TAFT CITY COUNCIL/SUCCESSOR AGENCY

SPECIAL MEETING AGENDA

TUESDAY, AUGUST 4, 2015
CITY HALL COUNCIL CHAMBERS
209 E. KERN ST., TAFT, CA 93268

AS A COURTESY TO ALL - PLEASE TURN OFF CELL PHONES

Any writings or documents provided to a majority of the City Council regarding any item on this agenda are made available for public inspection in the lobby at Taft City Hall, 209 E. Kern Street, Taft, CA during normal business hours (SB 343).

REGULAR MEETING **6:00 P.M.**

Pledge of Allegiance
Invocation
Roll Call: Mayor Miller
Mayor Pro Tem Noerr
Council Member Bryant
Council Member Hill
Council Member Krier

1. CITIZEN REQUESTS/PUBLIC COMMENTS

THIS IS THE TIME AND PLACE FOR THE GENERAL PUBLIC TO ADDRESS THE CITY COUNCIL ON MATTERS WITHIN ITS JURISDICTION. STATE LAW PROHIBITS THE COUNCIL FROM ADDRESSING ANY ISSUE NOT PREVIOUSLY INCLUDED ON THE AGENDA. COUNCIL MAY RECEIVE COMMENT AND SET THE MATTER FOR A SUBSEQUENT MEETING. PLEASE LIMIT COMMENTS TO FIVE MINUTES.

2. AMENDED IMPROVEMENT AGREEMENT WITH COLSTON CONSTRUCTION INC. FOR VESTING TENTATIVE TRACT MAP NO. 7227, PHASE 1

Recommendation – 1. Motion to **APPROVE THE AMENDED IMPROVEMENT AGREEMENT WITH COLSTON CONSTRUCTION INC. FOR VESTING TENTATIVE TRACT MAP NO. 7227, PHASE 1.**

3. COUNCIL MEMBER STATEMENTS (NON ACTION)

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ADJOURNMENT

AMERICANS WITH DISABILITIES ACT
(Government Code Section 54943.2)

The City of Taft City Council Chamber is accessible to persons with disabilities. Disabled individuals who need special assistance (including transportation) to attend or participate in a meeting of the Taft City Council may request assistance at the Office of the City Clerk, City of Taft, 209 E. Kern Street, Taft, California or by calling (661) 763-1222. Every effort will be made to reasonably accommodate individuals with disabilities by making meeting material available in alternative formats. Requests for assistance should be made five (5) working days in advance of a meeting whenever possible.

AFFIDAVIT OF POSTING

I, Darnell Rowe, declare as follows:

That I am the Deputy City Clerk for the City of Taft; that an agenda was posted on a public information bulletin board located near the door of the Civic Center Council Chamber on August 3, 2015, pursuant to 1987 Brown Act Requirements.

I declare under penalty of perjury that the foregoing is true and correct.
Executed August 3, 2015, at Taft, California.

Date/Time_____Signature_____

City of Taft Agenda Report

DATE: August 4, 2015

TO: **MAYOR MILLER AND COUNCIL MEMBERS**

AGENDA MATTER:
AMENDED IMPROVEMENT AGREEMENT WITH COLSTON CONSTRUCTION INC. FOR VESTING TENTATIVE TRACT MAP NO. 7227, PHASE 1

SUMMARY STATEMENT:

On July 21, 2015, the City Council voted unanimously to approve a Final Map and Improvement Agreement with Colston Construction Inc. for Vesting Tentative Tract Map No. 7227, Phase 1. Upon one final review of the agreement before signing, Colston Construction found that Section 7 of the Improvement Agreement was redundant with the Notice of Completion requirements and releasing of the improvement security listed in Section 4 of the agreement. Furthermore, Section 7(D) provided the Council an undefined open ended dollar amount with which to withhold when releasing the improvement security in order to cover public improvement defects.

Colston Construction proposes the deletion of Section 7 so that there is no amount of the improvement security retained by the City. Section 4 of the agreement provides direction for the completion of work and the reduction and releasing of the improvement security. Furthermore, Section 5 requires Colston Construction to be responsible for defects found in completed public improvements for a period up to one (1) year after the filing of a Notice of Completion.

Attached is a revised Improvement Agreement with Section 7 deleted and a new Section 5 (formerly Section 4 (D) and (E)) regarding the reduction and releasing of the improvement security. City Staff and the City Attorney advises the City Council that jurisdictions typically retain some of the improvement security to further reinforce a developer's obligation (new Section 6) to ensure defective improvement work is repaired or replaced. It is the City Council's discretion to concur with Colston Construction in deleting Section 7 and not retain the improvement security.

RECOMMENDED ACTION:
1. Motion to **APPROVE THE AMENDED IMPROVEMENT AGREEMENT WITH COLSTON CONSTRUCTION INC. FOR VESTING TENTATIVE TRACT MAP NO. 7227, PHASE 1**

FUNDING SOURCE: N/A

ATTACHMENT (Y/N): Amended Improvement Agreement for Final Tract Map No. 7227, Phase 1

PREPARED BY: Mark Staples, Director, Planning & Community Development

REVIEWED BY:

CITY CLERK:	FINANCE DIRECTOR:	CITY MANAGER:

IMPROVEMENT AGREEMENT
for
FINAL MAP NO. 7227 PHASE 1

This agreement, entered into this _____ day of July, 2015, by and between the CITY of TAFT, a municipal corporation, herein referred to as the "City" and Sandy Creek Estates, LLC, a California Limited Liability Corporation, and Colston Construction, Inc., a California corporation, herein collectively referred to as the "Subdivider."

WITNESSETH:

WHEREAS, the Subdivider is developing and subdividing land in the City of Taft under the provisions of the Subdivision Map Act (Government Code Sections 66410 et. seq., referred to as the "Map Act"), and under the provisions of the Subdivision Ordinance of the City of Taft (Title X of the Municipal Code) referred to as the "Ordinance"; and

WHEREAS, the tentative map has been approved by the Planning Commission (Advisory Agency) and the City Council, subject to certain approved exceptions and conditions; and

WHEREAS, the City Council approved the Final Tract Map No. 7227 Phase 1 (Lots 1 through 32) subject to the Condition of Approval that the Applicant execute the Subdivision Improvement Agreement prior to the recording of Final Tract Map No. 7227 Phase 1; and

WHEREAS, the Subdivider desires to enter into an agreement with the City to complete the required improvement work within the time and in the manner provided herein; and

WHEREAS, the City of Taft needs additional housing and support for this project is therefore in the public interest;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **IMPROVEMENT TO BE CONSTRUCTED**:

(A) In accordance with the requirements of the City Council the Subdivider shall construct, at its sole cost and expense, those improvements according to the standards, plans, profiles, specifications and conditions of approval all as approved by the City Engineer and all of which are incorporated in this agreement by reference as part hereof. Said improvements include, but are not limited to, curbs, gutters, sidewalks, sewer lines, water lines, drainage facilities, fire hydrants, street paving, street lights, street name signs, water meter boxes, block wall and landscaping per approved plans and all other improvements deemed necessary to complete the Subdivision, as directed by the City Engineer.

(B) Subdivider shall construct all public utilities, including cable TV, as required by Sections 10-6-1 through 10-6-11 of the City of Taft Municipal Code (Ordinance No. 777-09). Service from public utilities; consisting of telephone, gas, electrical, water and cable TV service, shall be provided for each lot within this subdivision.

2. MANNER OF CONSTRUCTION:

The improvements designated above shall be installed and constructed in accordance with all of the following:

(A) Title X of the Taft Municipal Code.

(B) The California Subdivision Map Act.

(C) Approved Plans, specifications and profiles.

(D) Standard City specifications and grades.

(E) Good engineering practices and workmanlike manner.

(F) Approved cost estimates.

3. TIME FOR COMPLETION:

All of said improvements shall be completed in full in accordance with the terms of this agreement and to the satisfaction of the City Engineer within one (1) year from the date of approval of this Agreement, to wit; on or before the ____ day of July, 2016, or any extension of said completion date granted by the City Council.

4. INSPECTION AND APPROVAL OF WORK:

(A) All improvement work shall be subject to inspection by the City Engineer, his/her designee, or other official designated by the City of Taft, and shall be completed to his/her satisfaction.

(B) When all of the required improvement work has been satisfactorily completed, upon written application of the Subdivider, the City Engineer, his/her designee, or other official designated by the City of Taft, may inspect and approve the same within a reasonable time and shall file his/her report with the City showing the date of inspection and approval.

(C) If the City Council finds that the report is true and correct, it may make its order accepting or approving the work of improvement and cause a Notice of Completion to be filed.

5. REDUCTION AND RELEASE OF SECURITY:

(A) Except as otherwise provided, the Subdivider and its surety shall be deemed released from liability for damage or injury to such work so accepted by said Council, and from the maintenance thereof, from and after the time the order of the City Council per section 4(c) is effective. However, the foregoing provision shall not relieve the Subdivider or its surety from any damage or injury to such work of improvement or any maintenance required therefore arising from any other work undertaken by the Subdivider or its surety, or as may necessarily be done by the City in the performance of any part of the required improvement work as a result of any default in the performance of this Agreement by the Subdivider or its surety or arising from any willful act or negligent act or omission of the Subdivider or its surety or their contractors, agents or employees, or arising from defective work or labor done or defective materials furnished in the performance of this Agreement.

(B) At the time of making of the order of acceptance or approval of such work, as the case may be, the Council may effect a reduction of the improvement security.

6. GUARANTEE AGAINST DEFECTS:

The Subdivider hereby guarantees all features of the work of improvement for a period of one (1) year following the acceptance of the work, against defective work or labor done, or defective material furnished, in performance of this Agreement; and Subdivider agrees to correct, repair or replace promptly when demanded by the City all such defective work or labor done, or defective materials furnished, as may be discovered within such one (1) year period and reported to the City Council.

7. IMPROVEMENT SECURITY:

(A) This Agreement shall be secured by good and sufficient security which shall be filed with the City prior to certification of the final map by the City Council. Such improvement security shall consist of one or more of the following, at the City's sole discretion: (1) a faithful performance bond or bonds by one or more duly authorized corporate sureties; or (2) a deposit, either with the City or a responsible escrow agent or trust company, selected by the City, of cash or negotiable bonds of the kind approved for securing deposits of public monies; (3) an irrevocable instrument of credit from one or more responsible financial institutions regulated by State or Federal government and pledging that the funds are on deposit and guaranteed for payment on demand by the City; or (4) a performance bond in the form of a letter of credit. The

form of all documents relating to such security shall be subject to approval by the City Attorney. The corporate surety bond shall conform substantially with the form set forth in Section 66499.1 of the Map Act. The estimated cost of the various features of the work of improvement shall be used, if applicable, as the basis for the reduction of bonds in connection with the final completion of any feature of the work (or any unit thereof), and the basis for all security shall be in an amount no less than, as follows:

Estimated costs referred to herein are set forth on the Cost Estimate for Subject Tract Map - attached hereto as Exhibit "A".

(B) Per the Taft Municipal code, said improvement security shall be in the amount of 100% of the total estimated cost of the improvement, conditioned upon the faithful performance of the Agreement, as follows:

(1) The faithful performance and full and timely completion of the work according to this Agreement; and

(2) The guarantee and maintenance of the work of improvement for a period of one (1) year following the completion and approval thereof, against defective work or labor done, or defective materials furnished in the performance of this Agreement; and

(C) Per the City of Taft Municipal Code, said improvement security shall also be in an additional amount of 50% of the total estimated cost of the improvement, securing payment to the contractor, his/her subcontractors and to persons renting equipment or furnishing labor or materials to them for the improvement; and if such portion of the improvement security is:

(1) A cash deposit, suit may be maintained against the holder of such deposit, or

(2) A surety bond, suit may be maintained against the surety, or an instrument of credit, suit may be maintained against the financial institution obligating itself as trustee on such instrument.

(D) In lieu of the amounts described in subparts (B) and (C) of this section, City of Taft shall accept a bond or letter of credit in the total amount of $699,218.00.

8. COMPLETION BY SURETY OR CITY:

(A) If the City Council, in the exercise of its reasonable discretion, shall determine:

(1.) That the Subdivider has failed to properly and fully complete all of the work of improvement in accordance with this agreement, and within the time (or any extension of time) provided herein; or

(2) That the Subdivider has failed or neglected to begin the work, or any feature

of the work, within a time which will reasonably allow its completion within the time (or any extension of time) provided in this agreement; or

(3) That the Subdivider has abandoned any of the work; and

(4) That the Subdivider (if he/she shall be an individual) has been declared incompetent or placed under the care of a guardian or conservator, or has disappeared; or

(5) That the Subdivider has filed a petition in bankruptcy or has been declared bankrupt then the City Council may determine to, and the City may give the Subdivider and its Surety fourteen (14) days written notice to proceed with the work, without prejudice to any other remedy the City may have in law or equity.

(B) If the Surety shall proceed with the work, the Surety shall be subject to all of the provisions of this Agreement as in the case of the Subdivider.

(C) If the Subdivider or its surety shall fail or neglect to proceed with the work diligently and in good faith in accordance with this Agreement after such notice has been given, the City may thereafter, at its sole option and without prejudice to any other remedy, provide the necessary supervision, equipment, materials and labor as it may determine necessary to undertake and complete the work of improvement or any part thereof in the manner required by this Agreement, by independent contract or by City forces, all for the account and at the expense of the Subdivider, and the Subdivider and its Surety shall be liable to the City and shall pay the City on demand, any expenses incurred by the City in the course thereof.

9. <u>INDEMNIFICATION PROVISIONS</u>:

(A) The Subdivider shall, and it does hereby agree, to hold harmless and indemnify the City and its Council, elected and appointed officers and employees, agents, volunteers, and authorized representatives (hereafter collectively referred to as "City Indemnified Parties") from every liability, claim, suit, demand, loss, charge, liens, cause of action, award, judgment, cost, and expense (including without limitation attorneys' fees, expert fees, staff time expenses and costs, and investigation costs) which may arise or may be made by reason of:

(1) Any act, omission or neglect of the Subdivider, its officers, engineers, employees, agents, contractors, independent contractors, sub-contractors, or representatives; or

(2) Any injury to any person, death of any person, or damage to any property, sustained by any person, firm or corporation while in or upon the parcel of land herein mentioned or arising from this Agreement; or

(3) Any injury to or death of the Subdivider or any officer or employees of the

Subdivider, or any damage to the property of any such person, firm or corporation, or arising from this Agreement; or

(4) Any damage to or taking of any property arising from said plans, specifications or profiles, or arising from the work of construction or the conduct thereof, including, without limitation, arising from this Agreement;

(B) The Subdivider at its own cost, expense and risk shall defend all legal proceedings which may be brought against the City Indemnified Parties, on any liability suit, claim or demand which it has agreed to indemnify them against herein, and shall satisfy any resulting judgement that may be rendered against any of them.

(C) It is mutually agreed that the Subdivider's surety under the improvement security for faithful performance shall not be deemed liable for performance of any of the foregoing provisions of this section, unless said surety shall undertake the completion of any improvement or the conduct of work required to be done under this Agreement, and then only to the extent of any act, omission or neglect of the surety, its engineers, employees, agents or contractors in the course of the completion of such improvements or the conduct of such work by said surety.

10. ATTORNEY'S FEES ON SUIT:

If any suit be brought by the City for the recovery of any sum due under this Agreement, for any damages for the breach of this Agreement, or to compel performance of this Agreement, the City shall be entitled to such portion of such reasonable attorney's fees as the Court may determine, in addition to its cost of suit.

11. INSURANCE REQUIREMENT:

(A) The Subdivider shall at all times during the course of any of the improvement work, secure and maintain, and shall cause its contractors to secure and maintain, in the manner required by law, worker's compensation insurance as required by the California State Labor Code and amendments thereto, and shall furnish to the City satisfactory evidence thereof.

(B) The Subdivider shall maintain, and pay all premiums on, a policy of comprehensive commercial general liability insurance in the amounts given below in form and with insurance companies satisfactory to the City, containing an endorsement including the City, its Council, officers and employees as additional named insured.

(C) The limits of said policy shall be in amounts not less than $2,000,000 per occurrence for Bodily injury, Personal injury and Property damage.

(D) The Subdivider shall maintain, and pay all premiums on, a policy of comprehensive automobile liability insurance in an amount of no less than $1,000,000 per occurrence and $2,000,000 aggregate, with insurance companies satisfactory to the City, and naming the City, its Council, officers and employees as additional named insureds.

(E) The Subdivider shall maintain, and pay all premiums on, a professional liability (errors and omissions) insurance for liability arising out of or related to the performance of the work contemplated under this Agreement, which shall be no less than $1,000,000 per claim and $2,000,000 aggregate, with insurance companies satisfactory to the City, and naming the City, its Council, officers and employees as additional named insureds.

(D) Prior to undertaking any work of construction, the Subdivider shall file with the City Clerk a Certificate of Insurance, with the endorsement thereon aforementioned, certified by the carrier, for all insurance named above.

(E) The Subdivider shall continue to so maintain said policy and pay the premiums thereon for a period of one (1) year from and after the acceptance or approval, as the case may be, of the entirety of the improvement work.

(F) In case the estimated cost of the required work of improvement is found to be less than $10,000.00, the City Council may approve limits of insurance coverage is lesser amounts than those specified in (C) above.

12. SUBDIVISION FEE:

The Subdivider shall pay fees in the amount of $4,251.38 (Four Thousand Two Hundred Fifty One Dollars and Thirty Eight cents) for the Final Tract Map, Engineering Plan Check and Improvement Inspection fees. The Subdivider agrees that he has, or forthwith deposit, the said amount with the Finance Department of the City.

13. MISCELLANEOUS.

A. The City and the Subdivider shall take all other actions and execute all other documents that are reasonably necessary to effectuate this Agreement.

B. The City shall not become or be deemed to be a partner or joint venture with the Subdivider or associate in any relationship with the Subdivider other than that of parties to this Agreement, by reason of the provisions of this Agreement. Subdivider shall not for any purpose be considered an agent, officer, or employee of the City.

C. No term, covenant or condition of this Agreement may be waived without the

prior written consent of the other Party. Forbearance or indulgence by a Party shall not constitute a waiver of that term, covenant, or condition, and a Party shall be entitled to exercise any remedy under this Agreement or any other legal or equitable remedy, despite any forbearance or indulgence. No waiver by a Party of any breach under this Agreement shall constitute a waiver of any other breach, whether of the same or of any other covenant or condition. No waiver given by either Party shall give the other Party a contractual right by custom, estoppel or otherwise which is in conflict with any written provision of this Agreement.

D. This Agreement contains all agreements of the Parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective.

E. The use by either Party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive such Party of, or limit the application of, any other remedy provided by law, at equity, or otherwise.

F. If any part, term, or portion of this Agreement is found to be unenforceable for any reason, the remaining parts, terms, and portions of this Agreement shall be deemed severable and enforceable in full.

G. Any action arising under this Agreement shall be brought, and venue shall exist, in the County of Kern. This Agreement shall be construed according to the laws of the State of California.

H. The terms, covenants, conditions, and restrictions in this Agreement shall be binding on, and inure to the benefit of, the parties hereto and their respective parent, subsidiary, or affiliated organizations, administrators, beneficiaries, conservators, custodians, directors, employees, executors, guardians, heirs, independent contractors, joint ventures, members, officers, partners, predecessors, representatives, stockholders, successors and all others acting for, under or in concert, including all business entity forms and partnerships.

I. This Agreement is made for the sole benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns, and no other persons shall have any right of action hereon.

J. Each provision of this Agreement to be performed by the Subdivider shall be deemed both a covenant and a condition.

K. This Agreement may be modified or amended only by a written document signed by both Parties hereto.

L. Each individual executing this Agreement on behalf of either Party represents and

warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of that Party.

M. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement, and that neither Party shall be deemed to have been the drafting party.

N. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

IN WITNESS WHEREOF, the parties in this Agreement have executed the same on the day and year first mentioned herein.

APPROVED AS TO FORM:	CITY OF TAFT:
_____	_____
Jason Epperson, City Attorney	Randy Miller, Mayor
_____	_____
Jerry Helt, City Engineer	Yvette Mayfield, City Clerk
COUNTERSIGNED:	SUBDIVIDER:
_____	_____
Craig Jones, City Manager	Bob Colston, Colston Construction, Inc.
	by_____