

Tuesday, September 17, 2013, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

Web Site: www.ci.tracy.ca.us

Americans With Disabilities Act - The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in Council meetings. Persons requiring assistance or auxiliary aids should call City Hall (209/831-6000) 24 hours prior to the meeting.

Addressing the Council on Items on the Agenda - The Brown Act provides that every regular Council meeting shall provide an opportunity for the public to address the Council on any item within its jurisdiction before or during the Council's consideration of the item, provided no action shall be taken on any item not on the agenda. Each citizen will be allowed a maximum of five minutes for input or testimony. At the Mayor's discretion, additional time may be granted. The City Clerk shall be the timekeeper.

Consent Calendar - All items listed on the Consent Calendar are considered routine and/or consistent with previous Council direction. A motion and roll call vote may enact the entire Consent Calendar. No separate discussion of Consent Calendar items will occur unless members of the City Council, City staff or the public request discussion on a specific item at the beginning of the meeting.

Addressing the Council on Items not on the Agenda – The Brown Act prohibits discussion or action on items not on the posted agenda. Members of the public addressing the Council should state their names and addresses for the record, and for contact information. The City Council's Procedures for the Conduct of Public Meetings provide that "Items from the Audience" following the Consent Calendar will be limited to 15 minutes. "Items from the Audience" listed near the end of the agenda will not have a maximum time limit. Each member of the public will be allowed a maximum of five minutes for public input or testimony. However, a maximum time limit of less than five minutes for public input or testimony may be set for "Items from the Audience" depending upon the number of members of the public wishing to provide public input or testimony. The five minute maximum time limit for each member of the public applies to all "Items from the Audience." Any item not on the agenda, brought up by a member of the public shall automatically be referred to staff. In accordance with Council policy, if staff is not able to resolve the matter satisfactorily, the member of the public may request a Council Member to sponsor the item for discussion at a future meeting. When members of the public address the Council, they should be as specific as possible about their concerns. If several members of the public comment on the same issue an effort should be made to avoid repetition of views already expressed.

Presentations to Council - Persons who wish to make presentations which may exceed the time limits are encouraged to submit comments in writing at the earliest possible time to ensure distribution to Council and other interested parties. Requests for letters to be read into the record will be granted only upon approval of the majority of the Council. Power Point (or similar) presentations need to be provided to the City Clerk's office at least 24 hours prior to the meeting. All presentations must comply with the applicable time limits. Prior to the presentation, a hard copy of the Power Point (or similar) presentation will be provided to the City Clerk's office for inclusion in the record of the meeting and copies shall be provided to the Council. Failure to comply will result in the presentation being rejected. Any materials distributed to a majority of the Council regarding an item on the agenda shall be made available for public inspection at the City Clerk's office (address above) during regular business hours.

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

Full copies of the agenda are available at City Hall, 333 Civic Center Plaza, the Tracy Public Library, 20 East Eaton Avenue, and on the City's website www.ci.tracy.ca.us

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

PRESENTATIONS - Certificate of Recognition – Linda Jimenez
Proclamation - Drive 4 Pledges Day

1. CONSENT CALENDAR

- A. Approval of Minutes
- B. Acceptance of the Water and Wastewater Improvements (Walnut Avenue, King Alley and Larsen Alley) – CIPs 74092 and 75114, Completed by Knife River Construction of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion
- C. Authorize Amendment of the City's Classification Plan by Approving Revisions to the Classification Specifications of Firefighter and Firefighter Trainee in the Tracy Fire Department
- D. Approval of a One Year (With Options to Extend for Five Additional One-Year Periods) General Services Agreement, Not to Exceed \$200,000, With Advanced Building Cleaners, Inc. for Services Required for Street, Alley, and Parking Lot Sweeping; Authorize the City Manager to Execute Extensions and Any Minor Amendments Associated with this Agreement for Administrative Efficiency; and Authorize the Mayor to Execute the Agreement

2. ITEMS FROM THE AUDIENCE

3. ACCEPT PRESENTATION ON TRILINK (STATE ROUTE 239) PROJECT FROM THE TRILINK TEAM

4. AUTHORIZATION FOR CITY STAFF TO PREPARE A MEMORANDUM OF UNDERSTANDING (MOU) WITH WILD RIVERS IRVINE LLC FOR THE POTENTIAL DEVELOPMENT AND OPERATION OF AN AQUATICS CENTER IN THE CITY OF TRACY

5. AUTHORIZATION FOR STAFF TO NEGOTIATE AN AMENDMENT TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH SURLAND COMMUNITIES, LLC FOR THE ELLIS DEVELOPMENT WHICH IS LOCATED ON APPROXIMATELY 321-ACRES OF LAND ON THE NORTHWEST CORNER OF CORRAL HOLLOW ROAD AND LINNE ROAD.

6. SECOND READING AND ADOPTION OF ORDINANCE 1187 AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTION 10.08.980, NAMES OF ZONES, AND ADDING SECTION 10.08.3021, CORDES RANCH SPECIFIC PLAN ZONE (CRSP) TO THE TRACY MUNICIPAL CODE, AND PREZONING THE CORDES RANCH SPECIFIC PLAN AREA AS CRSP

7. SECOND READING AND ADOPTION OF ORDINANCE 1188 AN ORDINANCE OF THE CITY OF TRACY APPROVING A DEVELOPMENT AGREEMENT WITH PROLOGIS, LP APPLICATION DA11-0001

8. ITEMS FROM THE AUDIENCE

9. STAFF ITEMS

A. RECEIVE AND ACCEPT THE CITY MANAGER INFORMATIONAL UPDATE

10. COUNCIL ITEMS

A. APPOINTMENT OF A CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANTS FOR VACANCIES ON THE TRACY SENIOR STEERING COMMITTEE

11. ADJOURNMENT

July 16, 2013, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

Web Site: www.ci.tracy.ca.us

Mayor Ives called the meeting to order at 7:11 p.m. and led the Pledge of Allegiance.

The invocation was offered by Pastor Tim Heinrich, Crossroads Baptist Church.

Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.

1. CONSENT CALENDAR - Following the removal of item 1-G by a member of the audience, it was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Approval of Minutes – Regular meeting minutes of May 7, 2013, May 21, 2013, and Special meeting minutes of May 21, 2013, were approved.
 - B. Authorize the Mayor to Sign a Quitclaim Deed Conveying Vacated Right-of-Way on Schulte Road to the Tracy Public Cemetery District, and Authorize the City Clerk to File the Quitclaim Deed with the San Joaquin County Recorder – Resolution 2013-100 authorized the Mayor to sign the Quitclaim Deed.
 - C. Acceptance of the Tracy Airport Fixed Base Operator (FBO) Meter – CIP 77035A, Completed by Bockmon & Woody Electric Co., Inc. of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion - Resolution 2013-101 accepted the project.
 - D. Acceptance of the Corral Hollow Road Pavement Repair and Resurfacing (North of Linne Road to Peony Drive) – CIP 73127, (Federal Project Number RSTP-5192 (036), Completed by Knife River Construction of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion - Resolution 2013-102 accepted the project.
 - E. Award a Construction Contract for Traffic Related Capital Improvement Projects (CIP 72072, 72080, and 72083) and Authorize the Mayor to Execute the Contract - Resolution 2013-103 awarded the construction contract.
 - F. Acceptance of the Bus Stop Improvements Project (Phase II) on Various City Streets - CIP 77539, Federal Transportation Improvement Program (TIP) No. 212-0000-0457, Grant No. CA-96-X003, Completed by American Asphalt, Inc., of Hayward, California, and Authorization for the City Clerk to File the Notice of Completion - Resolution 2013-104 accepted the project.
 - G. Authorize an Appropriation of \$10,810 from the 2013 Edward Byrne Memorial Justice Assistance Grant (JAG) Program for the Purchase and Installation of Enhanced Technology for the Tracy Police Department's Law Enforcement Programs - Police Chief Gary Hampton, provided the staff report. The Edward Byrne Justice Grant (JAG) Program (42 U.S.C. 3751(a)) is the primary provider of

Federal criminal justice funding to State and local jurisdictions. JAG funds support all components of the criminal justice system by improving the effectiveness and efficiency of criminal justice systems, processes and procedures.

Agencies are allowed to use this grant to support a broad range of activities to prevent and control crime based upon local needs and conditions. The Tracy Police Department has determined the most appropriate use of this grant is to purchase and install several components of technology to enhance the safety of citizens.

The Tracy Police Department intends to purchase electronic digital recorders, surveillance equipment, and automated external defibrillators. The City of Tracy will receive \$10,810 from the 2013 Federal JAG Program. There is no negative impact to the current fiscal budget as no City match is required. Accepting this grant funding requires the funds to be appropriated from the Federal JAG Program and \$10,810 added to the Police Department's Operating Budget.

Staff recommended that Council authorize acceptance of the grant and the appropriation of \$10,810 from the Federal JAG Program to the Police Department's Operating Budget for the purchase of electronic digital recorders, surveillance equipment, and automated external defibrillators.

Paul Miles asked what the nature of the surveillance equipment was and what measures were in place to ensure it was not misused, stating Tracy Police has a record of recording individuals without their knowledge. Police Chief Hampton stated Mr. Miles has not filed a formal complaint specific to the issues he brought up. Police Chief Hampton further stated that Mr. Miles has filed complaints and those complaints have been responded to. In response to the question, Police Chief Hampton stated the grant would be used to purchase remote video recorders which allow police personnel to monitor suspect activity without establishing police presence from several miles up to several hundred feet away.

It was moved by Council Member Rickman and seconded by Mayor Pro Tem Maciel to adopt Resolution 2013-105 authorizing acceptance of the grant and the appropriation of \$10,810 from the Federal JAG Program to the Police Department's Operating Budget for the purchase of electronic digital recorders, surveillance equipment, and automated external defibrillators. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Paul Miles addressed Council regarding comments made by Mayor Pro Tem Maciel at a previous Council meeting pertaining to Mr. Miles' website. Mr. Miles commented on the unfortunate actions of individuals against Council Member Young.
3. PUBLIC HEARING TO CONSIDER A PROPOSED INCREASE TO WASTEWATER RATES AND INTRODUCTION OF AN ORDINANCE TO REVISE WASTEWATER RATES – Steve Bayley, Project Specialist, provided the staff report. The goal of any rate setting process is to establish the fair and equitable distribution of costs among users. The 2013 Wastewater Revenue Program Update has been prepared by CH2M Hill using the City's wastewater revenue program model. A City Council workshop on the

rate study was held on April 16, 2013, to review the update. This study calculates rates based on revenue requirements for the upcoming years. The rate study recommendation is for a rate increase for the single-family home as well as rate increases for the multifamily, commercial, and industrial user classes. Expenses have been carefully managed and wastewater rates were last increased in 2006.

The need for the proposed rate increase is in large part to fund the construction of a second outfall pipeline project. The existing outfall pipeline was installed in the late 1970's so it will be nearly 40 years old by the time a second outfall can be constructed. The existing outfall is comprised of asbestos cement pipe. Asbestos cement is a very brittle material which can be easily damaged. There is currently only one outfall pipeline which makes it a single point of failure, meaning if the pipeline broke the City would have no other way to dispose of nine million gallons per day of treated wastewater. Were there to be a significant release of treated wastewater to the environment, there would likely be significant regulatory fines and the potential for third party lawsuits. The existing outfall pipeline is at capacity. The new, second outfall pipeline would parallel the existing outfall pipeline and would be approximately 3.5 miles long. Final design and permitting are nearly complete and the project will be ready for bidding this year. A redundant pipeline is needed in order to ensure continued long-term reliable disposal of the treated wastewater effluent.

Wastewater rates are calculated using the quantity of wastewater discharged (Flow) as well as the strength of the wastewater (BOD and Suspended Solids). Different types of users have different volumes and strengths of wastewater. The rate study establishes rates for user categories in proportion to Flow, BOD and Suspended Solids. Leprino Foods, as a large industrial user, has flow measured and samples taken daily in order to determine accurate monthly charges.

The proposed rate for a single-family home is to increase to \$34.00 per month. The current charge is \$31.00. Property owners were mailed a notice of the proposed increase indicating that a public hearing on the matter would be held at the City Council meeting on July 16, 2013. If a majority protest does not exist, the Council may act on the proposed increase to the wastewater system charges. A majority protest would be a majority of the owners of the parcels affected by the rate increase.

The proposed rate increase is needed to fund the Wastewater Enterprise Fund's share of the outfall pipeline project. The outfall pipeline project is to construct a new 42 inch diameter pipeline which will be 3.5 miles long with the associated pumping facilities. The new pipeline will have a capacity of 16 million gallons per day (mgd) and its estimated cost is \$25 million. The existing ratepayers' share of the project is a proration based on existing flow and new pipeline capacity. The existing flow is nine mgd, so the ratepayers' share would be 9/16, or 56%, which equals \$14 million. This cost may be financed with bonds. New developments' share of the project would be \$11 million.

Staff recommended that the Mayor open the public hearing and, upon close of the hearing, if there is not a majority protest, that Council introduce the ordinance to revise wastewater rates.

Council Member Manne asked what the lifecycle of the existing pipeline was. Mr. Bayley stated the existing pipeline was nearly 40 years old. Mr. Bayley added that the pipeline broke once 15 years ago. Mr. Bayley further stated it was prudent risk management to

replace the pipeline before it fails. Council Member Manne asked when a second replacement might be necessary. Mr. Bayley stated with new materials a new pipeline could last approximately 60-80 years.

Council Member Manne asked if it was fair to say the current system needed to be replaced immediately. Mr. Bayley indicated staff has been working on the project for five years, obtained permits which took three years, and to delay the project further may subject it to new environmental guidelines which would be more expensive.

Council Member Manne asked Mr. Bayley to provide an example of a catastrophic event. Mr. Bayley explained that if the pipe broke or was damaged, the City would have to shut down the treatment plant to repair the pipeline. Also, if the pipe broke, water could be discharged onto private property or into the river at a rate of nine million gallons per day, which could subject the City to severe fines.

Mayor Ives opened the public hearing.

A member of the public asked if the \$3 increase just covered the pipeline or included maintenance of the plant. Mr. Bayley explained that a portion of the fee goes to the outfall pipeline and a portion to cover the increased rates of the collection systems. Mr. Bayley added that 56% of the \$25 million cost would be borne by rate payers, and the remainder paid by future development.

The resident asked how long it would take to pay off the bond. Mr. Bayley indicated the term of the bond would be 20 or 30 years.

Paul Miles asked what size of a community could be supported by the new pipeline. Mr. Bayley stated the new pipeline would be capable of discharging 16 million gallons per day.

As there was no one further wishing to address Council, the public hearing was closed.

Council Member Rickman asked when the rate increase would take effect. Mr. Bayley stated sometime in September 2013. Council Member Rickman asked when the project would go out for bids. Mr. Bayley indicated sometime in January 2014, with an award in February or March 2014. Mr. Bayley added the bond sale would probably occur at the same time.

Council Member Rickman indicated he would like an agenda item to discuss the fees in relation to the bid amount. Mayor Ives suggested the future agenda item for awarding the contract include a discussion regarding the increased fee versus the contract cost. Council Member Rickman stated Council should be able to take action on the discussion when the award of contract returns to Council for adoption.

Mayor Ives indicated the action is necessary to protect a public asset.

The Clerk read the title of proposed Ordinance 1185. It was moved by Council Member Rickman and seconded by Council Member Manne to waive the reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Rickman and seconded by Mayor Pro Tem Maciel to introduce Ordinance 1185. Voice vote found all in favor; passed and so ordered.

4. APPROVE RESPONSES TO THE SAN JOAQUIN COUNTY GRAND JURY REPORT ON THEIR REVIEW OF (1) PUBLIC SAFETY IN SAN JOAQUIN COUNTY (CASE NO. 0912); (2) SAN JOAQUIN COUNTY MOSQUITO AND VECTOR CONTROL BOARD (CASE NO. 1112); (3) IMPROVING DISPOSAL OF CITY AND COUNTY SURPLUS PUBLIC ASSETS (CASE NO. 0312) AND AUTHORIZE THE MAYOR TO SIGN THE RESPONSES – Police Chief Gary Hampton provided the staff report. The 2012-2013 San Joaquin Grand Jury (Grand Jury) studied (1) the County's law and justice system in an effort to develop ideas to help reduce crime throughout the County; (2) the Mosquito and Vector Control District's Brown Act compliance and other issues; and (3) improving disposal of City and County surplus public assets.

Regarding the 2012-2013 San Joaquin Grand Jury report on Public Safety in San Joaquin County, the Grand Jury report addressed three areas within the law and justice system: law and justice staffing; county jail capacity; and law enforcement leadership.

Regarding the 2012-2013 San Joaquin Grand Jury report on the Mosquito and Vector Control Board, the Grand Jury investigation was structured to focus on five specific issues: lack of transparency and compliance with the Brown Act at District Board meetings; lack of understanding about action related to health insurance benefits; Trustees' knowledge of District finances; appointment of Trustees to the District Board; and the best governance structure of the District Board to serve the public.

Regarding to the 2012-2013 San Joaquin Grand Jury report on improving disposal of City and County surplus public assets, the Grand Jury report investigated the disposition of local government's surplus public assets, in an effort to promote public transparency and consistency while disposing of capital assets.

Staff recommended that City Council approve the City's responses to the San Joaquin County Grand Jury reports and authorize the Mayor to sign each of the three response letters.

Council Member Rickman asked if the City had a gang unit. Police Chief Hampton stated yes; the City has an officer deployed to a regional special enforcement team that not only deals with street violence, but focuses on gang activity.

Mayor Ives invited members of the public to address Council on the item.

Robert Tanner stated he was surprised that the City does not have a policy regarding the disposal of assets. Dan Sodergren, City Attorney, clarified that the City does have general procedures in the Tracy Municipal Code for real property and surplus equipment and supplies. Mr. Sodergren explained that the Grand Jury wants additional administrative procedures in place regarding disposition of equipment and vehicles.

Mayor Ives indicated the City's responses are appropriate.

Council Member Rickman referred to the Grand Jury responses regarding pulling resources to help Stockton. Police Chief Hampton indicated the City of Tracy will assist the City of Stockton or another city when it benefits the City of Tracy. Police Chief

Hampton added that he would rather deal with crime in another city before it reaches Tracy.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt Resolution 2013-106 approving responses to the San Joaquin County Grand Jury Report on their review of (1) Public Safety in San Joaquin County (Case No. 0912); (2) San Joaquin County Mosquito and Vector Control Board (Case No. 1112); (3) Improving disposal of City and County surplus public assets (Case No. 0312), and authorizing the Mayor to sign the response letters. Voice vote found all in favor; passed and so ordered.

5. APPROVE A PROFESSIONAL SERVICES AGREEMENT (PSA) WITH CH2MHILL FOR DESIGN AND PREPARATION OF IMPROVEMENT PLANS AND CONSTRUCTION DOCUMENTS FOR CORRAL HOLLOW ROAD SEWER AND WATER SYSTEM IMPROVEMENTS REQUIRED TO SERVICE SOUTH SIDE DEVELOPMENTS IN ACCORDANCE WITH THE CITY'S APPROVED MASTER PLANS AND DETERMINE THE FORMAL REQUEST FOR PROPOSAL PROCEDURE IS NOT IN THE BEST INTEREST OF THE CITY IN THIS INSTANCE – Kuldeep Sharma, City Engineer, provided the staff report. Citywide Water and Wastewater Master Plans were adopted by City Council on January 15, 2013. In order to serve new south side developments within the City, new sewer and water lines need to be designed and constructed on Corral Hollow Road. Since these lines will be crossing the Delta Mendota Canal (DMC-owned and operated by the Bureau of Reclamation and the San Luis – Delta Mendota Water Authority) and California Aqueduct (owned and operated by the California Department of Water Resources) along with Union Pacific Railroad Tracks (UPRR) and WSID Canal, the design and construction will need to meet requirements of these agencies. The proposed water and wastewater utility system will require multiple permits from various Federal, State, and local agencies. In addition, pump station, force mains, and improvements to the existing sewer lines need to be constructed to serve the new developments.

Since the majority of the infrastructure is essential to service Tracy Hills, the developers have agreed to fund their portion of the cost of design of the infrastructure upfront. The City will pay the remaining cost of this from Development Impact Fees already collected from Standard Pacific for the Muirfield subdivision. Due to the complexity of the work and involvement with various agencies, services of an experienced consultant are needed to complete this work.

Staff has received and negotiated a proposal from CH2MHill to complete the task for design, completion of improvement plans, and construction bid documents for a cost not to exceed \$2,360,000. Tracy Hills developers have also reviewed the proposal and have requested the City to acquire the services of CH2MHill for this task.

CH2MHill is a world renowned consultant, specializing in this type of utility work. They are familiar with the City's infrastructure and have worked with Federal and State agencies. Staff recommended that Council determine the formal request for proposal procedure is not in the best interest of the City and award the contract to complete the design of the Corral Hollow Road Sewer and Water System Improvements to CH2MHill in accordance with section 2.20.140 of the City of Tracy Municipal Code.

Tracy Hills developers are working with the City to enter into a cost recovery agreement to address staff timing and cost of other services. This PSA will not be executed until the cost recovery agreement is executed by the developer.

The item is consistent with the City's Economic Development Strategy and meets goals to ensure physical infrastructure and systems necessary for development.

A portion of the cost of services under the recommended PSA with CH2MHill will be borne by Tracy Hills and the remainder of the cost will be paid by the City from Wastewater Development Impact Fees already received from Standard Pacific Developers for the Muirfield subdivision as follows:

Total Cost of the Professional Services Agreement	\$2,360,000
Tracy Hills Cost	\$1,710,131
City of Tracy Cost (Paid by Standard Pacific)	\$ 649,869

Authorization to proceed will be limited to the existing funds that have already been received by Standard Pacific and to the amount which will be received from Tracy Hills development.

Staff recommended that City Council; 1) Determine the formal request for proposals procedure is not in the best interest of the City in this instance; and approve a Professional Services Agreement (PSA) with CH2MHill for the design and preparation of improvement plans and construction documents for Corral Hollow Road Sewer and Water Improvements for a not-to-exceed cost of \$2,360,000.

Council Member Rickman asked why the City did not go out to bid. Mr. Sharma stated the selection of consultants is based on qualifications. Mr. Sharma stated staff sends out a request for proposals and the consultant is chosen based on their qualifications and experience.

Council Member Rickman asked how the City knows if the contract is competitive if it does not go through the bidding process. Mr. Sharma stated the bidding process is usually limited to construction contracts which include competitive bidding and sealed bid documents.

Council Member Rickman stated on its face it looks like a monopoly. Council Member Rickman asked what the original price was for the consultant. Mr. Sharma stated when negotiations began they started at \$35,000 - \$45,000.

Council Member Young stated she was also concerned that the bidding process was not followed.

Mayor Ives asked the City Attorney to explain the process. Dan Sodergren, City Attorney explained that public works construction contracts are governed by State law and anything over \$5,000 has to go out for bid and awarded to lowest responsible bidder. The contracting of consultant services procedures is governed by municipal code. In the City's purchasing ordinance for consultant services a provision states that if the contract is under \$50,000 an informal request for proposal procedure can be followed; contracts over \$50,000 require the City to obtain at least three proposals. Mr. Sodergren further explained that the City can also take into account the proposers past

experience or other items such as a local business preference. This is usually stipulated in the request for proposals.

Mayor Pro Tem Maciel asked if the City has contracted with other consultants other than CH2MHill on similar projects. Mr. Sharma listed various companies the City had used in the past.

Mayor Pro Tem Maciel asked if any General Fund monies were involved. Mr. Sharma stated no. Mayor Pro Tem Maciel asked if Tracy Hills believed it was in their best interest. Mr. Sharma stated yes.

Council Member Manne asked if stakeholders other than Tracy Hills were involved in the selection process. Mr. Sharma stated three developments would benefit from the project and all were made aware of the proposal and provided a copy of the Agreement.

Council Member Manne asked how removing the bid process could impact the timeline for completion of the project. Mr. Sharma stated the developer's goal was to complete the design and environmental work within their own timeline.

Council Member Rickman asked how many times over the last few years has the City used CH2MHill. Mr. Sharma stated the last major project completed by CH2MHill was the relocation of a force main on the north side of the City.

Mayor Ives invited members of the public to address Council on the item.

Robert Tanner asked if the new project would be paid by the development community or would it cause a rate increase. Mr. Sharma stated the design and construction of the project will be paid by the development community with no rate increase to users.

Mayor Ives asked if the pipeline would be depreciated and money put aside for its replacement in the future. Mr. Sharma stated yes.

Mike Souza, Tracy Hills, stated the reason they wanted to use CH2MHill was because they would be able to prepare plans quicker, and their permitting experience with other entities was extensive.

Council Member Rickman asked Mr. Kumar if he understood his perspective regarding bidding the project. Vijay Kumar, CH2MHill, outlined the number of projects they have successfully bid on and received which totals less than ten percent of the jobs.

Council Member Rickman indicated he wanted to ensure that the City was getting the best deal. Mr. Kumar outlined the project, the experience of his staff and how he adjusted prices. Mr. Kumar stated he believed he was providing the City with the best price.

It was moved by Council Member Manne and seconded by Council Member Rickman to adopt Resolution 2013-107 approving a Professional Services Agreement with CH2MHill for design and preparation of improvement plans and construction documents for Corral Hollow Road sewer and water system improvements required to service south side developments in accordance with the City's approved master plans and determining the

formal request for proposal procedure is not in the best interest of the City in this instance. Voice Vote found all in favor; passed and so ordered.

6. ITEMS FROM THE AUDIENCE – None.

7. STAFF ITEMS

- A. Receive and Accept the City Manager Informational Update – Leon Churchill, Jr., City Manager, provided the report. Council accepted the City Manager's informational update.

8. COUNCIL ITEMS

- A. Council Designation of Voting Delegate and up to Two Voting Alternates for the League of California Cities 2013 Annual Conference Business Meeting – Mayor Ives stated he wanted to be sure that the City was well represented on any tax sharing item. Mayor Pro Tem Maciel indicated he attended last year and would attend this year as well. Council Member Young indicated she would like to attend as well.

Mayor Pro Tem Maciel was designated as the voting delegate and Council Member Young was designated as the alternate for the League of California Cities 2013 Annual Conference Business Meeting.

Council Member Rickman encouraged everyone to take advantage of the many events happening throughout the City this summer.

9. ADJOURNMENT - It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adjourn. Voice vote found all in favor; passed and so ordered. Time: 8:53 p.m.

The above agenda was posted at the Tracy City Hall on July 11, 2013. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk

August 6, 2013, 6:00 p.m.

City Council Chambers, 333 Civic Center Plaza

Web Site: www.ci.tracy.ca.us

Mayor Ives called the meeting to order at 6:00 p.m., and led the Pledge of Allegiance.

The invocation was provided by Pastor Scott McFarland, Journey Christian Church.

Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.

1. CONSENT CALENDAR - Following the removal of items 1-D, 1-G and 1-H, it was moved by Council Member Rickman and seconded by Mayor Pro Tem Maciel to adopt the consent calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Approval of Minutes – Regular meeting minutes of June 4 and June 18, 2013, closed session minutes of June 4 and June 18, 2013, and special meeting minutes of June 18, 2013, were approved.
 - B. Approval of an Agreement with the Tracy Unified School District (TUSD) and Authorization for the Mayor to Execute the Agreement; Accept Funding for Drug Abuse And Resistance Program (DARE) to be used for Supplies, T-Shirts, and Graduation Expenses for Fiscal Year 2013-14, in the Amount of \$10,000 – Resolution 2013-108 approved the agreement.
 - C. Authorize the Appointment of Six Youth Commissioners to the Youth Advisory Commission – Resolution 2013-109 authorized the appointments.
 - E. Rescind Resolution 2013-076, Approve the Revised Lathrop-Tracy Purchase, Sale and Amendment Agreement, Authorize the Mayor to Execute the Agreement, Authorize a Supplemental Appropriation from the Wastewater Fund and Establish a Loan to the Water Fund in the Amount of \$5 Million – Resolution 2013-110 rescinded Resolution 2013-076 and approved the revised agreement.
 - F. Authorization of Amendment No. 22 to Professional Services Agreement No. CH8 with CH2M Hill for Preparation of Wastewater Treatment Plant 2013-15 NPDES Permit Studies and Authorization for the Mayor to Execute the Amendment – Resolution 2013-111 authorized the amendment.
 - I. Award A Professional Services Agreement (PSA) No. DE 2 with Dokken Engineering to Provide Professional Services to Prepare Project Approval and Environmental Documents (PA & ED) for the I-205 / Chrisman Road New Interchange Project CIP 73109, Federal No. HPLULN-5192 (034), for a Not-to-Exceed Amount of \$826,919, Authorize the Director of Development Services to Acquire Additional Services if Needed up to an Amount of \$80,000, Authorize Transfer of \$239,838 from CIP 73014 to 73109, and Authorize the Mayor to Execute the Agreement – Resolution 2013-112 awarded the agreement.

- J. Acceptance of the Jackson Alley and 9th Street Storm Drainage Improvement CIP 73134A, Completed by Extreme Excavation of Tracy, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2013-113 accepted the project.
- K. Acceptance of the Monitoring Wells Abandonment Project – CIP 71033, Completed by Technicon Engineering Services, Inc., of Fresno, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2013-114 accepted the project.
- L. Rescind Resolution 2013-077 and Approve Four Reimbursement Agreements with Cordes Ranch Property Owners for the Acquisition of Water Supply – Resolution 2013-115 rescinded Resolution 2013-077 and approved the agreements.
- M. Approval of Amendment Number Four to the Professional Services Agreement with Design, Community and Environment, Inc. for the Preparation of an Environmental Impact Report, Assistance with the Preparation of a Specific Plan and Annexation for the Cordes Ranch Specific Plan Project – Resolution 2013-116 approved Amendment Four.
- N. Approval of a Real Property Purchase Agreement with Maria O. Silva Revocable Trust and Bernadine (A.K.A. Bernardine) Silva for Acquisition of the Right-of-Way for a Storm Drainage Channel in the North East Industrial (NEI) Area and Authorize the Mayor to Execute the Agreement – Resolution 2013-117 approved the agreement.
- D. Approval of a Wholesale Water Agreement Between Byron Bethany Irrigation District and the City of Tracy for Water Supply for Tracy Hills, Find the CEQA Negative Declaration Adequate for the City's Use, and Authorize the Mayor to Execute the Agreement – Steve Bayley, Project Specialist, provided the staff report. The subject agreement provides water supply for a portion of the Tracy Hills Specific Plan area. This land was annexed into the City in 1998 and was annexed into the Byron Bethany Irrigation District (BBID) in 1999. The subject agreement, in conjunction with a water exchange agreement between BBID and the US Bureau of Reclamation (USBR), will provide for BBID's water to be pumped into the Delta-Mendota Canal (DMC) and delivered to the City's John Jones Water Treatment Plant.

BBID will construct the necessary pump station and pipeline between their facilities and the DMC. Water will then be pumped into the DMC, conveyed to Tracy and, after treatment, potable water will be pumped to serve the Tracy Hills development. The agreement provides for delivery of up to 4,500 acre-feet per year. Delivery of the water is to be scheduled through the USBR and is subject to conveyance capacity being available in the DMC. The agreement has a term of approximately 40 years, through February 28, 2053.

BBID is the lead agency for CEQA and has prepared and adopted a Negative Declaration.

There is no fiscal impact to the General Fund. The City, through water rates, will fund maintenance of the BBID pump station and will pay for the delivered

water. Staff recommended that Council approve the Wholesale Water Agreement between Byron Bethany Irrigation District and the City of Tracy, find the CEQA negative declaration adequate for the City's use, and authorize the Mayor to execute the agreement.

Mayor Ives invited members of the public to address Council on the item.

Dave Anderson addressed Council voicing concerns that the development will be in existence long past the 40 year contract. Mr. Anderson asked where the water could come from after 40 years. Mr. Bayley indicated staff considered the water source to be reliable and stated a contract cannot be negotiated into perpetuity. Mr. Bayley added that the City has successive rights of renewal on the agreement.

It was moved by Council Member Rickman and seconded by Mayor Pro Tem Maciel to adopt Resolution 2013-118 approving a Wholesale Water Agreement between Byron Bethany Irrigation District and the City of Tracy for Water Supply for Tracy Hills, finding the CEQA Negative Declaration Adequate for the City's use, and authorizing the Mayor to execute the Agreement. Voice vote found all in favor; passed and so orders.

G. Adopt a Resolution Authorizing the City Manager to Sign Terms and Conditions of Accepting Airport Improvement Program Grants; Execute Grant Agreements AIP #3-06-0259-014-2013 and AIP #3-06-0259-015-2013 in the amount of \$600,000 with the Federal Aviation Administration for an Update to the Airport Layout Plan, Reimbursement for a Pavement Maintenance and Management Plan, and Reimbursement for Engineering and Design Work on the Airport Pavement Project

Dave Anderson, President Tracy Airport Association, provided Council with a copy of the deed for the Tracy Airport. Mr. Anderson requested that Council approve the item with a stipulation that the airport runway remain at 4,002 feet. Leon Churchill, Jr., City Manager, indicated documents that will be submitted are based on prior Council and action leading to that decision.

Roger Birdsall addressed Council regarding shortening of the runway length. Mr. Birdsall stated that records show that the runway length has been at 4,000 feet since 1980. Mr. Birdsall asked that Council re-consider the runway length.

Mayor Pro Tem Maciel asked if the handout provided by Mr. Anderson was supported by the Tracy Airport Association. Mr. Anderson provided a verbal response from the audience that was inaudible.

Council Member Rickman asked Mr. Churchill how the City was benefiting from a shorter runway length and safety zone. Mr. Churchill indicated the issue regarding the safety zone has been addressed as dictated by State regulations for safety zones based on airport length. Mr. Churchill stated the demarcation line between a small and a medium size cone is indeed 4,000 feet in length. Mr. Churchill indicated the City is submitting plans consistent with those regulations. Mr. Churchill added that a smaller cone does allow more homes to be built as part of the Ellis development. Mr. Churchill stated there are public policy advantages for a City that has a dearth of housing development while seeking to maintain a land use balance between commercial, industrial and residential uses.

Council Member Rickman asked if the three feet difference in runway length affects what type of plane can land. Mr. Anderson provided a response from his seat that was inaudible.

Mayor Ives asked if certain types of airplanes would no longer be able to land at the airport because of a change in runway length. Mr. Churchill indicated based on exhaustive research, staff had no verification of that information.

Council Member Young clarified that she would always support the economic value of the airport. Council Member Young stated that during the last Council discussion all Council Members voiced support for the airport.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt Resolution 2013-119 authorizing the City Manager to sign terms and conditions of accepting Airport Improvement Program Grants; executing Grant Agreements AIP #3-06-0259-014-2013 and AIP #3-06-0259-015-2013 in the amount of \$600,000 with the Federal Aviation Administration for an Update to the Airport Layout Plan, Reimbursement for a Pavement Maintenance and Management Plan, and Reimbursement for Engineering and Design Work on the Airport Pavement Project. Voice vote found all in favor; passed and so ordered.

- H. Approval of Task Order No. 3 with R.W. Brandley, Consulting Airport Engineer, for an Update of the Airport Layout Plan for the Tracy Municipal Airport Required for Implementation of a Federal Aviation Grant, Authorize the Mayor to Execute the Task Order, Authorize use of \$79,650 from the Airport Fund for the Completion of the Task Order until Reimbursement from the Federal Aviation Administration

Dave Anderson, President Tracy Airport Association, stated that when the airport plan is drawn, the Tracy Airport Association, the Aircraft Owners Association and the California Pilots Association will push the City to follow the agreement it made when the property was transferred to the City. Mr. Anderson urged Council to do due diligence.

Mayor Pro Tem Maciel asked if the City had a civil engineer measure the runway length. Ed Lovell, Management Analyst, indicated an engineer surveyed the runway and determined its length to be 3,996 feet and 9 inches.

Mayor Pro Tem Maciel asked if the Airport currently complies with all safety regulations. Mr. Lovell stated yes.

Council Member Rickman asked if a corporate jet could land at the Tracy Airport. Mr. Lovell stated yes.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2013-120 approving Task Order No. 3 with R.W. Brandley, Consulting Airport Engineer, for an update of the Airport Layout Plan for the Tracy Municipal Airport required for Implementation of a Federal Aviation Grant, authorizing the Mayor to execute the Task Order, authorizing use of \$79,650 from the Airport Fund for the completion of the Task Order until

Reimbursement from the Federal Aviation Administration. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – None.
3. COUNCIL ITEMS – Council Member Rickman invited everyone to the last Block Party scheduled for August 16, 2013, where music from the 80's will be featured.
4. ADJOURNMENT – It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adjourn. Voice vote found all in favor; passed and so ordered. Time: 6:27 p.m.

The above agenda was posted at the Tracy City Hall on August 1, 2013. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk

AGENDA ITEM 1.B

REQUEST

ACCEPTANCE OF THE WATER & WASTEWATER IMPROVEMENTS (WALNUT AVENUE, KING ALLEY, & LARSEN ALLEY) - CIPs 74092 AND 75114, COMPLETED BY KNIFE RIVER CONSTRUCTION OF STOCKTON, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

The contractor has completed construction of the Water & Wastewater Improvements (CIPs 74092, and 75114) in accordance with project plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends Council accept the project to enable the City to release the contractor's bonds and retention.

DISCUSSION

On February 19, 2013, City Council awarded a construction contract for the Water & Wastewater Improvements, (CIPs 74092, and 75114), to Knife River Construction of Stockton, California, in the amount of \$276,873.

The scope of water line work included abandoning an existing 4-inch asbestos cement pipe in place and installing approximately 160 linear feet of new 6-inch ductile iron water main, including water service connections, and blow-off valve on Walnut Avenue between Highland Avenue and the northern terminus of Walnut Avenue.

The sewer line work included removal and replacement of existing 8-inch vitrified clay pipe and installing approximately 545 linear feet of new 8-inch SDR26 (PVC) pipe in King Alley and Larsen Alley; and installing 145 linear feet of new 8-inch SDR26 (PVC) pipe in Walnut Street. The above work also involved installation of new sewer laterals, cleanouts, manholes, grinding and overlay.

One change order was issued in the amount of \$39,980.02 for this project which consisted of installation of seven water valves on the existing line. The existing valves were nonfunctional and needed to be replaced.

The project construction contract unit prices are based on estimated engineering quantities. Actual payment is based on field measured quantities installed by the contractor. According to the City's inspection records, actual field measurement quantities exceeded the contract quantities in the amount of \$13,980.02. These quantities were paid in accordance with the bid unit prices of the contract and are listed as over run quantities.

Status of budget and project costs is as follows:

A. Construction Contract Amount	\$ 276,873.00
B. Approved Change orders	\$ 39,980.02

C. Over run of quantities	\$ 13,899.44
D. Design, Construction management, Inspection, testing & miscellaneous expenses	\$ 59,960.00
E. Project Management Charges	\$ 36,037.00
Total Project Costs	\$ 426,749.46
Budgeted Amount	\$ 430,592.00

The project has been completed within the available budget, on schedule, per plans, specifications and City of Tracy standards.

STRATEGIC PLAN

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

FISCAL IMPACT

CIPs 74092, and 75114 are approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund. All remaining funds will be transferred back into the water and sewer funds.

RECOMMENDATION

That City Council, by resolution, accept construction of the Water & Wastewater Improvements (CIPs 74092, and 75114), completed by Knife River Construction of Stockton, California and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

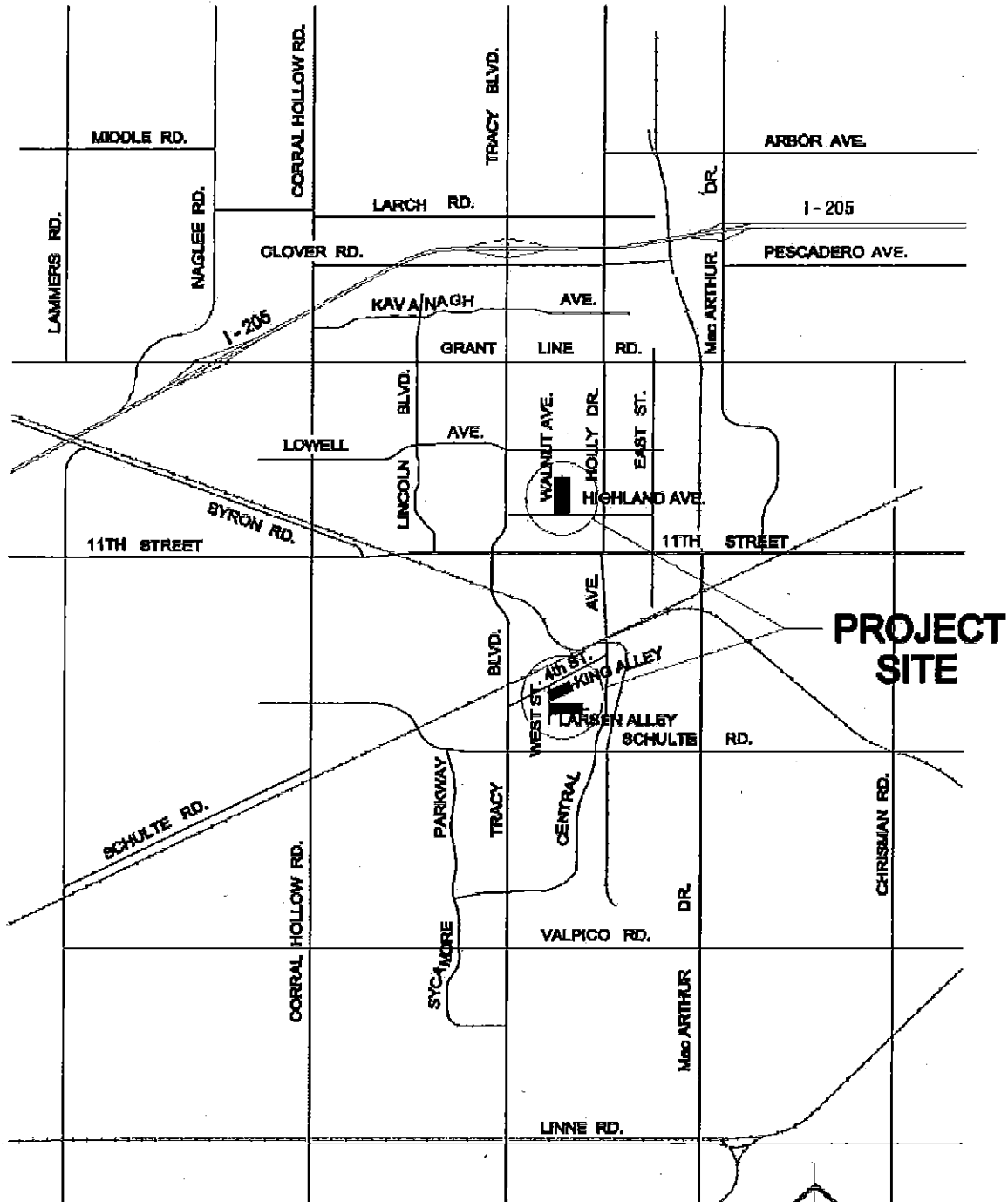
Prepared by: Paul Verma, Senior Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer

Approved by: Andrew Malik, Development Services Director
R. Leon Churchill, Jr., City Manager

ATTACHMENTS

Attachment A: Location Map



LOCATION MAP
NOT TO SCALE

RESOLUTION 2013- _____

ACCEPTING THE WATER & WASTEWATER IMPROVEMENTS (WALNUT AVENUE, KING ALLEY, & LARSEN ALLEY) - CIPs 74092 AND 75114, COMPLETED BY KNIFE RIVER CONSTRUCTION OF STOCKTON, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS, On February 19, 2013, City Council awarded construction contract for the Water & Wastewater Improvements, (CIPs 74092, and 75114), to Knife River Construction of Stockton, California, in the amount of \$276,873; and

WHEREAS, The contractor has completed construction of the Water & Wastewater Improvements. (CIPs 74092, and 75114) in accordance with project plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends Council accept the project to enable the City to release the contractor's bonds and retention; and

WHEREAS, one (1) change order was received in the net amount of \$39,980.02; and

WHEREAS, Status of budget and project costs are estimated to be as follows:

A. Construction Contract Amount	\$ 276,873.00
B. Approved Change orders	\$ 39,980.02
C. Over run of quantities	\$ 13,899.44
D. Design, Construction management, Inspection, testing & miscellaneous expenses	\$ 59,960.00
E. Project Management Charges	\$ 36,037.00
 Total Project Costs	 \$ 426,749.46
 Budgeted Amount	 \$ 430,592.00

WHEREAS, CIPs 74092, and 75114 are approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund. All remaining funds will be transferred back into the water and sewer funds

NOW, THEREFORE BE IT RESOLVED That City Council by resolution accept construction of the Water & Wastewater Improvements. (CIPs 74092, and 75114), completed by Knife River Construction of Stockton, California and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

RESOLUTION _____

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The foregoing Resolution 2013-_____ was adopted by City Council on the 17th day of September, 2013, by the following vote:

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

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.C

REQUEST

AUTHORIZE AMENDMENT OF THE CITY'S CLASSIFICATION PLAN BY APPROVING REVISIONS TO THE CLASSIFICATION SPECIFICATIONS OF FIREFIGHTER AND FIREFIGHTER TRAINEE IN THE TRACY FIRE DEPARTMENT

EXECUTIVE SUMMARY

Periodically, the Human Resources Department receives requests for classification studies and/or reviews as necessary. This report recommends revisions of existing classifications in the Tracy Fire Department to reflect negligible changes of the minimum qualification requirement and physical demands of the classifications. There is no additional cost associated with these revisions.

DISCUSSION

The Human Resources Department recommends approval of the revisions to Firefighter and Firefighter Trainee classifications of the Tracy Fire Department.

For the Firefighter classification, the job description is being revised to reflect the addition of a Candidate Physical Agility Test (CPAT) certification requirement, experiential knowledge inclusion and minor changes to the physical demands for the position. For the Firefighter Trainee classification, the job description is being revised to reflect the addition of a Candidate Physical Agility Test (CPAT) certification requirement and minor changes to the physical demands of the position.

Classification Review Recommendations

As a result of the classification review, the Human Resources Division recommends that the City's Classification Plan and Position Control Roster be amended to incorporate the aforementioned revisions.

STRATEGIC PLAN

This agenda item supports the City's Governance Strategy and Business Plan, and specifically implements the following goals and objectives:

Governance Strategy

Goal 1: Further develop an organization to attract, motivate, develop and retain a high quality, engaged, high-performing and informed workforce.

Objective 1b: Affirm organizational values.

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Page 2

FISCAL IMPACT

There is no fiscal impact associated with the revisions of the Firefighter and Firefighter Trainee classifications.

RECOMMENDATION

That the City Council, by resolution, authorize the Administrative Services Director to amend the City's Classification Plan by approving revisions to the classification specifications of Firefighter and Firefighter Trainee in the Tracy Fire Department.

Prepared by: Arlene Roberts, Human Resources Analyst II

Reviewed by: Jenny Haruyama, Administrative Services Director

Approved by: R. Leon Churchill Jr., City Manager

Attachments: Firefighter Job Description & Firefighter Trainee Job Description

City of Tracy

FIREFIGHTER

Class Title:	Firefighter	Class Code:	70102
Department:	Fire	Bargaining Group:	Tracy Firefighters
EEO Code:	78	Effective Date:	7/1/99
FLSA Status:	Non-exempt	Revision History:	3/02, 6/04

DESCRIPTION

Under the general direction of the Fire Captain, the firefighter operates and maintains a variety of firefighting equipment; responds to fire alarms and other emergencies; protects lives and property; participates in fire prevention, fire investigation, public education, station and equipment maintenance, and other related assigned duties.

SUPERVISION RECEIVED AND EXERCISED

Works under the general supervision of the Fire Captain. May assist, coordinate, instruct, and/or supervise the work of reserve and other fire personnel as assigned

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES

Duties may include, but not be limited to, the following:

Apply principles and practices of modern firefighting techniques and perform firefighting and other emergency activities as directed.

Use proper safety techniques in the operation and maintenance of various fire department equipment, tools and facilities.

Follow and apply City and departmental policies, rules, regulations and guidelines.

Apply EMT-D protocols, CPR and other medical assistance techniques.

Use effective communication skills, both oral and written; follow directions.

Establish and maintain effective working relationships with those contacted in the course of work.

Attend drills and staff training activities; participate in fire department activities.

Respond to alarms; maintain awareness of area streets, special hazards and water systems.

Establish and maintain effective training and readiness.

Assist in minor maintenance to keep the areas in and about the firehouse clean and orderly.

Clean and service firefighting and medical equipment; inspect and test medical equipment.

Provide community service.

Perform other related duties as assigned.

EDUCATION AND EXPERIENCE

Any combination of education, experience, and training that would likely provide the required knowledge and abilities if qualifying. A typical way to obtain the knowledge and abilities would be:

High school diploma or equivalent

Courses in Fire Science or related fields desirable

Minimum of three years, full-time, paid Fire Department experience, with a Fire Department of similar size and scope to the South County Fire Authority.

OR

Graduation from a State Fire Marshal Accredited Firefighter Training Academy within the past eighteen months

OR

Graduation prior to eighteen months with substantially continuous service and experience as a Reserve or Volunteer Firefighter for a State Fire Marshal recognized Fire Agency.

LICENSES AND CERTIFICATES

Must possess and maintain a valid Class C California Driver License

Must possess and maintain a valid EMT certificate as a condition of employment

ADDITIONAL REQUIREMENTS

Incumbent must be Candidate Physical Ability Test (CPAT) certified; certification must be valid within one year of the final submission date of the application period.

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodation may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to stand; walk; use hands to finger, handle, or operate objects, tools, or controls; and reach with hands and arms. The employee is frequently required to sit; climb or balance; stoop, kneel, crouch, or crawl; talk or hear; and taste or smell.

The employee must frequently lift and/or move 10 to 100 pounds. Specific vision abilities apply per DMV requirements.

WORK ENVIRONMENT

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodation may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee regularly works in outside weather conditions. The employee occasionally works near moving mechanical parts and in high, precarious places and is occasionally exposed to wet and/or humid conditions, fumes or airborne particles, toxic or caustic chemicals, risk of electrical shock, and vibration.

The noise level in the work environment is usually moderate, except during certain firefighting or EMT activities when noise levels may be loud.

TOOLS AND EQUIPMENT USED

Emergency medical aid unit, fire apparatus, fire pumps, hoses, ladders, first aid equipment, radio, pager, computers, phones and other standard firefighting/emergency tools and equipment.

SPECIAL REQUIREMENTS

In accordance with City policy, incumbents in this class must pass an annual agility test as part of the qualifications for employment.

In accordance with City policy, incumbents in this class are required to be non-smokers, as part of the qualifications for employment.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The job description does not constitute an employment agreement between the City of Tracy and employee and is subject to change by the City as the needs of the City and requirements of the job change.

City of Tracy

FIREFIGHTER TRAINEE

Class Title: Firefighter Trainee
Department: Fire
EEO Code: 69
FLSA Status: Non-exempt

Class Code: 90565
Bargaining Group: Limited Service/At Will
Effective Date: 8/03
Revision History:

DESCRIPTION

Under the direction of the Tracy Fire Department, and in conjunction with the designated Fire Academy Training Academy/Program Officer, the Firefighter Trainee will be trained in a wide-range of firefighting techniques, knowledge, skills, and abilities in the areas of operations, fire prevention, fire investigation, public education, EMS, operating and maintaining firefighting equipment, station maintenance and other related firefighter skills and duties.

The Trainee who successfully completes the Fire Training Academy Program, will be offered a full time position in the firefighter classification within the Tracy Fire Department.

SUPERVISION RECEIVED AND EXERCISED

Works under the direct supervision of the designated Tracy Fire Department Representative and, while attending academy training, the Academy Training Program Officer.

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES

Duties may include, but not be limited to, the following:

Learn to apply principles and practices of modern firefighting techniques and perform firefighting and other emergency activities as directed.

Learn the proper safety techniques; in the operation and maintenance of various fire department equipment, tools and facilities.

Learn the City and departmental policies, rules, regulations and guidelines.

Learn to apply EMT protocols, CPR and other medical assistance techniques.

Learn to use effective communication skills, both oral and written; follow directions.

Establish and maintain effective working relationships with those contacted in the course of work.

Attend drills and staff training activities; participate in fire department activities.

Learn area streets, special hazards and water systems.

Establish and maintain effective training and readiness.

Learn to assist in minor maintenance to keep the areas in and about the fire house clean and orderly.

Learn to clean and service firefighting and medical equipment; inspect and test medical equipment.

Participate in community activities as assigned.

Perform other related duties as assigned.

EDUCATION AND EXPERIENCE

Any combination of experience and training that would provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

High school diploma or equivalent

Courses in Fire Science or related fields desirable

LICENSES AND CERTIFICATES

Must possess and maintain a valid Class C California Driver License

Must possess and maintain a valid EMT certificate as a condition of employment

ADDITIONAL REQUIREMENTS

Incumbent must be eighteen years of age.

Incumbent must be Candidate Physical Ability Test (CPAT) certified; certification must be valid within one year of the final submission date of the application period.

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodation may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to stand; walk; use hands to finger, handle, or operate objects, tools, or controls; and reach with hands and arms. The employee is frequently required to sit; climb or balance; stoop, kneel, crouch, or crawl; talk or hear; and taste or smell.

The employee must frequently lift and/or move 10 to 100 pounds. Specific vision abilities apply per DMV requirements.

WORK ENVIRONMENT

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodation may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee regularly works in outside weather conditions. The employee occasionally works near moving mechanical parts and in high, precarious places and is occasionally exposed to wet and/or humid conditions, fumes or airborne particles, toxic or caustic chemicals, risk of electrical shock, and vibration.

The noise level in the work environment is usually moderate, except during certain firefighting or EMT activities when noise levels may be loud.

TOOLS AND EQUIPMENT USED

Emergency medical aid unit, fire apparatus, fire pumps, hoses, ladders, first aid equipment, radio, pager, computers, phones and other standard firefighting/emergency tools and equipment.

SPECIAL REQUIREMENTS

In accordance with City policy, incumbents in this class must successfully complete the fire academy to promote to the firefighter classification.

Failure to successfully complete the academy and be recommended for the position of firefighter will result in dismissal from the program.

In accordance with City policy, incumbents in this class are required to be non-smokers, as part of the qualifications for employment.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The job description does not constitute an employment agreement between the City of Tracy and employee and is subject to change by the City as the needs of the City and requirements of the job change.

RESOLUTION _____

AUTHORIZING AMENDMENT OF THE CITY'S CLASSIFICATION PLAN BY APPROVING REVISIONS TO THE CLASSIFICATION SPECIFICATIONS OF FIREFIGHTER AND FIREFIGHTER TRAINEE

WHEREAS, The City has an established Classification Plan, and

WHEREAS, The City has completed a classification review to revise classification specifications;

NOW, THEREFORE, BE IT RESOLVED, that the City Council authorizes the Administrative Services Director to amend the City's Classification Plan to reflect the revised classification specifications for Firefighter and Firefighter Trainee.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 17th day of September, 2013 by the following votes:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.D

REQUEST

APPROVAL OF A ONE YEAR (WITH OPTIONS TO EXTEND FOR FIVE ADDITIONAL ONE-YEAR PERIODS) GENERAL SERVICES AGREEMENT, NOT TO EXCEED \$200,000, WITH ADVANCED BUILDING CLEANERS, INC. FOR SERVICES REQUIRED FOR STREET, ALLEY, AND PARKING LOT SWEEPING; AUTHORIZE THE CITY MANAGER TO EXECUTE EXTENSIONS AND ANY MINOR AMENDMENTS ASSOCIATED WITH THIS AGREEMENT FOR ADMINISTRATIVE EFFICIENCY; AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

The authorization of a General Services Agreement will be to provide street, alley, and parking lot sweeping within the City of Tracy. The City currently has a total annual estimated 12,800 curb miles to be swept which include alleys and parking lots. The Agreement is for one year with the option to extend the Agreement for five additional one year terms. Advanced Building Cleaners, Inc. is the City's current Contractor for street, alley, and parking lot sweeping.

DISCUSSION

Street sweeping services are performed throughout the City to maintain clean streets, alleys, and parking lots, and reduce debris entering the City's storm drain system. Sweeping is completed every two weeks on all City streets, with the exception of the downtown business district which is swept twice a week. Selected City paved alleys and parking lots are swept on a monthly basis.

A "Notice Inviting Bids" for street sweeping was published on July 19, 2013 and August 2, 2013. Bid packages were sent to eight street sweeping contractors. Three bids were received and are summarized as follows:

<u>Contractor</u>	<u>Cost Per Mile</u>
Advanced Building Cleaners, Inc.	\$15.25 per curb mile
Clean Street	\$22.95 per curb mile
Contract Sweeping Services	\$18.87 per curb mile

One of the bids was automatically disqualified because it did not contain the required bond. The low bid was submitted by Advanced Building Cleaners, Inc. Staff recommends the General Services Agreement for street, alley, and parking lot sweeping be awarded to Advanced Building Cleaners, Inc. of Modesto, California. Upon approval, the initial term of the Agreement will be from October 1, 2013 through September 30, 2014. In the event that the City determines the Contractor has satisfactorily performed all requirements in this Agreement, the City may extend the Agreement for five additional one year terms. The Agreement shall be automatically extended for each additional term if the Contractor does not receive a 90 day written termination notice from the City.

STRATEGIC PLAN

This agenda item supports the organizational efficiency strategic plan and specifically implements the following goal:

Goal 3: Ensure systems are in place to meet the City's service delivery needs

FISCAL IMPACT

Funding is available in the Fiscal Year 2013/2014 Operational Budget for street sweeping services. This Agreement has a Not to Exceed amount of \$200,000.

RECOMMENDATION

That the City Council, by resolution, approve a one year (with options to extend for five additional one-year periods) General Services Agreement with Advanced Building Cleaners, Inc. for services required for street, alley, and parking lot sweeping; authorize the City Manager to execute extensions and any minor amendments associated with this agreement for administrative efficiencies; and authorize the Mayor to execute the agreement.

Prepared by: Connie Vieira, Management Analyst I, Public Works Department

Reviewed by: Robert Gravelle, Public Works Superintendent
David Ferguson, Public Works Director

Approved by: R. Leon Churchill Jr., City Manager

Attachment: General Services Agreement

**CITY OF TRACY GENERAL
SERVICES AGREEMENT
STREET, ALLEY, AND PARKING LOT SWEEPING**

This General Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and Advanced Building Cleaners, Inc., a California corporation ("CONTRACTOR").

RECITALS

- A. On July 19, 2013 and August 2, 2013, City published a Request for Bids for Street, Alley, and Parking Lot Sweeping (hereinafter "Project").
- B. On August 15, 2013, CONTRACTOR submitted its bid for the Project to City.
- C. City has determined that CONTRACTOR's bid was the lowest responsible bid. Therefore, it is advantageous and in the best interest of City to enter into the Agreement hereinafter set forth.
- D. On September 17, 2013, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2013-___.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** CONTRACTOR shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, CONTRACTOR's Authorized Representative: Ronald F. Richardson. CONTRACTOR shall not replace its Authorized Representative, nor shall CONTRACTOR replace any of the personnel listed in Exhibit "A," nor shall CONTRACTOR use any subcontractors, without City's prior written consent as set forth in Exhibit "A".
- 2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. CONTRACTOR shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be started and completed by CONTRACTOR in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONTRACTOR. CONTRACTOR shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

3. **INDEPENDENT CONTRACTOR STATUS.** CONTRACTOR is an independent contractor and is solely responsible for all acts of its employees or agents, including any negligent acts or omissions. CONTRACTOR is not City's employee and CONTRACTOR shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to CONTRACTOR. CONTRACTOR is free to work for other entities while under contract with the City. CONTRACTOR, and its agents or employees are not entitled to City benefits.
4. **CONFLICTS OF INTEREST.** CONTRACTOR (including its employees or agents) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If CONTRACTOR maintains or acquires such a conflicting interest, City may terminate any contract (including this Agreement) involving CONTRACTOR's conflicting interest.
5. **COMPENSATION.**
 - 5.1. **General.** For services performed by CONTRACTOR under this Agreement, City shall pay CONTRACTOR on a time and expense basis, \$15.25 per curb mile. For emergency callout services, City shall pay CONTRACTOR a flat rate of \$125 per hour for emergency callouts with a four hour minimum. CONTRACTOR's fee for this Agreement is Not to Exceed \$200,000 per year. CONTRACTOR's billing rates shall cover all costs and expenses for CONTRACTOR's performance of this Agreement. No work shall be performed by CONTRACTOR in excess of the Not to Exceed amount without City's prior written approval.
 - 5.2. **Invoices.** CONTRACTOR shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3. **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the CONTRACTOR based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to CONTRACTOR. Upon termination, CONTRACTOR shall give the City all original documents, including preliminary drafts and supporting documents, prepared by CONTRACTOR for this Agreement. The City shall pay CONTRACTOR for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by CONTRACTOR for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of CONTRACTOR's services, or upon demand from the City. No such documents shall be revealed or made available by CONTRACTOR to any third party without City's prior written.

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

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

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning any work under this Agreement, CONTRACTOR shall obtain a City of Tracy Business License.
10. **INSURANCE.** CONTRACTOR must comply with all the insurance requirements set forth in Exhibit "A".
11. **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONTRACTOR's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent of the City shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
12. **MISCELLANEOUS.**
12.1 Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

To City:
City of Tracy
Public Works Department
520 Tracy Boulevard
Tracy, CA 95376

To CONTRACTOR:
Advanced Building Cleaners, Inc.
P.O. Box 3600
Modesto, CA 95352

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

Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated above, or (2) three working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

12.2 Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

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

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

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

12.6 Entire Agreement. This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.

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

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

13. GENERAL PREVAILING WAGE RATE. The work contemplated by this contract is a public work subject to prevailing wages under California Labor Code Sections

1720 et. seq. Under Labor Code Section 1781, CONTRACTOR is obligated to cause the work to be performed as a public work.

CONTRACTOR is notified that under Section 1770 et. seq. of the California Labor Code, the City Council has ascertained the general prevailing rate of per diem wages and the rates for legal and overtime work for the locality in which the work is

to be performed, for each craft or type of workman or mechanic needed to execute the Agreement which will be awarded to the successful bidder.

- 14. SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONTRACTOR and the City. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

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

City of Tracy

CONTRACTOR
Advanced Building Cleaners, Inc.

By: Brent H. Ives
Title: Mayor
Date: _____

By: Ronald F. Richardson
Title: President
Date: _____

Attest:

By: Sandra Edwards
Title: City Clerk
Date: _____

By: Ronald F. Richardson
Title: Chief Financial Officer
Date: _____

Approved As To Form:

Fed. Employer ID No. 942846067

By: Daniel G. Sodergren
Title: City Attorney
Date: _____

Exhibits:

- A Scope of Services (including personnel, time for performance) (Agreement §§1, 2)

EXHIBIT "A"
SPECIFICATIONS
FOR
STREET, ALLEY, AND PARKING LOT SWEEPING
FOR
CITY OF TRACY
SAN JOAQUIN COUNTY, CALIFORNIA

1. STREET AND PARKING LOT SWEEPING

CONTRACTOR must use and furnish at CONTRACTOR's expense all labor, equipment, and materials necessary for the satisfactory performance of the street sweeping and parking lot sweeping work set forth herein. After sweeping, curbs and gutters must be left in a clean condition. The sweeping must include as many passes as necessary to leave the street in a clean condition. CONTRACTOR must maintain a log which indicates dates, times, streets, and miles swept. The log must be available for inspection by the Public Works Superintendent or his/her designee.

A. Schedule

The sweeping schedule (including dates and times) to be used for residential and commercial streets, alleys and parking lots will be provided by the Public Works Department. Any subsequent deviations from this route and schedule must be approved by the Public Works Superintendent. If deviations from the schedule are approved, CONTRACTOR must notify individual households that are affected IN WRITING at least 15 days (and no more than 30 days) prior to beginning the new schedule. All street sweeping must be performed as follows:

1. Residential and Commercial Streets

All residential and commercial streets, including any center or median strips therein, must be swept at the curb every two weeks or as otherwise agreed to in writing between the City and the CONTRACTOR. Residential streets must be swept between the hours of 7:00 a.m. and 5:00 p.m. Commercial streets must be swept between the hours of 5:00 a.m. and 8:00 p.m.

Exceptions:

The following downtown commercial streets must be swept twice per week (Mondays and Fridays from 5:30 a.m. to 6:00 a.m.):

Tenth Street (Parker Avenue to E Street)
Central Avenue (Eleventh Street to Sixth Street)
Sixth Street (C Street to D Street)

2. Alleys

All City owned paved alleys must be swept on a monthly basis. Those alleys not having curbs must be swept at the edges.

3. Intersections

The following intersections must be swept on a monthly basis:

Tracy Boulevard/Clover Road	Eleventh Street/East Street
Tracy Boulevard/Grant Line Road	Eleventh Street/MacArthur Drive
Tracy Boulevard/Eleventh Street	Grant Line Road/Naglee Road
Tracy Boulevard/Schulte Road	Grant Line Road/Corral Hollow Road
Tracy Boulevard/Central Avenue	Grant Line Road/Lincoln Boulevard
Tracy Boulevard/Valpico Road	Grant Line Road/Holly Drive
Eleventh Street/Lammers Road	Grant Line road/MacArthur Drive
Eleventh Street/Corral Hollow Road	Corral Hollow Road/Schulte Road
Eleventh Street/Lincoln Boulevard	Corral Hollow Road/Byron Road
Eleventh Street/Central Avenue	

4. Parking Lots

The following City parking lots must be swept on a monthly basis:

Downtown (adjacent to Tracy Inn)	Tracy Ball Park
Downtown (adjacent to Delta Disposal)	Tracy Sports Complex
Downtown (9 th Street and B Street)	Tracy Library
Sixth Street (East and West)	Community Center
Lincoln Park	City Hall
Dr. Powers Park	Police Department
El Pescadero Park	Park and Ride Lot (Naglee Road)
Plascencia Fields (upper and lower)	

Sweeping must normally be performed on the perimeter of the parking lot, but additional sweeping on the interior of the parking lot must be completed as needed or as requested. Sweeping must be done after the normal operating hours of the facility so that no vehicles remain in the parking lot at the time sweeping is done. In the case of parks in residential neighborhoods, sweeping must be done at such time as to avoid noise complaints from adjacent residents. Sweeping days and times for all parking lots must be approved by the Public Works Superintendent or his/her designee.

5. Emergency Callouts

CONTRACTOR must provide a 24-hour telephone number and/or list of employees, including telephone numbers and pager numbers, who are available for 24-hour emergency callout service. Compensation for emergency callouts must be on an hourly basis according to the rates listed in the Schedule of Prices.

6. Holidays

If sweeping is not to be performed on certain holidays, CONTRACTOR must provide a schedule for sweeping the missed streets. CONTRACTOR must advise City in advance of holidays to be observed by CONTRACTOR and must be provided with a makeup schedule that is no more than one week later.

7. Delays in Sweeping Schedule

In the event of inclement weather, CONTRACTOR will not be required to perform either the regular sweeping schedule or a makeup schedule. CONTRACTOR must, if requested by the Public Works Superintendent, sweep any streets which become littered with storm debris. In the event of a mechanical breakdown, service must be provided with sufficient backup equipment. CONTRACTOR must have at least two sweepers available for immediate use on a 24-hour basis.

B. Estimated Miles to be Swept

The total annual estimated curb miles to be swept are 12,800. This includes alleys and parking lots. Curb mileage is calculated according to actual miles swept and not machine odometer readings.

It is recognized that a need may arise to increase the frequency of sweeping during the heavy leaf-fall season and thus increase the total number of curb miles swept or to increase callout hours. In the event that such a need does arise, CONTRACTOR must increase the frequency of sweeping as directed in writing by the Public Works Superintendent or his/her designee.

Any streets added to the City during the term of the Agreement, either by new construction or annexation, must be swept according to the appropriate schedule beginning as soon as said streets are officially accepted by the City. The additional cost for sweeping these streets must be based on the per mile cost set forth in the Proposal - Schedule of Prices.

Additional parking lots may also be added to the Agreement as requested in writing by the City. The additional cost for sweeping these parking lots must be based on the per mile cost set forth in the Schedule of Prices.

The City additionally reserves the right to reduce the number of curb miles to be swept within a given year without incurring an increase in the agreed per mile cost for that year.

C. Street Sweeping Complaints

CONTRACTOR must investigate any complaints which may concern or involve the performance listed in these Specifications. CONTRACTOR must report to the Public Works Superintendent or his/her designee on the following working day as to the action or procedure taken with reference to any complaints, and when necessary, complete the citizens' request form which will remain on file in the City offices.

D. Disposal of Sweepings

The City will be responsible for the costs associated with the disposal of street sweeper waste. CONTRACTOR must dispose of all refuse collected by hauling the street sweeper waste to a legally established refuse disposal site approved by the Public Works Superintendent or his/her designee. Refuse must not be stored on the street but must be loaded into trucks or in appropriately placed containers, acceptable to the Public Works Superintendent. If containers are used, they must be dumped upon completion of the sweeping cycle.

E. Water

City will provide sufficient water for the street sweeping equipment necessary to comply with these Specifications and to assure that the curb and gutter are left in a clean condition and the amount of dust during sweeping is in compliance with regulatory laws.

F. Sweepers

All sweepers used must be Certified PM10 Efficient. Sweeper capabilities must be no less than 5.5 cubic yards capacity. CONTRACTOR must have access to a broom-type sweeper if regenerative air sweepers are not capable of removing heavy debris.

Must submit proof of compliance with California Air Resources Board as follows:

FINAL REGULATION ORDER:

TO REDUCE EMISSIONS OF DIESEL PARTICULATE MATTER, OXIDES OF NITROGEN AND OTHER CRITERIA POLLUTANTS FROM IN-USE ON-ROAD DIESEL-FUELED VEHICLES

Division 3: Air Resources Board

Chapter 1: Motor Vehicle Pollution Control Devices

Section 2025: Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles.

G. Sweeper Operation

The sweeper must be operated at a safe speed which will allow for maximum debris pick-up. Speeds should not exceed three to five miles per hour in heavy buildup of debris and six to eight miles per hour in light buildup.

H. Storage of Sweeping Equipment and Supplies

The CONTRACTOR will be responsible for storage of street sweeping equipment and supplies.

2. SUPERVISION BY PUBLIC WORKS SUPERINTENDENT

CONTRACTOR must faithfully and regularly provide service in accordance with these Specifications. The work must be done in a prompt, thorough, lawful and workmanlike manner, according to the provisions of these Specifications and commercially accepted standards,

whichever are more stringent. Performance of each provision of these Specifications shall be under the supervision of the Public Works Superintendent or his/her designee.

3. COMPLIANCE WITH LAWS

CONTRACTOR, its agents and employees, must comply with all laws, ordinances, rules and regulations of the State, County, and the City of Tracy, and all governing bodies having jurisdiction applying to work done or to be done under these Specifications.

4. INSURANCE

A. CONTRACTOR must, throughout the duration of the Agreement, maintain comprehensive general liability and property damage insurance or commercial general liability insurance, covering all operations of the CONTRACTOR, its representatives, agents and employees, performed in connection with the agreement including, but not limited to, premises and automobile.

B. CONTRACTOR must maintain the following minimum limits:

General Liability (with coverage at least as broad as ISO form CG 00 01 01 96)

Combined Single Limit Per Occurrence	\$5,000,000
General Aggregate	\$5,000,000

Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto")

Combined Single Limit Per Occurrence	\$5,000,000
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Workers' Compensation Insurance must be maintained as required by the State of California and Employer's Liability Insurance.

- C. All insurance companies affording coverage to the CONTRACTOR must be required to add the City as an "additional insured" under the insurance policy for all work performed in accordance with these Specifications.
- D. All insurance companies affording coverage to the CONTRACTOR must be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.
- E. All insurance companies affording coverage must provide 30 day written notice to the City should the policy be canceled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration will be considered a cancellation.
- F. CONTRACTOR must provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and Endorsements, in a form satisfactory to the City Attorney.
- G. CONTRACTOR must provide a substitute Certificate of Insurance no later than 30 days prior to the policy expiration date. Failure by the CONTRACTOR to provide such a substitution and extend the policy expiration date will be considered a default by the

CONTRACTOR and may subject the CONTRACTOR to a suspension or termination of work under these Specifications.

- H. Maintenance of insurance by the CONTRACTOR as specified in these Specifications will in no way be interpreted as relieving the CONTRACTOR of any responsibility whatsoever and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.
- I. All insurance certificates and endorsements which are part of the Agreement with the City must be approved by the Public Works Director and City Attorney as to form and content.

5. INDEMNIFICATION OF CITY

CONTRACTOR agrees to indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the CONTRACTOR or its employees, agents, subcontractors, or by these Specifications, excepting only those claims arising from the sole negligence or sole willful conduct of the City, its officers, agents, or employees. CONTRACTOR's indemnification must include any and all cost, expenses, attorney's fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, CONTRACTOR at its own expense must, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

CONTRACTOR's indemnification of City shall not be limited by any prior or subsequent declaration by the CONTRACTOR.

6. PERFORMANCE BOND

CONTRACTOR must provide the City with a performance bond issued by a corporate surety authorized to conduct business as such by the State of California, or other equivalent security approved by the City Attorney, naming the City as obligee, in an amount equal to the estimated street sweeping charges for a three month period as determined by the Public Works Director. Said performance bond or equivalent must be included as part of the agreement with the City.

7. SUBCONTRACTORS

The name, background, and experience of any and every firm to which any work outlined in these Specifications is to be subcontracted by CONTRACTOR must be submitted to the Public Works Director for his/her approval. Unless a subcontract is approved in writing by the Public Works Director, CONTRACTOR must perform all the work outlined in these Specifications, using its own

equipment and personnel. The City will require any such subcontractor to be notified that prevailing wages must be paid under the subcontract and that prior to commencing any work, under the subcontract, the subcontractor must obtain a payment bond for the full amount of the subcontract, which payment bond must be issued by a corporate surety authorized to issue such bonds by the State of California. It must be clearly understood that the CONTRACTOR, irrespective of any approved subcontract, will be held entirely responsible for the quality and quantity of the work done under the terms of the Agreement. No subcontract to do any work outlined in these Specifications is to run longer than the term of the Agreement, and the

extension or renewal of any such subcontract agreement can only be made with the approval of the Public Works Director. The Agreement will not be assignable in all or part without the express written approval of the City.

8. TERM OF AGREEMENT

The Agreement will be from October 1, 2013 through September 30, 2014. The City retains the option to extend the Agreement period for five additional one-year terms up to a maximum of five additional years. The City may exercise its option to extend Agreement for each additional one-year term by providing a 30-day written notice from the City extending the Agreement. The City's decision to exercise its option will be based upon the CONTRACTOR's past performance being satisfactory to the City. CONTRACTOR's performance will be reviewed on a semi-annual basis.

9. DEFAULT BY CONTRACTOR

The Agreement may be canceled by the City without liability for damage, when in the City's opinion the CONTRACTOR is not complying in good faith, is repeatedly charged liquidated damages pursuant to Section 13 of these Specifications, has become insolvent, or has assigned or subcontracted any part of the work without the City's consent. In the event of such cancellation, the CONTRACTOR will be paid the actual amount due based on unit prices and the quantity of work completed at the time of cancellation. Damages caused to the City by acts of the CONTRACTOR will be subtracted from this said amount. The CONTRACTOR, in having entered into this Agreement, will be deemed to have waived any and all claims for damages because of cancellation of Agreement for any such reason. If the City declares the Agreement canceled for any of the above reasons, written notice to that effect must be served upon the Surety. The Surety shall, within five business days, assume control and perform the work as successor to the CONTRACTOR.

If the CONTRACTOR fails to execute the work in the manner at such locations as specified, and carry out the intent of the Agreement, a written notice will be served upon the CONTRACTOR and the Surety on its performance bond or equivalent, as provided in Section 6 of these Specifications, demanding satisfactory compliance with the Agreement.

If the CONTRACTOR or its Surety does not comply with such notice within five business days after receiving it, or fails to continue after starting to comply, the City may exclude it from the premises and take possession of all material and equipment. The City may complete the work by its own forces, or by letting the unfinished work to another CONTRACTOR, or by a combination of such methods. In any event, the cost of completing the work will be charged against the CONTRACTOR and its Surety and will be deducted from any money due or becoming due from

the City. If the sums due under the Agreement are insufficient, the CONTRACTOR or Surety must pay to the City within five business days after the completion, all costs in excess of the sums due.

If the Surety assumes any part of the work, it will take the CONTRACTOR's place in all respects for that part and will be paid by the City for all work performed by it in accordance with the Agreement. If the Surety assumes the entire Agreement, all money due the CONTRACTOR at the time of its default will be payable to the Surety as the work progresses, subject to the terms of the Agreement.

The provisions of this section will be in addition to all other rights and remedies available to the City under law.

10. ANNUAL RATE INCREASES

CONTRACTOR will be entitled to an annual rate adjustment upon each extension of the Agreement, if any. The base for computing the adjustment will be the Consumer Price Index for Urban Wage Earners for the San Francisco-Oakland Bay Area published by the U.S. Department of Labor, Bureau of Labor Statistics (Index) which is published for the date nearest the date of the commencement of the term of this Agreement. If the Index published nearest the anniversary date (Renewal Index) has increased over the Index for the prior year, the rates for the following year will be established by multiplying the rates for the current year by a fraction, the numerator of which is the Renewal Index and the denominator of which is the index for the preceding year. In no case shall the adjusted rates be less than the initial rates as set forth in the Schedule of Prices. The Public Works Director or his/her designee will calculate the adjusted rate on each renewal date of this Agreement and will provide notice to the CONTRACTOR of the new rates.

11. PAYMENT TO CONTRACTOR

Compensation for street sweeping will be based on the actual number of curb miles swept. Quantities submitted by CONTRACTOR for payment by City will be according to the Bid - Schedule of Prices. Callout hours are subject to approval by the Public Works Director or his designee. The Schedule of Prices contains the unit prices for the performance of services pursuant to the Agreement. These will remain in effect until modified under the provisions of Section 13 of these Specifications.

CONTRACTOR will submit invoices on a monthly basis. Payment for services rendered per the Specifications will be made within 30 days following the month during which services have been performed, provided that the specified reports and invoices have been submitted in a timely manner.

12. LIQUIDATED DAMAGES

Failure of the CONTRACTOR to complete the work in accordance with specifications will result in damages being sustained by the City. Such damages are, and will continue to be, impracticable and extremely difficult to determine.

Following are cause for liquidated damages:

- a. Operation of sweeper without using sufficient water to control dust.
- b. Operation of sweeper exceeding the stated speed limits for operation.
- c. Missing scheduled sweeping days without providing prior notice to the Public Works Director or his/her designee (excluding inclement weather).
- d. Any failure or refusal by CONTRACTOR to perform in accordance with the terms of this Agreement.

When observed violating the foregoing on the first occurrence, the CONTRACTOR will be notified in writing by the City. CONTRACTOR must respond within five business days with a written plan stating how compliance will be obtained. If the CONTRACTOR violates the same specification a second time, City will have the right to withhold payment of \$500 as liquidated

damages which is an estimate of one times the cost of service which was scheduled for that day. Each separate violation shall result in a liquidated damages charge in the amount of \$500.

Execution of the Agreement will constitute an agreement between the City and the CONTRACTOR that the estimates for liquidated damages are reasonable. Such liquidated damages will not be construed as a penalty, and may be deducted from payments due the CONTRACTOR during or after the billing cycle in which such delay occurs.

13. PROTECTION OF EXISTING PROPERTY

CONTRACTOR must protect public and private property adjacent to the work from damages and must exercise due caution to avoid damage to such property. CONTRACTOR must repair or replace all damaged property as a result of its operations.

RESOLUTION _____

AUTHORIZING APPROVAL OF A ONE YEAR (WITH OPTIONS TO EXTEND FOR FIVE ADDITIONAL ONE-YEAR PERIODS) GENERAL SERVICES AGREEMENT, NOT TO EXCEED \$200,000, WITH ADVANCED BUILDING CLEANERS, INC. FOR SERVICES REQUIRED FOR STREET, ALLEY, AND PARKING LOT SWEEPING; AUTHORIZING THE CITY MANAGER TO EXECUTE EXTENSIONS AND ANY MINOR AMENDMENTS ASSOCIATED WITH THIS AGREEMENT FOR ADMINISTRATIVE EFFICIENCY; AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, the City of Tracy currently contracts for street, alley, and parking lot sweeping with the current contract expiring on September 30, 2013, and

WHEREAS, on July 19, 2013 and August 2, 2013, staff published a Notice Inviting Bids, sent bid packages to eight street sweeping contractors, and reviewed all three bids received, and

WHEREAS, one of the three bids received was automatically disqualified for not containing the required bond and the lowest bid was submitted by Advanced Building Cleaners, Incorporated, and

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The City Council approves a one year (with options to extend for five additional one-year periods) General Services Agreement (GSA), not to exceed \$200,000, with Advanced Building Cleaners, Inc. for services required for street, alley, and parking lot sweeping; and
2. The City Council authorizes the City Manager to execute extensions and any minor amendments associated with the GSA for administrative efficiency; and
3. The City Council authorizes the Mayor to execute the GSA.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 17th day of September, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS

Mayor

ATTEST:

City Clerk

AGENDA ITEM 3

REQUEST

ACCEPT PRESENTATION ON TRILINK (STATE ROUTE 239) PROJECT FROM THE TRILINK TEAM

EXECUTIVE SUMMARY

The Trilink Project Team has been working on the Phase 1 Planning of the State Route 239 project for the last two years. Prior to publically releasing the Draft Feasibility study, the Trilink Team requested to make a presentation to the City Council.

DISCUSSION

In 2011, Contra Costa County received authorization to receive Federal funding to complete Phase 1 Planning of the proposed Trilink (State Route 239) project connecting State Route 4 in the City of Brentwood area with Interstate 205 (I-205) and Interstate 580 (I-580) in the City of Tracy area. Contra Costa Transportation Authority is taking the lead role with active participation from other agencies in completing this project.

The Trilink Team consists of several agencies and consultants that have been working on this project for the last two years. Prior to public release of the Draft Feasibility Study, the Trilink Team requested to give a presentation to the City Council.

STRATEGIC PLAN

The presentation is a routine item and the project is consistent with the City's Economic Development Strategy for providing infrastructure for future development

FISCAL IMPACT

There is no impact to the City's General Fund.

RECOMMENDATION

That City Council accept the presentation on the Trilink Project (State Route 239) from the Trilink Team.

Prepared by: Kul Sharma, City Engineer

Reviewed by: Andrew Malik, Development Services Director

Approved by: R. Leon Churchill, Jr., City Manager

AGENDA ITEM 4

REQUEST

AUTHORIZATION FOR CITY STAFF TO PREPARE A MEMORANDUM OF UNDERSTANDING (MOU) WITH WILD RIVERS IRVINE LLC FOR THE POTENTIAL DEVELOPMENT AND OPERATION OF AN AQUATICS CENTER IN THE CITY OF TRACY

EXECUTIVE SUMMARY

On October 1 and 2, 2012, Council directed staff to explore the possibility of developing the Aquatics Center through a public-private partnership. Staff has reached out to numerous private water park developers and operators and has identified one entity that is interested in working with the City on the development of an Aquatics Center. Wild Rivers, located in Irvine, CA, has submitted a Letter of Interest to the City to explore the possibility of developing a public-private Aquatics Center project. In order to conduct due diligence with regard to this project, and to begin to work with all Council regarding details such as amenities / location etc., staff is requesting authorization to prepare a Memorandum of Understanding (MOU) with Wild Rivers. If Council directs staff to proceed, it is expected that an MOU could be scheduled for the October 1, 2013 Council meeting.

BACKGROUND

On October 1 and 2, 2012, City Council directed staff to acquire information on the potential of a privately developed and operated aquatic waterpark project. Staff has conducted outreach to three separate waterpark owner/operators in California: Palace Entertainment; Golfland Sunsplash; and Wild Rivers Waterpark. The following represents feedback and other details from each entity.

Palace Entertainment

Palace operates multiple waterparks and family entertainment centers throughout the United States. Within Northern California, Palace currently operates the 'Raging Waters' parks in Sacramento and San Jose, as well as the 'Waterworld California' waterpark in Concord. Upon contacting representatives at the Palace Entertainment office in Newport Beach it was discovered that they are not in the waterpark development industry. Their practice has been to acquire existing waterparks and assume operations. They indicated that they would not be interested in the development of a waterpark in Tracy at this time.

Golfland Sunsplash Entertainment Centers

The City, local retail developers, and Golfland Entertainment representatives have had preliminary discussions regarding the potential of developing entertainment type uses in the City. While conversations with Golfland Sunsplash continue, they are very preliminary and currently do not include any aquatics type facilities.

Wild Rivers Waterpark

Wild Rivers Waterpark, of Irvine, was forced to close last year when their land lease expired after 27 years - to make way for a housing development. The owners have recently received approval from the Orange County Board of Supervisors to rebuild a waterpark on public land off of I-5 in Irvine. The supervisors approved a 25-year lease with Wild Rivers Irvine LLC for 17-acres of county owned property. Mike Riedel, one of the partners of Wild Rivers Waterpark LLC, was contacted to discuss any potential interest they may have in the development of a waterpark in Tracy. Mr. Riedel, being unfamiliar with the Tracy area, requested additional demographic data for the City of Tracy and surrounding area in order to determine the general feasibility of a waterpark in the region. He was specifically interested in the population density within a 10/15/30/50 mile radius of Tracy. For additional information on Wild Rivers Waterpark LLC, staff has included greater detail, see Attachment A.

After reviewing demographic and other Tracy market reports, Mr. Riedel has expressed interest in moving forward with a MOU with the City to explore the aquatic center concept further.

DISCUSSION

Mr. Riedel, a partner with Wild Rivers Irvine LLC, has submitted a Letter of Interest (Attachment B) to the City to pursue and explore the possibility of developing an Aquatics Center in the City of Tracy. In order to move forward with this request, staff is asking Council for authorization to prepare a MOU with Wild Rivers Irvine, LLC to further explore the public-private development of an Aquatics Center in the community.

Should Council direct staff to negotiate a MOU with Wild Rivers Irvine LLC, staff will come back to Council with details of the MOU at a subsequent Council meeting. It is anticipated that the MOU could come back to Council as early as October 1, 2013. Staff understands that there are a number of outstanding issues related to aquatics facilities that need to be addressed, such as: location; refinement of amenities; and operations. Staff proposes a MOU with a six month duration in order to work through these issues with the private entity and the Council.

STRATEGIC PLAN

This agenda item supports the Economic Development Strategic Plan goal of attracting retail and entertainment uses that offer residents quality dining, shopping, and entertainment experiences, and specifically implements the following Action/ Task:

Action/ Task 2.b.2: Outreach to developers and/or operators to determine if a market exists for the private development and operation of a regional waterpark in Tracy.

FISCAL IMPACT

There is no impact to the General Fund as a result of preparing this MOU, aside from staff time. The City currently has \$3 million budgeted for the Aquatics Center CIP, with

additional funding (\$10 million) coming from Surland Communities as part of their Development Agreement with the City.

RECOMMENDATION

That City Council authorize staff to prepare a Memorandum of Understanding (MOU) with Wild Rivers Irvine LLC for the potential development and operation of an Aquatics Center in the City of Tracy

Prepared by: Andrew Malik, Development Services Director
Amie Mendes, Economic Development Analyst

Reviewed by: Maria Hurtado, Assistant City Manager

Approved by: R. Leon Churchill, Jr., City Manager

ATTACHMENTS

Attachment A: Information on Wild Rivers of Irvine LLC

Attachment B: Letter of Interest

EXECUTIVE SUMMARY

After 27 successful years, Wild Rivers became an icon in Orange County and in the waterpark industry. Yet, despite its success and importance, it lost its lease. Wild Rivers is now looking for new opportunities to recreate the success they had in the Irvine location. Accordingly, the Wild Rivers Waterpark team has identified The City of Tracy as an ideal place to build world-class, full-scale waterparks. The City of Tracy is ideal for a waterpark because there is no competition as there is no other waterpark in the geographically relevant area, the weather is warm and reliable, and the surrounding area has a large enough population base to support a waterpark.

HISTORY OF WILD RIVERS

Originally opened in 1986 Wild Rivers has not only been financially successful, but has come to be recognized by the insurance and waterpark industry as one of the best managed and safest waterparks in the country. Wild Rivers only ceased operating because the landowner, The Irvine Company, did not renew the ground lease, opting instead to build apartments. The same management team that managed Wild Rivers will be managing the new waterpark. Our business philosophy is to build and operate facilities that provide safe, fun, and clean family entertainment while respecting the site's local habitat. Because we believe long-term success comes through successfully operating waterparks, year after year, in a way that benefits the local community and its residents a principal member of the Wild Rivers' team will be onsite during the construction and daily operation of the waterpark. We also believe that one of the secrets of Wild Rivers success was that we were able to engage and become an important part of the community. Wild Rivers not only helped families create lasting memories but built large and loyal support of the community. We care about our community and in turn they care about us.

INDUSTRY SUMMARY

The waterpark industry has experienced phenomenal growth since its inception, enjoying particularly strong growth in the past decade. It is estimated that approximately 57 million Americans visited a waterpark in 2010. For the second year in a row, waterpark attendance in America exceeded the strong attendance at traditional theme parks such as Disneyland, Six Flags, and Knott's Berry Farm. Water-oriented recreational activities are among the most popular participation activities in America. A 1999 national survey by global marketing research firm A.C. Nielsen indicated water-oriented recreation has continued to grow in popularity, with 80% of 8- to 34-year-olds participating in water recreation.

Waterparks have proven to be safe, popular, insurable, and profitable businesses over a sustained period of time. Attractions such as wave pools, lazy rivers, speed slides, and body flumes have been developed, marketed, and operated all over the world. Waterparks offer many benefits to the community and surrounding area and are known for their willingness to participate in community activities and partner with charities.

THOUGHTFUL USE OF RESOURCES

Understanding that water is a scarce resource, the new park would endeavor to conserve it at every turn, including eco-friendly design features that were not around when the original park was constructed. While water use at waterparks is far below most people's expectations, the new park will further reduce water usage by including state-of-the-art water filtration and containment system. This system will reduce water consumption by more than 40%. Further water conservation can be effectuated by the use of waterless urinals; each one saving as much as 43,000 gallons of water per year. Even the foliage will be selected based on the water needs. Drought-tolerant, low-water-use native plant species will likely make up the majority of the waterpark's landscaping. Wherever possible, a "green" approach will be taken toward the construction, where ongoing need for resources will be considered and given a high priority instead of just looking at the construction costs.

The parks is being planned to be energy neutral or energy positive. Using alternative energy generation systems the park will actually produce more energy than it uses. This will also allow us to lock in our energy costs for years to come and not to be subject to rolling blackouts.. The waterpark will be equipped with adequate lighting to operate at night for special events and occasional maintenance during evening hours. Evening lighting will not be required for normal waterpark operations but will be installed in certain areas so the waterpark may be used at night for community events.

HOURS OF OPERATION AND SCHEDULE

The waterpark's schedule will be very similar to the successful model of the original Wild Rivers Waterpark, and take the local school schedule into account. It will be open on weekends from May to the middle of June between 11 a.m. and 5 p.m. Full-time hours of 10 a.m. to 8 p.m. daily will begin after the local schools are out through the end of August. During the month of September, the waterpark will return to the weekend schedule of 11 a.m. to 5 p.m. On an as-needed basis, the waterpark will be open from 9 a.m. to 4 p.m. Off-season activities and educational programs will maximize the use of the waterpark during these underutilized months. The waterpark will employ more than 1,000 young people, boosting the local economy and providing valuable experience in the operation and maintenance of the waterpark.

MANAGEMENT SUMMARY

Senior management team

The senior management team of Wild Rivers Waterpark is composed of Mike Riedel and Kevin Kopeny. In addition to operating Wild Rivers and helping to establish numerous other waterparks, the team has worked closely with trade associations to lead industry efforts to raise the standards for safety and operational protocols.

The team also worked hand-in-hand with the American Red Cross to improve training procedures and lifeguard standards, changes that were adopted for waterparks nationwide. Additionally, they have led national efforts to identify and educate park owners/operators about affordable construction and maintenance trends.

MANAGEMENT BIOS

Mike Riedel

Mike is the president of Beach West Properties, the managing general partner of Wild Rivers. Mike has more than 20 years of experience in project and property management. He co-founded Momentum Properties, a real estate syndication and management company.

In addition to Mike's managing general partner responsibilities, he has successfully managed the marketing strategies of Wild Rivers since 1999. Under his direction, Wild Rivers has significantly increased gross revenues in all major categories including general admissions, group sales, season pass holders and concession sales.

Mike serves on the World Waterpark Association's Best Practices Steering Committee, where he has helped develop a waterpark insurance buyers group. This group aims to keep liability insurance rates affordable and identify standard practices necessary to qualify amusement parks to join the insurance buyers group.

Mike is also the Secretary/Treasurer of the California Attractions and Parks Association, an association of California theme parks and waterparks.

Mike received a bachelor of arts in economics from UCLA.

Kevin Kopeny

Kevin served as the general manager of Wild Rivers until its recent closure. He began working at Wild Rivers in 1988 and possesses more than 20 years of experience in the waterpark industry.

In 1997, Kevin was promoted to the position of admissions manager at Wild Rivers. He was promoted to operations director in 1998, to assistant general manager in 2002, and to general manager in 2004. During Kevin's tenure as the operations director and assistant general manager from 1998 to 2003, attendance rose and the injury rate dropped during the same period.

Kevin is a member of the American Red Cross Advisory Committee, helping to develop new aquatic programs. Kevin also serves on the National Advisory Committee for the Red Cross Lifeguard Training Program, a committee that writes and updates the American Red Cross Lifeguard Manual. Kevin is an American Red Cross Lifeguard and a First Aid, CPR, AED and O2 instructor. In 2006, the American Red Cross selected Wild Rivers as the primary location to film their new Red Cross training videos under Kevin's direction.

Kevin received a Bachelor of Arts degree in sociology from the University of Colorado at Boulder.

Letters of Reference



February 7, 2011

To whom it may concern,

The World Waterpark Association is the world's leading water leisure trade association, serving more than 1000 waterpark operators and suppliers from more than forty-two countries around the world.

Wild Rivers has been a contributing and active member of the World Waterpark Association since its earliest days. Since joining the Association in 1984, the team at Wild Rivers has consistently been a leader in the water leisure industry, from safety and operations, to staff development and marketing.

In 2004, the WWA's Board of Directors honored Wild Rivers with its prestigious Industry Leadership Award for setting an exceptional standard for the industry over the years. This recognition was due to their long-standing reputation within the industry as a top flight operator.

They have built and maintained their own facility with a strong focus on guest and employee safety. They have considerable business acumen and are well respected for their financial success. Their team has continued to innovate with new attractions and inventive programs, all while maintaining a strong presence in the Irvine community.

When the WWA needed a partner to work with on its Be Water Aware Public Service Announcement campaign, Wild Rivers stepped up to offer its facilities as a backdrop for our campaign with Olympic athletes, Amanda Beard and Jason Lezak. Additionally, Wild Rivers' expert team members have provided many hours of insight and education as speakers at the WWA's annual Symposia.

Thanks to their strong internal leadership and extensive experience both within the California market and the industry as a whole, the team at Wild Rivers would make an excellent partner for the County of Orange Board of Supervisors. They are capable of accomplishing their stated goals both on time and within budget and feel a great sense of passion and commitment for the programs they champion.

I urge you to select them for this project. You will not find a better partner to support your county's goals and make this project a huge success than the team at Wild Rivers Waterpark.

Sincerely,

A handwritten signature in black ink that reads "Rick Root".

Rick Root
President

rroot@waterparks.org

WORLD WATERPARK ASSOCIATION

8826 Santa Fe Dr., Suite 310 | Overland Park, KS 66212 U.S.A.

PHONE: +913.599.0300 | FAX: +913.599.0520 | EMAIL: wwamemberinfo@waterparks.org | WEBSITE: www.waterparks.org



Corporate Head Office

Whitewater West Industries Ltd. · 6700 McMillan Way · Richmond · B.C. · Canada · V6W 1J7

Tel (604) 273-1068 · Fax (604) 273-4518 · e-mail: whitewater@whitewaterwest.com

To whom it may concern:

Re: Wild Rivers Management Group

We are writing to provide a reference for the Wild Rivers Management Group in support of their implementation of a New Waterpark development.

We have known and been involved with the Wild Rivers Group for in excess of 20 years and have found them to be a very experienced and capable team with a reputation of executing projects on a timely basis and a keen focus for on time, on budget implementation and delivery style. Their keen knowledge of the waterpark industry, development requirements, and construction systems and methods have provided them with the unique skill set to implement highly complex projects in an efficient and timely manner.

They display a high level of integrity and conduct themselves in a highly ethical manner at all times. Their successful approach has allowed them to excel at all levels of their works, as they set their own objectives at a very high level and achieve them without sacrificing integrity. This is also my personal experience in dealing with the individuals of this organization.

Should you have any questions regarding the capabilities of this group, we would be happy to address them at length at your convenience.

Sincerely

Yours truly,

WHITewater WEST INDUSTRIES LTD.

Ron Lausman M.L Arch., CSLA. MALA
Director of Architectural Services.



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February 7, 2010

California's Great America
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Knott's Berry Farm
LEGOLAND California
Pacific Park
Palace Entertainment
Pixieland Amusement Park
Redwood Valley Railway
Santa Cruz Beach
Boardwalk
SeaWorld Parks
and Entertainment
Six Flags Discovery
Kingdom
Six Flags Magic Mountain
Sonoma Train Town
The Wave Water Park
Universal Parks and Resorts
Water World California
Wild Rivers Water Park
*Partial list

To Whom It May Concern:

This letter is in reference to Mike Riedel, President of Wildriders Waterpark, on behalf of the members of the California Attractions and Parks Association (CAPA).

CAPA is a trade association representing virtually all of California's theme, amusement and water parks, from the world renowned destinations such as Disneyland and SeaWorld to smaller regional parks. Our members produce more than \$12 billion in annual commerce, directly employ more than 125,000 workers and provide the economic foundation for communities throughout the state.

Mr. Riedel was instrumental in forming CAPA in 2004, and has served on its Board of Directors and as treasurer from our inception. Mr. Riedel is the acknowledged expert on water park issues, development and attractions within our group. He is an industry leader, in all respects, with deep knowledge of the attractions industry, and the role of different park types in attracting patrons.

Our board members consist of senior executives, typically general counsels, park presidents and Senior Vice Presidents from companies such as Disneyland, Universal Studios, Six Flags, Cedar Fair and SeaWorld.

Mr. Riedel has a proven history of industry leadership and the ability to develop his park and attracts to obtain a leading role in the California parks and attractions industry.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Robinson".

John Robinson
CEO CAPA



HAAS&WILKERSON
INSURANCE

February 7, 2011

To Whom It May Concern:

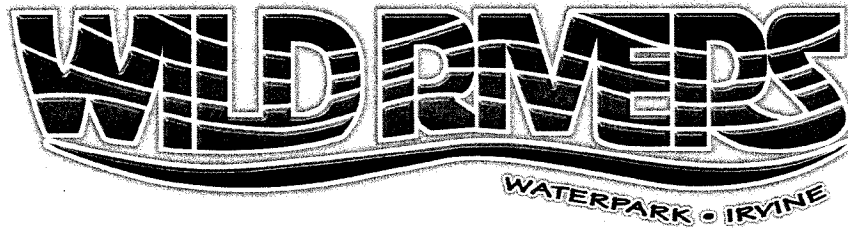
Haas & Wilkerson Insurance has insured all facets of the amusement industry since 1939. We insure fairs, festivals, special events, entertainment venues, carnivals, amusement parks, waterparks and family entertainment centers across the country. We are known as a leader with respect to insurance and risk management and in the amusement industry.

Haas & Wilkerson Insurance is proud to be the insurance provider for Wild Rivers Waterpark. In our experience working with waterparks throughout the industry, Wild Rivers has an excellent operation with superior management and exceptional claims experience. Wild Rivers is one of the finest waterpark operators in the country.

Please accept this letter as a strong recommendation for Wild Rivers Waterpark.

Regards,

Patrick Clark
Haas & Wilkerson



City Of Tracy
Attn: Andrew Malik
Development Services Director
333 Civic Center Plaza
Tracy, CA 95376

July 31, 2013

Dear Mr. Malik

Thank for you for meeting with us a few weeks back. I thought the meeting was informative and certainly peaked our interest in Tracy. We think that a waterpark would fit in perfectly there and we would be very interested in meeting with you further to see if we can figure out a structure for a private/public partnership that would be a win/win for us and the City of Tracy.

Let me know if we can meet again or what next steps might be.

Thanks Again,

A handwritten signature in black ink that reads "Mike Riedel".

Mike Riedel
Wild Rivers Waterpark
150 Via Monte Doro
Redondo Beach, CA 90277
310-922-8436

AGENDA ITEM 5

REQUEST

AUTHORIZATION FOR STAFF TO NEGOTIATE AN AMENDMENT TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH SURLAND COMMUNITIES, LLC FOR THE ELLIS DEVELOPMENT WHICH IS LOCATED ON APPROXIMATELY 321-ACRES OF LAND ON THE NORTHWEST CORNER OF CORRAL HOLLOW ROAD AND LINNE ROAD

EXECUTIVE SUMMARY

The City approved Amended and Restated Development Agreement (DA) with Surland Communities, LLC (Surland) in January 2013. Recently, Surland Communities, LLC submitted a request to amend the DA relative to payment terms for the Swim Center funding. Staff is requesting City Council direction on this request. Any future consideration of approving an amendment to a Development Agreement would be brought to public hearings at both the Planning Commission and the City Council.

DISCUSSION

Recently, Surland submitted an application request to process the first amendment to the existing DA, which was approved by the City Council on January 22, 2013. In accordance with City Council Resolution No. 2004-368, there are procedures and requirements for the consideration of Development Agreements, which include first receiving City Council authorization to negotiate. While amendments to Development Agreements are not specifically identified in these procedures, staff is requesting direction from the City Council on this request.

The request by Surland is narrow in scope and applies to the date when the Swim Center contribution is due to the City (Attachment A is letter from Surland requesting the amendment). The existing DA requires Surland to pay the City a \$2 million swim center payment by September 15, 2013 and an \$8 million swim center payment by July 17, 2016. Under the existing DA, Surland has submitted an offer to dedicate land for a swim center site. The City has until July 17, 2014 to accept this offer.

The request by Surland would change the date when the first \$2 million swim center payment is due from September 15, 2013 to July 17, 2015.

FISCAL IMPACT

An approval authorizing staff to negotiate the DA amendment will have no fiscal impact; actual costs are tracked by staff and paid by Surland through a Cost Recovery Agreement.

STRATEGIC PLAN

This agenda item does not relate to the Strategic Plan.

RECOMMENDATION

Staff recommends that the City Council discuss the request submitted by the Surland Communities, LLC and provide direction to staff. If Council directs staff to negotiate an amendment allowing the extension of the first swim center payment, staff requests the authority to negotiate an extension of time that fits with other City needs, which may result in an extension of time earlier than July 17, 2015. Also, such direction should include direction to negotiate adequate consideration for such amendment (e.g., an extension of the time the City has to accept the offer of land for a swim center site and/or other City benefit).

Prepared by: Bill Dean, Assistant Development Services Director

Reviewed by: Andrew Malik, Development Services Director

Approved by: R. Leon Churchill, Jr., City Manager

ATTACHMENTS

A: Surland Communities, LLC request to negotiate an amendment to the existing Amended and Restated Development Agreement

RECEIVED

July 16, 2013

SEP 11 2013

William Dean
City of Tracy
333 Civic Center Drive
Tracy, California 95376

CITY OF TRACY

RE: Request for First Amendment to Amended and Restated
Development Agreement; pursuant to Government Code
section 65868 and section 1.09 of the Development Agreement

Dear Mr. Dean:

With this letter, Surland Communities formally requests that the City of Tracy, approve and adopt amended terms to the Amended and Restated Development Agreement between the City of Tracy and Surland Communities LLC, that was adopted as Ordinance 1182 on March 19, 2013.

The basic terms of the agreement remain intact, including a payment of \$10,000,000 (ten million dollars) to the City, to fund the design, construction, operation and maintenance of a swim center, and a land dedication offer of 16 acres for the Ellis swim center site.

The requested change is to make the initial payment of \$2,000,000 within two years of the annexation effective date.

Thank you in advance for your timely consideration of this request and we look forward to working with the City of Tracy on the development of the Ellis project.

Sincerely,
SURLAND COMMUNITIES



Les J. Serpa
President

September 17, 2013

AGENDA ITEM 6

REQUEST

SECOND READING AND ADOPTION OF ORDINANCE 1187 AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTION 10.08.980, NAMES OF ZONES, AND ADDING SECTION 10.08.3021, CORDES RANCH SPECIFIC PLAN ZONE (CRSP) TO THE TRACY MUNICIPAL CODE, AND PREZONING THE CORDES RANCH SPECIFIC PLAN AREA AS CRSP

EXECUTIVE SUMMARY

Ordinance 1187 was introduced at the Council meeting held on September 3, 2013. Ordinance 1187 is before Council for a second reading and adoption.

DISCUSSION

The Cordes Ranch Specific Plan Area is proposed to be annexed into the City of Tracy and rezoned as Cordes Ranch Specific Plan Zone (CRSP). A Zoning Ordinance amendment is necessary to establish a Cordes Ranch Specific Plan Zone within the Tracy Municipal Code, as well as on the Zoning Map. Ordinance 1187 was introduced at the Council meeting held on September 3, 2013, to amend Section 10.08.980, Names of Zones, and adding Section 10.08.3021, Cordes Ranch Specific Plan Zone and rezoning the Cordes Ranch Specific Plan Area as CRSP.

Ordinance 1187 is before Council for a second reading and adoption.

STRATEGIC PLAN

This agenda item does not relate to the Council's four strategic plans.

FISCAL IMPACT

None.

RECOMMENDATION

That Council adopt Ordinance 1187 following its second reading.

Attachment

Prepared by: Adrienne Richardson, Deputy City Clerk
Reviewed by: Sandra Edwards, City Clerk

Approved by: R. Leon Churchill, Jr., City Manager

ORDINANCE 1187

AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTION 10.08.980, NAMES OF ZONES, AND ADDING SECTION 10.08.3021, CORDES RANCH SPECIFIC PLAN ZONE (CRSP) TO THE TRACY MUNICIPAL CODE, AND PREZONING THE CORDES RANCH SPECIFIC PLAN AREA AS CRSP

WHEREAS, On February 1, 2012, the City of Tracy adopted a General Plan ("General Plan"), which guides the growth of the City of Tracy (Resolution 2011-029); and

WHEREAS, A Final Environmental Impact Report ("FEIR") for the General Plan (SCH# 2008092006) was certified in 2011, which considered the environmental consequences of the adoption of the General Plan and included the adoption of a series of self-mitigating goals, policies, actions, and mitigation measures; and

WHEREAS, With certification of the FEIR in 2011, the City Council of the City of Tracy adopted a Statement of Overriding Considerations (Resolution No. 2011-028) for a number of unavoidable significant impacts identified within the General Plan FEIR, which is incorporated herein by reference; and

WHEREAS, The General Plan establishes areas for future growth, and identifies one of those areas as Urban Reserve 6, otherwise known as the Cordes Ranch site; and

WHEREAS, Applications were submitted to the City of Tracy for the Cordes Ranch Specific Plan, a General Plan Amendment, and Prezoning/ Annexation (Application Numbers GPA13-0002 and A/P13-0001); and

WHEREAS, A Final Environmental Impact Report ("FEIR") for the Cordes Ranch Specific Plan (SCH No. 2011122015) was prepared in compliance with the requirements of the California Environmental Quality Act ("CEQA") and the CEQA Guidelines and certified by City Council Resolution No. 2013-143 on September 3, 2013; and

WHEREAS, On September 3, 2013, the City Council adopted Resolution No. 2013-144 approving the Cordes Ranch Specific Plan and the General Plan Amendment; and

WHEREAS, The Cordes Ranch Specific Plan Area is proposed to be annexed into the City of Tracy and prezoned as Cordes Ranch Specific Plan Zone (CRSP); and

WHEREAS, A Zoning Ordinance Amendment is necessary to establish a Cordes Ranch Specific Plan Zone (CRSP) within the text of the Tracy Municipal Code as well as on the Zoning Map; and

WHEREAS, The Planning Commission held a duly noticed public hearing on July 30, 2013 to review and consider the proposed establishment of the Cordes Ranch Specific Plan Zone (CRSP) and the prezoning of the Cordes Ranch Specific Plan Area to CRSP and recommended approval; and

WHEREAS, The City Council held a duly noticed public hearing on September 3, 2013 to review and consider the proposed establishment of the Cordes Ranch Specific Plan Zone (CRSP) and the prezoning of the Cordes Ranch Specific Plan Area to CRSP, and found the proposed zoning actions to be consistent with the City's General Plan in all required

respects;

The city council of the City of Tracy hereby does ordain as follows:

SECTION 1: Section 10.08.980, Names of zones, of the Tracy Municipal Code, is amended to read as follows:

“10.08.980 - Names of zones.

In order to classify, regulate, restrict, and segregate the uses of land and buildings, to regulate and restrict the height and bulk of buildings, to regulate the area of yards and other open spaces about buildings, and to regulate the density of population, the following zones are hereby established:

- (a) Residential Estate ZoneRE;
- (b) Low Density Residential ZoneLDR;
- (c) Medium Density Cluster ZoneMDC;
- (d) Medium Density Residential ZoneMDR;
- (e) High Density Residential ZoneHDR;
- (f) Medical Office ZoneMO;
- (g) Professional Office and Medical ZonePOM;
- (h) Planned Unit Development ZonePUD;
- (i) Residential Mobile Home ZoneRMH;
- (j) Community Shopping Center ZoneCS;
- (k) Neighborhood Shopping ZoneNS;
- (l) Central Business District ZoneCBD;
- (m) General Highway Commercial ZoneGHC;
- (n) Light Industrial ZoneM-1;
- (o) Heavy Industrial ZoneM-2;
- (p) Highway Service ZoneHS;
- (q) Agricultural ZoneA;
- (r) Airport Overlay ZoneAO;
- (s) Northeast Industrial Specific Plan Zone ...NEI; and
- (t) Cordes Ranch Specific Plan Zone....CRSP.”

SECTION 2: A new Article 22.2, Cordes Ranch Specific Plan Zone (CRSP), and a new Section 10.08.3021, Cordes Ranch Specific Plan Zone, are added to the Tracy Municipal Code to read as follows:

“Article 22.2 Cordes Ranch Specific Plan Zone (CRSP)

10.08.3021 Cordes Ranch Specific Plan Zone.

The zoning within the Cordes Ranch Specific Plan Zone is governed by the Cordes Ranch Specific Plan.”

SECTION 3: The Cordes Ranch Specific Plan Area is hereby rezoned Cordes Ranch Specific Plan Zone (CRSP). The zoning of said Project site as CRSP, including amendment of the Zoning Map, shall take effect on the same date that annexation of the site occurs.

SECTION 4: This Ordinance shall take effect thirty (30) days after its final passage and adoption.

SECTION 5: This Ordinance shall be published once in the San Joaquin Edition of the Tri Valley Herald, a newspaper of general circulation, within fifteen (15) days from and after its final passage and adoption.

* * * * *

The foregoing Ordinance 1187 was introduced at a regular meeting of the Tracy City Council on the 3rd day of September, 2013, and finally adopted on the ____ day of September, 2013, by the following vote:

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

Mayor

ATTEST:

City Clerk

September 17, 2013

AGENDA ITEM 7

REQUEST

SECOND READING AND ADOPTION OF ORDINANCE 1188 AN ORDINANCE OF THE CITY OF TRACY APPROVING A DEVELOPMENT AGREEMENT WITH PROLOGIS, LP APPLICATION DA11-0001

EXECUTIVE SUMMARY

Ordinance 1188 was introduced at the Council meeting held on September 3, 2013. Ordinance 1188 is before Council for a second reading and adoption.

DISCUSSION

Ordinance 1188 was introduced at the Council meeting held on September 3, 2013. In June 2013, City Council directed staff to enter into negotiations with Prologis, LP for a proposed Development Agreement for lands they own within the Cordes Ranch Specific Plan area (application DA-11-0001). The land consists of approximately 1200-acres of the total 1,780 acres of Cordes Ranch Specific Plan. The proposed Development Agreement is consistent with the General Plan, and the Cordes Ranch Specific Plan.

Ordinance 1188 is before Council for a second reading and adoption.

STRATEGIC PLAN

This agenda item does not relate to the Council's four strategic plans.

FISCAL IMPACT

None.

RECOMMENDATION

That Council adopt Ordinance 1188 following its second reading.

Attachment

Prepared by: Adrienne Richardson, Deputy City Clerk
Reviewed by: Sandra Edwards, City Clerk

Approved by: R. Leon Churchill, Jr., City Manager

ORDINANCE 1188

AN ORDINANCE OF THE CITY OF TRACY APPROVING A DEVELOPMENT AGREEMENT
WITH PROLOGIS, LP APPLICATION DA11-0001

WHEREAS, in June, 2013, Prologis, LP applied for a development agreement (Application No. DA11-0001) which would provide funding towards the creation of City amenities or for uses deemed appropriate by the City Council; and

WHEREAS, on June 4, 2013, the City Council, directed staff to enter into negotiations with Prologis, LP for a proposed development agreement; and

WHEREAS, pursuant to the California Environmental Quality Act and its implementing regulations (collectively, "CEQA"), the City caused the preparation of a Final Environmental Impact Report (SCH No. 2011122015 (the "FEIR") for the Cordes Ranch Specific Plan Project Applications, which applications include Prologis' application for the proposed development agreement as well as the proposed Cordes Ranch Specific Plan, General Plan amendment, rezoning, municipal code amendments, and annexation of the Cordes Ranch Specific Plan site; and

WHEREAS, pursuant to California Government Code Section 65867, the Planning Commission reviewed the proposed development agreement substantially in the form of Exhibit "1" hereto (the "Development Agreement"), in conjunction with other Cordes Ranch Project applications; and

WHEREAS, on July 30, 2013, the Planning Commission, following duly noticed and conducted public hearing, in accordance with state law, recommended approval of the proposed Development Agreement to the City Council; and

WHEREAS, the proposed Development Agreement is consistent with the General Plan, and the Cordes Ranch Specific Plan, for the reasons set forth in the staff report to City Council dated September 3, 2013.

The city council of the City of Tracy hereby does ordain as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein as findings.
2. Compliance with CEQA. The FEIR was prepared in compliance with the requirements of CEQA and was approved and certified by the City Council by Resolution No. 2013-143, and incorporated herein by this reference.
3. Findings regarding Development Agreement. The City Council finds that the proposed Development Agreement:

- a. is consistent with the objectives, policies, general land uses and programs specified in the City General Plan (attached hereto as Exhibit "2" Consistency findings between the General Plan and the Development Agreement) and the Cordes Ranch Specific Plan;
 - b. is in conformity with public convenience, general welfare, and good land use practices;
 - c. will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area, nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole;
 - d. will not adversely affect the orderly development of property or the preservation of property values; and
 - e. is consistent with the provisions of Government Code Sections 65864 et seq.
4. Development Agreement Approval. The City Council hereby approves the Development Agreement with Prologis, LP attached hereto as Exhibit "1".
5. Effective Date. This Ordinance takes effect 30 days after its final passage and adoption.
6. Publication. This Ordinance shall be published once in the San Joaquin Edition of the Tri-Valley Herald, a newspaper of general circulation, within fifteen (15) days from and after its final passage and adoption.

This Ordinance 1188 was introduced at a regular meeting of the Tracy City Council on the 3rd day of September, 2013, and finally adopted on the ___day of _____, 2013, by the following vote:

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

MAYOR

Attest:

CITY CLERK

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
City of Tracy
Attn: Tracy City Clerk
333 Civic Center Plaza
Tracy, CA 95376

RECORDING FEE EXEMPT
PURSUANT TO GOVERNMENT CODE
SECTION 27383

**DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF TRACY AND PROLOGIS, L.P.**

**DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF TRACY AND PROLOGIS, L.P.,**

This DEVELOPMENT AGREEMENT (“**Agreement**”) is made by and between the City of Tracy (“**City**”), a municipal corporation, and Prologis, L.P., a Delaware limited partnership (“**Prologis**”). City and Prologis each may sometimes be referred to herein as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. The Legislature enacted Government Code Section 65864 *et seq.* (“**Development Agreement Statute**”) in response to the lack of certainty in the approval of development projects, which can result in a waste of resources, escalate the cost of housing, and discourage investment in and commitment to planning that would maximize the efficient utilization of resources. The Development Agreement Statute is designed to strengthen the public planning process, encourage private participation in comprehensive, long-range planning, and reduce the economic costs of development. It authorizes a city to enter into a binding agreement with any person having a legal or equitable interest in real property located in unincorporated territory within that city’s sphere of influence regarding the development of that property.

B. Pursuant to the Development Agreement Statute, City has adopted procedures and requirements for the consideration of development agreements, which are set forth in Tracy City Council Resolution No. 2004-368 and Attachment A thereto (“**City Development Agreement Procedures**”). This Agreement has been prepared, processed, considered and adopted in accordance with such procedures.

C. On September 3, 2013, following review and recommendation by the City of Tracy Planning Commission and after a duly noticed public hearing, the City Council of City took the following actions (collectively, the “**Initial Approvals**”):

1. By Resolution No. 2013-144, amended the City of Tracy General Plan to make certain conforming amendments to ensure consistency between the City’s General Plan and the Project, as defined below (“**General Plan Amendment**”).

2. By Resolution No. 2013-144, adopted the Cordes Ranch Specific Plan (“**Specific Plan**”), which is intended to comprehensively plan for and implement development of approximately one thousand seven hundred and eighty (1,780) acres (“**Specific Plan Area**”), as further depicted more in attached Exhibit 1. The Specific Plan is intended to create a state-of-the-art commerce and business park by establishing land use, zoning and development standards and regulations to provide for the phased development of approximately thirty one (31) million square feet of general commercial, general office and business park industrial uses, related on- and off-site infrastructure, and passive and active use open space areas, trails, joint use park/detention facilities, and other related improvements, as described more fully therein (“**Project**”). Among other things, the Project is intended to provide sufficient flexibility to City and the property owners within the Specific Plan Area (including Prologis, among others) to attract a variety of employment-generating uses to the City, while ensuring that the City remains revenue-neutral with respect to the

development and operation of the Project, and ensuring that the Project does not adversely impact the City's budget or General Fund.

3. Conducted the first reading of Ordinance No. 1187, an ordinance amending the text of the City's Zoning Code to reflect a new pre-zoning designation of "Cordes Ranch-Specific Plan (CR-SP)" for the Specific Plan Area, and amending the City's Zoning Map to show the Specific Plan Area as pre-zoned to "Cordes Ranch-Specific Plan (CR-SP)" (collectively, "**Zoning Amendments**").

4. Conducted the first reading of Ordinance No. 1188, an ordinance approving this Agreement and directing this Agreement's execution by City ("**Approving Ordinance**").

5. By Resolution No. 2013-144, adopted a Resolution of Intention to Initiate Annexation Proceedings to initiate the process of annexing the Specific Plan Area to the City ("**Annexation Resolution**").

6. In support of the foregoing actions, by Resolution No. 2013-143, and pursuant to and in compliance with the applicable provisions of the California Environmental Quality Act ("**CEQA**") certified an Environmental Impact Report for the Project (State Clearinghouse No. 2011122015) ("**EIR**"), adopted written findings relating to significant environmental impacts, adopted a Statement of Overriding Considerations, and adopted a mitigation monitoring and reporting plan that incorporated all identified mitigation measures set forth in the Project EIR ("**MMRP**").

D. On September 17, 2013 ("**Effective Date**"), the City Council conducted the second reading of and adopted the Zoning Amendments and the Approving Ordinance.

E. Prologis is the legal owner of approximately one thousand two hundred and thirty eight (1,238) acres within the Specific Plan Area ("**Property**"), as more particularly described and depicted on attached Exhibit 2.

AGREEMENT

Based on the foregoing recitals, the truth and accuracy of which are hereby acknowledged and incorporated into and made a part of this Agreement, and in consideration of the mutual covenants and promises contained herein and other consideration, the value and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

SECTION 1. DEFINITION OF TERMS.

This Agreement uses certain terms with initial capital letters that are defined in this Section 1 below or elsewhere in this Agreement. City and Prologis intend to refer to those definitions when the capitalized terms are used in this Agreement.

1.1 "Actual Wastewater Generation Rate" means the average dry weather flows (ADWF) that occur as a result of a particular use, through documentation from potable water meters (not including irrigation), which shall be used to verify the actual rate of wastewater generation for the particular use at issue. Such rate shall be the

average calculated rate using the actual water bills (not irrigation) for the preceding twelve (12) months.

1.2 “**Additional Wastewater Facilities Payment**” has the meaning set forth in Section 6.2(b).

1.3 “**Additional Wastewater Treatment Capacity Obligation**” has the meaning set forth in Section 3.3(c)(ii).

1.4 “**ADWF**” means the average dry weather flows as further described in the Tracy Wastewater Master Plan.

1.5 “**Adjusted Master Plan Fee Obligation**” has the meaning set forth in Section 6.3.

1.6 “**Agreement**” has the meaning set forth in the Preamble.

1.7 “**Annexation Resolution**” has the meaning set forth in Recital C(5).

1.8 “**Annexation Date**” means the date upon which the annexation of the Specific Plan Area to City is deemed complete under Government Code Section 57203.

1.9 “**Approving Ordinance**” has the meaning set forth in Recital C(4).

1.10 “**Assignee**” has the meaning set forth in Section 10.1.

1.11 “**Master Plan Fee Obligation**” has the meaning set forth in Section 6.3(b).

1.12 “**Building Permit**” means the document issued by City’s Building Official authorizing the holder to construct a building or other structure, as provided for in the City of Tracy Municipal Code.

1.13 “**California Aqueduct Bridge Work**” means the bridge upgrades and/or replacement and bridge widening of that section of Mountain House Parkway that crosses the California Aqueduct between the I-580 Interchange and Old Schulte Road, as further described in the TMP.

1.14 “**CEQA**” has the meaning set forth in Recital C(6).

1.15 “**Certificate of Occupancy**” means a final certificate of occupancy issued by City’s Building Official or, if City’s Building Code does not provide for the issuance of a certificate of occupancy for a particular structure, the functional equivalent thereto, as provided for in the City of Tracy Municipal Code.

1.16 “**City**” has the meaning set forth in the Preamble.

1.17 “**City Council**” means the Tracy City Council.

1.18 “City Development Agreement Procedures” has the meaning set forth in Recital B.

1.19 “Citywide Infrastructure Master Plans” means, collectively, the following City of Tracy Citywide Master Plans: the Citywide Public Facilities Master Plan, the Citywide Public Safety Master Plan, the Tracy Wastewater Master Plan, the Citywide Water System Master Plan, the Citywide Transportation Master Plan, and the Citywide Stormwater Drainage Master Plan.”

1.20 “Citywide Public Facilities Master Plan” means that certain Citywide Public Facilities Master Plan adopted by City, dated January 2013 and in effect on the Effect Date.

1.21 “Citywide Public Safety Master Plan” means that certain Citywide Public Safety Master Plan adopted by City, dated March 2013 and in effect on the Effective Date.

1.22 “Citywide Transportation Master Plan” or **“TMP”** means that certain Citywide Roadway & Transportation Master Plan adopted by City in November 2012 and in effect on the Effective Date.

1.23 “Citywide Storm Drainage Master Plan” means that certain Citywide Storm Drainage Master Plan adopted by City, dated November 2012 and in effect on the Effective Date.

1.24 “Citywide Water System Master Plan” means that certain Citywide Water System Master Plan adopted by City, dated December 2012 and in effect on the Effective Date.

1.25 “Citywide Master Plan Fee Program” has the meaning set forth in Section 6.3(a).

1.26 “Claims” has the meaning set forth in Section 11.13.

1.27 “Community Facilities District” or **“CFD”** means a financing district formed under the Mello-Roos Community Facilities Act of 1982, pursuant to Government Code Section 53311 *et seq.*

1.28 “County Recorder” means the San Joaquin County Recorder, which is responsible, in part, for recording legal documents that determine ownership of real property and other agreements related to real property.

1.29 “County RTIF” means the San Joaquin County Regional Transportation Impact Fee Program.

1.30 “CUP” means a conditional use permit approved by City pursuant to this Agreement and the Tracy Municipal Code.

1.31 “Days” means calendar days. If the last day to perform an act under this Agreement is a Saturday, Sunday or legal holiday in the State of California, said act may

be performed on the next succeeding calendar day that is not a Saturday, Sunday or legal holiday in the State of California and in which City offices are open to the public for business.

1.32 “**Deferred Fee Amount**” has the meaning set forth in Section 6.3(c).

1.33 “**Deferred Fee Program**” has the meaning set forth in Section 6.3(c).

1.34 “**Development Agreement Statute**” has the meaning set forth in Recital A.

1.35 “**Development Impact Fee**” means any requirement of City in connection with a Project Approval for the dedication or reservation of land, the construction of any Project Infrastructure or other public improvements, or the payment of fees which City imposes for the purpose of lessening, offsetting, mitigating or compensating for the impacts of Project development on the environment; facilities, services and infrastructure; and other public interests.

1.36 “**Development Services**” means the City’s Development Services Department.

1.37 “**Development Services Director**” means the head of Tracy’s Development Services Department and the Chief Planning Officer.

1.38 “**Dispute**” has the meaning set forth in Section 9.1.

1.39 “**Effective Date**” has the meaning set forth in Recital D.

1.40 “**EIR**” has the meaning set forth in Recital C(6).

1.41 “**Elected Fee Amount**” has the meaning set forth in Section 6.4(a).

1.42 “**Eminent Domain Costs**” means, collectively, the following in connection with the acquisition of identified Offsite Lands: the appraised fair market value of the Offsite Lands at issue; staff costs; filing fees, witness fees and court costs; any deposits necessary to obtain orders of prejudgment possession, satisfaction of judgments, severance damages, interest, loss of goodwill, relocation costs, pre-condemnation damages and defendants’ attorneys fees; appraisal costs; and reasonable attorneys’ fees for City’s eminent domain counsel (if any).

1.43 “**Eminent Domain Law**” has the meaning set forth in Section 3.8(b).

1.44 “**Enforced Delay**” has the meaning set forth in Section 7.4.

1.45 “**Enhanced Community Benefit Fee**” has the meaning set forth in Section 6.1.

1.46 “**ENR**” means the Engineering News Record (“**ENR**”) Construction Cost Index (overall-California).

1.47 “Estimated Wastewater Generation Rate” means the average dry weather flows (ADWF) (which will be used for wastewater treatment capacity and the PWWF will be used for conveyance or pipe facilities), which occur as a result of a particular use, which is documented through appropriate means, including, without limitation, reliance on prior information and data from similar uses, documentation from potable water meters (not including irrigation), the number of proposed fixtures, or any other reasonable means of estimating the ADWF generation rate for the particular use at issue.

1.48 “Existing Rules” means the Rules, Regulations and Policies in effect on the Effective Date.

1.49 “Finished Lot” means a legally subdivided lot with utilities stubbed out to the property line of said Lot.

1.50 “FIP” means the Finance and Implementation Plan adopted by City for the Property as provided for and required by this Agreement and the Tracy Municipal Code Section 10.20.060(b)(3).

1.51 “General Plan Amendment” has the meaning set forth in Recital C(1).

1.52 “Hansen Lift Station” means that certain existing wastewater lift station located at the intersection of Corral Hollow Road and Clover Road.

1.53 “Hansen Trunk Line” means that certain existing twenty-one inch (21”) wastewater conveyance line described and shown in the Capacity Analysis of the Hansen Sewer Collection System prepared by Ruark and Associated dated December 2006.

1.54 “I-580 Interchange Work” means, collectively, the I-580/Mountain House Parkway Interchange and the Canal Bridge crossing over the California Aqueduct, as further described in the TMP.

1.55 “Initial Approvals” has the meaning set forth in Recital C.

1.56 “Initial Conveyance Amount” has the meaning set forth in Section 3.3(d).

1.57 “Initial Fees” has the meaning set forth in Section 6.3(b).

1.58 “Initial Potable Water Service Obligation” has the meaning set forth in Section 3.3(a).

1.59 “Initial Wastewater Facilities Payment” has the meaning set forth in Section 6.2(a).

1.60 “Initial Wastewater Treatment Capacity Obligation” has the meaning set forth in Section 3.3(c)(i).

1.61 “LAFCO” has the meaning set forth in Section 3.7.

1.62 “Master Plan Fee Obligation” has the meaning set forth in Section 6.3(b).

1.63 “Master Plan Infrastructure” means, collectively, those on-site (i.e., within the Property) and off-site (i.e., not within the Property) improvements that are necessary or desirable to develop the Project, as described more fully in the Specific Plan and the Citywide Infrastructure Master Plans, and which are not considered Specific Plan Improvements for purposes of this Agreement.

1.64 “Master Plan Roads” means any Project roadways contemplated to be developed under the Specific Plan that are also considered Master Plan Infrastructure.

1.65 “MGD” means million gallons per day.

1.66 “MMRP” has the meaning set forth in Recital C(6).

1.67 “Mortgage” means any mortgage, deed of trust, security agreement, sale and leaseback arrangement, assignment or other security instrument encumbering all or any portion of the Property or Prologis’ rights under this Agreement, where the Property or a portion thereof or an interest therein, is pledged as security, contracted in good faith and for fair value.

1.68 “Mortgagee” means the holder of the beneficial interest under any Mortgage encumbering all or any portion of the Property or Prologis’ rights under this Agreement, and any successor, Assignee, or transferee of any such Mortgagee.

1.69 “Net Acreage” means the gross acreage of the Property, excluding any and all public rights-of-way, the natural storm drainage channel on the west half of the Property, permanent detention basins, any formally delineated wetlands, and any and all utility easements if not otherwise developed with structures or parking (i.e., a portion of the 150-foot wide PG&E electrical line easement and the 50-foot wide PG&E gas/oil pipeline easement), which acreage is estimated by the Parties to be approximately 1,042 acres.

1.70 “Notice of Compliance” has the meaning set forth in Section 7.2.

1.71 “Notice of Intent to Terminate” has the meaning set forth in Section 8.2.

1.72 “Offsite Land” means lands and/or interests therein other than the Property that are necessary for the construction of any Project Infrastructure, as is further detailed in Section 3.8(a).

1.73 “Party” or “Parties” has the meaning set forth in the Preamble.

1.74 “Periodic Review” has the meaning set forth in Section 8.1.

1.75 “Permitted Assignees” has the meaning set forth in Section 10.1(a).

1.76 “Permitted Assignment” has the meaning set forth in Section 10.1(a).

4.3. **1.77 “Permitted Interim Improvements”** has the meaning set forth in Section

1.78 “Planning Commission” means the Tracy Planning Commission.

1.79 “Program Soft Costs” has the meaning set forth in Section 5.1(b).

1.80 “Project” has the meaning set forth in Recital C(2).

1.81 “Project Approvals” means, collectively, the Initial Approvals and Subsequent Approvals.

1.82 “Project Infrastructure” means, collectively, the Master Plan Infrastructure and Specific Plan Improvements.

1.83 “Prologis” has the meaning set forth in the Preamble.

1.84 “Prologis Funded Phase” has the meaning set forth in Section 3.3(c)(iii).

1.85 “Property” has the meaning set forth in Recital E.

1.86 “PWWF” means the Peak Wet Weather Flow as described in the Tracy Wastewater Master Plan.

1.87 “Regulatory Processing Fees” means any and all fees, costs and charges adopted or otherwise imposed by City for the purpose of defraying City’s actual costs incurred or to be incurred in the processing and administration of any form of permit, approval, license, entitlement, or formation of a financing district or mechanism, or any and all costs adopted or otherwise imposed by City for the purpose of defraying City’s actual costs of periodically updating its plans, policies, and procedures, including, without limitation, the fees and charges referred to in Government Code Section 66014.

1.88 “Remaining Elected Fee Amount” has the meaning set forth in Section 6.4(c).

1.89 “Rules, Regulations and Policies” means any and all City laws, rules, regulations, policies and standards governing permitted uses of land; the density and intensity of uses; and the design, improvement, and construction standards and specifications, applicable to development of property, including, without limitation, rules, regulations and policies governing the maximum height and size of proposed buildings, provisions for the reservation or dedication of land for public purposes or payment of fees in lieu thereof, construction, installation and extension of public improvements, and any and all other laws, rules, regulations, policies and standards relating to development or use of real property and applicable to the Project on the Property. Furthermore, for purposes of this Agreement, said Rules, Regulations and Policies shall be those as set forth in Section 3.2(a).

1.90 “Specific Plan” has the meaning set forth in Recital C(2).

1.91 “Specific Plan Area” has the meaning set forth in Recital C(2).

1.92 “Specific Plan Improvements” means, collectively, those on-site (i.e., within the Property) and off-site (i.e., not within the Property) infrastructure and/or improvements that are necessary or desirable to develop the Project, as described more fully in the Specific Plan, and which are not considered Master Plan Infrastructure for purposes of this Agreement. A Specific Plan Improvement may be offered for dedication to City, or, in the alternative, may remain in private ownership, as set forth more fully herein.

1.93 “Specific Plan Private Improvements” has the meaning set forth in Section 5.2(a).

1.94 “Specific Plan Public Improvements” has the meaning set forth in Section 5.2(b).

1.95 “Subsequent Approval” means any and all land use, environmental, building and development approvals, entitlements and/or permits that are necessary or desirable to develop and operate the Project on the Property required subsequent to the Effective Date, including, without limitation, amendments or other modifications to any Initial Approvals; boundary changes; tentative and final subdivision maps, parcel maps and lot line adjustments; subdivision improvement agreements; development review; site plan review; conditional use permits; design review; Building Permits; grading permits; encroachment permits; Certificates of Occupancy; formation of financing districts or other financing mechanisms; and any amendments thereto (administrative or otherwise).

1.96 “Subsequently Adopted Rules” has the meaning set forth in Section 3.2(d).

1.97 “Subsequent Expansions” has the meaning set forth in Section 3.3(c)(iii).

1.98 “Term” has the meaning set forth in Section 2.1.

1.99 “Tracy Wastewater Master Plan” means that certain Citywide Wastewater Facilities Master Plan adopted by City, dated December 2012 and in effect on the Effective Date.

1.100 “Wastewater Generation Accounting Report” has the meaning set forth in Section 3.3(c)(i).

1.101 “Wastewater Treatment Facilities Payments” has the meaning set forth in Section 6.4(c)(ii)(C).

1.102 “Water Supply Agreement” has the meaning set forth in Section 6.4(b).

1.103 “WSA” means the Cordes Ranch Water Supply Assessment, approved by City in January 2013, and included in the EIR.

1.104 “Zoning Amendments” has the meaning set forth in Recital (C)(3).

SECTION 2. TERM OF THIS AGREEMENT

2.1 Term of Agreement.

This Agreement shall commence on the Effective Date and shall continue for a period of twenty-five (25) years unless sooner terminated as provided herein (“**Term**”). The Term may be extended at any time before termination by the mutual agreement of the parties in writing and in accordance with City’s Development Agreement Procedures.

2.2 Effect of Termination.

Following expiration of the Term (which shall include any mutually agreed upon extensions), this Agreement shall be deemed terminated and of no further force and effect except for any and all obligations expressly provided for herein that shall survive termination.

SECTION 3. CITY OBLIGATIONS REGARDING PROJECT DEVELOPMENT

3.1 Vested Right to Develop the Project.

As of the Effective Date, Prologis shall have the vested right to develop and operate all or any portion of the Property with the Project in accordance with the Specific Plan and this Agreement. The permitted uses of the Property; the density and intensity of such uses; the maximum height and size of proposed buildings; the provisions for the reservation or dedication of land for public purposes or payment of fees in lieu thereof; the construction, installation and extension of public improvements; and the development standards and design guidelines (including, without limitation, density, intensity, height, setbacks, floor area coverage, and building envelopes) shall be as set forth in the Specific Plan and the other Initial Approvals except in the event and to the extent Prologis agrees to any modifications thereto in connection with any Subsequent Approval. In the event of any inconsistency between this Agreement and any other Project Approval, the provisions of this Agreement shall control.

3.2 Rules, Regulations and Policies Governing Development and Operation of the Project.

(a) Applicable Rules, Regulations and Policies. The Rules, Regulations and Policies applicable to the development and operation of the Project on the Property shall be those set forth in: (a) this Agreement; (b) the City’s General Plan as it existed on the Effective Date; (c) the City of Tracy Municipal Code as it existed on the Effective Date; (d) the Specific Plan; (e) the MMRP; (f) the Subsequent Approvals, as and when they are issued, approved, or adopted; (g) all other applicable Existing Rules; and (h) any and all applicable Subsequently Adopted Rules.

(b) Processing Subsequent Approvals Generally. The Parties acknowledge that in order to develop the Project on the Property, Prologis will need to obtain City approval of various Subsequent Approvals that may include, without limitation, tentative and final subdivision maps, parcels maps, lot line adjustments, CUPs, development review, site plan review, Building Permits, grading permits, encroachment permits, and Certificates of Occupancy. For any Subsequent Approval proposed by Prologis, Prologis shall file an application with City for the Subsequent

Approval at issue in accordance with the Existing Rules, and shall pay any applicable Regulatory Processing Fees in connection therewith. City shall diligently and expeditiously process each such application in accordance with the Existing Rules, and shall exercise any discretion City has in related thereto in accordance with the terms and conditions of this Agreement.

(c) Processing Lot Line Adjustments. Prologis shall have the right to file an application with City to reconfigure any parcel(s) comprising all or a portion of the Property as may be necessary or desirable, in Prologis' sole discretion, in order to develop, lease or finance all or a portion of the Property in connection with development of the Project, so long as such application is otherwise consistent with the Specific Plan and subject to consistency with the Subdivision Map Act and applicable Tracy Municipal Code requirements. Prologis shall initiate any such parcel reconfiguration through an application for a lot line adjustment in accordance with the Existing Rules, and shall pay any applicable Regulatory Processing Fees in connection therewith. City shall accept such application, provided it is accompanied by an appropriate statement in writing, signed by Prologis, that such re-parcelization is being undertaken pursuant to this Section 3.2(c), and City shall diligently and expeditiously process each such application in accordance with the Existing Rules and this Agreement.

(d) No Conflict with Vested Rights. Subject to Sections 3.2(a)-(c) above, City may adopt new or modified Rules, Regulations and Policies after the Effective Date ("**Subsequently Adopted Rules**"); provided, however, any such Subsequently Adopted Rules shall be applicable to the Project on the Property only to the extent that such Rules are generally applicable to other similar non-residential developments in the City of Tracy and that such application would not conflict with any of the vested rights granted to Prologis under this Agreement. For purposes of this Agreement, any Subsequently Adopted Rule shall be deemed to conflict with Prologis' vested rights hereunder if it:

(i) Seeks to limit or reduce the density or intensity of development of the Project or any part thereof, or otherwise require a reduction in: the total number of proposed buildings; the square footage, floor area ratio, number of floors or height of any proposed buildings; or improvements related thereto;

(ii) Change any land use designation or permitted or conditionally permitted use of the Property or require a change in the amount of any particular land use to be developed on the Property;

(iii) Limit or control the location of buildings, structures, grading, or other improvements of the Project, or limit the hours of operation or uses on the Property, in a manner that is inconsistent with the Initial Approvals;

(iv) Limit the timing or rate of the development of the Project (including, without limitation, the timing of approval and issuance of any Subsequent Approvals), either with specific reference to the Property or as part of a general enactment that applies to the Property.

(v) Result in Prologis having to substantially delay construction of the Project or require the issuance of additional permits, entitlements or approvals by City not described or contemplated by this Agreement;

(e) Applicable Subsequently Adopted Rules. Notwithstanding the foregoing, City shall not be precluded from applying any Subsequently Adopted Rules to development of the Project on the Property under the following limited circumstances, where the Subsequently Adopted Rules are:

(i) Specifically mandated by changes in state or federal laws or regulations adopted after the Effective Date as provided in Government Code Section 65869.5;

(ii) Specifically mandated by a court of competent jurisdiction;

(iii) Changes to the Uniform Building Code or similar uniform construction codes, or to City's local construction standards for public improvements so long as such code or standard has been adopted by City and is in effect on a Citywide basis; or

(iv) Required as a result of facts, events or circumstances presently unknown or unforeseeable that would otherwise have an immediate and substantially adverse risk on the health or safety of the surrounding community as reasonably determined by City.

In the event that City imposes a Subsequently Adopted Rule on the Project as a result of the occurrence of one of the circumstances set forth in subsection (e)(i)-(iv) above, then the Parties shall work diligently and in good faith to amend this Agreement in a manner to reflect the required Subsequently Adopted Rule while still achieving the underlying purposes of this Agreement.

3.3 Potable Water and Wastewater Service.

(a) Potable Water Supplies. City shall use best efforts to secure additional potable water supplies for the Project to further bolster City's future water portfolio, in accordance with the EIR, including, without limitation, the WSA.

(b) Wastewater Service to the Property. Upon annexation of the Specific Plan Area, City shall serve the Project on the Property with wastewater treatment and conveyance consistent with the EIR, Specific Plan and Tracy Wastewater Master Plan and in accordance with this Section 3.3, subject to such wastewater infrastructure being in place that is required to provide such service as each development occurs on the Property, and provided that Prologis is otherwise in compliance with the terms and conditions of this Agreement.

(c) Wastewater Treatment Plant Capacity.

(i) Upon annexation of the Specific Plan Area, City shall provide wastewater treatment service to the Property, up to 0.145 MGD of wastewater based on ADWFs ("**Initial Wastewater Treatment Capacity Obligation**"). Prologis shall be permitted to develop that amount of acreage within the Property with uses that could be served by this Initial Wastewater Treatment Capacity Obligation, based on the Estimated Wastewater Generation Rates of the proposed uses and Actual Wastewater Generation Rates of the then-existing uses on the Property. Upon annexation, after receipt of a development proposal for all or a portion of the Property, City shall, in

consultation with Prologis and at Prologis' sole cost and expense, determine (a) the Estimated Wastewater Generation Rate for such proposal, and (b) the Actual Wastewater Generation Rate for each then-existing use on the Property, which Rates shall be used to determine whether such proposal is covered by the Initial Wastewater Treatment Capacity Obligation. City shall, at Prologis' sole cost and expense, reasonably maintain and update, as appropriate, records of all Estimated Wastewater Generation Rates and Actual Wastewater Generation Rates, which records shall be referred to herein as the Project's "**Wastewater Generation Accounting Report.**"

(ii) Upon completion of the next phase of the planned expansion of City's wastewater treatment plant (which is currently estimated to increase its treatment capacity to approximately twelve and one-half (12.5) MGD) as further described in the Tracy Wastewater Master Plan, and provided that Prologis is in compliance with all of its obligations under this Agreement including, without limitation, Prologis' payment obligations set forth in Section 6.2 below, then City shall increase its wastewater treatment service to the Property by an additional 0.255 MGD based on ADWFs (the "**Additional Wastewater Treatment Capacity Obligation**"), for a total of 0.4 MGD of wastewater treatment service to the Property based on ADWF.

(iii) Prologis and City hereby acknowledge and agree that, beyond the Additional Wastewater Treatment Capacity Obligation described in Section 3.3(c)(ii) above, further wastewater treatment service to the Property depends upon subsequent expansions of treatment capacity of the wastewater treatment plant beyond 12.5 MGD ("**Subsequent Expansions**"), as described in the Tracy Wastewater Master Plan. The Subsequent Expansions may be done in incremental phases. City shall take such measures as needed to ensure that all public and private development projects proposing to utilize the Subsequent Expansions, including, without limitation, Prologis, pay their fair shares of the funding needed to construct, maintain and operate the Subsequent Expansions. If sufficient funding from all anticipated users of the Subsequent Expansions is not available to provide further wastewater treatment service to the Property in excess of the Additional Wastewater Treatment Capacity Obligation when Prologis seeks such further wastewater treatment service, then Prologis may, in Prologis' sole and exclusive discretion, fund the balance of the cost of the Subsequent Expansions (including any phase of the Subsequent Expansions) needed to provide such further wastewater treatment service to the Property ("**Prologis' Funded Phase**"). In such a case, Prologis shall be reimbursed for that portion of the Prologis Funded Phase that exceeds Prologis' fair share of such funding. Except as provided in the City's Capital Improvement Plans and applicable FIPs, City shall not be obligated to advance funds for any Subsequent Expansions.

(d) Wastewater Conveyance Capacity.

(i) Prologis shall be permitted to use the Hansen Trunk Line and the Hansen Lift Station to accommodate up to 0.145 MGD (based on Estimated Wastewater Generation Rates and Actual Wastewater Generation Rates) ("**Initial Conveyance Amount**") based on ADWF, to serve development of the Project on the Property on a temporary basis, until such time as the ultimate improvements required to serve the Property, as identified in the Tracy Wastewater Master Plan, are completed. City agrees that no development proposal shall be required, as a condition of approval,

either to (i) construct, or (ii) wait for the completion of the construction of, additional wastewater conveyance facilities to serve proposed uses that are covered by this Initial Conveyance Amount.

(ii) Once the Initial Conveyance Amount is utilized by the Project, then Prologis shall be permitted to continue to use the Hansen Trunk Line and the Hansen Lift Station, so long as sufficient capacity is available (based on Estimated and Actual Wastewater Generation Rates as determined by City), until such time as the ultimate improvements required to serve the Property, as identified in the Tracy Wastewater Master Plan, are triggered, as determined by City.

(iii) Prologis shall pay a sewer connection fee to City in accordance with, and in an amount sufficient to satisfy Prologis' proportionate fair share of the reimbursement requirements set forth in, Section 4(e) of the Water Supply and Sewage Services Agreement between King & Lyons, Safeway, Inc., and the City dated September 19, 1991, as determined by City.

(e) Potable Water Conveyance Capacity. In accordance with Section 4.2 below, construction of all potable water system infrastructure necessary to serve the Project shall be completed in accordance with the Specific Plan and the Citywide Water System Master Plan.

3.4 Prologis' Application for Non-City Permits and Approvals.

City shall cooperatively and diligently work with Prologis in its efforts to obtain any and all such non-City permits, entitlements, approvals or services as are necessary to develop and operate the Project in order to assure the timely availability of such permits, entitlements, approvals and services, at each stage of Project development.

3.5 Processing of Applications for Subsequent Approvals.

The Parties acknowledge and agree that the Specific Plan's implementation process for the Project has been designed in a manner to facilitate the expeditious and efficient processing of Subsequent Approvals, and that the Parties intend to work cooperatively, diligently and in good faith to accomplish these objectives. Accordingly, City shall cooperate and diligently work with Prologis to promptly process and consider all applications for Subsequent Approvals in a timely manner (provided such application(s) are in a proper form and include all required information and payment of any applicable Regulatory Processing Fees), in accordance with Prologis' vested rights granted hereunder, and taking into consideration such factors, among others, as cost efficiencies, economies of scale, and best engineering practices. In the event that City and Prologis mutually determine that it would be necessary to retain additional personnel or outside consultants to assist City to expeditiously process any Subsequent Approval, City may retain such additional personnel or consultants, and shall direct any such additional personnel or consultants to work cooperatively and in a cost-efficient and timely manner with Prologis to accomplish the objectives under this Section 3.5; provided, however, that Prologis shall pay all costs associated therewith, although said personnel or consultants shall be under City's direction. City shall retain the full range of its discretion in its consideration of any and all Subsequent Approvals as provided for under applicable law.

3.6 Preparation of Cordes Ranch FIP; Prioritization of Interchange Improvements; Obligation to Seek Inclusion of Road Improvements in County RTIF.

(a) Finance and Implementation Plan. Within ninety (90) days of the Effective Date, it is anticipated that City will prepare a FIP for the Project at Prologis' sole cost and expense, which will be designed to assist City and Prologis to implement the various infrastructure obligations related to the Project on the Property and as required hereunder. City agrees: (i) the FIP shall be consistent with this Agreement and be designed to facilitate its purposes, and (ii) in the case of any conflict between the FIP and this Agreement, this Agreement shall prevail.

(b) Prioritization of Improvements in County RTIF Program. City agrees to work diligently and in good faith with San Joaquin County and Prologis to modify the County RTIF to include, as promptly as feasible, the I-580 Interchange Work and the I-205/Mountain House Interchange and to list said improvements as priority projects.

(c) Prioritization of Improvements. The Parties acknowledge and agree that the I-580 Interchange Work is particularly important to have in place for the Project, and therefore the Parties agree to take the following steps to facilitate construction of said improvements, as well as improvements at the I-205/Mountain House Parkway Interchange:

(i) City shall use diligent and good faith efforts to facilitate construction of the I-580 Interchange Work and treat this as a priority improvement project, and in cooperation with Prologis, to identify and secure adequate funding, and expeditiously process the necessary approvals as set forth in subsection (ii) below.

(ii) Subject to the availability of adequate funding, City shall use diligent and good faith efforts to obtain approval of all required permits and entitlements necessary to construct the I-580 Interchange Work and I-205/Mountain House Parkway interchange improvements, including, without limitation, completion of the Project Study Report (or equivalent process) and final design so that these improvement projects are "shovel-ready" within four (4) years of the Effective Date, for purposes of the I-580 Interchange Work, and in the time frames identified in the EIR (Mitigation Measure TRANS-10) for purposes of I-205/Mountain House Parkway interchange improvements. The FIP shall list construction of the I-580 Interchange Work and I-205/Mountain House Parkway interchange improvements as priority improvement projects consistent with this subsection (c)(ii) and shall specify reasonable milestones (both short-term and long-term) to achieve these goals. The Parties agree that if City is not able or willing to meet said milestones, then Prologis shall have the right, but not the obligation, to complete the approval process, subject to applicable laws. In connection therewith, Prologis and City shall work diligently and cooperatively to facilitate said approval process, as well as its construction, including, without limitation, identifying and securing adequate funding to complete the I-580 Interchange Work and I-205/Mountain House Parkway interchange improvements. Prologis may, but shall not be obligated to, provide all or a portion of the funding necessary to complete the approval process, subject to fee reconciliation pursuant to Section 6.4 below.

(d) Prioritization of Specified Fees. In the event and to the extent City receives a portion of the County RTIF paid in connection with the Project, City agrees to prioritize the use of such fees for the construction of the I-580 Interchange Work and the I-205/Mountain House Parkway Interchange in the FIP. In addition, City shall prioritize the use of Development Impact Fees collected in connection with the Project's potable water obligation such that said fees will be used to facilitate the planned twenty-inch (20") potable water line to be connected to City's water treatment plant, as described more fully in the Specific Plan and Citywide Water System Master Plan, if said line is determined to be necessary pursuant to Section 4.2 below. Promptly upon Prologis' request, City shall make available to Prologis sufficient information and other technical materials as may be necessary to confirm compliance with this Section 3.6(d). In addition, the Parties agree that City shall diligently and in good faith prepare and bring to City Council for its consideration a proposed update to its Citywide Storm Drainage Master Plan to remove the OFF2 drainage area that is southwest of I-580.

3.7 Annexation of Property to City.

City acknowledges and agrees that City is processing the Initial Approvals in connection with the Property and the remaining portions of the Specific Plan Area in anticipation of these lands being expeditiously annexed to City. Within thirty (30) days of City's approval of the Initial Approvals, City shall submit an application to the San Joaquin Local Agency Formation Commission ("**LAFCO**") in accordance with the applicable requirements under state law and LAFCO's local procedures, requesting annexation of the Property (and any other related boundary changes, if necessary) and the remaining portions of the Specific Plan Area into City. Thereafter, City shall diligently and in good faith pursue annexation, consistent with its Annexation Resolution, including, without limitation, preparing and submitting all materials and other information necessary to obtain an application completeness determination from LAFCO; and working with LAFCO staff to expeditiously schedule any required public hearing(s) on the annexation matter. Prologis shall work cooperatively with City to process said annexation application, and shall pay all City costs related to the preparation, submittal and processing of said annexation application, subject to potential reimbursement from other benefitting property owners within the Specific Plan Area. The Parties agree that said annexation application shall not request the inclusion of any other lands beyond the Specific Plan Area.

3.8 Eminent Domain.

(a) Potential Need for Offsite Land. The Parties acknowledge and agree that development of the Project Infrastructure is a critical component of the Project and also may result in key benefits to the community generally. The Parties further acknowledge that fulfilling said obligations may require acquisition of additional lands or interests therein outside the Property. If such acquisition is necessary to develop any aspect of the Project Infrastructure, Prologis shall use commercially reasonable efforts to acquire any and all such land or interest therein ("**Offsite Land**") that are determined to be required to serve the identified uses and structures shown on an application for a proposal for a Subsequent Approval submitted by Prologis. For purposes of this Section 3.8(a), "**commercially reasonable efforts**" shall be defined as: a) paying for an appraisal prepared by a qualified Member of the Appraisal Institute (MAI) retained by City, in connection with the acquisition of the Offsite Land; and b) offering to acquire the Offsite Land based on such appraisal.

(b) Eminent Domain Proceedings. In the event Prologis fails to reach a satisfactory agreement with the owner of any Offsite Land within a reasonable period of time despite Prologis' commercially reasonable efforts to do so, upon Prologis' request, City shall promptly initiate and diligently pursue and complete eminent domain proceedings under the applicable law to acquire the Offsite Land (Cal. Code of Civ. Proc. Part 3, tit. 7, §§ 1230.010-1273.050, as amended from time to time) ("**Eminent Domain Law**"). Upon acquisition of the Offsite Land, City shall convey such Offsite Land to Prologis to the extent such conveyance is necessary to achieve the public purposes for which said eminent domain proceeding was undertaken, provided Prologis has paid City all of its Eminent Domain Costs and in accordance with the applicable provisions of the Eminent Domain Law. Notwithstanding the foregoing, nothing in this Section 3.8(b) is intended to abrogate City's responsibilities, in the exercise of eminent domain, to satisfy the substantive and procedural requirements of the Eminent Domain Law.

(c) Payment of Eminent Domain Costs. Prologis acknowledges and agrees that if it requests City to initiate and complete eminent domain proceedings as provided for in Section 3.8(b) above, then Prologis shall be obligated to pay any and all Eminent Domain Costs related thereto.

3.9 Life of Project Approvals.

The life of all Initial Approvals and any and all Subsequent Approvals for the Property, including, without limitation, tentative subdivision maps or parcel maps, shall be equal to the Term of this Agreement in accordance with applicable laws, unless this Agreement is earlier terminated pursuant to the provisions hereof, in which event the life of said approvals shall be governed by the applicable provisions of this Agreement with respect to entitlements after termination.

3.10 Timing of Development.

Prologis shall have the right to develop the Project on the Property (or any portion thereof) in such order, at such rate, and at such times as Prologis deems appropriate within its exercise of subjective business judgment. In accordance with Section 4.1 below, the Parties acknowledge and agree that this Agreement contains no requirement that Prologis commence or complete development of the Project or any portion thereof within any specific period of time, and that City shall not impose any such timing requirement on any Subsequent Approval.

SECTION 4. PROLOGIS' OBLIGATIONS RELATING TO PROJECT DEVELOPMENT GENERALLY

4.1 Phasing of Project Development.

Development of the Project is intended to be phased, as generally described and depicted in the Specific Plan, although the Parties agree that Prologis shall have the right to develop the Project in such order, at such rate, and at such times as Prologis deems appropriate within its exercise of subjective business judgment, in accordance with Section 3.10 above.

4.2 Required Project Infrastructure Generally.

(a) Construction of Necessary Project Infrastructure for Each Development Application. Development shown on each application for a tentative subdivision map, parcel map, development review or other Subsequent Approval submitted by Prologis for the Property shall provide for the construction of any Master Plan Infrastructure and/or Specific Plan Improvement(s) (both public and private) that is determined by City, in its reasonable discretion, necessary to serve the identified uses and structures shown on each said application. Notwithstanding any other provision of this Agreement, all Project infrastructure constructed on the Property shall be in accordance with the applicable Citywide Infrastructure Master Plans, as determined by the City. Subject to the terms and conditions of this Section 4.2, Prologis shall be responsible for either funding or constructing the identified improvements in accordance with the Specific Plan, the Citywide Infrastructure Master Plans and this Agreement. Notwithstanding the foregoing, the Parties agree that Prologis' payment of the applicable Development Impact Fees for recycled water facilities shall be sufficient for purposes of satisfying its fair share obligation, and that Prologis shall not be required to construct any recycled water facilities (except for the inclusion of purple pipe facilities within the Property, as streets are constructed, to facilitate future use of recycled water) as a condition of approval of any development application for the Property.

(b) Determination of Scope of Necessary Infrastructure. City's determination regarding which improvements are necessary for Prologis to develop a proposal as set forth in Section 4.2(a) above shall be consistent with Prologis' vested rights hereunder, and shall be governed by the Existing Rules. The Parties further agree that no additional requirements on Prologis with respect to the Project Infrastructure may be imposed on a development application for the Property beyond those necessary to serve the proposed uses shown on each said application and to provide for the intended function of the improvements and as permitted under this Section 4.2, and beyond those required by Sections 5.2(a) and (b), without Prologis' prior written consent.

4.3 General Construction and Security Obligations. In constructing any Project Infrastructure, Prologis shall (a) provide adequate security in accordance with the requirements of the Subdivision Map Act and City's Subdivision Ordinance; and (b) promptly and diligently oversee and coordinate the construction of said infrastructure in a good and workmanlike manner and free from all defects, and in accordance with the applicable Citywide Infrastructure Master Plans, the Project Approvals, and any other applicable City standards. Any Subdivision Improvement Agreements (or similar improvement agreements) required hereunder shall be in substantially the same form as is typically used by City in accordance with the Subdivision Map Act and City's Subdivision Ordinance and shall be consistent with this Agreement.

4.4 Inspection and Acceptance of Improvements. Any Project Infrastructure constructed by Prologis pursuant to this Agreement shall be subject to all required inspections, including the final inspection, and approval by the City Engineer in accordance with City's Subdivision Ordinance and the Subdivision Map Act. Upon inspection:

(a) Meet and Confer Process. If the City Engineer determines, consistent with Prologis' vested rights hereunder, that the improvement at issue does not meet the applicable requirements and standards, City shall reasonably document this

determination and promptly provide this information to Prologis. Prologis and City then shall, within seven (7) Days of the City Engineer's determination or at such other mutually acceptable time, meet and confer regarding any modifications to said improvement necessary to achieve conformity with the applicable requirements and standards.

(b) Remedy of Any Improvement Deficiencies. Following any meet and conferral process pursuant to Section 4.4(a) above, if the Parties have not reached a mutually acceptable approach to addressing any necessary modifications identified by City, and/or Prologis has not corrected, or agreed to correct by a date certain reasonably acceptable to City, the identified deficiencies in the improvement at issue, then City shall have the right, at Prologis' sole cost and expense, to remedy such deficiencies and complete the construction of said improvement in accordance with the applicable requirements and standards, and Prologis shall have no right to receive a credit or to otherwise be reimbursed for the costs of City to complete said construction. These remedies are in addition to any other remedies that may be available in a Subdivision Improvement Agreement or other similar improvement agreement pertaining to the Property as a result of any Subsequent Approval.

(c) Roadway Construction. For all roadways constructed by Prologis (both Master Plan Infrastructure and Specific Plan Improvements), Prologis shall install all required service facilities (i.e., potable water, wastewater, underground storm lines, recycled water), lighting, and storm drainage facilities concurrently with the installation of said roadways, subject to any mutually agreed-upon interim improvements in accordance with Sections 4.5 and 4.6 below. Prologis shall be permitted to complete any widening or improvements within any existing City roadways or rights-of-way if Prologis elects to perform this work in accordance with applicable laws. Provided, however, no roadway frontage improvements in back of curb shall be required to be constructed until such time as the lot fronting such street is developed. For construction of curb-to-curb Master Plan Roads, the scope of work shall include street pavement, traffic signals, curb, gutter, sidewalk, street lights, median, and median landscaping, storm drainage facilities, wastewater lines, storm drainage lines, potable and recycled water lines and appurtenances (including the fire hydrants, valves, and associated facilities and service lines), in accordance with the Citywide Infrastructure Master Plans. City may require temporary asphalt sidewalks behind the street curb for pedestrian use as part of the development process. The installation of utilities shall include, without limitation, electric utilities, including the cost of all electric lines for Master Plan Road lights, outside the curb-to-curb width and within the street right-of-way in a dedicated public utilities area, if such improvements are necessary for construction of the Master Plan Road at issue and adjacent development as set forth in the Transportation Master Plan, and the cost of design and construction of such utilities shall be borne solely and exclusively by Prologis so long as those roads are located within the Specific Plan Area. Subject to Section 3.8 above, Prologis shall acquire the necessary rights of way beyond the street curb to accommodate street signs, fire hydrants and sidewalks. Since joint trench improvements are not considered Master Plan Infrastructure, then if: (i) City constructs certain Master Plan Roads that are necessary to serve the Property, and (ii) those Master Plan Roads require said joint trenches, then (iii) Prologis shall be responsible for the cost to construct the joint trench at issue subject to any third party reimbursement, including, without limitation, the cost to obtain any necessary rights-of-way or easement(s) within and outside the curb-to-curb area. This payment obligation shall be calculated based on the hard costs to construct the joint trench at issue as well

as an additional forty percent (40%) in soft costs for purposes of providing for City's design, construction and program management costs and for construction contingencies. City shall use diligent and good faith efforts to notify Prologis at least eighteen (18) months prior to City's construction of any Master Plan Road that would trigger Prologis' obligation to pay for any joint trench improvements related thereto as specified in this Section 4.4(c), at which time Prologis may elect to either pay said obligation or construct the joint trench improvements at issue. Prologis shall satisfy this obligation (either through payment of costs or construction pursuant to Section 5 below, at Prologis' election) upon issuance of the next Building Permit for a structure on the Property that occurs after this obligation is triggered, and shall be permitted to satisfy this payment obligation through a CFD or other appropriate mechanism (i.e., fee reconciliation, if available) at the time of obtaining a Building Permit.

4.5 Permitted Interim Improvements. The Parties acknowledge and agree that construction of certain interim improvements (including Master Plan Infrastructure and Specific Plan Improvements) may be appropriate given the phased nature of the Project and the Parties' mutual desire to maximize the use of existing infrastructure, take advantage of economies of scale, catalyze development of the Project, and implement best engineering practices. Subject to the City's approval, which shall not be unreasonably withheld or delayed, Prologis may be permitted to construct the following interim improvements (collectively, "**Permitted Interim Improvements**"): (a) traffic signal and ramp improvements associated with I-580/Mountain House Parkway Interchange and I-205/Mountain House Parkway; (b) temporary pressure-reducing valves for expediting construction of potable water system; (c) future road transitions to accommodate phasing of road construction; (d) potable water, wastewater, recycled water and storm drainage lines and other facilities necessary to accommodate phasing of the Project; and (e) stormwater connection to Westside irrigation district channel. Provided, however, that Prologis assumes the obligation to construct the full, ultimate improvement (as set forth in the relevant Master Plan and/or Specific Plan, as applicable), and otherwise adheres to its improvement obligations set forth in this Agreement. Any Interim Improvement Agreement (as described more fully in Section 4.6 below) executed in connection with any Permitted Interim Improvements may also provide, where appropriate, for credits against Prologis' fee obligations, in City's reasonable discretion and consistent with the terms and conditions of this Agreement.

4.6 Additional Interim Improvements. In addition to the Permitted Interim Improvements, the Parties acknowledge and agree that other interim improvements may be appropriate. Accordingly, as part of the application process for a development, Prologis may request that it be permitted to construct other interim improvements, and City shall expeditiously review and consider said request(s). If City grants said request(s), then Prologis shall execute one (1) or more Interim Improvement Agreement(s), which shall, among other things: (a) describe, at a level of detail reasonably acceptable to City, the nature and scope of the interim improvement; (b) provide that Prologis shall be responsible for any unforeseen additional costs to build the full, ultimate Master Plan Infrastructure or Specific Plan Improvement at issue that result from construction of the interim improvement; and (c) provide that Prologis shall pay all costs incurred by City, including costs of City staff and consultant time, to implement Prologis' election to construct the interim improvement. Such Interim Improvement Agreement may also address other and further requirements as reasonably required by City and shall be consistent with the terms and conditions of this Agreement.

4.7 No Obligations For Off-Site Detention Basins. The Parties acknowledge and agree that the Project has been designed, and will be required to be constructed, with on-site storm drainage facilities that adequately address the Project's storm drainage impacts, as described more fully in the EIR and in accordance with the MMRP, and that the City's determination of required storm drainage facilities made in connection with each Subsequent Approval shall be made in accordance with Section 4.2 above. Following the conclusion of the Citywide Storm Drainage Infrastructure Master Plan update process described in Section 3.6(d) above, City shall not impose, as a condition of approval, a requirement to construct or fund the construction of any improvements related to offsite storm water flows from the area southwest of I-580 within the OFF2 drainage area as described in the Citywide Storm Drainage Master Plan; provided, however, that the timing of the update process described in Section 3.6(d) above shall not affect Prologis' obligations for storm drainage facilities as set forth herein.

4.8 Marketing Report and Program. Prologis shall work diligently and in good faith with City as well as other public agencies and organizations, as appropriate, to facilitate and implement a joint private/public marketing partnership with the purposes of creating awareness in the business community and potential users regarding the benefits of locating manufacturing uses within the Cordes Ranch project, and attracting highly-skilled jobs (including manufacturing) to the City.

Prologis shall, in partnership with City, take the following steps:

(a) not later than December 31, 2013, prepare a marketing report that identifies any outstanding resources that are necessary to attract manufacturing jobs and provides specific recommendations regarding how best to position the City and the Cordes Ranch project to facilitate the provision of said resources;

(b) develop and commence implementing, not later than March 31, 2014, a detailed marketing plan that is both targeted and general and which addresses the following, as appropriate: (a) targets high-tech contract manufacturers and identifies a customized approach to position the City to best capture the State of California's defined form of foreign investment (EB-5 designation); targets the Silicon Valley business and user community, capitalizes on Prologis' relationships with brokers and presence in the market as one of the leading owners of research and development and manufacturing properties; (3) markets generally (with City, as appropriate) the Cordes Ranch project at trade shows and similar events (e.g., IAMC, SIOR, NAIOP, ULI, other broker conferences), including, without limitation, designating a marketing team to actively participate in said trade shows and conferences;

(c) Prologis shall attend and participate in an annual workshop with the City Council regarding the outcome of initial and ongoing marketing efforts pursuant to this Section 4.8. The first (1st) said workshop shall take place no later than June 2014; provided, however, the City Council retains the discretion to modify the timing for this annual workshop and/or eliminate this requirement, as determined appropriate.

(d) Prologis shall meet quarterly with City staff regarding the outcome of initial and ongoing marketing efforts pursuant to this Section 4.8 and address necessary scheduling issues

(e) Prologis and the City shall coordinate and determine whether an outside marketing firm should be retained, at Prologis' sole expense, to facilitate said marketing efforts; and

(f) Prologis shall cooperatively and diligently interface with other economic development entities, as appropriate, to facilitate said marketing efforts.

(g) Prologis shall work diligently and in good faith with City to determine an appropriate budget, which shall be reviewed on an annual basis, to facilitate said marketing efforts that reflects the joint commitment of the Parties, as well as other appropriate stakeholders (e.g., County, CalTrans, other property owners and developers, PLD, etc.) to reflect the goal of attracting highly-skilled jobs to the City.

SECTION 5. CONSTRUCTION OF PROJECT INFRASTRUCTURE

5.1 Construction of Master Plan Infrastructure.

(a) Ability to Elect to Construct Master Plan Infrastructure.

(i) Prologis may elect, in its sole discretion, to construct any Master Plan Infrastructure identified in attached Exhibit 3, in which case such construction shall be governed by this Section 5, the Specific Plan, the relevant Citywide Infrastructure Master Plan, and any applicable Subdivision Improvement Agreement or similar improvement agreement. Notwithstanding the foregoing, for those improvements marked with an asterisk on Exhibit 3, the Parties acknowledge and agree that, subject to timing considerations set forth in Section 4.1 below, if Prologis elects to construct any or all of said improvements, then Prologis shall use diligent and good faith efforts to obtain approval of all required permits and entitlements necessary to construct each of the said improvements and to construct said improvements in a timely fashion. Provided, however, if the other public agencies involved in the approval and construction of said improvements request or require that the City take the lead in this regard, the City will do so and will continue to work diligently and cooperatively with Prologis to facilitate said approval process, as well the construction of said elected improvements. If Prologis so elects, then Prologis shall be responsible for funding the construction of said improvement, subject to fee reconciliation in accordance with Section 6.4 below. The Parties acknowledge and agree that if Prologis assigns its rights and obligations under this Agreement for all or a portion of the Property, pursuant to Section 10 below, then the Assignee shall have the same election rights as Prologis hereunder. The Parties further acknowledge and agree that if said Assignee exercises the election rights, then it shall be permitted to assign the right to construct the Master Plan Infrastructure at issue to Prologis (or related entity) without City consent; provided, however, that if said Assignee seeks to assign this right to a non-Prologis entity, then it shall obtain prior approval from City, which shall not be unreasonably withheld, denied or delayed.

(ii) The Parties acknowledge and agree that Prologis' decision to elect to construct any Master Plan Infrastructure identified in attached Exhibit 3 is within its sole discretion. Notwithstanding the foregoing, if Prologis elects to construct any identified Master Plan Infrastructure and City does not agree that the construction of the improvement at issue is necessary at that time, then this shall not affect Prologis' fee

reconciliation rights under Section 6.4 below; provided, however, the Parties agree that City retains the right to not accept said improvement until City confirms that any costs or work related to any additional maintenance of said improvement (applying typical City maintenance standards) will be adequately funded or otherwise provided for by Prologis.

(b) Payment of Program Soft Costs. If Prologis elects to construct any Master Plan Infrastructure as provided for in this Section 5.1, then rather than paying the normal Regulatory Processing Fees that Prologis would otherwise pay in connection with constructing the improvement at issue, Prologis shall pay the following costs to City in connection therewith (collectively, "**Program Soft Costs**"), which shall be calculated based on the estimated hard construction costs to construct the improvement at issue as set forth in the then-applicable Citywide Infrastructure Master Plan:

(i) A program management cost of five percent (5%), except that such program management cost shall be four percent (4%) for such Master Plan Infrastructure that Prologis elects to construct in connection with development of its first (1st) six hundred (600) Net Acres within the Property.

(ii) A contingency deposit of five percent (5%), which may be in the form of a financial guarantee, such as a letter of credit in a form reasonably acceptable to City, or a deposit of cash funds into an escrow account. Prologis may elect which form of guarantee to use, in its discretion, so long as it elects one of the two foregoing options. Prologis shall be entitled to a prompt release of any unused Contingency Deposit following completion and City's inspection and acceptance of the Master Plan Infrastructure at issue.

(iii) A construction management and inspection cost in the amount of City's actual costs related thereto, with a three percent (3%) advance deposit. Any unused portion of such advance deposit shall be promptly returned to Prologis upon City's inspection and acceptance of the Master Plan Infrastructure at issue.

(iv) A plan check cost of five percent (5%), subject to any reductions in said costs that may occur as a result of City's adoption of a reduced plan check fee schedule that applies on a Citywide basis.

Program Soft Costs due under this Section 5.1(b) shall be paid by Prologis at the time of issuance of a Building Permit for the Master Plan Infrastructure at issue, unless City determines there are insufficient Program Soft Cost funds available to City at the time Prologis elects to construct the Master Plan Infrastructure at issue for City to perform its responsibilities under this subsection (b), in which case Prologis shall be required to promptly pay upon election such portion of its Program Soft Cost obligation that is reasonably determined by City to be necessary to fund said Program Soft Cost responsibilities that may arise, and the balance of Prologis' Program Soft Cost obligation shall be due and payable upon issuance of the Building Permit for the Master Plan Infrastructure at issue. If Prologis elects to construct any Master Plan Infrastructure, Prologis and City shall enter into an improvement agreement which provides for, among other things, a schedule for the construction of the subject Master Plan Infrastructure(s) and adequate security to be provided by Prologis, in a form reasonably acceptable to City, to ensure the timely construction of said improvement.

(c) No Election to Construct Master Plan Infrastructure. If Prologis elects not to construct any Master Plan Infrastructure identified in attached Exhibit 3, and such infrastructure is determined necessary in connection with an application submitted by Prologis pursuant to Section 4.2 above, then Prologis shall be required to pay the applicable Development Impact Fees in accordance with Section 6.3 below.

(d) Process to Submit Improvements Plans Relating to Master Plan Infrastructure. Upon election to construct any identified Master Plan Infrastructure, Prologis shall retain a licensed, qualified engineering firm or other qualified professional firm specializing in the relevant field to complete said improvement plans and specifications under supervision of a licensed engineer or other appropriate licensed design professional. In addition, upon such election, Prologis shall have the right to submit an application for improvement plans at any time for the construction of the improvement at issue, and City shall expeditiously process said application pursuant to Section 3.5 above. Provided, however, that the Parties agree that City shall only formally approve said improvement plans concurrently with an application for development of the Property (e.g., parcel map, lot line adjustment, development review).

(e) City acknowledges and agrees that certain aspects of the Master Plan Infrastructure will benefit other properties outside of the Property. In the event and to the extent other property owners outside of the Property (either within or outside the Specific Plan Area) benefit from Prologis' construction or funding of any Master Plan Infrastructure, Prologis shall be eligible for reimbursement from such other benefitted property owner(s) according to City's applicable rules, regulations, procedures and requirements for similar reimbursements.

5.2 Construction of Specific Plan Improvements.

(a) Specific Plan Private Improvements. The Parties acknowledge and agree that the Specific Plan identifies certain Specific Plan Improvements (located within and outside of the Property) that benefit not only Prologis but also other property owners within the Specific Plan Area, which are anticipated to remain private (i.e., not be offered for dedication to City). Said improvements (collectively, "**Specific Plan Private Improvements**") are identified in the attached Exhibit 5. Prologis shall construct each Specific Plan Private Improvement in accordance with the timing requirements set forth in the Specific Plan unless City and Prologis mutually agree upon modified timing requirements. Notwithstanding any other provision of this Agreement, Prologis shall not seek or be entitled to any reimbursement from City for any costs associated with its design and construction of such Specific Plan Private Improvements. Notwithstanding the foregoing, City acknowledges that Prologis intends to enter into a private, third-party agreement with the other major benefitting property owners within the Specific Plan Area, to share costs associated with the construction of the Specific Plan Private Improvements.

(b) Specific Plan Public Improvements. The Parties acknowledge and agree that the Specific Plan identifies certain Specific Plan Improvements (located within and outside of the Property) that benefit not only Prologis but also other property owners within the Specific Plan Area, which will be offered for dedication to City as identified on attached Exhibit 5 (collectively "**Specific Plan Public Improvements**").

(i) Subject to Section 4.2 above, Prologis shall build all of the Specific Plan Public Improvements required to serve the Property, as identified on attached Exhibit 5, and Prologis shall not seek or be entitled to any reimbursement from City for any costs associated with its design and construction of such Specific Plan Public Improvements. Notwithstanding the foregoing, City acknowledges that Prologis intends to enter into a private, third-party agreement with the other major benefitting property owners within the Specific Plan Area, to share costs associated with the construction of the Specific Plan Public Improvements.

(ii) The Parties hereby agree that the timing for construction of the Specific Plan Public Improvements within the Property shall be determined by City in connection with each specific development proposal, subject to the limitations set forth in Section 4.2 of this Agreement. Prologis hereby acknowledges and agrees that such determinations by City may result in an unequal distribution of Specific Plan Public Improvement construction obligations amongst the various parcels within the Property. Prologis hereby acknowledges and agrees, for itself and its successors, that notwithstanding any other provision of this Agreement, Prologis shall not be entitled to any reimbursement for costs incurred in construction of such Specific Plan Public Improvements. Notwithstanding the foregoing, City acknowledges that Prologis has entered or may enter into private, third-party agreement(s) with other owners within the Property, to share costs associated with the construction of the Specific Plan Public Improvements.

SECTION 6. FEES AND OTHER PAYMENT OBLIGATIONS.

6.1 Community Benefit Fee.

Subject to LAFCO approval of annexation of the Specific Plan Area to City, Prologis shall pay to City the amount of Five Million Dollars (\$5 million) to assist City in achieving other community-wide goals (“**Enhanced Community Benefit Fee**”). Prologis shall pay the Community Benefit Fee in four (4) equal payments of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) each, to be paid annually on each anniversary of the Effective Date, provided that the first payment shall be due two (2) years from the Effective Date unless, on such date, there is pending in the Superior Court of San Joaquin County a legal action brought by a third party challenging any of the Initial Approvals, in which case the first (1st) payment shall be due not later than seventy-five (75) days from the first (1st) date that no third party legal action or appeal thereof remains pending in the San Joaquin County Superior Court or any competent court of appeal.

6.2 Wastewater Treatment Plant Expansion Contributions.

(a) Initial Wastewater Facilities Payment. In exchange for, among other things, City’s provision of the Initial Wastewater Treatment Capacity Obligation, subject to annexation of the Specific Plan Area to City, Prologis shall pay to City the amount of Three Million One Hundred Fifty Thousand Dollars (\$3,150,000) (“**Initial Wastewater Facilities Payment**”), to be used by City, in its discretion, to support the planned expansion of City’s wastewater treatment plant, as described more fully in the Tracy Wastewater Master Plan. Prologis shall be permitted to make such payment through formation of a CFD or payment in a lump sum. The Initial Wastewater

Facilities Payment shall be made not later than sixty (60) days from the Annexation Date, and shall be subject to fee reconciliation in accordance with Section 6.4 below.

(b) Additional Wastewater Facilities Payment. In exchange for, among other things, City's provision of the Additional Wastewater Treatment Capacity Obligation, subject to annexation of the Specific Plan Area to City, Prologis shall pay to City the amount of Five Million Five Hundred Forty Thousand Dollars (\$5,540,000) ("**Additional Wastewater Facilities Payment**"), to be used by City to expand the treatment capacity of the wastewater treatment plant to approximately twelve and one half (12.5) MGD, as described more fully in the Tracy Wastewater Master Plan. Prologis shall make the Additional Wastewater Facilities Payment not later than thirty (30) days from Prologis' receipt of written notice from City that City has secured sufficient additional funds from other sources which, when combined with Prologis' Additional Wastewater Facilities Payment, will enable City to complete the contemplated expansion. Upon receipt of said funding, City agrees to expeditiously proceed with construction of said expansion, subject to obtaining all necessary approvals and permits. Notwithstanding the foregoing, (i) the Additional Wastewater Facilities Payment shall be subject to fee reconciliation in accordance with Section 6.4 below, and (ii) if Prologis has previously paid all or a portion of said amount (\$5,540,000) in Development Impact Fees for wastewater pursuant to Section 6.3 below, then such payment shall constitute compliance with its obligations under this subsection (b) to the extent of the amount paid.

(c) Subsequent Wastewater Treatment Plant Expansions. Prologis' payments of the Initial Wastewater Facilities Payment and the Additional Wastewater Facilities Payment do not relieve Prologis of the obligation to participate in funding expansions of the treatment capacity of the wastewater treatment plant beyond 12.5 MGD.

6.3 Development Impact Fee Generally.

(a) Adoption of Citywide Master Plan Fee Program. The Parties acknowledge and agree that City intends to adopt a Citywide Master Plan Fee Program to implement the Citywide Infrastructure Master Plans, in substantially the same form as attached Exhibit 4, and City shall use its best efforts to bring forward for City Council consideration and action said Master Plan Fee Program no later than September 17, 2013; provided, however, that if City has not adopted said Master Plan Fee Program by October 17, 2013, then Prologis shall have the right, in its sole discretion, to terminate this Agreement upon ten (10) days' notice to City. The Parties further acknowledge and agree that Prologis shall vest into said Master Plan Fee Program upon its adoption ("**Citywide Master Plan Fee Program**") for purposes of its obligations relating to Development Impact Fees, subject to the terms and provisions of this Section 6.3 and Section 6.4 below. It is anticipated that industrial fees will not exceed One Hundred Seventy Eight Thousand Dollars (\$178,000) per Net Acre; provided, however, if City adopts the Citywide Master Plan Fee Program with industrial fees that exceed this amount, then Prologis shall have the right, in its sole discretion, to terminate this Agreement upon ten (10) days' notice to City.

(b) Overall Development Impact Fee Obligation. Said Master Plan Fee Program shall be used to determine Prologis' Development Impact Fee obligations for the Project ("**Master Plan Fee Obligation**"), subject to any applicable credits or

reimbursements as set forth herein. Furthermore, the Parties hereby agree that Prologis' Master Plan Fee Obligation shall be reduced by Twenty Eight Thousand Five Hundred Ninety Five Dollars (\$28,595) per Net Acre, which amount represents Prologis' estimate of the total value of all land dedications in fee to be provided by Prologis pursuant to this Agreement divided by the total number of acres of land dedications that Prologis is anticipated to provide in fee pursuant to this Agreement, based on a currently-estimated value of One Hundred Fifty Thousand Dollars (\$150,000) per acre. For purposes of example only, if City adopts a Citywide Master Plan Fee Program that imposes industrial fees in the amount of \$178,000 per Net Acre, then for purposes of determining the Master Plan Fee Obligation, said amount would be reduced to \$149,405 per Net Acre to reflect the estimated value of said land dedications. Notwithstanding the foregoing, following approval of development of the first six hundred (600) Net Acres, the Parties shall confirm the actual, remaining amount of acreage required to be dedicated in connection with the Project on the Property and shall, if necessary, adjust the amount of the reduction in Prologis' Master Plan Fee Obligation above (i.e., \$28,595) for the remaining acreage on the Property, to ensure that all land dedications provided by Prologis for the entire Property (including the first 600 Net Acres and all the remaining acreage on the Property) are properly credited for \$150,000 per Net Acre.

(c) Prologis' Master Plan Fee Obligation; Deferred Fee Program. Prologis shall pay its Master Plan Fee Obligation for the Project (calculated in accordance with subsection (b) above) on a per-Net-Acre basis, subject to such applicable modifications as are set forth herein; provided, however, that for any application that proposes to develop land within the first (1st) six hundred (600) Net Acres of the Property, Prologis may elect to defer payment of a portion of its fee obligation ("**Deferred Fee Program**") and pay only One Hundred Fifteen Thousand Dollars (\$115,000) per Net Acre ("**Deferred Fee Amount**"). The Deferred Fee Amount shall be composed of the same type of Master Plan Fees as comprise the adopted Citywide Master Plan Fee Program, and shall be in the same percentages of the Deferred Fee Amount as are in the adopted Master Plan Fee Program. The Parties acknowledge and agree that the Deferred Fee Program is provided for in this Agreement in order to serve as a catalyst for development on the Property, which will, in turn, result in the accelerated payment of Development Impact Fees generally. The Deferred Fee Amount (\$115,000 per Net Acre) shall not be increased under any circumstances; provided, however, that any fees that are deferred under the Deferred Fee Program shall be paid by Prologis in connection with its development of the remaining approximately four hundred forty two (442) Net Acres of the Property (i.e., resulting in an obligation to pay the difference between the Citywide Master Plan Fees otherwise due (subject to any applicable credits set forth in this Agreement) and the Deferred Fee Amounts paid).

(d) Modifications to Development Impact Fees. The Parties agree that Prologis shall vest into the type and amount of Development Impact Fees as set forth in this Section 6.3. Prologis shall not be required to pay any newly established Development Impact Fees (beyond those identified in attached Exhibit 4) on Prologis' development of the Property that City adopts after it adopts the Citywide Master Plan Fee Program, and shall not be required to pay an increase in any applicable Development Impact Fees except under any of the following limited circumstances:

(i) After the third (3rd) anniversary of the Effective Date, City may increase any Development Impact Fee based on the change in the ENR.

(ii) City may modify any Development Impact Fee as a result of City adopting an update to the relevant Citywide Infrastructure Master Plan so long as said update is intended to change the estimated construction cost of a specific previously identified improvement to reflect actual construction costs based on three (3) recent similar improvement projects constructed in the City of Tracy.

(iii) City may modify any Development Impact Fee as a result of City adopting an update to the relevant Citywide Infrastructure Master Plan that reflects a change in the scope of a specific previously identified improvement so long as said change in scope is made for the purpose of:

(a) complying with a specific mandate under federal or state law; or

(b) refining the design of the improvement at issue such as is reasonably necessary to build the underlying improvement, as reasonably determined and documented by City (e.g., design change to avoid unanticipated pipeline as opposed to the addition of new lane).

(iv) City may modify the Traffic Impact Fee as a result of City adopting an update to the TMP to reflect additional costs necessary to implement any improvements determined to be necessary to mitigate the Project's anticipated traffic impacts based on the re-assessment of traffic forecasts and projected operating conditions to be performed upon completion of Phase I of the Project pursuant to Mitigation Measure TRANS-10 of the EIR.

(v) To the extent City modifies the TMP, it shall use its best efforts to ensure that at least twenty percent (20%) of the total roadway infrastructure work referenced therein will be funded by federal sources and County RTIF monies.

In accordance with the provisions of this Section 6.3(d), City acknowledges that the Project's pro rata fair share of the westside recycled water infrastructure, as more fully described in the Citywide Water System Master Plan, is included in the Project's fee structure (as set forth in attached Exhibit 4). City further acknowledges that development of a power plant to be located in adjacent Alameda County, to the west of the I-580/Mountain House Parkway interchange, has been proposed, and that if approved, said power plant would require a significant expansion of City's planned recycled water infrastructure, which is not currently contemplated in the Citywide Water System Master Plan. In the event and to the extent City ultimately decides to expand its system to accommodate said power plant, City agrees not to seek to impose any additional costs of doing so on Prologis, if doing so would be contrary to Prologis' vested rights as set forth herein. City further agrees that except for the limited circumstances set forth in this Section 6.3(d), City may not increase any Development Impact Fees as a result of including a new infrastructure project in a Citywide Infrastructure Master Plan or substantially modifying the scope of any existing infrastructure project in a Citywide Infrastructure Master Plan beyond the design refinements contemplated in this Section 6.3(d); and in no event, shall Prologis be required to pay more than the Deferred Fee Amount of \$115,000 per Net Acre for the first (1st) six hundred (600) Net Acres.

6.4 Development Impact Fee Determination and Reconciliation. City shall take the following steps to determine the amount of Development Impact Fees that Prologis shall pay in connection with each Subsequent Approval:

(a) Election of Deferred Fee Program. In connection with each Subsequent Approval, Prologis shall elect to either: (1) pay the adopted Master Plan Fees, or (2) pay the Deferred Fee Amount under the Deferred Fee Program. This election shall be referred to as the “**Elected Fee Amount.**”

(b) Payment of Off-Site Fee Amounts. Nothing in this Agreement shall preclude City from collecting that portion of Prologis’ Development Impact Fees that is required to fund off-site improvements, as established in the Citywide Infrastructure Master Plans, regardless of whether Prologis elects to pay the adopted Master Plan Fees or pay the Deferred Fee Amount. To implement City’s collection of such portion of Prologis’ Development Impact Fees, then before any credits are applied to the Elected Fee Amount under Section 6.4(c), City shall deduct from the full Elected Fee Amount an amount equal to the total of the following percentages of the Elected Fee Amount:

(i)	Traffic Fee	12.38%
(ii)	Potable Water Distribution Fee	7.88%
(iii)	Storm Drainage Fee	5.38%
(iv)	Recycled Water Fee	9.19%
(v)	Wastewater Conveyance	100% (subject to Sec. 3.3(d))
(vi)	Public Facilities	100%
(vii)	Public Safety	100%

Provided that Prologis has complied with the terms of that certain Agreement Between the City of Tracy and Prologis, L.P., Regarding Reimbursement for Acquisition of Water Supply and Conveyance Capacity approved by the City of Tracy City Council on or about August 6, 2013 (the “**Water Supply Agreement**”), and provided that delivery to City of the water supplies contemplated in the Water Supply Agreement is not prevented, as a result of government action or litigation, and through no fault of the City, then Prologis: (i) shall not be required to pay any Off-Site Fee Amount for Potable Water Supply and Treatment costs if City secures anticipated water supplies, funded by Prologis, as contemplated in this Section 6.4(b); and (ii) shall not be required to pay any Off-Site Fee Amount for Wastewater Treatment fees until such time as Prologis’ payments of the Initial Wastewater Facilities Payment and the Additional Wastewater Facilities Payment are fully credited pursuant to Section 6.4(c)(ii)(C) below.

(c) Determine Applicable Credits. The balance of the Elected Fee Amount after the deduction of Off-Site Fee Amounts made pursuant to Section 6.4(b) above shall be referred to herein as the “**Remaining Elected Fee Amount.**” Following the deduction of the Off-Site Fee Amounts made pursuant to Section 6.4(b) above, the Remaining Elected Fee Amount shall be subject to the following credits:

(i) Credits for Construction of Master Plan Infrastructure. If Prologis elects to construct any Master Plan Infrastructure (or any Permitted or agreed-upon interim improvements pursuant to Sections 4.5 and 4.6 above, which are determined to be appropriate for reconciliation), then the estimated cost listed in the then-applicable Citywide Infrastructure Master Plan for the improvement at issue (or any portion thereof) shall be deducted from the Remaining Elected Fee Amount. In the event that Prologis elects to construct less than the full length of any Master Plan Infrastructure, the amount to be deducted from the Remaining Elected Fee Amount shall be that percentage of the cost listed in the then-applicable Citywide Infrastructure Master Plan for the improvement at issue that is equal to the percentage of the full Master Plan Infrastructure constructed by Prologis on a linear foot basis (or similarly appropriate quantity take offs). In the event and to the extent that Prologis assigns all or a portion of its rights and obligations hereunder to an Assignee pursuant to Section 10 below, said Assignee shall be entitled to the deductions referenced in this subsection (c) to the same extent of Prologis absent such assignment. This credit shall be determined in connection with each development application, as applicable; provided, however, that it may only be applied after City receives adequate security in the form of a letter of credit in the amount of the credit due (based on the estimated cost listed in the then-applicable Citywide Infrastructure Master Plan) or an improvement bond (with execution of a satisfactory improvement and security agreement), to ensure construction of such Master Plan Infrastructure. Prologis may elect, in its sole discretion, to provide either said letter of credit or improvement bond; provided, however, that any such letter of credit or improvement bond shall be in a form acceptable to the City.

(ii) Credits for Additional Land Dedication, Wastewater Facilities Payments, Water Treatment and Water Supply, and Costs of Technical Studies and Design for I-580 Interchange Work.

(A) Prologis shall offer for dedication all required lands in fee or easement(s) for any and all Project Infrastructure that is necessary, as determined by City, to serve the Property in accordance with the applicable requirements of the Subdivision Map Act, City's Subdivision Ordinance, and City's Infrastructure Master Plans. To the extent that such land dedication costs have not already been accounted for in determining the Master Plan Fee Obligation (pursuant to Section 6.3(b) above), in connection with each Subsequent Approval, if Prologis is required to offer to City additional land dedications in fee, Prologis shall receive a credit in the amount of One Hundred Fifty Thousand Dollars (\$150,000) per acre against the applicable fee portion of its Remaining Elected Fee Amount. Similarly, to the extent that such costs have not already been accounted for in determining the Master Plan Fee Obligation, in connection with each Subsequent Approval, if Prologis is required to offer to City any easements, Prologis shall receive a credit of Fifty Thousand Dollars (\$50,000) per acre against the applicable fee portion of its Remaining Elected Fee Amount. These credits from the applicable Development Impact Fees shall not affect or reduce Prologis' obligation to pay the Off-Site Fee Amounts pursuant to Section 6.4(b) above. These credits shall be determined in connection with each development application, as applicable; provided, however, that they may only be applied after City approval of improvement plans for the improvements at issue and execution of an improvement and security agreement in a form acceptable to the City.

(B) Prologis is anticipated to contribute to the costs of acquiring a treated potable water supply for purposes of serving the Project. So long

as Prologis provides this contribution substantially in conformance with the Water Supply Agreement described in Section 6.4(b) above, and provided that delivery to City of the water supplies contemplated in the Water Supply Agreement is not prevented, as a result of government action or litigation, and through no fault of the City, then in connection with each Subsequent Approval, Prologis shall not be required to pay any Potable Water Supply or Treatment Fees so long as the acquisition of the above-referenced supply sufficiently covers water service to the Property in accordance with the EIR and the WSA. To the extent the above-referenced supply does not sufficiently cover water service to the Property in accordance with the EIR and the WSA, then Prologis shall be required to fund the cost of the acquisition of any such additional needed supplies, which may involve treatment, storage and delivery.

(C) In connection with each Subsequent Approval, Prologis may deduct up to the full amount of the Traffic Fee portion of the Remaining Elected Fee Amount from the total Remaining Elected Fee Amount, for all eligible costs that Prologis has, at the time of such Subsequent Approval, previously paid for technical studies, environmental review, and/or design work for the I-580 Interchange Work, until the full amount of Prologis' credit-eligible payments for such work has been credited against the Traffic Fee portions of Development Impact Fees paid in connection with Subsequent Approvals. This credit against the applicable Development Impact Fees shall not affect or reduce Prologis' obligation to pay the Off-Site Fee Amounts pursuant to Section 6.4(b) above.

(D) Pursuant to Section 6.2 above, Prologis is required to pay the Initial Wastewater Facilities Payment, and may elect to pay the Additional Wastewater Facilities Payment (together, the "**Wastewater Treatment Facilities Payments**"). Subject to Section 6.4(b) above, in recognition of and to the extent that Prologis pays the Wastewater Facilities Payments, in connection with each Subsequent Approval, Prologis may deduct up to the full amount of the Wastewater Fee portion of the Remaining Elected Fee Amount from the total Remaining Elected Fee Amount, until the full amount of the Wastewater Facilities Payments actually paid by Prologis has been credited against the Wastewater Treatment portions, as applicable, of Development Impact Fees paid in connection with Subsequent Approvals.

(E) In the event and to the extent that Prologis assigns all or a portion of its rights and obligations hereunder to an Assignee pursuant to Section 10 below, said Assignee shall be entitled to the credits referenced in this Section 6.4(c)(ii) to the same extent of Prologis absent such assignment.

(d) Fee Reconciliation. Once the Off-Site Fee Amounts and the applicable credits have been determined pursuant to Sections 6.4(b) and (c) above, then the following shall occur:

(i) Payment of Off-Site Fee Amounts. Prologis shall pay to City the Off-Site Fee Amounts due on a per-Building Permit basis, at the time of issuance of each Building Permit for the individual development that is the subject of the Subsequent Approval.

(ii) Satisfaction of Remaining Elected Fee Amount.

(A) If the Remaining Elected Fee Amount is greater than the total of the applicable credits under Section 6.4(c) above, then Prologis shall pay the difference between the Remaining Elected Fee Amount and the applicable credits, with respect to each infrastructure fee type, on a per-Building Permit basis, at the time of issuance of each Building Permit for the proposal at issue.

(B) If the Remaining Elected Fee Amount is less than the total of the applicable credits under Section 6.4(c) above, then City shall reconcile the fee payment obligation, with respect to each infrastructure fee type, in connection with the next development submitted by Prologis and approved by City by deducting the difference between the Remaining Elected Fee Amount and the applicable credits from the Master Plan Fee Obligation otherwise due in connection with that subsequent proposal. Notwithstanding the foregoing, the Parties agree that in the event that Prologis pays more than the total amount of its Master Plan Fee Obligation due hereunder as a result of Prologis fronting specified costs and/or its provision of Master Plan Infrastructure, and no further deduction can occur under this subsection because Prologis has developed all of its lands within the Property, then Prologis shall be eligible for reimbursement under the Citywide Master Plan Fee Program according to City's applicable rules, regulations, procedures and requirements for similar reimbursements.

6.5 Regulatory Processing Fees.

In addition to the applicable Development Impact Fees, Prologis shall pay the applicable Regulatory Processing Fees in connection with any and all Subsequent Approvals. Provided, however, that City may only impose increased Regulatory Processing Fees on development of the Project on the Property if said increased fees were formally adopted by City in accordance with applicable law, and would be applied generally throughout the City of Tracy on both residential and non-residential projects, and City shall not be permitted to impose any new Regulatory Processing Fees adopted by City after the Effective Date.

SECTION 7. PERIODIC COMPLIANCE REVIEW; DEFAULT.

7.1 Periodic Compliance Review.

On an annual basis and upon thirty (30) days' notice from City to Prologis, Prologis shall document its good faith compliance with the terms of this Agreement and submit this compliance report to City. This periodic compliance review shall be conducted in accordance with the Development Agreement Statute and City's Development Agreement Procedures ("**Periodic Review**"). In conducting this Periodic Review, City acknowledges and agrees that any finding of non-compliance on Prologis' part shall be limited in effect to Prologis' interest in the Property or the Project. Furthermore, the City acknowledges and agrees that in the event and to the extent Prologis has assigned its rights and obligations to other Assignee(s) pursuant to Section 10.1 below, then any such Assignee(s) shall be responsible for conducting the Periodic Review as it relates to their rights and obligations hereunder, although Prologis shall cooperate with respect to reasonable information requests from any Assignee(s) in order to facilitate the Periodic Review process. In the event City elects to terminate this Agreement pursuant to the provisions of Section 8 below, Prologis may challenge such termination by instituting

legal proceedings in which the court shall exercise its review, based on substantial evidence, as to the existence of cause for termination.

7.2 Notice of Compliance.

Provided that City has determined, based Prologis is in compliance with all provisions of this Agreement based on the most recent Periodic Review, then within thirty (30) days following a written request from Prologis that may be made from time to time, City shall execute and deliver to Prologis (or to any party requested by Prologis) a written "**Notice of Compliance**" in recordable form, duly executed and acknowledged by City, that certifies:

(a) This Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications;

(b) There are no current uncured defaults as to the requesting Prologis under this Agreement or specifying the dates and nature of any such default;

(c) Any other information reasonably requested by Prologis. Prologis shall have the right, at its sole discretion, to record the Notice of Compliance.

7.3 Default.

(a) Any failure by City or Prologis to perform any material term or condition of this Agreement, which failure continues uncured for a period of sixty (60) days following written notice of such failure from the other Party (unless such period is extended by written mutual consent), shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default.

(c) During any cure period specified under this Section and during any period prior to any delivery of notice of default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter and pending its resolution or formal termination of the Agreement as provided herein.

(d) City will continue to process in good faith development applications relating to the Property during any cure period, but need not approve any such application if it relates to a proposal on the Property with respect to which there is an alleged default hereunder.

(e) In the event either Party is in default under the terms of this Agreement, the non-defaulting Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies, and/or (iii) pursue judicial remedies.

(f) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies that it may have available in law or equity, institute legal action to cure, correct, or remedy any default by the other Party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder or to seek specific performance. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement as it relates to an alleged default hereunder shall be deemed a final agency action.

(g) The Parties hereby acknowledge that the City would not have entered into this Agreement if doing so would subject it to the risk of incurring liability in money damages, either for breach of this Agreement, anticipatory breach, repudiation of the Agreement, or for any actions with respect to its negotiation, preparation, implementation or application. The Parties further acknowledge that money damages and remedies at law generally are inadequate, and specific performance is the most appropriate remedy for the enforcement of this Agreement and should be available to all Parties for the following reasons:

(i) Money damages are excluded;

(ii) Due to the size, nature, and scope of the Project, it may not be practical or possible to restore the property to its original condition once implementation of this agreement has begun. After such implementation, Prologis may be foreclosed from other choices it may have had to utilize the property or portions thereof. Prologis has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate Prologis for such efforts.

(h) Therefore, the Parties hereby acknowledge and agree that it is a material part of Prologis' consideration to City that City shall not be at any risk whatsoever to liability for money damages relating to or arising from this Agreement, and except for non-damages remedies, including the remedy of specific performance, Prologis, on the one hand, and the City, on the other hand, for themselves, their successors and assignees, hereby release one another's officers, trustees, directors, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth and Fourteenth Amendments of the United States Constitution, or any other law or ordinance which seeks to impose any money damages, whatsoever, upon the Parties because the Parties entered into this Agreement, because of the terms of this Agreement, or because of the manner of implementation or performance of this Agreement.

7.4 Enforced Delay; Extension of Time of Performance.

No party shall be deemed in default of its obligations under this Agreement where a delay or default is due to an act of God, natural disaster, accident, breakage or failure of equipment, enactment of conflicting federal or state laws or regulations, third-party litigation, strikes, lockouts or other labor disturbances or disputes of any character, interruption of services by suppliers thereof, unavailability of materials or labor, unforeseeable and severe economic conditions, rationing or restrictions on the use of utilities or public transportation whether due to energy shortages or other causes, war, civil disobedience, riot, or by any other severe and unforeseeable occurrence that is beyond the control of that party (collectively, "Enforced Delay"). Performance by a party of its obligations under this Section 8.4 shall be excused during, and extended for a period of time equal to, the period (on a day-for-day basis) for which the cause of such Enforced Delay is in effect.

7.5 Third Party Legal Actions.

(a) If there are any third party administrative, legal or equitable actions challenging any of the Project Approvals, including, without limitation, this Agreement and all CEQA processes and actions by City relating to the Project, Prologis shall defend and indemnify City against any and all fees and costs arising out of the defense of such actions, including the fees and costs of City's own in-house or special counsel retained to protect City's interests. Each Party is entitled to legal counsel of its choice, at Prologis' expense. The Parties and their respective counsel shall cooperate with each other in the defense of any such actions, including in any settlement negotiations. If a court in any such action awards any form of money damages to such third party, or any attorneys' fees and costs to such third party, Prologis shall bear full and complete responsibility to comply with the requirements of such award, and hereby agrees to timely pay all fees and costs on behalf of City.

(b) If any part of this Agreement, any Project Approval is held by a court of competent jurisdiction to be invalid, the Parties shall cooperate and use their best efforts, to the extent permitted by law, to cure any inadequacies or deficiencies identified by the court in a manner consistent with the purposes of this Agreement.

SECTION 8. TERMINATION.

8.1 Termination Upon Completion of Project or Expiration of Term.

This Agreement shall terminate upon the expiration of the Term or when the Project on the Property has been fully developed and Prologis' obligations in connection therewith and with this Agreement have been satisfied. Upon termination of this Agreement, either Party may cause a notice of such termination in a form satisfactory to the City Attorney to be duly recorded in the official records of San Joaquin County.

8.2 Termination Due to Default.

After notice and expiration of the thirty (30) day cure period as specified in Section 7.3 above, if the default has not been cured or it is not being diligently cured in the manner set forth above, the noticing party may, at its option, give notice of its intent to terminate this Agreement pursuant to the Development Agreement Statute and City's

Development Agreement Procedures (“**Notice of Intent to Terminate**”). Within thirty (30) days of receipt of a Notice of Intent to Terminate, the matter shall be scheduled for consideration and review in the manner set forth in the Development Agreement Statute and City’s Development Agreement Procedures. Following consideration of the evidence presented in said review, the party alleging the default may give written notice of termination of this Agreement. If a party elects to terminate as provided herein, upon sixty (60) days’ written notice of termination, this Agreement shall be terminated as it relates to the defaulting party’s rights and obligations hereunder. Notwithstanding the foregoing, a written notice of termination given under this Section 8.2 is effective to terminate the obligations of the noticing party only if a default has occurred and such default, as a matter of law, authorizes the noticing party to terminate its obligations under this Agreement. In the event the noticing party is not so authorized to terminate, the non-noticing party shall have all rights and remedies provided herein or under applicable law, including, without limitation, the right to specific performance of this Agreement. Once a party alleging default has given a written notice of termination, legal proceedings may be instituted to obtain a declaratory judgment determining the respective termination rights and obligations under this Agreement. Notwithstanding the foregoing, any such default and related termination shall only extend to the defaulting party’s rights and obligations hereunder and shall not affect the rights and obligations of any other Assignee who has acquired other portions of the Property in accordance with Section 10.1 below.

8.3 Termination by Mutual Consent.

This Agreement may be terminated by mutual consent of the parties in the manner provided in the Development Agreement Statute and in City’s Development Agreement Procedures.

8.4 Termination Due to Fee Increase or City’s Failure to Adopt Master Plan Fee Program.

Prologis shall have the right, in its sole discretion, to terminate this Agreement if City fails to adopt the contemplated Master Plan Fee Program or the industrial fees under the adopted Citywide Master Plan Fee Program exceed One Hundred Seventy Eight Thousand Dollars (\$178,000), as set forth in Section 6.3(a) above.

SECTION 9. DISPUTE RESOLUTION.

9.1 Voluntary Mediation and Arbitration.

If a dispute arises related to the interpretation or enforcement of, or compliance with, the provisions of this Agreement (“**Dispute**”), City and Prologis may mutually consent to attempt to resolve the matter by mediation or arbitration; provided, however, that no such mediation or arbitration shall be required in order for a party to pursue litigation to resolve a Dispute.

9.2 Legal Proceedings.

Either party may, in addition to any other rights or remedies, institute legal action to resolve any Dispute or to otherwise cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof,

enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.

9.3 Attorneys' Fees and Dispute Resolution Costs.

In any action or proceeding brought by any party to resolve a Dispute, the prevailing party is entitled to recover reasonable attorneys' fees and any other costs incurred in the action or proceeding in addition to any other relief to which it is entitled.

SECTION 10. ASSIGNMENT AND ASSUMPTION; RIGHTS AND DUTIES OF MORTGAGEES.

10.1 Assignment of Rights, Interests and Obligations.

Subject to compliance with this Section 10, any Prologis may sell, assign or transfer its interest in the Property and related Project Approvals to any individual or entity ("**Assignee**") at any time during the Term of this Agreement.

(a) Prologis' assignment as provided for in this Section 10.1 may occur without obtaining City's consent ("**Permitted Assignment**") so long as (i) the proposed Assignee is an affiliate of Prologis, which shall include any entity that is directly or indirectly owned or controlled by Prologis such that it owns a substantial interest, but less than a majority of voting stock of the entity; or (ii) any subsequent owner of a Finished Lot within the Project. Any Assignees satisfying either criteria set forth in this Section 10.1(a) shall be referred to herein as "**Permitted Assignees.**" Prologis shall provide City with written notice of a Permitted Assignment within thirty (30) days following the effective date thereof.

(b) If the proposed Assignee does not qualify as a Permitted Assignee, then Prologis may assign its interest in the Property and related Project Approvals so long as Prologis receives the Planning Director's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. It shall be deemed unreasonable to refuse consent for such assignment unless in light of the proposed Assignee's reputation and financial resources, such Assignee would not be able to perform the obligations proposed to be assumed by such Assignee. Any such determination shall be made in writing by the Development Services Director, supported by substantial evidence, and would be appealable by Prologis to the City Council. Failure by City to respond to any such assignment request within forty-five (45) days would be deemed to constitute consent. Further, no consent to assign shall be required under this Section 10.1(b) for land covered by a specific tentative map or parcel map so long as Prologis has satisfied all of its obligations hereunder in connection with said tentative map or parcel map. Finally, the Parties agree that once the Project is fully built out, then no consent to assign shall be required.

10.2 Assumption of Rights, Interests and Obligations.

Subject to compliance with the preceding Section 10.1, express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred, shall relieve Prologis of such obligations and other terms and conditions so expressly assumed. Any such assumption agreement shall be in substantially the same

form as attached Exhibit 6. The County Recorder shall duly record any such assumption agreement in the official records of San Joaquin County within ten (10) days of receipt. Upon recordation of said assumption agreement, Prologis shall automatically be released from those obligations assumed by the Assignee.

10.3 Rights and Duties of Mortgagee in Possession of Property.

(a) This Agreement shall be superior and senior to all liens placed upon the Property or any portion thereof after the Effective Date, including, without limitation, the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair any Mortgage made in good faith and for value; provided, however, this Agreement shall be binding upon and effective against all persons and entities, including all Mortgagees who acquire title to the Property or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise, and including any subsequent transferee of the Property acquired by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise (in either case, a "Mortgagee Successor"), subject, however, to the terms of Section 10.3(b), below.

(b) The provisions of Section 10.3(a) above notwithstanding, no Mortgagee Successor shall have any obligation or duty under this Agreement to commence or complete the construction of any Project Infrastructure, or to guarantee such construction or completion or any liability for failure to do so; provided, however, that a Mortgagee Successor shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements permitted under the Project Approvals. In the event that any Mortgagee Successor shall acquire title to the Property or any portion thereof, the Mortgagee Successor further shall not be (i) liable for any breach or default under this Agreement on the part of any Prologis or its successor, or (ii) obligated to cure any breach or default under this Agreement on the part of any Prologis or its successor. In the event such Mortgagee Successor desires to succeed to Prologis' rights, benefits, and privileges under this Agreement, however, City may condition such succession upon the assumption of this Agreement by the Mortgagee Successor by written agreement reasonably acceptable to City and the Mortgagee Successor, including, without limitation, the obligation to cure any breach or default on Prologis' part that is curable by the payment of money or performance at commercially reasonable cost and within a commercially reasonable period of time after such assumption takes effect.

(c) If City receives notice from a Mortgagee requesting a copy of any Notice of Default regarding all or a portion of the Property, then City shall deliver said notice to such Mortgagee, concurrently with service thereof to Prologis, any notice given to Prologis with respect to any claim by City that Prologis has committed an Event of Default, and if City makes a determination of noncompliance under Section 7 above, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Prologis. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after receipt of such notice to cure, or to commence to cure, the alleged default set forth in said notice in accordance with Section 7 above. If the Event of Default or such noncompliance is of a nature that can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall have the right (but not the obligation) to seek to obtain possession with diligence and continuity through a receiver or otherwise, and thereafter to remedy or cure the Event of Default or noncompliance within ninety (90) days after obtaining possession, except if any such

Event of Default or noncompliance cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Event of Default or noncompliance if such Mortgagee commences cure during such ninety (90) day period, and thereafter diligently pursues completion of such cure to the extent possible. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to permit or authorize any Mortgagee or Mortgagee Successor to undertake or continue construction or completion of any improvements comprising the Project (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the defaulting Prologis' continuing obligations hereunder in the manner specified in Section 10.3(b), above.

SECTION 11. GENERAL PROVISIONS.

11.1 Independent Contractors.

Each party is an independent contractor and shall be solely responsible for the employment, acts, omissions, control and directing of its employees. All persons employed or utilized by Prologis in connection with this Agreement and the Project shall not be considered employees of City in any respect. Except as expressly set forth herein, nothing contained in this Agreement shall authorize or empower any party to assume or create any obligation whatsoever, express or implied, on behalf of any other party or to bind any other party or to make any representation, warranty or commitment on behalf of any other party.

11.2 Invalidity of Agreement and Severability of Provisions.

If this Agreement in its entirety is determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment, including the entry of judgment in connection with any appeals. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid and unenforceable, the remaining provisions shall continue in full force and effect. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Prologis may terminate this Agreement as to Prologis (in the case of Prologis taking such action, the termination shall relate only to Prologis' interest in the Property and the related Project Approvals) by providing written notice of such termination to the other parties.

11.3 Further Documents; Other Necessary Acts.

Each party shall execute and deliver to the other party all other instruments and documents as may be reasonably necessary to carry out the purpose of this Agreement and the Project Approvals and Subsequent Approvals, in order to provide or secure to the other party the full and complete enjoyment of the rights and privileges granted by this Agreement.

11.4 Time of Essence.

Time is of the essence in the performance of each and every covenant and obligation to be performed by the parties hereunder.

11.5 Amendment to this Agreement.

This Agreement may be modified from time to time by mutual consent of the parties, in accordance with the Development Agreement Statute, the City Development Agreement Procedures and this Section 11.5. In the event the parties modify this Agreement, City shall cause notice of such action to be duly recorded in the official records of San Joaquin County within ten (10) days of such action.

11.6 Project Is A Private Undertaking.

The parties agree that: (a) any development by Prologis of the Property shall be a private development; (b) City has no interest in or responsibilities for or duty to third parties concerning any improvements constructed in connection with the Property until such time that City accepts the same pursuant to the provisions of this Agreement and in connection with the various Project Approvals; (c) Prologis shall have full power over and exclusive control of the Project herein described to the extent of Prologis' interest therein, subject only to the limitations and obligations of Prologis under this Agreement, its Project Approvals, and the other Existing Rules; (d) the contractual relationship between City and Prologis is such that Prologis is an independent contractor and not an agent of City; and (e) nothing in this Agreement is intended or shall be construed to create or reflect any form of partnership or joint venture between the parties.

This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

11.7 Covenants Running With The Land.

All of the provisions contained in this Agreement are binding upon and benefit the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or any portion of the Property, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including, without limitation, Civil Code section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Property and is binding upon each owner, including Prologis and all successive owners, of all or a portion of the Property during its ownership of such property.

11.8 Recordation Of Agreement.

Within ten (10) days of the Effective Date, Prologis shall cause this Agreement to be duly recorded in the official records of San Joaquin County.

11.9 Notices.

Any notice required under this Agreement shall be in writing and personally delivered, or sent by certified mail (return receipt requested and postage pre-paid), overnight delivery, or facsimile to the following:

City: City of Tracy
Attn: Development Services Director
333 Civic Center Plaza
Tracy, CA 95376

Copy to: City Attorney's Office
Attn: City Attorney
333 Civic Center Plaza
Tracy, CA 95376

Prologis: Prologis L.P.
Attn: Dan Letter
Pier 1, Bay 1
San Francisco, CA 94111
Tel: (415) 733-9973
Fax: (415) 733-2171

Copy to: Miller Starr Regalia
Attn: Nadia Costa
1331 North California Blvd., 5th Floor
Walnut Creek, CA 94596
Tel: 925.935.9400
Fax: 925.933.4126

Copy to: Prologis L.P.
Attn: General Counsel
4545 Airport Way
Denver, CO 80239
Tel: 303.567.5000
Fax: 303.567.5903

Notices to Mortgagees by City shall be given as provided above using the address provided by such Mortgagee(s). Notices to Assignees shall be given by City as required above only for those Assignees who have given City written notice of their addresses for the purpose of receiving such notices. Either party may change its mailing address/facsimile at any time by giving written notice of such change to the other party in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the earlier of the date personal delivery is effected or on the delivery date or attempted delivery date shown on the return receipt, air bill or facsimile.

11.10 Prevailing Wage.

In accordance with applicable laws and regulations, City or Prologis, as appropriate, shall be responsible for determining whether construction of any or all of the Project Infrastructure required in connection with development shown on a specific tentative map or final map or other Subsequent Approval application proposed by Prologis will trigger the obligation to pay prevailing wages under California or federal law. In the event and to the extent that payment of prevailing wages is required, City shall ensure compliance with those requirements, as appropriate and feasible.

11.11 Applicable Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

11.12 Venue.

Any action brought relating to this Agreement shall be held exclusively in a state court in the County of San Joaquin.

11.13 Indemnification.

Prologis shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) (collectively, "Claims") resulting from or arising out of the development contemplated by this Agreement, including, without limitation, Claims that may arise out of Section 3.3(d)(iii), other than a liability or claim based upon City's gross negligence or willful misconduct. The indemnity obligations of this Agreement shall not extend to Claims arising from activities associated with the maintenance or repair by the City or any other public agency of improvements that have been accepted for dedication by the City or such other public agency.

11.14 No Waiver.

No waiver by either party of any provision of this Agreement shall be considered a waiver of any other provision of any subsequent breach of the same or any other provisions, including the time for performance of any such provisions, and shall have no effect with respect to any other party's rights and obligations hereunder. The exercise by a party of any right or remedy as provided in this Agreement or provided by law shall not prevent the exercise by the party of any other remedy provided in this Agreement or under the law, and shall have no effect with respect to any other party's rights and remedies as provided herein.

11.15 Construction.

This Agreement has been reviewed and revised by legal counsel for both City and Prologis and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. The provisions of this Agreement and the attached exhibits shall be construed as a whole according to their common meaning and not strictly for or against either party, and in a

manner that shall achieve the purposes of this Agreement. Wherever required by the context, the masculine gender shall include the feminine or neuter genders, or vice versa.

11.16 Entire Agreement.

This Agreement and all exhibits constitute the entire agreement between the parties and supersede all prior discussions, negotiations, and agreements whether oral or written. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written notification signed by both parties.

11.17 Estoppel Certificate.

Either party from time to time may deliver written notice to the other party requesting written confirmation that, to the knowledge of the certifying party: (a) this Agreement is in full force and effect and constitutes a binding obligation of the parties; (b) this Agreement has not been amended either orally or in writing, or if it has been amended, specifying the nature of the amendment(s); and (c) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature of the default. A party receiving a request shall execute and return the certificate within thirty (30) days after receipt thereof. The Planning Director shall have the right to execute any such certificate requested by Prologis. At Prologis' request, the certificate provided by City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and Prologis shall have the right to record the certificate for the affected portion of the Property at its cost.

11.18 Counterparts.

This Agreement and any and all amendments thereto may be executed in counterparts, and all counterparts together shall be construed as one document.

11.19 Authority To Execute.

Each party hereto expressly warrants and represents that it has the authority to execute this Agreement on behalf of its entity and warrants and represents that it has the authority to bind its entity to the performance of its obligations hereunder.

11.20 Captions.

The caption headings provided herein are for convenience only and shall not affect the construction of this Agreement.

11.21 Compliance, Monitoring, and Management Duties; Default.

If Prologis fails to perform any of its duties related to compliance review processes, monitoring, or the management of any programs as required herein, City has the right, but not the obligation, to undertake such duties and perform them at said Prologis' expense.

11.22 Listing And Incorporation Of Exhibits.

The exhibits to this Agreement, each of which is hereby incorporated herein by reference, are as follows:

Exhibit 1: Map of Specific Plan Area

Exhibit 2: Map and Legal Description of Property

Exhibit 3: Master Plan Infrastructure Subject to Prologis' Election to Construct Pursuant to Section 5.1

Exhibit 4: Citywide Master Plan Fee Program

Exhibit 5: Specific Plan Private and Public Improvements

Exhibit 6: Form of Assumption Agreement

[SIGNATURE PAGE FOLLOWS]

CITY OF TRACY, a municipal corporation

Brent Ives
Mayor, City of Tracy
Date:

APPROVED AS TO FORM:
City of Tracy City Attorney's Office

Dan Sodergren
City Attorney
Date:

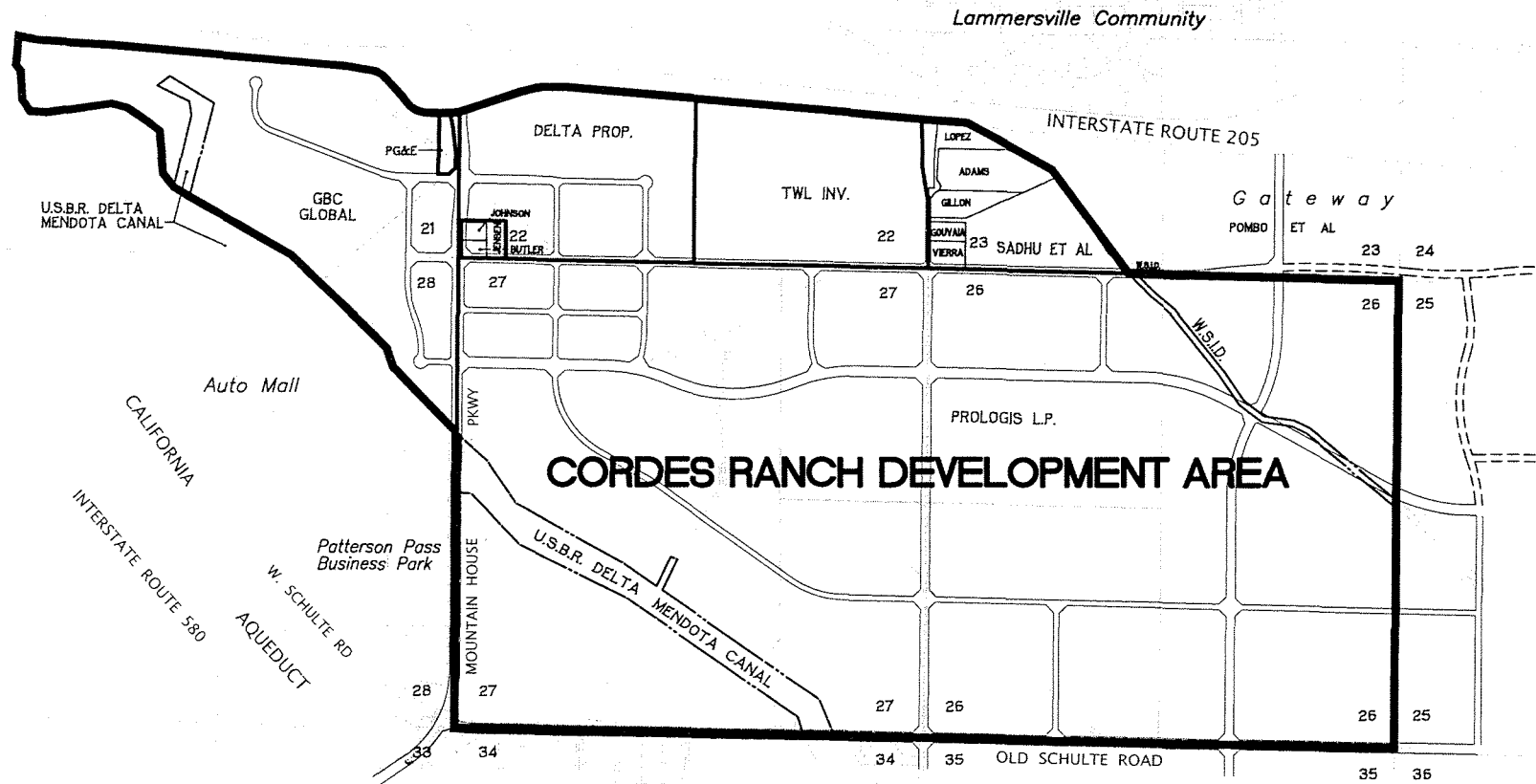
PROLOGIS:
PROLOGIS L.P., a Delaware limited partnership

By: Prologis, Inc., its General Partner

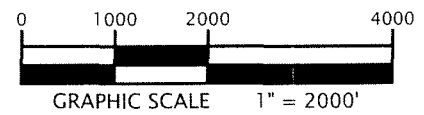
Dan Letter
Its: Senior Vice President
Date:

EXHIBIT 1

MAP OF SPECIFIC PLAN AREA



— SPECIFIC PLAN BOUNDARY



KIER & WRIGHT
 CIVIL ENGINEERS & SURVEYORS, INC.
 2850 Collier Canyon Road (925) 245-8788
 Livermore, California 94551 Fax (925) 245-8796

EXHIBIT 1

**CORDES RANCH
 OVERALL SITE**

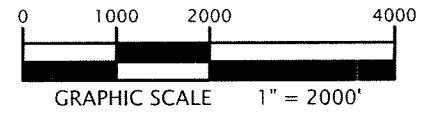
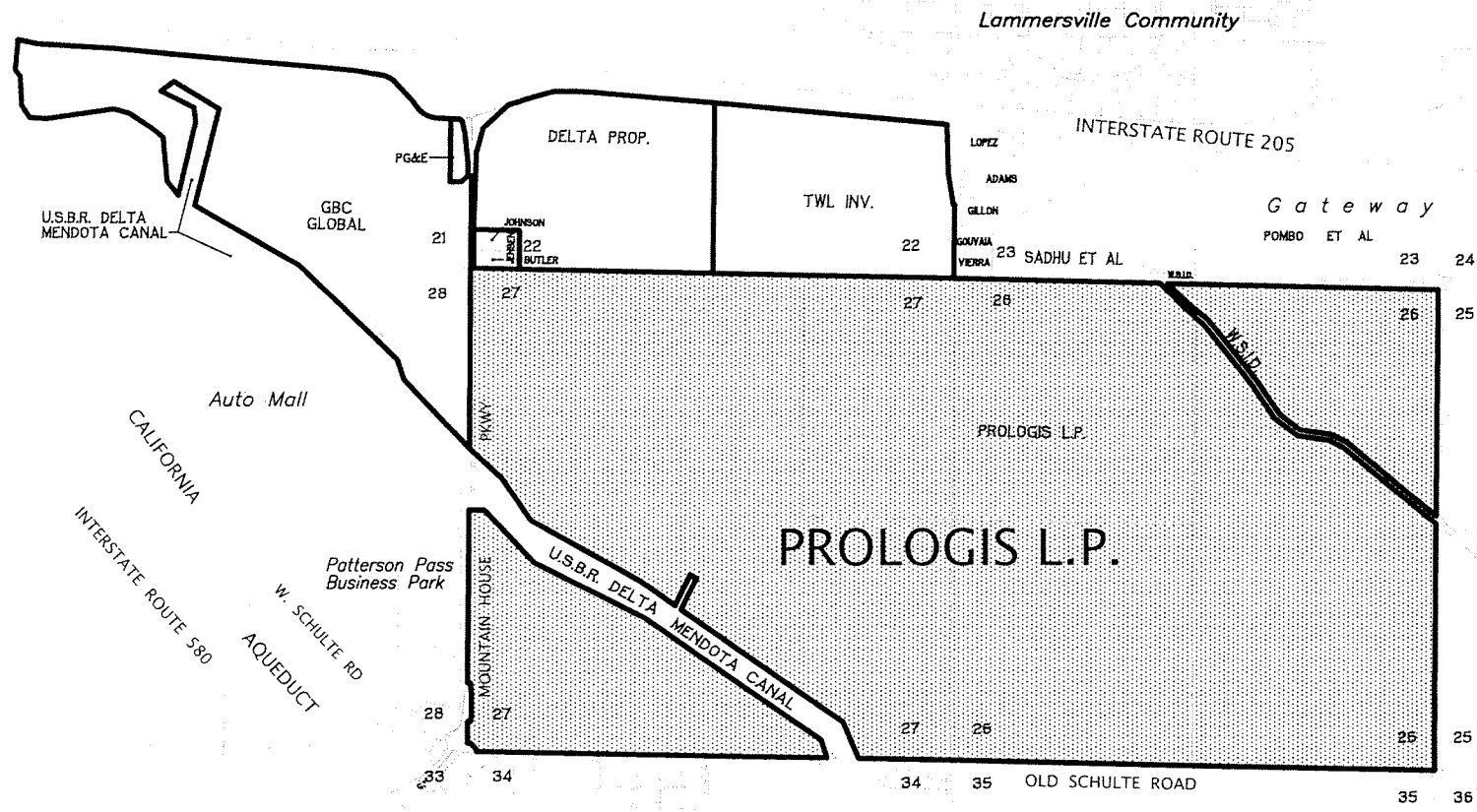
TRACY

CALIFORNIA

DATE	06/28/2013
JOB NO.	A09500
SCALE	1" = 2000'
SHEET	01

EXHIBIT 2

MAP AND LEGAL DESCRIPTION OF PROPERTY



KIER & WRIGHT
 CIVIL ENGINEERS & SURVEYORS, INC.
 2850 Collier Canyon Road (925) 245-8788
 Livermore, California 94551 Fax (925) 245-8796

EXHIBIT 2

CORDES RANCH
PROLOGIS L.P.

TRACY

CALIFORNIA

DATE	04/15/2013
JOB NO.	A09500
SCALE	1" = 2000'
SHEET	03

Exhibit 2
Legal Description of Property

Real property in the unincorporated area of the County of SAN JOAQUIN, State of CALIFORNIA, described as follows:

PARCEL A:

PARCEL 2 AS SHOWN ON NOTICE OF LOT LINE ADJUSTMENT NO. LA-01-0017 AS EVIDENCED BY DOCUMENT RECORDED APRIL 26, 2001 AS INSTRUMENT NO. 2001-062040 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY SITUATE, LYING AND BEING IN THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, LYING IN SECTION 27, TOWNSHIP 2 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

THE NORTH ½ OF SECTION 27 TOGETHER WITH THE SOUTH ½ OF SECTION 27, TOWNSHIP 2 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPTING THEREFROM THAT CERTAIN PARCEL DESCRIBED IN THE DEED TO THE UNITED STATES OF AMERICA, RECORDED FEBRUARY 25, 1945 IN VOLUME 1103 OF OFFICIAL RECORDS, PAGE 464, SAN JOAQUIN COUNTY RECORDS, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 27 AND RUNNING THENCE NORTH 00° 20. WEST, ALONG THE WESTERLY BOUNDARY OF SAID SECTION 27, A DISTANCE OF 405.3 FEET TO A POINT, SAID POINT BEING SOUTH 00° 20. EAST 2234.5 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 27;
THENCE CONTINUING NORTH 00° 20. WEST, ALONG SAID WESTERLY BOUNDARY, 252.8 FEET;
THENCE LEAVING SAID BOUNDARY, SOUTH 48° 17. EAST 481.7 FEET;
THENCE SOUTH 35° 17. EAST 432.1 FEET TO A POINT IN THE SOUTHERLY BOUNDARY OF THE NORTHWEST QUARTER OF SAID SECTION 27, SAID POINT IS SOUTH 89° 31. EAST 605.3 FEET FROM THE POINT OF BEGINNING;
THENCE NORTH 89° 31. WEST, ALONG LAST NAMED BOUNDARY, 215.7 FEET TO A POINT;
THENCE CONTINUING NORTH 89° 31. WEST, ALONG SAID BOUNDARY, 389.6 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT CERTAIN PARCEL DESCRIBED IN THE DEED TO THE UNITED STATES OF AMERICA, RECORDED MAY 15, 1947 IN VOLUME 1065 OF OFFICIAL RECORDS, PAGE 227, SAN JOAQUIN COUNTY RECORDS, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS ON THE NORTHERLY BOUNDARY OF THE SOUTH ½ OF SAID SECTION 27, AND IS DISTANT THERE ALONG, SOUTH 89° 31. EAST 389.6 FEET FROM THE WEST ¼ CORNER OF SAID SECTION 27, AND
RUNNING THENCE ALONG SAID NORTHERLY BOUNDARY, SOUTH 89° 31. EAST 215.7;
THENCE LEAVING SAID BOUNDARY AND RUNNING SOUTH 35° 17. EAST 127.2 FEET;
THENCE SOUTH 61° 36. EAST 1374.2 FEET;
THENCE SOUTH 55° 51. EAST 455.1 FEET;
THENCE NORTH 25° 54. EAST 367.6 FEET;
THENCE SOUTH 64° 06. EAST 80.00 FEET;
THENCE SOUTH 25° 54. WEST 379.2 FEET;
THENCE SOUTH 55° 41. EAST 2161.3 FEET;

THENCE SOUTH 23° 19. EAST 370.6 FEET;
THENCE SOUTH 23° 19. EAST 50.0 FEET TO A POINT IN THE NORTHERLY BOUNDARY OF THE EXISTING RIGHT OF WAY FOR THE COUNTY ROAD ALONG THE SOUTHERLY BOUNDARY OF SAID SECTION 27;
THENCE SOUTH 23° 19. EAST 21.9 FEET TO A POINT THAT IS ON THE SOUTHERLY BOUNDARY OF SAID SECTION 27 AND IS DISTANT THERE ALONG NORTH 89° 25. WEST 1006.8 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 27;
THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID SECTION 27, NORTH 89° 25. WEST 166.2 FEET;
THENCE CONTINUING ALONG SAID SOUTHERLY BOUNDARY, NORTH 89° 25. WEST 179.7 FEET;
THENCE LEAVING SAID BOUNDARY AND RUN NORTH 18° 21. WEST 21.1 FEET TO A POINT IN THE NORTHERLY BOUNDARY OF THE EXISTING RIGHT OF WAY FOR SAID COUNTY ROAD;
THENCE NORTH 18° 21. WEST 40.0 FEET TO A POINT DESIGNATED FOR THE PURPOSE OF REFERENCE THERETO HEREINAFTER, AS POINT C;
THENCE NORTH 18° 21. WEST 151.3 FEET;
THENCE NORTH 55° 51. WEST 316.2 FEET TO A POINT DESIGNATED FOR THE PURPOSE OF REFERENCE THERETO HEREINAFTER AS POINT D;
THENCE NORTH 55° 51. WEST 2044.6 FEET;
THENCE NORTH 64° 13. WEST 1341.4 FEET;
THENCE NORTH 44° 08. WEST 299.4 FEET TO A POINT DESIGNATED FOR THE PURPOSE OF REFERENCE THERETO HEREINAFTER, AS POINT A;
THENCE NORTH 44° 08. WEST 423.7 FEET TO A POINT DESIGNATED FOR THE PURPOSE OF REFERENCE THERETO HEREINAFTER, AS POINT B;
THENCE NORTH 44° 08. WEST 67.8 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF THE SOUTH 1/2 OF SAID SECTION 27 AND IS DISTANT THERE ALONG NORTH 89° 31. WEST 220.0 FEET FROM THE POINT OF BEGINNING;
THENCE ALONG SAID NORTHERLY BOUNDARY, SOUTH 89° 31. EAST 220.00 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT CERTAIN PARCEL DESCRIBED
IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED SEPTEMBER 14, 1962 IN VOLUME 2595 OF OFFICIAL RECORDS, PAGE 390, SAN JOAQUIN COUNTY RECORDS, SAID PARCELS

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF SCHULTE ROAD, COUNTY ROAD NO. 01-281 (A ROAD 60-FEET WIDE) WITH THE EAST LINE OF PATTERSON PASS ROAD, COUNTY ROAD NO. 01-280 (A ROAD 60-FEET WIDE); SAID INTERSECTION BEARS NORTH 44° 32. 52" EAST 43.01 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 27;
THENCE ALONG SAID EAST LINE, NORTH 00° 19. 04" EAST 301.97 FEET TO THE TRUE POINT OF BEGINNING; SAID POINT BEING AT THE COORDINATES Y=446,917.88 FEET AND X=1,702,034.86 FEET;
THENCE, CONTINUING ALONG SAID EAST LINE, NORTH 00° 19. 04" EAST 426.72 FEET;
THENCE SOUTH 05° 06. 42" EAST 100.45 FEET;
THENCE SOUTH 00° 17. WEST 252.65 FEET;
THENCE SOUTH 07° 44. 03" WEST 74.72 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF SCHULTE ROAD, COUNTY ROAD NO. 01-281 (A ROAD 60-FEET WIDE) WITH THE EAST LINE OF PATTERSON PASS ROAD, COUNTY ROAD NO. 01-280 (A ROAD 60-FEET WIDE); SAID INTERSECTION BEARS NORTH 44°32. 52" EAST 43.01 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 27, SAID INTERSECTION BEING AT THE COORDINATES Y=446,615.92 FEET AND X=1,702,033.19 FEET;

THENCE ALONG SAID EASTERLY LINE OF PATTERSON PASS ROAD, NORTH 00° 19. 04" EAST 65.00 FEET;
THENCE SOUTH 45° 27. 08" EAST 90.69 FEET TO SAID NORTHERLY LINE OF SCHULTE ROAD;
THENCE ALONG SAID NORTHERLY LINE, NORTH 88° 46. 38" WEST 65.00 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

ALL THAT CERTAIN REAL PROPERTY SITUATE, LYING AND BEING IN THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, LYING IN THE NORTH ½ OF SECTION 27, TOWNSHIP 2 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHEAST CORNER OF SECTION 27, TOWNSHIP 2 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN;
THENCE ALONG THE EAST LINE OF SAID SECTION 27, SOUTH 0° 22. 36" WEST 2635.22 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 27;
THENCE ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 27, NORTH 88° 53. 27" WEST 1652.51 FEET;
THENCE ALONG A LINE PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 27, NORTH 00° 22. 36" EAST 2636.66 FEET TO THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 27;
THENCE ALONG THE NORTH LINE OF NORTHEAST QUARTER OF SAID SECTION 27, SOUTH 88° 50. 27" EAST 1652.53 FEET TO THE POINT OF BEGINNING.

PARCEL B:

PARCEL 1 AS SHOWN ON NOTICE OF LOT LINE ADJUSTMENT NO. LA-01-0017 AS EVIDENCED BY DOCUMENT RECORDED APRIL 26, 2001 AS INSTRUMENT NO. 2001-062040 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
ALL THAT CERTAIN REAL PROPERTY SITUATE, LYING AND BEING IN THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, LYING IN THE NORTH ½ OF SECTION 27, TOWNSHIP 2 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHEAST CORNER OF SECTION 27, TOWNSHIP 2 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN;
THENCE ALONG THE EAST LINE OF SAID SECTION 27, SOUTH 0° 22. 36" WEST 2635.22 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 27;
THENCE ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 27, NORTH 88° 53. 27" WEST 1652.51 FEET;
THENCE ALONG A LINE PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 27, NORTH 00° 22. 36" EAST 2636.66 FEET TO THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 27;
THENCE ALONG THE NORTH LINE OF NORTHEAST QUARTER OF SAID SECTION 27, SOUTH 88° 50. 27" EAST 1652.53 FEET TO THE POINT OF BEGINNING.

PARCEL C:

ALL THAT PORTION OF THE NORTHEAST ¼ OF SECTION 26 TOWNSHIP 2 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN LYING NORTH AND EAST OF THE NORTHERLY LINE OF THE UPPER MAIN CANAL OF THE WEST SIDE IRRIGATION DISTRICT, AND ALSO ALL THAT PORTION OF THE NORTHWEST ¼ OF SAID SECTION 26, TOWNSHIP 2 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN LYING NORTH AND EAST OF THE NORTHERLY LINE OF THE SAID UPPER MAIN CANAL OF THE WEST SIDE IRRIGATION DISTRICT.

PARCEL C-1:

AN EASEMENT 30 FEET IN WIDTH ALONG THE SOUTHERLY PORTION OF THE SOUTHWEST ¼ OF SECTION 23, TOWNSHIP 2 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN LYING SOUTH OF THE SOUTHWESTERLY BOUNDARY LINE OF THE UPPER MAIN CANAL OF THE WEST SIDE IRRIGATION DISTRICT BEING DESCRIBED AS PARCEL A AS SHOWN ON THE PARCEL MAP RECORDED IN BOOK OF PARCEL MAPS, BOOK 3, PAGE 114, SAN JOAQUIN COUNTY RECORDS AS RESERVED IN AN INSTRUMENT RECORDED JANUARY 13, 1989 RECORDER'S INSTRUMENT NO. 89003100, SAN JOAQUIN COUNTY RECORDS.

PARCEL D:

THE EAST ½ OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN LYING SOUTH OF THE UPPER MAIN CANAL OF THE WEST SIDE IRRIGATION DISTRICT.

PARCEL E:

THE SOUTHWEST ¼ OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

PARCEL F:

THE NORTHWEST ¼ OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN LYING SOUTHWESTERLY OF THE WEST SIDE IRRIGATION UPPER MAIN CANAL.

APN:

209-120-030-000 (AFFECTS PORTION OF PARCEL A)
209-120-040-000 (AFFECTS PORTION OF PARCEL A)
209-120-050-000 (AFFECTS PARCEL B)
209-120-060-000 (AFFECTS PORTION OF PARCEL A)
209-120-070-000 (AFFECTS PORTION OF PARCEL A)
209-220-030-000 (AFFECTS PARCEL D)
209-220-040-000 (AFFECTS PARCEL E)
209-220-060-000 (AFFECTS PARCEL F)
209-220-070-000 (AFFECTS PARCEL C)

EXHIBIT 3

**MASTER PLAN IMPROVEMENTS SUBJECT TO PROLOGIS' ELECTION TO
CONSTRUCT PURSUANT TO SECTION 5.1 OF DEVELOPMENT AGREEMENT**

Exhibit 3

Master Plan Improvements Subject To Prologis' Election To Construct Pursuant to DA

Improvements

Master Plan Traffic Improvement

Bridges and Interchanges

- 1 California Aqueduct Bridge *
- 2 Mountain House Parkway Canal Bridge *
- 3 Old Schulte Road Canal Bridge *

Intersections and On/Off Ramps

- 4 I-580 Interchange - Interim Traffic Signals *
- 5 Mountain House and New Shulte
- 6 Mountain House and Capital Parkway
- 7 Mountain House and Old Schulte
- 8 Capital Parkway and Hanson Road
- 9 Capital Parkway and Pavillion Parkway
- 10 New Shulte and Hanson Road
- 11 New Shulte and Pavillion Parkway
- 12 Old Shulte and Pavillion Parkway
- 13 Old Shulte and Hanson Road

Roadways

- 17 Mountain House Parkway*
 - 18 Capital Parks Drive
 - 19 New Schulte Road*
 - 20 Old Schulte Road
 - 21 Hansen Road
 - 22 Pavillion Parkway
 - 23 Intelligent Transportation System (conduit only)
-

Master Plan Storm Drain Improvements

- 24 On-Site Storm Drain Pipe System
- 25 Storm Drain Basins
- 26 Storm Drain - Greenbelt Parkway

Master Plan Potable Water Improvements

- 27 All Potable Water Lines within Specific Plan
- 28 Water Tank - 1.5 MG / Booster Pump (Zone 3)
- 29 Pressure Regulating Stations # 9 and # 10

Master Plan Recycled Water Improvements

- 30 All Recycled Water Lines - 30 inches or less within Specific Plan

* City may construct these projects due to multiple agency involvement.

EXHIBIT 4

CITYWIDE MASTER PLAN FEE PROGRAM

Exhibit 4

City of Tracy
Draft Master Plan Fees
8/28/2013

	Transportation per unit	Water		Recycled Water	Wastewater			Storm Drainage*				Public Safety	Public Facilities	Total (Lammers SD and West WW)	Total (South MacArthur SD and East WW)	
		Distribution	Supply		Treatment	Treatment Plant	East Conveyance	West Conveyance	Lammers	Mtn. House	South MacArthur and Rocha					Parks
Residential-Very Low Density	\$ 8,362	\$ 4,236	\$ 1,813	\$ 3,295	\$ 2,653	\$ 6,727	\$ 2,405	\$ 1,610	\$ 1,475	NA	\$ 4,866	\$ 7,557	\$ 1,353	\$ 2,953	\$ 42,034	\$ 46,220
Residential-Low Density	\$ 8,362	\$ 4,236	\$ 1,813	\$ 3,295	\$ 2,653	\$ 6,727	\$ 2,405	\$ 1,610	\$ 1,355	NA	\$ 4,469	\$ 7,557	\$ 1,353	\$ 2,953	\$ 41,914	\$ 45,823
Residential-Medium Density (attached 2-4)	\$ 5,101	\$ 3,050	\$ 1,305	\$ 2,372	\$ 2,282	\$ 5,504	\$ 1,968	\$ 1,317	\$ 902	NA	\$ 2,971	\$ 6,183	\$ 1,107	\$ 2,416	\$ 31,540	\$ 34,259
Residential-High Density (attached 4+)	\$ 5,101	\$ 2,160	\$ 925	\$ 1,680	\$ 1,539	\$ 4,485	\$ 1,603	\$ 1,073	\$ 807	NA	\$ 2,659	\$ 5,038	\$ 902	\$ 1,969	\$ 25,679	\$ 28,061
	per acre												per 1,000 sf			
Commercial/Retail	\$ 217,757	\$ 17,622	\$ 7,542	\$ 13,707	\$ 14,939	\$ 29,048	\$ 10,385	\$ 6,952	\$ 24,736	\$ 15,795	\$ 81,501	\$ -	\$ 410	\$ 77	\$ 338,664	\$ 398,862
Office	\$ 173,185	\$ 13,216	\$ 5,657	\$ 10,280	\$ 12,179	\$ 29,048	\$ 10,385	\$ 6,952	\$ 24,736	\$ 15,795	NA	\$ -	\$ 683	\$ 128	\$ 291,148	NA
Industrial	\$ 75,011	\$ 13,216	\$ 5,657	\$ 10,280	\$ 12,179	\$ 26,908	\$ 9,620	\$ 6,440	\$ 24,736	\$ 15,795	NA	\$ -	\$ 137	\$ 26	\$ 177,968	NA

* only 3 of the 9 SD zones are shown on the summary - picked a representation of the fees.

EXHIBIT 5

SPECIFIC PLAN PRIVATE AND PUBLIC IMPROVEMENTS

EXHIBIT 5

TABLE 6.3 SPECIFIC PLAN PUBLIC AND PRIVATE IMPROVEMENT OBLIGATIONS					
	Obligation	Depiction	Trigger	Area Responsibility	Maintenance Responsibility
<i>Public Roadways</i>					
1	Road A (East of Mountain House)	Shown on Exhibit 6.2	Subdivision Mapping	Zone 3	City Of Tracy*
2	Road A (West of Mountain House)	Shown on Exhibit 6.2	Subdivision Mapping	Zone 2	City Of Tracy*
3	Road B (North Of Capital Parks)	Shown on Exhibit 6.2	Subdivision Mapping	Zone 3	City Of Tracy*
4	Road B (South Of Capital Parks)	Shown on Exhibit 6.2	Subdivision Mapping	Zone 1	City Of Tracy*
5	Road C	Shown on Exhibit 6.2	Subdivision Mapping	Zone 2	City Of Tracy*
6	Road D	Shown on Exhibit 6.2	Subdivision Mapping	Zone 2	City Of Tracy*
7	Road E (North Of Capital Parks)	Shown on Exhibit 6.2	Subdivision Mapping	Zone 3	City Of Tracy*
8	Road E (South Of Capital Parks)	Shown on Exhibit 6.2	Subdivision Mapping	Zone 1	City Of Tracy*
9	Road F (North of Capital Parks)	Shown on Exhibit 6.2	Subdivision Mapping	Zone 3	City Of Tracy*
10	Road F (South of Capital Parks)	Shown on Exhibit 6.2	Subdivision Mapping	Zone 1	City Of Tracy*
11	Road G	Shown on Exhibit 6.2	Subdivision Mapping	Zone 1	City Of Tracy*
12	Road H	Shown on Exhibit 6.2	Subdivision Mapping	Zone 1	City Of Tracy*
13	Road I	Shown on Exhibit 6.2	Subdivision Mapping	Zone 1	City Of Tracy*
14	Frontage Improvements Mountain House(Between Capital Parks/ I-205)	Shown on Exhibit 6.2	Subdivision Mapping	Zone 2 and 3 Along Frontage Behind Curb and Shared Intersections	City Of Tracy*
15	Frontage Improvements Mountain House(Between Capital Parks/ Delta	Shown on Exhibit 6.2	Subdivision Mapping	Zone 1 and 2 Along Frontage Behind Curb and Shared Intersections	City Of Tracy*
16	Frontage Improvements Mountain House(Between Delta/Old Shulte)	Shown on Exhibit 6.2	Subdivision Mapping	Zone 1	City Of Tracy*
17	Frontage Improvements Capital Parks	Shown on Exhibit 6.2	Subdivision Mapping	Zone 1 -5 Along Frontage and Shared Intersections	City Of Tracy*
18	Frontage Improvements New Shulte (East of Mountain House)	Shown on Exhibit 6.2	Subdivision Mapping	Zone 1	City Of Tracy*
19	Frontage Improvements Hanson (Between Capital Parks/ Delta Mendota)	Shown on Exhibit 6.2	Subdivision Mapping	Zone 1	City Of Tracy*
20	Frontage Improvements Hanson (Between Capital Parks/Old Schulte)	Shown on Exhibit 6.2	Subdivision Mapping	Zone 4	City Of Tracy*
21	Frontage Improvements Hanson Road (Between Capital Parks/ I-205)	Shown on Exhibit 6.2	Subdivision Mapping	Zone 4 and 5 Along Frontage and Shared Intersections	City Of Tracy*
22	Northern Frontage Improvements Old Schulte(East of Mountain House)	Shown on Exhibit 6.2	Subdivision Mapping	Zone 1	City Of Tracy*
<i>Public Utilities</i>					
1	Potable Water Pipelines	Shown on Exhibit 6.42	Subdivision Mapping	Zones 1-5 Based on Exhibit	City Of Tracy
2	Recycled Water Pipelines	Shown on Exhibit 6.43	Subdivision Mapping	Zones 1-5 Based on Exhibit	City Of Tracy
3	Sanitary Sewer Pipelines	Shown on Exhibit 6.44	Subdivision Mapping	Zones 1-5 Based on Exhibit	City Of Tracy
4	Landscaping and Bike Trails within Storm Drain and Basins	Shown on Exhibit 6.45	Subdivision Mapping	Zones 1-5 Based on Exhibit	City Of Tracy
5	Storm Drains Within Roads	Shown on Exhibit 6.45	Subdivision Mapping	Zones 1-5 Based on Exhibit	City Of Tracy
6	*All Joint Trench(electric, telecommunications, gas)	Shown on Exhibit 6.46	Subdivision Mapping	Zones 1-5 Based on Exhibit	City Of Tracy

TABLE 6.3 SPECIFIC PLAN PUBLIC AND PRIVATE IMPROVEMENT OBLIGATIONS					
	Obligation	Depiction	Trigger	Area Responsibility	Maintenance Responsibility
<i>Private Improvements</i>					
1	City Gateway Signage	Section 5.3	After First 650 acres of Development	Zone 1-4	Owners Association Per Exhibit 6.47
2	Entryway Signage	Section 5.4	At Time of Construction of Intersection	Zone 1-4	Owners Association Per Exhibit 6.47
3	Major Intersections	Section 5.5	At Time of Construction of Intersection	Based on Zone Location	Owners Association Per Exhibit 6.47
4	Minor Intersections	Section 5.6	At Time of Construction of Intersection	Based on Zone Location	Owners Association Per Exhibit 6.47
5	Central Green Bicycle Trails and Passive Park	Section 5.7	Recordation of First Map Adjacent to Central Green	Zone 1	Owners Association Per Exhibit 6.47
6	Eastside Park	Section 5.8	Recordation of First Map North to Eastside Park	Zone 1	Owners Association Per Exhibit 6.47
7	Street Frontage Landscape Behind Walks	Section 5.9	At time of Development of Each Adjacent Parcel Unless Otherwise Approved by Development Director	Based on Zone Location	Owners Association Per Exhibit 6.47
8	Drainage Easement Landscaping and Trails	Section 5.10	Landscaping and Trails shall be constructed by each adjacent parcel at time of development. Design shall be done on timing based on final approved wetlands mitigation plan.	Zone 1	Owners Association Per Exhibit 6.47
9	I-205 Frontage Landscaping	Section 5.11	At time of Development of Each Adjacent Parcel Unless Otherwise Approved by Development Director	Zone 2-5 (Based on Zone Location)	Owners Association Per Exhibit 6.47
* Road Improvements Include Required Intersections.					
** Joint Trench in curb to curb program Roads to accommodate lighting and traffic Signals are considered program improvements					

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EXHIBIT 6

FORM OF ASSUMPTION AGREEMENT

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Attention: _____

**ASSIGNMENT AND ASSUMPTION AGREEMENT
(Development Agreement)**

This Assignment and Assumption Agreement (Development Agreement) (the "**Agreement**") is made effective as of _____, _____, by and between _____, a _____ ("**Assignor**"), and _____, a _____ ("**Assignee**").

A. Assignor and the _____, _____ (the "**City**") entered into that certain Development Agreement, dated as of _____, 2013 and recorded as Instrument No. _____ on _____ (the "**DA**"), relating to certain real property in located in the City of Tracy, County of San Joaquin, State of California (the "**Property**"). The Property is more particularly described in the DA. All capitalized terms used herein shall have the definitions given to them in the DA, unless otherwise expressly stated herein.

B. The DA provides for development of the Project (as that term is defined therein) on the Property, as more particularly described in the DA.

C. Assignor desires to assign to Assignee all of Assignor's rights and obligations as "Developer" under the DA with respect to the Property (the "**Assigned Interests**") and Assignee desires to assume from Assignor the Assigned Interests.

NOW, THEREFORE, in consideration of the promises and the mutual agreements and covenants set forth herein and intending to be legally bound hereby, Assignor and Assignee do hereby agree as follows:

1. Assignment. Assignor hereby assigns to Assignee all of Assignor's right, title and interest in and to the Assigned Interest.

2. Assumption. Assignee hereby assumes from Assignor all of Assignor's right, title and interest in and to the Assigned Interests relating to the period from and after the effective date of this Agreement, and agrees to perform all of Assignor's obligations as "Developer" under the DA with respect to the Assigned Interests relating to the period from and after the effective date of this Agreement.

3. Consent. The City has consented to such assignment and assumption pursuant to the Consent set forth in Exhibit A.

4. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation shall not affect the validity or enforceability of the offending term or provision in any other situation.

5. Successors and Assigns. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their permitted successors and assigns.

6. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, applicable to contracts executed in and to be performed entirely within that state, and without regard to the conflict of laws provisions thereof.

7. Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

ASSIGNOR:

_____,
a _____

By: _____
Name: _____
Title: _____

ASSIGNEE:

_____,
a _____

By: _____
Name: _____
Title: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

CONSENT TO ASSIGNMENT AND ASSUMPTION

The CITY OF TRACY, a municipal corporation (the “**City**”), hereby consents to the Assignment and Assumption Agreement (Development Agreement) by and between _____, a _____, as Assignor, and _____, a _____, as Assignee (the “**Assignment**”), to which this Consent to Assignment and Assumption is attached, and releases Assignor from obligations under the DA (as defined in the Assignment) relating to the period from and after the effective date of the Assignment.

CITY:

CITY OF TRACY, a municipal corporation

Development Services Director
Date:

APPROVED AS TO FORM:
City of Tracy City Attorney’s Office

City Attorney
Date:

Attested:

Name: _____
Secretary

Approved as to form:

By: _____
Name: _____
Title: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Consistency Findings between the General Plan and Development Agreement

For the reasons set forth below, the development agreement between the City of Tracy and Prologis, L.P. (hereinafter “Development Agreement”) and the development it contemplates (hereinafter “Project”), including the Cordes Ranch Specific Plan (hereinafter “Specific Plan”) are consistent with the objectives, policies, profiles for general land uses and programs specified in the City of Tracy’s 2011 General Plan subject to the proposed 2013 Cordes Ranch General Plan Amendment. In particular, the Project (including Specific Plan) is consistent with, and in furtherance of, the following components of the 2011 General Plan:

Statistical Profile: Urban Reserve 6

- **Policy 6a.** Direct vehicular, bicycle and pedestrian connections to Tracy Gateway to the east should be provided.

Grounds for finding of consistency: The Project proposes to increase east-west connectivity in the Specific Plan Area. These new streets would have Class 1 bikeways and pedestrian sidewalks that connect with existing facilities located to the east of the Specific Plan Area.

- **Policy 6b.** Direct connections to I-205 and I-580 via Mountain House Parkway should be provided.

Grounds for finding of consistency: Along Mountain House Parkway, the Project proposes a six-lane parkway north of Old Schulte Road and a four-lane parkway south of Old Schulte Road in order to enhance the existing vehicle connections to I-205 and I-580.

- **Policy 6c.** Parcel sizes should vary in size in order to accommodate a range of uses including high density housing, large-scale industrial uses such as regional warehouse and distribution facilities, as well as smaller-scale uses such as commercial, office, office-flex, and industrial flex businesses.

Grounds for finding of consistency: The Project proposes a range of parcel sizes to accommodate a range of complimentary non-residential land uses. For instance, the parcels for commercial uses, located near the intersection of I-205 and Mountain House Parkway, would be much smaller than the parcels for business park industrial uses, located along Old Schulte Road. In addition, the Project would be consistent with this policy because the General Plan Amendment would remove the reference to high-density residential housing within the Specific Plan Area, to conform to the City’s current residential growth areas and growth management ordinance guidelines.

- **Policy 6d.** Development proposals should include land for public facilities, parks and/or open spaces to ensure consistency with the standards established in the Community Character Element of this General Plan.

Grounds for finding of consistency: The Project proposes approximately 89 acres of parks and open space areas to be used in conjunction with storm drainage facilities, including an approximately 35-acre Central Green and an approximately 18-acre Eastside Park. As discussed below (Goals CC-1, CC-2, CC-9, and CC-11), these proposals are consistent with the standards established in the Community Character Element.

- **Policy 6e.** Appropriate setbacks and landscaping along I-205 should be provided to create an aesthetically pleasing visual entryway to the city.

Grounds for finding of consistency: As shown in the Master Landscape Plan (Chapter 5 of the Specific Plan), the Project proposes setbacks and landscaped buffers along I-205. Additionally, the conceptual landscape designs for entry intersections, which are described in Chapter 6 of the Specific Plan, would provide a sense of arrival and visual emphasis to entryways in the Specific Plan Area. The Specific Plan also contains the I-205 Overlay which establishes additional land use and development standards to further direct the orientation, design, and detailing of buildings and landscaping and enhance this visual entryway to the City.

- **Policy 6f.** Industrial uses on the eastern side of this Urban Reserve should be designed with adequate buffers from residential uses.

Grounds for finding of consistency: No residential uses are proposed by the Project or the Gateway Project, or adjacent lands to the east. Additionally, the Project proposes office uses in the southeastern corner of the I-205 and Hansen Road intersection to create a transition zone between the Lammersville residential neighborhood (north of I-205) and the business industrial park in the Specific Plan Area.

- **Policy 6g.** Consistent with the goals, objectives, policies, and actions in the Community Character and Economic Development Elements, areas along I-205 should be developed with office-flex or higher quality space, rather than warehousing and distribution uses, to capitalize upon their proximity to entryways of the city.

Grounds for finding of consistency: The Project proposes the development of high-quality space with an emphasis on commercial, office, and business park industrial uses on the properties along I-205. The development standards also discourage truck stops in this area and prohibit outdoor storage. The Specific Plan also contains the I-205 Overlay which establishes additional land use and development standards to further enhance this visual entryway to the City.

- **Goal LU-1.** A balanced and orderly pattern of growth in the City.

Grounds for finding of consistency: As discussed below, the Project is consistent with the LAFCO approved SOI and includes a Specific Plan which promotes a comprehensive planning vision consistent with the General Plan as well as a framework to develop the Project in an orderly fashion.

- **Objective LU-1.2.** Comprehensively plan for new development in the City’s Sphere of Influence.

- **Policy P3.** The first application for development in each Urban Reserve shall be responsible for preparing a General Plan amendment to establish specific land use designations for each parcel of land within the Urban Reserve and a Zoning District, Specific Plan or PUD for the entire Urban Reserve area. When the development intended for areas within an Urban Reserve is initiated solely to accommodate schools, parks, and public facilities, then the requirement to prepare comprehensive Zoning Districts, Specific Plans or PUDs for the entire area does not apply until development of commercial, industrial, office or residential development is proposed.

Grounds for finding of consistency: The Project includes a General Plan Amendment to establish Industrial, Office, Commercial, and Park land use designations across the entire Specific Plan Area. The Project also includes a Specific Plan containing zoning and development regulations for the Specific Plan Area, as well as a comprehensive planning vision and framework.

- **Goal LU-2.** Expanded economic opportunities in Tracy.

Grounds for finding of consistency: As discussed below, the Specific Plan would bring job-generating development to the city.

- **Objective LU-2.1.** Balance residential development with jobs, retail growth, and the ability to provide services.

- **Policy P1.** The City’s priorities for future growth, in order of priority, are: job-generating development to match the skills of Tracy residents; diversification of housing types suitable for Tracy’s workforce, including those types suitable for Tracy’s workforce; and continued growth of the retail base.

Grounds for finding of consistency: The Project would include office, retail, and business park industrial developments, which would bring a range of jobs that match the skills of Tracy residents and encourage the growth of the retail base.

- **Objective LU-2.3.** Expand the City’s industrial base.

Policy P3. Consistent with goals in the Economic Development Element, office-flex uses, or higher-quality space should be located in areas at entryways to the city such as in Tracy Gateway, Cordes Ranch, and the Tracy Hills Specific Plan area along I-205 and I-580. The Specific Plan Area should also contain commercial uses and services to meet the daily needs of workers and high-density housing suitable for the workforces in these areas.

Grounds for finding of consistency: Per Table 1.1 of the Specific Plan, at least 75 percent of the Specific Plan Area would consist of business park, industrial and office uses. As discussed below (Objective ED 6.7), the Project would include high-quality business space and would contain commercial uses and services to meet the daily needs of workers. However, the Specific

Plan area would not include high-density, workforce housing. The Project includes a proposal to amend the General Plan to remove the reference to high-density residential housing within the Specific Plan Area, in order to implement the Cordes Ranch planning vision which is consistent with the City's goals for this area.

- **Goal LU-6.** Land development that mitigates its environmental, design and infrastructure impacts.

Grounds for finding of consistency: The Project includes sustainable measures and other features that are designed to enhance sustainability, reduce greenhouse gas emissions, decrease water and energy consumption, and minimize, to the extent feasible, the impacts of construction activities and waste generation. In addition, the Draft Environmental Impact Report (hereinafter "DEIR") prepared for the Project evaluates its potential environmental impacts and identifies mitigation measures that will reduce, to the extent feasible, these impacts to a less than significant level.

- **Objective LU-6.1.** Minimize the impact of industrial development or aggregate mining on adjacent uses.

- **Policy P1.** New industrial or mining uses shall be designed to not adversely impact adjacent uses, particularly residential neighborhoods, with respect to, but not limited to, noise, dust and vibration, water quality, air quality, agricultural resources and biological resources.

Grounds for finding of consistency: The sustainable measures and other Project components as well as the identified mitigation measures in the DEIR would help minimize the impact of the proposed business park industrial development on the adjacent uses. The Specific Plan contains land use limitations, design and development standards to appropriately regulate the type of development allowed in the Specific Plan Area.

- **Objective LU-6.2.** Ensure land use patterns that minimize conflicts between transportation corridors and neighboring uses.

- **Policy P1.** Uses that are compatible with the noise, air quality and traffic impacts associated with freeways, such as auto-oriented commercial and industrial uses, should be located near and along freeway corridors whenever possible.

The proposed business park industrial uses are located near I-580 or along I-205 to maximize the use of these transportation corridors. The Project would provide commercial and office development along I-205 with landscaped buffer zones, heightened development standards and design guidelines and other mitigation measures to reduce noise, air quality, and traffic impacts associated with freeways.

- **Policy P2.** Adequate environmental protection and mitigation shall be provided for uses that are less compatible with development near and along freeway corridors.

Grounds for finding of consistency: As discussed above, the proposed business park industrial uses are located near I-580 or along I-205 to maximize the use of these transportation corridors. The Project would provide commercial and office development along I-205 with landscaped buffer zones, heightened development standards and design guidelines and other mitigation measures to reduce noise, air quality, and traffic impacts associated with freeways. The Project has designated truck routes which exclude Hansen Road north of I-205 (which leads to the Lammersville residential neighborhood).

- **Goal LU-8.** No urbanization in unincorporated County areas as defined by this General Plan or the San Joaquin County General Plan, whichever is more restrictive, without annexation to the city, a pre-annexation agreement, or a letter of support from the City.

Grounds for finding of consistency: Development under the Specific Plan would not occur until LAFCO approves the annexation of the Specific Plan area to the City.

- **Objective LU-8.1.** Participate proactively in land use decision making within Tracy’s Planning Area in pursuit of the above-stated goal.

- **Policy P1.** The City shall strongly oppose all development in the area defined by Goal LU-8 unless the property is annexed, unless there is a pre-annexation agreement, or unless San Joaquin County receives a letter of support from the City of Tracy.

- **Policy P2.** The City shall not make new commitments to provide water and wastewater services to areas outside the City limits unless such commitment is accomplished by a pre-annexation agreement and approved by LAFCO if required.

Grounds for finding of consistency: The Project proposes to annex the Specific Plan Area to the City. No utility services to the Project would be provided by the City prior to approval of the annexation.

Community Character Element

- **Goal CC-1.** Superior design quality throughout Tracy.

Grounds for finding of consistency: The Design Guidelines of the Plan would ensure that the architecture, landscape, and streetscape in the Specific Plan area feature high-quality design.

- **Objective CC-1.1.** Preserve and enhance Tracy’s unique character and “hometown feel” through high-quality urban design.

- **Policy P2.** All new development and redevelopment shall adhere to the basic principles of high quality urban design, architecture and landscape architecture including, but not limited to, human-scaled design, pedestrian-orientation, interconnectivity of street layout, siting buildings to hold corners, entryways, focal points and landmarks.

Grounds for finding of consistency: The Development Standards and Design Guidelines of the Specific Plan, as well as other land use planning and development design policies, would ensure that development under the Specific Plan contains high-quality urban design, human-scaled design, and pedestrian-orientation. One of the goals of the Specific Plan calls for creating a gateway to the City. To achieve this, the Specific Plan designates an I-205 Overlay Zone along Interstate 205, where heightened development standards and design guidelines would be imposed, which would require, among other things, an enhanced gateway design, addressing building orientation, signage, focal points, and landscaping. Other examples of design techniques to enhance the quality of the built environment within the Specific Plan Area include requirements for pedestrian connectivity, building orientation, site planning, screening, walls, fences, parking areas, lighting, among other techniques, as more fully described Chapter 4 of the proposed Specific Plan.

- **Goal CC-2.** A high level of connectivity within the City of Tracy.

Grounds for finding of consistency: The Project proposes a circulation network that is designed to create connectivity between uses, to reduce vehicle miles traveled, and to provide increased connectivity and mobility options for pedestrians and bicycles. As shown in Figure 6.28 of the proposed Specific Plan, the Project includes Class I bikeways and sidewalks on every street.

- **Objective CC-2.1.** Maximize direct pedestrian, bicycle and vehicle connections in the city.

Grounds for finding of consistency: The Project proposes a circulation network that is designed to create connectivity between uses, to reduce vehicle miles traveled, and to provide increased connectivity and mobility options for pedestrians and bicycles. As shown in Figure 6.28 of the proposed Specific Plan, the Project includes Class I bikeways and sidewalks on every street.

- **Goal CC-11.** Well-designed Employment Areas that are integrated with other parts of Tracy.

Grounds for finding of consistency: The Project proposes two focal points within the Specific Plan Area: an approximate 35-acre Central Green that would provide a main focal point and amenity for the employees and visitors of the Specific Plan Area; and an approximate 18-acre Eastside Park, located at the eastern edge of the Specific Plan area, providing an additional focal point and amenity. These two focal points would be within walking or biking distance from all developments in the Specific Plan Area. Additionally, there are two planned roadways (Capitol Parks Drive and New Schulte Road) that further connect the Specific Plan Area with the City and finally, the City's TRACER bus system will further connect this area with residential, commercial, and downtown areas. The Project also includes entry monumentation and landscape features at major intersections to further enhance the identity of the Project Area.

- **Objective CC-11.1.** Ensure those Employment Areas is developed with a recognizable identity and structure.

- **Policy P1.** Employment Areas should contain one or more Focal Points such as a retail use, park, or plaza.

- **Policy P3.** Development within an Employment Areas should occur such that a majority of business parks or office parks are within a reasonable walking or biking distance, generally ½ mile, of one or more Focal Points.

Grounds for finding of consistency: The Project proposes two focal points within the Specific Plan Area: an approximate 35-acre Central Green that would provide a main focal point and amenity for the employees and visitors of the Specific Plan Area; and an approximate 18-acre Eastside Park, located at the eastern edge of the Specific Plan area, providing an additional focal point and amenity. These two focal points would be within walking or biking distance from all developments in the Specific Plan Area. Additionally, there are two planned roadways (Capitol Parks Drive and New Schulte Road) that further connect the Specific Plan Area with the City and finally, the City's TRACER bus system will further connect this area with residential, commercial, and downtown areas. The Project also includes entry monumentation and landscape features at major intersections to further enhance the identity of the Project Area.

Economic Development Element

- **Goal ED-1.** A diversified local economy.

Grounds for finding of consistency: The Project provides for approximately 126 acres of office uses, which would allow for corporate headquarters and emerging industries, including technical, finance, insurance, and information technologies uses. Another approximately 1,291 acres of business park industrial uses would allow for a variety of service, manufacturing, distribution, and warehousing related uses. In so doing, the Project would provide enhanced employment opportunities for a wide range of skill levels and salaries to meet the needs of the Tracy community.

- **Objective ED-1.1.** Attract emerging growth industries in order to increase employment opportunities for a wide range of skill levels and salaries to meet the current and future employment needs of residents.

- **Policy P1.** The City shall target corporate headquarters, high-wage office uses and emerging, high-wage industries for attraction, including but not limited to industries within the North American Industry Standard Classification (NAISC) subcategories of manufacturing, health care, professional, scientific and technical, finance and insurance, and information technologies.

Grounds for finding of consistency: The Project provides for approximately 126 acres of office uses, which would allow for corporate headquarters and emerging industries, including technical, finance, insurance, and information technologies uses. Another approximately 1,291 acres of business park industrial uses would allow for a variety of service, manufacturing, distribution, and warehousing related uses. In so doing, the Project would provide enhanced employment opportunities for a wide range of skill levels and salaries to meet the needs of the Tracy community.

- **Goal ED-5.** Support for Tracy's key economic assets.

Grounds for finding of consistency: The Project would allow business to expand and provide significant employment opportunities along the intersection of two inter regional freeway corridors.

- **Objective ED-5.3.** Support I-205/I-580/I-5 infrastructure as key to economic growth in the area.

Grounds for finding of consistency: The development in the Specific Plan Area would fund and extend planned infrastructure as contemplated in the Citywide Infrastructure Master Plans. This would allow for development to occur on the Specific Plan Area which will facilitate enhanced business expansion opportunities, and significantly increase employment opportunities along the I-205 and I-580 corridors.

- **Goal ED-6.** Healthy, key economic activity centers.

Grounds for finding of consistency: The Project would add an economic activity center to the City, which also includes pedestrian and bicycle paths, open space, and parks to promote healthy lifestyles for the employees and visitors to the Project.

- **Objective ED-6.7.** Develop higher end office and office–flex uses, particularly along entryways to the City along I-205 and I-580.
- **Policy P1.** Development of a high amenity campus style business park is encouraged.
- **Policy P2.** The City shall support attraction efforts for Class A Office and certain flex-tech development tenants seeking a high amenities workplace, particularly along entryways to the City along I-205 and I-580.
- **Policy P3.** High-speed telecommunications systems should be included in development to help create the premier office location in Tracy.

Grounds for finding of consistency: The Project’s development standards and design guidelines support the design of high quality business space and architecture along major entryways and streets within the Specific Plan Area. The Project proposes the development of office uses that contain a variety of amenities, such as plazas, framed open space areas, pedestrian pathways, and connections to open spaces. The Specific Plan also includes an overlay zone along I-205 that requires heightened standards for architecture and landscaping. It also limits land uses, and prohibits large distribution facilities from locating along I-205. Consistent with modern business requirements, all developments under the Specific Plan would include high-speed telecommunications systems.

Open Space and Conservation Element

- **Goal OSC-4.** Parks, open space, and recreation facilities and services that maintain and improve the quality of life for Tracy residents.

Grounds for finding of consistency: There would be approximately 89 acres of open space and parks, including a drainage corridor and trails, in the Specific Plan Area. These would provide park and outdoor use areas for employees and users of the Project and Tracy residents.

- **Objective OSC-4.2.** Ensure that new development is responsible for providing parks and recreation facilities throughout the City of Tracy.

Grounds for finding of consistency: See above.

Public Facilities and Services Element

- **Goal PF-7.** Meet all wastewater treatment demands and federal and State regulations.

Grounds for finding of consistency: Implementation of the Project would comply with all applicable federal and state laws and regulations as they relate to wastewater treatment.

- **Objective PF-7.3.** Promote coordination between land use planning and wastewater conveyance, treatment, and disposal.

- **Policy P3.** The approval of new development shall be conditioned on the availability of sufficient capacity in the wastewater collection and treatment system to serve the project.

Grounds for finding of consistency: The amount of development that would be allowed under the Specific Plan is consistent with the Citywide Infrastructure Master Plans, which established the relationship between land use development and supporting infrastructure. The Citywide Infrastructure Master Plans contemplated development of the Project, and the Project's proposed uses are consistent with the existing and planned utility capacity. Further, the Project will be required to have sufficient capacity in the wastewater collection and treatment system to serve its proposed uses.

AGENDA ITEM 9.A

REQUEST

RECEIVE AND ACCEPT THE CITY MANAGER INFORMATIONAL UPDATE

EXECUTIVE SUMMARY

This agenda item will update the Council on newsworthy events.

DISCUSSION

The City Manager will provide Council with an informational report on various items, including upcoming special events, status on key projects, or other items of interest in an effort to keep Council, staff, and residents abreast of newsworthy events.

STRATEGIC PLAN

This agenda item does not relate to the Council's strategic plans.

FISCAL IMPACT

There is no fiscal impact with this informational item.

RECOMMENDATION

That Council receive and accept the City Manager's informational update.

Prepared by: R. Leon Churchill, Jr., City Manager
Reviewed by: R. Leon Churchill, Jr., City Manager
Approved by: R. Leon Churchill, Jr., City Manager

AGENDA ITEM 10.A

REQUEST

APPOINTMENT OF A CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANTS FOR VACANCIES ON THE TRACY SENIOR STEERING COMMITTEE

EXECUTIVE SUMMARY

Request appointment of a two-member Council subcommittee to interview applicants to fill three positions on the Tracy Senior Steering Committee

DISCUSSION

On August 20, 2013, City Council approved the formation of a Senior Steering Committee to facilitate two community conversations that would provide the local senior population a forum to identify and discuss current and future service needs, and provide feedback to City Council and the Parks and Community Services Commission. The Senior Steering Committee will consist of seven members including one appointed Commissioner from each of the following City of Tracy commissions: Parks and Community Services Commission, Planning Commission, Tracy Arts Commission, and Transportation Commission. Additionally, three residents from the Tracy community will be appointed by City Council.

The City Clerk's office will utilize the recruitment process for boards and commissions as outlined in Resolution 2004-152, to conduct the application and recruitment for the Tracy Senior Steering Committee. The three positions on the Senior Steering Committee have been advertised and the recruitment is scheduled to close on September 18, 2013. As stated in Resolution 2004-152, in the event there are not two or more applicants than vacancies, the filing deadline will be extended.

In accordance with Resolution 2004-152, a two-member subcommittee needs to be appointed to interview the applicants and make a recommendation to the full Council.

STRATEGIC PLAN

This item is a routine operational item and does not relate to any of the Council's strategic plans.

FISCAL IMPACT

None.

RECOMMENDATION

That Council appoint a two-member subcommittee to interview applicants to fill three vacancies on the Tracy Senior Steering Committee.

Prepared by: Sandra Edwards, City Clerk
Reviewed by: Maria Hurtado, Assistant City Manager
Approved by: R. Leon Churchill, Jr., City Manager