In a strip appraisal where the majority of the property’s improvements are not being affected by the partial acquisition, it is still important to include in the value of the larger parcel the contribution of any improvements that are being taken. The only improvement being acquired from the subject property is some grass landscaping, and a contributory value of \$500 is attributed to this improvement.

Adding the value of the land to the contribution of the affected improvements leads to a total value for the subject larger parcel of \$447,341.70.

Property Valuation Discussion

Comparable 1 represents a vacant land parcel that is located along the east side of Mooney Boulevard, north of Bardsley Avenue, in Tulare. The 34,727-square-foot parcel has an interior lot orientation and it is zoned C-3 for retail commercial uses. There are no off-site improvements in place along the street frontage, but public utilities are available in close proximity. The property is just north of a new commercial development that features a Jack-in-the-Box fast food restaurant. This site was listed for sale at an asking price of \$330,000 and after nine months of exposure it sold in March 2020 for \$300,000 all cash or \$8.64 per square foot. The buyers are franchisees of the Little Caesar’s Pizza chain and they plan to construct a new fast-food restaurant on the site.

Comparable 2 consists of a vacant commercial land parcel that is part of a newly developing commercial center in Tulare. The center is situated at the southwest quadrant of Bardsley Avenue and Mooney Boulevard and is anchored by a CVS/pharmacy store. Surrounding the pharmacy is 4.31 acres of land that was purchased by developers, who are subdividing it into smaller parcels. This is one of those parcels and it is situated toward the rear of the project. A new parcel map was recorded to create the site and it is landlocked with no direct public street frontage. Access comes from common area drives that lead to both streets. All public utilities are readily available. The zoning is C-3 for retail commercial uses by the City of Tulare. The buyers are local developers who had an agreement to build a new 5,877-square-foot adult day care facility for Social Vocational Services, who committed to lease it for a 10-year term. The land sale closed in July 2020 at a price of \$250,000 all cash or \$6.64 per square foot.

Comparable 3 refers to a vacant commercial lot located along the east side of ‘J’ Street, north of Prosperity Avenue, in Tulare. The interior-oriented parcel is just north of the intersection with frontage along a busy street. It has 29,266 square feet of land area and is zoned C-4 for service commercial uses by the City of Tulare. Curb and gutter are in place along the street frontage and there are two drive approaches for access. All public utilities are readily available. The site was previously improved with five old bungalow houses that had been abandoned along with a bar that was also closed

down, and all of the structural improvements were cleared from the site prior to the sale. The property was listed for sale at an asking price of \$450,000 in February 2020, and it sold in September 2020 for \$440,000 or \$15.03 per square foot. The buyers plan to develop a new market on the property.

Comparable 4 is a large vacant land parcel that is located on the east side of Mooney Boulevard, north of Tulare Avenue, in Tulare. The 4.70-acre property is in raw condition with no off-site improvements installed, but all public utilities are available to serve it. The zoning applied by the City of Tulare is C-4 for service commercial uses. The seller purchased the property in 2017 as a potential site for their Quality Paint and Body business, but they never developed the property. Later, it was listed for sale in October 2021 at an asking price of \$650,000. It took only a short time to find a buyer and in February 2022 the sale closed at a price of \$625,000 or \$3.05 per square foot all cash.

Value of Portion to be Acquired

The same unit value that has been estimated for the larger parcel is also applied to the portion of the site that is to be acquired in fee title for use as permanent right-of-way. To this is added the contributory value of the affected improvement leading to a total value for the permanent taking of \$27,384.20.

$$\text{Land Size} \times \text{Value per S.F.} = \text{Land Value} + \text{Improvement Value} = \text{Value of Permanent Taking}$$

$$3,108 \text{ s.f.} \times \$8.65 = \$26,884.20 + \$500 = \$27,384.20$$

The valuation of the temporary construction easement acquisitions utilizes a somewhat different methodology because this take area will not be permanently taken and will only be needed for a relatively short period of time. During this time, the larger parcel will be without the use of this area though, and the owner must be compensated accordingly. The most appropriate method of valuing this temporary easement area is to estimate the rental value of the property within the take area over the specified term.

Ground leases for commercial properties in the local market are often structured with the annual rent being equal to 10% of the value of the underlying land. Multiplying the size of the TCE takings by the fee value of the land times the 10% rate of return and the 12-month term leads to a value for the temporary easement taking of \$740.44.

$$\text{TCE Size} \times \text{Value per S.F.} \times \text{Annual Rental Rate} \times \text{Term} = \text{Value of Temporary Easement}$$

$$856 \text{ s.f.} \times \$8.65 \times 10\% \times 12 \text{ months} = \$740.44$$

Adding together the values of the various portions to be acquired results in a total value for the takings of \$28,124.64.

Value of Permanent Right-of-Way Taking	\$27,384.20
Value of Temporary Construction Easement	+ \$ 740.44
Taking Total Value of Takings	\$28,124.64

City of Tulare	CT Exhibit 8-EX-15A
APPRAISAL SUMMARY STATEMENT (CONT.)	Page 8 of 17

Description of Right-of-Way Taking:

The proposed acquisition of new road right-of-way (ROW) will be a partial taking in fee title. The take area is situated at the southeast corner of the larger parcel and is irregular in shape as it wraps around the corner. It is 14 feet wide at its west end along the Prosperity Avenue frontage, angles at the corner intersection, and then narrows to 12 feet in width on the West Street exposure. Altogether, this take area encompasses 3,108 square feet of land area. The only improvement situated in this area is some grass landscaping with sprinkler irrigation.

Temporary Easement Taking:

The temporary construction easement (TCE) will be used by the City of Tulare (City) or its contractors for purposes of facilitating construction of adjacent public street improvements and related purposes, in, on, over, under, through, along, and across the property. The TCE will commence upon written notice of commencement of construction and shall automatically terminate upon completion of the City's construction or twelve months after commencement, whichever occurs first. Certain improvements, like concrete and structural improvements, will be protected in place and will not be removed, while other improvements may need to be cleared to allow for use of the TCE in the manner intended. If fencing needs to be taken down, the contractor will provide temporary fencing during the term to keep the property secure and the owner will be compensated for the need to replace it with permanent fencing after the TCE is terminated.

Three TCE areas are being acquired from the larger parcel and they are referred to as areas A, B, and C. TCE-A is irregular in shape and wraps around the ROW take area on its north and west sides covering a total of 406 square feet. There is only grass landscaping in this area. TCE-B and TCE-C are both situated along the West Street frontage on the east side of the property, and they are rectangular areas that measure 9 feet deep by 25 feet long for a total of 225 square feet each. There are no improvements situated in either of these TCEs.

Severance damages:

There are no damages to the remainder property that have been identified so no compensation for any losses needs to be estimated.

Benefits:

No benefits that will enhance the value of the remainder property are anticipated as a result of the project. Therefore, the net severance damages to the remainder are \$0.

Construction Contract Work:

Sometimes it is necessary to do certain work, either inside the right-of-way or on the owner's private property, in order to restore the utility and value of the remainder property, and this work may be most economically and/or practically performed by the project's contractor. This is known as construction contract work. For the subject property, no construction contract work is planned.

City of Tulare	CT Exhibit 8-EX-15A
APPRAISAL SUMMARY STATEMENT (CONT.)	Page 9 of 17

Analysis of Remainder:

In the after condition, the remainder property will be slightly smaller at 48,550 square feet, which is within the size range required by the zoning ordinance and is large enough to support a new commercial project. The shape of the land parcel will be altered slightly, but no uneconomic remnants will be created, and it will remain a functional site. Adequate exposure and access will be available from both Prosperity Avenue and West Street. None of the houses will be adversely affected and the loss of some landscaping will not significantly diminish the aesthetic appeal of the property.

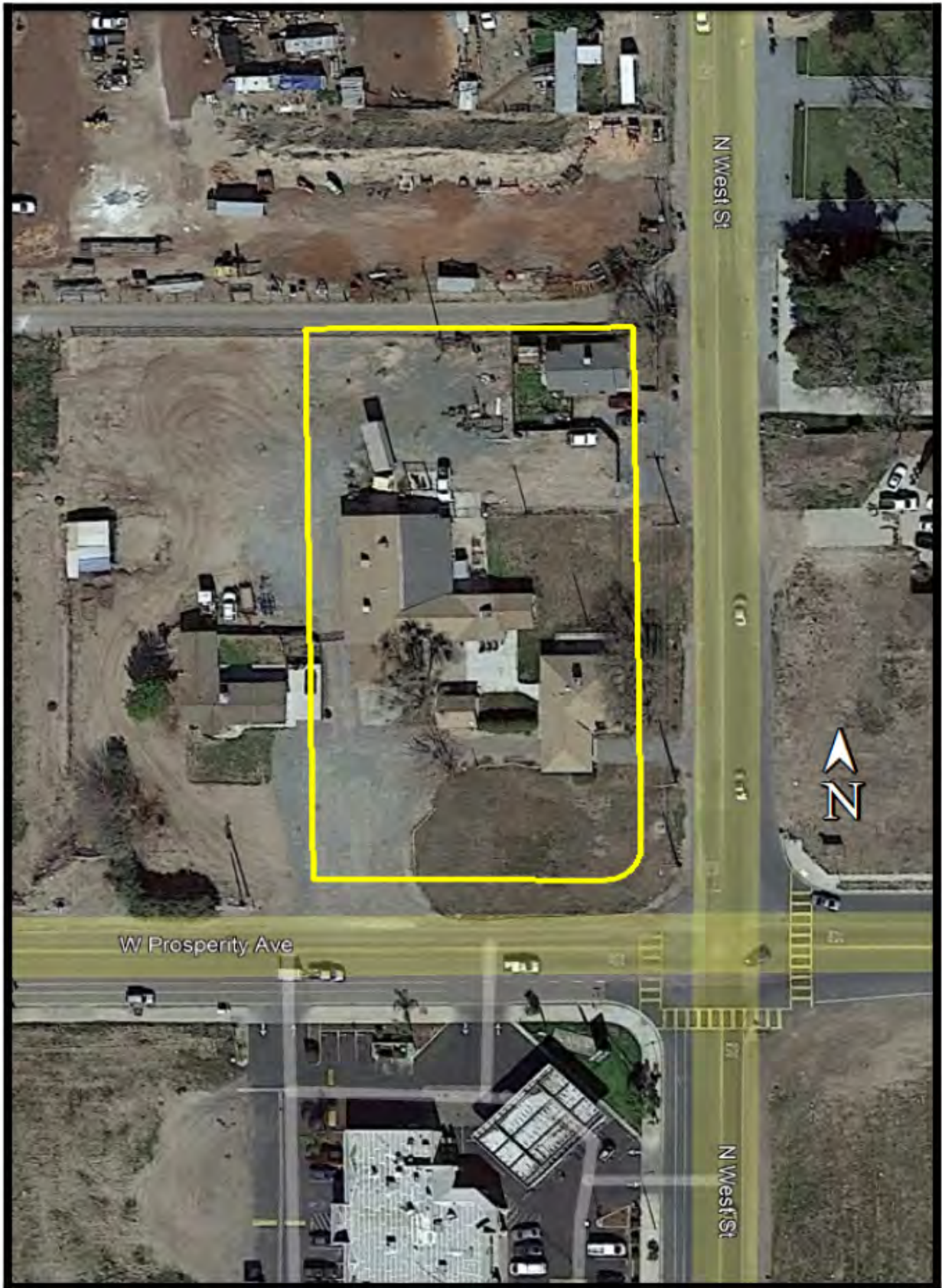
The project improvements are intended to improve traffic control and intersection safety. While this will be generally beneficial to properties in the area, the project is not likely to measurably increase the value of the subject remainder.

Final Total Value Opinion:

The final total value opinion is equal to the value of the takings plus the net severance damages to the remainder, which totals \$28,124.64 and is rounded to \$28,200.

Value of Takings + Net Severance Damages = Final Total Value Opinion

$$\mathbf{\$28,124.64 + \$0 = \$28,124.64 \cong \$28,200}$$



AERIAL PHOTOGRAPH



View of the subject property from its southeast corner at the intersection of Prosperity Avenue and West Street.



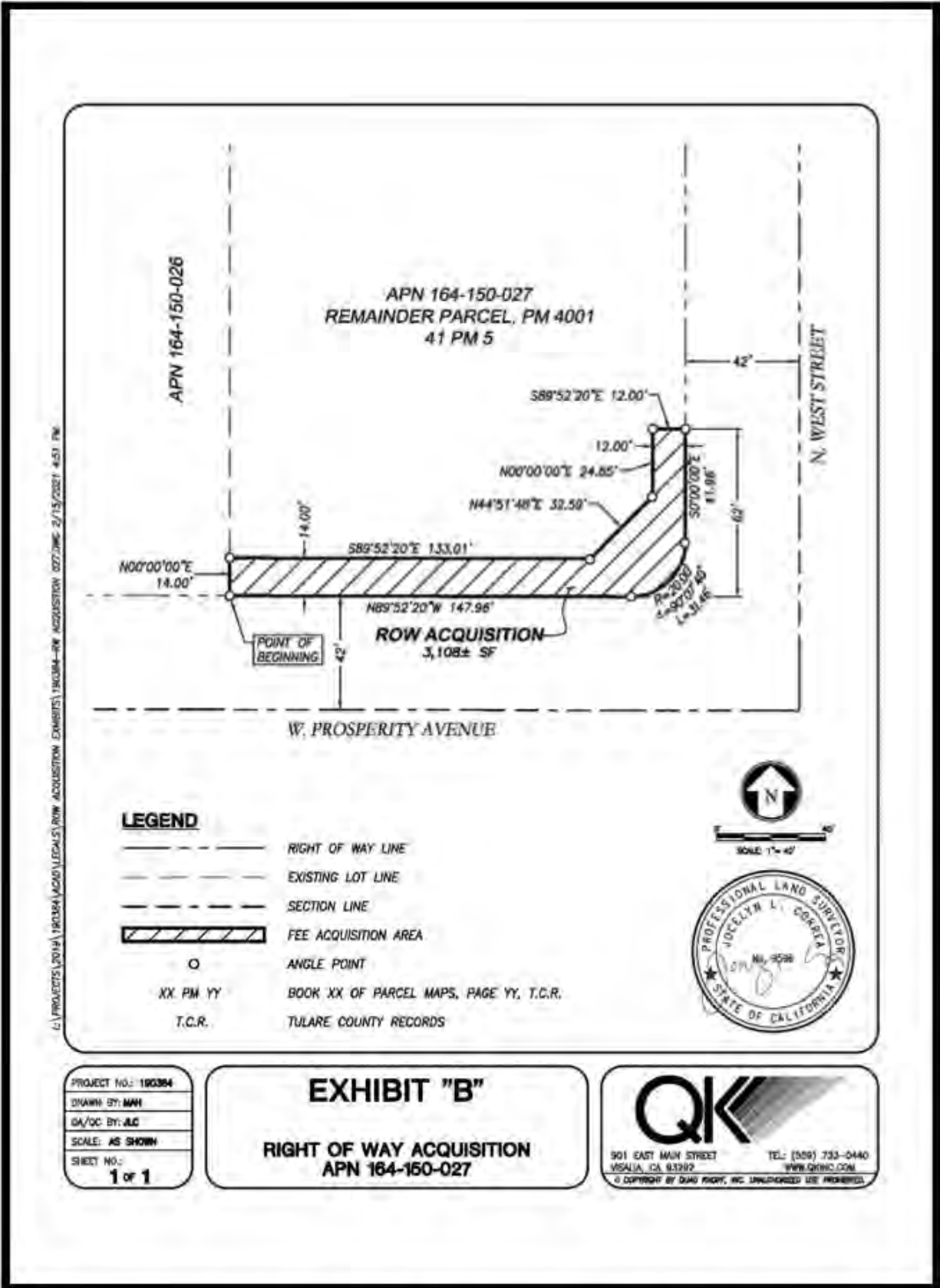
View of two of the residences on the larger parcel looking northeast from the southwest corner of the property.



View of the larger parcel looking east towards the intersection from the west property line.



View of the single-family residence situated in the northeast corner of the property facing West Street.



G:\PROJECTS\2014\190384\ACQUIS\LEGAL\ROW ACQUISITION EXHIBITS\190384-RW ACQUISITION 027.DWG 2/13/2021 4:51 PM

LEGEND

- RIGHT OF WAY LINE
- EXISTING LOT LINE
- SECTION LINE
- FEE ACQUISITION AREA
- ANGLE POINT
- XX PM YY BOOK XX OF PARCEL MAPS, PAGE YY, T.C.R.
- T.C.R. TULARE COUNTY RECORDS

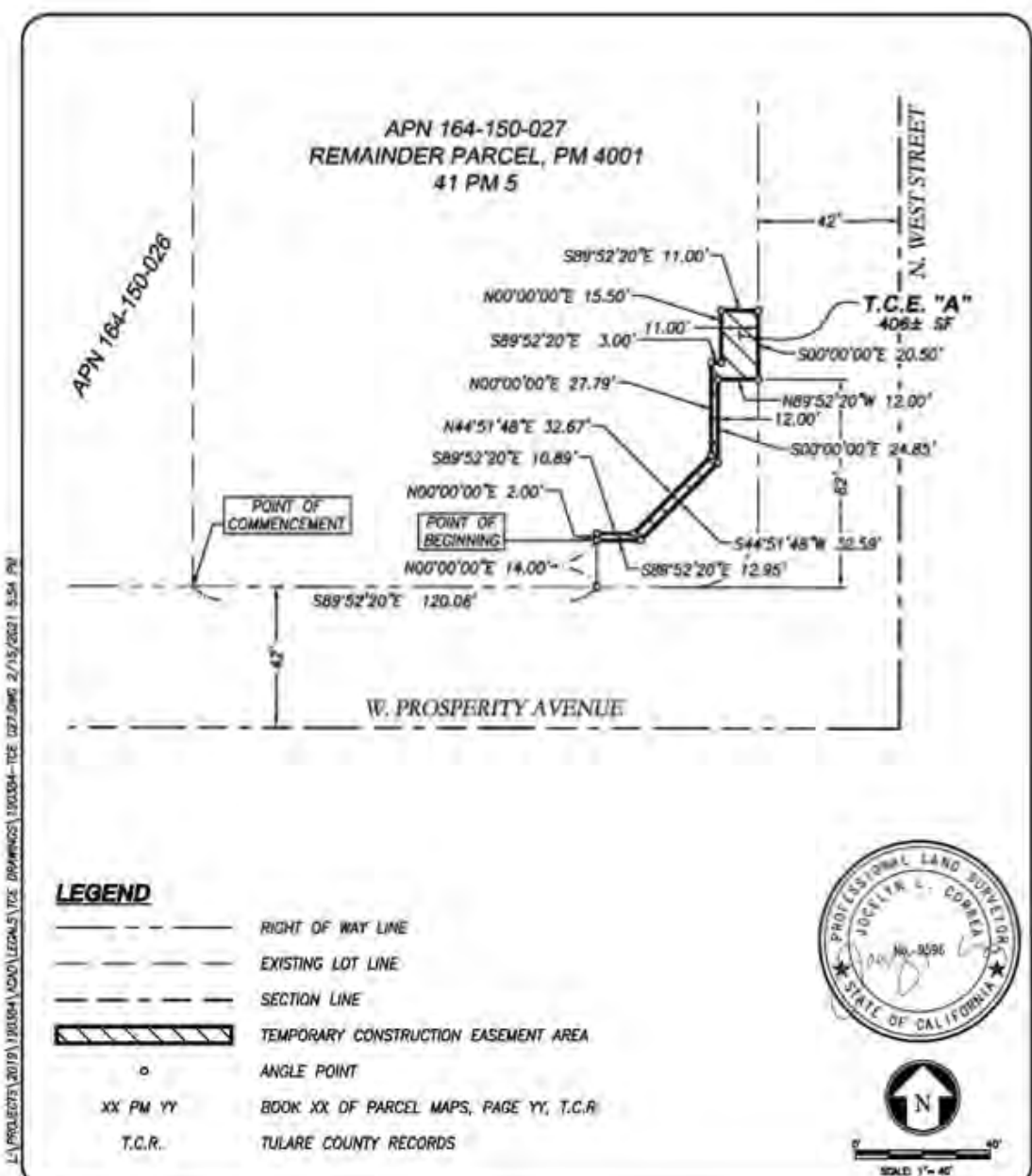


PROJECT NO.: 190384
 DRAWN BY: MAN
 QA/QC BY: JLC
 SCALE: AS SHOWN
 SHEET NO.:
1 of 1

EXHIBIT "B"
RIGHT OF WAY ACQUISITION
APN 164-150-027



PLAT OF THE RIGHT-OF-WAY TAKING



LEGEND

- RIGHT OF WAY LINE
- - - EXISTING LOT LINE
- - - SECTION LINE
- ▨ TEMPORARY CONSTRUCTION EASEMENT AREA
- o ANGLE POINT
- XX' PM YY BOOK XX OF PARCEL MAPS, PAGE YY, T.C.R.
- T.C.R. TULARE COUNTY RECORDS



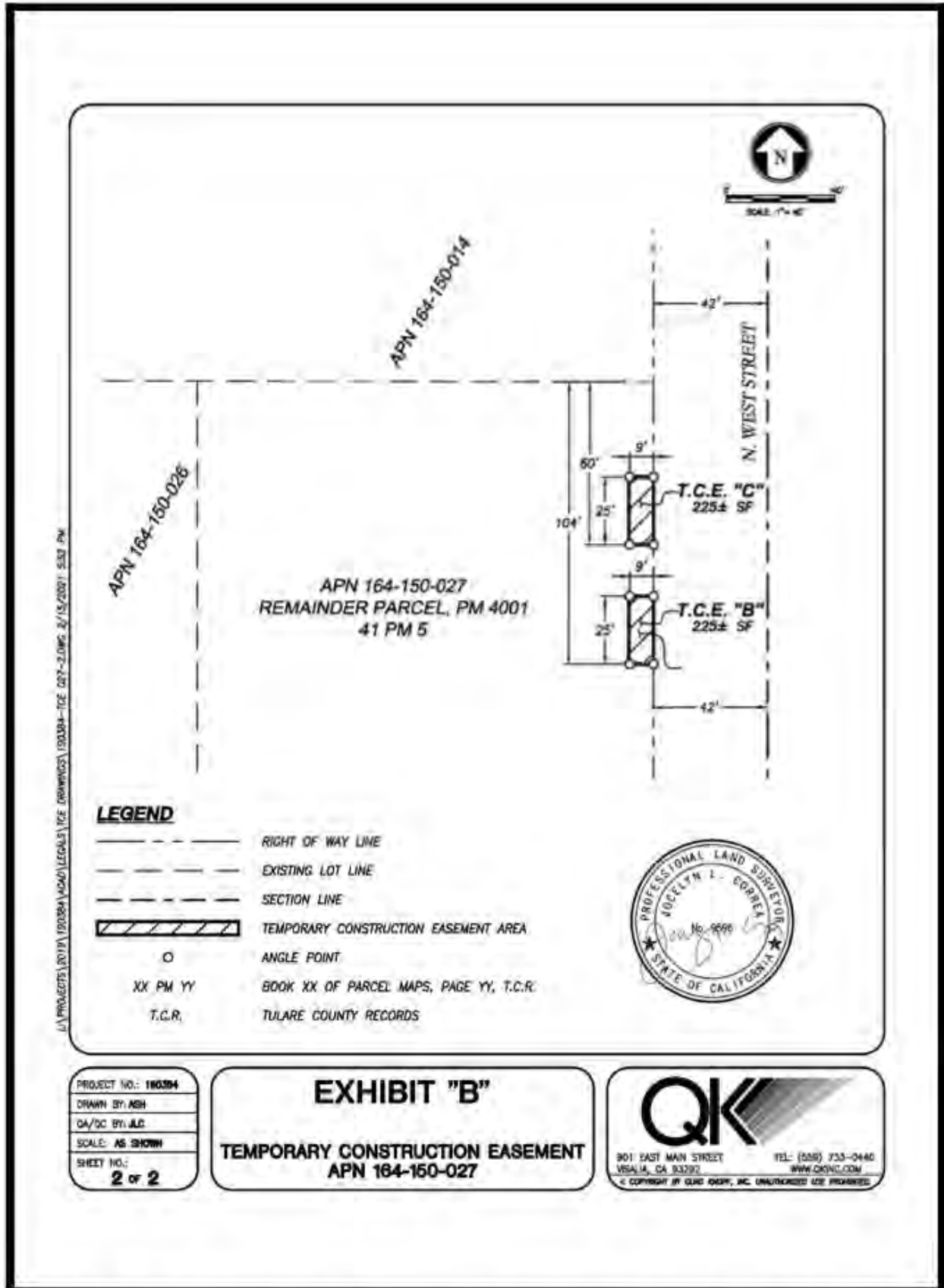
SCALE 1" = 40'

PROJECT NO.: 190304
 DRAWN BY: ASH
 QA/QC BY: JLC
 SCALE: AS SHOWN
 SHEET NO.:
1 of 2

EXHIBIT "B"
TEMPORARY CONSTRUCTION EASEMENT
APN 164-150-027



PLAT OF A TEMPORARY CONSTRUCTION EASEMENT TAKING



PLAT OF A TEMPORARY CONSTRUCTION EASEMENT TAKING



View of the ROW and TCE take areas situated at the southeast corner of the property.



View of the ROW and TCE take areas looking north from the southwest corner of the property.



View of the ROW and TCE take areas looking southwesterly from the West Street frontage.



View of TCE-B and TCE-C looking north along the West Street frontage.



MEMORANDUM

Date: October 6, 2022

To: Nick Bartsch, Sr. Project Manager

From: Jesse Ortiz, Senior Agent
Monument

Regarding: Prosperity and West Traffic Signal and Improvements Project
Administrative Settlement to Acquire Property
Dorothy J. Martinho, Trustee of Exemption Trust C, created under the Martinho Family Revocable Living Trust
1343 N. West St., Tulare, CA 93274
APN: 164-150-027

Subject Property

The subject real property, known as Assessor's Number 164-150-027, in the City of Tulare, California is located at 1343 N. West Street (the "Property"). The Property consists of a site area of 51,658 square feet and is currently improved with what appears to be three-single family residences.

An appraisal was obtained from Hopper Company to determine the fair market value for the subject property and interests to be acquired. The appraisal, dated February 3, 2022, concluded that the value of the property rights required for the project was \$28,200. This includes compensation for some grass landscaping and improvements.

On July 21, 2022, a written offer in the amount of \$28,200 was presented to the owner, Dorothy J. Martinho.

Background

The City of Tulare ("City") requires the acquisition of certain property rights for the Prosperity and West Traffic Signal and Improvements Project ("Project"). The purpose of this Project is to upgrade the intersection of Prosperity Avenue and West Street from its current stop sign control to a fully signalized intersection and add ADA-compliant sidewalks.

In order to allow for the construction of this Project, the City requires the fee acquisition of 3,108 Sq. Ft. of the Property along West Street and Prosperity Avenue.

Analysis of Counter Offer

Through subsequent negotiations and discussions with the owner's children, they indicated that in the offer, they were being compensated \$500 for the landscaping and improvements (irrigation system within the fee take area), and that this amount was not sufficient to modify the irrigation system. They obtained a bid from a landscaper for the sprinkler system modifications in the amount of \$1,522, and their counteroffer was \$29,722.



Recommendation

Monument recommends moving forward with the administrative settlement for the negotiated amount of \$29,722. In support of this recommendation, 49 CFR 24.102(i) – Administrative Settlement states that the purchase price for a property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest.

The City may determine that an administrative settlement is reasonable, prudent, and in the public interest. Factors to consider in making this determination may include, but are not limited to, damages the Grantor may suffer as a result of the acquisition, the range of probable testimony in trial and the cost of trial. Other related reasons that support an administrative settlement include diligent attempts to expedite acquisitions by agreement to avoid litigation and relieve congestion in the courts. Not accepting this proposed settlement will most assuredly put this parcel into condemnation which would result in substantial delays in getting possession.

The exposure to a jury or judge verdict could likely exceed \$40,000.00 with the possibility that the final settlement amount could be significantly higher and attorney fees could be awarded to the property owner. Both sides will represent their opinions of value based on the most current comparable sales used, market trends, and severance damages to the property as a result of the project; wherein the Grantor will argue substantially more damages to the remainder property than provided as just compensation. In the majority of eminent domain cases of this nature, the judgements favor the property owner over the public agency. Without the use of the provisions of the Administrative Settlement Process, use of more costly and time-consuming legal means such as the outlined above may become necessary to secure the required permanent property rights. Use of this administrative settlement is believed to be reasonable, prudent and in the best public interest as per the provisions of 49 CFR 24.102(i).

Due to project time constraints and the support provided for the irrigation system modification, it is recommended to accept the owner’s counter-offer. Provisions for the use of this type of settlement are delineated in the Code of Federal Regulations Title 49, Part 24, at 24.102(i).

Monument considers the recommended administrative settlement of \$29,722 to be reasonable, prudent, and in the public interest. Settlement by negotiation avoids potential future litigation and reduces risk of jury awards should it be necessary to proceed to an eminent domain case.

Approval Recommended By:



Jesse Ortiz, Senior Agent, Monument

10/06/2022

Date

City’s Acceptance of Recommendation:

City Manager

Date



3626 Fair Oaks Blvd., Suite 100, Sacramento, CA 95864

info@monumentrow.com | 800 577 0109

monumentrow.com

AGENDA ITEM: Consent 10

**CITY OF TULARE
AGENDA ITEM TRANSMITTAL SHEET**

Submitting Department: Engineering Services / Project Management

For Council Meeting of: October 18, 2022

Documents Attached: Ordinance Resolution Other None

AGENDA ITEM:

Authorize the City Manager to complete and execute the documents necessary to purchase property and easements located on the west side of West Street south of Prosperity Avenue (portion of APN 168-240-069) needed for Project EN0088 – Prosperity Avenue & West Street Improvements Project in the amount of \$3,700, subject only to minor conforming and clarifying changes acceptable to the City Attorney and City Manager.

IS PUBLIC HEARING REQUIRED: Yes No

BACKGROUND/EXPLANATION:

A traffic study was performed for a proposed development on the southeast corner of Prosperity Avenue and West Street, which showed that warrants were met for a new traffic signal at this intersection. The City Council subsequently provided staff with direction to review the condition of this intersection, and to prioritize construction of improvements at this location. The resulting project, EN0088 – Prosperity Avenue & West Street Improvements Project, will construct the intersection to its ultimate width, install ADA compliant dual curb ramps at each corner, and install master-planned utility improvements within the project limits. Street improvements will include sufficient transitions from the full-width widening at the curb returns back down to the existing pavement width. An eight-phase traffic signal with emergency preemption, video detection for both vehicle and bicycle traffic, and associated appurtenances will be included in the project.

In order to widen the intersection and construct the ultimate improvements, the City needs to acquire approximately 230 square feet of additional property, and a temporary construction easement of approximately 202 square feet, from the subject property at 1279 N. West Street. The property owner is Parmar Brothers, Inc., a California Corporation. The property owner has worked diligently with City Staff through the design, appraisal, and acquisition process for Project EN0088, and has agreed to provide the property and temporary construction easement needed for the project for the amount of \$3,700. This amount is in accordance with an appraisal prepared by the City’s right-of-way consultant dated February 3, 2022. Restoration of existing landscaping improvements is included in this amount.

STAFF RECOMMENDATION:

Authorize the City Manager to complete and execute the documents necessary to purchase property and easements located on the west side of West Street south of Prosperity Avenue (portion of APN 168-240-069) needed for Project EN0088 – Prosperity Avenue & West Street Improvements Project in the amount of \$3,700, subject only to minor conforming and clarifying changes acceptable to the City Attorney and City Manager.

CITY ATTORNEY REVIEW/COMMENTS: Yes N/A

IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED: Yes No N/A

FUNDING SOURCE/ACCOUNT NUMBER:

EN0088-030-0230

021 – Measure R – Local

022 – Gas Tax (HUTA)

010 – Water Bonds

615 – Sewer Wastewater CIP

Submitted by: Nick Bartsch

Title: Senior Project Manager

Date: October 10, 2022

City Manager Approval: _____



OFFICE OF THE CITY CLERK

CERTIFICATE OF ACCEPTANCE

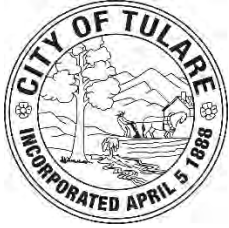
THIS IS TO CERTIFY, that the interest in real property conveyed by the **Temporary Construction Easement Deed** dated _____, from **Parmar Brothers, Inc., a California Corporation**, to the City of Tulare, Municipal Corporation of the State of California, was duly accepted by the City Council of the City of Tulare on **October 18, 2022**, and by the same order of the City Council of the City of Tulare, the City Manager was authorized to execute this Certificate of Acceptance to be recorded with the **Temporary Construction Easement Deed**.

CITY OF TULARE

By: _____
Marc Mondell, City Manager

ATTEST:

Chief Deputy City Clerk



OFFICE OF THE CITY CLERK

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY, that the interest in real property conveyed by the **Grant Deed** dated _____, from **Parmar Brothers, Inc., a California Corporation**, to the City of Tulare, Municipal Corporation of the State of California, was duly accepted by the City Council of the City of Tulare on **October 18, 2022**, and by the same order of the City Council of the City of Tulare, the City Manager was authorized to execute this Certificate of Acceptance to be recorded with the **Grant Deed**.

CITY OF TULARE

By: _____
Marc Mondell, City Manager

ATTEST:

Chief Deputy City Clerk



Approval of Just Compensation

CFR Part 24, Subpart B Section 24.102(d) states that before the initiation of negotiations, the Agency shall establish an amount which it believes is Just Compensation for the real property. The amount shall not be less than the approved appraisal of the Fair Market Value of the property, taking into account the allowable damages or benefits to any remaining property.

Date: April 12, 2022	Agency: City of Tulare
To: Nick Bartsch, Sr. Project Manager	Project: Prosperity & West Traffic Signal Project

The following parcel(s) is proposed to be partially acquired for the subject project and was appraised by **Renee E. Hendrick and Keith J. Hopper** of **Hopper Company**, State Certified General Appraisers:

Parcel Information	
Owner(s)	Assessor's Parcel Number
Parmar Brothers, Inc., a California Corporation	168-240-069
Address: 1279 N. West Street, Tulare, CA 93274	

Appraisal Information		
Appraisal Report Date	Property Take Type	Appraised Value
February 3, 2022	Partial Acquisition in fee for road purposes, & temporary construction easement	\$3,700.00

The appraised value is believed to be the full amount of just compensation for the property interest to be acquired.

Prepared By:

**Jesse Ortiz, R/W-RAC
Monument**

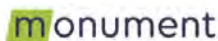
Approved By:

Signature: _____

Date: _____

By: Nick Bartsch

Its: Sr. Project Manager



City of Tulare	CONFIDENTIAL	Caltrans Exhibit
APPRAISAL SUMMARY STATEMENT	The document contains personal information and pursuant to Civil Code 1798.21, it shall be kept confidential in order to protect against unauthorized disclosure.	8-EX-15A
		Page 1 of 14

Dist.	Co.	Rte.	P.M.	Parcel No.	Federal Aid Project No.	Date / Revised Date
				168-240-069		February 3, 2022

Owner: Parmar Brothers, Inc., a California Corporation Date Acquired: August 2019

Property Address: 1279 N. West St., Tulare, CA 93274 Property to be acquired: Part All

Locale: The subject larger parcel property consists of a single parcel of land that is located at the southwest corner of Prosperity Avenue and West Street, in northwest Tulare, California.

Total Property Area: 41,866 Sq. Ft. (larger parcel) Including Access Rights Yes No

STATUTORY BASIS OF VALUATION

The market value for the property to be acquired by The City of Tulare (the "City") is based upon an appraisal prepared in accordance with accepted appraisal principles and procedures.

Code of Civil Procedure Section 1263.320 defines Fair Market Value as follows:

- a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.
- b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

Code of Civil Procedure Section 1263.321 defines the Value for Nonprofit, Special Use Property as follows:

A just and equitable method of determining the value of nonprofit, special use property for which there is no relevant, comparable market is as set forth in Section 824 of the Evidence Code, but subject to the exceptions set forth in subdivision (C) of Section 824 of the Evidence Code.

The market value for the property to be acquired by the City is based upon Code of Civil Procedure Section 1263.320 as defined above.

BASIC PROPERTY DATA

Interest valued: Fee Simple & Temporary use
Date of valuation: February 3, 2022 Original Updated
Applicable zoning: C-3 (Retail Commercial)
Area to be acquired: 230 Sq. Ft.
Highest and best use: As improved
Current use: Gasoline Fueling Station

AREAS WITHIN THE RIGHT OF WAY

The proposed acquisition of new road right-of-way (ROW) will be a partial taking in fee title. The irregular-shaped taking is located at the northeast corner of the property and contains 230 square feet of total land area.

Total Area = 230 Sq. Ft.

New Road Right-of-Way

230 Sq. Ft. x \$8.65/Sq. Ft. x 100%	=	<u>\$1,989.50</u>
Total	=	\$1,989.50

IMPROVEMENTS WITHIN THE RIGHT OF WAY

The only improvements that are situated in this area are grass with sprinkler irrigation.

Improvements

Lump sum	=	<u>\$500</u>
Total	=	\$500

TEMPORARY CONSTRUCTION EASEMENT (TCE)

The valuation of the temporary construction easement acquisition utilizes a somewhat different methodology because this take area will not be permanently taken and will only be needed for a relatively short period of time. During this time, the larger parcel will be without the use of this area though, and the owner must be compensated accordingly. The most appropriate method of valuing this temporary easement area is to estimate the rental value of the property within the take area over the specified term.

Ground leases for commercial properties in the local market are often structured with the annual rent being equal to 10% of the value of the underlying land. Multiplying the size of the TCE taking by the fee value of the land times the 10% rate of return and the 12-month term leads to a value for the temporary easement taking of \$174.73.

Total Area = 202 Sq. Ft.

TCE

202 Sq. Ft. x \$8.65/Sq. Ft. x 10% X 12 months	=	<u>\$174.73</u>
Total	=	\$174.73

Lump Sum Total = \$2,664.23

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SEVERANCE DAMAGES

COST TO CURE DAMAGE ITEMS

The only damage to the property is the need to reconfigure the sprinkler system and this is best measured using the cost to cure technique. Because of the small area that will be affected, the cost of the repair is estimated to be about \$1,000, which includes compensation to the property owner for coordinating the work.

Lump Sum Total	\$ <u>1,000</u>
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INCURABLE DAMAGES

(Narrative explanation and calculations, if applicable)

Lump Sum Total	\$ <u>0</u>
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<u>TOTAL DAMAGES</u>	\$ <u>1,000</u>
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BENEFITS

(Narrative explanation and calculations, if applicable)

Lump Sum Total	\$ <u>0</u>
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<u>NET DAMAGES</u> (Total Damages less Benefits)	\$ <u>1,000</u>
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CONSTRUCTION CONTRACT WORK ITEMS

No construction contract work will be done on the owner's behalf by the project contractor and any corrective work will be the responsibility of the property owner.

SUMMARY OF THE BASIS FOR JUST COMPENSATION

Selected Market Data

Four sales of comparable commercial properties are selected for use in valuing the subject larger parcel. These data items are narratively discussed below followed by a grid that analyzes the data and shows how each item compares to the subject.

LAND SALES COMPARISON GRID				
Comparable Commercial Sales				
	Sale No. 1	Sale No. 2	Sale No. 3	Sale No. 4
Location	Mooney & Bardsley	Mooney & Bardsley	Prosperity & 'J' St.	Mooney & Tulare
City	Tulare	Tulare	Tulare	Tulare
APN	172-150-021	182-060-061	164-090-020	172-100-002
Buyer	Shedid & Feghali	Encinas Norte	Ramirez & Bernal	Mega 3 LLC
Document No.	20-12957	20-45002	20-53875	22-10726
Recording Date	3/3/2020	7/30/2020	9/9/2020	2/16/2022
Sale Price	\$300,000	\$250,000	\$440,000	\$625,000
Land Area – SF	34,727	37,645	29,266	204,732
Price / SF	\$8.64	\$6.64	\$15.03	\$3.05
Topography	Level	Level	Level	Level
Zoning	C-3	C-3	C-4	C-4
Utilities	W-S-G-E	W-S-G-E	W-S-G-E	W-S-G-E
Orientation	Interior	Landlocked	Interior	Interior
Property Rights	=	=	=	=
Financing	=	=	=	=
Conditions of Sale	=	=	=	=
Market Conditions	=	=	=	=
Interim Value	= \$8.64	= \$6.64	= \$15.03	= \$3.05
Location	-	+	-	=
Zoning	=	=	=	=
Parcel Size	=	=	-	+
Topography	=	=	=	=
Utilities	=	=	=	=
Orientation	+	+	+	+
Final Indication	= \$8.64	> \$6.64	< \$15.03	> \$3.05

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In comparing these sales to the subject property, consideration is given to various elements of comparison that market participants recognize as having an impact on the prices that are paid for this type of property. The comparison grid summarizes how each data item is compared to the subject. A “+” is shown if the data item is inferior to the subject, a “-” is used if the sale is superior, and an “=” sign is indicated if the data item is generally comparable. Not all elements of comparison are weighted equally by the market and in some instances a greater magnitude of difference is appropriate for a symbol.

Based on these comparisons, the subject land should be valued above the \$3.05 to \$6.64 per square foot indicated by sale nos. 2 and 4, below the \$15.03 per square foot reflected in sale no. 3, and at a level similar to the \$8.64 of sale no. 1. Thus, a unit value of \$8.65 per square foot is concluded. This is applied to the 41,866 square feet in the subject larger parcel, which results in a total land value of \$362,141.

Land Size x Value per S.F. = Value of Larger Parcel Land

$$41,866 \text{ s.f.} \times \$8.65 = \$362,141$$

In a strip appraisal where the majority of the property’s improvements are not being affected by the partial acquisition, it is still important to include in the value of the larger parcel the contribution of any improvements that are being taken. The only improvement being acquired from the subject property is some grass landscaping and its contributory value is estimated to be \$500.

Adding the value of the land to the contribution of the affected improvement leads to a total value for the subject larger parcel of \$362,641.

Property Valuation Discussion

Comparable 1 represents a vacant land parcel that is located along the east side of Mooney Boulevard, north of Bardsley Avenue, in Tulare. The 34,727-square-foot parcel has an interior lot orientation and it is zoned C-3 for retail commercial uses. There are no off-site improvements in place along the street frontage, but public utilities are available in close proximity. The property is just north of a new commercial development that features a Jack-in-the-Box fast food restaurant. This site was listed for sale at an asking price of \$330,000 and after nine months of exposure it sold in March 2020 for \$300,000 all cash or \$8.64 per square foot. The buyers are franchisees of the Little Caesar’s Pizza chain and they plan to construct a new fast-food restaurant on the site.

Comparable 2 consists of a vacant commercial land parcel that is part of a newly developing commercial center in Tulare. The center is situated at the southwest quadrant of Bardsley Avenue and Mooney Boulevard and is anchored by a CVS/pharmacy store. Surrounding the pharmacy is 4.31 acres of land that was purchased by developers, who are subdividing it into smaller parcels. This is one of those parcels and it is situated toward the rear of the project. A new parcel map was recorded to create the site and it is landlocked with no direct public street frontage. Access comes from common area drives that lead to both streets. All public utilities are readily available. The zoning is C-3 for retail commercial uses by the City of Tulare. The buyers are local developers who had an agreement to build a new 5,877-square-foot adult day care facility for Social Vocational Services, who committed to lease it for a 10-year term. The land sale closed in July 2020 at a price of \$250,000 all cash or \$6.64 per square foot.

Comparable 3 refers to a vacant commercial lot located along the east side of ‘J’ Street, north of Prosperity Avenue, in Tulare. The interior-oriented parcel is just north of the intersection with frontage along a busy street. It has 29,266 square feet of land area and is zoned C-4 for service commercial uses by the City of Tulare. Curb and gutter are in place along the street frontage and there are two drive approaches for access. All public utilities are readily available. The site was previously improved with five old bungalow houses that had been abandoned along with a bar that was also closed

down, and all of the structural improvements were cleared from the site prior to the sale. The property was listed for sale at an asking price of \$450,000 in February 2020, and it sold in September 2020 for \$440,000 or \$15.03 per square foot. The buyers plan to develop a new market on the property.

Comparable 4 is a large vacant land parcel that is located on the east side of Mooney Boulevard, north of Tulare Avenue, in Tulare. The 4.70-acre property is in raw condition with no off-site improvements installed, but all public utilities are available to serve it. The zoning applied by the City of Tulare is C-4 for service commercial uses. The seller purchased the property in 2017 as a potential site for their Quality Paint and Body business, but they never developed the property. Later, it was listed for sale in October 2021 at an asking price of \$650,000. It took only a short time to find a buyer and in February 2022 the sale closed at a price of \$625,000 or \$3.05 per square foot all cash.

Value of Portion to be Acquired

The same unit value that has been estimated for the larger parcel is also applied to the portion of the site that is to be acquired in fee title for use as permanent right-of-way. To this is added the contributory value of the affected improvement leading to a total value for the permanent taking of \$2,489.50.

$$\text{Land Size} \times \text{Value per S.F.} = \text{Land Value} + \text{Improvement Value} = \text{Value of Permanent Taking}$$

$$230 \text{ s.f.} \times \$8.65 = \$1,989.50 + \$500 = \$2,489.50$$

The valuation of the temporary construction easement acquisition utilizes a somewhat different methodology because this take area will not be permanently taken and will only be needed for a relatively short period of time. During this time, the larger parcel will be without the use of this area though, and the owner must be compensated accordingly. The most appropriate method of valuing this temporary easement area is to estimate the rental value of the property within the take area over the specified term.

Ground leases for commercial properties in the local market are often structured with the annual rent being equal to 10% of the value of the underlying land. Multiplying the size of the TCE taking by the fee value of the land times the 10% rate of return and the 12-month term leads to a value for the temporary easement taking of \$174.73.

$$\text{TCE Size} \times \text{Value per S.F.} \times \text{Annual Rental Rate} \times \text{Term} = \text{Value of Temporary Easement}$$

$$202 \text{ s.f.} \times \$8.65 \times 10\% \times 12 \text{ months} = \$174.73$$

Adding together the values of the various portions to be acquired results in a total value for the takings of \$2,664.23.

Value of Permanent Right-of-Way Taking	\$2,489.50
Value of Temporary Construction Easement	+ \$ 174.73
Taking Total Value of Takings	\$2,664.23

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Description of Right-of-Way Taking:

The proposed acquisition of new road right-of-way (ROW) will be a partial taking in fee title. The irregular-shaped taking is located at the northeast corner of the property and contains 230 square feet of total land area. The only improvements that are situated in this area are grass with sprinkler irrigation.

Temporary Easement Taking:

The temporary construction easement (TCE) will be used by the City of Tulare (City) or its contractors for purposes of facilitating construction of adjacent public street improvements and related purposes, in, on, over, under, through, along, and across the property. The TCE will commence upon written notice of commencement of construction and shall automatically terminate upon completion of the City's construction or six months after commencement, whichever occurs first. Certain improvements, like concrete and structural improvements, will be protected in place and will not be removed, while other improvements may need to be cleared to allow for use of the TCE in the manner intended. If fencing needs to be taken down, the contractor will provide temporary fencing during the term to keep the property secure and the owner will be compensated for the need to replace it with permanent fencing after the TCE is terminated.

The TCE taking parallels the south side of the ROW take area. It is a linear strip of land that is 6.76 feet wide on the east end along the West Street frontage and 7.32 feet wide on the west end at the Prosperity Avenue exposure. In total, it will burden 202 square feet of land area. Grass with sprinkler irrigation is the only improvement in this area. While the sign advertising the convenience store and its gasoline prices is nearby, it will be protected in place and not disturbed by the project.

Severance damages:

The only damage to the property is the need to reconfigure the sprinkler system and this is best measured using the cost to cure technique. Because of the small area that will be affected, the cost of the repair is estimated to be about \$1,000, which includes compensation to the property owner for coordinating the work.

Benefits:

No benefits that will enhance the value of the remainder property are anticipated as a result of the project.

Construction Contract Work:

Sometimes it is necessary to do certain work, either inside the right-of-way or on the owner's private property, in order to restore the utility and value of the remainder property, and this work may be most economically and/or practically performed by the project's contractor. This is known as construction contract work. For this subject property, no construction contract work will be done on the owner's behalf by the project contractor and any corrective work will be the responsibility of the property owner. As a result, appropriate compensation, if necessary, is included in the appraisal.

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Analysis of Remainder:

In the after condition, the remainder property will be slightly smaller at 41,636 square feet, which is still of sufficient size to support commercial development. The shape of the parcel will be altered only in a small and insignificant way. Frontages along the two streets will see only minor reductions and this will not affect the property's access or visibility. All utilities will continue to be connected and any disruptions will be kept to a minimum during construction. The building structure will not be directly impacted and it will continue to comply with the zoning's setback requirement. No impact to the canopy or fueling islands will be felt either, and the movement of vehicles around the site will not be disrupted.

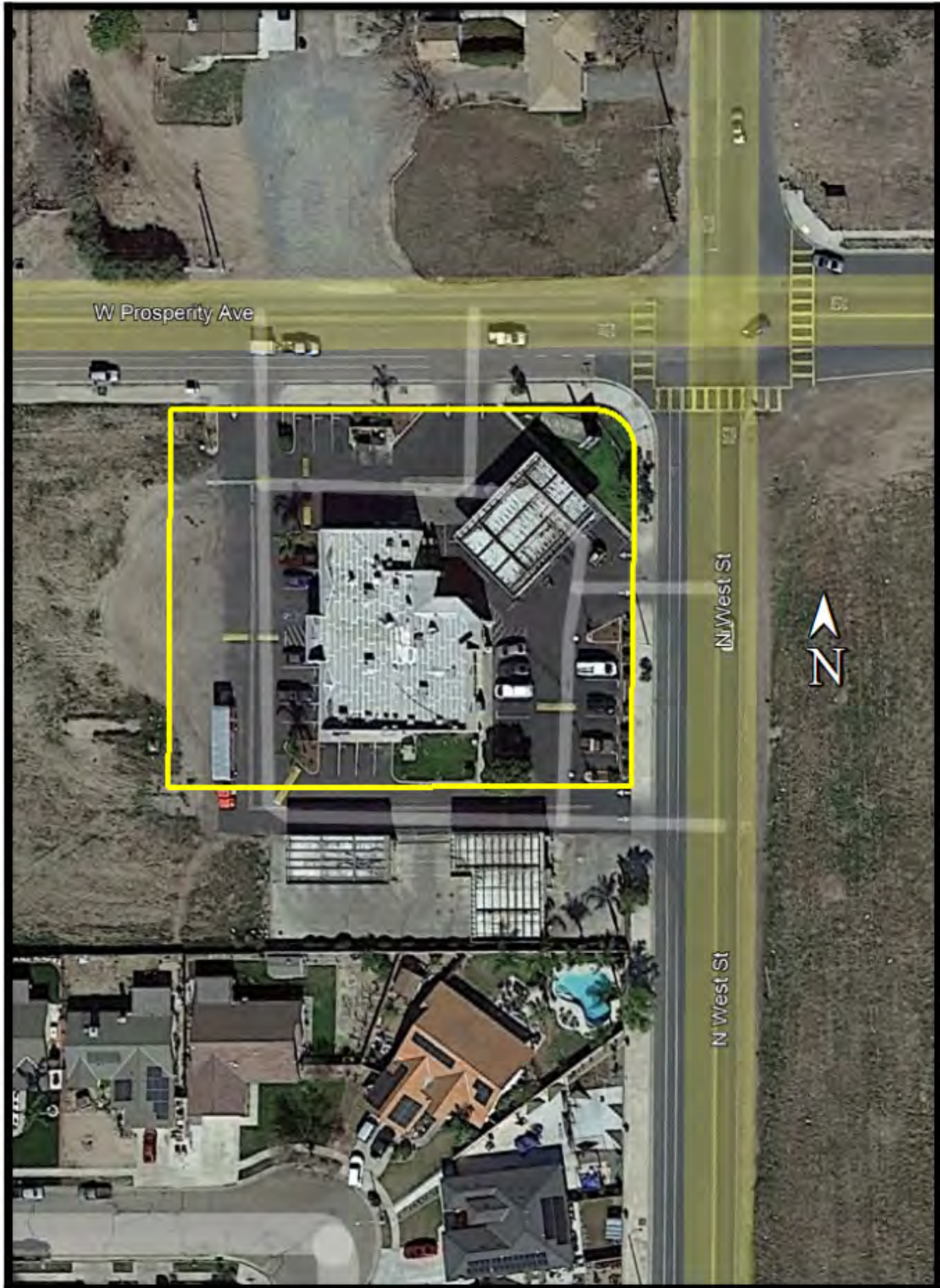
There will be a need to make some minor adjustment to the sprinkler system in order to properly irrigate the remaining grass. The project improvements are intended to improve traffic control and intersection safety. While this will be generally beneficial to properties in the area, the project is not likely to measurably increase the value of the subject remainder.

Final Total Value Opinion:

The final total value opinion is equal to the value of the takings plus the net severance damages to the remainder, which totals \$3,664.23 and is rounded to \$3,700.

Value of Takings + Net Severance Damages = Final Total Value Opinion

$$\mathbf{\$2,664.23 + \$1,000 = \$3,664.23 \cong \$3,700}$$



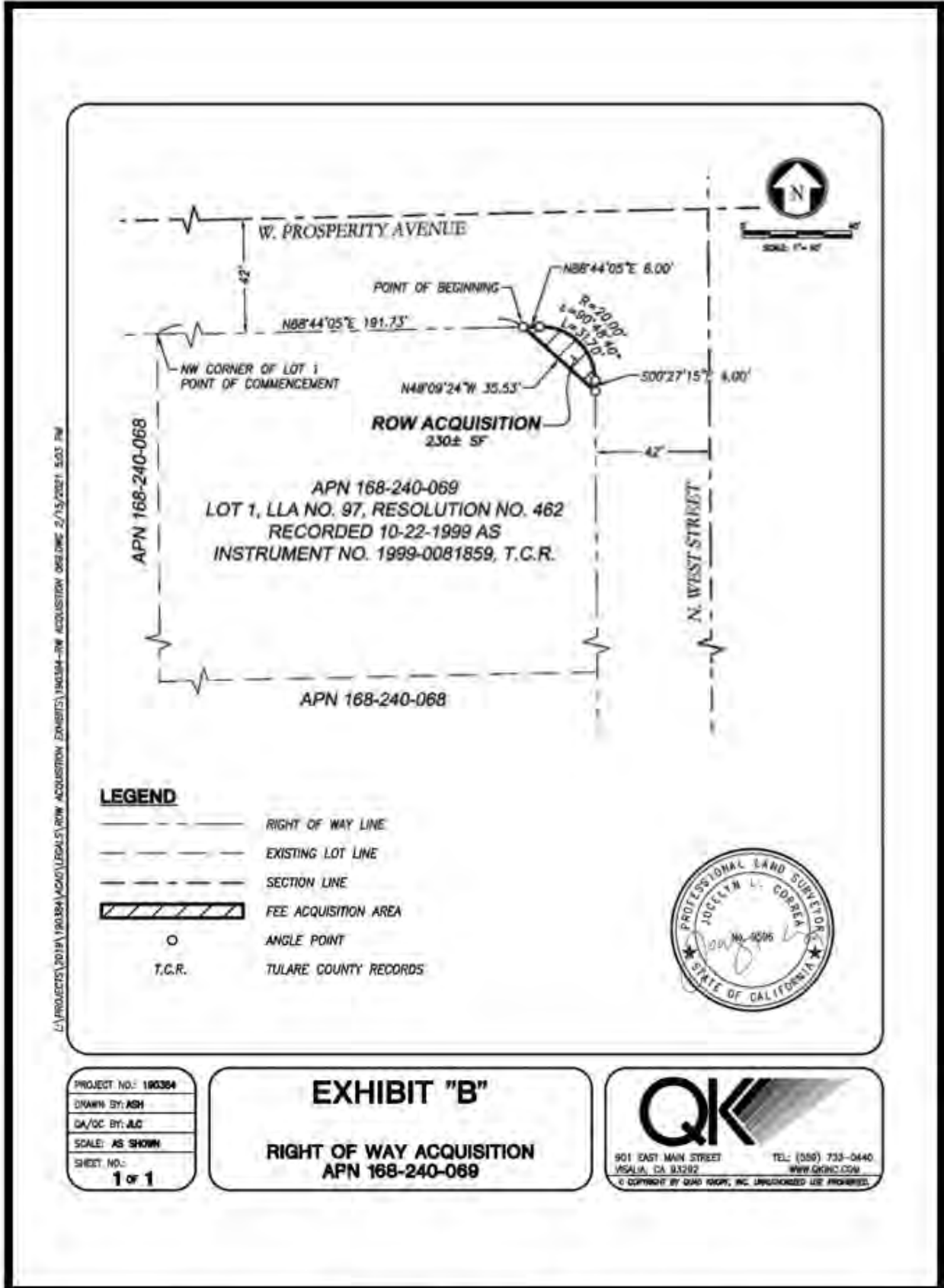
AERIAL PHOTOGRAPH



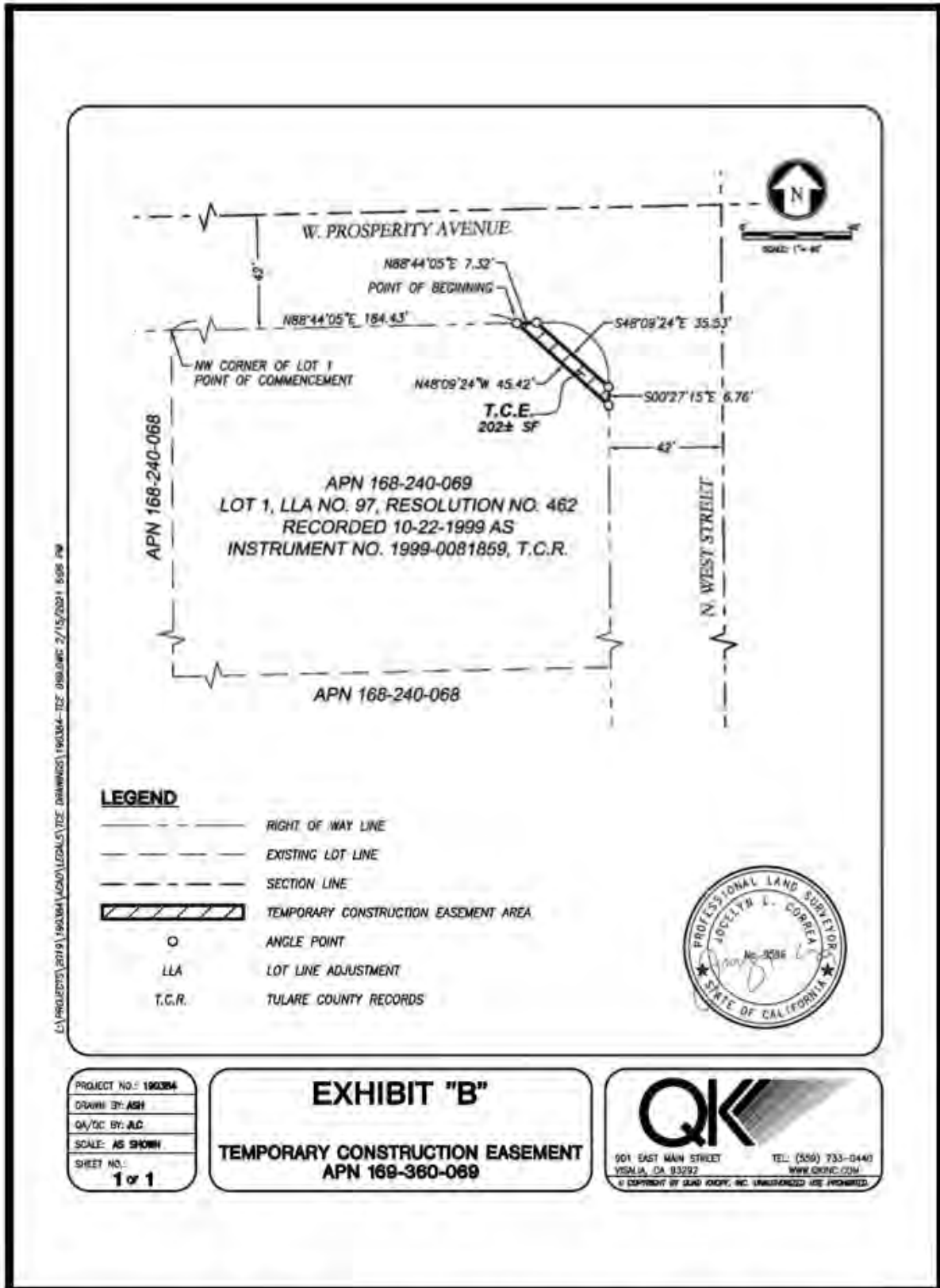
View of the subject property looking west from the West Street frontage.



View of the subject property as seen from its northeast corner at the intersection of Prosperity Avenue and West Street.



PLAT OF THE RIGHT-OF-WAY TAKING



PLAT OF THE TEMPORARY EASEMENT TAKING



View of the ROW and TCE take areas looking northwesterly from the West Street frontage.



View of the ROW and TCE take areas looking southeasterly from Prosperity Avenue across the northeast corner of the parcel.

AGENDA ITEM: Consent 11

**CITY OF TULARE
AGENDA ITEM TRANSMITTAL SHEET**

Submitting Department: City Attorney

For Council Meeting of: October 18, 2022

Documents Attached: Ordinance Resolution Other None

AGENDA ITEM:

Approve an amendment to City Manager Marc Mondell's Employment Agreement.

IS PUBLIC HEARING REQUIRED: Yes No

BACKGROUND/EXPLANATION:

An amendment to City Manager Marc Mondell's Employment Agreement calls for a ten percent (10%) increase in salary which would bring his salary to two hundred, twenty-five thousand, three hundred, fifty-three dollars and seventy cents (\$225,353.70). The Amendment also provides an additional \$2,500 in deferred compensation bringing his total deferred compensation to an annual amount of \$13,400.00.

STAFF RECOMMENDATION:

Approve an amendment to City Manager Marc Mondell's Employment Agreement.

CITY ATTORNEY REVIEW/COMMENTS: Yes N/A

IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED: Yes No N/A

FUNDING SOURCE/ACCOUNT NUMBER:

N/A

Submitted by: Mario Zamora

Title: City Attorney

Date: October 11, 2022

City Manager Approval: _____

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

This First Amendment to Employment Agreement is made on the _____ day of October, 2022, by and between the CITY OF TULARE, a municipal corporation (“City”), and MARC MONDELL (“Employee”), with respect to that Employment Agreement (“Agreement”) attached hereto as Exhibit 1, effective on October 22, 2022. City and Employee are collectively referred to herein as the “Parties” and singularly as a “Party.”

For valuable consideration, the receipt of which is hereby acknowledged, the Parties amend the Agreement as follows:

1. The annual salary as stated in Section 4 shall be amended to two hundred, twenty-five thousand, three hundred, fifty-three dollars and seventy cents (\$225,353.70).
2. The deferred compensation as stated in Section 5G shall be amended to a City contribution of five hundred fifteen dollars and thirty-eight cents (\$515.38) (total of \$13,400 annually) to Employee’s deferred contribution plan.
3. All terms and conditions of the Agreement not otherwise amended herein shall remain in full force and effect.

Dated: _____

CITY OF TULARE

By: _____
Dennis Mederos
Mayor

Dated: _____

EMPLOYEE

By: _____
Marc Mondell

ATTEST:

By: _____
City Clerk

EXHIBIT 1

**CITY OF TULARE
CITY MANAGER
EMPLOYMENT AGREEMENT**

This Employment Agreement (“**Agreement**”) is made and entered into the 27th day of September, 2021, by and between the City of Tulare, California, a municipal corporation (“**City**”), and Marc Mondell (“**Employee**”).

SECTION 1. DUTIES.

City hereby employs Employee as City Manager to perform the functions and duties specified in the laws of the State of California and Ordinances and Resolutions of the City and to perform such other duties and functions as the Tulare City Council (“**Council**”) shall from time-to-time assign.

SECTION 2. TERM OF AGREEMENT.

The terms of this Agreement shall commence September 27, 2021 (“**Commencement Date**”), and shall continue through September 27, 2024, or until terminated as set forth below.

SECTION 3. TERMINATION OF AGREEMENT.

A. Employee shall serve at the pleasure of the Council and shall be an “**AT-WILL**” employee of City and may be terminated with or without cause.

B. This employment relationship may be terminated as follows:

1. Automatic termination upon expiration of this Agreement.
2. By Employee, with prior written notice to City of at least thirty (30) calendar days.

3. By City, without cause, upon City’s cash payment to Employee, subject to withholdings, of a severance amount equal to six (6) months of aggregate then-current annual salary if Employee is terminated without cause; provided however, in accordance with California Government Code Section 53260, the severance amount will not exceed an amount equal to Employee’s then-current monthly salary multiplied by the number of months remaining on the unexpired term of this Agreement.

4. By City, without payment of any severance or additional compensation past the termination date, for any cause for disciplinary action under the City’s personnel policies, as well as any of the following:

- a) Act of immoral or unprofessional conduct;
- b) Violation of or refusal to obey any federal, state, or municipal laws or regulations;
- c) Conviction of a felony;
- d) Material breach of this Agreement; or

e) Such other action as may be inconsistent with Employee's duties under this Agreement.

C. Notwithstanding the foregoing provisions, Employee's employment shall not be terminated, other than for cause, during or within a period of one hundred eighty (180) calendar days following the date of a regular election for one (1) or more seats on the Council.

D. Employee shall remain in the exclusive employ of City and shall not accept other employment until such time as Employee resigns or is terminated by City, or upon written approval of City.

SECTION 4. COMPENSATION.

In exchange for the services provided by Employee under this Agreement, City will pay Employee an annual salary of two hundred and four thousand, eight hundred and sixty-seven dollars (\$204,867.00), which shall be paid in installments at the same time other employees of City are paid. Adjustments to Employee's compensation shall occur only through the amendment of this Agreement.

SECTION 5. BENEFITS.

A. In accordance with the California Public Employees' Pension Reform Act of 2013 ("PEPRA"), the City of Tulare offers the retirement formula of 2% @ 62 to new CalPERS members beginning January 1, 2013 with three (3) year's final compensation. Employee shall be considered a PEPRA member based upon his initial membership into CalPERS. In keeping with the provisions in place for the City's PEPRA miscellaneous employees, Employee shall pay the current PEPRA employee share and an additional 3% of the City's share. This rate is subject to change on a fiscal year basis.

B. Employee will receive reimbursement for moving expenses up to ten thousand dollars (\$10,000.00) if Employee relocates within City limits or up to five thousand dollars (\$5,000.00) if not in City limits but to a Tulare address. If Employee moves to a location outside of City limits and not a Tulare address, then he shall receive no reimbursement. Employee must request reimbursement within eighteen (18) months after September 27, 2021 and must provide receipts or other evidence of payment.

C. City will provide term life insurance for Employee in the amount of two hundred and fifty thousand dollars (\$250,000.00).

D. Health, dental, and vision insurance coverage offered to City employees shall be available to Employee.

E. Employee will receive a vehicle allowance of five hundred dollars (\$500.00) per month to compensate for the use of his personal vehicle in carrying out his employment responsibilities. Payment of the vehicle allowance will occur on a bi-weekly basis through payroll. Employee will maintain liability insurance on Employee's vehicle used for work purposes and will be responsible for all expenses associated with the ownership, operation, maintenance, repair, and regular replacement of such vehicle. Employee's automobile liability policy shall have a limit no

less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per accident for bodily injury and property damage. Employee shall maintain such insurance coverage through an insurer possessing a current A.M. Best's rating of no less than A:VII. Employee will cause his insurer to issue endorsements identifying City as an additional insured; indicating that Employee's liability coverage is primary and non-contributory with respect to any liability coverage maintained by City; and waiving the right of subrogation with respect to City. Employee's automobile liability policy will be endorsed provide that coverage shall not be canceled without notice to City. Upon execution of this Agreement, Employee will submit to City a Certificate of Insurance and the required endorsements as evidence of the satisfaction of the insurance requirements set forth herein, if a fleet vehicle is not provided for his use.

F. Employee will receive a cell phone allowance of one hundred dollars (\$100.00) per month to compensate for the use of his personal cell phone in carrying out his employment responsibilities. Payment of the cell phone allowance will occur on a bi-weekly basis through payroll.

G. City shall make available to Employee a deferred compensation plan administered by a vendor providing services to City employees. The City shall contribute four hundred and nineteen dollars and twenty-three cents (\$419.23) per pay period (total of \$10,900 annually) to Employee's deferred compensation plan.

SECTION 6. LEAVE.

A. All leaves are accrued on a pay period by pay period basis. Leave provisions, requirements, procedures and payouts as outlined in the City's Personnel Rules and Regulations shall apply.

B. Employee shall accrue vacation leave at the rate of 3.07 hours per pay period (eighty (80) hours annually). This accrued vacation leave will be available for use upon completion of six (6) months of continuous service. Employee shall be granted an initial leave bank of forty (40) hours. The 40-hour leave bank will be effective and available for use on the effective date of this agreement.

C. Employee shall accrue sick leave at a rate of 3.69 hours per pay period (ninety-six (96) hours annually). This accrued sick leave will be available for use upon completion of six (6) months of continuous service. Employee shall be granted an initial sick leave bank of forty (40) hours. The 40-hour sick leave bank will be effective and available for use on the effective date of this agreement.

D. Employee will be granted Management Leave in the amount of eighty-eight (88) hours per fiscal year. Management leave cannot be accumulated from one fiscal year to the next. Employee will be credited with Management Leave each July and this leave bank must be used by the last full pay period the following June as outlined in the City's Personnel Rules and Regulations.

E. Employee will be granted additional leave of eight (8) hours for birthday leave and sixteen (16) hours of floating leave on a fiscal year basis. The provisions for use, accrual, and payment upon separation are outlined in the City's Personnel Rules and Regulations.

F. Except in an emergency, Employee will not be required to work on the holidays.

SECTION 7. PERFORMANCE EVALUATION.

A. The Council shall perform an evaluation of Employee's performance at the sixth (6th) month anniversary of the Commencement Date. Another evaluation shall occur at the one (1) year anniversary of the Commencement Date. Thereafter, City will annually evaluate Employee's performance.

B. Depending on the results of an evaluation, the parties may amend this Agreement to adjust Employee's compensation to reflect Employee's performance; for example, the Council's finding of employee's positive performance may result in the increase of Employee's salary or other compensation. Employee acknowledges that he is not entitled to any automatic increases in compensation, and adjustments to Employee's compensation are within the Council's sole discretion.

C. All evaluations will utilize a process, form, criteria, and format selected by the Council. A written evaluation shall be completed and delivered to Employee within thirty (30) calendar days after the completion of the Council's evaluation of Employee.

D. This provision does not limit Council's authority to perform additional evaluations of Employee's performance if necessary, including closed session items related thereto.

SECTION 8. PROFESSIONAL DEVELOPMENT.

City shall annually budget and allocate sufficient funds to pay the expenses of Employee's travel and subsistence while representing City at the Annual International City/County Management Association Conference, the Annual League of California Cities Conference, conferences of the City Managers' Department of the League of California Cities, and conferences or meetings of state committees or commissions upon which Employee serves as a member, said membership on said committees or commissions being subject to the approval of the Council, and for such other official meetings and/or travel as are reasonably necessary for Employee to carry out his responsibilities as City Manager.

SECTION 9. CREDIT CARD.

City will provide to Employee a credit card that Employee may utilize for City-related expenses. Employee shall only use City's credit card for City-related business and in accordance with the City's credit card policy, the terms of which are incorporated herein by reference. Any misuse of City's credit card shall be grounds for discipline, including immediate termination of employment for cause.

SECTION 10. EMPLOYEE'S DUTY TO REIMBURSE CITY.

A. If City terminates Employee without cause and Employee receives a severance amount pursuant to Section 3.B.(3) of this Agreement and Employee is convicted of a crime involving abuse of his office or position, as defined by California Government Code Section

53243.4, as may be amended, Employee shall immediately reimburse City the full severance amount that Employee received from City.

B. Employee acknowledges that this Agreement is subject to California Government Code Sections 53243-53243.4, the terms of which are incorporated herein by reference, that require Employee to reimburse City for certain City expenditures if Employee is convicted of a crime involving abuse of his office or position, as defined by California Government Code Section 53243.4. Employee will promptly reimburse City if required to do so pursuant to California Government Code Sections 53243-53243.4, and if Employees fails to immediately reimburse City, Employee will pay attorneys' fees and costs to City for the cost of litigation to recover said amounts subject to California Government Code Section 53243.4.

SECTION 11. BONDING.

City shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

SECTION 12. NOTICES.

Notices pursuant to this Agreement shall be in writing given by deposit in the custody of the United States Postal Service (certified mail, return receipt requested) or deposit in the custody of a nationally recognized delivery service, addressed as follows:

CITY:
City of Tulare
Attn: Mayor
411 E. Kern Ave
Tulare, CA 93274

EMPLOYEE:
Marc Mondell

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to the civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission of the United States Postal Service or nationally recognized delivery service.

SECTION 13. MISCELLANEOUS PROVISIONS.

A. The text of this Agreement and the documents incorporated herein by reference shall constitute the entire agreement between the parties, and supersede any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of Employee by City. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee. This Agreement shall not be assignable.

C. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

D. Any modification of this Agreement will be effective only if it is in writing and signed by both Employee and City.

E. No waiver or any breach of any term, condition or provision of this Agreement shall constitute a waiver of any other breach of any other term, condition or provision and no consent of one (1) party to any departures by the other shall be effective unless such waiver shall be in writing and shall be signed by the non-waiving party or a duly authorized agent thereof and the same shall be effective only for a period, on the conditions, and for the specific instances and purposes specified in such writing.

F. This Agreement shall be governed by the laws of the State of California. The venue for any and all litigation arising from this Agreement shall be in the Superior Court for the County of Tulare, California, if in state court, or the United States District Court, Eastern District of California, if in federal court.

G. In the event legal action is brought to enforce this Agreement, the party prevailing in such action shall be entitled to his/its reasonable attorneys' fees and costs, which will be paid by the non-prevailing party, except as to enforce Section 10, which contains its own attorneys' fee provision.

IN WITNESS WHEREOF, the parties have executed this Agreement in Tulare, California.

EMPLOYEE

By: *Marc Mondell*
MARC MONDELL

APPROVED AS TO FORM

GRISWOLD, LaSALLE, COBB,
DOWD & GIN, L.L.P., City Attorneys

By: *Mario U. Zamora*
MARIO U. ZAMORA

CITY OF TULARE

By: *Dennis A. Mederos*
DENNIS A. MEDEROS
Mayor

ATTEST

By: *Roxanne Yoder*
ROXANNE YODER
City Clerk

AGENDA ITEM: Public Hearing 1

**CITY OF TULARE
AGENDA ITEM TRANSMITTAL SHEET**

Submitting Department: Community & Economic Development / Building

For Council Meeting of: October 18, 2022

Documents Attached: Ordinance Resolution Other None

AGENDA ITEM:

Pass-to-print an ordinance amending Title 4 of the Tulare Municipal Code to adopt Appendix X of the latest edition of the California Residential Code and Appendix O of the latest edition of the California Building Code, and commencing on January 1, 2023, Appendix Z of the 2022 California Residential Code or Appendix P of the 2022 California Building Code, as applicable.

IS PUBLIC HEARING REQUIRED: Yes No

BACKGROUND/EXPLANATION:

The City of Tulare has made progress towards managing its homeless situation. However, the City continues to find that the number of homes is insufficient, that a significant portion of homeless are without the ability to obtain shelter, and that the situation has resulted in a threat to the health and safety of those persons. The City has also found that there is an ongoing need to expand the number of shelters within the City. The City of Tulare also affirms the City’s commitment to managing homelessness and offering shelter and service options for those living without shelter in our communities.

During a declared shelter crisis, Government Code Section 8698.1 allows a local agency to suspend state and local statutes, regulations, or ordinances prescribing standards for housing, health, or safety to the extent reasonably necessary to mitigate impacts of the crisis. The statute also encourages agencies to adopt minimum local health and safety standards that will apply in lieu of the California Building Standards Code to additional public facilities used to provide emergency housing.

The proposed policy outlines the minimum fire and life safety requirements that will apply during a declared shelter crisis in the City of Tulare on properties or facilities owned or leased by the City of Tulare.

STAFF RECOMMENDATION:

Pass-to-print an ordinance amending Title 4 of the Tulare Municipal Code to adopt Appendix X of the latest edition of the California Residential Code and Appendix O of the latest edition of the California Building Code, and commencing on January 1, 2023, Appendix Z of the 2022 California Residential Code or Appendix P of the 2022 California Building Code, as applicable.

CITY ATTORNEY REVIEW/COMMENTS: Yes N/A

IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED: Yes No N/A

FUNDING SOURCE/ACCOUNT NUMBER:

N/A

Submitted by: Traci Myers

Title: Community & Economic Development Director

Date: October 11, 2022

City Manager Approval: _____

ORDINANCE 2022-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TULARE AMENDING TITLE 4 OF THE TULARE MUNICIPAL CODE TO ADOPT APPENDIX X OF THE LATEST EDITION OF THE CALIFORNIA RESIDENTIAL CODE AND APPENDIX O OF THE LATEST EDITION OF THE CALIFORNIA BUILDING CODE, AND COMMENCING ON JANUARY 1, 2023, APPENDIX Z OF THE 2022 CALIFORNIA RESIDENTIAL CODE OR APPENDIX P OF THE 2022 CALIFORNIA BUILDING CODE, AS APPLICABLE.

WHEREAS, on July 19, 2022, the City of Tulare adopted Resolution 2022-35 declaring that a shelter crisis exists in the City pursuant to Government Code §§ 8698 et seq.; and

WHEREAS, the City's citywide 2022 point-in-time count identified 212 homeless individuals, of which 31 (14.62%) were sheltered and 181 (85.38%) were unsheltered; and

WHEREAS, although the City has made progress towards combating its homeless situation, the City continues to find that the number of homes is insufficient, that a significant portion of homeless are without the ability to obtain shelter, and that the situation has resulted in a threat to the health and safety of those persons and there is a continuing need to expand the number of shelters within the City; and

WHEREAS, the City Council affirms the City's commitment to combatting homelessness and creating or augmenting a continuum of shelter and service options for those living without shelter in our communities.

NOW, THEREFORE, be it ordained by the Council of the City of Tulare as follows:

SECTION 1. This Ordinance shall be uncodified.

SECTION 2. This Ordinance shall remain in effect as long as the City's declaration that shelter crisis remains in effect.

SECTION 3. Pursuant to Government Code § 8698.2, the City Council hereby reaffirms that a shelter crisis exists in City of Tulare.

SECTION 4. The local minimum building and life safety standards attached hereto as Exhibit A, which is incorporated herein by reference, are adopted within the City during the pendency of the shelter crisis. These standards and the suspension of law per Government Code § 8698.1(b) shall only apply to emergency shelters installed on property owned or leased by the City. An emergency shelter that is established pursuant to this Ordinance may only be operated for a period allowed under Government Code § 8698.1(c)(3), commencing from the first day an individual uses the shelter for housing. In the event the shelter is proposed for use longer than Ninety (90) days, the local Chief Building Official and Fire Marshal shall have the right to establish

more restrictive standards.

SECTION 5. The City Council hereby finds that the adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section 15061(b)(3), in that it can be seen with certainty that the adoption of the ordinance is not a project that may have a significant effect on the environment.

SECTION 6. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 7. Pursuant to Section 15 of the Charter of the City of Tulare, it is ordered that a summary of this ordinance be issued in a daily newspaper of general circulation in the City of Tulare for one day and that the ordinance be available in at least one public place at the City offices. This ordinance shall be in full force and effect 30 days from and after the date of its adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Tulare on the XX day of XXXX, 2022.

President of the Council and Ex-Officio
Mayor of the City of Tulare

ATTEST:

Chief Deputy City Clerk and Clerk of the
Council of the City of Tulare

STATE OF CALIFORNIA }
 COUNTY OF TULARE } ss.
 CITY OF TULARE }

I, Marc Mondell, City Clerk of the City of Tulare and Clerk of the Council of said city, do hereby certify that the foregoing ordinance was introduced at a regular meeting of the City Council on October 18, 2022, and finally passed, approved, and adopted at a regular meeting held on November 1, 2022, by the following vote:

AYES: Councilmembers
 NOES: None
 ABSENT: None
 ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of the City of Tulare, California, this XX day of XXXX, 20XX.

Marc Mondell, City Clerk

By Melissa Hermann, Chief Deputy City Clerk

CERTIFICATE OF PUBLICATION

STATE OF CALIFORNIA }
 COUNTY OF TULARE } ss.
 CITY OF TULARE }

I, Marc Mondell, City Clerk of the City of Tulare and Clerk of the Council of said city, do hereby certify that a summary of Ordinance 20XX-XX has been published in the Tulare Advance Register, a newspaper of general circulation on XXXX XX, 20XX.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of the City of Tulare, California, this _____ day of XXXX, 20XX.

Marc Mondell, City Clerk

By Melissa Hermann, Chief Deputy City Clerk

EXHIBIT A

MINIMUM BUILDING AND LIFE SAFETY STANDARDS FOR TEMPORARY HOMELESS SHELTERS ON CITY PROPERTY**Background and Authority:**

During a declared shelter crisis, Government Code Section 8698.1 allows a local agency to suspend state and local statutes, regulations, or ordinances prescribing standards for housing, health, or safety to the extent reasonably necessary to mitigate impacts of the crisis. The statute also encourages agencies to adopt minimum local health and safety standards that will apply in lieu of the California Building Standards Code to additional public facilities used to provide emergency housing.

Application:

This policy outlines the minimum fire and life safety requirements that will apply during a declared shelter crisis in the City of Tulare on properties or facilities owned or leased by the City of Tulare.

Standards:

1. Emergency homeless shelter facilities shall:
 - a. Have an approved set of plans stamped and signed by an architect or engineer, as applicable, which includes the following (contact the Building Division for the complete list of Minimum Submittal Requirements):
 - i. Site Plan;
 - ii. Floor Plan;
 - iii. Mechanical Plan
 - iv. Electrical plan;
 - v. Plumbing plan;
 - vi. Storm water plan; and
 - vii. Through December 31, 2022, Accessibility Plan with notes and details showing compliance with Chapter 11B of the 2019 California Building Code, and commencing on January 1, 2023, with Chapter 11B of the 2022 California Building Code.
 - b. Have an emergency preparedness plan for each facility.
 - c. Provide adequate access for emergency service vehicles.
 - d. Have a fire safety plan for the facility approved by the local fire authority. At a minimum, the facility shall have fire extinguishers centrally located throughout the facility. Fire extinguishers shall have regularly scheduled servicing and maintenance.
 - e. Provide a minimum of three (3) feet of shelter-to-shelter separation.
 - f. Provide a minimum of five (5) feet separation between any property line and a shelter unit.
 - g. Provide a facility supervisor to monitor compliance with facility rules and regulations, and to notify emergency services in the event of an emergency.

done in any manner in violation of the provisions of the California codes or any other laws or ordinances of this jurisdiction.

6. The Chief Building Official and Fire Marshal (or local fire authority) shall have the authority to establish any additional building and life safety standards on a case-by-case or as-needed basis.

AGENDA ITEM: General Business 1

**CITY OF TULARE
AGENDA ITEM TRANSMITTAL SHEET**

Submitting Department: Engineering Services / Project Management

For Council Meeting of: October 18, 2022

Documents Attached: Ordinance Resolution Other None

AGENDA ITEM:

Receive an update and presentation of the 30% progress plans for the proposed Homeless Shelter facility (Project - FM0048) and provide direction regarding the proposed heating/cooling system alternatives thereto.

IS PUBLIC HEARING REQUIRED: Yes No

BACKGROUND/EXPLANATION:

Over the past several years, the City has been discussing the issue of homelessness, its impacts on the community, and possible solutions. With the restrictions that resulted from the 2018 Martin vs. Boise court decision, cities cannot enforce anti-camping ordinances if there are not a sufficient number of shelter beds available for the homeless population.

At the May 17, 2022 City Council Meeting, Staff presented a memorandum outlining a conceptual plan, project phasing, potential lease options, and an operational plan for Council's review and consideration. The primary recommendation of the memorandum was that the City partner with the County of Tulare to design, construct, and operate an emergency homeless shelter located on the County's property at East O'Neal Avenue, east of "K" Street. The City Council approved and directed Staff to move forward with the project as presented.

On July 19, 2022, the City Council approved a contract with 4 Creeks for architectural and engineering design services for a permanent homeless shelter located on the vacant land at the Tulare County Health and Human Services facility. The initial intent of the project was to construct it in three phases. The first phase included a temporary encampment area with restroom facilities and a site office building. The permanent shelter structure with two separate training rooms and a food pantry were to be constructed in the second phase. The third and final phase was to add a modular village and additional amenities, such as storage containers, a kennel, a garden area, and an exercise court. However, due to concerns expressed by the County, the temporary homeless encampment will be constructed in a separate location. It is anticipated that the construction of the permanent facility will now be completed in either one or two phases.

As promised, an update and presentation of the design and scope of work is being brought back to the Council for consideration and comment prior to proceeding with the completion of the design. Specifically, Staff is requesting feedback with regard to the proposed heating and cooling systems being designed in the main shelter building. The main building is planned to encompass approximately 20,000 square feet with a capacity of 200 beds easily scalable upwards to 400 beds. It will include both common areas and designated sleeping areas, with varying degrees of accommodations and privacy. To address the conditioning of such a large space, two major factors must be considered when evaluating alternatives. First, what is

necessary for the alternatives to comply with Title 24 Energy Code requirements of the building code? Second, what are the resulting construction and operational costs associated with those alternatives?

Air Conditioning and Full Heating

To fully condition a space, Title 24 Energy Code requires certain building standards/ratings be met, including minimum levels of building insulation. For a building of this type and use, additional measures would need to be taken, such as constructing interior walls to enclose/protect the insulation from damage/vandalism. In regards to performance, on a 100-degree day a full air-conditioning system could be expected to cool a space of this size to 75 degrees. On a 45-degree night, this system could be expected to warm the building up to 72 degrees.

Evaporative Coolers and Reduced Heating

Alternatively, with the use of evaporative coolers, fully insulating the building could be avoided and Title 24 Energy Code requirements would not apply for the cooling system. However, the Title 24 Energy Code requirements would impact the design of the heating system. To meet the efficiency requirements of the code, the levels of heating that could be provided would be reduced. With regards to system performance, on a 100-degree day an evaporative cooling system can be expected to cool a space of this size to 80 degrees. With the reduced heating system, on a 45-degree night, this system would be expected to warm the building up to 55 degrees. While this system alternative would not achieve the same temperature differential as the air conditioning and full heating system, evaporative cooling systems are much more cost efficient to construct and operate, using as much as 50% less electricity.

Currently, the cost differential between the evaporative cooling and reduced heating system and an air conditioning and full heating system (with associated/required energy efficiency upgrades) is estimated at \$1.1 million. In either alternative, large ceiling fans will be utilized throughout the shelter space to provide air circulation. In weighing the alternatives, there is a need to consider the intent, function, and desired performance of the facility, while recognizing the significant difference in initial capital costs and ongoing operational costs.

STAFF RECOMMENDATION:

Receive an update and presentation of the 30% progress plans for the proposed Homeless Shelter facility (Project - FM0048) and provide direction regarding the proposed heating/cooling system alternatives thereto.

CITY ATTORNEY REVIEW/COMMENTS: Yes N/A

IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED: Yes No N/A

FUNDING SOURCE/ACCOUNT NUMBER:

FM0048-040-0200

Submitted by: Nick Bartsch

Title: Senior Project Manager

Date: October 11, 2022

City Manager Approval: _____

AGENDA ITEM: General Business 2

**CITY OF TULARE
AGENDA ITEM TRANSMITTAL SHEET**

Submitting Department: City Manager

For Council Meeting of: October 18, 2022

Documents Attached: Ordinance Resolution Other None

AGENDA ITEM:

Receive the Operational Plan for the Temporary Homeless Encampment Area and provide direction thereto.

IS PUBLIC HEARING REQUIRED: Yes No

BACKGROUND/EXPLANATION:

As discussed at the September 20, 2022, Council meeting, staff has prepared an operational plan for the temporary homeless encampment area to be located at the northeast corner of Walnut Avenue and O Street. The operational plan is attached for Council review and consideration.

STAFF RECOMMENDATION:

Receive the Operational Plan for the Temporary Homeless Encampment Area and provide direction thereto.

CITY ATTORNEY REVIEW/COMMENTS: Yes N/A

IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED: Yes No N/A

FUNDING SOURCE/ACCOUNT NUMBER:

N/A

Submitted by: Marc Mondell

Title: City Manager

Date: October 12, 2022

City Manager Approval: _____

Operational Plan for Temporary Homeless Encampment Area

As a result of the 2018 Boise versus Martin legal decision, the City is unable to prohibit homeless individuals from camping on public property unless the City has an adequate number of beds available to support the homeless population. Therefore, the City is proceeding with developing an Emergency Homeless Shelter (Homeless Shelter) at Tulare County's Hillman Health Center which will serve as the community's long-term solution to managing homelessness. The City's initial concept envisioned a three-phase development. The first phase would have created a Temporary Homeless Encampment Area (Temporary Encampment) within a fenced perimeter to provide an attractive alternative for homeless individuals where they could immediately start to receive services. Ongoing negotiations with Tulare County on the lease agreement for the Homeless Shelter are progressing and staff anticipates bringing the lease forward to City Council for approval in November however, the County has declined the opportunity to locate the Temporary Encampment on their property.

Given that the anticipated timeline to complete design and construction of the Homeless Shelter is twelve to eighteen months, an alternative short-term solution is needed to provide a Temporary Encampment where homeless individuals can be supported. A suitable site would be free from the inherent risks of being located adjacent to an active rail line, and could serve as a centralized point of service for those entities seeking to meet the needs of those in our community experiencing homelessness. The City has purchased the 2-acre property located at the northeast corner of Walnut Avenue and "O" Street as the location for the Temporary Encampment. Its close proximity to the Hillman Health Center and the services provided at that location will be a great benefit to individuals at the Temporary Encampment, and will also facility an easy relocation to the future Homeless Shelter when it is available.



Proposed Temporary Encampment – Vicinity Map



Proposed Temporary Encampment – Street View

In its initial stage, the Temporary Encampment is intended to serve as a relocation site for the 60+ individuals located within the designated area identified in the City's current Encampment Resolution Funding (ERF) Program. The Temporary Encampment would have an operational focus of providing the ERF Program services at a superior level to what is currently provided at the designated area, with additional measures to address safety, sanitary conditions, and convenience for those utilizing the facility. Subsequent expansion of the facilities and services provided at the Temporary Encampment to include individuals outside of the ERF Program will occur as additional funding sources are secured, either through supplemental ERF grants or other eligible funding sources. Obtaining additional grant funding may require the preparation of a viable project plan and involve a competitive grant application process.

Prior to and subsequent to the ERF Program grant award and commencement of associated services, the City and Union Pacific Railroad have been dealing with ongoing concerns regarding pedestrian/train conflicts. There have been 12 fatalities resulting from pedestrian vs. train collisions since 2010, including 2 recently on the same day. Most, if not all, of the incidents are believed to have been intentional (i.e., suicide) and involving homeless individuals. This problem is clearly exacerbated by having multiple make-shift encampments within close proximity to an active rail line. The designated area identified in the City's ERF Program is adjacent to the UPRR tracks, presenting significant safety concerns for inhabitants. The City has determined that these concerns can only be adequately addressed through the physical relocation of homeless individuals to the Temporary Encampment.

The City of Tulare successfully applied for and received a funding allocation of \$1,566,504 through the ERF Program, with the original project plan identifying the provision of services to homeless individuals in existing, long-standing encampment sites along the Union Pacific Railroad in the vicinity of Centennial Park and Rotary Skate Park. Through the services provided, the ERF Program objectives of transitioning homeless individuals to permanent supportive housing and the restoration of designated encampment sites to their intended use may be achieved. The services provided under the ERF Program will be relocated to the Temporary Encampment to include the following:

Services Identified in City's ERF Program Application

1. Direct Services – Case Management. One full-time employee (FTE) will provide street outreach, case management, and housing navigation services for the estimated 57 clients five days per week. The FTE will be sourced through one of the non-profit organizations of Kings Tulare CoC, Salt+Light Works, and Kings View.
2. Direct Services – Project Supervision. One manager from each of the three non-profit organizations of Kings Tulare CoC, Salt+Light Works, and Kings View will oversee, train, and offer regular technical assistance to their respective case manager/Housing Navigator and the estimated 57 clients.
3. Direct Services – Mobile Shower and Bathroom Unit. The non-profit organization, Clean The World Global LLC, has manufactured and will operate and maintain a two-stall shower and bathroom trailer serving the temporary encampment facility. The trailer is a self-contained mobile unit that will be managed by one FTE and deployed in the field three- to two-days per week. The mobile unit includes an ADA accessible stall, a sharps container, awning, display tv / monitor, and technology to support the collection of client data.
4. Direct Services – Food and Palliative Relief Items. The non-profit organization Salt+Light Works will plan, implement, and maintain a food and palliative relief item (e.g., water bottles, clothing, hygiene kits) distribution service for unsheltered residents in the temporary encampment facility. This service will be available at least three-days per week, and involves multiple staff members responsible for effective implementation and coordination.
5. Direct Services – Medical Mobile Care Unit. Adventist Health will contribute the services of their Mobile Care Unit (MCU) team to assist unsheltered residents in the temporary encampment facility. The MCU is led by a team of physicians, medical assistants, and outreach staff. Collectively, the MCU delivers first aid, wound care, medical assessments, disability assessments, and referrals to primary care providers when applicable.
6. Direct Services – Homeless Multi-Disciplinary Team. The Tulare County Health and Human Services Agency will commit their Homeless Multi-Disciplinary Team (MDT) to engage and offer technical services to the unsheltered residents in the temporary encampment facility. The MDT consists of personnel from public health, human services, mental health, and fiscal divisions. This team offers benefits acquisition, alcohol and other drug counseling, and mental health assessment services.
7. Housing Options – Rent and Deposit Assistance. Through the ERF Program, the three case managers, in collaboration with City of Tulare staff, will execute a housing plan with upwards of 57 clients relocated to the temporary encampment facility from the prioritized encampment area. The housing plan will account for 12 months of rent and a standard rental deposit at available public and privately managed rental units. This subsidy is intended to facilitate an exit from homelessness to permanent housing, and to address housing affordability for at least one-year.

8. Sustainable Outcomes – Housing Stability Assistance. Through the ERF Program, the three case managers, in collaboration with City of Tulare staff, will provide funding to offset monthly utility and other household costs for upwards of 57 clients exiting homelessness from the prioritized encampment area. This subsidy is intended to address particular household costs prior to and/or after move-in, including standard monthly utilities as well as rental application fees, credit repair, and/ other costs necessary to secure and sustain housing for clients.
9. Sustainable Outcomes – Waste Removal Service. The City of Tulare Public Works Department will assist with collecting and disposing of existing and new waste accrued during the course of the two-year project ERF Program. The trash bin located at the temporary encampment facility will be serviced on a weekly, or as-needed, basis to address sanitation and general public health conditions.

Temporary Encampment Layout

The proposed layout of the Temporary Encampment is shown as Exhibit A. One hundred seventy-four (174) designated tent spaces with twenty (20) foot drive aisles meeting Fire Code requirements are provided. The typical designated tent space is twelve (12) feet wide and fifteen (15) feet deep. A common area with ten (10) picnic tables, four (4) BBQ grills, three (3) fire pits and lighting is provided in a central location. Space has also been allocated for a modular building to serve as a residence for a caretaker, which will require the addition of water and electrical service to the site. The temporary encampment facility will also feature portable restroom facilities, a designated area for mobile shower unit parking, trash enclosure areas, and space for four (4) converted shipping containers to provide secure storage for encampment residents.

Capital Improvements

Development of the Temporary Encampment will require the City to complete various capital improvements. These include:

- 1) Site Preparation
 - a. Site Grading – The 2-acre temporary encampment site will be cleared of vegetation and rough graded to ensure proper drainage, accommodate level tent spaces and provide on-site drive aisles and pathways that meet fire protection and accessibility standards.
 - b. Perimeter Fencing – The perimeter of the temporary encampment facility will be fenced with 6-ft high chain link fencing. At least two entrances, one on Walnut Avenue and one on “O” Street coinciding with driveway approaches into the site, will be left open without fencing to provide unhindered access for the encampment residents.
 - c. Driveway Approaches – Two (2) City standard driveway approaches would be constructed to access the temporary encampment facility, one located on Walnut Avenue and one located on “O” Street.
 - d. Decomposed Granite Drives – To provide access for emergency services, drive lanes consisting of decomposed granite over compacted native material will be constructed on the temporary encampment facility site. These drive aisles will meet the requirements of the City Fire Department.
 - e. Decomposed Granite Pathways – The walking paths between the designed tent spaces will be surfaced with compacted decomposed granite to provide all-weather access for residents.

- f. Encampment Area Lighting – Five (5) pole-mounted, overhead lighting fixtures will be installed within the temporary encampment facility to provide security lighting. Lighting levels will be kept to a reasonable level so as not to be a nuisance to encampment residents.

2) Sanitation Facilities

- a. Portable Restroom Facilities – Seven (7) portable restrooms, one of which will be ADA compliant, will be installed to serve encampment residents. The portable restroom units will be serviced regularly by contract forces. These items can later be relocated to the Homeless Shelter site at the Hillman Health Center campus.
- b. Handwash Stations – Three (3) handwash stations will be provided in conjunction with the portable restroom facilities. These items can later be relocated to the Homeless Shelter site at the Hillman Health Center campus.
- c. Solid Waste Collection – A 3-yard trash bin will be located on the temporary encampment facility, and will be serviced on a weekly basis to serve the encampment residents.

3) On-site Caretaker Facilities

- a. Modular Housing Unit – A modular structure will be placed within the encampment to provide residence for an on-site caretaker. The on-site caretaker’s responsibilities would be limited to observing and reporting on conditions at the temporary encampment facility, and coordinating with City staff to address concerns and schedule services.
- b. 2” Metered Water Service – A 2” metered water service with a backflow prevention device will be installed to provide a source of water for the temporary encampment facility caretaker residence.
- c. Electrical Service – Electrical service will be provided to the On-site Caretaker Modular Housing Unit. The service will also power a charging station located in the common area of the facility for encampment residents to recharge their electronic devices.

4) Resident Amenities

- a. Tents – Tents will be purchased and provided to individuals who relocate to the temporary encampment facility. The initial quantity purchased will be sixty (60) units to meet the needs of those individuals from the designated encampment area identified in the City’s ERF Program.
- b. Picnic Tables – Ten (10) picnic tables will be placed within a common area. The picnic tables will be constructed of concrete for durability, and will ultimately be relocated to the City’s Homeless Shelter facility.
- c. Umbrellas – To provide shade for the picnic tables, ten (10) umbrellas will be placed in conjunction with the picnic tables within the encampment common area.
- d. BBQ Grills – Four (4) raised BBQ grills will be placed within the encampment common area so that residents have an area to cook without being in close proximity to the tents.
- e. Fire Pits – Three (3) in-ground fire pits (or similar) will be placed within the encampment common area so that residents have an area to build warming fires without being in close proximity to the tents.
- f. Electrical Charging Station – A charging station will be provided within the encampment common area so that encampment residents can charge their electrical devices.

- g. Storage Containers – Four (4) 8’w x 20’l x 8’h locking storage containers will be purchased for the storage of encampment residents’ personally belongings and Temporary Encampment Facilities items (i.e., spare tents, umbrellas, etc.). Personal items to be stored within the storage containers will need to meet criteria to be specified by the City Fire Marshall.

- 5) Transportation – It is proposed that a used van be purchased to provide a means to transport encampment residents.

Table 1 – Capital Improvement Cost Estimate						
	Item	Quantity	Units	Unit Cost	Cost	Fund Source
1	Land Acquisition	2	AC	\$180,407	Completed	Surplus GF
2a	Site Grading	1	LS	\$15,000	\$15,000.00	Surplus GF
2b	Perimeter Fencing	1,094	LF	\$38.00	\$41,572.00	Surplus GF
2c	Driveway Approaches	400	SF	\$8.00	\$3,200.00	Surplus GF
2d	D.G. Surfacing – Drive Aisles	9,320	SF	\$1.10	\$10,252.00	Surplus GF
2e	D.G. Surfacing – Pathways	5,200	SF	\$1.10	\$5,720.00	Surplus GF
2f	Encampment Area Lighting	5	EA	\$3,500.00	\$17,500.00	Surplus GF
3a	Portable Restrooms (dual unit)	3	EA	\$3,500.00	\$10,500.00	Surplus GF
3b	ADA Compatible Restroom	1	EA	\$3,500.00	\$3,500.00	Surplus GF
3c	Handwash Stations	3	EA	\$1,500.00	\$4,500.00	Surplus GF
3d	Trash Bin (3-yard)	2	EA	\$1,200.00	\$2,400.00	Surplus GF
4a	Caretaker Facility	840	SF	\$120.00	\$103,680.00	Surplus GF
4b	2” Metered Water Service	1	EA	\$3,500.00	\$3,500.00	Surplus GF
4c	2” Backflow Preventer	1	EA	\$2,500.00	\$3,250.00	Surplus GF
4d	Electrical Service	1	LS	\$25,000.00	\$25,000.00	Surplus GF
5a	Tents	60	EA	\$150.00	\$9,000.00	ERF
5b	Picnic Tables	10	EA	\$3,000.00	\$30,000.00	Surplus GF
5c	BBQ Grills	4	EA	\$1,650.00	\$6,600.00	Surplus GF
5e	Storage Container	4	EA	\$3,800.00	\$15,200.00	Surplus GF
6	Vehicle Purchase – Used Van	1	EA	\$10,000.00	\$10,000.00	Surplus GF
	Contingency	1	LS	15%	\$105,000.00	
Total Capital Improvement Cost					\$444,186.00	

In addition, the City is negotiating a potential lease with the property owner to the north of the Temporary Encampment to allow for the parking of vehicles by those homeless individuals that are residing at the Temporary Encampment. If successful, there will be additional improvements necessary to allow for the parking area including; concrete drive aisle, fencing, gates, solar lighting, and security measures the total estimate of which is \$50,000. **Therefore, the total estimated capital improvement cost for the Temporary Encampment is \$500,000.**

Additional Operating Costs

The majority of the initial operating costs will be covered under the ERF Program. However, there will be other operating costs which may not be eligible under the ERF Program including; utility costs (electric, water, sewer, garbage), rent for the parking area (\pm \$11,250 for 18 months), and the cost of having a caretaker present in the evenings. The City is currently negotiating that cost with several potential organizations and will provide an update at a future date.



Example of Temporary Encampment Facility (City of Modesto, Beard Brook Park)



Example of Tent Shelters (City of Modesto, Beard Brook Park)



Example of Portable Restroom Facilities



Example of Portable Hand Wash Facilities



Example of Concrete Picnic Table



Example of Storage Container



Example of Modular Housing Unit (Caretaker Residence)

Temporary Encampment Operations

In its initial phase, the Temporary Encampment is intended to receive individuals relocated from the ERF Program designated encampment area until such time as they can receive permanent supportive housing. The City would need to work with individuals within the Temporary Encampment, and with the ERF Program service providers to relocate other individuals and services to the Temporary Encampment. The Temporary Encampment would serve as a low barrier encampment site. Operating guidelines would be developed based upon accepted industry standard practices for such facilities. It is proposed that the facility would have an on-site caretaker housed in a modular unit. The caretaker would be tasked with monitoring activities and conditions within the encampment, and would coordinate with City program administrators as needed to address issues that arise.

Preliminary Schedule

Staff will pursue an aggressive schedule to develop the proposed Temporary Encampment, with the goal of accepting residents from the ERF Program's designated encampment site by January, 2023.

Next Steps

Immediately following City Council approval of the operational plan, staff will finalize the design of the Temporary Encampment and start the process of specifying and procuring materials and equipment needed for the facility. Staff would also coordinate with Southern California Edison for electrical service to the facility, and with the affected ERF Program stakeholders and service providers for the seamless transfer of services once the facility becomes operational.

Future Phases

In its initial stage (Phase 1), the Temporary Encampment would focus on providing for the needs of individuals located within the designated encampment area identified in the City's current ERF Program. Subsequent expansion of the facilities and services provided at the Temporary Encampment could occur as additional funding sources are secured, either through supplemental ERF grants or other eligible funding sources. With the goal of expanding the ERF Program designated encampment area to include all remaining encampments along the UPRR corridor within the City limits, Staff will investigate the possibility of obtaining supplemental funding through the City's current ERF Program Grant. If that is not possible, opportunities to provide additional ERF Program funding through subsequent grant cycles, or through other programs will be investigated.