

Tuesday, December 2, 2014, 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, including those distributed within 72 hours of a regular City Council meeting, 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.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

PRESENTATIONS - Employee of the Month
- Brighter Christmas – Steve Abercrombie

1. MINUTES APPROVAL
2. ADOPT A RESOLUTION DECLARING THE RESULTS OF THE NOVEMBER 4, 2014, CITY OF TRACY MUNICIPAL ELECTION
3. PRESENTATION TO OUTGOING MAYOR AND COUNCIL MEMBER

RECESS

4. ADMINISTRATION OF OATH OF OFFICE
5. CONSENT
 - A. Approve A Memorandum of Understanding (MOU) Between the City of Tracy and the Girl Scouts Heart of Central California and Authorize the Mayor to Execute the MOU
 - B. Approve Resolution Awarding a Two-Year Professional Services Agreement to Sprint Solutions, Inc., for Services Relating to the Installation and Monitoring of Automated Vehicle Locating Systems in the City of Tracy's Vehicle Fleet, Using the Western States Contracting Alliance Master Services Agreement, Authorize the Mayor to Execute the Agreement, and Authorize the City Manager to Extend the Agreement Provided Council Appropriates Funds for it Through the Budget Process
 - C. Approve an Inspection Improvement Agreement for the Bungalows (aka The Classics), Tract 3351, and Authorization for the Mayor to Execute the Agreement
 - D. Approve an Offsite Improvement Agreement for the Cordes Ranch Two Million Gallon Water Tank to be Located at the Southeast Corner of Hansen Road and Road E, and Authorization for the Mayor to Execute the Agreement
 - E. Declare the .938 Acre City-Owned Property Located at the Southeast Corner of Naglee Road and Park and Ride Drive (APN 212-290-48) as Surplus Property, Authorization of a Purchase and Sale Agreement Between the City of Tracy and BCP Tracy, LLC (BCP), a California Corporation, and Authorization for the Mayor to Execute the Purchase and Sale Agreement and Related Documents
6. ITEMS FROM THE AUDIENCE
7. DETERMINE WHETHER TO FILL CITY COUNCIL VACANCY BY SPECIAL ELECTION OR BY APPOINTMENT, AND, IF BY APPOINTMENT, DETERMINE THE DETAILS OF THE PROCESS TO BE USED
8. ITEMS FROM THE AUDIENCE

9. COUNCIL ITEMS

10. ADJOURNMENT

June 3, 2014, 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 7:10 p.m., and led the Pledge of Allegiance.

The invocation was offered by Pastor Kal Waetzig, St. Paul's Lutheran Church.

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

Maria Hurtado, Interim City Manager, presented the Employee of the Month award for June 2014 to Frank Desousa, Public Works.

Mayor Ives and Fire Chief Nero administered the Oath of Office to Firefighters Timothy Rivas, Larry Griffith, Kimani Lovan, and Shawn Bracha.

PROCLAMATION – CRIME STOPPERS MONTH – Mayor Ives presented a proclamation to Marshall Rose, President, Tracy Crime Stoppers, Inc. proclaiming June 2014 as “Tracy Crime Stoppers Month.”

Mayor Ives and Council Member Rickman presented a Certificate of Recognition to Devra Asah recognizing Tracy High School students for their participation in the Bulldog Project, which brings awareness of Bullying, Gangs, Drugs, and Bomb Threats to the Tracy community.

Fire Engineer Sean Butler offered a presentation on drowning prevention.

1. **CONSENT CALENDAR –** It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt the consent calendar. Roll call vote found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Motion carried 5:0. Council Member Young abstained from voting on item 1.I.
 - A. Approval of Minutes – Regular meeting minutes of February 18, 2014, and March 4, 2014, were approved.
 - B. Adopt Resolutions Regarding the Election Process, General Municipal Election to be Held on November 4, 2014 – Resolution 2014-081 called for the election of the Mayor and two Council Members. Resolution 2014-082 requested consolidation of the City's General Municipal Election of November 4, 2014, with the Statewide General Election by the County of San Joaquin.
 - C. Approve Professional Services Agreements (PSA) With Eleven Companies for Plan Review and/or Inspection Services and Authorize the Mayor to Execute the Agreements – Resolution 2014-083 approved the agreements.
 - D. Award a Construction Contract to Trident Contractors Inc. of Daly City, California, for Sidewalk, Curb and Gutter Replacement Fiscal Year 2013 – 2014 (FY/13/14)

Project CIP 73139 and Authorize the Mayor to Execute the Contract – Resolution 2014-084 awarded the contract.

- E. Acceptance of the Storm Drainage Improvement Robert Gabriel Drive and Gonzales Street CIP 76062, completed by Extreme Excavation of Tracy, California, and Authorization for the City Clerk to File the Notice of Completion and the City Engineer, in Accordance With the Terms of the Construction Contract, will Release the Bonds and Retention Payment – Resolution 2014-085 accepted the project.
 - F. Approve Master Professional Services Agreements (MPSAs) with GDR Engineering, Inc. (GDR), and Mid Valley Engineering, Inc. (MVE) to Provide Land Surveying Services for Multiple Capital Improvement Projects, Authorize the Mayor to Execute the Agreements and Authorize the Development Services Director to Sign Task Order No. 1 to the MPSA with MVE, Inc., and Future Task Orders Related to the MPSAs With GDR, Inc., and MVE, Inc. Cumulatively Not To Exceed \$200,000 For Each Consultant – Resolution 2014-086 approved the agreements and future task orders related to the agreements.
 - G. Award a Construction Contract to Modesto Sand and Gravel, Inc. of Modesto, California, for the Bessie Avenue Building Demolition Project CIP 78142, Authorize a Contingency Amount of \$3,750, Authorize the Mayor to Execute the Contract and Authorize the Transfer of \$85,000 from CIP 78142 to Emergency Repairs to Lammersville School House Project, CIP 78151 – Resolution 2014-087 awarded the contract.
 - H. Amendment of Two Holly Sugar Ranch Leases with the Arnaudo Bros. (Holly Ranch), a Partnership, and the Arnaudo Bros., LLC and Authorization for the Mayor to Execute the Amendments – Resolution 2014-088 amended the leases.
 - I. Approve Amendment 1 to the Memorandum of Understanding Between the City of Tracy and the Tracy African American Association to Waive Administrative Processing and Banner Hanging Fees and Authorize the Mayor to Execute the Amendment – Resolution 2014-089 approved the amendment. Council Member Young abstained.
 - J. Adoption of the Appropriations Limit for Fiscal Year 2014/15 for the City of Tracy – Resolution 2014-090 adopted the appropriations limit.
2. ITEMS FROM THE AUDIENCE – Dave Anderson, 1940 Earl Way, suggested the City require barriers to be installed on all pools in the City.
3. RECEIVE PRESENTATION ON UPDATED AIRPORT LAYOUT PLAN, PROVIDE INPUT, AND AUTHORIZE SUBMITTAL TO THE FEDERAL AVIATION ADMINISTRATION - Maria Hurtado, Interim City Manager, gave a brief overview of the issues related to runway 12-30 and the solutions which will be put in place to resolve the issues.

Ed Lovell, Management Analyst II, Public Works, presented the staff report. The Tracy Municipal Airport is in need of pavement reconstruction. A Pavement Maintenance and Management Plan (PMMP) completed in March 2013, showed the deteriorated

conditions of the existing pavement throughout the airport. On April 2, 2013, City Council authorized approval for the City's Airport Consultant, Reinard W. Brandley, to begin the design and engineering necessary for implementation of a Federal Aviation Administration (FAA) grant for the reconstruction of pavement at the Tracy Municipal Airport. Through this process, the FAA has indicated that due to the extensive changes anticipated with the reconstruction of the runways and taxiways that the ALP for the Tracy Municipal Airport would need to be updated prior to any construction. On August 6, 2013, the City Council authorized Task Order No. 3 with Reinard W. Brandley, Consulting Airport Engineer, for an update of the Airport Layout Plan.

Reinard Brandley, Consulting Airport Engineer, used a power point in his presentation to give a brief history of the Tracy Municipal Airport and an update on where the City is headed in the future.

The current runway/taxiway system consists of marking the old 300-foot wide World War II military landing strip to identify a 100-foot wide runway on one side of the landing strip and a 50-foot wide taxiway on the other side of the strip. An asphalt overlay was placed on the existing pavement in the runway and taxiway section in the 1970 to 1980 period. This runway configuration, the apron, Fixed Base Operator (FBO), and hangar layout are shown on the existing approved Airport Layout Plan.

The FAA has developed new standards for different types of airports. The Tracy Municipal Airport classifies as an Airport Design Group B II. The FAA requirements for this classification airport are specific and have been used in the development of the updated ALP. The following are the major modifications made to the ALP to conform to the new FAA requirements, and to provide necessary facilities to accommodate the aircraft currently using the airport and forecast to use the airport over the next 20 years:

1. The centerline spacing between the runway centerline and the taxiway centerline has been increased from 220 feet to 240 feet.
2. The runway width has been decreased from 100 feet to 75 feet. The taxiway width has been decreased from 50 feet to 35 feet.
3. The central operations area of the airport has been modified to include the following:
 - a. Area for the development of large corporate hangars, which can either be built and owned by the City or built by individuals or companies on leased ground.
 - b. Addition of possible future fixed base operator plots.
 - c. Development of an Airport Administration Building, which could include a restaurant as well as airport offices and pilot lounges.
 - d. Relocation of the fueling island, which involves moving the fuel dispensers and controls from the existing island to a new facility at the current location of the fuel tanks.
 - e. Potential expansion of the general aviation tie down apron if and when required.
4. Space has been provided for expansion of tee hangar aircraft storage facilities on the west side of Runway 12-30.

Mr. Brandley concluded by stating that after the ALP has been finalized it will be sent to the FAA for approval, which will take three to four months. Approval of the updated ALP will take approximately three to four months and is a necessary step since the FAA will not release any money until the ALP is approved

Mr. Lovell added as part of the reconstruction permanent benchmarks will be installed at each end of the runway so there will be no discrepancy on the length of the runway in the future.

Robert Tanner, 1371 Rusher Street, asked what is the estimated cost and length of time for completion of the project. Mr. Brandley responded the reconstruction will cost approximately \$12m and will take about three years to complete.

In response to a question from George Riddle, 1850 Harvest Lane, regarding the fuel tanks, Mr. Lovell responded the fuel farm will remain in place for now. In the future, the fuel island will be moved to where the fuel tanks are located.

In response to a question from Dave Helm regarding the varying lengths of the runway, Mr. Brandley stated the previous benchmarks had moved over time, but a survey was conducted which measured the length of the runway at 4001ft. Ms. Hurtado stated staff and the consultant have spoken to the FAA and the ALP plan approved in 2001 and updated in 2007 did indicate Runway 12-30 was 4002ft. Permanent benchmarks will be installed during reconstruction so these discrepancies will not arise in the future. Staff and the consultant have spoken to the FAA and the length of the runway cannot be arbitrarily changed to 4002ft since it has been surveyed at 4001ft.

Mayor Pro Tem Maciel asked if the FAA had specifically agreed with the 4001ft, and if the FAA will fund the repaving at 4001ft. Mr. Lovell responded the current ALP states the runway is 4002ft, but the FAA has no backup to support it. Based on the new survey the change will be made to 4001ft because there is data to support 4001ft. Dave Helm suggested the City request a letter from the FAA confirming the length at 4001ft.

Ms. Hurtado stated the FAA has funding available now which is why the City does not want to wait. The approval body is the FAA, and the City is required to solicit input from the community and the Council before officially submitting the updated ALP for approval. Moving the runway from 4002ft to 4001ft does not impact the safety cone.

Trina Anderson, 1940 Earl Way, stated she had lots of questions which staff had already answered and thanked Council for the work they had done on this project. Ms. Anderson stated she had checked the Jeppesen charts and sectionals for Tracy airport which show the length of the runway at 4001ft. Ms. Anderson also thanked staff for adding run-up areas on the runway.

Dave Anderson, President of Tracy Airport Association, thanked Mr. Brandley and his team, and staff for their work on this project which will include a number of items from the future projects list, including runway lights. Mr. Anderson stated the FAA has two lengths for the runway, 4002ft and 4001ft. In 1940 the length of the runway was specified as 4002ft. Mr. Anderson suggested that later when the runway was surveyed for approach procedures the length was determined to be 4001ft. Mr. Anderson added the plan is well laid out and will support the Cordes Ranch project as it builds out.

Mayor Pro Tem Maciel moved to adopt Resolution 2014-09, Authorizing submission of the updated Airport Layout Plan to the Federal Aviation Administration. Council Member Rickman seconded the motion.

In response to a question from Council Member Young, Mr. Brandley explained how the permanent benchmarks would be installed.

Voice vote found all in favor; passed and so ordered.

4. CONDUCT A PUBLIC HEARING TO AUTHORIZE THE ACCEPTANCE AND APPROVE THE APPROPRIATION OF \$11,421 FROM THE 2014 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR THE PURCHASE OF EQUIPMENT FOR THE TRACY POLICE DEPARTMENT'S LAW ENFORCEMENT PROGRAMS – Lani Smith, Support Operations Manager, presented 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 their local needs and conditions. The Tracy Police Department has determined the most appropriate use of this grant is to purchase technology equipment and training gear for the officers to enhance the safety of citizens. The Tracy Police Department intends to purchase the following equipment: Crime Scene documentation equipment; digital cameras and video recorder, \$2,001; DeTAC training suits, \$1,500; prisoner WRAPS, \$2,000; CPR Prompt Kits for CPR and AED training, \$1,220; Less-Than-Lethal training rounds, \$2,500; and breaching tools for SWAT, \$2,200.

Mayor Ives opened the public hearing. Since there was no one wishing to address the Council the public hearing was closed.

Mayor Pro Tem Maciel motioned to adopt Resolution 2014-092 authorizing the acceptance and approving the appropriation of \$11,421 from the 2014 Edward Byrne Memorial Justice Assistance Grant Program for the purchase of equipment for the Tracy Police Department's Law Enforcement Programs. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

5. SECOND READING AND ADOPTION OF ORDINANCE 1194 AN ORDINANCE OF THE CITY OF TRACY APPROVING FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH THE SURLAND COMMUNITIES, LLC APPLICATION DA11-0002 - Ordinance 1194 was introduced at the Council meeting held on May 20, 2014, to amend the Development Agreement (DA) with Surland Communities (Surland). The DA provides for Surland to dedicate 16 acres of land and to contribute \$10 million towards the cost of construction of the swim center for the benefit of the greater Tracy Community. The first payment of \$2 million was due on September 15, 2013. The proposed amendment to the DA will extend the date for payment of the \$2 million to no later than September, 15, 2014, and extend the time in which the City may accept the Land Dedication Offer to September 15, 2015. Ordinance 1194 was before the Council for a second reading and adoption.

Mayor Ives invited public comment. There was no public comment.

Following reading of the title of proposed Ordinance 1194, it was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to waive reading of the text. Voice vote found all in favor; passed and so ordered. It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt Ordinance 1194. Roll call vote found Mayor Pro Tem Maciel, Council Members Rickman, Manne, Young, and Mayor Ives in favor. Motion carried 5:0.

6. ITEMS FROM THE AUDIENCE – None.
7. COUNCIL ITEMS – Council Member Young reported the 20th Annual Juneteenth Celebration would be held in Lincoln Park on Saturday, June 7, and extended an invitation to the community.
8. 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 8:33 p.m.

The above agenda was posted at the Tracy City Hall on May 29, 2014. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk

December 2, 2014

AGENDA ITEM 2

REQUEST

ADOPT A RESOLUTION DECLARING THE RESULTS OF THE NOVEMBER 4, 2014, CITY OF TRACY MUNICIPAL ELECTION

EXECUTIVE SUMMARY

A Municipal Election was held in the City on November 4, 2014. The Registrar of Voters Office is in the process of certifying the results. The results of the election and other matters as provided by law need to be adopted by resolution. The certified results and the resolution will be presented at the meeting.

DISCUSSION

A Municipal Election was held in the City on Tuesday, November 4, 2014. Pursuant to Resolution 2014-082 (Exhibit A), adopted by Council on June 3, 2014, the Registrar of Voters for San Joaquin County has canvassed the returns of the election and is in the process of certifying the results (per Elections Code section 10264):

- The names of the persons voted for at the election for Mayor were Michael Maciel and Ray Morelos.
- The names of the persons voted for at the election for Member of the City Council were Charles Manne, Robert Rickman, Robert Tanner and Veronica Vargas.

The number of precincts and the number of votes given in the City to each of the persons named above for the respective offices for which the persons were candidates, will be included in the certified results.

FISCAL IMPACT

The cost for the election was budgeted in FY 2014/15 budget.

RECOMMENDATION

That the City Council, pursuant to Elections Code section 10262, adopts a resolution reciting the facts of the General Municipal Election held on November 4, 2014, declaring the results and other matters as provided by law.

Prepared by: Carole Fleischmann, Interim City Clerk
Reviewed by: Maria Hurtado, Assistant City Manager
Approved by: Troy Brown, City Manager

Attachments: Exhibit A – Tracy City Council Resolution 2014-082

RESOLUTION 2014-082

REQUESTING THE BOARD OF SUPERVISORS OF SAN JOAQUIN COUNTY
PROVIDE FOR THE CONSOLIDATION OF THE GENERAL MUNICIPAL ELECTION
TO BE HELD WITH THE STATEWIDE GENERAL ELECTION
TO BE HELD ON NOVEMBER 4, 2014

WHEREAS, The City Council of the City of Tracy called a General Municipal Election to be held on November 4, 2014, for the purpose of the election of a Mayor for the full term of two years and two members of the City Council for full terms of four years; and

WHEREAS, It is desirable that the General Municipal Election be consolidated with the Statewide General Election to be held on the same date and that within the City the precincts, polling places and election officers of the two elections be the same, and that the County Elections Department of the County of San Joaquin canvass the returns of the General Municipal Election, and that the election be held in all respects as if it were only one election.

NOW, THEREFORE, the City Council of the City of Tracy, California, does resolve, declare, determine, and order as follows:

Section 1: Pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of San Joaquin is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday November 4, 2014, for the purpose of the election of a Mayor for the full term of two years and two members of the City Council for full terms of four years.

Section 2: The County Elections Department is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

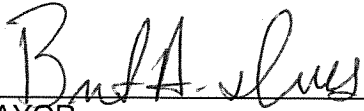
Section 3: The Board of Supervisors is requested to issue instructions to the County Elections Department to take any and all steps necessary for holding of the consolidated election.

Section 4: The City of Tracy recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

Section 5: The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the County Elections Department of the County of San Joaquin.

The foregoing Resolution 2014-082 was passed and adopted by the Tracy City Council on the 3rd day of June 2014, by the following vote:

AYES: COUNCIL MEMBERS: MACIEL, MANNE, RICKMAN, YOUNG, IVES
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE
ABSTAIN: COUNCIL MEMBERS: NONE


MAYOR

ATTEST:


INTERIM CITY CLERK

RESOLUTION 2014-

RECITING THE FACT OF THE GENERAL MUNICIPAL ELECTION HELD ON
NOVEMBER 4, 2014, DECLARING THE RESULTS AND SUCH OTHER MATTERS AS
PROVIDED BY LAW

WHEREAS, a General Municipal Election was held and conducted in the City of Tracy, California, on Tuesday, November 4, 2014, as required by law; and

WHEREAS, Notice of the election was given in time, form, and manner as provided by law; that voting precincts were properly established; that election officers were appointed and that in all respects the election was held and conducted and the votes were cast, received and canvassed and the returns made and declared in time, form and manner as required by the provisions of the Elections Code of the State of California for the holding of elections in general law cities; and

WHEREAS, Pursuant to Tracy City Council Resolution 2014-082 adopted June 3, 2014, the County Elections Department canvassed the returns of the election and has certified the results to this City Council per Elections Code section 10264. The results are received, and attached and made a part hereof.

NOW THEREFORE, The Tracy City Council does resolve, declare, determine, and order as follows:

Section 1: That the names of the persons voted for at the election were as follows:

For Mayor: Michael Maciel and Ray Morelos

For Member of the City Council: Charles Manne, Robert Rickman, Robert Tanner and Veronica Vargas

Section 2: That the number of votes given at each precinct and the number of votes given in the City to each of the persons named above for the respective offices for which the persons were candidates were as listed in the Certificate of Results (attached).

Section 3: The City Council does declare and determine that: Michael Maciel was elected as Mayor for the full term of two years; that Robert Rickman and Veronica Vargas were elected as Members of the City Council for the full term of four years.

Section 4: The City Clerk shall enter on the records of the Tracy City Council, a statement of the result of the election showing (1) the whole number of ballots cast in the City; (2) the names of the persons voted for; (3) for which office each person was voted for; (4) the number of votes given at each precinct to each person; and (5) the total number of votes given to each person.

Section 5: That the City Clerk shall immediately make and deliver to each of the persons so elected a Certificate of Elections signed by the City Clerk and authenticated; that the

City Clerk shall also administer the Oath of Office prescribed in the Constitution of the State of California and shall have them subscribe to it and file it in the office of the City Clerk. Each and all of the persons so elected shall then be inducted into the respective office to which they have been elected.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 2nd day of December 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

Interim City Clerk

AGENDA ITEM 5.A

REQUEST

APPROVE A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF TRACY AND THE GIRL SCOUTS HEART OF CENTRAL CALIFORNIA AND AUTHORIZE THE MAYOR TO EXECUTE THE MOU

EXECUTIVE SUMMARY

In 1949, the City entered into an agreement with the Girl Scouts of America for the use of City owned land which houses the Girl Scout Hut. Since then, there have been several agreements renewing that original agreement. This MOU will again grant the Girl Scouts use of the property for the next five years.

DISCUSSION

The City of Tracy and the Girl Scouts of America entered into a lease agreement in 1949 for City owned property that currently houses the Girl Scout Hut, located at 2301 Bessie Avenue, Assessor's Parcel No. 233-020-01. The Girl Scout organization in Tracy has changed names several times and the current successor is Girl Scouts Heart of Central California.

Since 1949, the original agreement has been renewed in five and ten year increments. The Girl Scouts Heart of Central California would like to continue to lease the City owned property for the sole right and privilege of occupying and using it for the purpose of Girl Scouts activities. Upon approval, the term of this MOU will be from January 1, 2015 through December 31, 2019.

STRATEGIC PLAN

This is a routine operational item and is not related to one of the City Council's Strategic Plans.

FISCAL IMPACT

Approval of this MOU will minimally impact the General Fund. The annual revenue to the City is approximately \$300 per year, or \$1,500 over the term of the MOU.

RECOMMENDATION

That the City Council, by resolution, approve this MOU with the Girl Scouts Heart of Central California and authorize the Mayor to execute the MOU.

Prepared by: Connie Vieira, Management Analyst I

Reviewed by: Brian MacDonald, Management Analyst II
David Ferguson, Public Works Director
Maria A. Hurtado, Assistant City Manager

Approved by: Troy Brown, City Manager

Agenda Item 5.A
December 2, 2014
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ATTACHMENTS

Attachment A: Memorandum of Understanding between the City of Tracy and Girl Scouts Heart
of Central California

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF TRACY
and
GIRL SCOUTS HEART OF CENTRAL CALIFORNIA**

I. PARTIES: This Memorandum of Understanding (hereinafter "MOU") is made by and between the City of Tracy (hereinafter "City"), a municipal corporation, and Girl Scouts Heart of Central California (hereinafter "Association"), a California Corporation.

II. RECITALS:

- A.** The City owns real property located at 2301 Bessie Avenue, Assessor's Parcel No. 233-020-01 (hereinafter "Premises"). The Premises is land used to house a Girl Scout hut.
- B.** In 1949, the City entered into an agreement with the Girl Scouts of America for the use of land considered the Premises for specified public purposes for the benefit of the general public.
- C.** The City and the Association, through various name changes, have renewed the original agreement for use of the Premises in five and ten year increments.
- D.** The parties hereto desire to define the conditions under which the City and the Association agree to continue the use of the land, management, and operations of the Premises.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. PERMISSION TO USE PREMISES.

1.1 General. The specific area on parcel number 233-020-01, is described as follows:

Beginning at a point on the westerly line of Bessie Avenue, bearing North 89° 53' 30" West 60 feet from the North West corner of Sunset Park Subdivision, as filed August 12, 1946 in Volume 11 of Maps and Plats at page 114; thence along said westerly line of Bessie Avenue South 0° 03' West 96.74 feet; thence leaving said westerly line of Bessie Avenue North 89° 53' West 3.67 feet to a point of curvature; thence along a tangent curve to the right, subtended by a central angle of 41° 17' 45" and having a radius of 30.07 feet an arc distance of 21.67 feet to a point of tangency; thence North 48° 35' 15" West 104.99 feet to a point of curvature; thence along a tangent curve to the left, subtended by a central angle of 41° 18' 15" and having a radius of 80.23 feet an arc distance 57.84 feet to a point; thence South 89° 53' 30" East 155.24' to the point of beginning.

1.2 Grant of Permission. The City hereby grants the Association permission to use the Premises for the uses described in this MOU.

1.3 Condition of Premises. The Association hereby warrants that, prior to the commencement of the term of this MOU, the Association examined the condition of the Premises, and the Association hereby acknowledges that the Premises are in good condition suitable for the purposes of this MOU. In the event that the Association

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF TRACY AND GIRL SCOUTS HEART OF CENTRAL CALIFORNIA**

becomes aware of any problem or defect with the Premises, the Association will provide prompt written notice to the City.

- 1.4 Access.** The City shall have the right to enter the Premises for the purpose of inspection, provided that the City provides the Association with 24 hours prior notice. In the event of an emergency, the City will have the right to immediately enter the Premises without prior notice to the Association.
- 1.5 Limitations of Use of Premises.** The City will not unreasonably interfere with the Association's use of the Premises for the purposes authorized by this MOU. However, the Association acknowledges that the City retains all rights to the Premises not specifically granted by this MOU, including, but not limited to, public use of the Premises by the City, and the right to grant easement(s) for utilities and other improvements in the public interest.
- 1.6 Utilities.** The Association acknowledges that the Association will pay for the following utilities to the Premises: gas, electric, water, sewer, garbage collection, all telephone equipment and services, and all alarm services.
- 1.7 Security of Premises.** The Association shall be solely responsible for maintaining security of the Premises, including security of all personal property located on the Premises. Any damage to or loss of personal property during the term of this MOU will be the responsibility of the Association, and the Association will indemnify the City for any such damage or loss in accordance with the terms of this MOU.

2. PERMITTED USES OF PREMISES.

- 2.1 General.** The Association will use the Premises solely for the public purposes described below and in association with the terms and conditions of this MOU.
 - 2.1.1** The Premises will be used for the public purpose of providing public access to the Girl Scouts, which has as its purpose, to provide for the community and further the image of the City. The Premises will also be used by the Association for any use consistent with the purpose of the Girl Scouts, and in accordance with past usage.
 - 2.1.2** The Association will have an Authorized Representative (who will be subject to the approval of the City) at the Premises during all operations, functions, and activities on the Premises.
 - 2.1.3** The Association will provide general management of all activities on the Premises.
- 2.2 Compliance with Law.** In the use of the Premises, the Association will comply with all applicable federal, state, and local laws, rules, regulations, and codes, whether or not said laws are expressly stated in this MOU.
- 2.3 No Commercial Activities.** Any and all commercial activities on or from the Premises are strictly prohibited.

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2.4 Maintenance of Premises. The Association will, at its own cost, perform or cause to be performed all repairs, maintenance, and cleaning necessary to keep the land and facility therein, in a safe condition with an attractive and desirable appearance.

2.5 No Alterations or Modifications to the Premises. The Association will not make any alterations or modifications to the Premises without first receiving approval from the City. The City will provide written approval of alterations or modification to the Premises only if the Association establishes, to the satisfaction of the City, that the alterations or modifications will not adversely affect the value of the premises. The Association may store personal property (including office materials, exhibit structures, and donated property) on the Premises, provided that such personal property is only to be used for the purposes authorized by this MOU.

2.6 No Liens. The Association will promptly obtain a written release of any lien or claim filed against the Premises, or against any improvements on the Premises, by a third party.

2.7 Ownership of Improvements. All permanent improvements existing on the Premises prior to the commencement of the term of this MOU will remain on the Premises after the termination of this MOU. Any non-permanent improvements privately owned by the Association, and brought onto the Premises by the Association (including exhibit preparation and display) will remain the property of the Association, provided, however, that the City will have a lien on any improvements privately owned by the Association and brought onto the Premises, in the event of a default of this MOU by the Association.

3. TERM OF AGREEMENT

3.1 General. The term of this MOU will be for a period of five years, commencing on January 1, 2015 and ending on December 31, 2019.

3.2 Holdover. Any holding over of the term of this MOU by the Association after the expiration or termination of this MOU will not be considered as a renewal or extension of the MOU. The occupancy of the Premises by the Association after the expiration or termination of this MOU will be considered a month-to-month use, and all other terms and conditions of this MOU will continue in full force and effect.

3.3 Termination. Either party may terminate this MOU by providing 30 days prior written notice to the other party of intention to terminate.

4. RENT

The Association acknowledges and agrees that the estimated fair market value for the monthly use of the Premises will be waived. In lieu of the fair market monthly rate, the Association agrees to pay the City \$300 per year, payable yearly in advance during each year of the said term. This is the administrative cost of compiling this MOU, divided by the five year term.

5. INDEMNIFICATION

**MEMORANDUM OF UNDERSTANDING
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The Association will indemnify, defend, and hold harmless the City (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, damages, demands, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of the Association's performance of services under this MOU or related to the use of the Premises (including the performance of the Association's officers, agents, representatives, invitees, employees, contractors, and subcontractors), except only those claims arising from the sole negligence or active misconduct of the City. The Association, at its own expense, will, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees. The Association will require any contractor, subcontractor, or agent performing work for the Association at the Premises to include an indemnification clause protecting the City in substantially the same form as this indemnification clause.

6. INSURANCE

- 6.1 General.** The Association must, throughout the duration of this MOU, maintain insurance to cover the Association, its agents, representatives, and employees in connection with the performance of services under this MOU at the minimum levels set forth herein.
- 6.2 Commercial General Liability.** (With coverage at least as broad as ISO form CG 00 01 11 88) coverage must be maintained in an amount not less than \$1,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 6.3 Workers Compensation.** Coverage must be maintained as required by the State of California.
- 6.4 Endorsements.** The Association must obtain endorsements to the commercial general liability insurance with the following provisions:
- 6.4.1** The City (including its elected officials, officers, employees, agents, and volunteers) must be named as an additional "insured."
- 6.4.2** For any claims related to this MOU, the Association's coverage must be primary insurance with respect to the City. Any insurance maintained by the City will be excess of the Association's insurance and will not contribute with it.
- 6.5 Notice of Cancellation.** The Association must obtain endorsements to all insurance policies by which each insurer is required to provide 30 days prior written notice to the City should the policy be cancelled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration will be considered a cancellation.
- 6.6 Authorized Insurers.** All insurance companies providing coverage to the Association must be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 6.7 Insurance Certificate.** The Association must provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF TRACY AND GIRL SCOUTS HEART OF CENTRAL CALIFORNIA**

satisfactory to the City Attorney, no later than five days after the execution of this MOU.

6.8 Substitute Certificates. No later than 30 days prior to the policy expiration date of any insurance policy required by this MOU, the Association must provide a substitute certificate of insurance.

6.9 Association's Obligation. Maintenance of insurance by the Association as specified in this MOU will in no way be interpreted as relieving the Association of any responsibility whatsoever (including indemnity obligations under this MOU), and the Association may carry, at its own expense, such additional insurance as it deems necessary.

7. TERMINATION

Either party to this MOU will have the right, with or without cause, to terminate this MOU by giving 30 days prior written notice to the other party.

8. FORCE MAJEURE

Neither of the parties hereto will be chargeable with, liable for, or responsible to the other for anything or in any amount for any delay caused by fire, earthquake, explosion, the elements, acts of God, riots, strikes or lockouts. Any delay due to said causes will not be deemed a breach of or default in the performance of this MOU.

9. SURRENDER OF PREMISES

Upon the expiration or termination of this MOU, the Association will immediately surrender the Premises to the City in good condition, excepting only ordinary wear and tear. The Association will, at its expense, return the Premises its original state. All personal property left on the Premises upon termination of this MOU will be deemed to be property abandoned by the Association, and the Association waives any and all claims for the damages to the abandoned property. Upon the expiration or termination of this MOU, the City will have an immediate right to enter the Premises, and any abandoned property may be disposed of in a manner determined by the City.

10. DAMAGES CAUSED BY THE ASSOCIATION

In the event that the Association fails to make any repairs or perform any work required by this MOU, the City may, at its option, perform the work and charge the costs therefore (including an administrative fee of 10%) to the Association. The Association will make payment to the City within 30 days after receipt of a bill therefore. Any work performed by the City pursuant to this section will in no event be construed as a waiver of the City's right to demand performance from the Association.

11. TIME OF PERFORMANCE

Time is of the essence in the performance of services under this MOU and the timing requirements set forth herein will be strictly adhered to unless otherwise modified in writing in accordance with this MOU. Any requests for extensions of time must be submitted to the

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other party 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.

12. CONFLICTS OF INTEREST

The Association (including its officers, agents, representatives, employees, contractors, and subcontractors) will not maintain or acquire any direct or indirect interest that conflicts with the performance of this MOU. In the event that the Association maintains or acquires such a conflicting interest, any contract (including this MOU) involving the Association's conflicting interest may be terminated by the City.

13. ATTORNEY'S FEES

In the event any legal action is commenced to enforce this MOU, the prevailing party is entitled to have the non-prevailing party pay its reasonable attorney's fees, costs, and expenses incurred as a result of such legal action.

14. ASSIGNMENT AND DELEGATION

This MOU and any portion thereof will not be assigned, sublet, or transferred, nor will any of the Association's duties be delegated without the written consent of the City. Any attempt to assign, sublet, or delegate this MOU without the written consent of the City will be void and of no force and effect. A consent by the City to one assignment will not be deemed to be a consent to any subsequent assignment.

15. NOTICES

All notices, demands, or other communications which this MOU contemplates or authorizes must be in writing and will be personally delivered or mailed to the respective party as follows:

To CITY:

City of Tracy
David Ferguson
Public Works Director
520 Tracy Boulevard
Tracy, CA 95376

To ASSOCIATION:

Girl Scouts Heart of Central California
Mark Criswell
Director of Properties
6601 Elvas Avenue
Sacramento, CA 95819

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:

- a. Actual receipt at the address designated above, or
- b. Three working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

16. POSSESSORY INTEREST SUBJECT TO TAXATION

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If this MOU, or any assignment or delegation of this MOU under section 14 above, creates real property possessory interest in the Association (its agents, employees, contractors, or assigns), which possessory interest is subject to real property taxes, then City will not be responsible for payment of any such tax.

17. MODIFICATIONS

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

18. WAIVERS

Waiver of a breach or default under this MOU will not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this MOU.

19. SEVERABILITY

In the event any term of this MOU is held invalid by a court of competent jurisdiction, the MOU will be construed as not containing that term, and the remainder of this MOU will remain in full force and effect.

20. JURISDICTION AND VENUE

The interpretation, validity, and enforcement of the MOU will 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 MOU will be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

21. ENTIRE MEMORANDUM OF UNDERSTANDING

This MOU comprises the entire integrated understanding between the parties concerning the lease of the Premises described in this MOU. This MOU superseded all prior negotiations, representations, or agreements.

22. SIGNATURES

The individuals executing this MOU represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this MOU on behalf of the respective legal entities of the Association and the City. This MOU will inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY

GIRL SCOUTS HEART OF CENTRAL CALIFORNIA

By: _____

By: Dr. Linda E. Farley _____

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF TRACY AND GIRL SCOUTS HEART OF CENTRAL CALIFORNIA**

Title: Mayor
Date: _____

Title: Chief Executive Officer
Date: _____

Attest:

By: Carole Fleischmann
Title: Interim City Clerk
Date: _____

Approved As To Form:

By: Dan Sodergren
Title: City Attorney
Date: _____

RESOLUTION _____

APPROVING A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF TRACY AND THE GIRL SCOUTS HEART OF CENTRAL CALIFORNIA AND AUTHORIZING THE MAYOR TO EXECUTE THE MOU

WHEREAS, In 1949, the City of Tracy entered into an agreement with the Girl Scouts of America for the use of City owned land to house the Girl Scout Hut, and

WHEREAS, There have been several agreements with the Girl Scouts organization since the original agreement was made, and

WHEREAS, The Girl Scouts of America will pay to the City of Tracy an annual lease fee of \$300, and

WHEREAS, The Girl Scouts of America will be responsible for all utilities and maintenance of the building, and

WHEREAS, Staff recommended entering into a Memorandum of Understanding (MOU) with the Girl Scouts Heart of Central California for the sole right and privilege of occupying and using the City owned property for the purpose of a Girl Scouts clubhouse.

NOW, THEREFORE, BE IT RESOLVED, That City Council approves a MOU with the Girl Scouts Heart of Central California and authorizes the Mayor to execute the MOU.

The foregoing Resolution _____ was adopted by Tracy City Council on the 2nd day of December 2014, by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

MAYOR

CITY CLERK

AGENDA ITEM 5.B

REQUEST

APPROVE RESOLUTION AWARDING A TWO-YEAR PROFESSIONAL SERVICES AGREEMENT TO SPRINT SOLUTIONS, INC., FOR SERVICES RELATING TO THE INSTALLATION AND MONITORING OF AUTOMATED VEHICLE LOCATING SYSTEMS IN THE CITY OF TRACY'S VEHICLE FLEET, USING THE WESTERN STATES CONTRACTING ALLIANCE MASTER SERVICES AGREEMENT, AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT, AND AUTHORIZE THE CITY MANAGER TO EXTEND THE AGREEMENT PROVIDED COUNCIL APPROPRIATES FUNDS FOR IT THROUGH THE BUDGET PROCESS

EXECUTIVE SUMMARY

On August 18, 2014, the City emailed a Request for Proposals (RFP) to various providers of Automated Vehicle Locating (AVL) systems, and published the RFP on the City's website. Sixteen companies submitted proposals. Staff found Sprint Solutions, Inc., (Sprint) to be the most responsive to the City's needs and the most competitively priced. Staff recommends that a Professional Services Agreement be awarded to Sprint for a term of two years at a cost of \$75,775.

DISCUSSION

Various agencies have increasingly used Automated Vehicle Location (AVL) systems. The AVL units provide significant value to day-to-day operations as they improve Public Works Department driver safety, vehicle efficiency and effectiveness by accessing current GPS locations and diagnostics data anytime, anywhere via the Internet. AVL systems use Global Positioning System (GPS) devices in vehicles to not only track the location of a vehicle, but also provide other important data. This technology optimizes fleet operations by increasing operational efficiencies and decreasing costs such as fuel, insurance, labor and maintenance. The Public Works Department has had a long standing goal of installing AVL units on all its fleet. Staff proposes that because of the benefit to the City of having these units installed, all City vehicles be installed with AVLs.

On August 18, 2014, City staff mailed a Request for Proposals (RFP) to various providers of AVL systems and published the RFP on the City's website. The service requirements (as listed in Exhibit "A") include the following but are not limited to:

- Capability to track multiple vehicles (real-time and logged tracking)
- Simultaneous real-time mapping of multiple vehicles
- Capability to add additional vehicles
- Capability to establish geo fences
- Capability to add and remove landmarks
- Web access for tracking, reporting and viewing maps with vehicle locations
- Printable built in reports and individual vehicle reports.
- Easy hardware installation that does not require extensive modification of

- vehicles
- Durable, low maintenance equipment
- Frequent updates – must be able to provide varied update frequencies – as frequently as 3-60 seconds.
- On Board Diagnostics reporting

Below are the seven most closely bid proposals. Please note that these costs are as listed in the proposals and do not include taxes or applicable shipping charges, if any.

<u>Company</u>	<u>Unit Cost/Vehicle</u>	<u>Ongoing Monthly Cost/Vehicle</u>	<u>Total 2-year Cost</u>
Fleet Safety Institute	\$182.90	\$15.17	\$70,013
Sprint	\$9.99	\$24.25	\$75,775
AirTrak	\$199.00	\$20.00	\$86,912
ActSoft	\$192.35	\$21.00	\$89,133
Motion Link	\$225.00	\$20.00	\$90,240
CalAmp	\$205.00	\$21.00	\$90,752
easiTrack	\$250.00	\$19.99	\$93,409

After a review of the proposals by staff, it was found that Sprint met the stated requirements and was competitively priced as outlined in the table. While one company was priced below Sprint, staff felt that the services offered by Sprint were more advantageous to the City including a minimum ping frequency of fifteen seconds and ease of the ability to add expansion components such as driver identification while still maintaining the ability to receive On Board Diagnostics reporting. Sprint also has a proven track record, being in the industry for fifteen years and providing their service to all types of businesses, from large corporations to small startups. Furthermore, as part of their proposal, Sprint stated that they have a Master Services Agreement with the Western States Contracting Alliance (WSCA) and proposed that the City utilize that agreement for purchasing the AVL units. Staff has reviewed the Master Services Agreement and found it to be comparable to our standard Professional Services Agreement. Staff recommends purchasing the AVL units through the WSCA agreement.

The WSCA agreement ends in 2016 and has an option to extend for an additional two years. It is recommended that so long as the WSCA agreement is in effect, and Council authorizes the expense of these funds through the annual budget process, that the City Manager be authorized to continue the agreement beyond the initial two years.

STRATEGIC PLAN

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

FISCAL IMPACT

The total cost of the proposed two year agreement is approximately \$75,775 for 128 City vehicles. This cost does not include any applicable taxes. As part of the FY 2014/15

budget, funding was included to cover the cost of the AVL devices and ongoing maintenance support for the remainder of the fiscal year. Ongoing costs for subsequent years will be included during future budget cycles.

RECOMMENDATION

Approve resolution awarding a two-year Professional Services Agreement to Sprint Solutions, Inc., for services relating to the installation and monitoring of Automated Vehicle Locating systems in the City of Tracy's Public Works fleet, utilizing the Western States Contracting Alliance Master Services Agreement, authorize the Mayor to execute the agreement, and authorize the City Manager to extend the agreement beyond the initial two-years, provided Council has appropriated necessary funds through the budget process and the Master Services Agreement is still in effect .

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: David Ferguson, Director of Public Works
Maria A. Hurtado, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Exhibit: A – Western States Contracting Alliance Master Services Agreement
B – City of Tracy Funding Document

For Purchasing Use Only:

RFP/CONTRACT # 1907

MASTER SERVICE AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract between the Western States Contracting Alliance
Acting by and through the State of Nevada

Department of Administration, Purchasing Division
515 E Musser Street, Room 300
Carson City, NV 89701
Contact: Teri Smith, Purchasing Officer
Phone: (775) 684-0178 • Fax: (775) 684-0188
Email: tsmith@purchasing.state.nv.us

and

Sprint Solutions, Inc.
as contracting agent for the affiliated Sprint and Nextel entities providing the Products and Services
12502 Sunrise Valley Drive
Reston, VA 20196
Mailstop: VARESA0208
Contact: Michaela Clairmonte - Manager, Contract Negotiations & Management
Phone: (703) 433-8581 • Fax: (703) 433-8798
Email: michaela.clairmonte@sprint.com

Pursuant to Nevada Revised Statute (NRS) 277.100, NRS 277.110, NRS 333.162(1)(d), and NRS 333.480 the Chief of the Purchasing Division of Nevada is authorized to enter into cooperative group-contracting consortium.

The Western States Contracting Alliance ("WSCA") is a cooperative group-contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) for the states of Alaska, Arizona, California, Colorado, Hawai'i, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming.

The State of Nevada has been authorized by WSCA to negotiate a Master Agreement as Lead State, for and on behalf of WSCA and its Members.

In consideration of the above premises, and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by the Western States Contracting Alliance Directors.
2. DEFINITIONS.
"WSCA" means the Western States Contracting Alliance.

Effective 04/07

“State” and/or “Lead State” means the State of Nevada and its state agencies, officers, employees and immune contractors as defined in NRS 41.0307.

“Participating State(s)” means state(s) that have signed (and not revoked) an Intent to Contract at the time of the award of this Contract, or who have executed a Participating Addendum.

“Participating Entity” means a state, or other legal entity authorized by a state, that is authorized to enter and does enter into a Participating Addendum under this Contract. Unless specifically prohibited by State law, government agencies, political subdivisions and authorized non-profits are authorized to enter into a Participating Addendum under this Contract, subject to the review of the Chief Procurement Official of the State in which the potential Participating Entity is located. Issues of interpretation and eligibility for participation shall be determined by the applicable State Chief Procurement Official.

“Buyer” means any WSCA Participating State, a Participating Entity, any authorized agency or political subdivision of a Participating State, or any authorized non-profit entity that makes a purchase under this contract, either pursuant to its own Participating Addendum or by making purchasing under another entity’s Participating Addendum. Unless specifically prohibited by State law, government agencies, political subdivisions and authorized non-profits are authorized to enter into a Participating Addendum under this Contract or make purchases under this Contract pursuant to another entity’s Participating Addendum, subject to the review of the Chief Procurement Official of the State in which the potential Buyer is located. Issues of interpretation and eligibility for participation shall be determined by the applicable State Chief Procurement Official.

“Contract” means this Master Service Agreement for Services of Independent Contractor, together with all documents incorporated herein.

“Contractor” and/or “Contracting Agency” means a person or entity that performs services and/or provides goods for WSCA or a Participating Entity under the terms and conditions set forth in this Contract.

“Solicitation” means RFP #1907 incorporated herein as Attachment BB.

“Fiscal Year” is defined as the period beginning July 1 and ending June 30 of the following year.

3. CONTRACT TERM. This Contract shall be effective upon WSCA Directors’ approval as set forth on the signature page of this Contract, to October 31, 2016 (“Initial Term”), with the option to extend for an additional two (2) years beyond the Initial Term at the discretion of the Lead State or as determined in the best interest of the Lead State and WSCA, subject to mutual written acceptance of the parties, unless sooner terminated by either party as specified in paragraph (4) or paragraph (21). Lead State shall provide Contractor with notice of its intent to exercise the extension at least 90 days prior to the expiration of the Initial Term. Each Participating Addendum executed in connection with this Contract shall be effective from its corresponding effective date. A Participating Addendum shall not exceed the term or scope of this Contract.

4. CANCELLATION OF CONTRACT FOR CONVENIENCE; NOTICE. Unless otherwise stated in the special terms and conditions, any Contract entered into as a result of the Solicitation may be canceled for convenience by either party upon written notice sixty (60) days prior to the effective date of the cancellation. Further, any Participating State may cancel for convenience its participation upon thirty (30) days written notice, unless otherwise limited or stated in the special terms and conditions of the Solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Participating Entity to indemnification by the Contractor, Contractor’s rights of payment for

goods/services delivered and accepted, WSCA's rights to payment of administrative fees through the effective date of cancellation (but not for periods after the effective date of cancellation or termination), and each party's rights attending any warranty or default in performance in association with any order. Cancellation of the Contract due to default of either party shall be in accordance with Section 21 herein. (b) Notice. All notices must be in writing. Notices required under this Agreement must be submitted in writing to the party's address for notice listed in this Agreement or an Order and, in the case of a dispute, notices must also be sent to:

Sprint: Attn: Legal Dept. – Public Sector 12502 Sunrise Valley Drive Reston, VA 20196	Customer: Attn: Teri Smith, Purchasing Officer Department of Administration 515 E Musser Street, Room 300 Carson City, NV 89701
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5. INCORPORATED DOCUMENTS; ORDER OF PRECEDENCE. The Contract consists of this document entitled Master Service Agreement, together with the following incorporated documents: Contractor's Special Terms and Conditions, the Solicitation, the Contractor's Response. To participate in the Contract each Participating Entity must do so pursuant to a Participating Addendum either as a signatory thereto or as an eligible Buyer under the applicable Participating Addendum. The parties acknowledge and agree that each Participating Addendum executed in accordance herewith incorporates the terms and conditions of the Contract, and that the corresponding Participating Entities will be bound to the terms and conditions of that Participating Addendum and the Contract.

In the event of any conflict between the terms and conditions of any of the documents comprising, related to, or participating in the Contract, the following order of precedence will control:

1. The applicable Participating Addendum;
2. The Master Service Agreement;
3. The Contractor's Special Terms and Conditions (Attachment AA);
4. The Solicitation (Attachment BB);
5. The Contractor's Response (Attachment CC);

Neither the Special Terms and Condition, nor any purchase order(s) issued under the Contract shall contradict or supersede any terms and conditions in the Contract without written evidence of mutual assent to such change(s) between Contractor and the Lead State.

A Contractor's attachment shall not contradict or supersede any WSCA specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract.

6. RESERVED

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. RESERVED

9. BID SPECIFICATIONS. Contractor certifies that any deviation from the specifications in the scope of work, incorporated herein as part of Attachment AA, have been clearly indicated by Contractor in its response, incorporated herein as Attachment CC; otherwise, it will be considered that the bid is in strict compliance. Any BRAND NAMES or manufacturers' numbers are stated in the specifications are intended to establish a standard only and are not restrictive unless the Solicitation states "no substitute," and unless so stated, bids have been considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate bids offering lower quality or inferior performance have not been considered.

10. RESERVED

11. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph (5) at the cost for each service as set forth in the Contractor's Special Terms and Conditions (Attachment AA). WSCA does not guarantee to purchase any amount under this Contract. Estimated quantities in the Solicitation are for bidding purposes only and are not to be construed as a guarantee to purchase any amount. If Contractor has quoted a cash discount based upon early payment; discounts offered for less than thirty (30) days have not been considered in making the award. The date from which early payment discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise. Neither WSCA nor the Lead State is liable for any costs incurred by the bidder in proposal preparation.

12. PAYMENT. Payment is normally made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After forty-five (45) days the Contractor may assess overdue account charges up to a maximum rate of one (1) percent per month on the outstanding balance. Payments will be remitted by mail or payments may be made via a Buyer's "Purchasing Card."

13. TAXES. Prices shall be exclusive of state sales and federal excise taxes. Where a Participating State or Participating Entity is not exempt from sales taxes on sales within its state, the Contractor shall add the sales taxes on the billing invoice as a separate entry. Contractor agrees to be responsible for payment of any government obligations relating to Contract performance that are owed to Lead State or a Participating Entity that are not paid by Contractor's subcontractors during performance of this Contract. The Lead State Nevada may set-off against consideration due any delinquent government obligation in accordance with applicable law, including, but not limited to NRS 353C.190.

(a) Taxes Not Included. Contractor's rates and charges for Products and Services do not include taxes. Customer will pay all taxes, including, but not limited to, sales, use, gross receipts, excise, VAT, property, transaction, or other local, state, or national taxes or charges imposed on, or based upon, the provision, sale or use of Products or Services. Additional information on the taxes, fees, charges, and surcharges collected by Contractor is posted on the Rates and Conditions Website (<http://www.sprint.com/ratesandconditions>).

(b) Withholding Taxes. Notwithstanding any other provision of this Agreement, if a jurisdiction in which Customer conducts business requires Customer to deduct or withhold separate taxes from any

amount due to Contractor, Customer must notify Contractor in writing. Contractor will then increase the gross amount of Customer's invoice so that, after Customer's deduction or withholding for taxes, the net amount paid to Contractor will not be less than the amount Contractor would have received without the required deduction or withholding.

(c) Tax Exemptions and Exclusions. Contractor will recognize and honor all validly and properly issued and executed tax exemption certificates delivered by Customer and statutory exemptions and will not bill Customer for any such exempted taxes. Customer will not be responsible for payment of Contractor's direct income and employment taxes.

14. FINANCIAL OBLIGATIONS OF PARTICIPATING STATES. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Unless otherwise provided by state law or in a Participating Addendum, States incur no financial obligations on behalf of political subdivisions that are Participating Entities under this Contract. Unless otherwise specified in the Solicitation or the Participating Addendum, the resulting award(s) will be permissive.

15. ORDER NUMBERS. Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

16. REPORTS, WSCA ADMINISTRATIVE FEE. As more fully described in the Solicitation and Response and in accordance with the Contractor's Special Terms and Conditions (Attachment AA), the Contractor shall submit quarterly reports to the WSCA Contract Administrator showing the quantities and dollar volume of purchases by each Participating Entity. This information will be utilized in computing and verifying the administrative fee payable to WSCA. Contractor shall pay an administrative fee of 1/10th of 1% (one-tenth of one percent) of the total wireless spend to WSCA.

17. DELIVERY. The prices bid shall be the delivered price to any Buyer. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in Attachment CC. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back-ordered shall be shipped without charge.

18. HAZARDOUS CHEMICAL INFORMATION. The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to any Buyer. All safety data sheets and labels will be in accordance with each Participating State's requirements.

19. INSPECTIONS. Goods furnished under this Contract shall be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or in non-compliance with bid specifications, the Buyer may reject the goods and require Contractor to correct them without charge. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part.

20. INSPECTION & AUDIT.

a. Books and Records. The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP)

full, true and complete records, contracts, books, and documents as are necessary to fully disclose to WSCA, the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. **Inspection & Audit.** Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, during Contractor's normal business hours, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, upon reasonable prior written notice, by the following entities, (at such entities' sole cost and expense): WSCA; the United States Government; the State Auditor or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives, and the authorized equivalent agencies of a Participating State or Participating Entity (collectively the "Auditing Authorities."). All subcontracts shall reflect requirements of this paragraph. Due to the highly sensitive and proprietary nature of Contractor's records, any third party auditor action on behalf of one or more of the Auditing Authorities shall be subject to prior approval by Contractor, and the third party auditor may be required at Contractor's sole discretion to execute the Contractor's standard non-disclosure agreement prior to examining, inspecting, copying or auditing Contractor's records. Such non-disclosure agreement shall not prohibit disclosure to or the Auditing Authorities or discussion between the third party auditor and the Auditing Authorities for the purpose of complying with section. Records available for audit shall be limited to records for the period of time since the auditing entity last performed an audit of that type of records. An audit by or on behalf of WSCA does not preclude a Participating Entity from performing its own audit.

c. **Period of Retention.** All books, records, reports, and statements relevant to this contract must be retained a minimum four (4) years after the contract terminates or until all audits initiated within the four (4) years have been completed, whichever is later, and for five (5) years if Contractor has received prior written notice that any federal funds are used in the contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when Contractor has been provided prior written notice that an audit is scheduled or is in progress, for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

21. **CONTRACT TERMINATION; REMEDIES.** Any of the following events shall constitute cause to declare a default of the contract: (1) nonperformance of contractual requirements; and/or (2) a material breach of any term or condition of this contract. The non-defaulting party shall issue a written notice of default providing a period in which the defaulting party shall have an opportunity to cure. The defaulting party shall be allowed thirty (30) calendar days to cure a default before this Contract is terminated for default, unless the default poses a substantial risk to human health or safety, in which case a commercially reasonable shorter cure period may be set by the non-defaulting party (which shall be no less than five (5) business days). In the event the default poses an imminent and substantial risk to human health or safety, the non-defaulting party may suspend use or operation of the products and services before the time for cure has expired. Time allowed for cure shall not diminish or eliminate the defaulting party's liability for damages. If the default remains, after the defaulting party has been

provided the opportunity to cure, the non-defaulting party may do one or more of the following: (1) exercise any remedy provided by law or by the terms of this Contract; (2) terminate this contract and any related contracts or portions thereof; and/or (3) WSCA may suspend Contractor from receiving future bid solicitations.

22. REMEDIES NOT EXCLUSIVE. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for attorneys employed by the Lead State. The Lead State and any Participating State may set off consideration against any unpaid obligation of Contractor to that State or any of its departments, agencies or political subdivisions, to the extent allowed by law, including, for the Lead State, a setoff in accordance with NRS 353C.190.

23. LIMITED LIABILITY. Nevada will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply. Damages for any breach by the Lead State shall never exceed the amount of funds appropriated for payment by the Lead State or any of its agencies pursuant to a Participating Addendum entered into by the Lead State under this contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed 125% of the contract maximum "not to exceed" value between Contractor and the applicable individual Buyer; provided, however, that if no "not to exceed" value is specified then Contractor's maximum liability shall be one million dollars (\$1,000,000). Contractor's tort liability shall not be limited, except for the following limitations, which limitations shall apply to any claims or causes of action, whether based on contract, in tort, or based on any other legal theory:

i. For any claims whatsoever arising from or related to service disruption, regardless of the causes ("Service Disruption"), Contractor's sole liability is limited to a credit allowance equal to the proportionate charge to the Buyer for the period of the Service Disruption. Service Disruptions do not include unavailability of the Service during periods of scheduled or unscheduled network maintenance.

ii. In no event is Contractor liable for any consequential, special, incidental, indirect, exemplary or punitive damages, nor for lost profits, loss of business, loss of data, loss of use, or lost savings or increased cost of operations, sustained by WSCA, a Participating Entity, a Buyer or any other end user in connection with this Contract.

24. FORCE MAJEURE. Neither party to this Contract shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

25. INDEMNIFICATION.

25.1 Contractor's Obligations to WSCA. To the fullest extent permitted by law, Contractor shall indemnify and defend, not excluding the Lead State's right to participate, the Lead State and/or WSCA from and against all third party claims for damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, relating to personal injury, death or damage to tangible personal

property that resulted from the negligence or willful misconduct of Contractor, its officers, employees and authorized agents.

25.2 Contractor's Obligations to Participating Entities (excluding authorized non-profit entities).

The Contractor shall indemnify and defend Participating Entities and their officers, agencies and employees, from and against all third party claims for damages, losses and expenses, including reasonable attorney's fees, relating to personal injury, death or damage to tangible personal property that resulted from the negligence or willful misconduct of the Contractor, its officers, employees and authorized agents. Notwithstanding anything in this Contract to the contrary, Contractor's indemnification obligations with respect to Participating Entities that are authorized non-profit entities (and such Participating Entities indemnification obligations with respect to Sprint) shall be as set forth in Section 11 of Attachment AA.

25.3 Exception. Contractor will not be liable for damages that are the result of negligence or willful misconduct by WSCA, the Participating Entities, and/or their respective employees, officers, agencies and authorized agents.

26. INSURANCE SCHEDULE. Unless expressly waived in writing by the Lead State or Participating States, Contractor, as an independent contractor and not an employee of the Lead State or Participating States, must carry policies of insurance in amounts specified in this Insurance Schedule and/or any Insurance Schedule agreed by Contractor and a Participating State via a participating addendum, and pay all taxes and fees incident hereunto. The Lead State and Participating States shall have no liability except as specifically provided in the Contract. The Contractor shall not commence work before:

1) Contractor has provided the required evidence of insurance to the Lead State.

The Lead State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent to this Contract. Any failure of the Lead State to timely approve shall not constitute a waiver of the condition.

Unless different or additional insurance is required pursuant to the terms of a Participating Addendum, Contractor agrees that the following insurance coverages and policy limits shall also apply to, and operate for the benefit of, each Participating Entity that participates in this Contract pursuant to a Participating Addendum.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically stated herein or otherwise agreed to by the Lead State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:

1. Final acceptance by the Lead State of the completion of this Contract; or

2. Such time as the insurance is no longer required by the Lead State under the terms of this Contract.

Any insurance or self-insurance available to the Lead State shall be excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis.

Until such time as the insurance is no longer required by the Lead State, Contractor shall provide the Lead State with renewal or replacement evidence of insurance before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

Effective 04/07

Workers' Compensation and Employer's Liability Insurance

- 1) Contractor shall provide proof of worker's compensation insurance.
- 2) Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.

Commercial General Liability Insurance

- 1) Minimum Limits required:
 - \$2,000,000.00** General Aggregate
 - \$1,000,000.00** Products & Completed Operations Aggregate
 - \$1,000,000.00** Personal and Advertising Injury
 - \$1,000,000.00** Each Occurrence
- 2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Business Automobile Liability Insurance

- 1) Minimum Limit required: **\$Waived** Each Occurrence for bodily injury and property damage.
- 2) Coverage shall be for "any auto" (including owned, non-owned and hired vehicles).
The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

Professional Liability Insurance

- 1) Minimum Limit required: **\$ Waived** Each Claim
- 2) Retroactive date: Prior to commencement of the performance of the contract
- 3) Discovery period: Three (3) years after termination date of contract.
- 4) A certified copy of this policy may be required.

Umbrella or Excess Liability Insurance

- 1) May be used to achieve the above minimum liability limits.
- 2) Shall be endorsed to state it is "As Broad as Primary Policy"

Commercial Crime Insurance

Minimum Limit required: **\$Waived** Per Loss for Employee Dishonesty
This insurance shall be underwritten on a blanket form amending the definition of "employee" to include all employees of the Vendor regardless of position or category.

General Requirements:

- a. RESERVED
- b. Waiver of Subrogation: Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
- c. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. Deductibles and Self-Insured Retentions: Insurance maintained by Contractor may contain deductibles or self-insured retentions. Such deductibles or self-insured retentions shall not relieve

Contractor from the obligation to pay any loss or claim for which the Contractor is responsible under this Contract.

- e. Policy Cancellation: Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) days prior written notice to the Lead State, the policy shall not be canceled. Insurer shall provide notice of cancellation via mail to Certificate Holders.
- f. Approved Insurer: Each insurance policy shall be:
 - 1) Issued by insurance companies authorized to do business in the Lead State and Participating States or eligible surplus lines insurers acceptable to the Lead State and Participating States and having agents upon whom service of process may be made, and
 - 2) Currently rated by A.M. Best as "A- VII" or better.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the Lead State:

- 1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor.
- 2) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the Lead State prior to the commencement of work by Contractor. Neither approval by the Lead State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the Lead State or others, and shall be in addition to and not in lieu of any other remedy available to the Lead State or Participating States under this Contract or otherwise. The Lead State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

Mail all insurance documents required by this Contract to the Lead State identified on page one of the Contract. Additional insurance obligations may be imposed in Participating Addenda executed by Contractor and eligible Participating Entities. Any additional or different insurance documents required by a Participating Addendum shall be provided to the Participating Entity.

27. COMPLIANCE WITH LEGAL OBLIGATIONS. Any and all supplies, services and equipment bid and furnished shall comply fully with all applicable Federal and State laws and regulations. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract.

28. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

29. SEVERABILITY. If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

30. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by WSCA, the Lead State, or a Participating Entity, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Neither party shall assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

31. OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, customized computer code or other documents of any kind which are intended to be consideration under the Contract, and prepared or in the course of preparation by Contractor (or its subcontractors) specifically for WSCA in performance of its obligations under this Contract shall be the exclusive property of WSCA and all such materials shall be delivered into WSCA possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of WSCA. Unless otherwise specifically stated in this Contract, WSCA shall have no proprietary interest in any pre-existing works or materials, or in any materials licensed to WSCA for use that are subject to patent, trademark or copyright protection. WSCA acknowledges that Contractor sells identical Products and Services to other customers of Contractor, and WSCA agrees that all intellectual property rights in the Products and Services are retained by Contractor and/or Contractor's suppliers. Contractor is not precluded from developing for itself or for others, products, services or materials that are competitive with or similar to or derived from the Products and Services provided under this Contract, and Contractor shall be free to use its general knowledge skills and experience and any ideas, concepts, know-how and techniques within the scope of its business practices that are used in the course of providing the Products and services to WSCA or any Participating Entity. All materials required to be delivered to WSCA under this paragraph shall be delivered to the Lead State.

32. PATENTS, COPYRIGHTS, ETC. The Contractor shall release, indemnify and hold WSCA, the Lead State, and Participating States and their officers, agents and employees harmless from liability against third party claims that any of the Products or Services as provided by Contractor under this Contract infringe or violate any copyright, patent, tradename, trademark, trade secret, or other intellectual property rights. WSCA acknowledges and agrees that in connection with Sprint's indemnity obligations to WSCA for Products, Sprint may rely upon the indemnity being provided to Sprint by Sprint's third party suppliers for such Products. WSCA agrees to reasonably cooperate with Sprint and Sprint's third party suppliers in connection with the defense of the third party claims included in the indemnity obligations under this Agreement.

Contractor's obligations under this section will not apply to the extent that the infringement or violation is caused by (i) functional or other specifications that were provided by or requested by Customer; or (ii) Customer's continued use of infringing Products or Services after Contractor provides reasonable notice to

Customer of the infringement. For any third party claim that Contractor receives, or to minimize the potential for a claim, Contractor may, at its option and expense, either: (A) procure the right for Customer to continue using the Products or Services; (B) replace or modify the Products or Services with comparable Products or Services; or (C) terminate the Products or Services. The provisions of this Section state the entire liability and obligations of Contractor and any of its affiliates or licensors, and the exclusive remedy of State, with respect to any actual or alleged infringement in whole or in part, of any patent, copyright, trade secret, trademark or other intellectual property right by the Products or Services.

33. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records. Information or documents provided in connection with a Participating Addendum shall be governed by the public records laws and practices of the Participating State or Participating Entity.

34. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise designated in writing as such. The foregoing restrictions on use and disclosure of confidential information do not apply to information that: (a) is in the possession of Contractor at the time of its disclosure and is not otherwise subject to obligations of confidentiality; (b) is or becomes publicly known, through no wrongful act or omission of the Contractor; (c) is received without restriction from a third party free to disclose it without obligation to the disclosing party; (d) is developed independently by the Contractor without reference to the confidential information; or (e) is required to be disclosed by law, regulation, or court or government order.

35. NONDISCRIMINATION. Contractor agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Contractor further agrees to furnish information and reports to requesting Participating Entities, upon request, for the purpose of determining compliance with these statutes. Contractor agrees to comply with each individual Participating State's certification requirements, if any, as stated in the special terms and conditions. This Contract may be canceled if the Contractor fails to comply with the provisions of these laws and regulations. Contractor must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

36. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:
- a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
 - b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
 - c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)
37. LOBBYING. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:
- a. Any federal, state, county or local agency, legislature, commission, council or board;
 - b. Any federal, state, county or local legislator, commission member, council member, board member, or other elected official; or
 - c. Any officer or employee of any federal, state, county or local agency; legislature, commission, council or board.
38. NON-COLLUSION. Contractor certifies that this Contract and the underlying bid, have been arrived at independently and have been without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition.
39. WARRANTIES.
- a. General Warranty. Contractor will perform all Services in a good and workmanlike manner consistent with accepted industry practice and in compliance with applicable laws and regulations. To the maximum extent possible, Contractor will pass through to Buyer all warranties available to Sprint for any Product(s) acquired hereunder.
 - b. Contractor does not manufacture Products and offers no warranty on any Products beyond the manufacturer's warranty provided directly from the manufacturer to the Buyer upon receipt of the Products. Except as, and then only to the extent, expressly provided in this Contract, Products and Services are provided "as is." Contractor disclaims all express or implied warranties and in particular disclaims all warranties of merchantability, fitness for a particular purpose, and warranties related to equipment, material, services, or software.
40. CONFLICT OF INTEREST. Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of the Lead State or any WSCA Participating Entities to any

officer or employee of WSCA, the Lead State, or Participating Entities to secure favorable treatment with respect to being awarded this Contract.

41. INDEPENDENT CONTRACTOR. Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA, the Lead State, or any Participating Entity to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA, the Lead State, or any Participating Entity, except as expressly set forth herein.

42. POLITICAL SUBDIVISION PARTICIPATION. Participation under this Contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) of the WSCA Participating States shall be voluntarily determined by the political subdivision. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices set forth in this Contract and in the applicable Participating Addendum.

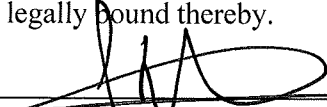
43. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by WSCA and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency.

44. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed and construed in accordance with the laws of the state of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract. The construction and effect of any Participating Addendum or order against the Contract(s) shall be governed by and construed in accordance with the laws of the Participating State or the laws of the State in which the applicable Participating Entity is located if such entity is not a State. Venue for any claim, dispute or action concerning an order placed against the Contract(s) or the effect of a Participating Addendum shall be in the Purchasing State or the laws of the State in which the applicable Participating Entity is located if such entity is not a State.

45. SIGNATURES IN COUNTERPART. Contract may be signed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one in the same instrument.

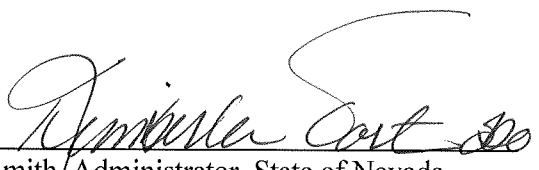
46. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this contract. The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA Contract Administrator. A WSCA Member State or another entity authorized to participate in this contract shall execute with the Contractor a Participating Addendum consistent with this Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.



Independent Contractor's Signature
Paget L. Alves

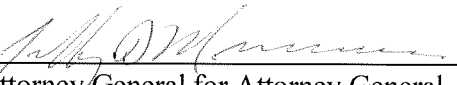
4/9/12 _____
Date Chief Sales Officer
Independent's Contractor's Title



Greg Smith, Administrator, State of Nevada

APPROVED BY WSCA DIRECTORS
On 4/12/12
(Date)

Approved as to form by:



Deputy Attorney General for Attorney General

On 11 April 12
(Date)

Sprint — Approved
as to Legal Form
KAC — 5 April 2012





PUBLIC WORKS DEPARTMENT

MAIN 209.831.6300
FAX 209.831.4472
www.ci.tracy.ca.us

November 24, 2014

Ian Castro, Public Sector Account Manager
Phone: 916-796-7000
Email: ian.castro@Sprint.com

Dear Mr. Ian Castro,

The units on the following Billing Account Numbers listed below are eligible to purchase wireless communication services under the Western State Contracting Alliance (WSCA) Agreement, No. 1907 dated April 12, 2012 and the WSCA Participating Addendum between Sprint Solutions, Inc., and the State of California (Participating State Master Contract No. 7-10-70-15).

Billing Account Numbers: 745302967

I, Michael Maciel, hereby certify that the following information provided herein is true and accurate as of the date of this letter: (1) I am an authorized purchaser for CITY OF TRACY; (2) all orders will be in accordance with and subject to the pricing, terms and conditions under the Western State Contracting Alliance (WSCA) Agreement, No. 1907, and the WSCA Participating Addendum with the State of California (Participating State Master Contract No. 7-10-70-15); and (3) Sprint is authorized to invoice the total dollar amount for services and equipment ordered by an authorized purchaser for the CITY OF TRACY.

Furthermore, I certify the CITY OF TRACY (1) shall pay charges incurred for the period of time the units are active with Sprint and until written notice of cancellation is provided to Sprint; and (2) the CITY OF TRACY acknowledges and understands that Sprint will not automatically terminate service until written notice of cancellation is received by Sprint. The CITY OF TRACY agrees to pay Sprint for all fees and charges for services and equipment received up to the effective date of cancellation.

If there is a change in the above authorization, it is the responsibility of the authorized purchaser to provide written notification to Sprint within ten (10) days at the following address:

Sprint
12502 Sunrise Valley Drive
Mailstop: VARESA0208
Reston, VA 20196
Attn: Public Sector Contracts Manager

CITY OF TRACY

SPRINT SOLUTIONS, INC.

By: Michael Maciel
Title: Mayor

Date: _____



By: Michaela Clairmonte
Title: Manager

Date: 11/24/2014

Attest:

By: Carole Fleischmann
Title: _____

Date: _____

Approved by
Public Sector Legal
as to legal form

KAC 11-24-14

Approved as to Form:

By: Bill Sartor
Title: Assistant City Attorney

Date: _____

RESOLUTION _____

AWARDING A TWO-YEAR PROFESSIONAL SERVICES AGREEMENT TO SPRINT SOLUTIONS, INC., FOR SERVICES RELATING TO THE INSTALLATION AND MONITORING OF AUTOMATED VEHICLE LOCATING SYSTEMS IN THE CITY OF TRACY'S PUBLIC WORKS FLEET, USING THE WESTERN STATES CONTRACTING ALLIANCE MASTER SERVICES AGREEMENT, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT, AND AUTHORIZING THE CITY MANAGER TO EXTEND THE AGREEMENT PROVIDED COUNCIL APPROPRIATES FUNDS THROUGH THE BUDGET PROCESS

WHEREAS, Various agencies have increasingly used Automated Vehicle Location (AVL) systems as a means of tracking the locations of vehicles in real time enabling the optimization of fleet operations by increasing operational efficiencies and decreasing costs such as fuel, insurance, labor and maintenance, and

WHEREAS, The Public Works Department has had a long standing goal of installing AVL units on all its fleet, and

WHEREAS, A Request For Proposals was emailed to various AVL service providers on August 18, 2014, and placed on the City's website on August 18, 2014, and

WHEREAS, A total of sixteen proposals were received and opened on September 2, 2014, and

WHEREAS, Sprint Solutions, Inc., was a responsive and qualified bidder with a proposal that best meets the needs of the City of Tracy, and

WHEREAS, Sprint Solutions, Inc., also is part of a Master Services Agreement with the Western States Contracting Alliance through which the AVL units and service will be purchased;

NOW, THEREFORE, BE IT RESOLVED, That City Council hereby awards a two-year Professional Services Agreement to Sprint Solutions, Inc., for services relating to the installation and monitoring of Automated Vehicle Locating systems in the City of Tracy's Public Works fleet, utilizing the Western States Contracting Alliance Master Services Agreement, authorizes the Mayor to execute the agreement, and authorizes the City Manager to extend the agreement beyond the initial two-years, provided Council has appropriated necessary funds through the budget process and the Master Services Agreement is still in effect.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 2nd day of December, 2014, by the following vote:

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

MAYOR

ATTEST:

INTERIM CITY CLERK

AGENDA ITEM 5.C

REQUEST

APPROVE AN INSPECTION IMPROVEMENT AGREEMENT FOR THE BUNGALOWS (AKA THE CLASSICS), TRACT 3351, AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

Approval of the Inspection Improvement Agreement will allow Woodside O5N, LP, a California limited partnership (Subdivider), to proceed with the construction of street and utilities improvements within the Bungalows Subdivision.

DISCUSSION

The Vesting Tentative Subdivision Map for the Bungalows Subdivision, a single-family residential subdivision with a total of 57 lots, was approved by City Council on May 20, 2014, pursuant to Resolution 2014-078. The Bungalows, Tract 3351, is located on the northwest corner of MacArthur Drive and Pescadero Avenue as shown in Attachment A and is designated in the General Plan as Residential Medium.

The Subdivider has submitted improvement plans for the subdivision improvements for approval and has requested that the City proceed with construction of the improvements pending approval of the Final Map and execution of the Subdivision Improvement Agreement. Improvement plans have been reviewed by the Engineering Division and all improvements required of the Bungalows, Tract 3351, are guaranteed as part of the Inspection Improvement Agreement.

Under the provisions of the Inspection Improvement Agreement (IIA), the Subdivider will construct the public improvements at his own risk and responsibility prior to approval and recordation of the Final Map. The City will inspect construction of the public improvements that will be eligible for dedication and acceptance after completion of the construction improvements, approval of the Final Map and execution of the Subdivision Improvement Agreement.

FISCAL IMPACT

There will be no fiscal impact to the General Fund. The Subdivider has paid the cost of plan checking, engineering inspection, and agreement processing.

STRATEGIC PLAN

This agenda item is consistent with the City Council's Economic Development Strategy, to ensure physical infrastructure necessary for development are constructed.

RECOMMENDATION

That City Council, by resolution, approve the Inspection Improvement Agreement for the Bungalows, Tract 3351, and authorize the Mayor to execute the Inspection Improvement Agreement on behalf of the City.

Prepared by: Criseldo Mina, P. E., Senior Civil Engineer

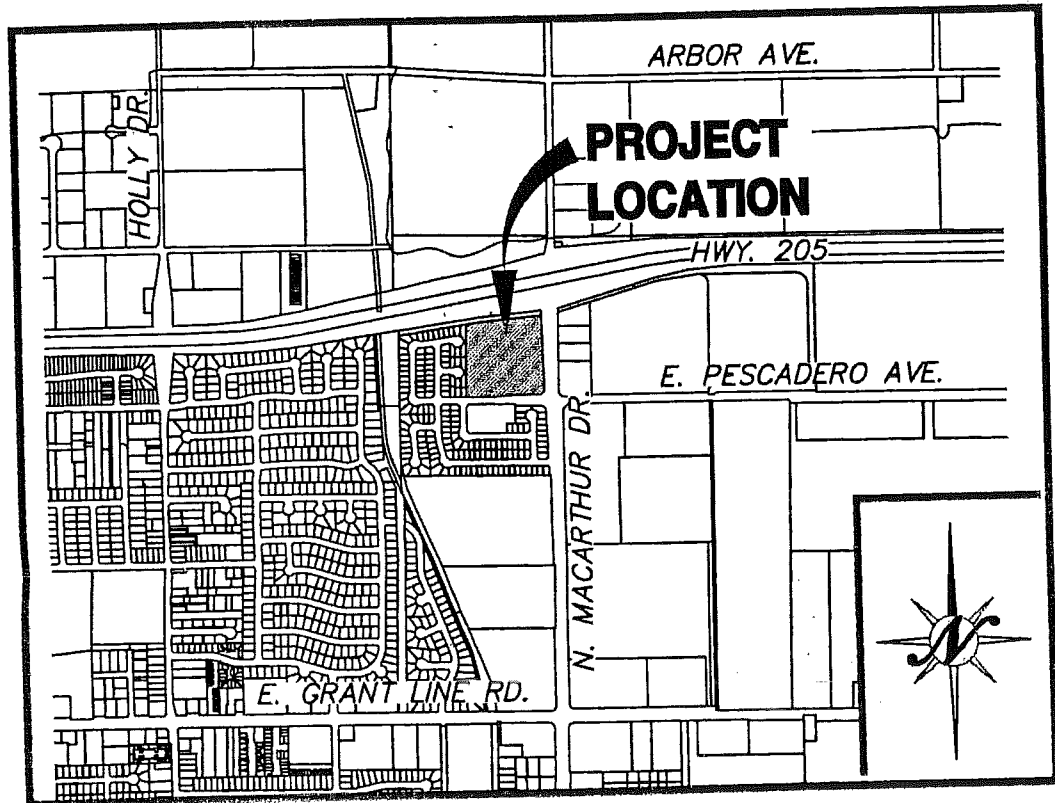
Reviewed by: Kuldeep Sharma, Interim City Engineer
Andrew Malik, Development Services Director
Maria A. Hurtado, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A - Location Map

Attachment B – Inspection Improvement Agreement



Recording Requested By
City of Tracy
Development Services Department
333 Civic Center Plaza
Tracy, CA 95376
Attention: Criseldo Mina, P. E.

And When Recorded Mail To:
City of Tracy
Office of the City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attention: Carole Fleischmann

**CITY OF TRACY
INSPECTION IMPROVEMENT AGREEMENT
THE CLASSICS (AKA THE BUNGALOWS), TRACT 3351**

This **INSPECTION IMPROVEMENT AGREEMENT** (hereinafter "Agreement") is made and entered into by and between the **CITY OF TRACY**, a municipal corporation (hereinafter "City"), and **WOODSIDE O5N, LP**, a California limited partnership, (hereinafter "Subdivider").

RECITALS

- A. The Subdivider is currently the owner of the real property located at the northwest corner of MacArthur Drive and Pescadero Avenue (hereinafter "Property"), and more particularly described in Exhibit "A", attached and incorporated herein by its reference.
- B. In accordance with the Subdivision Map Act (California Government Code sections 66410, et seq.) and the Subdivision Ordinance (Tracy Municipal Code, Title 12), the Subdivider has submitted to the City a Final Map (hereinafter "Final Map") for the Project known as **THE BUNGALOWS, TRACT 3351** (hereinafter "Project"). The Final Map is being reviewed by the City Engineer for substantial compliance with the approved Tentative Subdivision Map, and the Final Map has not yet been approved by the City for recordation.
- C. The Project is geographically located within the boundaries of the Vesting Tentative Subdivision Map known as The Classics Subdivision (hereinafter "Tentative Subdivision Map"). The Tentative Subdivision Map, as approved by the City Council on May 20, 2014, pursuant to Resolution No. 2014-078, is on file with the City Engineer, and is incorporated herein by reference.
- D. The approval of the Tentative Subdivision Map by the City Council was subject to specified conditions of approval (hereinafter "Conditions"). The Conditions are attached hereto as Exhibit "B", and incorporated herein by reference.

**CITY OF TRACY - INSPECTION IMPROVEMENT AGREEMENT
THE BUNGALOWS (AKA THE CLASSICS), TRACT 3351
Page 2 of 12**

- E. The Conditions describe, among other things, improvements which are required for approval of the Final Map pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards.
- F. Improvement Plans and Specifications (which incorporate portions of the City's Standard Specifications) have been prepared on behalf of the Subdivider, and approved by the City Engineer, which describe in more detail the improvements which are required for approval of the Final Map. The Plans and Specifications, as approved by the City Engineer, are on file with the City Engineer, and are incorporated herein by reference. The term "Plans and Specifications" shall include nineteen (19) sheets of improvement plans titled "Improvement Plans for The Bungalows, Tract No. 3351" prepared by North Star Engineering of Modesto, California, six (6) sheets of improvement plans entitled "Joint Trench Plans for The Bungalows, Tract 3351" prepared by Sunshine Design, and eight (8) sheets of improvement plans entitled "Landscaping Plans for The Bungalows, Tract 3351" prepared by KLA & Associates of Sonora, California.
- G. Since the required improvements, as described in the Conditions and the Plans and Specifications, have not been completed, and in order to facilitate construction of improvements prior to approval and recordation of the Final Map, the Subdivider was required to execute this Agreement as authorized by Government Code section 66462.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The Subdivider shall perform or cause to be performed, the Work described in the Plans and Specifications and the Conditions (hereinafter "Work"), including landscaping, to the satisfaction of the City Engineer. The Work shall be performed, and all materials and labor shall be provided, at the Subdivider's expense, in the manner described in the Plans and Specifications. No change shall be made to the Scope of Work unless authorized in writing by the City Engineer. The Subdivider may submit a written request to the City Engineer for a change in the Scope of Work, as required by Tracy Municipal Code Section 12.36.060(f).
 - 1.1 It was determined that the Subdivider's obligation towards the repair and maintenance of the three (3) storm water treatment structures is estimated to be \$100,000 (hereinafter "Storm Water In-Lieu Fee). The Subdivider shall pay 50% of the Storm Water In-Lieu Fee, prior to the recordation of the Final Map and the remaining 50% of the Storm Water In-Lieu Fee prior to the issuance of the first building permit. If a public facility maintenance district is not formed at the time of final building inspection of the first residential house within the Final Map area, the City shall consider the payment of the Storm Water In-Lieu Fee to have satisfied the Subdivider's obligation towards the repair and maintenance of the

**CITY OF TRACY - INSPECTION IMPROVEMENT AGREEMENT
THE BUNGALOWS (AKA THE CLASSICS), TRACT 3351**

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three storm water treatment structures. The City shall not seek additional funds from the Subdivider, or its successors or assigns including but not limited to individual homeowners or a homeowners association, for maintenance or repair of the storm water treatment structures.

If a public facility maintenance district is formed prior to final building inspection of the first residential house within the Final Map area, the Subdivider shall participate and annex the Final Map area into the public facility maintenance district. The City shall return the unused portion of the cash deposit to the Subdivider within 15 working days from date of recordation of the assessment map.

If the City forms a public facility maintenance district after the final inspection of the first residential building within the Final Map area, the homeowners within the Final Map area will not be subject to any assessment that relates to the maintenance of the storm water treatment structures.

1.2 Prior to the recordation of the Final Map, the Subdivider shall pay the City cash in the amount of \$80,000 (Storm Drainage Outlet In-lieu Fee) for the cost of designing and installing two (2) storm water flow control gates at the Eastside Channel and all associated improvements that will be constructed by the City as part of the future Eastside Channel Upgrade Improvement project. Upon receipt of the payment for the Storm Drainage Outlet In-lieu Fee, the Subdivider's obligation towards installing the Project's permanent storm drainage connections at the Eastside Channel will be considered to have been fully satisfied. The Storm Drainage Outlet In-Lieu Fee includes design, construction, engineering inspection, and testing costs.

1.3 Prior to the approval of the Final Map, the Subdivider shall provide improvement security in the amount of \$3,000 (12 monuments multiplied by \$250 per monument), to guarantee setting and tagging of street centerline monuments as shown on the Final Map.

1.4 On October 15, 2013, pursuant to Resolution 2013-164, the City Council adopted the amended development fees for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). The adopted SJMSCP development fee for natural lands and agricultural land is \$13,295 per acre. The Project is considered an agricultural land and is subject to pay \$13,295 per acre. The Project is approximately 9.42 acres. The total SJMSCP development fee applicable to the Project is \$125,238.90. The SJMSCP development fee per residential lot is \$2,197.17 (calculated as 9.42 acres multiplied by \$13,295 per acre divided by 57 lots). This fee is due at the time of issuance of the grading permit.

**CITY OF TRACY - INSPECTION IMPROVEMENT AGREEMENT
THE BUNGALOWS (AKA THE CLASSICS), TRACT 3351**

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1.5 Prior to the approval of the Final Map, the Subdivider shall submit the improvement plans and supporting structural calculations including necessary design details for the proposed masonry wall along the northern boundary of the Property. The entire masonry wall and footing shall be located within City's right-of-way. The City will be responsible for the repair and maintenance of the masonry wall. Masonry wall/ fences along the frontage of the Project on MacArthur Drive and Pescadero Avenue are private improvements. The Subdivider shall disclose to individual lot buyer(s) their obligations and responsibilities for repairing and maintaining portion of the masonry wall within their respective lots.

2. GRADING AND STREETS MAINTENANCE.

2.1. Until all the Work is accepted by the City as complete and all applicable warranty periods have expired, the Subdivider shall diligently perform the necessary maintenance of the entire Project site including berms and streets constructed within the Project to the satisfaction of the City Engineer at the Subdivider's own cost.

2.2. The Subdivider shall maintain the streets including the removal and disposal of weed and accumulated debris.

2.3. All public improvements including roads, sewer, water and storm drain constructed within the Project will be maintained by the Subdivider until accepted by the City as complete.

3. **FILING OF FINAL MAP(S)**: Subdivider understands and agrees that no final map may be filed for the Project until after the Subdivider and the City enter into a Subdivision Improvement Agreement which addresses all requirements of the conditions. Neither the execution of this Agreement, nor the completion of the work, shall cause Subdivider to acquire any vested rights to file a final map, to the payment of any development impact fees, and/or the performance of any conditions. It is expressly agreed that Subdivider shall be subject to all laws and regulations now in force or hereinafter enacted affecting the Project. By executing this Agreement, the Subdivider fully understands and agrees to comply with these conditions.

4. **SUBDIVIDER'S AUTHORIZED REPRESENTATIVE**: At all times during the progress of the Work, Subdivider shall have a competent foreman or superintendent (hereinafter Authorized Representative") on site with authority to act on behalf of the Subdivider. The Subdivider shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. The Subdivider shall, at all times, keep the City Engineer informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work.

**CITY OF TRACY - INSPECTION IMPROVEMENT AGREEMENT
THE BUNGALOWS (AKA THE CLASSICS), TRACT 3351**

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5. **LOCATION OF PERFORMANCE**: The Subdivider shall perform all Work at the locations and grades shown on the Plans and Specifications. Any easement or right-of-way necessary for the performance of the Work shall be acquired by the Subdivider at the Subdivider's sole cost and expense.

6. **IMPROVEMENT SECURITY**: Concurrently with the execution of this Agreement by the Subdivider, and prior to the commencement of any Work, the Subdivider shall furnish contract security, in a form authorized by the Subdivision Map Act (including Government Code Section 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:
 - 6.1. **Faithful Performance** security in the amount of **\$1,876,260** (based on the Engineer's Estimate approved by the City) to secure faithful performance of this Agreement (until the date on which the City Council accepts the work as complete) pursuant to Government Code sections 66499.1, 66499.4, and 66599.9

 - 6.2. **Labor and Material** security in the amount of **\$1,876,260** (based on the Engineer's Estimate approved by the City) to secure payment by the Subdivider to laborers and materialmen (until the date on which claims are required to be made by laborers and materialmen) pursuant to Government Code sections 66499.2, 66499.3, 66499.4 and 66499.7(b).

 - 6.3. **Warranty security** in the amount of **\$187,626** (based on the Engineer's Estimate approved by the City) to secure faithful performance of this Agreement (from the date on which the City Council accepts the Work as complete until one year thereafter) pursuant to Government Code sections 66499.1, 66499.4 and 66499.9.

7. **INSURANCE**: Concurrently with the execution of this Agreement by the Subdivider, and prior to the commencement of any Work, the Subdivider shall furnish evidence to the City that all of the following insurance requirements have been satisfied.
 - 7.1. **General**: The Subdivider shall, throughout the duration of this Agreement, maintain insurance to cover Subdivider, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

 - 7.2. **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$3,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

**CITY OF TRACY - INSPECTION IMPROVEMENT AGREEMENT
THE BUNGALOWS (AKA THE CLASSICS), TRACT 3351
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7.3. Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

7.4. Workers' Compensation coverage shall be maintained as required by the State of California.

7.5. Endorsements. Subdivider shall obtain endorsements to the automobile and commercial general liability with the following provisions:

7.5.1. The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an additional "insured".

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

7.6. Notice of Cancellation. Subdivider shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the City should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

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

7.8. Insurance Certificate. Subdivider shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney.

7.9. Substitute Certificates. No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, Subdivider shall provide a substitute certificate of insurance.

7.10. Subdivider's Obligation. Maintenance of insurance by the Subdivider as specified in this Agreement shall in no way be interpreted as relieving the Subdivider of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Subdivider may carry, at its own expense, such additional insurance as it deems necessary.

**CITY OF TRACY - INSPECTION IMPROVEMENT AGREEMENT
THE BUNGALOWS (AKA THE CLASSICS), TRACT 3351
Page 7 of 12**

8. **PERMITS, LICENSES, AND COMPLIANCE WITH LAW:** The Subdivider shall, at the Subdivider's expense, obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, the Subdivider shall obtain a City of Tracy Business License. The Subdivider shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
9. **TIME OF PERFORMANCE:** Time is of the essence in the performance of the Work, and timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. The Subdivider shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
- 9.1. **Commencement of Work.** No later than fifteen (15) days prior to the commencement of Work, the Subdivider shall provide written notice to the City Engineer of the date on which the Subdivider shall commence Work. The Subdivider shall not commence Work until after the notice required by this section is properly provided, and the Subdivider shall not commence Work prior to the date specified in the written notice.
- 9.2. **Schedule of Work.** Concurrently with the written notice of commencement of Work, the Subdivider shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect the Subdivider's prosecution of Work.
- 9.3. **Completion of Work.** The Subdivider shall complete all Work by no later than three hundred sixty-five (365) days after the City's execution of this Agreement. If the Work is not completed and accepted by City Council by this date, City Engineer may grant an extension of time if a) the Subdivider submits a written request for extension at least ten (10) days prior to expiring date of completion, b) the City Engineer determines that Work is substantially complete and an extension is warranted, c) the Subdivider amends this Agreement and provides bonds to cover the term of the Amendment, and d) the Subdivider pays all processing fees for such time extension.

The Subdivider shall complete portion of the Work on MacArthur Drive and Pescadero Avenue including the construction of the right-turn lane and landscaping improvements along MacArthur Drive, and the modification of the traffic signal and installation of associated improvements at the intersection of MacArthur Drive and Pescadero Avenue as shown on the Improvement Plans, prior to final inspection of the first residential building within the Final Map area.

**CITY OF TRACY - INSPECTION IMPROVEMENT AGREEMENT
THE BUNGALOWS (AKA THE CLASSICS), TRACT 3351
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9.4. Reversion to Acreage. In the event that the Subdivider fails to commence the Work prior to the date on which completion is due, the Subdivider shall, upon written request by the City, consent to the reversion to acreage of all real property described by the Final Map, and the Subdivider shall bear all costs thereof.

10. INSPECTION BY THE CITY. In order to permit the city to inspect the Work, the Subdivider shall, at all times, provide to the City proper and safe access to the Project site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

11. INSPECTION FEES. Concurrently with the execution of this Agreement by the Subdivider, and prior to the commencement of any Work, the Subdivider shall pay the City Inspection Fees in the amount of three and one-half percent (3-1/2%) of the estimated Project costs (as approved by the City Engineer). In the event that the City determines that the City's actual costs of inspecting the Work (including all costs and expenses of inspection, reviewing maps and plans, field checking, testing, and administrative and overhead costs of fifteen percent (15%) exceed the amount of Inspections Fees paid by the Subdivider, the Subdivider shall pay the City the actual costs of inspecting the Work less Inspection Fees previously paid. In the event that the City requires an independent inspection, the Subdivider shall pay all such costs and provide a report to the City.

In the event that the City determines that the City's actual costs of inspecting the Work (including all costs and expenses of inspection, reviewing maps and plans, field checking, testing, and administrative and overhead costs of fifteen percent (15%) is less than the amount of Inspection Fees paid by the Subdivider, the City shall reimburse the Subdivider the cost difference between the Inspection Fees previously paid and the actual costs of inspecting the Work.

12. DEFAULT.

12.1. In the event that the Subdivider is in default of this Agreement, as defined in this section, the City Engineer shall provide written notice to the Subdivider and the Subdivider's surety (if any) in which the default is described.

12.2. The Subdivider shall be in default of this Agreement if the City Engineer determines that any one of the following conditions exist:

12.2.1. The Subdivider is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.

12.2.2. The Subdivider abandons the Project site.

**CITY OF TRACY - INSPECTION IMPROVEMENT AGREEMENT
THE BUNGALOWS (AKA THE CLASSICS), TRACT 3351
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12.2.3. The Subdivider fails to perform one or more requirements of this Agreement.

12.2.4. The Subdivider fails to replace or repair any damage caused by Subdivider or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.

12.2.5. The Subdivider violates any legal requirement related to the Work.

12.3. In the event that the Subdivider fails to cure the default within five (5) days, or provide adequate written assurance to the satisfaction of the City Engineers that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in the discretion of the City Engineer, take any or all of the following actions:

12.3.1. Cure the default and charge the Subdivider for the costs thereof, including administrative costs and interest in any amount equal to seven percent (7%) per annum from the date of default.

12.3.2. Demand the Subdivider to complete performance of the Work.

12.3.3. Demand the Subdivider's surety (if any) to complete performance of the Work.

13. ACCEPTANCE OF WORK: Prior to acceptance of the Work by the City Council, the Subdivider shall be solely responsible for maintaining the quality of the Work, and maintaining safety at the Project site. The Subdivider's obligation to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid and the City Council has accepted the Work as complete.

14. WARRANTY PERIOD. The Subdivider shall warrant the quality of the Work, in accordance with the terms of the Plans and Specifications, for a period of one year after acceptance of the Work by the City Council. In the event that (during the one year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of the Subdivider under this Agreement, the Subdivider shall be in default.

15. INDEPENDENT CONTRACTOR STATUS. Subdivider is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Subdivider is not City's employee and Subdivider 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 whatsoever, unless the City provides

**CITY OF TRACY - INSPECTION IMPROVEMENT AGREEMENT
THE BUNGALOWS (AKA THE CLASSICS), TRACT 3351
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prior written authorization to Subdivider.

- 16. OWNERSHIP OF WORK.** All original documents prepared by Subdivider for this Agreement are the property of the City, and shall be given to the City at the completion of Subdivider's Work, or upon demand from the City.
- 17. ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
- 18. INDEMNIFICATION.** Subdivider shall indemnify, defend, and hold harmless the 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) resulting from or arising out of the performance of the Work by Subdivider or Subdivider's agents, representatives, contractors, subcontractors, or employees.
- 19. ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the Subdivider's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. Consent by the City of one assignment shall not be deemed to be consent to any subsequent assignment.
- 20. NOTICES.**
- 20.1.** 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 respective party as follows:
- | | |
|------------------------|-----------------------|
| <u>To CITY:</u> | <u>To Subdivider:</u> |
| City Engineer | Doug Goldsmith |
| City of Tracy | Woodside O5N, LP |
| 333 Civic Center Plaza | 111 Woodmere Road |
| Tracy, CA 95376 | Suite 190 |
| | Folsom, CA 95630 |
- 20.2.** 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.

**CITY OF TRACY - INSPECTION IMPROVEMENT AGREEMENT
THE BUNGALOWS (AKA THE CLASSICS), TRACT 3351
Page 11 of 12**

- 21. MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 22. 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.
- 23. SEVERABILITY.** In the event any 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 full force and effect.
- 24. JURISDICTION AND VENUE.** The interpretation, validity, and enforcement of the Agreement shall be governed by the construed under the laws of the State of California. Any suit, claim, or legal proceeding of any king related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 25. ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the improvements to be constructed for this Project. This Agreement supersedes all prior negotiations, representations or agreements.

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**CITY OF TRACY - INSPECTION IMPROVEMENT AGREEMENT
THE BUNGALOWS (AKA THE CLASSICS), TRACT 3351
Page 12 of 12**

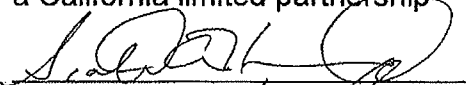
27. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Subdivider and the City. This Agreement shall inure to the benefit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

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY,
a municipal corporation

SUBDIVIDER
WOODSIDE O5N, LP,
a California limited partnership

By: Brent Ives
Title: MAYOR
Date: _____



By: Scott A. Hoisington
Title: UP
Date: 11/19/14

Attest:

By: Carole Fleischmann
Title: CITY CLERK
Date: _____

Approved As To Form:

By: Daniel Sodergren
Title: CITY ATTORNEY
Date: _____

04-092314cm

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

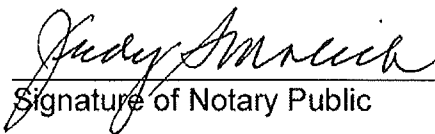
On November 19, 2014 before me, Judy Smolich, a Notary Public in and for said County and State personally appeared Scott A Hoisington who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they 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.



(Notary Seal)

WITNESS my hand and official seal.


Signature of Notary Public

RESOLUTION 2014- _____

APPROVING AN INSPECTION IMPROVEMENT AGREEMENT FOR THE BUNGALOWS (AKA THE CLASSICS), TRACT 3351, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The Vesting Tentative Subdivision Map for the Bungalows Subdivision, a single-family residential subdivision with a total of 57 lots, was approved by City Council on May 20, 2014, pursuant to Resolution 2014-078, and

WHEREAS, The Subdivider has submitted improvement plans for the subdivision improvements for approval and has requested that the City proceed with construction of the improvements pending approval of the Final Map and execution of the Subdivision Improvement Agreement, and

WHEREAS, Improvement plans have been reviewed by the Engineering Division and all improvements required of the Bungalows, Tract 3351, are guaranteed as part of the Inspection Improvement Agreement, and

WHEREAS, Under the provisions of the Inspection Improvement Agreement, the Subdivider will construct the public improvements at his own risk and responsibility prior to approval and recordation of the Final Map, and

WHEREAS, There will be no fiscal impact to the General Fund. The Subdivider has paid the cost of plan checking, engineering inspection, and agreement processing;

NOW, THEREFORE BE IT RESOLVED, That City Council approves the Inspection Improvement Agreement for the Bungalows, Tract 3351, and authorizes the Mayor to execute the Inspection Improvement Agreement.

* * * * *

The foregoing Resolution 2014-_____ was passed and adopted by the Tracy City Council on the 2nd day of December, 2014, by the following vote:

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

MAYOR

ATTEST:

INTERIM CITY CLERK

AGENDA ITEM 5.D

REQUEST

APPROVE AN OFFSITE IMPROVEMENT AGREEMENT FOR THE CORDES RANCH TWO MILLION GALLON WATER TANK TO BE LOCATED AT THE SOUTHEAST CORNER OF HANSEN ROAD AND ROAD E, AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

Approval of an Offsite Improvement Agreement will allow Prologis L. P., Delaware limited partnership (Developer), to proceed with the construction of the water tank and associated pipelines and appurtenances, which are necessary to serve several light industrial developments within the Cordes Ranch Business Park.

DISCUSSION

The Development Services Director has approved Development Review applications for the construction of three industrial buildings within the Cordes Ranch Business Park. As part of the development review approval, these projects were subject to certain conditions of approval. After six months of occupancy of any of the three industrial buildings, the two million gallon water tank, including the necessary pipelines are to be completed by the Developer and made operational, to provide potable water to these industrial projects.

This water tank is part of the Water Master Plan infrastructure and funded from development impact fees to be collected from new developments. The location of the tank is on private property and needs to be operational to serve the above developments. To ensure timely completion of this tank, the developer has opted to construct this tank in accordance with City standards and will dedicate the improvements to the City after its completion. An Offsite Improvement Agreement is required to be executed prior to the start of construction of this tank to ensure its timely completion and construction inspection to be provided by the City. This agreement is limited to the structural part of the tank only. Another Offsite Improvement Agreement will be executed for completion of other improvements including the pump station and site improvements. The developer will be eligible for credits or reimbursements for the cost of construction of this tank.

The location of the tank and size of the tank has been modified from what is shown in the Water Master Plan. The size of the tank has been analyzed to ensure the capacity meets the proposed development needs. The existing Water Master Plan will be amended and the water impact fees will be updated at a later date to reconcile these changes.

The Developer has completed the design of the two million gallon water tank and appurtenances and has submitted the Improvement Plans, Specifications and Cost Estimates (PSE). City staff has reviewed the PSE and found them to be complete. The

Developer has executed the Offsite Improvement Agreement and submitted the required security to guarantee completion of the offsite waterline improvements. The Offsite Improvement Agreement and Improvement Plans are on file with the City Engineer and are available for review upon request.

Upon completion of all improvements, the City will accept the improvements for maintenance and will accept all offers of dedication of public right-of-way at that time.

FISCAL IMPACT

There will be no fiscal impact to the General Fund. The Developer will pay for the cost of inspection and processing the agreement.

STRATEGIC PLAN

This agenda item is consistent with the City Council's Economic Development Strategy to ensure physical infrastructure necessary for development.

RECOMMENDATION

That City Council, by resolution, approve the Offsite Improvement Agreement for the Cordes Ranch two million gallon water tank at the southeast corner of Hansen Road and Road "E", and authorize the Mayor to execute the Offsite Improvement Agreement.

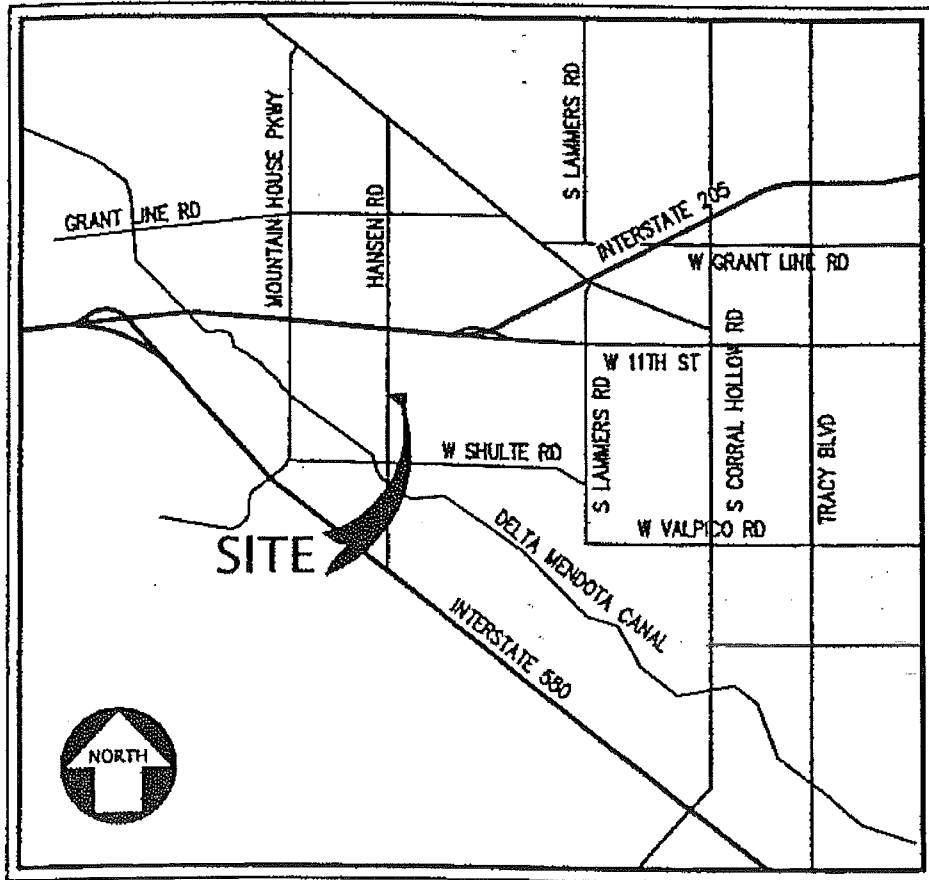
Prepared by: Criseldo Mina, P. E., Senior Civil Engineer

Reviewed by: Kuldeep Sharma, Interim City Engineer
Andrew Malik, Development Services Director
Maria A. Hurtado, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS:

Exhibit A – Location Map
Exhibit B – Offsite Improvement Agreement



VICINITY MAP

N.T.S.

**CITY OF TRACY
OFFSITE IMPROVEMENT AGREEMENT
1.5 MILLION GALLON CORDES RANCH AND 0.5 MILLION GALLON PATTERSON
PASS POTABLE WATER TANK**

This **OFFSITE IMPROVEMENT AGREEMENT FOR THE 1.5 MILLION GALLON CORDES RANCH AND 0.5 MILLION GALLON PATTERSON PASS POTABLE WATER TANK** ("**Agreement**") is made and entered into by and between the **CITY OF TRACY**, a municipal corporation ("**City**") and **PROLOGIS, L. P.**, a Delaware limited partnership ("**Developer**").

RECITALS

- A. Developer is the legal owner of approximately one thousand two hundred and forty two (1,242) acres of real property, as shown and more particularly described in attached Exhibit A ("**Property**").
- B. The Property is within the Cordes Ranch Specific Plan Area, which consists of approximately one thousand seven hundred and eighty (1,780) acres ("**Specific Plan Area**"). The Cordes Ranch Specific Plan ("**Specific Plan**") is intended to create a state-of-the-art commerce and business park within the Specific Plan Area 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**").
- C. On September 3, 2013, the Tracy City Council ("**City Council**") adopted the Specific Plan and approved related land use entitlements to enable the Project to proceed. In connection therewith, the City Council approved that certain *Development Agreement By and Between the City of Tracy and Prologis, L.P.* (the indirect parent of Developer) ("**Development Agreement**").
- D. In accordance with the Development Agreement, the Specific Plan, and the Citywide Water System Master Plan ("**Master Plan**"), Developer has submitted, and City has approved, those certain improvement plans and specifications relating to the construction of a 1.5 million gallon Cordes Ranch and 0.5 million gallon Patterson Pass Water Tank and associated improvements (collectively, "**Water Tank**" or "**Work**"). The Work is described more fully in the seven (7) sheets of improvement plans entitled "Cordes Ranch – Improvement Plans for Water Tank Site prepared by Kier & Wright Engineers of Livermore, California and eleven (11) sheets of improvement plans entitled "2.0 MG Cordes Ranch Tank" prepared by DN Tanks/ DYK and Natgun- Generations Strong of El Cajon, California ("**Plans and Specifications**"). The Plans and Specifications are on file with the City Engineer, and are incorporated herein by reference.
- E. The Plans and Specifications have been prepared on behalf of Developer and City, and approved by the City Engineer, which describe in more detail the Work required in this Agreement.

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
1.5 MILLION GALLON CORDES RANCH AND 0.5 MILLION GALLON PATTERSON
PASS POTABLE WATER TANK
Page 2 of 10**

F. Since the Work, as described above and in the Plans and Specifications, has not been completed, Developer has requested to execute this Agreement as authorized by Government Code Section 66462.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. SCOPE OF WORK. Developer shall perform, or cause to be performed, the Work, to the satisfaction of the City Engineer, pursuant to Section 4 of the Development Agreement. The Work shall be performed, and all materials and labor shall be provided, at Developer's expense, in the manner described in the Plans and Specifications, subject to fee reconciliation provisions set forth in Section 6 of the Development Agreement. No material change shall be made to the scope of Work unless authorized in writing by the City Engineer, such approval not to be unreasonably withheld. Developer may submit a written request to the City Engineer for a change in the scope of Work, as required by Tracy Municipal Code Section 12.36.060(f). Any portion(s) of the Work that are within City's right(s)-of-way and/or easement(s) are to be performed by the Developer in accordance with the requirements of the State prevailing wage laws, in the event and to the extent applicable.
2. DEVELOPER'S AUTHORIZED REPRESENTATIVE. At all times during the progress of the Work, Developer shall have a competent foreman or superintendent ("**Authorized Representative**") on site with authority to act on Developer's behalf. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the name and telephone number of the Authorized Representative. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work. Exhibit B attached hereto includes the initial contact information referenced herein.
3. LOCATION OF PERFORMANCE. Developer shall perform the Work at the locations and grades shown on the Plans and Specifications or as otherwise approved by the City Engineer. Subject to Section 3.8 of the Development Agreement, in the event and to the extent required for the Work, Developer shall acquire all easements and/or rights-of-way necessary for the performance of the Work, at Developer's expense, subject to fee reconciliation provisions set forth in Section 6 of the Development Agreement.
4. IMPROVEMENT SECURITY. Concurrently with the execution of this Agreement, and prior to the commencement of any Work, Developer shall furnish contract security, in a form authorized by the Subdivision Map Act (including Government Code Sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
1.5 MILLION GALLON CORDES RANCH AND 0.5 MILLION GALLON PATTERSON
PASS POTABLE WATER TANK
Page 3 of 10**

Program Improvements – 1.5 Million Gallon Cordes Ranch Water Tank

- 4.1. Faithful Performance security in the amount of **\$3,344,750** to secure faithful performance of this Agreement (until the date when the City Council accepts the Work as complete) pursuant to Government Code section 66499.1, 66499.4, and 66499.9.
- 4.2. Labor and Material security in the amount of **\$3,344,750** to secure payment by Developer to laborers and materialmen (until the date when any and all claims in connection with the Work are required to be made by laborers and materialmen in accordance with applicable laws) pursuant to Government Code Sections 66499.2, 66499.3, 66499.4, and 66499.7(b).
- 4.3. Warranty security in the amount of **\$334,475** to secure faithful performance of this Agreement (from the date when the City Council accepts the Work as complete until one (1) year thereafter) pursuant to Government Code Section 66499.1, 66499.4, and 66499.9.

Program Improvements – 0.5 Million Gallon Patterson Pass Water Tank

- 4.4. Faithful Performance security in the amount of **\$2,419,950** to secure faithful performance of this Agreement (until the date when the City Council accepts the Work as complete) pursuant to Government Code section 66499.1, 66499.4, and 66499.9.
 - 4.5. Labor and Material security in the amount of **\$2,419,950** to secure payment by Developer to laborers and materialmen (until the date when any and all claims in connection with the Work are required to be made by laborers and materialmen in accordance with applicable laws) pursuant to Government Code Sections 66499.2, 66499.3, 66499.4, and 66499.7(b).
 - 4.6. Warranty security in the amount of **\$241,995** to secure faithful performance of this Agreement (from the date when the City Council accepts the Work as complete until one (1) year thereafter) pursuant to Government Code Section 66499.1, 66499.4, and 66499.9.
5. INSURANCE. Concurrently with the execution of this Agreement, and prior to the commencement of any Work, Developer shall furnish evidence to City that all of the following insurance requirements have been satisfied by the Developer or its general contractor responsible for the Work.
 - 5.1. General. Developer shall, throughout the duration of this Agreement, maintain or cause to be maintained insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services for the Work covered by this Agreement at the minimum levels set forth herein.

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
1.5 MILLION GALLON CORDES RANCH AND 0.5 MILLION GALLON PATTERSON
PASS POTABLE WATER TANK
Page 4 of 10**

- 5.2. Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than Three Million Dollars (\$3,000,000) general aggregate and One Million Dollars (\$1,000,000) per occurrence for general liability, bodily injury, personal injury, and property damage.
- 5.3. Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage shall be maintained in an amount not less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- 5.4. Workers' Compensation coverage shall be maintained as required by the State of California.
- 5.5. Endorsements. Developer shall ensure the automobile and commercial general liability provide the following provisions:
 - 5.5.1. City (including its elected and appointed officials, officers, employees, and agents) shall be named as an additional "insured."
 - 5.5.2. For any claims related to this Agreement, Developer's coverage shall be primary insurance with respect to City. Any insurance maintained by City shall be excess of Developer's insurance and shall not contribute with it.
- 5.6. Notice of Cancellation. Developer shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days' prior written notice to City should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 5.7. Authorized Insurers. All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 5.8. Insurance Certificate. Developer shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form reasonably satisfactory to the City Attorney.
- 5.9. Substitute Certificates. No later than five (5) calendar days prior to the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.
- 5.10. Developer's Obligation. Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
1.5 MILLION GALLON CORDES RANCH AND 0.5 MILLION GALLON PATTERSON
PASS POTABLE WATER TANK**

Page 5 of 10

of its obligations hereunder (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary or desirable.

6. PERMITS, LICENSES AND COMPLIANCE WITH LAW. Developer shall, at its expense, obtain and maintain all necessary permits, approvals and licenses for performance of the Work, subject to City's cooperation pursuant to Sections 3.4 and 3.5 of the Development Agreement. In its performance of the Work, Developer shall comply with all applicable local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
7. TIME OF PERFORMANCE. Time is of the essence in the performance of the Work, and Developer shall with diligence and in good faith adhere to the timing requirements set forth herein unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to City, in writing, no later than ten (10) days after the start of the condition that purportedly caused the delay, and not later than the date on which performance is due.
 - 7.1. Commencement of Work. No later than fifteen (15) days prior to the commencement of the Work, Developer shall provide written notice to the City Engineer of the date on which Developer intends to commence the Work. Developer shall not commence the Work until after the notice required by this Section 7.1 is provided, and Developer shall not commence Work prior to the date specified in said written notice.
 - 7.2. Schedule of Work. Concurrently with the written notice of commencement of Work, Developer shall provide City with a written estimated schedule of Work, which shall be updated in writing as necessary to accurately reflect Developer's prosecution of the Work.
 - 7.3. Completion of Work. Developer shall complete all Work by no later than five hundred forty (540) calendar days after Developer's submittal of its notice of commencement of work pursuant to Section 7.1 above, subject to extension for force majeure.
8. INSPECTION BY CITY. In order to permit City to inspect the Work, Developer shall, at all times, provide to City reasonable and safe access to the Work site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation. City inspections of the Work shall be conducted in accordance with Section 4 of the Development Agreement.
9. INSPECTION, OTHER FEES AND PROGRAM FEE CREDITS. All fees due to City in connection with the Work shall be paid in accordance with the Development Agreement. Accordingly, concurrently with the execution of this Agreement, and prior to the commencement of any Work, Developer shall pay City the applicable

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
1.5 MILLION GALLON CORDES RANCH AND 0.5 MILLION GALLON PATTERSON
PASS POTABLE WATER TANK
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Program Soft Costs (as that term is defined in the Development Agreement) in accordance with Section 5.1(b) of the Development Agreement.

10. DEFAULT.

10.1. Notice of Default. Subject to compliance with Sections 4.4(a) and (b) of the Development Agreement, in the event that Developer is in default of this Agreement, as defined in this Section 10, the City Engineer shall provide written notice to Developer and Developer's surety (if any) in which the default is described.

10.2. Material Breach. Developer shall be in default of this Agreement if Developer fails to perform one or more material requirements of this Agreement, and fails to cure any such non-performance pursuant to Section 10.3, below.

10.3. Cure of Default. In the event that Developer fails, within thirty (30) calendar days after receipt of written notice, to either cure the default or provide adequate written assurance to the reasonable satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in its discretion, take any or all of the following actions:

10.3.1. Cure the default in accordance with Section 4.4(b) of the Development Agreement.

10.3.2. Demand that Developer complete performance of the Work.

10.3.3. Demand that Developer's surety (if any) complete performance of the Work.

11. REPAIR OF ANY DAMAGE. In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other property owners, then Developer shall promptly take all reasonable steps to repair or replace (as necessary) such property to remedy the damage caused thereto.

12. ACCEPTANCE OF WORK. Prior to acceptance of the Work by the City Council, Developer shall be solely responsible for maintaining the quality of the Work, and maintaining safety at the Work site.

13. WARRANTY PERIOD. Developer shall warrant the quality of the Work, in accordance with the terms of the Plans and Specifications, for a period of one (1) year after acceptance of the Work by the City Council. In the event that (during said one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
1.5 MILLION GALLON CORDES RANCH AND 0.5 MILLION GALLON PATTERSON
PASS POTABLE WATER TANK**

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Agreement, Developer shall be in default and shall cure such default as required hereunder.

14. INDEPENDENT CONTRACTOR STATUS. Developer is an independent contractor, and the parties agree that City shall have no responsibility for any acts of Developer's employees, agents, representatives, contractors or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of City as an agent, or to bind City to any obligation whatsoever, unless City provides prior written authorization to Developer.
15. OWNERSHIP OF WORK. All original documents prepared by Developer for this Agreement shall be given to City upon City's acceptance of the Work; provided, however, ownership of said documents shall be determined in accordance with applicable laws.
16. ATTORNEY'S FEES. In the event any legal action or proceeding is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
17. INDEMNIFICATION. Consistent with the security provisions contained herein, Developer 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) resulting in the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees until such time as the City Council accepts the Work, and the City becomes responsible for the maintenance, operation and repair of the Work, at which time the indemnification obligations under this Section 17 shall automatically terminate, with regard to any cause of action arising after such date. For avoidance of doubt, this termination shall not affect Developer's warranty obligations set forth in Section 13, above.
18. ASSIGNMENT AND DELEGATION. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the written consent of City, which shall not be unreasonably withheld, delayed or denied. Any attempt to assign or delegate this Agreement without City's written consent shall be void and of no force and effect. Consent by City to one assignment shall not be deemed to be consent to any subsequent assignment.
19. NOTICES.
 - 20.1. Notice in Writing. All notices, demands, or other communications that this Agreement contemplates, authorizes or requires shall be in writing and shall be personally delivered or mailed to the respective party as follows:

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
1.5 MILLION GALLON CORDES RANCH AND 0.5 MILLION GALLON PATTERSON
PASS POTABLE WATER TANK**

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City: City of Tracy
Attn: City Engineer
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

- 20.2. 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) two (2) business days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.
21. MODIFICATIONS. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
22. 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.
23. SEVERABILITY. In the event a court of competent jurisdiction holds any term of this Agreement invalid, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
1.5 MILLION GALLON CORDES RANCH AND 0.5 MILLION GALLON PATTERSON
PASS POTABLE WATER TANK
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24. 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.

25. ENTIRE AGREEMENT. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the Work. This Agreement supersedes all prior negotiations, representations or agreements as such may relate to performance of the Work.

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**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
1.5 MILLION GALLON CORDES RANCH AND 0.5 MILLION GALLON PATTERSON
PASS POTABLE WATER TANK
Page 10 of 10**

26. 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 Developer and City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY, a municipal corporation

Brent Ives
MAYOR
Date: _____

Attest:


Carole Fleischmann
CITY CLERK
Date: _____

APPROVED AS TO FORM:

Dan Sodergren
CITY ATTORNEY
Date: _____

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

By: Prologis, Inc., a Maryland Corporation, its General Partner



Ryan George
Its: Senior Vice President
Date: 11.24.14

05-090814cm

RESOLUTION _____

APPROVING AN OFFSITE IMPROVEMENT AGREEMENT FOR THE CORDES RANCH TWO MILLION GALLON WATER TANK TO BE LOCATED AT THE SOUTHEAST CORNER OF HANSEN ROAD AND ROAD E, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The Development Services Director has approved Development Review applications for the construction of three industrial buildings within the Cordes Ranch Business Park , and

WHEREAS, As part of the development review approval, these projects were subject to certain conditions of approval, and

WHEREAS, After six months of occupancy of any of the three industrial buildings, the two million gallon water tank including the necessary pipelines are to be completed by the Developer and made operational, to provide potable water to these industrial projects, and

WHEREAS, The Developer has completed the design of the two million gallon water tank and appurtenances and has submitted the Improvement Plans, Specifications and Cost Estimates, and

WHEREAS, The Developer has executed the Offsite Improvement Agreement and submitted the required security to guarantee completion of the offsite waterline improvements, and

WHEREAS, There will be no fiscal impact to the General Fund. The Developer will pay for the cost of inspection and processing the agreement;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the Offsite Improvement Agreement for Cordes Ranch two million gallon water tank at the southeast corner of Hansen Road and Road "E", and authorizes the Mayor to execute the Offsite Improvement Agreement.

The foregoing Resolution 2014-_____ was adopted by the Tracy City Council on the 2nd day of December, 2014, by the following votes:

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

MAYOR

ATTEST:

INTERIM CITY CLERK

AGENDA ITEM 5.E

REQUEST

DECLARE THE .938 ACRE CITY-OWNED PROPERTY LOCATED AT THE SOUTHEAST CORNER OF NAGLEE ROAD AND PARK AND RIDE DRIVE (APN 212-290-48) AS SURPLUS PROPERTY, AUTHORIZATION OF A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF TRACY AND BCP TRACY, LLC (BCP), A CALIFORNIA CORPORATION, AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE PURCHASE AND SALE AGREEMENT AND RELATED DOCUMENTS

EXECUTIVE SUMMARY

The City of Tracy is the owner of a 0.938 acre property located near the southeast corner of Naglee Road and Park and Ride Drive, adjacent to the Texas Roadhouse Restaurant. BCP Tracy, LLC, a California Corporation, has been marketing this site under an Exclusive Negotiating Rights Agreement (ENRA) and has received a fully executed Letter of Intent to develop the site for an El Pollo Loco restaurant. Staff believes this is a good use for the site due to El Pollo Loco's limited parking demand and high ranking (#13) on the City's Retail and Restaurant Survey.

DISCUSSION

In April 2005, City Council approved a Disposition and Development Agreement with Armadillo Realty, LLC for the purpose of developing a Texas Roadhouse Restaurant. The agreement provided for certain onsite and offsite improvements, such as streets, sidewalks, storm drains, sanitary sewers, common area landscaping, and other improvements on the Texas Roadhouse site, as well as the adjacent .938 acre subject property. Additionally, the agreement provided for the development of a 4,000 square foot pad site on the adjacent property. While these improvements provided better access to the Texas Roadhouse property, they also improved the frontage appeal on the adjacent city-owned parcel, making the parcel more attractive.

On May 11, 2011, the City entered into a Settlement Agreement with Armadillo Realty, LLC, to clarify matters such as the lot line adjustment between Parcels A and B, reciprocal easements, use limitation on Parcel B, to correct references on the Disposition and Development Agreement, and assign the final description of Parcels A and B, amounts owed by Armadillo Realty, LLC and reimbursement due from the City. Per the agreement, \$271,942 will be collected as part of the property sale and reimbursed to Armadillo Realty, in part to reimburse for frontage and other site improvements.

On November 19, 2014, in accordance with State Government Code Section 65402(a), the Planning Commission reported that the disposal of the subject property was in conformance with the City's adopted General Plan. This section requires that any disposition of surplus property, defined in Section 54221 as land owned by any local agency that is determined to be no longer necessary for the agency's use, requires a report of conformity to the agencies General Plan. The City initiated this disposal of real

property because it has been determined that the subject property will not be needed for any future public facility.

The City and BCP have reached out to numerous restaurant tenants that we believed would be a good fit for Tracy and the surrounding retail area. Unfortunately, due to site constraints, the City has received sparse interest, especially from restaurants focused on a "sit-down style" business model. Feedback from several prospective tenants indicated a high level of concern relative to the available parking during the evening hours due to Texas Roadhouse's significant parking demand. The buildable area of the site is limited as well, due to shared parking and a driveway easement.

In order to accommodate parking concerns, BCP expanded their search to include quick service restaurants that utilize a drive-thru, for which parking requirements are greatly reduced. As a result, BCP has received an Executed Letter of Interest from El Pollo Loco.

Staff believes this is a good use for the site. El Pollo Loco is a unique user for Tracy and a restaurant which ranked in the top 15 of desired restaurants in the City's Retail and Restaurant Survey. El Pollo Loco also does not share the parking concern that other "sit-down style" restaurants expressed.

STRATEGIC PLAN

This agenda item supports Goal 2, Objective 2a of the Economic Development Strategic Plan by focusing recruitment efforts on retailers and restaurants that meet the desires of the Tracy community.

FISCAL IMPACT

Upon the close of escrow, the City will receive payment of \$545,000, from which the City will reimburse Armadillo Realty, LLC, \$271,942 for parking and other site improvements per the Settlement Agreement between the City of Tracy and Armadillo Realty, LLC, dated September 28, 2001. The balance of the proceeds from the sale will be placed in the City's General Fund.

RECOMMENDATION

That City Council declare the .938 acre city-owned property located at the southeast corner of Naglee Road and Park and Ride Drive (APN 212-290-48) as surplus property, authorize a purchase and sale agreement between the City of Tracy and BCP Tracy, LLC, a California Corporation, and authorize the Mayor to execute the purchase and sale agreement and related documents.

Prepared by: Barbara Harb, Management Analyst

Reviewed by: Andrew Malik, Development Services Director
Maria A. Hurtado, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A – Location Map

Attachment B – Purchase and Sale Agreement between BCP Tracy, LLC and the City of Tracy

POR. NAGLEE BURK TRACT

THIS MAP IS FOR ASSESSMENT USE ONLY

212-29



- A - R. S. Bk. 19 Pg. 122
- B - P. M. Bk. 09 Pg. 047
- C - P. M. Bk. 21 Pg. 026
- D - P. M. Bk. 22 Pg. 044
- E - P. M. Bk. 22 Pg. 076
- F - P. M. Bk. 23 Pg. 125

HIGHEST A.P.N. USED			
YEAR	PAR. #	PAR. #	PAR. #
03-04	21	32	34
04-05	36		
05-06	38		
06-07	44	48	
07-08	47		
09-10	48		

CITY OF TRACY
Assessor's Map Bk.212 Pg.29
County of San Joaquin, Calif.

Bk. 238

NOTE: Assessor's Parcel Numbers Shown in Circles.
Assessor's Block Numbers Shown in Ellipses.

03-04

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This Agreement for Purchase and Sale of Real Property ("**Agreement**"), effective as of the date last signed below, is entered into between **BCP Tracy LLC**, a California limited liability company ("**Buyer**"), and the **CITY OF TRACY**, a California general law city ("**City**").

RECITALS

A. City owns certain real property located at the southeast corner of Naglee Road and Park & Ride Drive, in the City of Tracy, San Joaquin County, California, containing approximately 40,859 square feet of land area, as more particularly described in Exhibit A, attached (the "**Property**"). City wishes to sell fee title interest in the Property to Buyer under the terms in this Agreement.

B. On April 19, 2005, the Community Development Agency of the City entered into a Disposition and Development Agreement with Armadillo Realty, LLC (**Armadillo Realty**, a Nevada limited liability company, also owner and operator of Texas Roadhouse restaurant) (the DDA). Those parties also entered into a Settlement Agreement and Mutual Release, and a Declaration of Restrictions, both on May 17, 2011. (The Declaration was recorded on August 3, 2011 in the San Joaquin County Recorder's Office as Document #2011-092225.) Those documents contain at least two provisions relevant to this Agreement:

(1) The City agreed to reimburse Armadillo \$271,942 for Parcel B Improvement Costs, and City here agrees to pay this amount from the proceeds of the sale under this Agreement. (See Settlement Agreement Section 6; and Section 2 below.)

(2) The deed conveying the Property will be subject to the following, existing agreed-upon restriction: (See Settlement Agreement Section 3 and Declaration of Restrictions Section 1.)

The Property shall not be used as a steakhouse as long as Parcel A is used as a steakhouse by Armadillo (doing business as Texas Roadhouse) or by any successor steakhouse restaurant, or for 50 years, whichever is less.

Steakhouse means a full-service, sit-down restaurant offering steak-type items as 20% or more of its menu entrees (including such items as steak, T-bone, sirloin, rib eye, prime rib, New York strip, filet mignon).

C. Buyer desires to purchase the Property from City under the terms set forth in this Agreement.

NOW, THEREFORE, considering the foregoing and the mutual covenants contained here, the parties agree as follows:

AGREEMENT

1. Purchase and Sale. City agrees to sell and convey to Buyer, and Buyer agrees to purchase from City all of City's interest in the Property on the terms set forth in this Agreement. The "**Effective Date**" is the date on which the last party executes the Agreement.

2. Purchase Price. The purchase price ("**Purchase Price**") for the Property is Five Hundred Forty-five Thousand Dollars (\$545,000), which includes the reimbursement due to Armadillo Realty, LLC, to be paid by City from the purchase price. (See Recital B above.)_The Purchase Price shall be payable by Buyer to City through Escrow at the Close of Escrow.

3. Escrow.

(a) Opening of Escrow. On or before the third business day following the Effective Date, City shall open an escrow ("**Escrow**") with Old Republic Title Company, 150 W. 10th Street, Tracy, CA 95376 (Tel: 209-835-1331) ("**Escrow Holder**"). Buyer and City agree to execute and deliver to Escrow Holder, in a timely manner, all escrow instructions and other documents necessary to consummate the transaction contemplated by this Agreement. Any such instructions and other documents shall not conflict with, amend or supersede this Agreement. If there is any inconsistency between such instructions and other documents and this Agreement, this Agreement shall control.

(b) Close of Escrow. The Close of Escrow shall occur, subject to the satisfactions of the conditions precedent, within 30 days following satisfaction of the conditions precedent, but not later than 365 days following the Effective Date, unless otherwise extended by the mutual written consent of the parties, which date is referred to herein as the "**Scheduled Closing Date.**" If Buyer is satisfied as to all conditions set forth in Section 5 (a) (Conditions to Buyer's Obligations) sooner than 365 days, Buyer shall send written notice to the City, and City shall submit the necessary documents into Escrow within ten working days after that. For purposes of this Agreement, "**Close of Escrow**" is defined as the date that the Grant Deed to the Property is recorded in the Official Records of San Joaquin County. For purposes of this Agreement, "**Close of Escrow**" shall be defined as the date that the Grant Deed (as hereinafter defined) to the Property is recorded in the Official Records of San Joaquin County.

(c) Buyer's Inspections and Due Diligence. From the date that Escrow is opened (the "**Opening of Escrow**") until 5:00 p.m. Pacific Time ten days before the Scheduled Closing Date or such other date agreed to by the parties for Close of Escrow (the "**Due Diligence Period**"), Buyer may conduct examinations, inspections, testing, studies and investigations of the Property. Within five business days following the Opening of Escrow, City shall provide Buyer with any and all existing reports, studies and other related information in its possession or under its control that reasonably relate to the Property, including, without limitation, any Phase I and Phase II environmental reports, surveys, and geotechnical studies. Buyer may conduct such due diligence activities, inspections, and studies of the Property as it deems necessary or appropriate, and examine and investigate to its full satisfaction all facts, circumstances, and matters relating to the Property. Buyer shall notify City before conducting any invasive testing of the Property. Buyer shall repair any damage to the Property caused by Buyer's inspections and tests and shall restore the Property to substantially the condition existing as of the date of the inspection. Buyer agrees to defend, indemnify and hold City harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, and all costs

incurred in connection therewith (including without limitation actual attorneys' fees and costs of experts and consultants) arising directly out of the conduct of any investigative activities of Buyer or its agents or representatives on the Property at any time following the Effective Date, but not as to any such as may arise out of any factual information that may be disclosed by such investigation, such as, but not limited to any environmental problems with the Property.

4. Conditions of Title. It shall be a condition to the Close of Escrow and a covenant of City that title to the Property be conveyed to Buyer by City by a Grant Deed, which shall be in the form customarily used by Escrow Holder in the County ("**Grant Deed**"), subject only to:
- (a) those exceptions shown in a preliminary title report to be ordered by Buyer (the "**Preliminary Report**"), if approved by Buyer; and
 - (b) such other title matters affecting the Property created by or with the written consent of Buyer (collectively, "**Approved Conditions of Title**").

It is expressly understood that title to the Property shall be conveyed free and clear of any obligation to pay for any onsite and offsite improvements constructed in connection with the development of the Texas Roadhouse properties, because City will pay those fees from the sale proceeds. (See Recital B, above.) City covenants and agrees (and it shall be a condition to the Close of Escrow) that between the Effective Date and the Close of Escrow, it will not, except as specifically provided in this Agreement, cause or permit the condition of title to the Property to differ from that disclosed by the Preliminary Report. Subject to the foregoing, any liens, encumbrances, encroachments, easements, restrictions, conditions, covenants, rights, rights-of-way or other matters which appear of record or are revealed after the date of the Preliminary Report are subject to Buyer's approval, which approval may be withheld in Buyer's sole and absolute discretion. If the Buyer objects to any exception to title, City, within five business days after receipt of Buyer's objection, shall notify Buyer in writing whether City elects to (i) cause the exception to be removed of record, (ii) obtain a commitment from Escrow Holder for an appropriate endorsement to the policy of title insurance reasonably acceptable to Buyer to be issued to the Buyer, insuring against the objectionable exception, or (iii) terminate this Agreement unless the Buyer elects to take title subject to such exception.

5. Conditions to Close of Escrow.

(a) Conditions to Buyer's Obligations. The Close of Escrow and Buyer's obligations to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions (or Buyer's waiver thereof), which are for Buyer's benefit, on or before the Close of Escrow in absence of a specified date:

- i. Title. Buyer shall have the right to receive fee title to the Property subject only to the Approved Conditions of Title.
- ii. Title Insurance. As of the Close of Escrow, Escrow Holder shall have issued or shall have committed to issue the Title Policy (defined below) to Buyer.
- iii. Lease. Buyer shall have entered into a lease with El Pollo Loco, Inc., a Delaware corporation ("**El Pollo Loco**"), or another tenant approved by the City,

on such terms and conditions as are satisfactory to Buyer in its sole and absolute discretion, and all conditions to the El Pollo Loco lease which can be satisfied before Close of Escrow have been satisfied.

iv. Governmental Permits. All governmental permits, approvals, licenses and authorizations required for construction and operation of an El Pollo Loco restaurant on the Property, including, without limitation, a building permit, any required encroachment permits, and architectural review approval (collectively "**Governmental Permits**"), shall have been issued and all applicable appeal periods shall have expired with no appeals then outstanding. This condition to Buyer's Obligations does not commit the City to any particular decision regarding the Governmental Permits.

It is understood that the parcel-map described in the legal description of the Property (the "**Parcel Map**") contains specific limitations on the size and configuration of the building pad to be constructed on the Property, which will not accommodate El Pollo Loco's current standard building. Accordingly, it is agreed that Governmental Permits will include, among other things, an amendment of the Parcel Map or such other governmental approval as may be required to permit construction on the Property of the current standard El Pollo Loco building.

v. City's Fulfillment of its Obligations. As of the Close of Escrow, City shall have performed all of the obligations required to be performed by City under this Agreement.

vi. Physical Condition of the Property. Buyer has the right to approve or disapprove the physical condition of the Property, as long as Buyer does so within 90 days of the Effective Date of this Agreement.

(b) Conditions to City's Obligations. The Close of Escrow and City's obligations to consummate the transaction contemplated by this Agreement are subject to Buyer having timely performed all of the obligations required by the terms of this Agreement to be performed by Buyer.

(c) Failure of Condition to Close of Escrow. Except as provided by subsection(a) or (b) of this section, if any of the conditions set forth in subsection (a) or (b) are not timely satisfied or waived, for a reason other than the default of City or Buyer, this Agreement shall terminate, and the parties shall have no further obligations hereunder.

6. Deposits By City. At least one business day before the Close of Escrow (See Section 3(b)), City shall deposit with Escrow Holder the following documents:

(a) Grant Deed. The Grant Deed, duly executed and acknowledged in recordable form by City, conveying fee title to the Property to Buyer subject only to the Approved Conditions of Title.

(b) FIRPTA Certificate. If deemed to be required by Escrow Holder, a certification, acceptable to Escrow Holder and duly executed by City under penalty of perjury setting forth City's address and federal tax identification number in accordance with and/or for the purpose of the provisions of Sections 7701 and 1445, as may be amended, of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

7. Deposits By Buyer. At least one business day prior to the Close of Escrow, Buyer shall deposit or cause to be deposited with Escrow Holder the Purchase Price and Costs, under Section 11.

8. Issuance of Title Insurance. At the Close of Escrow, City shall cause Old Republic Title Company to issue to Buyer its standard form CLTA Owner's Policy of Title Insurance or at Buyer's option an ALTA Owner's Policy of Title Insurance showing fee title to the Property vested in Buyer subject only to the Approved Conditions of Title, with any endorsements reasonably requested by Buyer ("***Title Policy***"). The Title Policy shall be issued with liability in an amount equal to the Purchase Price. Buyer and City shall each pay equally for the expense of the Title Policy. However, if Buyer requests an ALTA policy, Buyer shall be solely responsible for the cost of the Title Policy to the extent that it exceeds the cost of a CLTA policy.

9. Costs and Expenses. Except as otherwise specified in this Agreement, Buyer shall pay all escrow fees and recording charges.

10. Prorations.

(a) Taxes/Assessments. If applicable, all non-delinquent real estate taxes on the Property shall be prorated as of 11:59 p.m. on the day prior to the Close of Escrow based on the actual current tax bill, but if such tax bill has not yet been received by City by the Close of Escrow, then the current year's taxes shall be deemed to be 100% of the amount of the previous year's tax bill for the Property. All delinquent taxes and all assessments, if any, on the Property shall be paid at the Close of Escrow by City. All supplemental taxes billed after the Close of Escrow for periods before the Close of Escrow shall be paid promptly by City.

(b) Corrections. If any errors or omissions are made regarding adjustments and prorations as set forth here, the parties shall make the appropriate corrections promptly upon discovery. If any estimates are made at the Close of Escrow regarding adjustments or prorations, the party shall make the appropriate correction promptly when accurate information becomes available. Any corrected adjustment or proration shall be paid in cash to the party entitled to it.

11. Representations and Warranties. In consideration of this Agreement, City and Buyer as applicable make the following representations and warranties, each of which is material and is being relied upon by the other party:

(a) Each party has the legal power, right and authority to enter into this Agreement and the instruments referenced here, and to consummate the transaction contemplated by this Agreement;

(b) All requisite corporate or partnership action has been taken by the applicable party in connection with the entering into this Agreement, the instruments referenced here, and the consummation of the transaction contemplated by this Agreement. No consent of any member, partner, shareholder, trustee, trustor, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party is required; and

(c) The individuals executing this Agreement and the instruments referenced here on behalf of each party have the legal power, right, and actual authority to bind the party to these terms.

12. Buyer's Acknowledgements.

(a) "AS IS" PURCHASE. Buyer specifically acknowledges and agrees that City is selling and Buyer is buying the Property on an "as is with all faults" basis and that Buyer is not relying on any representations or warranties of any kind whatsoever, express (except as expressly set forth in this agreement) or implied, from City, its agents, or brokers as to any matters concerning the Property, including without limitation:

- i. the quality, nature, adequacy and physical condition of the Property (including, without limitation, topography, climate, air, water rights, water, gas, electricity, utility services, grading, drainage, sewers, access to public roads and related conditions);
- ii. the quality, nature, adequacy, and physical condition of soils, geology and groundwater,
- iii. the existence, quality, nature, adequacy and physical condition of utilities serving the Property,
- iv. the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose,
- v. the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property,
- vi. the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity,
- vii. the presence or absence of hazardous materials on, under or about the Property or the adjoining or neighboring Property, and
- viii. the condition of title to the Property.

Buyer affirms that Buyer has not relied on the skill or judgment of City or any of its respective agents, employees or contractors to select or furnish the Property for any particular purpose, and that City makes no warranty that the Property is fit for any particular purpose. Buyer acknowledges that it shall use its independent judgment and make its own determination as to the scope and breadth of its due diligence investigation which it shall make relative to the Property and shall rely upon its own investigation of

the physical, environmental, economic and legal condition of the Property (including, without limitation, whether the Property is located in any area which is designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wild land fire area, by any federal, state or local agency). Buyer undertakes and assumes all risks associated with all matters pertaining to the Property's location in any area designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wild land fire area, by any federal, state or local agency.

(b) Survival. The terms and conditions of this Section 12 shall expressly survive the Close of Escrow, shall not merge with the provisions of the deed or any other closing documents and shall be deemed to be incorporated by reference into the deed. City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person. Buyer acknowledges that the purchase price reflects the "as is" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Buyer has fully reviewed the disclaimers and waivers set forth in this Agreement with Buyer's counsel and understands their significance and effect.

13. Legal and Equitable Enforcement of this Agreement. If the Close of Escrow and the consummation of the transaction contemplated by this Agreement does not occur as a result of any default by City or Buyer, the non-defaulting party shall have the right to pursue any remedy available at law or in equity, including the specific performance of this Agreement.

14. Condemnation. If, before the Close of Escrow, any material portion of the Property is taken or if the access is taken, by eminent domain or otherwise (or is the subject of a pending, threatened or contemplated taking which has not been consummated), City shall immediately notify Buyer of such fact. In such event, Buyer shall have the option, in its sole and absolute discretion, to terminate this Agreement upon written notice to City given not later than ten days after receipt of City's notice. If this Agreement is so terminated, the provisions of Section 5(c) shall govern. If Buyer does not exercise this option to terminate this Agreement, or if there has not been a material taking by eminent domain or otherwise to give rise to such option, neither party shall have the right to terminate this Agreement, but the City shall assign and turn over, and the Buyer shall be entitled to receive and keep, all awards for the taking of the Property by eminent domain which accrue to City and the parties shall proceed to the Close of Escrow under the terms of this Agreement, without modification of the terms and without any reduction in the Purchase Price. Unless or until this Agreement is terminated, City shall take no action with respect to any eminent domain proceeding without Buyer's prior written consent.

15. Broker's Commission. Buyer and City each represent to the other that they have dealt with no real estate broker or agent other than Chris Sill of Lee & Associates, who represents Buyer ("**Buyer's Broker**"). Buyer shall pay a commission to Buyer's Broker under the terms of a separate commission agreement between Buyer and Buyer's Broker. Buyer and City each agree to indemnify and hold the other harmless from all expense, loss, damage and claims, including the attorneys' fees, if necessary, arising out of a breach of this Section 15.

16. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by nationally recognized courier service that provides written confirmation of delivery (such as FedEx or UPS) and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, or (ii) if mailed or sent by courier service, on the date of receipt or refusal by the addressee, as shown on return receipt or delivery confirmation. However, any notice of default or other notice which is received on a Saturday, Sunday, national holiday, or City closed day shall be deemed received on the next succeeding business day.

TO CITY: City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
E-Mail: Andrew.Malik@ci.tracy.ca.us

TO BUYER: BCP Tracy LLC
c/o Becker Commercial Properties
P.O. Box 590
Wilton, CA 95693
E-Mail: jon.becker@bcprop.net

ESCROW HOLDER: Old Republic Title Company
150 W. 10th Street
Tracy, CA 95376
(20) 835-1331

Notice of change of address shall be given by written notice in the manner described in this Paragraph.

17. Execution of Documents. Each of the parties shall execute the documents reasonably necessary to effect the purpose of this Agreement and do all acts necessary to carry out the terms of this Agreement.

18. Miscellaneous.

(a) Partial Invalidity. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each such term and provision of this Agreement shall be valid, and shall be enforced to the fullest extent permitted by law.

(b) Waivers. No waiver of any breach of any provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach, or of any other provision. No extension of time for performance of any obligation or act shall be deemed an extension

of time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

(c) Survival of Representations. The representations and warranties made by each party shall survive: (1) the Close of Escrow and shall not merge into the Grant Deed and its recordation; and (2) the termination and/or cancellation of this Agreement.

(d) Successors and Assigns. This Agreement is binding upon and inures to the benefit of the successors and assigns of the parties.

(e) Professional Fees. If either party commences an action against the other regarding this Agreement, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses and court costs and other costs of action incurred in connection with the prosecution or defense of the action, whether or not the action is prosecuted to a final judgment. For the purpose of this Agreement, the terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties, which may include printing, photocopying, duplicating and other expenses, delivery charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which the fees and expenses were incurred.

(f) Entire Agreement. This Agreement (including all Exhibits) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter, and supersedes all prior understandings. This Agreement may not be modified, nor may any obligations be waived, except by written instrument signed by the party. The parties do not intend to confer any benefit under this Agreement on any person, firm or corporation other than the parties and their lawful assignees.

(g) Time of Essence. Buyer and City acknowledge that time is strictly of the essence and that failure to timely perform any term constitutes a material breach of and a non-curable (but waivable) default under this Agreement.

(h) Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.

(i) Governing Law. The parties acknowledge that this Agreement has been negotiated and entered into in the State of California, and shall be governed by,

interpreted under, and construed and enforced in accordance with the laws of the State of California.

(j) Possession of Property. Buyer is entitled to the possession of the Property immediately following the Close of Escrow.

(k) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

(l) Days of Week. If any date for performance herein falls on a Saturday, Sunday or holiday, the time for such performance shall be extended to 5:00 p.m. on the next business day.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

CITY:

BUYER:

THE CITY OF TRACY,
a California general law city

BCP Tracy LLC,
A California limited liability company

By: _____
Name: _____
Title: _____

By: Jonathan P. Becker
Name: Jonathan P. Becker
Title: Managing Member

Date: _____

Date: 11-4-2014

Approved as to Form:

By: _____
Name: _____
Title: City Attorney

EXHIBIT A

Legal Description of Property

Real property in the City of Tracy, County of San Joaquin, State of California, described as follows:

A PORTION OF LOTS 39 AND 40 OF "NAGLEE BURK TRACT" ACCORDING TO THE OFFICIAL MAP THEREOF, FILED IN VOLUME 5 OF MAPS AND PLATS, PAGE 18, SAN JOAQUIN COUNTY RECORDS AND ALSO AS SHOWN UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD JULY 13, 2005 IN BOOK 23 OF PARCEL MAPS, PAGE 125, SAN JOAQUIN COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF PARCEL B, AS SHOWN UPON SAID PARCEL MAP, FILED FOR RECORD JULY 13, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 125, SAN JOAQUIN COUNTY RECORDS:

EXCEPT THEREFROM THE FOLLOWING DESCRIBED STRIP OF LAND:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL A, AS SHOWN ON ABOVE SAID PARCEL MAP; THENCE SOUTH 89° 37' 10" EAST, ALONG THE NORTH LINE OF SAID PARCEL A, 64.57 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 00° 22' 50" EAST, 25.00 FEET TO A POINT; THENCE SOUTH 89° 37' 10" EAST, PARALLEL TO SAID NORTH LINE OF PARCEL A, 125.94 FEET TO A POINT; THENCE SOUTH 00° 22' 50" WEST, 25.00 FEET TO A POINT ON SAID NORTH LINE OF PARCEL A; THENCE NORTH 89° 37' 10" WEST, ALONG SAID NORTH LINE OF PARCEL A, 125.94 FEET TO THE POINT OF BEGINNING.

THIS LEGAL DESCRIPTION IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE APPROVING A CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT, CERTIFICATE NO. MS11-0004 RECORDED JULY 14, 2011 AS INSTRUMENT NO. 2011-083328 OF OFFICIAL RECORDS.

APN: 212-290-48

RESOLUTION 2014- _____

DECLARING THE .938-~~ACRE~~ CITY-OWNED PROPERTY LOCATED AT THE SOUTHEAST CORNER OF NAGLEE ROAD AND PARK AND RIDE DRIVE (APN 212-290-48) AS SURPLUS PROPERTY, AUTHORIZING A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF TRACY AND BCP TRACY, LLC (BCP), A CALIFORNIA CORPORATION, AND AUTHORIZING THE MAYOR TO EXECUTE THE PURCHASE AND SALE AGREEMENT AND RELATED DOCUMENTS

WHEREAS, The City of Tracy is the owner of a 0.938-acre property located near the southeast corner of Naglee Road and Park and Ride Drive, adjacent to the Texas Roadhouse Restaurant, and

WHEREAS, BCP Tracy, LLC, a California Corporation, has been marketing this site under an Exclusive Negotiating Rights Agreement, and

WHEREAS, The buildable area of the site is limited due to shared parking and a driveway easement, and

WHEREAS, BCP has received an Executed Letter of Interest from El Pollo Loco, and

WHEREAS, El Pollo Loco is a unique user for Tracy and a restaurant which ranked in the top 15 of desired restaurants in the City's Retail and Restaurant Survey, and

WHEREAS, Upon the close of escrow, the City will receive payment of \$545,000, from which the City will reimburse Armadillo Realty, LLC, \$271,942 per the Settlement Agreement between the City of Tracy and Armadillo Realty, LLC, dated September 28, 2001. The balance of the proceeds from the sale will be placed in the City's General Fund;

NOW, THEREFORE BE IT RESOLVED, That City Council declares the .938-acre City-owned property located at the southeast corner of Naglee Road and Park and Ride Drive (APN 212-290-48) as surplus property, authorizes a purchase and sale agreement between the City of Tracy and BCP Tracy, LLC, a California Corporation, and authorizes the Mayor to execute the purchase and sale agreement and related documents.

* * * * *

The foregoing Resolution 2014-_____ was passed and adopted by the Tracy City Council on the 2nd day of December, 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

INTERIM CITY CLERK

AGENDA ITEM 7

REQUEST

DETERMINE WHETHER TO FILL CITY COUNCIL VACANCY BY SPECIAL ELECTION OR BY APPOINTMENT, AND, IF BY APPOINTMENT, DETERMINE THE DETAILS OF THE PROCESS TO BE USED

EXECUTIVE SUMMARY

Staff is recommending that the City Council determine whether to fill the City Council vacancy by appointment or by special election, and, if by vacancy, determine the details of the process to be used.

DISCUSSION

A vacancy will be created on the City Council due to the election of Council Member Maciel to the Mayor's seat. Government Code section 36512 (b) states "...the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent." The successful candidate would serve the remainder of Council Member Maciel's term which expires in November of 2016.

A. Special Election

If the Council chooses to proceed by way of special election, the Council must call for a special election to be held on the "next regularly established election date" not less than 114 days from the call of the special election. (Government Code, § 36512(b).)

Elections Code section 1000 provides that the "established election dates" for 2015 include March 3 (the first Tuesday after the first Monday in March), June 2 (the first Tuesday after the first Monday in June), and November 3. However, because March 3 would be less than 114 days from the date the special election was called (December 2, 2014), the special election could not be held until June 2, 2015. This means that during the interim period, the City Council would be operating with only four members.

An additional factor to be considered is the cost of a special election. The Registrar of Voters Office for San Joaquin County has estimated the cost of a special election at approximately \$7.50 per registered voter. Because the City has approximately 34,213 registered voters the estimated cost of a special election would be close to \$257,000.

B. Appointment

In lieu of calling a special election, the Council may choose to fill the vacancy by appointment. At the October 21, 2014 regular City Council meeting, the City Council adopted a formal policy for filling Council vacancies.

A benefit of appointing a successor to fill the vacancy is that the new Council Member would take office immediately, and the Council would have a full complement of five members to carry out its work. In the past, five City Council vacancies, one City Treasurer vacancy, and one City Clerk vacancy have all been filled by appointment.

If the Council chooses to proceed by way of appointment, the recently adopted City Council Policy on Filling City Council Vacancies would apply (Attachment A).

1. Schedule

The Policy provides that at the earliest possible time after a vacancy occurs, the City Council shall adopt a time schedule:

1. Setting a time and date by which any qualified person interested in being appointed shall submit an application;
2. Setting a time and date by which questions for the applicants may be submitted by the public; and
3. Setting a date or dates on which applicants will be interviewed by the City Council at a public meeting.

Staff suggests the following time schedule:

- December 3, 2014 – Application period opens. Prospective applicants may pick up application packets from the City Clerk's Office, 333 Civic Center Plaza. Staff will also advertise the recruitment in the Tracy Press, which will appear on December 12th. Application packets will be available from the library and also posted on the City's website. Potential candidate questions from members of the public can also be submitted for consideration by the City Council.
- December 9, 2014 – Deadline by which questions for the applicants by the public must be submitted to the City Clerk's Office.
- December 22, 2014 – Application period closes. Completed application packets must be received by the City Clerk's office no later than noon.
- January, 6, 2015 – Interviews will be conducted at a special meeting to be held prior to the regular council meeting. Following the individual interviews which will be conducted in open session, balloting will take place. The candidate receiving the majority vote shall be appointed to the Council and will be sworn in.

2. Application Form

The Policy provides that the application of a person interested in being appointed to the City Council shall state background, qualifications and why he or she wishes to be appointed. In addition to completing an application any person applying for the vacancy shall be required to file with the City Clerk the following additional documents:

1. A Nomination Form containing valid signatures of at least 20 registered voters of the City of Tracy. The fact that a voter has signed nomination papers for more than one applicant shall not invalidate the signature; and
2. A completed Statement of Economic Interests (Form 700) provided by the Fair Political Practices Commission.

A proposed application form is attached (Attachment B).

3. Questions

The Policy provides that the City Council, by motion, may choose to present questions in advance of the interviews to the applicants and may choose to require applicants to either answer all such questions at the interviews or provide written responses to all such questions prior to the interviews. Proposed advance questions may be suggested by individual City Council Members or may be drafted by an ad hoc committee of the City Council appointed by the Mayor for that purpose.

For past vacancies, the City Council chose to form a subcommittee to draft questions to be verbally answered at the interview and present the draft questions for final approval of the City Council as a whole. If the City Council chooses to form a subcommittee, the subcommittee could present draft questions to the City Council for approval at its meeting on December 16, 2014. A sample list of the questions used during the 2012 appointment process is attached (Attachment C).

STRATEGIC PLAN

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

FISCAL IMPACT

The cost to fill the vacancy by appointment will be minimal and would include staff time and some resources. If the City Council decides that a special election is appropriate, the estimated cost is \$257,000, plus staff time to coordinate the election with the Registrar of Voters office.

RECOMMENDATION

That the City Council determine whether to fill the City Council vacancy by special election or by appointment, and, if by appointment, determine the details of the process to be used.

Prepared by: Carole Fleischmann, Interim City Clerk

Reviewed by: Maria Hurtado, Assistant City Manager

Approved by: Troy Brown, City Manager

Attachments:

- A. City Council Policy on Filling City Council Vacancies
- B. Draft Application Form
- C. List of Questions from 2012 Appointment Process

**CITY COUNCIL POLICY ON
FILLING CITY COUNCIL VACANCIES**

I BACKGROUND

The process for filling City Council vacancies (other than for an elective Mayor) is set forth in Government Code section 36512(b), which provides that:

If a vacancy occurs in an elective office provided for in this chapter, the City Council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent.

State law does not prescribe any procedure for selection of appointees. Therefore, the City Council may choose any selection method it desires.

II. POLICY

The following procedures will be used by the City Council to fill a City Council vacancy if the City Council chooses to fill such a vacancy by appointment rather than by special election:

A. Schedule

At the earliest possible time after a vacancy occurs, the City Council shall adopt a time schedule:

1. Setting a time and date by which any qualified person interested in being appointed shall submit an application;
2. Setting a time and date by which questions for the applicants may be submitted by the public; and
3. Setting a date or dates on which applicants will be interviewed by the City Council at a public meeting.

B. Applications

The application of a person interested in being appointed to the City Council shall state background, qualifications and why he or she wishes to be appointed. In addition to completing an application any person applying for the vacancy shall be required to file with the City Clerk the following additional documents:

1. A Nomination Form containing valid signatures of at least 20 registered voters of the City of Tracy. The fact that a voter has signed nomination papers for more than one applicant shall not invalidate the signature; and

2. A completed Statement of Economic Interests (Form 700) provided by the Fair Political Practices Commission.

C. Disclosure of Applications

Following the deadline set by the City Council for the submittal of applications, copies of all applications and the names of the applicants shall be filed in the City Clerk's office and made public. No information shall be disclosed prior to the close of the application deadline.

D. Questions from the Public

Questions for or concerning applicants may be submitted in writing by the public to the City Clerk. Following the deadline set by the City Council for the submittal of questions, all such questions shall be forwarded to City Council Members, who may use them in the applicant interviews.

E. Advance Questions for Applicants

The City Council, by motion, may choose to present questions in advance of the interviews to the applicants and may choose to require applicants to either answer all such questions at the interviews or provide written responses to all such questions prior to the interviews. Proposed advance questions may be suggested by individual City Council Members or may be drafted by an ad hoc committee of the City Council appointed by the Mayor for that purpose.

F. City Council Interviews

Applicant interviews shall be conducted in a public meeting, which may be televised and recorded. The order of interviews will be based on a random drawing. At the time and date set for applicant interviews, each applicant shall be interviewed separately and shall be given the opportunity to make a brief statement concerning his or her qualifications and to answer any question previously submitted to the applicant by the City Council. Thereafter, each City Council Member may question each applicant on any subject he or she feels is relevant to that applicant's qualifications to sit on the City Council. Based on the time available and the number of candidates, the City Council, by majority vote, may require a time limit on interviews, limit the number of questions to be asked, and limit the time to receive answers from each applicant.

G. Voting Procedure

The person to fill the City Council vacancy shall be selected from all applicants by the following process of elimination:

1. If one or two applicants exist:
 - a. each City Council Member shall vote for one applicant; and
 - b. the applicant who receives a majority vote shall be appointed to fill the vacancy.
2. If three or more applicants exist:
 - a. each City Council Member shall vote for two applicants; and
 - b. all applicants receiving the least number of votes (including no votes) shall be eliminated; and
 - c. subsequent votes shall be taken with each City Council Member voting for two applicants until one or two applicants remain; and
 - d. each City Council Member shall then vote for one applicant and the applicant who receives a majority vote shall be appointed to fill the vacancy.
3. If no applicant receives a majority vote, the City Council may adopt such other procedures to fill the vacancy as it deems appropriate.
4. Notwithstanding the voting procedure described above, at any time during the appointment process, the City Council in its discretion may abandon the process and call a special election to fill the vacancy.
5. If no applicant receives a majority vote within 60 days of the commencement of the vacancy, the City Council shall call a special election to fill the vacancy.

H. Appointment by the City Council

The appointment to fill the vacancy shall be made by resolution of the City Council.

City of Tracy

City Council Application

Please answer all questions and place N/A in those areas that do not apply. Please return your signed application to the City Clerk's office by **Noon on Monday, December 22, 2014**. Should you have any questions please feel free to contact the City Clerk's Office at 209-831-6105.

Position Applying for: **City Council Member**

Name: _____
Last First M.I.

Telephone: _____
Daytime Evening

Address _____
Street Zip

Email Address (Optional) _____

Do you reside within the Tracy City Limits Yes No
Are you registered to vote at the above address? Yes No

If NO, explain why _____

Please provide proof of residency at the above address (***copy of utility bill, voter registration card, etc.***)

Are you employed by the City of Tracy? _____ If so in what capacity? _____

Do you have relatives or members of your household who are employed by the City of Tracy or are currently serving on the City Council or other Commission? _____

How many meetings have you attended of the City Council for which you are now applying?

Why did you attend the meeting(s) (i.e. personal interest, specific issue being addressed, etc.)

List current occupation and related employment history: _____

List related educational background: _____

Describe your involvement in community activities, volunteer and civic organizations: _____

Why does a position on the City Council interest you? _____

What would be your personal approach as a Council Member in recommending policy, working with the other members of the Council, working with staff, etc.? _____

- I have attached proof of residency
- I have attached optional additional materials (such as a resume, etc.)
- Form 700
- Nomination Paper

Signature _____ Date _____

Council Subcommittee

Questions for Candidate Interviews held on January 15, 2013

QUESTIONS:

1. What prompts you to want to be a Council Member?

2. Do you have any specific area or areas of interest that prompt you to apply for consideration?
 - a. What distinguishes you from other applicants?
 - b. What has been your level of community involvement and how does that relate to council service?

3. What do you consider to be the four (4) most significant issues and opportunities currently facing the Council and the City?

4. What is your understanding of the role of a Council Member in a Council-Manager form of government?
 - a. What is a council member's role regarding operational issues?
 - b. What is a council member's role regarding personnel issues?
 - c. If a council member receives a request or complaint from a citizen regarding city services, how should the council member deal with the matter?

5. What is your opinion regarding the city's economic development practices?
 - a. Do you agree with the practice of creating incentives to encourage some businesses to come to Tracy?
 - b. Would you want to change the practice and if so, how?
 - c. How should the city fund such incentives?
 - d. What else should the city be doing to promote economic development?

6. What position, if any, should the City take in regard to downtown development?

7. Could you give us your awareness and understanding of the City's General Plan?
 - a. Are you familiar with the growth management ordinance (GMO)?
 - b. What are your feelings regarding development agreements?
 - c. What changes, if any, would you like to see regarding how Tracy deals with growth?

8. What is your opinion regarding public safety in Tracy?
 - a. How should public safety staffing levels be determined?
 - b. Are you familiar with the police department's strategy to combat gang activity in Tracy and what, if any, changes would you like to see made to that strategy?
 - c. If fiscal restrictions forced a reduction to public safety budgets, what should be the council's role in resolving the problem?

9. What is your opinion regarding how the city manages its budget?
 - a. Have you reviewed the city budget?
 - b. What do you feel is an appropriate level of fiscal reserves?
 - c. If the city sees a budget surplus over the next few years as a result of Measure E, what should be done with the funds?
 - d. When Measure E expires what should be done if annual expenses continue to exceed revenues?

10. What is your opinion regarding how the city handles capital improvement projects (CIP)?
 - a. How do you feel CIP priorities should be determined?
 - b. Do you feel there is adequate public input in establishing CIP priorities?
 - c. Should the process be changed and if so, how?
 - d. What are your thoughts regarding CIP funding?