

**FOWLER CITY COUNCIL MEETING
AGENDA
JANUARY 5, 2021
7:00 P.M.
CITY COUNCIL CHAMBER
128 S. 5TH STREET
FOWLER, CA 93625**

This meeting will be conducted pursuant to the provisions of Paragraph 11 of the Governor's Executive Order N-25-20 which suspends certain requirements of the Ralph M. Brown Act, and as a response to mitigating the spread of COVID-19, the meeting will not be open to the public. The telephone number listed below will provide access to the City Council meeting via teleconference.

Please note: when joining the meeting you will be asked your name which will be used to identify you during any public comment period.

**Telephone Number: 978-990-5175
Meeting ID: 494026#**

It is requested that any member of the public attending while on the teleconference to have his/her/their phone set on "mute" to eliminate background noise or other interference from telephonic participation.

Any writing or document that is a public record and provided to a majority of the City Council regarding an open session item on the agenda will be made available for public inspection at City Hall, in the City Clerk's office, during normal business hours. In addition, such writings and documents may be posted on the City's website at www.fowlerciv.org.

1. Meeting called to order
2. Roll call
3. Public Presentations - (This portion of the meeting reserved for persons desiring to address the Council on any matter not described on this agenda. Presentations are limited to 5 minutes per person and no more than 15 minutes per topic.)

With respect to the approval of resolutions and ordinances, the reading of the title thereto shall be deemed a motion to waive a reading of the complete resolution or ordinance and unless there is a request by a Councilmember that the resolution or ordinance be read in full, further reading of the resolution or ordinance shall be deemed waived by unanimous consent of the Council.

4. Communications

5. Staff Reports

A) City Engineer's Report

- ◆ Consider/Adopt Resolution No. 2486, "A Resolution of the City Council of the City of Fowler Approving Final Tract Map No. 6274 and Accepting Street Dedication and Easements"

B) City Manager's Report

- ◆ COVID-19 Update

C) Public Works Director's Report

D) Finance Department Report

E) Police Department Report

F) Fire Department Report

6. City Attorney's Report

7. *Consent Calendar - Items on the Consent Calendar are considered routine and shall be approved by one motion of the Council. If a Councilmember requests additional information or wants to comment on an item, **the vote should be held until the questions or comments are made, and then a single vote should be taken.** If a Councilmember **objects** to an item, **then** it should be removed and acted upon as a separate item.*

A) Ratification of Warrants – January 5, 2021

B) Approve Minutes of the City Council Special Meetings – December 8, 2020 and December 15, 2020

8. Committee Reports (No action except where a specific report is on the agenda)

◆ Board/Committee Assignments

Mayor Cardenas

Re-appoint Craig Mellon and Kevin Kandarian to another term on the Planning Commission

Mayor Pro-Tem Rodriguez

Councilmember Kazarian

Councilmember Mejia

Councilmember Parra

9. Closed Session:

- ◆ Government Code Section 54956.9(d)(1) Conference with Legal Counsel – Existing Litigation City of Fowler v. David Elias, Fresno County Superior Court Case No. 19CECG04298.

- ◆ Government Code Section 54956.8 - Conference with Real Property Negotiators: Property: 131 N. 6th Street (Christian Church) Agency Negotiators: Jeannie Davis, City Manager. Negotiating Party: Prodigy Health Care Under Negotiation: Price and terms.

10. Adjournment

Next Ordinance No. 2021-01

Next Resolution No. 2487

CERTIFICATION: I, Corina Burrola, Deputy City Clerk of the City of Fowler, California, hereby certify that the foregoing agenda was posted for public review on Thursday, December 31, 2020.



Corina Burrola
Deputy City Clerk

STAFF REPORT

DATE: DECEMBER 24, 2020
TO: MAYOR AND CITY COUNCIL
FROM: DAVID PETERS, CITY ENGINEER
RE: TRACT 6274 FINAL MAP

REQUESTED COUNCIL ACTION:

Consider the acceptance of the final map for Tract 6274;

1. Adopt Resolution No. 2486 approving the final map for Tract 6274 accepting on behalf of the public the streets and easements as offered on the map in accordance with the terms of the dedications.
2. Authorize the City Engineer to transmit the Final Map of Tract 6274 and associated documents to the Fresno County's Recorder's Office for recording.
3. Authorize the City Manager to execute the Subdivision Agreement on behalf of the City.

DISCUSSION:

The applicant, WOODSIDE 06N, LP, a California Limited Partnership (Woodside Homes) is proposing to develop a 99 lot subdivision in the northwest corner of the Sunnyside Avenue / Sumner Avenue intersection.

The applicant has complied with the conditions of approval of the approved tentative map.

A subdivision agreement has been prepared for the development because the off-site improvements have not yet been constructed. The subdivision agreement requires that the applicant post bonds or instruments of security with the City in order to guarantee the construction of the improvements, which have been submitted to the City. The subdivision agreement also sets forth the development fees that the applicant must pay to the City prior to the delivery of the final map to the County Recorder.

The applicant has submitted the public improvement plans and the final map to the City, both of which have been reviewed and approved by the City Engineer. A request by the Council for another access onto Sumner Avenue has been incorporated into the Final Map and improvement plans. The access will be a right-in / right-out movement as shown in the

attached Exhibit 'A'. A public park will be developed as part of the subdivision. A conceptual plan of the park improvement is attached. The Council is required by law to accept the final map unless they can site deficiencies in the final documents.

The applicant has paid development fees as described above and in accordance with City fee resolutions. These fees will provide for review costs by the City and other capital improvement requirements.

The subdivision is zoned residential, and complies with the City's General Plan.

Following acceptance of this map by the City, the City Engineer shall deliver the final map and subdivision agreement to the Fresno County Recorder for recordation.

Attachments:

1. Resolution of Acceptance
2. Subdivision Agreement
3. Final Map Tract 6274
4. Western Sumner Access – Exhibit 'A'
5. Conceptual Park Improvement Plan

DP

RESOLUTION NO. 2486

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOWLER APPROVING FINAL TRACT MAP NO. 6274 AND ACCEPTING STREET DEDICATION AND EASEMENTS

WHEREAS, WOODSIDE 06N, LP, a California Limited Partnership, the Owner and Subdivider, has presented to the City Council of the City of Fowler, a Municipal Corporation, a Final Map of Tract No. 6274 for approval by the City Council; and

WHEREAS, the City Engineer has verified that all of the provisions of the Subdivision Map Act and of Chapter 4, "Subdivisions," of the Fowler Municipal Code have been complied with, and that said Final Map is substantially the same as the Tentative Map thereof, as previously approved by the City Council and Planning Commission; and

WHEREAS, certain streets to be developed in Tract Map No. 6274 have been offered for dedication to the City of Fowler; and

WHEREAS, the Fowler Subdivision Ordinance requires that street dedications and easements be accepted by the City Council; and

WHEREAS; the City Council also determined that it would be in the best interests of the City at this time to accept the streets and easements offered for dedication on the Final Tract Map No. 6274; and

WHEREAS; the City Council hereby authorizes the City Manager to enter into the Subdivision Agreement, which has been previously executed by the Subdivider, related to the construction of public improvements associated with the subdivision.

NOW THEREFORE, BE IT RESOLVED the Final Map of Tract No. 6274 and the dedication of the street and easements offered for dedication as shown on Final Tract Map 6274 be accepted, and the Mayor and/or City Manager and City Clerk be authorized and directed to sign the documents for improvements and recordation.

Dated: January 5, 2021

David Cardenas, Mayor

I, Corina Burrola, Deputy City Clerk of the City of Fowler, do hereby certify and attest that the foregoing resolution was duly passed and adopted at a regular meeting of the Fowler City Council held on January 5, 2021, by the following vote:

Ayes:
Noes:
Absent:
Abstain:

Dated: January 5, 2021

Corina Burrola, Deputy City Clerk
City of Fowler

**CITY OF FOWLER
SUBDIVISION AGREEMENT**

TRACT NO. 6274

THIS SUBDIVISION AGREEMENT ("AGREEMENT") is made and entered into this ____ day of _____, 2020, by and between WOODSIDE 06N, LP, a California Limited Partnership, ("SUBDIVIDER"), and the CITY OF FOWLER, a Municipal Corporation ("CITY").

RECITALS

A. Tentative Map No. 6274 (attached hereto as Exhibit "A") has been filed with City for a proposed division of land adjacent to the intersection of Sunnyside Avenue and Sumner Avenue which is located within the corporate limits of the City. This tentative map has been approved and is being developed in a single phase. SUBDIVIDER has requested that the CITY accept and approve the Final Map and the dedications delineated and shown on the Final Map for the use and purposes specified thereon and to otherwise approve the Final Map in order that the same may be recorded as required by law.

B. The CITY requires as a condition precedent to the acceptance and approval of the Final Map, the dedication of the streets and public improvements and easements as delineated and shown on the Final Map, and deems the same as necessary for the public use, and requires and deems as necessary for the public use that any and all streets, public improvements and easements delineated and shown on the Final Map shall be improved by the construction thereof and the installation of the improvements specified in this Agreement.

C. Certain public improvements are required to be made by SUBDIVIDER in accordance with the approved tentative map of the Subdivision and have not yet been completed. Section 66462 of the California Government Code provides, as a condition precedent to the approval of the Final Map, that the City shall require the SUBDIVIDER to enter into an agreement to complete said public improvements.

D. The SUBDIVIDER and CITY enter into this agreement to perform and complete the work and matters as hereinafter described in this Agreement, in conformance with the City of Fowler Municipal Code, which Sections by this reference are incorporated into this Agreement made a part hereof.

NOW THEREFORE, it is hereby agreed as follows:

1. Improvements. SUBDIVIDER shall construct and install all public improvements in the Subdivision as identified on the Final Map and Improvement plans in accordance with all of the requirements and standards as set forth in the approval or conditional approval of the tentative map of the Subdivision, the Fowler Municipal Code, all applicable laws, codes and regulations as determined by the City Engineer and the terms and conditions of this Agreement (collectively "Work"). In accordance with the Fowler Municipal Code, all of the Improvements shall be completed no later than twelve (12) months after the recording of the Final Map and commencement of construction. The SUBDIVIDER shall notify the City Engineer in writing two weeks (14 calendar days) prior to the commencement of construction activities. The City Engineer will then document in writing the beginning of the construction period. Construction shall commence not later than 12 months after recordation of the Final Map. Request to extend

the time for completion of the Improvements must be in written form and received by the CITY not less than thirty (30) days prior to expiration of said twelve (12) month period and shall include facts to support the extension of time for completion as required by the City Engineer. Only the City Council shall have the authority to extend such time period. The extension period shall not exceed three (3) months.

Within thirty (30) days after the SUBDIVIDER notifies the City Engineer that the required Work has been completed, the City Engineer shall inspect such Work and, if the Work has been performed in the required manner and in accordance with this Agreement, the Final Map, the Fowler Municipal Code and all other applicable laws, codes and regulations, the City Engineer shall advise the City Council that the public improvements are ready for acceptance by the CITY.

2. Inspection. The CITY shall inspect all work in accordance with Section 16 of the Fowler Municipal Code, including the SUBDIVIDER'S conformance with the CITY's standard specifications and any and all applicable conditions, standards or requirements, including, without limitation, all conditions, standards or requirements identified at the preconstruction conference held prior to commencing the Work.

As part of the inspection process, SUBDIVIDER shall retain, at its sole cost and expense, a materials testing company to perform any testing or retesting of the Work as required by the City's Department of Public Works and/or Building Official. The materials testing firm must be approved by the CITY before any testing or retesting begins. The City's Inspector shall designate the locations for compaction tests, and shall observe all testing procedures. In addition to street areas, compaction testing shall be performed in building pad areas.

The SUBDIVIDER'S Engineer shall check the grade of all streets prior to surfacing and shall, prior to surfacing, provide written confirmation to the City's Department of Public Works that the street grades conform to the approved grades. In the case of asphalt concrete surfacing, the SUBDIVIDER'S Engineer shall, prior to surfacing, set grade stakes and shall be in attendance at the time all surfacing is performed.

SUBDIVIDER shall construct all required improvements in accordance with the applicable improvement plans and specifications. Where concrete curbs and gutters are required and where driveway approaches are not constructed at the time curbs and gutters are constructed, the curb and gutter shall be continuous.

CITY shall schedule a preliminary final inspection and a deficiency list shall be compiled and submitted to the SUBDIVIDER for correction. Upon completion of all corrections or additional work as outlined by the deficiency list, the SUBDIVIDER shall certify, in writing, that all corrections have been completed and request a final inspection. Upon finding that all items have been corrected and receipt of as-built improvement plans, the Subdivision shall be placed on the City Council agenda for acceptance.

The completion of corrections indicated by the deficiency list shall not relieve the SUBDIVIDER from the responsibility of correcting any deficiency not shown on the deficiency list that may be subsequently discovered. Should the CITY require payment of additional engineering and inspection fees and costs for improvements constructed after the stated date of completion, the SUBDIVIDER must pay said additional fees and costs prior to acceptance by the City Council of the improvements.

3. Costs and Fees. The SUBDIVIDER shall be responsible for all costs and expenses associated with the Work, including, without limitation, the costs identified in the Improvement Cost Estimate attached hereto and made a part hereof and identified as Exhibit "C" to this Agreement. SUBDIVIDER agrees to all amounts identified on Exhibit "C" and agrees to pay when due, all amounts identified on Exhibit "C", including, without limitation, all CITY engineering and inspection fees.

4. Security. SUBDIVIDER agrees to furnish security, which complies with Section 66499 et. seq. of the California Government Code, and in such amounts as are required by the CITY, to guarantee the faithful performance of this Agreement including, without limitation, the construction of the Improvements and completion of the Work, and to guarantee payment to contractors, subcontractors, laborers, material men and other persons involved in the performance of the Work. In the sole discretion of the CITY and with the written authorization of the CITY, the sureties provided by the SUBDIVIDER may be released in whole or in part in the following manner:

- (a) Faithful performance sureties, not in excess of ninety percent (90%) of the estimated costs of the individual items of the Improvements and Work, may be released, or the required surety amounts may be reduced, as work is satisfactorily completed and accepted by the CITY.
- (b) Forty-five (45) days after recordation of the Notice of Completion for the Subdivision, the sureties securing the payment to contractors and subcontractors, and to persons furnishing labor, materials, or equipment, may be released if claims including, without limitation, stop notices, have not been filed.
- (c) Twenty-Five percent (25%) of the total faithful performance surety, retained as the public improvement warranty, may be released one year after the Notice of Completion for the SUBDIVISION has been recorded. In the alternative, SUBDIVIDER shall provide CITY with new warranty security of not less than twenty-five percent (25%) of the Improvement Cost Estimate identified in Exhibit "C" hereto, which security shall have a term of one (1) year from the date of recordation of the Notice of Completion for the Subdivision.

The SUBDIVIDER shall furnish, in writing, proof of adequate security deposit to all utility companies for the installation of electricity, gas, telephone, cable television and any other utility which charges are not part of the Improvement Cost Estimate set forth in Exhibit "C".

No final map shall be signed by the City Engineer or recorded until all improvement securities required by the Fowler Municipal Code and this Agreement have been received and approved by the CITY. The form of securities shall be one or the combination of forms as approved by the CITY.

5. Liability. As a condition precedent, and prior to commencement of the Work to be performed pursuant to this Agreement, SUBDIVIDER shall furnish the CITY with a certificate of insurance with a separate endorsement evidencing the following insurance coverages:

Commercial and general liability insurance with a combined single limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence. Such insurance shall include

products/completed operations liability, owners and contractors protective blanket contractual liability, personal injury liability, broad form property damage coverage and explosion, collapse and underground hazard coverage. The insurance shall name the CITY, its appointed and elected officials, officers, employees and agents and Peters Engineering Group as additional insureds; and be primary with respect to any insurance or self-insurance programs maintained by the CITY, and shall protect them from claims for personal injury, death or property damage suffered by third persons or by officers, employees, agents or independent contractors of the SUBDIVIDER, and arising out of or in any way connected with the Work which is the subject of this Agreement. Such policy or policies of insurance shall specifically provide that the CITY shall receive at least thirty (30) days prior to written notice of any cancellation of such policy or policies. Any such notice shall be sent to the attention of the City Engineer. Notwithstanding an inconsistent statement in the insurance policy or certificate or subsequent endorsement attached thereto, the CITY shall be insured or named as an additional insured covering the Work which is the subject of this Agreement, whether liability is attributable to the SUBDIVIDER or to the passive or active negligence of the CITY. The insurance shall be in effect on the date of this Agreement and shall expire no sooner than one year after the date of recordation of the Notice of Completion for the Subdivision. The cost of providing all required insurance shall be borne solely by the SUBDIVIDER.

All such insurance shall provide coverage for SUBDIVIDER's obligations of indemnification as set forth in paragraph 6 of this Agreement.

The expiration or proposed cancellation of any such insurance policy or policies, for any reason whatsoever, shall constitute a material breach of this Agreement.

6. Indemnification. SUBDIVIDER hereby agrees to and shall protect, indemnify, defend and hold harmless the CITY and all officials, officers, agent, representatives and employees and Peters Engineering Group from and against any and all liability, loss, claims, expenses, or damages of whatsoever kind or character, including attorney's fees and costs of all types, in any way arising out of, or in any way related, directly or indirectly to the Work to be performed pursuant to this Agreement or the acts or omissions of the SUBDIVIDER, SUBDIVIDER'S independent contractors, employees, representatives, agents and invitees, and the passive or active negligent acts or omissions of the CITY or its officials, officers, employees, contractors, representatives, and agents while acting within the scope of their duties and regarding, in any way, the Work to be performed pursuant to this Agreement. These indemnification and hold harmless provisions shall be in full force and effect regardless of whether or not there is insurance policies covering the applicable damages, claims, or liability. This indemnification shall be binding upon the SUBDIVIDER whether or not there are any allegations of fault, negligence or liability of the parties indemnified hereunder and shall survive the completion of construction of the Improvements and completion of the Work.

SUBDIVIDER agrees that the use of any and all public streets and improvements, which are part of the Subdivision, shall be, at all times prior to the final acceptance by the CITY, the sole and exclusive risk of the SUBDIVIDER.

7. Permits and Compliance. Should SUBDIVIDER be required to perform any Work within any public rights-of-way or easements, which are located beyond the Subdivision limits, SUBDIVIDER shall satisfy any and all requirements necessary to obtain an encroachment permit from the CITY or any other agency.

The SUBDIVIDER shall install underground, all gas main services, telephone, cable television, and electrical lines, and all electrical transformers, splice boxes, pull boxes, and other existing facilities providing service to within the limits of this Subdivision.

SUBDIVIDER agrees to make all financial arrangements with Pacific Gas and Electric, Southern California Gas, Comcast Cable, ATT, and any other applicable utility company, to guarantee the installation of all utilities and services to the Subdivision. Copies of all agreements and written evidence of these financial arrangements shall be furnished to the CITY along with a composite underground utility plan prior to beginning construction of the Improvements within the limits of the subdivision.

SUBDIVIDER shall make arrangements for the relocation of all overhead and underground public utility facilities along the frontages or that interfere with the construction of the Improvements. The SUBDIVIDER shall be responsible for the full cost of relocating such utilities and facilities.

The SUBDIVIDER shall repair any damage to public streets or other public property or improvements, which results from, or is incidental to, the construction of the Improvements, or in lieu of making such repairs, the SUBDIVIDER shall pay to the CITY the full cost of such repairs.

Building permits for individual lots of the Subdivision may be issued after primary completion of the infrastructure improvements as approved by the City Engineer following inspection. Primary completion is defined as completion of all required improvements except paving, sidewalks, landscaping and street lighting.

No occupancy permit for any dwelling to be constructed within the Subdivision shall be issued until all required Work and Improvements are substantially complete subject to City Engineer approval. Substantial completion is defined as completion of all required improvements with only minor corrections known as "punch list" items remaining. No inspections or approval by the City Engineer will be deemed acceptance by the City Council.

In accordance with the Fowler Municipal Code, construction methods and materials for all Improvements shall conform to the standard plans and specifications of the CITY. Construction shall not commence until required improvements plans have been approved by the City Engineer and payment of all fees have been received by the CITY.

The Improvements shall be constructed in accordance with all applicable street, plumbing, building, electrical and zoning codes and any other applicable codes, rules or regulations of the CITY and the State of California.

The SUBDIVIDER shall require contractors and subcontractors to provide and maintain barricades and warning signs to protect and warn the public of construction hazards. Traffic control shall conform to a traffic control plan approved by the City Engineer. If in the opinion of the City Engineer, proper barricades and warning signs are not being provided, the Contractor will be required to immediately stop work until proper traffic control is provided and approved by the City Engineer.

The SUBDIVIDER shall require all contractors and subcontractors to conform to the applicable provisions of the California Occupational Safety and Health Act ("OSHA"). On site inspection of the work will be requested of OSHA officials and all work subject to this Agreement

shall immediately stop if, in the opinion of the City Engineer, any such work is being performed in violation of OSHA, or when appropriate safety measures are not being utilized for the Work.

SUBDIVIDER shall be responsible for obtaining an NPDES permit for construction sites in excess of one acre, and shall develop a dust control plan and erosion control plan to mitigate soil migration from the Subdivision. SUBDIVIDER shall be responsible for soil and erosion control throughout the one-year warranty period called for in this Agreement. The SUBDIVIDER shall sweep the streets and alleys periodically throughout the one-year warranty period, at a minimum frequency of once per month.

The SUBDIVIDER and its contractors and subcontractors shall pay for any materials, provisions and other supplies used in, upon, for, or about the performance of the Work, and for any and all work or labor associated therewith and for all amounts due under the worker's compensation and the unemployment insurance acts and all other applicable laws or regulations of the State of California or the United States with respect to such work or labor, including, without limitation, as required by Section 3200 of the California Labor Code and Section 4200 of the California Government Code.

The SUBDIVIDER shall provide and plant one street tree per lot at a location approved by the City's Building Official. The trees shall be planted at the time the dwelling unit on the lot is occupied and shall be selected from a street tree list provided by the CITY. Trees shall be furnished with root barriers and watered via a City approved irrigation system for each lot.

The SUBDIVIDER shall install streetlights in the Subdivision. A streetlight plan shall be submitted to the City Engineer for review and approval. Streetlights shall be LED and be furnished and installed in accordance with CITY, PG&E and Caltrans' standards. The street lighting system shall become the property of the CITY upon completion and acceptance of the work, without further consideration to SUBDIVIDER. SUBDIVIDER'S contract with PG&E ("PG&E" Contract) for the furnishing of electrical power to the Subdivision shall specifically state that all streetlights shall become the property of the City. Each street light shall be furnished with an electrical pull box and grounding rod. The SUBDIVIDER shall number the street light poles in accordance with PG&E requirements. The PG&E Contract shall identify a maintenance rate schedule for the streetlights of LS2C.

Fencing improvements shall be constructed in accordance with City Standards, with appropriate fencing offsets to be provided for sanitation and garbage collection service to each lot, including allowance for approved number and/or style of garbage cans, green waste, and recycling containers. Fencing improvements shall be constructed in such a manner as to eliminate any dirt strip between the fence and the adjacent alley. Where framing improvements face the alley, the SUBDIVIDER shall construct a concrete mow strip in accordance with City standards between the fence and the alley paving.

The SUBDIVIDER shall furnish to the CITY a set of reproducible as-built plans for all street improvements ("Street Plans"). The Street Plans shall be original ink on vellum or mylar copies. The Street Plans shall include the location of all underground utilities, finished grades for all curb returns and building pads. The SUBDIVIDER'S engineer shall provide a copy of the tract, in digitized format (AutoCAD 2020 or equivalent format as approved by the City Engineer) to the City prior to final acceptance of the Improvements and Work by the City.

SUBDIVIDER agrees to install security devices, acceptable to the City of Fowler Public Works Department in order to protect streetlight and water meter facilities from vandalism.

Prior to the acceptance of the Work and release of the security, the SUBDIVIDER shall provide to the CITY a certification from its engineer that all work and the construction and installation of all Improvements conform with the approved plans for the Subdivision and the recommendations contained in the Preliminary Soils Reports. A certification shall also be furnished by the SUBDIVIDER'S engineer that all utility trenches have been uniformly compacted to the percentages specified in the City Standards.

SUBDIVIDER agrees that the City shall inspect all Work and Improvements. All of said Work and Improvements and materials shall be completed, performed and installed under the inspection of and to the satisfaction of the City Engineer. It shall further be the responsibility of SUBDIVIDER to give the City Engineer written notice not less than two (2) working days in advance of the actual date on which Work is to be started to allow for arrangements for appropriate and adequate inspection services. SUBDIVIDER'S failure to notify the City Engineer may cause inspection delays for which SUBDIVIDER will be solely responsible.

Defective work shall be made good, and unsuitable materials may be rejected, notwithstanding the fact that such defective work and unsuitable materials may have been previously overlooked or approved by the City Engineer or inspector. Any damage to the sewer system, water system, storm drainage facilities, concrete work, street paving, or any other improvements that occurs after installation shall be made good to the satisfaction of the City Engineer by SUBDIVIDER before final acceptance of completed work by the City Council. Defective work appearing after final acceptance shall be repaired/replaced under the warranty provisions herein. Upon final acceptance by the City Council of all Work and Improvements as provided herein, SUBDIVIDER shall warrant said Work and Improvements from any defects in materials or workmanship for a period of one (1) year following said acceptance, and a one-year warranty bond shall be furnished by SUBDIVIDER to the City as herein provided herein.

8. Other Conditions. The SUBDIVIDER shall annex the Subdivision to the City's Landscape and Storm Drainage Maintenance District for the provision of maintenance of the landscape areas. The SUBDIVIDER shall provide a signed and notarized covenant and consent for annexation of the Subdivision to the Landscape Maintenance District. The SUBDIVIDER shall notify every potential buyer of lots within the Subdivision that the Subdivision is part of a Landscape Maintenance District. The SUBDIVIDER shall provide the City with a signed copy of such notice indicating acceptance of the notice by the buyer.

SUBDIVIDER shall ensure that all solid waste is collected and disposed of by the City's contract agent, Waste Management, as required by Section 6-2.307 of the Fowler Municipal Code. If SUBDIVIDER uses persons or companies other than Waste Management for general clean up, SUBDIVIDER shall ensure that all solid waste is collected and disposed of by Waste Management.

The City Engineer is assumed to be a just arbitrator between CITY, SUBDIVIDER and SUBDIVIDER'S Contractor (herein "Contractor") and the entire work is under his jurisdiction to such end. It is his function to interpret the drawings and specifications; pass upon merits of materials and workmanship.

It is agreed that all conditions of approval of the Tentative Map and any Site Plan Review shall apply to and be included in the Agreement.

9. Scheduling. It shall be the responsibility of the SUBDIVIDER to coordinate all Work performed by its contractors and subcontractors, such as scheduling the sequence of operations and the determination of liability of one contractor or subcontractor operation delays another. In no case shall representatives of the CITY be placed in the position of making decisions that are the responsibility of the SUBDIVIDER. It shall further be the responsibility of the SUBDIVIDER to give the City Engineer written notice not less than two (2) working days in advance of the actual date on which work is to be started. Failure on the part of the SUBDIVIDER to notify the City Engineer may cause delay for which the SUBDIVIDER shall be solely responsible.

10. Soil and Dust Control Provisions. The SUBDIVIDER is responsible for arrangement for and payment of all CITY required soil tests at locations as determined by the City Engineer. Payment for said tests shall be made directly by the SUBDIVIDER to the certified testing firm of the SUBDIVIDER'S choice.

Adequate dust control shall be maintained by the SUBDIVIDER on all streets and areas, including, without limitation, undeveloped lots within the Subdivision and all streets outside of the Subdivision, from the time Work is first commenced until all work is completed. "Adequate dust control" as used herein shall mean the sprinkling of the streets with water or approved dust palliative with sufficient frequency to prevent the scattering of dust by wind or the activity of vehicles and equipment onto any street area or private property adjacent to the Subdivision. Whenever, in the opinion of the City Engineer, adequate dust control is not being maintained on any street or streets, or other areas of the Subdivision, the City Engineer shall give notice to the SUBDIVIDER to comply with these provisions, or, at the election of the City Engineer, notice may be mailed to the SUBDIVIDER at his address on file with the City Engineer. If, within twenty-four (24) hours after personal service or within forty-eight (48) hours after mailing of notice, the SUBDIVIDER has not commenced to maintain adequate dust control or at any time thereafter fails to maintain adequate dust control, the City Engineer may, without further notice of any kind, cause any street or streets to be sprinkled with water or an approved dust palliative as may be deemed necessary by the City Engineer to eliminate the scattering of dust. Such dust control shall be performed by equipment and personal of the CITY or by contract as the City Engineer shall determine, and the SUBDIVIDER agrees to pay to CITY, upon receipt of the billing therefore, the entire cost to the CITY of such dust control.

When the surfacing on any existing street is disturbed, SUBDIVIDER shall immediately replace the surfacing with temporary surfacing and permanently pave the existing street within fourteen (14) calendar days thereafter. All streets shall be maintained in a safe and passable condition at all times between the commencement of construction of Improvements and final completion thereof.

11. Reimbursement. If the City Municipal Code provides SUBDIVIDER with the right to receive cash reimbursement or Development Impact Fee credit because of the construction of certain Improvements or the oversizing thereof, SUBDIVIDER must request payment of the cash reimbursement or preparation of a reimbursement agreement, whichever is applicable, or the Development Impact Fee credit. Such request must be made in writing and received by the City Engineer prior to the date of final acceptance of all Improvements by FOWLER City Council. SUBDIVIDER agrees that should it fail to make such written request by the date identified herein, SUBDIVIDER forever waives it's right to request and receive any reimbursement, reimbursement agreement or Development Impact Fee credit.

The following items are eligible for reimbursement related to this Subdivision:

- a. 50% of the cost of 554 lineal feet of 12-inch waterline installed in Walter Avenue (Sta 11+10.22 to Sta 16+65.29).
- b. 50% of eligible park improvement costs (estimated to be \$208,794) to be credited towards park impact fees.
- c. Outlot D (6,144 square foot lot). Eligible reimbursement costs will be equal to the purchase price paid by the developer for the dedicated land and frontage improvements surrounding the site (curb, gutter, sidewalk, landscaping, etc.).

12. Prevailing Wage Laws, Rules and Regulations. SUBDIVIDER shall comply with and shall require all contractors to comply with all prevailing wage laws, rules and regulations applicable to the Subdivision, the Work and the Improvements. Unless otherwise advised in writing by the CITY, SUBDIVIDER shall be solely responsible for making any and all decisions regarding the payment of prevailing wages for any portion or aspect of the Subdivision, Work or Improvements, including, without limitation, any form of reimbursement by the CITY to the SUBDIVIDER or any contractor. Further, SUBDIVIDER will be solely responsible for the payment of any claims, fines, penalties, reimbursements, payments or any other actions that may be initiated against SUBDIVIDER, any contractor, or the CITY as a result of failure to pay prevailing wages.

SUBDIVIDER shall defend, indemnify and hold harmless the CITY, Peters Engineering Group, its officials, officers, employees, representatives, agents and attorneys from and against any and all claims, damages, losses, judgments, liabilities, expenses and other costs, including, without limitation, litigation costs and attorney's fees arising out of, resulting from or in any way in connection with any violation or claim of violation of any prevailing wage law, rule or regulation applicable to any portion or aspect of the Subdivision, the Work or the Improvements. SUBDIVIDER's obligation to defend, indemnify and hold the CITY harmless specifically includes, but is not limited to, any suit or administrative action against the CITY which claims a violation of any prevailing wage law, rule or regulation applicable to any portion or aspect of the Subdivision, Work or Improvements.

SUBDIVIDER's obligations to defend, indemnify and hold the CITY, Peters Engineering Group, its officials, officers, employees, representatives, agents and attorneys harmless as set forth herein, shall include, but shall not be limited to, staff time, copying costs, court costs, the costs of any judgments or awards against the CITY for damages, losses, litigation costs or attorney fees arising out of any violation or claim of violation of any prevailing wage law, rule or regulation applicable to any portion or aspect of the Subdivision, Work or Improvements and costs of any settlement representing damages, litigation costs and attorney's fees to be paid to other parties arising out of any such proceeding or suit.

The CITY may, at any time, require the SUBDIVIDER to reimburse the CITY for costs that have been, or which the CITY reasonably anticipates will be, incurred by the CITY during the course of any action. SUBDIVIDER shall reimburse the CITY within thirty (30) days of receipt of an itemized written invoice from the CITY. Failure of the SUBDIVIDER to timely reimburse the CITY shall be considered a material breach of this Agreement. All of the provisions of this paragraph 12 shall survive the completion of construction of the Improvements and completion of the Work.

13. Sole and Only Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding such matters. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this Agreement and no other agreement, statement or promises shall be valid or binding.

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

15. Attorneys' Fees. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court in the County of Fresno, State of California for any proceeding arising hereunder.

16. Successors and Assigns. The covenants and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the parties hereto. This Agreement shall not be assigned by SUBDIVIDER without the express prior written consent of CITY, which consent may be withheld in the sole and absolute discretion of CITY.

17. Governing Law. This Agreement shall be construed and governed pursuant to the laws of the State of California.

18. Time of the Essence. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the ____ day of _____, 2020.

CITY OF FOWLER

SUBDIVIDER

FOWLER CITY MANAGER

WOODSIDE 06N, LP, a California Limited Partnership By: WDS GP, Inc., a California Corporation, it's General Partner

By: _____
Jeannie Davis

By: _____
Matt Smith, Vice President

APPROVED AS TO CONTENT:

ATTEST:

By: _____
David Peters, PE
City Engineer, City of Fowler

By: _____
Fowler Deputy City Clerk

EXHIBIT "B"
IMPROVEMENT COST ESTIMATE

Estimated construction costs used in this Agreement are increased for projected inflation computed to the estimated mid-point of construction.

ESTIMATED
CONSTRUCTION COST

Site Preparation

Construction of all sanitary sewerage facilities as shown on the approved improvement plans in accordance with City Standards and Specifications.

\$ 265,109.50

Sanitary Sewer System

Construction of all sanitary sewerage facilities as shown on the approved improvement plans in accordance with City Standards and Specifications.

\$ 196,784.00

Storm Drainage System

Construction of underground cross drains, storm sewerage conductor, and disposal facilities as shown on the approved improvement plan in accordance with City Standards and Specifications.

\$ 101,740.00

Water System

Install all water mains, hydrants, services and appurtenances as shown on the approved Improvement Plans in accordance with City Standards and Specifications.

\$ 259,248.00

Street Construction

Construct Type "B" asphalt concrete surfacing over Class 2 aggregate base, curb and gutter, sidewalk, wheelchair ramps, drive approaches, valley gutters, streetlights and misc improvements as shown on the approved Improvement Plans in accordance with City Standards and Specifications.

\$ 1,016,147.70

Total Estimate Construction Costs =

\$ 1,839,029.20

SECURITY REQUIREMENTS

Performance	\$ <u>1,839,029.20</u>
Labor and Material	\$ <u>919,514.60</u>
Warranty	\$ <u>459,757.30</u>
Monumentation Security	\$ <u>8,500.00</u>

PLAN CHECK AND INSPECTION FEE

Improvement Plan Check and Inspection Fees (3%) = \$55,170.00

Less Previously Paid = \$15,000.00

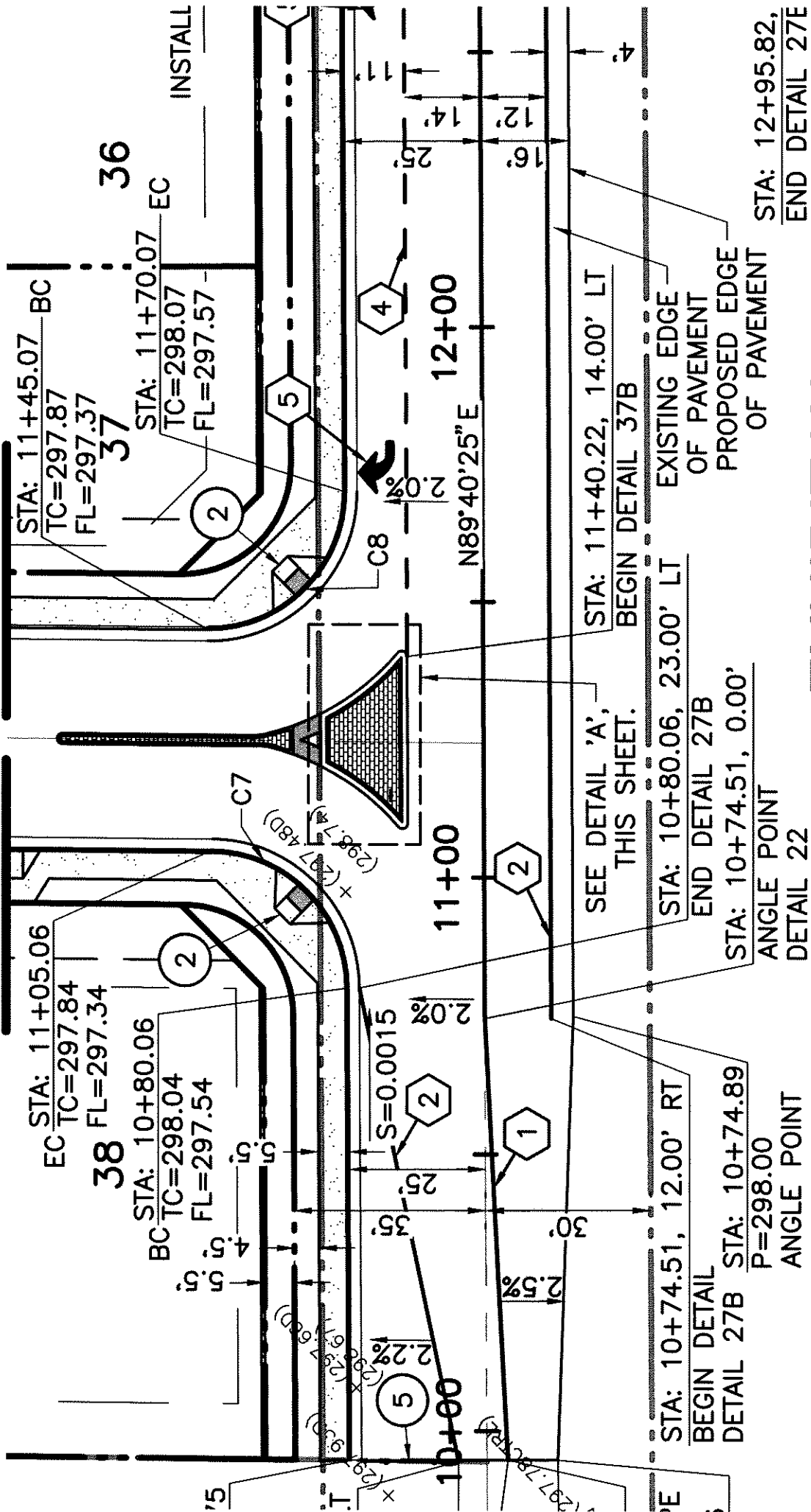
Total Due = \$40,170.00

Actual plan check and inspections fees in excess of the total amount provided herein shall be invoiced to the Owner by the City for Payment prior to acceptance of the improvements.

DEVELOPMENT FEES

All development fees are due and payable at the time of issuance of a building permit. Development fees will be determined using the fee schedule in effect at the time of payment.

SOUTH 'A' AVENUE - SEE SHEET 9



AGENDA ITEM NO. 7A WILL BE PROVIDED TO THE COUNCIL ON
TUESDAY, JANUARY 5, 2021.

**MINUTES OF THE FOWLER CITY COUNCIL
SPECIAL MEETING
DECEMBER 8, 2020**

Mayor Cardenas called the meeting to order at 7:01 p. m. Roll call was taken.

Councilmembers present: Cardenas, Hammer, Kazarian, Parra, & Rodriquez
Councilmembers elect present: Mejia

City Staff Present: City Manager/City Clerk Davis, City Attorney Wolfe, Police Chief Alcaraz, Public Works Director Dominguez, Senior Center/Recreation Coordinator Hernandez, Deputy City Clerk Burrola, and City Engineer Peters (via teleconference)

PUBLIC PRESENTATIONS

There were no public presentations.

ADOPTION OF RESOLUTION NO. 2483

City Manager Davis summarized the results of the November 3, 2020 General Election, noting that there were six candidates for three City Council seats on the ballot. Out of 3,578 registered voters, 2,879 ballots were cast, resulting in an 80.46% voter turnout. Total votes casts in the City of Fowler in the two voting precincts for the three City Council seats were as follows: .

	<u>Juan Mejia</u>	<u>Karnig Kazarian</u>	<u>Daniel Parra</u>	<u>Leonard Hammer</u>	<u>Patric Jones</u>	<u>Alexander Grimaldi</u>
Precinct 219	981	957	864	850	596	402
Precinct 220	322	342	295	273	205	133
TOTAL	<u>1303</u>	<u>1299</u>	<u>1159</u>	<u>1123</u>	<u>801</u>	<u>535</u>

City Manager Davis asked the Council to approve Resolution No. 2483, officially declaring the November 3, 2020 General Municipal Election results, Councilmember Rodriquez made a motion, seconded by Mayor Pro-Tem Hammer to adopt Resolution No. 2483, "A Resolution of the City Council of the City of Fowler Declaring Result of Municipal Election Held on November 3, 2020" The motion carried by roll call vote: Ayes: Rodriquez, Hammer, Kazarian, Parra, and Cardenas. Noes: None. Abstain: None. Absent: None.

PRESENTATION OF PLAQUE /COMMENTS TO OUTGOING MAYOR PRO-TEM LEONARD HAMMER

Mayor Cardenas presented a plaque to outgoing Mayor Pro-Tem Leonard Hammer. Mayor Cardenas, Councilmembers Parra, Kazarian, Rodriquez, and Councilmember elect Mejia each made comments commending him for his many years of service and dedication to the City, and for his effort in making the community a better place to live and work.

INSTALLATION OF NEWLY ELECTED COUNCILMEMBERS

Deputy City Clerk Burrola administered the Oath of Office to Juan Mejia, Karnig Ronald Kazarian, and Daniel Parra. Ms. Burrola presented a Certificate of Election to each.

REORGANIZATION OF CITY COUNCIL: ELECTION OF MAYOR AND MAYOR PRO-TEM

Deputy City Clerk Burrola took the Mayor's seat at the dais and began the reorganization of the City Council by calling for nominations for the Office of Mayor. Councilmember Rodriquez made a motion, seconded by Councilmember Mejia, to nominate David Cardenas for the Office of Mayor. The motion carried by roll call vote: Ayes: Rodriquez, Mejia, Kazarian, Parra, and Cardenas. Noes: None. Abstain: None. Absent: None.

Mayor Cardenas called for nominations for the Office of Mayor Pro-Tem. Councilmember Mejia made a motion to nominate Mark Rodriquez for the Office of Mayor Pro-Tem, seconded by Councilmember Kazarian. The motion carried by the following roll call vote: Ayes: Mejia, Kazarian, Cardenas, Parra, and Rodriquez. Noes: None. Abstain: None. Absent: None.

Mayor Cardenas called a recess for a brief reception in honor of outgoing Mayor Pro-Tem Leonard Hammer and the newly elected Councilmembers.

COMMUNICATIONS

None.

STAFF REPORTS

CITY ENGINEER'S REPORT

- ◆ **Approve Award of the Main Street Improvements – 3rd Street to 7th Street to Don Berry Construction in the Amount of \$165,887.40**

City Engineer Peters joined via teleconference. Mr. Peters said on November 24, 2020 the City received six bids for the City's Main Street Improvements project. He said the project proposes to mill, overlay, install pavement striping, and install ADA ramps along Main Street between 3rd Street and 7th Street. The bids received for the base bid ranged from \$165,887.40 to \$218,582.00. The lowest bid was from Don Berry Construction in the amount of \$165,887.40.

Councilmember Kazarian made a motion to award the Main Street Improvements Project to Don Berry Construction in the amount of \$165,887.40, seconded by Mayor Pro-Tem Rodriquez. The motion carried by roll call vote: Ayes: Kazarian, Rodriquez, Cardenas, Mejia, and Parra. Noes: None. Abstain: None. Absent: None.

CITY MANAGER'S REPORT

City Manager Davis said the City is currently at 398 total cases. She said cases have accelerated during the past week. The County Health Department has cautioned to keep gatherings small and maintain physical distancing of at least six feet.

Ms. Davis said United Health Centers is providing no cost COVID-19 testing on Thursday, December 17th from 9:00 a.m. to 12:00 p.m. and Tuesday, December 29th from 9:00 a.m. to 12:00 p.m. at the Edwin Blayney Senior Center.

She said the grand opening ceremony for the new fire station is scheduled for Thursday, December 10th, she asked for direction from the Council on whether to proceed or postpone the event due to the new mandated order that went into effect on December 6, 2020. A discussion took place and the consensus of the Council is to postpone the event until further notice.

PUBLIC WORKS REPORT

Public Works Director Dominguez provided an update on the RFQ, Energy Conservation and Generation Project. He said the City received a request for qualifications (RFQ) from SiteLogiQ who will be partnering with Advanced Lighting Services, Inc. for the energy conservation and generation project also known as our Citywide Solar project. He said the next step is to work with consultants and start creating a contract agreement and bring it to the Council for approval.

FINANCE DIRECTOR'S REPORT

No report was given.

POLICE DEPARTMENT REPORT

No report was given.

FIRE DEPARTMENT REPORT

No report was given.

CITY ATTORNEY'S REPORT

City Attorney Cross said he is planning to have a refresher course in the upcoming month on Brown Act Laws.

He said he will provide updates on pending litigations to keep Councilmember Mejia up to date.

CONSENT CALENDAR

The consent calendar consisted of: A) Ratification of Warrants – December 8, 2020; B) Approve Minutes of the City Council Meeting – November 17, 2020; C) Adoption of Resolution No. 2484, “A Resolution of the City Council of the City of Fowler in the Matter of Federal Transportation Project Selection and Implementing Timely Use of Funding”

Councilmember Parra made a motion to approve the consent calendar; seconded by Mayor Pro-Tem Rodriquez. The motion carried by roll call vote: Ayes: Parra, Rodriquez, Cardenas, Kazarian, and Mejia. Noes: None. Abstain: None. Absent: None.

COMMITTEE REPORTS

Mayor Cardenas attended the Christmas tree lighting event. He commended everyone who attended and everyone involved in the success of the event.

Councilmember Kazarian attended the Christmas tree lighting event.

Councilmember Parra commended the Recreation Department, Fowler Lions club, and City Staff for their involvement in the Christmas tree lighting event.

Councilmember Mejia attended the Christmas tree lighting event.

Public Comments on Closed Session:

Richard Wadda, Selma resident, addressed his interest to the Council on the closed session item.

CLOSED SESSION

The meeting adjourned to a closed session at 8:02 p.m. to discuss Pursuant to Government Code Section 54956.8 Property: 127 S. 6th Street (Old Fire Station) Agency Negotiator: Jeannie Davies, City Manager under Negotiation: Price and Terms of potential property sales or lease.

Mayor Pro-Tem Rodriguez left the meeting at 8:28 p.m.

The meeting reconvened to open session at 8.42 p.m. with no reportable action taken. Direction was given to staff.

AJOURNMENT

Having no further business, Councilmember Kazarian made a motion, seconded by Councilmember Mejia to adjourn. The motion carried and the meeting adjourned at 8:42 p.m.

**MINUTES OF THE FOWLER CITY COUNCIL
SPECIAL MEETING
DECEMBER 15, 2020**

Mayor Cardenas called the meeting to order at 6:00 p. m. Roll call was taken.

Councilmembers Present: Cardenas, Rodriquez, Kazarian, Mejia, and Parra (via teleconference)

City Staff Present: City Manager Davis, City Attorney Cross, Deputy City Clerk Burrola

ADOPTION OF RESOLUTION NO. 2485

City Manager Davis said that as discussed at a previous Council meeting, she planned to retire on December 30, 2020. The Council asked that she continue working either by an extension of her contract, or by working as a retired annuitant, until the recruitment process for a new city manager was complete. Ms. Davis stated that she wished to stay with the December 30th retirement date and continue working as a retired annuitant.

City Attorney Cross explained the rules under the California Public Employees' Retirement law (CalPERS) for retirees to return to work. Government Code section 7522.56(f) provides that a retired person shall not be eligible to be employed pursuant to Section 7522.56 for a period of 180 days following the date of retirement unless the retiree's appointment is necessary to fill a critically needed position before the 180 day waiting period has passed. He said the appointment for Ms. Davis to return as a retired annuitant is necessary to immediately fill the critically needed vacant position of City Manager, effective December 31, 2020, therefore, pursuant to Government Code section 7522.56(f)(1), the 180-day wait period shall not apply to this appointment. As a retired annuitant, Ms. Davis will be receiving her current monthly salary for the City Manager position and no other benefits, compensation or incentives, pursuant to CalPERS regulations.

Councilmember Kazarian made a motion to approve resolution No. 2485, "A Resolution of the City Council of the City of Fowler appointing Jeannie Davis as a Retired Annuitant Pursuant to Government Code Section 21221(h) and clarifying the Exception to the 180-day Waiting period for Appointment", seconded by Mayor Pro-Tem Rodriquez. The motion carried by roll call vote: Ayes: Kazarian, Rodriquez, Cardenas, Mejia, and Parra. Noes: None. Abstain: None. Absent: None.

APPOINT BRIAN HAMMER TO THE PLANNING COMMISSION

Mayor Cardenas recommended appointing Brian Hammer to fill the vacancy of the Planning Commission due to the expiring of Gary Mukai's term. Councilmember Parra made a motion to approve the appointment, seconded by Councilmember Kazarian. The motion carried by roll call vote: Ayes: Parra, Kazarian, Cardenas, Parra, and Rodriquez. Noes: None. Abstain: None. Absent: None.

ADJOURNMENT

Having no further business, Councilmember Kazarian made a motion, seconded by Mayor Pro-Tem Rodriquez to adjourn. The motion carried and the meeting adjourned at 6:22 p.m.