

TRACY CITY COUNCIL

REGULAR MEETING AGENDA

Tuesday, January 19, 2016, 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.

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

PRESENTATIONS – Employee of the Year

- Presentation of the 2015 iShop Tracy Downtown Promotional Campaign and Random Drawing hosted by the City of Tracy, Tracy City Center Association and Tracy Chamber of Commerce
- National Mentoring Month Proclamation

1. CONSENT CALENDAR

- A. Adopt Council Minutes – January 5, 2016, closed session meeting minutes and the November 17, 2015, and December 15, 2015 regular meeting minutes.
- B. Approve an Agreement Between the City of Tracy and Pacific Gas & Electric Company (PG&E) Regarding the Construction and Operation of a Gas Distribution Pipeline on the City's Proposed Utility Bridge Crossing the California Aqueduct Along Corral Hollow Road and Authorize the Mayor to Execute the Agreement
- C. Approve Standard Agreement Between the City of West Covina, through its Police Department, an Entity Organized Under the Laws of the State of California, and the City of Tracy for Data Processing Equipment and Services and Authorize the Mayor to Execute the Agreement
- D. Authorization to Award the Purchase of Replacement Police Department 911 Telephone Equipment through the State of California 911 Branch Customer Premise Funding from AT&T, doing Business through a State of California Master Purchase Agreement (MPA), Contract Number 5-12-58-01, a Cooperative Purchase Agreement, per Tracy Municipal Code Section 2.20.220, and Authorize the Mayor to Execute a Five-Year Contract
- E. Approve Resolution Authorizing the Purchase of 50 Electronic Citation Devices and Related Equipment from Tyler Technologies through a General Services Administration Contract GSA, Contract Number GS-35F-0096X, Pursuant to Tracy Municipal Code Section 2.20.220 and Authorize the Mayor to Execute a One-Year Contract with Tyler Technologies and a Three-Year Factory Hardware Services Agreement and Appropriate \$255,447 from the Computer Aided Dispatch/Records Management System Replacement CIP Project (CIP 71063) to Complete the Purchase

- F. Authorization to Award the Purchase of a Forensic 3-D Laser Scanner System, Manufactured by Leica Geosystems, Distributed by Precision Survey Supply, a Limited Liability Corporation, and Find in the Best Interest of the City of Tracy to Forego the Formal Bid Process Pursuant to Tracy Municipal Code Section 2.20.180(B)(2)- Sole Source Purchase and Request to Appropriate \$100,500 from the Equitable Sharing Funds to Complete the Purchase
- G. Approve the Downtown Tracy Community Benefit District Management District Plan and Approve a Disbursement Agreement by and between the City of Tracy and the Tracy City Center Association, Authorizing the City Manager to Execute the Agreement on Behalf of the City
- H. Award a Construction Contract to Mazingo Construction of Oakdale, California, in the Amount of \$4,075,750 for the Larch Road Reconstruction and Hansen Road Wastewater Collection System Upgrade, CIPs 73125, 74097, 74106 & 74113; Authorize an Appropriation of \$800,000 from the Wastewater Enterprise Fund 523 to CIP 74097; Authorize the Mayor to Execute the Construction Contract; Authorize the City Manager to Approve Lee & Ro Professional Services Agreement to Provide Design Support During Construction in an Amount Not to Exceed \$40,000
- I. Approve the Final Subdivision Map and Subdivision Improvement Agreement for Primrose - Phase 2, Tract 3821, Authorize the Mayor to Execute the Agreement, Authorize the City Clerk to File the Subdivision Improvement Agreement with the San Joaquin County Recorder, and Approve the Street Name Change from "Kagehiro Court" to "Aurora Astorga Drive"
- J. Authorization to Establish a Capital Improvement Project (CIP) to Construct a Temporary Asphalt Concrete Sidewalk Along Lammers Road Between Kimball High School and the Redbridge Subdivision, and Approval of an Appropriation of \$25,000 From Gas Tax Fund 245 for Preliminary Design
- K. Approve an Exclusive Negotiating Rights Agreement by and between the City of Tracy and Becker Commercial Properties for the Remainder of the City-Owned Property Located at the Southwest Corner of Naglee Road and Pavilion Parkway (APN 212-290-39), and Authorize the Mayor to Sign the Agreement
- L. Approve Request for Out-of-State Travel By Council Member Young
- M. Adopt Resolution Approving an Employment Agreement Between Larry Esquivel and the City of Tracy to Serve as Police Chief
- N. Approve Resolution Exercising the Option to Extend a Lease Agreement with Mizuno Farms, Inc., for One Additional Two-Year Period, for Farming Operations at Property Located at the Corner of Eleventh Street and Chrisman Road, and Authorize the Mayor to Execute Amendment No. 3

2. ITEMS FROM THE AUDIENCE

3. AUTHORIZE THE CITY MANAGER TO ENROLL THE CITY OF TRACY IN THE COMMUNITY FOUNDATION OF SAN JOAQUIN (CFOSJ), APPROPRIATE \$10,000 FROM THE GENERAL FUND TO BE USED AS INITIAL FUNDS IN THE CITY OF TRACY FUND WITHIN THE CFOSJ, AUTHORIZE RETURN OF THE \$10,000 TO THE GENERAL FUND WHEN THE CHARITABLE FUNDS FOR THE CITY REACH \$50,000, AND DESIGNATE THE CITY MANAGER AS THE FUND ADVISOR
4. PUBLIC HEARING TO INTRODUCE AN ORDINANCE AMENDING THE CONCEPT DEVELOPMENT PLAN, AND ADOPTING A RESOLUTION AMENDING THE PRELIMINARY AND FINAL DEVELOPMENT PLAN, FOR THE 71-LOT SOUTHGATE RESIDENTIAL SUBDIVISION LOCATED SOUTH OF THE WESTERN TERMINUS OF SCHULTE ROAD AND EAST OF MABEL JOSEPHINE DRIVE. THE APPLICANT AND OWNER IS BRIGHT DEVELOPMENT – APPLICATION NUMBERS PUD15-0003 AND D14-0027
5. APPROVE A LIST OF CITY OF TRACY PROJECTS FOR SAN JOAQUIN COUNCIL OF GOVERNMENT'S ONE VOICE TRIP TO WASHINGTON D.C., FOR CONGRESSIONAL FUNDING APPROPRIATION REQUESTS
6. COMPARATIVE ANALYSIS OF EXISTING 1998 TRACY HILLS APPROVALS TO THE PROPOSED 2016 PROJECT
7. ITEMS FROM THE AUDIENCE
8. COUNCIL ITEMS
 - A. Appoint Applicants to the Parks and Community Services Commission
 - B. Review Appointments to Council Committees
9. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

January 5, 2016, 6:15 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Maciel called the meeting to order at 6:15 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel present.
3. ITEMS FROM THE AUDIENCE – There were none.
4. CLOSED SESSION

Labor Negotiations (Gov. Code, § 54957.6)

Employee Organizations: Tracy Police Officers Association
Tracy Firefighters' Association
Teamsters Local 439, IBT

City's designated representatives: Toy Brown, City Manager
Stephanie Garrabrant-Sierra, Assistant City
Manager
Rachelle McQuiston, Administrative Services
Director Midori Lichtwardt, Human Resources
Manager
Dania Torres Wong, Esq.

5. MOTION TO RECESS TO CLOSED SESSION – Mayor Pro Tem Rickman motioned to recess the meeting to closed session at 6:16 p.m. Council Member Vargas seconded the motion. Voice vote found all in favor; passed and so ordered.
6. RECONVENE TO OPEN SESSION – Mayor Maciel reconvened the meeting into open session at 7:06 p.m.
7. REPORT OF FINAL ACTION – There was no report of final action.
8. ADJOURNMENT – Mayor Pro Tem Rickman motioned to adjourn. Council Member Vargas seconded the motion. Voice vote found all in favor; passed and so ordered. Time: 6:57 p.m.

The agenda was posted at City Hall on December 29, 2015. The above are action minutes.

ATTEST:

Mayor

City Clerk

November 17, 2015, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

Mayor Maciel called the City Council meeting to order at 7:02 p.m. and led the Pledge of Allegiance.

Invocation was led by Pastor Kal Waetzig, Saint Paul's Lutheran Church.

Roll call found Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel present.

Mayor Pro Tem Rickman presented Council Member Young with the Tracy High Jersey to wear upon agreement of their friendly bet on the football game between Tracy High and West High which took place on November 6, 2015. Final score was 21 Tracy High to 20 West High.

1. CONSENT CALENDAR

ACTION Following the removal of item 1E, it was moved by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered. Motion carried 5:0

- A. Adopt Council Minutes – Regular meeting minutes of October 20, 2015, special meeting minutes of November 3, 2015, and closed session minutes of November 3, 2015, were approved as amended.
- B. Approve Amendment 1 to the Master Professional Services Agreement with Associated Right of Way Services, Inc. (AR/WS) of Pleasant Hill, California, for Extension of their MPSA for a Period of Two Years for a Not to Exceed of \$750,000, to Provide Right of Way Acquisition Services for Multiple Capital Improvement Projects, Authorize the Mayor to Execute the Amendment, and Authorize the Development Services Director to Execute Future Task Orders Related to this Amendment – Resolution 2015-185 approved Amendment 1 to a Master Professional Services Agreement.
- D. Approve Amendment 1 to Task Order No. CH01-16 With CH2M Hill for Additional Design and Permitting Services for the Corral Hollow Road Sewer and Water System Upgrade and Authorize the Mayor to Execute the Amendment – Resolution 2015-186 approved Amendment 1 to a Task Order.
- C. Approval of a Cooperative Agreement Between the City of Tracy and San Joaquin County for the Widening of Corral Hollow Road from Parkside Drive to the I-580 Ramp and Authorize the Mayor to Execute the Agreement – Troy Brown, City Manager, pulled this item to be heard on December 1, 2015.

- E. Authorize Mayor to Sign a Certificate of Acceptance and Payment Request to Cancel a Lease Agreement with Santander Leasing LLC – Resolution 2015-187

Council Member Vargas pulled this item and requested financial information related to Account 606. Staff is to provide information within the next 2-3 weeks.

2. ITEMS FROM THE AUDIENCE

Vivica Lance, President of Young Leaders In Action Youth Group announced an upcoming party coordinated between West High, Tracy High and Kimball High on November 27, 2015, from 7:00 p.m. to 11:00 p.m. at the Tracy Community Center. The event is for all youth ages 13-17.

Paul Miles, expressed concern about the comments made by Mayor Pro Tem Rickman at a previous meeting about Chief Hampton’s medical condition.

Caroline Blunt announced the upcoming conference “Boys to Men” taking place at Kimball High on December 12, 2015 from 9:30 a.m. to 4:00 p.m.

DEVIATION

- 6. RECEIVE AND DISCUSS THE GRAND THEATRE CENTER FOR THE ARTS ANNUAL REPORT AND ACCEPT THE GRAND FOUNDATION’S FISCAL YEAR 2015-2016 ANNUAL UNDERWRITING SUPPORT IN THE AMOUNT OF \$20,000 AND APPROVE A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$20,000 FOR PROGRAMMING AND TECHNICAL SUPPORT AT THE GRAND THEATRE CENTER FOR THE ARTS

Kim Scarlata, Division Manager, City Manager’s Office, presented the staff report.

Kaylin Schack, President and Tiffanie Heben, Executive Director of The Grand Foundation presented a brief overview of the foundations accomplishments and contributions to the 2014-2015 season.

City Council comments and questions followed.

ACTION Motion was made by Mayor Pro Tem Rickman seconded by Council Member Vargas to adopt Resolution 2015-188 accepting the Grand Theatre Center for the Arts Annual Report and accepting the Grand Foundation’s Fiscal Year 2015/16 annual underwriting support of \$20,000 in proceeds for programming and technical support at the Grand Theatre Center of the Arts. Voice vote found all in favor; passed and so ordered.

- 3. PUBLIC HEARING TO CONSIDER AN APPLICATION FOR A PRELIMINARY AND FINAL DEVELOPMENT PLAN TO CONSTRUCT A 795,732 SQUARE FOOT INDUSTRIAL DISTRIBUTION BUILDING WITH CORRESPONDING PARKING AND LANDSCAPE IMPROVEMENTS LOCATED AT 8450 ARBOR AVENUE, AND TO ADOPT THE TECHNICAL STUDIES AND FINANCE PLAN FOR THE M2 PARCEL LOCATED IN THE I-205 PLANNING AREA - APPLICANT IS DCT INDUSTRIAL OPERATING LLC; OWNERS ARE GREGG AND ROBERT CHRISTENSEN- APPLICATION NUMBER D15-0014.

Victoria Lombardo, Senior Planner and Robert Armijo, City Engineer presented the staff report.

Mayor Maciel opened the public hearing, there was no public testimony, and Mayor Maciel closed the public hearing.

City Council comments and questions followed.

ACTION Motion was made by Council Member Young and seconded by Council Member Vargas to adopt Resolution 2015-189 approving the Preliminary and Final Development Plan for a 795,732 square foot industrial distribution facility located on a 39.58-acre site, located at 8450 Arbor Avenue – Assessor’s Parcel No. 213-060-03, APN D15-0014 as amended. Voice vote found Council Members Mitracos, Vargas, Young and Mayor Maciel in favor; Mayor Pro Tem Rickman abstained; passed and so ordered

ACTION Motion was made by Council Member Young and seconded by Council Member Vargas to adopt Resolution 2015-190 approving the Technical Studies and Finance Plan for the M2 Parcel located in the I-205 Planning Area. Voice vote found Council Members Mitracos, Vargas, Young and Mayor Maciel in favor; Mayor Pro Tem Rickman abstained; passed and so ordered.

DEVIATION

7. COUNCIL DISCUSSION AND DIRECTION REGARDING THE CONSTRUCTION OF TEMPORARY SIDEWALK(S) ON LAMMERS ROAD BETWEEN KIMBALL HIGH SCHOOL AND THE REDBRIDGE SUBDIVISION

Robert Armijo, City Engineer and Ripon Bhatia, Senior Civil Engineer, presented the staff report.

Public comment followed by the following speakers who expressed being in support of a sidewalk between Kimball High School and the Redbridge subdivision: Brenda Daton, Mike McDonald, Tom Rouke, Brian Collins, Andrea Taveras, Dan Frazier and Nicholas.

Mayor Maciel called for a recess at 9:02 p.m.

Mayor Maciel reconvened the meeting at 9:09 p.m.

City Council comments and questions followed.

ACTION Upon Council consensus staff was directed to look into expanding the boundaries not within city limits for traffic calming. Staff was also directed to take the lead and engage the County and the School District in discussions about coordinating efforts on this project. Staff will begin a preliminary plan creating a

Capital Improvement Project for some design work, acquisition, and identify funding sources which may be transferable to a developer in the near future. Staff will return with a staff report in January to provide a progress update. Mayor Maciel suggested considering a shuttle to transport kids to school in the meantime.

4. PUBLIC HEARING TO INTRODUCE AN ORDINANCE AMENDING VARIOUS PROVISIONS OF THE TRACY MUNICIPAL CODE IN ORDER TO CONFORM WITH THE GENERAL PLAN HOUSING ELEMENT – THE APPLICATION IS INITIATED BY THE CITY OF TRACY – APPLICATION NUMBER ZA15-0003

Allan Bell, Senior Planner, Development Services, presented the staff report.

Mayor Maciel opened the public hearing, there was no public testimony, and Mayor Maciel closed the public hearing.

City Council comments and questions followed.

Nora Pimentel, City Clerk read the title of Interim Ordinance 1202 into the record.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Young to waive reading of full text of Interim Ordinance 1202. Voice vote found Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel in favor; passed and so ordered.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt Interim Ordinance 1202. Voice vote found Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel in favor; passed and so ordered.

5. PUBLIC MEETING TO REVIEW THE GENERAL PLAN DRAFT HOUSING ELEMENT, RECEIVE PUBLIC INPUT, AND DIRECT STAFF TO SUBMIT THE DRAFT TO THE STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR FORMAL STATE REVIEW

Allan Bell, Senior Planner, Development Services, presented the staff report.

Mayor Maciel opened the public hearing, there was no testimony, and Mayor Maciel closed the public hearing.

City Council comments and questions followed

ACTION Upon consensus Council directed staff to move forward with submitting Housing Element draft for review.

8. ITEMS FROM THE AUDIENCE – There were no speakers.

9. COUNCIL ITEMS

A. APPOINTMENT OF CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANTS FOR UPCOMING VACANCIES ON THE TRACY ARTS COMMISSION

Nora Pimentel, City Clerk presented the staff report.

Mayor Pro Tem Rickman and Council Member Vargas volunteered to serve as the subcommittee to interview applicants.

The City Council wished everyone a Happy Thanksgiving.

Mayor Pro Tem Rickman acknowledged Council Member Young for her comradery and participation in their annual bet.

Council Member Vargas invited everyone to participate in preparing packages for the troops on Saturday, November 21, 2015 at 11 a.m. at the Fire Administration Building. Ms. Vargas also announced and encouraged everyone to purchase tickets for the holiday dinner taking place at the Portuguese Hall.

Council Member Young announced that on Friday at West High, the Annual International Feast will be taking place at 6:00 p.m. in the cafeteria and encouraged everyone to purchase a \$5 ticket.

Mayor Pro Tem Rickman expressed an interest in receiving information on the Rails for Trails program.

10. ADJOURNMENT – Time: 10:25 p.m.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adjourn the meeting. Voice vote found all in favor; passed and so ordered.

The above agenda was posted at the Tracy City Hall on November 10, 2015. The above are action minutes. A recording is available at the Office of the City Clerk.

Mayor

ATTEST:

City Clerk

December 15, 2015, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

Mayor Maciel called the City Council meeting to order at 7:04 p.m. and led the Pledge of Allegiance.

Invocation was led by Pastor Tim Heinrich, Crossroads Baptist Church.

Roll call found Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel present.

1. CONSENT CALENDAR

ACTION Following the removal of item 1D, it was moved by Mayor Pro Tem Rickman and seconded by Council Member Young to adopt the consent calendar. Roll call vote found all in favor; passed and so ordered. Motion carried 5:0

- A. Adopt Council Minutes – Regular meeting minutes of December 1, 2015, and closed session minutes of December 1, 2015 were approved.
- B. Approval to Purchase a Patch Truck from Nixon-Egli Equipment Company for Asphalt Repairs – Resolution 2015-208 approved the purchase of a Patch Truck.
- C. Approve Amendment No. Three to the Service Agreement Between the City of Tracy and Tracy Material Recovery and Solid Waste Transfer, Inc., Approve the Budget for the Operation of the Tracy Material Recovery Facility and Solid Waste Transfer Station for the Period of January 1, 2016 through December 31, 2016, and Approve Funding Appropriation – Resolution 2015-209 approved Amendment No. Three to a Service Agreement.
- E. Authorization to Award the Purchase of Replacement Mobile Data Computers and Related Equipment to Hubb Systems, LLC, Doing Business as Data 911 Through a State of California Multiple Award Schedule (CMAS), Contract Number 3-08-70-2549A, Pursuant to Tracy Municipal Code Section 2.20.220 and Authorize the Mayor to Execute a Four-Year Contract With Hubb Systems, LLC, Doing Business As Data 911 And Appropriate \$40,000 from the Equipment Replacement Fund to Complete the Purchase – Resolution 2015-210 authorized award to the purchase of replacement mobile data computers and related equipment.
- F. Award a Construction Contract for the 2014-2015 Slurry Seal Project – CIP 73138b, to the Lowest Responsive Bidder, Authorize the Mayor to Execute the Contract, and Authorize the City Manager to Execute Change Orders Up to the

Maximum Amount Permitted for this Project if Needed – Resolution 2015-211 awarded a construction contract for the 2014-15 Slurry Seal Project.

- G. Waive Second Reading and Adopt Ordinance 1203 an Ordinance of the City of Tracy Adding a New Section 10.08.3198, Donation Containers, to the Tracy Municipal Code - Ordinance 1203 was adopted.
- H. Waive Second Reading and Adopt Ordinance 1204 an Ordinance of the City of Tracy Amending Section 4.16.190 of Chapter 4.16 of Title 4 of the Tracy Municipal Code Making a Violation for Being in the Park After Dark a Misdemeanor; and Amending Article 14 of Chapter 4.12 of Title 4 Defining and Making Violations of Aggressive or Dangerous Solicitation a Misdemeanor – Ordinance 1204 was adopted.
- D. Approve Changes to the City Position Control Roster for Positions Allocated to the Fire Department to Include One Fire Captain and One Fire Engineer in a Temporary Over Hire Capacity – Resolution 2015-212 approved changes to the City position control roster.

Council Member Vargas pulled this item and disclosed that she would not participate in the discussion and vote of this item.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Young. Roll call vote found Council Members Mitracos, Young, Mayor Pro Tem Rickman and Mayor Maciel in favor; Council Member Vargas abstained; passed and so ordered.

- 2. ITEMS FROM THE AUDIENCE - Dan and Kelly Cabral expressed concern about the Tracy Police Officers working without a contract for six months and not receiving a pay increase for more than six years. Mr. and Mrs. Cabral urged the Council to keep the City of Tracy safe and take care of the needs of the Police Officers in a timely manner.

Milly Comber expressed her support for the Tracy Police Officers and was concerned that the officers have been working without a contract for six months.

- 3. PUBLIC HEARING TO INTRODUCE AN ORDINANCE AMENDING THE EDGEWOOD CONCEPT DEVELOPMENT PLAN TO PERMIT MULTI-FAMILY RESIDENTIAL USES AND SELF-STORAGE USES AT THE SITE CURRENTLY DESIGNATED NEIGHBORHOOD SHOPPING CENTER AND ADOPT A RESOLUTION TO APPROVE A PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR A 144-UNIT APARTMENT COMPLEX AND ASSOCIATED OUTDOOR AREAS. THE PROJECT IS LOCATED AT THE SOUTHEAST CORNER OF CORRAL HOLLOW ROAD AND MIDDLEFIELD DRIVE, ASSESSOR'S PARCEL NUMBERS 244-020-07. THE APPLICANT IS PACIFIC UNION LAND COMPANY, INC. AND PROPERTY OWNER IS EDGEWOOD LANE DEVELOPERS, LP. APPLICATION NUMBERS PUD12-0002 & D13-0017 – This item was postponed to be heard at a later date.

DEVIATION

6. ADOPT A RESOLUTION OF NECESSITY AUTHORIZING THE INITIATION OF EMINENT DOMAIN PROCEEDINGS TO ACQUIRE RIGHT OF WAYS AND TEMPORARY CONSTRUCTION EASEMENTS FROM CERTAIN REAL PROPERTIES FOR CONSTRUCTION OF INTERSECTION IMPROVEMENTS AT ELEVENTH STREET AND MACARTHUR DRIVE (WESTERN INTERSECTION) AND AUTHORIZE THE DEPOSIT OF \$17,200 FOR THE MARINO PARCEL AND \$350,000 FOR THE BOGETTI PARCEL WITH THE STATE OF CALIFORNIA CONDEMNATION DEPOSIT FUND

Kul Sharma, Utilities Director, presented the staff report.

Robert Mehlhaff, attorney for Albert and Robert Bogetti alleged that the City has not complied with regulations and expressed opposition to the recommendation. Mr. Mehlhaff urged the City Council to delay this item and reconsider.

City Council comments and questions followed

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt Resolution 2015-213 of Necessity of the of the City of Tracy to condemn real property in connection with intersection improvements at Eleventh Street and Mac Arthur Drive (Western Intersection), making findings and determinations, authorizing eminent domain proceedings and applications for possession prior to judgment, draw and deposit warrant (portions of Marino Property, APN 235-190-10 and Bogetti property, APN 235-190-11). Voice vote found all in favor; passed and so ordered.

4. CONDUCT A HEARING FOR APPROVAL OF A LOCATION AGREEMENT WITH MEDLINE INDUSTRIES, INC. AS PART OF THE CITY'S OFFICE/INDUSTRIAL INCENTIVE PROGRAM

Andrew Malik, Development Services Director presented the staff report.

Mayor Maciel opened the public hearing, there was no testimony given, and Mayor Maciel closed the public hearing.

Council comments and questions followed.

ACTION Motion was made by Council Member Vargas and seconded by Mayor Pro Tem Rickman to adopt Resolution 2015-214 approving a Location Agreement by and between the City of Tracy and Medline Industries, Inc. Voice vote found all in favor; passed and so ordered.

5. CITY COUNCIL DISCUSSION REGARDING DEVELOPMENT STANDARDS, DESIGN GUIDELINES, AND A RETAIL DEMAND FORECAST (ECONOMIC ANALYSIS) FOR PROPERTY ALONG INTERSTATE 205 (I-205) FROM TRACY BOULEVARD TO THE EAST CITY LIMIT

Victoria Lombardo, Senior Planner, Development Services, and Andrew Malik, Development Services Director, presented the staff report.

Bill Wiseman with Kimley-Horn presented an overview of design guidelines related to site planning and design. Ray Kennedy with Bay Area Economics presented an overview of the retail demand study.

City Council comments and questions followed.

Mayor Maciel called a recess at 9:01 p.m.

Mayor Maciel reconvened the meeting at 9:13 p.m.

City Council discussion ensued.

ACTION Upon City Council consensus staff was directed to incorporate the feedback received tonight into the design guidelines, return with an interim ordinance for consideration in January, 2016, and a map of the corridor with context related to zoning. Staff will begin defining potential land use, overlay and rezoning.

7. CONDUCT A PUBLIC HEARING TO HEAR OBJECTIONS TO AND APPROVE THE FINAL COSTS OF WEED ABATEMENT AND AUTHORIZE A LIEN ON THE LISTED PROPERTIES IN THE AMOUNT OF THE COST OF ABATEMENT PLUS TWENTY-FIVE PERCENT

David Bramell, Division Chief, presented the staff report.

Mayor Maciel opened the public hearing, there was no testimony given, and Mayor Maciel closed the public hearing.

City Council comments and questions followed.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt Resolution 2012-215 approving the final costs of weed abatement and authorizing a lien on the properties for which the City conducted weed abatement. Voice vote found all in favor; passed and so ordered.

8. ADOPT RESOLUTION APPROVING THE ANNUAL REPORT ON DEVELOPMENT IMPACT FEE REVENUES, EXPENDITURES AND FINDINGS REGARDING UNEXPENDED FUNDS

Rachelle McQuiston, Administrative Services Director, presented the staff report.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Young to adopt Resolution 2015-216 approving the annual report on Development Impact Fee Revenues, expenditures and findings regarding unexpended funds. Voice vote found Council Members Mitracos, Young, Mayor Pro Tem Rickman and Mayor Maciel in favor; passed and so ordered. Council Member Vargas was away from the dais during the vote. Council Member Vargas returned to the dais at 10:22 p.m.

9. ITEMS FROM THE AUDIENCE – There were no speakers.

10. COUNCIL ITEMS

A. APPOINT APPLICANTS TO THE TRACY ARTS COMMISSION

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to reappoint Anne Marie Fuller and Danette Poole to a four year term each ending December 31, 2019; and appoint Jenese Borges-Soto and Lon Swanson to a four year term each ending December 31, 2019. Voice vote found all in favor; passed and so ordered.

Mayor Pro Tem Rickman asked when the lobbying ordinance would return to Council. Dan Sodergen, City Attorney, responded that the Lobbying Ordinance will return to the Council on January 19, 2016.

Mayor Pro Tem Rickman also asked about the Local Hiring ordinance, Dan Sodergren, City Attorney responded that only Charter Cities can have a local preference ordinance for contracts over \$45,000, but that staff would return in February with an ordinance allowing local preferences for contracts under \$45,000, with some other clean-up language to the purchasing ordinance.

Council Member Vargas inquired about looking into an incentive program for City employees to live within City limits to retain the money that is paid out in the City. Staff is to return with incentive program information to the Council between April and May, 2016.

Council Member Young congratulated Don Scholl as the new Public Works Director.

11. ADJOURNMENT – Time 10:31 p.m.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adjourn the meeting. Voice vote found all in favor; passed and so ordered.

The above agenda was posted at the Tracy City Hall on December 8, 2015. The above are action minutes. A recording is available at the Office of the City Clerk.

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.B

REQUEST

APPROVE AN AGREEMENT BETWEEN THE CITY OF TRACY AND PACIFIC GAS & ELECTRIC COMPANY (PG&E) REGARDING THE CONSTRUCTION AND OPERATION OF A GAS DISTRIBUTION PIPELINE ON THE CITY'S PROPOSED UTILITY BRIDGE CROSSING THE CALIFORNIA AQUEDUCT ALONG CORRAL HOLLOW ROAD AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

In order to serve the Tracy Hills Development, PG&E must install a gas distribution line along Corral Hollow Road spanning the California Aqueduct. The City is also constructing a utility bridge for a water line spanning across the California Aqueduct to serve the Tracy Hills Development. The cost of design and construction of the utility bridge is the responsibility of the Tracy Hills Development. The Tracy Hills Developer and PG&E have requested the City to allow the crossing of PG&E gas line on the utility bridge spanning the California Aqueduct.

The attached agreement identifies the responsibilities of both the City and PG&E with regard to the design, construction, operations and maintenance of the bridge and their respective utilities lines.

DISCUSSION

Both water and wastewater services to the Tracy Hills Development will be served from new water and sewer lines to be installed on Corral Hollow Road. The sewer lines will be either force mains or gravity siphon lines spanning under the Delta Mendota Canal (DMC) and the California Aqueduct. The water line starting from the Tracy Water Treatment Plant will cross the California Aqueduct only. Similarly, PG&E will be installing a gas distribution line south of the DMC toward the Tracy Hills development. This gas line will also cross the California Aqueduct.

In order to cross water lines across the California Aqueduct, a separate utility bridge will be installed along Corral Hollow Road. The cost of design and construction of this bridge will be paid by the Tracy Hills developer.

Both PG&E and the Tracy Hills developer have requested the City to design and construct the utility bridge to accommodate PG&E gas distribution lines in addition to the City's water line. Since the cost of this bridge will be paid by the developer and PG&E will be responsible to maintain its own line, staff has given favorable consideration to their request. However, an agreement is required between the City of Tracy and PG&E to identify the responsibility of each agency during design, construction and post construction operational mode.

Since the City will own the utility bridge, a utility encroachment permit will be issued to PG&E consistent with the existing practices. PG&E will operate and maintain their own

gas line. PG&E will provide and maintain insurance coverage throughout the duration of the agreement and will indemnify the City for any claims and damages as a result of their performance or negligence. PG&E will be responsible for any damages to the bridge as a result of any pipe break or leak. The agreement allows PG&E to remove and relocate their gas line at their own cost whenever the City deems it necessary.

STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to City Council's Strategic Plans.

FISCAL IMPACT

This agenda item will have no impact to the General Fund. All costs associated with the utility bridge and PG&E line will be borne by the Tracy Hills developer.

RECOMMENDATION

That the City Council, by resolution, authorize approval of an agreement between the City of Tracy and Pacific Gas & Electric Company (PG&E) regarding the construction and operation of a gas distribution pipeline on the City's proposed utility bridge crossing the California Aqueduct along Corral Hollow Road and authorize the Mayor to execute the Agreement.

Prepared by: Kuldeep Sharma, Director of Utilities

Reviewed by: Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENT A: Agreement with PG&E Regarding Construction and Operation of Gas Distribution Pipeline on the City's Proposed Bridge Crossing the California Aqueduct Canal

**AGREEMENT
BETWEEN CITY OF TRACY AND PACIFIC GAS AND ELECTRIC COMPANY
REGARDING THE CONSTRUCTION AND OPERATION
OF A GAS DISTRIBUTION PIPELINE
ON THE CITY'S PROPOSED BRIDGE CROSSING THE CALIFORNIA AQUEDUCT
CANAL**

THIS AGREEMENT is entered into _____, 2015, between the City of Tracy, a municipal corporation ("City"), and the Pacific Gas and Electric Company, a California corporation ("PG&E").

RECITALS

A. The City is preparing to design and construct a bridge structure ("Bridge") to support a City-owned water pipe line to supply water to serve the Tracy Hills residential development ("Project") located on Corral Hollow Road, south of the California Aqueduct Canal ("Aqueduct") (For the purposes of this Agreement, "City" includes City's consultants); and

B. The Bridge will extend across the Aqueduct, which is operated by the California Department of Water Resources ("DWR"); and

C. The City has applied for and anticipates receiving an encroachment permit from DWR for the Bridge and water pipe line; and

D. PG&E is preparing to design and construct a distribution line extension to provide gas service to the Project; and

E. The Project involves the construction of one gas distribution pipeline from PG&E's existing gas regulator station located 500 feet north of the Aqueduct; and

F. The northern segment of the Project is designed to extend across the Aqueduct canal at the same approximate location as the Bridge; and

G. PG&E wishes to attach its gas distribution pipe line, and related facilities ("PG&E Pipe Line"), on the Bridge; and

H. By this Agreement, PG&E and the City seek to memorialize the terms and conditions for accommodation of the gas distribution pipe line on the Bridge.

NOW, THEREFORE, the parties mutually agree as follows:

1. City Encroachment Permit for the PG&E Pipe Line.

The City will issue an encroachment permit to PG&E to use the Bridge for the installation, operation and maintenance the PG&E Pipe Line (“City Encroachment Permit”), subject to this Agreement. No other use of the Bridge is authorized without the City’s prior written permission of the City.

The City will only issue the City Encroachment Permit after all of the following have occurred:

- a. PG&E has secured an encroachment permit from DWR, and all other necessary permits and approvals from DWR and other state and federal agencies;
- b. PG&E has complied with the terms of this Agreement required to be performed before construction begins; and
- c. City has completed the design and construction of the Bridge.

2. Planning, Design and Construction of the PG&E Pipe Line.

a. At the request of the City, and within a reasonable period of time to be mutually agreed upon by the City and PG&E, PG&E will submit to the City the proposed design plans and specifications for accommodating the location of the PG&E Pipe Line proposed to be installed on the Bridge. The plans shall include the location, alignment, length, size and/or capacity, type, class, design loads (weight), pertinent operating conditions, design criteria for supports on the bridge, and design features of the proposed facilities.

The City and PG&E agree to exchange technical data and other relevant information related to the construction of the PG&E Pipe Line and the Bridge. The City and PG&E agree to participate in timely review (not more than 10 working days) of the design of the PG&E Pipe Line. Exceptions to the timely response will apply to the City’s own design schedule for the Bridge, items subjected to federal, state, or local agency reviews and/ or approvals. PG&E is responsible for the design of the PG&E Pipe Line, subject to the City's approval.

b. The PG&E Pipe Line shall be of durable materials designed in accordance with PG&E minimum standards. PG&E will provide the City with minimum specifications and plans for the PG&E Pipe Line, including but not limited to special details, material unit weights, location of access points, and alignment prior to any design revisions associated with adding the PG&E Pipe Line to the Bridge design. Final approval for the PG&E Pipe Line and access locations shall be by the City.

c. The PG&E Pipe Line shall be installed by PG&E’s forces upon completion and acceptance of the Bridge construction by the City and issuance of the City Encroachment Permit.

d. The PG&E Pipe Line and associated fixtures and hardware installed on the Bridge as part of the Project shall be PG&E's solely-owned property and responsibility. Ownership does not apply to any other part of the Bridge.

3. Future Utility Accommodations.

This Agreement does not provide for exclusive use of the Bridge by PG&E. City may allow utility installations adjacent to the PG&E Pipe Line, provided that any such utilities comply with the minimum separation requirements established by the CPUC, DWR Encroachment Permit, or any other governmental agencies with jurisdiction. The City shall also make reasonable efforts to minimize any potential conflicts with the PG&E Pipe Line and to reduce the possibility of accidental damage.

4. Construction and Operational Conditions.

In order to construct and operate the PG&E Pipe Line on the Bridge, PG&E shall:

- a. Comply with all applicable laws, orders, ordinances, regulations, licenses and permits, if any, of any federal, state and local authorities with jurisdiction over PG&E's operations;
- b. Not interfere with the City's use of its property, or the City's construction and maintenance of the Bridge, unless prior written approval is expressly granted from the City;
- c. Not cause any public safety hazard;
- d. Promptly repair any leaks or breaks in the PG&E Pipe Line, and, if any portion of the Bridge is damaged by reason of breaks or leaks in the PG&E Pipe Line, PG&E shall at its own expense, take immediate steps to repair the damage and restore the Bridge to as good condition as it was before the break or leak, to the satisfaction of the City;
- e. Not begin the construction, installation or repair of the PG&E Pipe Line until it first obtains the City Encroachment Permit from the City;
- f. Prior to issuance of the City Encroachment Permit, furnish evidence to the City that all of the following insurance requirements have been satisfied:
 - i. PG&E shall, throughout the duration of this Agreement, maintain insurance to cover PG&E, its agents, representatives, contractors, subcontractors, and employees in connection with the construction and operation of the PG&E Pipe Line under this Agreement at the following minimum levels:
 - (a) Commercial General Liability (with coverage at least as broad as ISO forms CG 00 01, CG 20 10, and CG 20 37) coverage shall be maintained in an amount not less than \$10,000,000.00 general aggregate and

\$5,000,000.00 per occurrence for general liability, bodily injury, personal injury, and property damage;

(b) Automobile Liability (with coverage at least as broad as ISO form CA 00 01, for “any auto”) coverage shall be maintained in an amount not less than \$10,000,000.00 per accident for bodily injury and property damage;

(c) Workers’ Compensation coverage shall be maintained as required by the State of California.

ii. PG&E shall obtain endorsements to the automobile and commercial general liability with the following provisions:

(a) The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an additional “insured;” and

(b) For any claims related to this Agreement, PG&E’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the PG&E’s insurance and shall not contribute with it.

iii. PG&E 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.

iv. All insurance companies providing coverage to PG&E 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.

v. PG&E 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.

vi. No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, PG&E shall provide a substitute certificate of insurance.

vi. Maintenance of insurance by PG&E as specified in this Agreement shall in no way be interpreted as relieving PG&E of any responsibility whatsoever (including indemnity obligations under this Agreement), and PG&E may carry, at its own expense, such additional insurance as it deems necessary.

vii. PG&E shall have the right to self insure with respect to any of the insurance requirements required under this Agreement. PG&E shall submit a letter of self-insurance signed by a duly authorized representative evidencing that PG&E's self-insurance program is in full force and effect and in compliance with and subject to all the terms, agreements, covenants, conditions and provisions of this Agreement.

5. Indemnification

As permitted by law, PG&E shall defend, indemnify, and hold harmless the City, its officers, employees and agents against, and shall hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, ("claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the activities of PG&E, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the acts or omissions of PG&E under this Agreement, or arising from PG&E's performance of or failure to perform any terms, provision, covenant or condition of this Agreement, whether or not there is concurrent passive or active negligence on the part of City, its officers, agents or employees but excluding such claims or liabilities arising from the sole negligence, gross negligence, or willful misconduct of the City, its officers, agents or employees, who are directly responsible to the City and in connection therewith:

i. PG&E shall defend any action or actions filed in connection with any of the claims or liabilities and shall pay all actual costs and expenses, including legal costs and attorneys' fees, incurred in connection therewith;

ii. PG&E shall promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with such work, operations or activities of PG&E; and PG&E agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

iii. If the City, its officers, agents, or employees is made a party to any action or proceeding filed or prosecuted against PG&E for the damages or other claims arising out of or in connection with its construction and operation of the PG&E Pipe Line, PG&E agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents, or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

iv. The indemnity, defense and hold harmless provisions of this section include any claim of damage resulting from or relating to environmental contamination including any environmental claims, environmental clean-up liability, environmental compliance costs and any other claims which arise under environmental law from the leakage or spillage of the contents of the PG&E Pipe Line, whether by slow seeping or breakage whether or not such leakage or break results from PG&E's actual negligence.

6. Relocation of Bridge or City-owned Water Pipe Line.

If the City determines that it is necessary to remove or relocate the Bridge or City-owned water pipe line and such work reasonably necessitates the removal or rearrangement of the PG&E Pipe Line, PG&E shall at its own cost and expense remove the PG&E Pipe Line from the Bridge or rearrange the PG&E Pipe Line on the Bridge upon 60 days written notice by the City. If the PG&E Pipe Line cannot reasonably be removed or rearranged within the 60 day period, PG&E shall have such additional time as may be reasonably necessary to perform such work, provided PG&E commences work within the original 60 day period and thereafter diligently prosecutes the work to completion. In the event of any damages to the bridge and or to the pipe due to natural calamity or any accidents beyond City's control, PG& E will be responsible to remove, repair or relocate the pipe immediately to ensure health and safety of the public. The City does not assume any responsibility or liability in such event.

7. Removal or Abandonment of PG&E Pipe Line.

In the event of the expiration, revocation, or termination of the City Encroachment Permit, or of the permanent discontinuance of the use of the PG&E Pipe Line, PG&E shall, within 30 days make written application to the City for instructions as to the disposal to be made of the PG&E Pipe Line. The City shall in the exercise of his or her sole discretion, within 60 days of the receipt of the application (if City finds that the removal of the PG&E Pipe Line will not materially injure or shorten the life of the Bridge), order the PG&E Pipe Line to be removed, or upon PG&E's request, permit the PG&E Pipe Line to be abandoned in place.

When the abandonment of the PG&E Pipe Line is permitted or required under this Agreement, the affected pipelines shall be capped, plugged or removed as may be prescribed by the City.

8. Notices.

All notices, application, 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:

a. City

City Manager
333 Civic Center Plaza
Tracy, California 95376

b. PG&E

Pacific Gas and Electric Company
Mail Code N10A
Post Office Box 770000
San Francisco, CA 94177
Attention: Supervisor, Land Rights Services

9. Integration.

This Agreement constitutes the entire agreement and understanding between the parties as to the subject matter of the Agreement.

10. Amendments and Waivers.

This Agreement may be amended, supplemented or modified only in writing signed by the parties.

11. Assignment and Delegation.

This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of PG&E'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 to one assignment shall not be deemed to be consent to any subsequent assignment.

12. 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.

13. 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.

14. 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.

15. 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 PG&E 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.

PACIFIC GAS AND ELECTRIC COMPANY:

By: 
Name: ANTHONY M. D'ALESTANDO
Title: MANAGER

Date: 9/30/15

CITY OF TRACY:

By:
Name:
Title:

Date: _____

Attest: _____

Date: _____

Approved as to Form: _____

RESOLUTION 2016- _____

APPROVING AN AGREEMENT BETWEEN THE CITY OF TRACY AND PACIFIC GAS & ELECTRIC COMPANY (PG&E) REGARDING THE CONSTRUCTION AND OPERATION OF A GAS DISTRIBUTION PIPELINE ON THE CITY'S PROPOSED UTILITY BRIDGE CROSSING THE CALIFORNIA AQUEDUCT ALONG CORRAL HOLLOW ROAD AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, In order to serve the Tracy Hills Development, PG&E must install a gas distribution line along Corral Hollow Road spanning the California Aqueduct, and

WHEREAS, The City is also constructing a utility bridge for a water line spanning across the California Aqueduct serving the Tracy Hills Development; the cost of design and construction of which is the responsibility of the Tracy Hills Development, and

WHEREAS, The Tracy Hills Developer and PG&E have requested the City to allow crossing of PG&E lines on the utility bridge spanning the California Aqueduct, and

WHEREAS, An agreement is required between the City of Tracy and PG&E to identify the responsibility of each agency during design, construction and post construction operational mode, and

WHEREAS, Since the City will own the utility bridge, a utility encroachment permit will be issued to PG&E consistent with the existing practices, and

WHEREAS, There is no fiscal impact to the City General Fund as all costs associated with the utility bridge and PG&E line will be borne by the Tracy Hills developer;

NOW, THEREFORE, BE IT RESOLVED, That the City Council, authorizes approval of an agreement between the City of Tracy and Pacific Gas & Electric Company (PG&E) regarding the construction and operation of a gas distribution pipeline on the City's proposed utility bridge crossing the California Aqueduct along Corral Hollow Road and authorizes the Mayor to execute the Agreement.

* * * * *

The foregoing Resolution 2016-_____ was passed and adopted by the Tracy City Council on the 19th day of January 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.C

REQUEST

APPROVE STANDARD AGREEMENT BETWEEN THE CITY OF WEST COVINA, THROUGH ITS POLICE DEPARTMENT, AN ENTITY ORGANIZED UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND THE CITY OF TRACY FOR DATA PROCESSING EQUIPMENT AND SERVICES AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

The Tracy Police Department requests to enter into an Agreement with the City of West Covina Police Department to implement and use a comprehensive public safety information system for the Computer Aided Dispatch (CAD)/Records Management System (RMS).

DISCUSSION

In November 1999, the City Council approved a Data Processing Equipment and Services Agreement between the City of West Covina, through its Police Department, and the City of Tracy for a comprehensive public safety information system.

In March 2012, the City and Spillman Technologies, Inc. (Spillman) entered into a Professional Services Agreement for the Computer Aided Dispatch and Records Management System. In January 2014, the Police Department went "live" with the new CAD/RMS system. Since the "live" date, Spillman was not able to meet the Department's needs. Spillman was attentive to the challenges and made efforts to address the issues. However, due to the difficulties Spillman and staff encountered with multiple interfaces and customization, staff found another provider to be a better fit and that would provide cost savings for the department. City staff and Spillman amended the Agreement whereby Spillman agreed to reimburse monies to the City for all payments made to Spillman, other than those made to purchase hardware.

In October 2014, the department reverted back to the previous system provided by West Covina. Since October 2014, staff has been using the West Covina system and has successfully implemented Automated Field Reporting (AFR) and an electronic subpoena program. The system is meeting the needs of the department at this time. Staff is in the process of changing over the City's electronic ticket writers to enhance the efficiency of processing citations through an interface with the West Covina system. Staff recommends continuing with the West Covina system.

STRATEGIC PLAN

This is a routine operational item and is not related to any of the Council Strategic Plans.

FISCAL IMPACT

Budgeted; General Fund; \$96,932.

RECOMMENDATION

That the City Council approve the Data Processing Equipment and Services Agreement and authorize the Mayor to execute the Agreement.

Prepared by: Lani Smith, Support Operations Manager

Reviewed by: Jeremy Watney, Acting Chief of Police
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A Standard Agreement Data Processing Equipment and Services Agreement

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

STANDARD AGREEMENT

DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT

This DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT is made this 19th day of January, 2016 by and between the City of West Covina, through its Police Department, an entity organized under the laws of the State of California ("West Covina Police") and the **City of Tracy/Tracy Police Department**, organized under the laws of the State of California ("Client Agency") for a period of three years with on-going annual fees (due July 1st of each year, starting July 1, 2016 and ending July 1, 2018)

Recitals

- A. Client Agency has requested to lease the West Covina application software.
- B. Client Agency desires to implement and use a comprehensive public safety information system without the responsibility for day-to-day central computer system management and West Covina Police has the available central computer system capacity, implementation and system management skills and ability to implement such a system and to provide on-going support and maintenance.

In consideration of an initial processing establishment fee and annual processing and software usage/support/maintenance fees to be paid by Client Agency to the West Covina Police, the parties agree as follows:

1. Sale of Equipment and Right To Use Software. Subject to the terms and conditions hereof, West Covina Police agrees to sell to Client Agency, and Client Agency agrees to purchase from West Covina Police, the equipment and the right to use the software products described herein (collectively referred to as the "System"). West Covina Police shall obtain for delivery at the address designated for Client Agency's use of the System (the "Installation Site"), the equipment, parts, and supplies identified in Attachment 1 hereto (the "Network Equipment").

Client Agency's right to use the system software products may not be transferred, leased, assigned, or sublicensed without West Covina Police's prior written consent, except for a transfer of the right-to-use in its entirety to a successor in interest of Client Agency's entire organization who assumes the obligations of this Agreement.

2. Network Equipment Installation. West Covina Police shall be responsible for complete installation of the System and Network Equipment identified in Attachment 1 hereto.

3. Training. Client Agency shall select personnel suitable to operate and use the System and confirm that such personnel demonstrate the competence necessary to manage and operate the System. West Covina Police shall, upon Client Agency's request, provide Client Agency's personnel with training and instruction concerning the operation and use of the System by conducting a training session(s)

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

at a mutually convenient time at Client Agency's facility. The cost and terms of payment for providing training at Client Agency's facility is contained in Attachment 1 of this Agreement.

4.Remote Computing Services. The West Covina Police shall provide Client Agency with the data processing services described in the Processing Schedule contained in Attachment 1. The Processing Schedule sets forth standards and procedures, including form of source data, programs to be used in processing, procedures for data storage, and form of return data and output, for such services. The West Covina Police may provide remote computing services to sort and analyze such data in order to produce the return data and output. Such data, as sorted and analyzed, shall be stored in a custom database file for Client Agency to access on a confidential, "password-restricted" basis through the West Covina Police's on-line communications network. The Processing Schedule also sets forth the equipment and computer programs provided for Client Agency's use, the quantity of data storage space reserved the communication protocols and terminal specifications for equipment on Client Agency's premises, and user identification and security procedures to be employed.

5.Processing. The West Covina Police will process work in a timely manner according to the processing schedule, including computer network availability times and scheduled downtime arrangements, to be developed from time to time by Client Agency and West Covina Police and documented in additions to the Processing Schedule signed by both parties hereto. West Covina Police acknowledges that maximum availability of the computer network so undertaken is necessary for Client Agency to meet Client Agency's internal operating requirements, but West Covina Police shall not be responsible for unscheduled computer network outages attributable to causes beyond its reasonable control, including but not limited to limitations on the availability of 6.telephone transmission facilities, failures of other communications equipment, or Client Agency's failure to prepare data properly for input into equipment of West Covina Police.

7.Backup Services. If West Covina handles Client processing, West Covina Police shall maintain adequate back-up arrangements and equipment in order to maintain services hereunder in the event of the failure of West Covina Police's equipment. West Covina Police shall, at a minimum, perform daily incremental and weekly comprehensive backups of Client Agency's database files and shall rotate a current backup copy off-site from West Covina Police's premises weekly.

8.Priority Processing. West Covina Police shall afford priority to all data processing services provided with respect to public safety information systems and shall undertake all reasonable efforts to maximize computer network availability for such data processing for Client Agency prior to any non-priority processing.

9.Ownership of Systems, Materials and Database. All systems, programs, operating instructions, and other documentation prepared by West Covina Police shall be, and remain, the property of West Covina Police. All data and source documents provided by Client Agency and all output shall be, and remain, Client Agency's property. Upon termination of this Agreement, all of Client Agency's information retained by West Covina Police in Client Agency's custom database files shall be made

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

available to Client Agency on computer readable media, of a type suitable for use on the specified equipment, and West Covina Police shall return to Client Agency all documents and written records of transactions belonging to Client Agency. Client Agency's custom database files shall be supplied in either native West Covina application system format or in a flat file format with all data fields unpacked or not in computational or binary form. Costs to cover such final servicing and handling of materials and custom database files are deemed to be included in the processing establishment fee.

10. Duty of Care. West Covina Police agrees to employ due care and attention in maintaining Client Agency's custom database files. Client Agency acknowledges that data processing entails the likelihood of some human and machine errors, omissions, delays, and losses, including inadvertent loss of data or damage to media, which may give rise to loss or damage.

Operation of the System and use of the products and services identified in this Agreement are the sole responsibility of Client Agency. West Covina's sole undertaking is limited to providing the products and services outlined herein in accordance with the terms and conditions of this Agreement. The provision of products sold or leased and services performed by West Covina to Client Agency shall not be interpreted, construed, or regarded, either expressly or implied, as being for the benefit of or creating any obligation toward any third party or legal entity outside of West Covina and Client Agency; West Covina's obligations under this Agreement extend solely to Client Agency.

Client Agency is responsible for adopting reasonable measures to limit Client Agency's exposure with respect to such potential losses and damages, including (without limitation) examination and confirmation of results prior to use thereof, provision for identification and correction of errors and omissions, preparation and storage of backup data, replacement of lost or damaged data or media, and reconstruction of data. Client Agency agrees to maintain at all times alternative methods capable of substitution for West Covina Police's performance under this Agreement. Client Agency is also responsible for complying with all local, state, and federal laws including those pertaining to the use and disclosure of any data.

11. Confidential Treatment of Information. West Covina Police shall maintain in confidence, and shall not disclose to any third party, unless directed to do so in writing by Client Agency's Chief of Police, or designee, all data and materials furnished by Client Agency for processing hereunder, and West Covina Police agrees that such information shall not be used by West Covina Police for any purposes other than the provision of processing services pursuant to this Agreement. West Covina Police's obligation under this Paragraph 11 is limited to diligent compliance with the same methods and procedures that West Covina Police uses to protect its own confidential information from disclosure. West Covina Police further agrees to restrict access to the custom database files created for the output of its processing of Client Agency's data. West Covina Police shall furnish Client Agency with a description of such restrictions upon Client Agency's request, BUT CLIENT AGENCY ACKNOWLEDGES THAT ACCESS RESTRICTIONS, BY THEIR NATURE, ARE CAPABLE OF BYPASS AND WEST COVINA POLICE DOES NOT AND CANNOT

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

GUARANTEE THAT SUCH OUTPUT CANNOT BE ACCESSED BY UNAUTHORIZED PERSONS CAPABLE OF OVERCOMING SUCH RESTRICTIONS.

12.Audits and Governmental Examination. West Covina Police agrees to permit auditors or consultants retained by Client Agency to audit or review the procedures for handling and processing of data hereunder upon reasonable notice and compliance with West Covina Police's security procedures. The parties also acknowledge that certain federal and state agencies may require access to facilities of West Covina Police to audit the performance of the services by West Covina Police for Client Agency under this Agreement, and West Covina Police will cooperate with respect to all such governmental audits. West Covina Police shall provide an annual financial accounting and report of data processing operations in writing to Client Agency.

13.Modification of Procedures. West Covina Police may make changes from time to time in its standards and procedures for performing data processing services, but no substantial changes will be implemented by West Covina Police until it has furnished Client Agency with written notice thereof and a reasonable opportunity to adapt Client Agency's operations to accommodate such changes. Substantial changes are those which would force Client Agency to make significant modifications to their standard operating procedures.

14.West Covina Maintenance. West Covina Police shall maintain the application software used by Client Agency at the time of the execution of this Agreement. West Covina Police shall use its best efforts to correct any reproducible error. Response to downed systems generally will be within four hours. Suspected error conditions will be investigated and corrected by West Covina Police personnel at West Covina offices to the extent possible although visits to the Client Agency's site shall be made when necessary pursuant to Paragraph 18 of this Agreement. West Covina Police may provide Client Agency with use of unsolicited error corrections or changes to the software which West Covina Police determines are necessary for proper operation of the software.

15.New Releases. West Covina Police is continually working on improvements to application software modules. During the term of this Agreement, as these improvements are released, Client Agency will receive the right-to-use these improvements. West Covina Police reserves the right to make final determination as to whether or not newly completed or acquired enhancements, modules and/or applications are deemed separately priced products or are to be included as no-cost enhancement/new releases for the maintenance-paying Client Agency.

16.Pricing. Network Equipment Costs, Processing Establishment, Installation and Training Fees shall be paid on a one-time only basis according to the payment schedule contained in Attachment 1 of this Agreement. Processing, Software Support and Usage and Maintenance fees are billed annually and are due and payable by July 1 of each year. The amount of these annual recurring fees is presented in Attachment 1. West Covina Police may increase the amount of the annual recurring fees each year, based upon budget requirements, to a maximum of 5% in any year. Client Agency will be notified of such annual recurring fees increases by April 1 of each year.

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

17.Taxes. Client Agency shall report and pay all applicable federal, state, and local taxes designated, levied, or based (1) upon the Purchase Price, Service Establishment, Processing Fees, or any other amounts payable under this Agreement; (2) on account of this Agreement; or (3) with respect to the System, the Network Equipment, or the use by Client Agency of the System or the Network Equipment.

Client Agency shall indemnify and hold harmless West Covina Police from all claims and liability resulting from Client Agency's failure to report or pay such amounts.

18.Delivery. West Covina shall deliver all equipment outlined in Attachment 1 to Client Agency's facility.

19.On-Site Assistance and Billing. If a problem cannot be resolved using remote diagnostics, with the Client Agency's authorization, West Covina Police shall send a specialist to the Client Agency's site under the following terms and conditions: (1) If the problem lies solely with Client Agency's equipment, Client Agency will be responsible for all expenses associated with the resolution of the problem, and (2) if the problem is Client Agency generated, Client Agency may be responsible for all fees and expenses and will be automatically billed on a net 30 basis at West Covina Police's then-current service rate plus cost of materials. The current service rate is indicated in Attachment 1 of this Agreement.

Nonpayment of billed services shall constitute a breach of Agreement and all remote computing services and maintenance shall be withheld until such time as all back payments plus applicable late penalties and interest have been fully repaid. Client Agency generated problems include any and all hardware and/or network failures that were caused by improper use, tampering or by intentional damage to the Client Agency's Network Equipment.

20.West Covina Service Group (WCSG). Calls to WCSG will be accepted during regular business hours from 7:00 a.m. PST to 5:00 p.m. PST on Monday through Thursday, excluding announced West Covina holidays. Responses from WCSG or other West Covina Police representatives will be provided during the same hours. West Covina Police will use its best efforts to resolve problems promptly. Client Agency will select no more than two (2) of its employees to serve as official representatives of Client Agency to use the WCSG hotline support. Client Agency may also appoint alternative representatives to act in place of the official representatives in their absence. The WCSG service is not to be considered a source of training or a source of consulting. It is Client Agency's responsibility to regulate and authorize the use of this service by its employees. All WCSG services shall be coordinated in advance with the West Covina Site Manager. Client Agency's representatives shall not call programming staff directly.

After-hours support services may be provided in coordination through the Site Manager. "After hours support services" means services between 5:00 p.m. - 7:00 a.m. Monday-Friday or on West Covina holidays or on weekends. Requests for emergency support services may originate only from the Client Agency's official representative(s). The charge for emergency services shall be on a time and materials basis at the rate indicated in Attachment 1 with a two (2) hour minimum.

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

West Covina shall designate a Site Manager under this Agreement.

21. Client Agency Responsibilities. Client Agency's responsibilities shall include the following:

- 1 Client Agency, at its expense and prior to delivery and installation of the System at Client Agency's address, shall prepare the Installation Site in an appropriate manner and shall cause the Installation Site to conform to any utility, climate control, and communication interface specifications that West Covina Police or the manufacturers or vendors of the Network Equipment may supply.
- 2 Client Agency shall promptly inspect the Network Equipment upon its arrival at the Installation Site and shall notify West Covina Police if Client Agency finds any damage or defect in the Network Equipment.
- 3 Client Agency shall provide West Covina Police personnel with the work space necessary for the proper execution of its service obligations as necessary and required by West Covina Police.
- 4 Client Agency will be responsible for maintaining the computer hardware, communications equipment, telephone lines, cabling, modems and all other hardware equipment as necessary to operate efficiently and to industry standards.
- 5 Client Agency will make available network access time for the testing and maintenance of software as necessary and required by West Covina Police.

22. Terms of Agreement. This Data Processing Equipment and Services Agreement shall be effective until terminated as set out in paragraph 23, subject to changes in terms and conditions set out herein.

23. Termination. Either party shall have the right to terminate this Agreement without cause upon not less than one hundred eighty (180) days advance written notice.

24. Warranties.

- 1 West Covina Police warrants, for the benefit of Client Agency only, that at the time of completion of delivery and installation of the Network Equipment and Operating Programs at the Installation Site, the equipment shall be free of defects in materials or workmanship. West Covina Police's sole obligation, and Client Agency's exclusive remedy, for any defect or nonconformity in the Network Equipment and Operating Programs shall be to cooperate with Client Agency to provide it with the benefit, if any, of the warranty and support commitment of the third-party manufacturers and suppliers of Network Equipment and the Operating Programs. Client Agency may independently seek to obtain directly, from the manufacturers of the Network Equipment or the Operating Programs, maintenance or repair of the Network

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

Equipment or the Operating Programs under any warranty or guarantee provided by such manufacturer. Client Agency acknowledges, unless Client Agency obtains separate service agreements with such manufacturers and suppliers or with a third-party maintenance vendor covering maintenance or repair of the Network Equipment and the Operating Programs at the Installation Site, that such manufacturers and suppliers may require Client Agency to deliver defective Network Equipment or Operating Programs to their authorized service centers for maintenance or repair.

- 2 THE CLIENT AGENCY UNDERSTANDS AND AGREES THAT EXCEPT FOR THE FOREGOING WARRANTY, NO WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY TO THE SOFTWARE UNDER THIS AGREEMENT, WHICH IS FOR MAINTENANCE AND SUPPORT ONLY. ALL IMPLIED WARRANTIES ARE HEREBY AND EXPRESSLY DISCLAIMED. West Covina's sole obligation for breach of this Agreement is limited to repairing and/or replacing, at Client Agency's option, the software components at West Covina's own expense, which shall be Client Agency's sole and exclusive remedy. The repair or replacement of any defective software under this warranty is conditioned upon the software not having been altered or repaired by any individual other than West Covina employees or agents, and West Covina shall not be responsible for any defects resulting from the mishandling, abuse, misuse, improper storage or improper operation, including use in conjunction with equipment which is electrically or mechanically incompatible with or of inferior quality to the System, as well as failure to maintain the environmental conditions specified by the manufacturer of the System.

25. Indemnification. Subject to the limitations set out herein each party shall indemnify and hold harmless the other party from and against claims, losses, damages, liabilities, demands, and lawsuits to the extent they arise from, or are alleged to arise from, negligent acts solely in connection with a party's performance (or failure to perform) under this Agreement or a party's use of, or operation of, the Product(s) sold, installed, and maintained under this Agreement. This indemnity extends solely to claims and lawsuits for personal injury, death, or destruction of tangible property

Notwithstanding any other provision in this Agreement, including without limitation Paragraphs 9,23,24, West Covina Police shall defend, indemnify and hold harmless the Client Agency and its elected officials, officers, employees and agents from and against any claims, losses, damages, liabilities, demands and lawsuits, of whatsoever kind or nature, including, without limitation, patent and/or copyright infringement claims arising out of or relating to West Covina Police's ownership and/or ability or right to sell or lease the software and database which are the subject of this Agreement.

26. Security and Privacy. West Covina Police agrees that to the extent allowed by law, none of its officers or employees shall use or reveal any research or statistical information furnished by any person and identifiable to any specific private person for any purpose other than the purpose for

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

which it was obtained. Copies of such information shall not, without the prior written consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit or other judicial or administrative proceedings, unless ordered by a court of competent jurisdiction. Client Agency shall be notified immediately upon receipt of any such order of court, pertaining to production of such information.

27.Changes to files and/or hardware configuration. Any changes to files and/or hardware which may affect software performance, including but not limited to changes to existing hardware configurations, network configurations, terminal and printer characteristics or modems without the prior written consent of West Covina Police may void this Agreement. West Covina Police may provide requested support on a time and material basis only, until such time as the changes in configuration are resolved.

28.Independent Contractor. The parties hereto agree that West Covina Police Department and its employees, officers, and agents are independent contractors under this Agreement and shall not be construed for any purpose to be employees of Client Agency.

29.Notices. Any notices required or permitted under this Agreement shall be in writing and shall be effective when delivered in person or sent by registered or certified mail, return receipt requested, with proper postage affixed, or by personal courier to the address set forth in this Agreement or any more recent address of which the sending party has been apprised.

30.Governing Law/Miscellaneous. This agreement shall be governed by the laws of the State of California. It may be amended only in writing signed by both parties. No waiver of any term or condition of this Agreement shall be a continuing waiver thereof.

31.Entire Agreement. This Agreement, including Attachment 1 hereto, which is hereby incorporated herein by this reference, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior and contemporaneous representations, proposals, agreements, negotiations, advertisements, statements, or understandings, whether oral or written. No amendment to this Agreement shall be binding on either party unless such amendment is in writing and executed by authorized representatives of both parties to this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized representatives.

City of **Tracy**

By: _____
Michael Maciel
Title: Mayor
Date: _____

City of West Covina

By: _____
Name: _____
Title: _____
Date: _____

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

Attest:

By: _____
Nora Pimentel

Title: City Clerk

Date:

Approved as to form

By: _____
Daniel G. Sodergren

Title: City Attorney

Date: _____

I. Description of Data-Processing Services:

A. Maintenance and Repair of Data Communications Lines:

All data communication lines between Client Agency and West Covina are supplied by the local telephone service company. The maintenance and repair of those lines remains the responsibility of the provider.

B. Maintenance and Repair of E-911 Connections:

All 911 communication lines are supplied by the local telephone service company. The maintenance and repair of those lines remains the responsibility of the provider.

C. Maintenance and Repair of External System Interfaces:

All external interface communication lines between Client Agency and the County or State are supplied by the County or the State. The maintenance and repair of those lines remains the responsibility of the provider.

D. Maintenance and Repair of West Covina Police supplied Third-Party Equipment:

All third party equipment provided by West Covina to Client Agency will be the property of the Client Agency. The maintenance and repair of that equipment will be the responsibility of West

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

Covina. Any West Covina personnel costs will be billed to Client Agency at a time and materials rate of \$150 per hour.

E. Maintenance and Repair of Third-Party Software provided by West Covina Police:
All third party software provided by West Covina to Client Agency will be the property of the Client Agency. The maintenance and repair of that software will be the responsibility of West Covina. Any West Covina personnel costs will be billed to Client Agency at a time and materials rate of \$150 per hour.

F. Maintenance and Repair of West Covina Police Central Computer System:

West Covina will be responsible for all maintenance and repair of the Central Computer System with contracted maintenance coverage of 24 hours by 7 days per week, including holidays.

G. Client Agency copy of database backup:

H. Additional training requested by Client Agency will be quoted separately at a rate of \$150 per hour.

At Client Agency direction, West Covina Police will rotate to Client Agency a comprehensive backup media on a monthly basis.

II. Standards and Procedures

A. Client Agencies Users' Group:

Client Agency will be a member of the West Covina User's Group and will be invited to attend all meetings of that group and will be asked to provide input into future software enhancements.

B. Procedures for Off-Site Data Storage:

West Covina will make daily backups of the entire Client Agency system. If asked to do so, West Covina will provide Client Agency, monthly, with a full backup media.

C. Network Availability Schedule:

24 hours daily, 7 days per week.

D. Scheduled Downtimes:

Downtimes are scheduled on an "as needed" basis and West Covina Police will provide, in most instances, at least one (1) day advance notice. Less notice may be provided for emergency system maintenance downtime.

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

E. Security Procedures:

Client Agency will have full authority and responsibility to assign passwords, terminal time-outs, user clearances, and other related security functions to all of their users on the system.

F. On-Site Assistance and Emergency Service Fees:

Normal On-Site Assistance rate is \$150.00 hour.

Emergency Services rate is \$300.00 hour.

Client Agency shall be invoiced for these services fees as they are incurred. The invoice shall indicate the date services were provided, the individual providing the services and amount of time incurred. Invoices are due and payable within 30 days.

Client Agency shall be invoiced for any software or hardware purchases made on their behalf, at the time of ordering. Invoices are due and payable within 30 days. Late payments are subject to a 3% monthly penalty.

The annual processing/usage fee is due and payable by July 1 of each year.

The software support and maintenance fee is due and payable by July 1 of each year.

**DATA PROCESSING EQUIPMENT AND SERVICES AGREEMENT
NETWORK EQUIPMENT AND PROCESSING SCHEDULE – Attachment 1**

ON-GOING ANNUAL FEES (due July 1st of each year, starting July 1, 2016 and ending July 1, 2018)

WCSG may increase fees by no more than 5% each year. Tracy Police Department shall be notified of any increase in writing by the 1st day of April of each year or the fees will remain the same as the previous year.

ANNUAL CAD/RMS/EXTERNALS INTERFACE MAINTENANCE FEES	\$28,301.00
ANNUAL HOSTED LEASE/USAGE FEES	\$43,370.00
ANNUAL EXTERNALS MAINTENANCE FEES	\$6,010.00
REIMBURSEMENT OF DATA CONNECTION FEES	\$583.00
REIMBURSEMENT OF CLETS ANNUAL FEES	\$4,244.00
MDT ANNUAL MAINTENANCE FEES	\$6,010.00
PST RADCOM SERVER & RADCOM CLIENT MAINTENANCE	\$8,414.00
TOTAL WCSG ANNUAL FEES	\$96,932.00

RESOLUTION _____

APPROVING STANDARD AGREEMENT BETWEEN THE CITY OF WEST COVINA, THROUGH ITS POLICE DEPARTMENT, AN ENTITY ORGANIZED UNDER THE LAWS OF THE STATE OF CALIFORNIA AND THE CITY OF TRACY FOR DATA PROCESSING EQUIPMENT AND SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, In January 2014, the Police Department implemented a new Computer Aided Dispatch (CAD)/Records Management System (RMS). The system was not fully implemented and the department reverted back to the previous system, and

WHEREAS, In October 2014, the department reverted back to West Covina, the previous Computer Aided Dispatch (CAD) and Records Management System (RMS), and in December 2014 a new agreement was developed to provide a fully integrated Computer Aided Dispatch (CAD)/Records Management System (RMS) for a Public safety Information System, and

WHEREAS, Staff has been successfully using the CAD/RMS system and has implemented automated field reporting and a subpoena module and plans to implement an electronic citation program that will integrate with West Covina, and

WHEREAS, The recommendation of staff is to continue using the West Covina System, and

WHEREAS, The funding for the annual maintenance has already been included in the FY 2015-16 budget;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the Standard Agreement Data Processing Equipment and Services Agreement between the City of West Covina, through its Police Department, an entity organized under the laws of the State of California and the City of Tracy for the Data Processing Equipment and Services, in the amount not to exceed \$96,932, and Authorizes the Mayor to execute the Agreement.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the
19TH day of January, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.D

REQUEST

AUTHORIZATION TO AWARD THE PURCHASE OF REPLACEMENT POLICE DEPARTMENT 911 TELEPHONE EQUIPMENT THROUGH THE STATE OF CALIFORNIA 911 BRANCH CUSTOMER PREMISE FUNDING FROM AT&T, DOING BUSINESS THROUGH A STATE OF CALIFORNIA MASTER PURCHASE AGREEMENT (MPA), CONTRACT NUMBER 5-12-58-01, A COOPERATIVE PURCHASE AGREEMENT, PER TRACY MUNICIPAL CODE SECTION 2.20.220, AND AUTHORIZE THE MAYOR TO EXECUTE A FIVE-YEAR CONTRACT

EXECUTIVE SUMMARY

In March of 2015 the Police Department requested funds from the State of California Governor's Office of Emergency Services, 9-1-1 Emergency Communications Branch to replace its current 911 Customer Premise Equipment (CPE). The funds for this equipment become available to Tracy Police Department on March 23, 2016.

DISCUSSION

The funds provided to the Tracy Police Department are allocated by the State of California using an analysis of the emergency call traffic the Tracy Police Department receives. The funds are based on a five- year fixed allotment calculated on each Public Safety Answering Points (PSAP) 9-1-1 call volume to determine their qualifying funding level. The City of Tracy currently qualified for \$330,000 fixed allotment to replace and upgrade 7 telephone positions in the Tracy Police Departments CPE.

The City of Tracy's Communications Center currently has 7 CPE positions to accept calls placed to 9-1-1. With the CPE funding the Communications Unit will be able to upgrade and replace its current CPE positions (Attachment A). This new CPE will provide the Communications Center with the ability to incorporate new technologies to best serve the citizens of Tracy.

The State of California provides a 911 Services and Systems Master Purchase Agreement (MPA) which provides PSAPs an efficient, cost effective procurement vehicle for system replacement or certified upgrade of their 911 CPE and services. The funding is direct billed to the State from a list of vendors listed on the in the MPA.

The recommendation is to purchase the Intrado Viper 911 Call Handling solution, installed and maintained by AT&T (Attachment B).

STRATEGIC PLAN

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

FISCAL IMPACT

None, the State of California's MPA allows the vendor to direct bill the State. Any residual funding can be used by the PSAP to acquire communications related equipment or services, up to, but not to exceed the total fixed CPE allotment.

RECOMMENDATION

Staff recommends the City Council, by resolution, award the purchase of replacement police department 911 telephone equipment through the State of California 911 Branch Customer Premise Funding from AT&T, doing business through a State of California Master Purchase Agreement, Contract number 5-12-58-01, a Cooperative Purchase Agreement, per Tracy Municipal Code Section 2.20.220, and authorizing the Mayor to execute a five-year contract in the amount of \$270,000.

Prepared by: Cheri Lynn Rockwell, Communications Unit Supervisor

Reviewed by: Lani Smith, Operations Division Manager
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A - Scope of Work for Power911/VIPER Power MIS Project
Attachment B - AT&T Quote Summary



City of Tracy
Tracy Police Department

With



SCOPE OF WORK

For
Power 911 / VIPER
Power MIS
Project

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1.0 OVERVIEW

1.1 Purpose & Objectives

The purpose of this document is to describe the work to be performed by AT&T California (herein referred to as Contractor) in satisfying the E9-1-1 system requirements for the City of Tracy, Tracy Police Department (herein referred to as *Agency*). In order to achieve the proposed system design the following system work operations are required: Upgrade existing Intrado system to new 6 positions of Power 911/VIPER. The aforementioned equipment will be used to terminate various trunks, lines and data circuits required to process E9-1-1, and administration calls by the Agency.

AT&T will provide the following products:

Intrado Call Processing Equipment

Qty	Power 911/VIPER
1	VIPER Core Servers (4) & Software (OS, SQL, etc.)
1	Power 911 Server
2	CAMA Interface Module (4 trunks per module)
4	AIM Modules (4 lines per module)
4	VIPER Gateway Shelf
2	-48V Power Supply & Shelf for VIPER system
2	24 Port High Capacity Switch with QoS
6	Power 911 Intelligent Workstations (includes CPU, VIPER backroom interface components, Audio Interface equipment, keyboard, and mouse).
6	Integrated Telephony & Radio Recorder (ITRR)
1	Laptop Position (includes laptop, docking station, backroom interface components, audio interface equipment, keyboard, mouse, and Power911 license/software, plus additional audio interface) (<i>included at no cost to Agency</i>) Includes 24" widescreen monitor, Genovation keypad, IRR, and other ancillary equipment.
6	24" LCD monitor w/ built-in speakers
6	Genovation 48 button keypad (model 682)
6	4 Port KVM Arbitrators
6	Busy Lights, 10" Pole, mounting bracket and power supply (<i>included at no cost to Agency</i>)
0	Back Room UPS System with extended Battery
0	Position UPS system

Intrado Data Management Equipment

Qty	Power MIS
1	Power MIS Server
6	Power MIS Data License (per position)
1	Power MIS Concurrent Client License
1	Network (color) printer

Spectracom NetClock System

Qty	GPS NetClock
1	NetClock GPS Time System: Components As Follows:
1	- NetClock Model 9483 with OCXO Oscillator with 1 NTP Port
1	- TimeView® Display Clock Model TV400W with Power Supply
1	- GPS Outdoor Antenna Model 8225
1	- GPS Antenna Surge Protector Model 8226
1	- Outdoor GPS Antenna Cable, 100 ft.
1	- RS-485 Station Cable, 100 ft.

Agency will supply following system components:

Qty	Item Description

System components NOT included in the sale:

Item Description
CDR Printer / ePrinter
IP Admin Phones

****Please refer to Line Item price list for all parts in Appendix D.****

The equipment provided by ATT will comply with State of California Contract 5-5-12-58-01 AT&T CALIFORNIA and any FCC requirements for E9-1-1. It will also meet the NENA requirements for displaying ANI/ALI Phase II wireless calls.

1.2 Reutilization of Existing Equipment

The following equipment has been certified to be compatible with current technology and in good condition. This equipment will be reutilized:

Qty	Item Description

Re-utilization of existing equipment may require additional system down time that results in the Agency going to Alternate Answer.

*Note: Any IWS workstation that can be re-used for peripheral purposes will be evaluated for use. All workstations must meet minimum vendor specifications to be re-used.

1.3 Equipment Removal & Disposal**Legacy 911 phone Equipment**

The following equipment will be left at the Agency's building by AT&T:

- ◆ Positions and servers, workstations and ancillary components
- ◆ Miscellaneous components not being re-used

In the event the old equipment must be removed, AT&T technicians will work with the *Agency's* personnel to remove the above equipment. AT&T technicians will place old equipment in an area designated by the *Agency*. AT&T technicians will not remove any existing equipment from Tracy Police Department building.

2.0 DESIGN SOLUTION

2.1 Call processing

System Overview

AT&T will provide a complete E9-1-1 system solution from a high-level perspective by deploying Call-Processing, and Data-Management related system equipment. The functionality of these system components when coupled together enables the *Agency* with the capability to process E9-1-1 and administrative type calls and other various PSAP emergency and non-emergency functions. While also creating a system solution that enables the *Agency* to gather, process, and statistically report all critical 911/administrative call information.

AT&T will implement Intrado's Call-Procession suite of hardware/software application(s): Power 911/VIPER and Power MIS for this E9-1-1 system design solution. Per Agency request, Power Map is not desired (uses CAD map) therefore this upgrade does not include Power Map. AT&T will achieve these system objectives by implementing the following managed work operations:

Call-Taker/Radio Positions in Dispatch Area

Install (6) workstations (positions 1-6) with: Power 911 and ITRR. These positions are AT&T provided workstations. Each workstation includes: a 48-button Genovation keypad, (1) 24" LCD monitor, keyboard, mouse, SONIC box, and a single handset jack (telephony only) configured as a call-taking / dispatching position(s).

New CAT5 wiring to each position will be installed. One Quad (four) CAT5 cables to each position from the backroom. The CAT5 cable is provisioned as follows: (1) Power 911 Primary NIC, (1) Power 911 Secondary NIC, (1) for LTR position-based recording, and (1) for future/spare).

Call-Taker/Dispatch Laptop Position

Install one (1) Laptop position (position 7) of Power911. This position is an AT&T provided laptop and includes: (2) Genovation keypad, (2) LCD monitor, (2) Sonic Boxes (Audio Interface), (1) Power911 software/license. This position is included in the solution at no charge to the *Agency*.

ITRR

Integrated Telephony and Radio Recorder (ITRR) is a short-term recorder and is used to record both telephony audio (from Power 911) and radio audio (from radio console) so it can be played back as desired by the user. It is configured for an eight hour continuous

first-in, first out method. Playback output is done via external speakers only at this time (cannot be played via head/handset).

Audio Interface

In order to ensure proper audio functionality at each IWS position and facilitate audio connectivity with third party audio devices at the Agency location, the system design includes a SONIC Box that hands off telephony audio (from Power 911) to a radio console. The SONIC Box also provides a two wire audio path of position audio that will be terminated to AT&T provide long-term voice recorder. The demarcation point for this audio will be located in the backroom. This enables the radio console to provide headset sharing between phone and radio. The radio console will perform the audio arbitration/switching thus the radio headset jackbox would provide both telephony and radio audio.

Only Intrado tested and certified headsets and amplifiers (as per the List of Approved Headsets, revision 44, document) are supported. Any non-approved headset or amplifier will be supported on a “best effort” basis.

Power MIS Clients

The Power 911 workstations can be configured for client access to Power MIS on one or more positions and further configured by Power 911 user logon. This will be determined during implementation.

Printer

A networked color (laser) printer is included in this solution which can be used by both the Power911/VIPER and Power MIS systems. This printer will be installed in dispatch.

2.2 Backroom System

System Overview

Existing 911 CAMA trunks originating from the Agency’s serving central office tandem will be terminated on the VIPER system (via CAMA Interface Modules) controller equipment located in the backroom. Analog lines such as 10-digit emergency, 10-digit admin lines, and ring-down lines will be terminated on the VIPER (via AIM modules) call processing equipment also located in the backroom. The AIM modules are also known as admin gateway, in that it processes voice and data (Caller-ID) type calls using FXO signaling along with supporting standard FSK format Caller-ID decoding. Digital trunk(s) are not a part of this solution. Please refer to the Trunks & Lines table below for a full list of lines that are a part of this design.

VIPER

Install VIPER hardware in one cabinet located in Telco equipment backroom. It should be noted that the VIPER equipment will be installed in a pre-racked cabinet (see dimensions in equipment list table in Section 1.1). The VIPER equipment cabinet must be able to fit in all areas leading to the Telco equipment room.

NetClock

NetClock: system is a highly accurate and reliable GPS master clock technology that is easy-to-install. While maintaining strict compliance to the National Emergency Number Association’s (NENA) Master Clock Standard #04-002, the new NetClock has added

features to support Next-Generation 911 initiatives, and has been tested against NENA's Security for Next Generation 9-1-1 Standard #075-001s an integrated Long-Term Recorder Server/application used record and store for retrieval emergency and non-emergency calls.

ALI

The existing network geographic diverse 56K Data circuit (DS0) that carry the Automatic Location Identification (ALI) data will terminate in the AT&T provided router, which is connected via RS-232C cables to the VIPER servers.

CAD

AT&T will provide an interface connection demarcation point between the VIPER server and Agency provided Computer Aided Dispatch (CAD) computer system via a RS-232C cable located in the backroom. If the data rate of this RS232C connection is set for 9600 bps there is a 50ft limitation imposed on this connection. This 50 foot limitation can be increased with the use of an Agency provided RS232c extender. AT&T can provide a quote to the Agency to provide this RS232c extender to overcome the 50 foot distance limitation of the CAD to AT&T backroom.

Firewall

The VIPER system includes a firewall to give remote access to AT&T for support and maintenance. A broadband (DSL or higher) connection to the firewall is required and to be provided by the Agency as per the terms of the State contract. Specifications for these options are provided on separate documents.

2.3 System Growth Capabilities

AT&T warrants that the hardware, software and operating systems sold are current at the time of shipment. Software and hardware manufacturers continually upgrade their products. This may require the Agency to upgrade hardware, software or operating systems in the future in order to expand this system. The maintenance package included in this sale does not include software/hardware upgrades required for expansion or integration.

The modular design of VIPER allows the system to be configured to accommodate up to (192) - E9-1-1 Positions, (192) - incoming 911 trunks, and (192) – analog lines (supports Caller-ID).

Tracy Police Department system will be configured with a capacity of (8) 911 CAMA trunks, currently using (4), leaving a future growth of (4) 911 CAMA trunks. This system is also configured with a capacity of (12) analog lines, currently using (10) leaving a future growth of (2) lines. The number of modules in this system was based upon the needs and requirements of the Agency at time of system design. Additional equipment cards and/or hardware may be added to the system to increase lines or positions.

2.4 Connectivity

Trunks & Lines

Qty	Trunk Line Definition
4	E9-1-1 CAMA Trunks

2	7 Digit Emergency Lines (as inventoried below)	
	• 209-831-4551	• 209-831-4552
5	Admin Lines (as inventoried below)	
	• 209-831-4553	• 209-831-4554
	• LOBBY PHONE	• 209-831-4518
		• 209-831-4519
3	Ring Downs (as inventoried below)	
	• SO RINGDOWN	• VALLEYCOM
	• FIRE	•

2.5 System Programming

The system will be programmed with a log in ID for each Administrator/Supervisor. The administrators/ Supervisors will have all the capabilities that the dispatchers have as well as additional capabilities requested by the *Agency*. The “master” speed dial list will be the same for each position and the site supervisor/administrator will have the capability to change, add, and delete speed dials on the “master” list.

The system will be programmed with a log in ID for each dispatcher. There will be a single Agent Profile for all dispatchers that will have the same configuration, colors and icons.

The system programming requirements may be changed at the request of the Agency during the Installation process. The AT&T Project Manager/Emergency Communications Manager (ECM) will work with the Agency to meet the Agency’s specific needs.

All system programming on Power 911 and Power MIS, will be handled by AT&T. All initial system programming will be to replicate the current operation of Tracy Police Department as closely as possible. If it is determined during design sessions that changes need to be made, they can be made at that time. Once the system is cutover and accepted, any further adds, moves, and changes will be performed on a Time and Materials basis at the prevailing contract rates. (Examples of adds, moves, and changes are: Adding 7 digit emergency lines to the system; moving a Power 911 position to another location; changing the DID number on a position).

2.6 Integration Requirements

AT&T will be the integrator for all telephony-related issues. AT&T will be responsible for installation and maintenance of all network facilities terminating into the connector block installed at each position.

CAD Interface

The Power 911 E9-1-1 system provides a CAD Interface Port that allows other system devices to interface with emergency call information. It will provide the retrieved ANI/ALI for an emergency call, as well as the answering position identification on an ASCII RS-232C port. The demarcation point for the *Agency* CAD system is the labeled serial port/connector from the VIPER server(s) in the equipment room.

Building Modifications

All building modifications are the responsibility of the *Agency*. The AT&T Project Manager/ECM will work closely with the *Agency* to determine proper timeline coordination for a smooth system implementation. Please refer to Appendix A for the specific modifications to be performed by the *Agency*.

3.0 CHANGE REQUESTS

The *Agency* may at any time, by written order, and without notice to the *Contractor's* sureties, submit a change order to the *Contractor*. Within ten (10) working days of receiving a proposed change order, the *Contractor* will submit a written cost estimate, which will include adjustments to the Project Price, Project Schedule, Statement of Work, Acceptance Criteria, or any other obligations of the *Contractor*, as applicable. The *Contractor* or the *Agency* may also decline the change order, depending on the nature of the requested changes.

The *Contractor* may also propose a change order involving additions, deletions, or revisions to the work, or any obligations imposed upon the Parties under this agreement. AT&T's changes to the system design or individual component changes will be submitted to the *Agency* for approval using the Change Request Form shown in Appendix E.

The *Agency* will appoint a single individual as a Project Manager. Change Orders will be approved in writing, by the *Agency's* Project Manager. The *Contractor* will not proceed with any work contemplated in any proposed Change Order until it receives written notification to commence such work from the *Agency's* Project Manager.

4.0 ACCEPTANCE TESTING

Final system acceptance for this Scope of Work will occur when the standards of performance of the State contract which can be reviewed at:

<http://www.calema.ca.gov/PSC/Pages/Services/911/911-Systems-and-Services-Master-Purchase-Agreements.aspx>.

These will have been met after 240 consecutive hours of operation following the cutover date. During these 240 hours, the system will function without interruption, as defined by contract and according to the project specifications. If the 9-1-1 system fails to meet the standards of performance, then the 240 hour system acceptance period will re-start following correction of the problem.

Once the system is accepted, any further adds, moves and changes will be performed on a Time and Materials basis at the prevailing contract rates.

5.0 RESPONSIBILITIES

5.1 AT&T Project Team

Contacts			
Role	Name	Phone / Fax / Pager	Mail / E-mail
Provisioning Manager	Gayle Kinn	Phone: (916) 972-2283 Cell: (916) 213-4619	gk5619@att.com 3707 Kings Way #C33

			Sacramento, CA 95821
Application Sales Executive	Kent Ames	Phone: (8530) 400-1987 Fax: (530) 621-6987	Ka3169@att.com
9-1-1 Service Executive	Anne Abdallah	Cell: (925) 336-1657	aa4345@att.com 3707 Kings Way Sacramento, CA 95821
9-1-1 Systems Technician	Troy Gentry	Phone: (888) 500-4911	tg2518@att.com
Technical Sales Consultant II	Shelby Lewis	Phone: 951) 369-2317	sl2387@att.com
PSAP Manager	Cheri Lynn Rockwell	Phone: (209) 831-6656	cherilynn.rockwell@tracypd.com
State 911 Consultant	Kyle Pease	Phone: (916) 657-9145	Kyle.Pease@caloes.ca.gov 601 Sequoia Pacific Blvd. MS-911 Sacramento, CA 95814

5.2 Project Manager

An AT&T Project Manager will be assigned for this system implementation. The Project Manager is responsible to plan, organize, control, direct and coordinate people and material resources throughout the life of the project.

5.3 AT&T Responsibilities

AT&T is responsible for the following:

- Delivery of equipment
- Security of equipment, until equipment is delivered to customer premise.
- Disposal of packaging materials and debris.
- Any damage caused by Contractor (or Contractor's agent) to equipment, building, or other property.
- Installation of common control (server) equipment in racks/cabinets.
- Dressing of all cables.
- Identification and labeling of all cables.
- Installation of appropriate cabling from equipment room to all Power 911 positions.
- NENA standard ANI/ALI interface supplied to the Agency owned CAD system.
- Installation of interface jacks for radio headsets.

5.4 Tracy Police Department Responsibilities

Equipment Room

- Provide locked, limited access to the equipment room.
- Provide space for VIPER cabinet as agreed upon and depicted in below drawing
- Adequate space for working area and for spare part/equipment storage (if applicable).
- Furnishing HVAC equipment that will keep the backroom temperature and humidity levels of 72 degrees F +/- 5 and less than 50% relative humidity.
- Provide/verify that each AT&T backroom equipment cabinet has two 20 amp breakered circuits dedicated to the rack with a NEMA 5-20R outlet each and a single dedicated NEMA 5-20R breakered circuit for each rack (if required).
- Earth ground for AT&T provided equipment.

- Building UPS for 911 equipment

Dispatch Room

- Furniture selected by *Agency* is compatible with, or will be modified by the *Agency* to be compatible with, the selected system equipment.
- Provide/verify that each AT&T dispatch position has one 15 or 20 amp (NEMA 5-15/20R) breakered circuit dedicated to emergency call-taking with a quad outlet. Ancillary electrical components such as heaters, lights, and furniture will not be on this circuit(s).
- Provide conduit run from each dispatch position to backroom equipment.
- Individual or building UPS for each 911 position

General

- Access to building for AT&T and subcontractors.
- Conduit and coring of walls.
- Adequate power and power outlets and circuit breakers.
- All radio and CAD equipment.
- Adequate security to prevent theft of computer equipment.
- On-going upkeep for room requirements listed.
- Technical expertise from *Agency's* other vendor's during planning, installation and cut-over.
- The *Agency's* Project Manager will facilitate the resolution of any problem determined with these interfaces pertaining to the radio, CAD, recorders, NetClock or other *Agency* owned interfaces.
- Full and free access to the 9-1-1 related equipment to provide service (subject to *Agency's* security regulations)
- Maintain records and documentation associated with contractor performance

Note: The 911 Network and Agency Networks may not share the same LAN Segments. Power 911 IP packets must be segregated from CLETS, NCIC, DMV, CWS, and all other Agency network traffic.

6.0 INSTALLATION SCHEDULE

The following table is provided as a guideline based on the “Estimated Final Funding Date”. The actual funding date will affect the entire timeline.

Estimated Final Funding Date:	1/30/2016
Estimated Equipment Order Date:	2/4/2016
Estimated Equipment Delivery Date:	4/14/2016
Programming Change Freeze Date:	4/21/2016
Estimated Begin Installation Date:	4/24/2016
Estimated Training Date:	5/8/2016
Estimated System Cutover Date:	5/22/2016

The official implementation schedule will be negotiated between the Agency and the AT&T project Manager using the “911 CPE PSAP Implementation Form”. Changes to the agreed upon schedule may be made by mutual consent of AT&T and the Ordering Agency and must be documented on the “911 CPE PSAP Implementation Form”.

Pricing is based on installation being performed during AT&T's normal business hours (M-F, 8:00am - 5:00pm, excluding AT&T holidays). Installation activities outside of AT&T's normal business hours are available at prevailing after hour tariff. There will be no additional cost to the *Agency* for an after-hours cutover, if it becomes necessary.

7.0 MAINTENANCE PLAN

7.1 Maintenance and Remote Access Services Capabilities

The 911 system is provisioned to allow AT&T (and Intrado) to remote access into the 911 system in order to identify software and hardware problems and make repairs. In the event that the equipment cannot be repaired remotely, two trained technicians are stationed within two hours of the *Agency* PSAP to facilitate onsite repairs.

Items excluded from maintenance include any software which is at a revision level not supported by the Software licensor. AT&T makes no guarantee as to parts availability on Equipment that has been discontinued by its manufacturer. In the event a manufacturer discontinues producing any equipment or in the event the equipment has outlived the manufacturer's suggested product life cycle, AT&T will continue to provide Service under the Maintenance Plan for as long as parts are available on a commercially reasonable basis. In the event repair parts are not readily available, AT&T will advise customer and customer will have the option to replace the Equipment with a similar product. AT&T offers at the prevailing rates. In the event the customer declines to authorize such replacement, AT&T will cease providing Service for such Equipment.

If persons other than AT&T and/or their subcontractor(s) have performed maintenance or repair of equipment, and, as a result, further repair by AT&T and/or their subcontractor(s) is required, such further repairs will be made at AT&T's then applicable time and material rates.

AT&T includes a one-year warranty and years two through five on a maintenance contract through the State of California Contract.

POWER 911/VIPER

- AT&T will provide a "Maintenance Kit" to be kept at a location readily accessible to AT&T Technicians or, in some special cases, due to an *Agency's* location or system size, kept on site in a secured location. The contents of the Maintenance Kit will be based upon the requirements of the *Agency's* 9-1-1 system. AT&T absorbs the cost of the Maintenance Kit and the equipment provided within the kit will remain the property of AT&T.
- AT&T includes five-year parts and labor on the 9-1-1 system. The five-year period begins at date of customer acceptance. After the five-year period, the *Agency* may choose to replace the system, maintain it, or a maintenance contract will be created with agreed terms, conditions and costs. Service packs, and hot fixes will be kept current and upgraded at no charge (additional features and hardware may not be included). Operating System upgrades are not included.

7.2 Post-Installation Support Limitations

AT&T's support obligations hereunder will not apply to any AT&T supported product if adjustment, repair, or parts replacement is required because of:

- Printer ink and paper are not included under maintenance.
- Accident, neglect, tampering, misuse, improper / insufficient grounding, failure of electric power; failure of the PSAP and/or others to provide appropriate environmental conditions, relocation of hardware or software, or causes other than ordinary use
- Repair or alteration, or attempted repair or alteration of any AT&T supported product (hardware and/or software) by the PSAP or others
- Connection of another machine, device, application or interface to AT&T supported equipment (hardware and/or software) by , Agency, the PSAP or others, which has caused damage to AT&T supported equipment
- Degradation of performance to AT&T systems due to non-compliance with the Customer Site Preparation Requirements (excessive heat, humidity, moisture, condensation, dust, EMI, etc.) as identified in AT&T document TP76911, Section C, Part 2, is not covered under Maintenance or Warranty.
- Damage or destruction caused by natural or man-made acts or disasters
- Degradation of performance to AT&T systems due to the installation of third party software applications or Operating System patches, service packs, hot-fixes, or Windows services and not specifically certified, approved, and registered by AT&T for use at the site(s) identified herein.
- Support described herein does not include cosmetic repairs, refurbishment, furnishing consumables, supplies or accessories, making accessory changes or adding additional devices or software applications.

7.3 Repair of Unsupported Failures

The *Agency* may request Field engineering to rectify unsupported failures, as defined above, on a Time & Materials basis. Labor rate charged will be the current AT&T labor rate (plus expenses) at the time service is requested.

AT&T is NOT responsible for the performance of third party applications/systems.

8.0 TRAINING

8.1 Supervisor/Dispatcher Training

AT&T and/or its subcontractor will provide Call-taker/Dispatcher and Supervisor/System Administrator training for the Power 911, Power MIS systems. The training will be done at the *Agency's* site. The Call-Taker/Dispatcher training will be Train the Trainer where the *Agency* supervisors will be trained and they will train the call takers,. The training will be done during normal business hours (6 am – 6 pm) Monday through Friday.

8.2 Training Documentation

Training documentation may include hard-copies of the User Guide per site, and one soft-copy will be installed on each workstation. Documentation will be given to the *Agency's* designated training coordinator or during class.

8.3 Service Manual Documentation

IWS Technical Installation and Maintenance Manuals will be provided with the delivery of the systems. These technical manuals should be kept in the equipment room near the equipment racks for the AT&T technicians to utilize as necessary.

Appendix A: Agency Compliance - Site Certification Document

Tracy Police Department Compliance - Site Certification Document

This Section meets the State contract requirement for AT&T to provide a Site Readiness Checklist to the Agency.

A site survey has been made and site modifications will be needed to meet the following requirements for equipment installation. The following site modifications must be completed by the Agency prior to AT&T beginning the installation of the new or upgraded system. The completion of all building modifications are the responsibility of the Agency. In the event that AT&T attempts to begin installation and subsequently discovers that these modifications have not been met as specified, AT&T may postpone implementation. A quote will be provided to the Agency for any additional costs incurred by AT&T because of the postponement. Any additional costs that are incurred for site modifications because of the postponement will be the responsibility of the Agency. Work will be rescheduled upon completion of the required modifications.

Hazardous Materials

Customer will maintain Customer's location where AT&T is to perform work in a suitable and safe working environment, free of Hazardous Materials. AT&T does not handle, remove or dispose of, nor does AT&T accept any liability for, any Hazardous Materials at Customer's location. If AT&T encounters any such Hazardous Materials, AT&T may terminate this Statement of Work or suspend performance until Customer removes and cleans up at its expense Hazardous Materials in accordance with this Statement of Work and applicable law. For purposes hereof, "Hazardous Materials" means any substance whose use, transport, storage, handling, disposal, or release is regulated to any law related to pollution, protection of air, water, or soil, or health and safety.

- 1) Provide backroom space for VIPER cabinet as depicted in below drawing (in red)
- 2) Provide two dedicated NEMA 5-20R (20 amp) circuits for VIPER cabinet as depicted in below drawing (in red)
- 3) Provide one dedicated NEMA 5-15/20R (15/20 amp) circuit for each 911 position
- 4) Provide DSL or other high-speed link for remote maintenance and support.
- 5) Provide conduit for NetClock antenna to roof

Authorized Agency Representative understands that the modifications listed above must be complete prior to AT&T commencing installation.

_____ Date _____
 Authorized Agency Representative accepts modification list.

.....

_____ Date _____
 Authorized Agency Representative certifies modifications complete.

Appendix B: LAN/WAN Policy**AT&T LAN/WAN PSAP Security Policy**

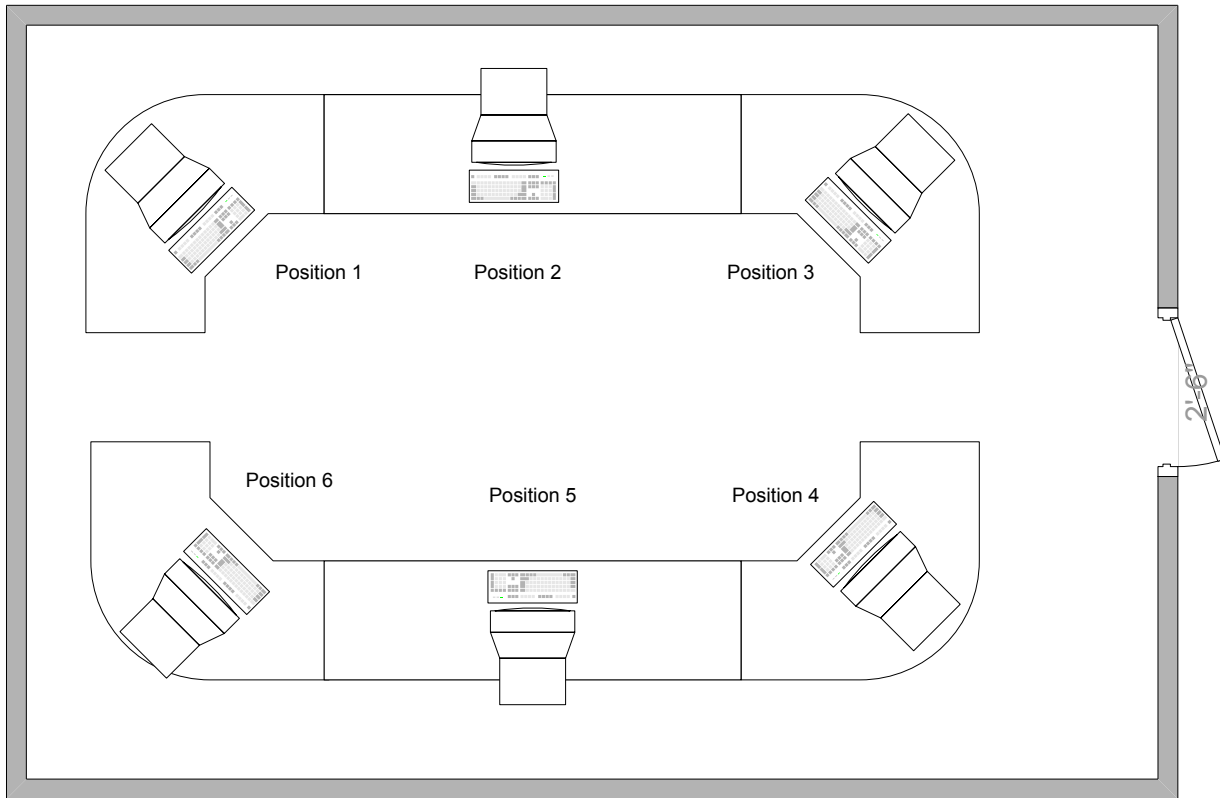
It is AT&T's policy to install 911 equipment only in a secure PSAP Local Area Network ("LAN") that is not connected to any other computer network outside of AT&T's control (with the exception of the national Crime Information Center network or similar network, but only if such connection is expressly approved in writing by AT&T, which approval will be in AT&T's sole discretion).

AT&T will not install or terminate a PSAP LAN to a firewall. AT&T will identify the demarcation point for the PSAP LAN, beyond which AT&T is not responsible. In the event the customer has previously connected or subsequently connects their PSAP LAN to any other computer network or has caused or causes such a connection, contrary to AT&T's PSAP Network Security Policy (which customer acknowledges it has received and read), and the 911 equipment and/or PSAP LAN is infected or damaged as a result of such connection, then all 911 equipment and/or PSAP LAN warranties, maintenance, and service provisions of this amendment or statement of work will be immediately null and void. Under such circumstances, AT&T will provide repair services for the 911 equipment and/or PSAP LAN at Customer's request and time and materials charges will apply for all parts and labor required as a result of damage caused by the infection. After all related damage has been repaired, maintenance and service provisions of this agreement will resume.

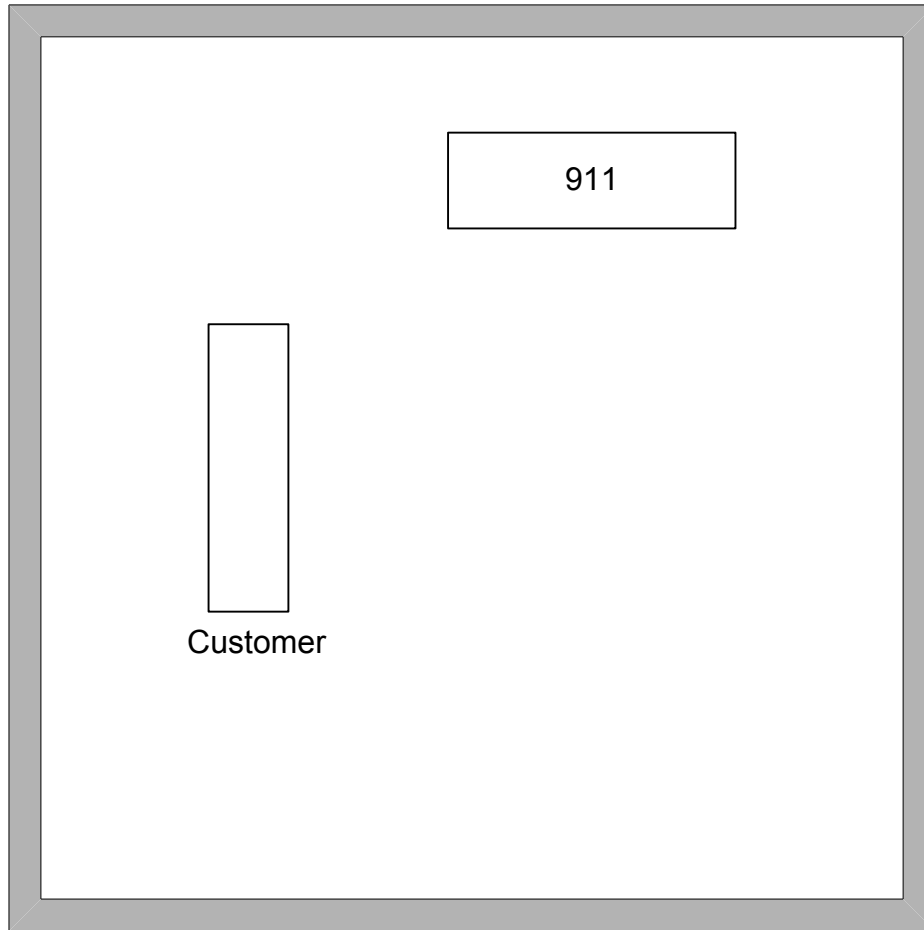
Customer agrees to indemnify and save AT&T harmless for any damages to or claims by any third party against AT&T that arise in whole or in part from Customer's existing or subsequent connection of the 911 equipment and/or PSAP LAN provided hereunder to any computer network outside of AT&T's control.

Appendix C: Dispatch and Equipment Floor Plans

FOOTPRINT OF DISPATCH



FOOTPRINT OF EQUIPMENT ROOM



Appendix D: Pricing & Terms

Please refer to separate document.

Appendix E: Change Order Request Form

AT&T Project Office

Change Request Form: Tracy Police Department

Change Orders cannot be billed directly to the State without State approval.
The Agency will be billed and must submit a reimbursement request to the State.

Originator:

Change Request Definition:

To be completed by Project Manager/ECM

Impact to System Schedule:

Impact to Overall Project Schedule:

Development Price:

Change Request #:	Date:
System Affected:	
Accepted	Rejected:

Final AT&T Signoff:	Final Agency Signoff:	Date:
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Appendix F: Maintenance Procedures**“AT&T”****PROVIDING PRODUCT & SERVICE EXCELLENCE****TROUBLE REPORTING PROCEDURES**

The Customer Assistance Bureau (CAB) is the trouble reporting center for our priority Public Safety Agencies. The center is responsible for receiving *Agency* reports and electronically relaying the reports to the responsible work groups for resolution, 24 hours a day, 365 days a year. The CSB can escalate trouble reports and put you in contact with management personnel responsible for resolving the trouble you have reported.

The Priority Repair Service number is:

(877) 500-4911

Due to the complexity of the services we provide and your own equipment ***it is essential that you isolate trouble before reporting to AT&T.*** A few extra minutes to properly identify, isolate and report a trouble can save hours in resolution time. Reporting the wrong trouble or circuit number may cause extended delays in our ability to deploy the appropriate work crew to repair the problem.

When you call in a report, please be ready to provide the following information:

1. Your name and call back telephone number.
2. Address and the location of trouble.
3. Telephone numbers or circuit number in trouble.
4. Nature of the trouble/condition.
5. Application the circuit is used for.
6. Access restrictions we may have to resolve trouble report.
7. Any terminal access problems or arrangements before dispatch.
8. The name of the contact person and their office number is a must!
9. Identification of Major or Minor Failure. (Defined below)
10. For urgent restorations you can ask for an hourly status from the Plant Control Office/PCO.

Major Failure - Definition of Major Failure: Any hardware, software or circuitry failure that prevents the 9-1-1 PSAP call taker from making voice or TDD contact or viewing ANI information or ALI information from a person who has dialed 9-1-1. Upon verbal notification by the *Agency*, or electronic notification by the 9-1-1 system itself, of a major failure, AT&T will meet the required response time detailed below:

ONSITE RESPONSE: A factory-trained technician will respond on-site with spare parts/software within two (2) hours, or less, to diagnose and commence repair of a major failure. (The initial replacement of some components may not be identical to the defective part (monitor, keyboard, mouse, speakers, etc.). This is to provide an expeditious restoration. An identical replacement

part will be provided within 72 hours.) Within two (2) hours, or less, the responding technician will notify the PSAP of the nature of failure and an estimated time to effect repairs.

Minor Failure - Definition of Minor Failure: Any hardware, software or circuitry failure that prevents the normal operation of any feature of the 9-1-1 system. Upon verbal notification by the *Agency*, or electronic notification by the 9-1-1 system itself, of a minor failure AT&T will meet the required response time detailed below:

ONSITE RESPONSE: During the initial notification by the PSAP *Agency* of a minor failure, the *Contractor* will provide to the PSAP *Agency* an estimated time for on-site diagnostics/repairs to begin. A factory trained technician will respond on-site with spare parts/software within twenty four (24) hours, or less, to diagnose and repair a minor failure. (The initial replacement of some components may not be identical to the defective part (monitor, keyboard, mouse, speakers, etc.). This is to provide an expeditious restoration. An identical replacement part will be provided within 72 hours.) Within twenty four (24) hours, or less, the responding technician will notify the PSAP of the nature of failure and an estimated time to effect repairs.



DATE 12/16/2015

Quote Summary

Tracy PD
 Power911-PowerMIS
 SUMMARY

Account Manager Kent Ames
 Phone (530) 621-6986
 Email KentAmes@att.com
 Address 3707 Kings Way
 Sacramento, CA 95821

Equipment	\$198,978.88
Tax	\$5,160.25
Installation	\$7,252.00
Maintenance	\$50,843.31
Total Power911 Call Handling	\$262,234.44
Equipment	\$4,359.47
Tax	\$363.29
Installation	\$631.16
Maintenance	\$2,092.54
Total PowerMIS	\$7,446.46

SYSTEM TOTAL \$269,680.90

This Quote Valid until 4/14/2016



Quote Summary

DATE **12/16/2015**

**Tracy PD
Power911 Call Handling**

Account Manager **Kent Ames**
Phone (530) 621-6986
KentAmes@att.com

Tax Rate **INTRADO**
6 Positions Viper
7.500%

6 Positions Viper	Equipment	\$198,978.88
	Taxable Equipment	\$68,803.34
	Tax	\$5,160.25
	Installation	\$7,252.00
	Subtotal	\$211,391.13
\$1,059.24 x 48 Months Maintenance Years 2-5 <i>Year 1 included with system</i>		\$50,843.31
	SYSTEM TOTAL	\$262,234.44

This Quote Valid until 4/14/2016



Quote Summary

DATE **12/16/2015**

**Tracy PD
PowerMIS System**

Account Manager **Kent Ames**
Phone (530) 621-6986
Email KentAmes@att.com

INTRADO

Tax Rate **7.500%**

INTRADO Package	Equipment	\$4,359.47
	Taxable Equipment	\$4,843.85
	Tax	\$363.29
	Installation	\$631.16
	Subtotal	\$5,353.92
	\$43.59 x 48 Months Maintenance Years 2-5 <i>Year 1 included with system</i>	\$2,092.54
	SYSTEM TOTAL	\$7,446.46

This Quote Valid until 4/14/2016

Considerations:

Revision History

1	Solution	VIPER	Original	27-Aug
2	Number of IWS positions	7 (6 full positions, 1 Laptop @ N/C)	Minor Changes	1-Sep
3	Laptop Position	Yes- Included at no-charge (2 monitor, mouse, keyboard, genovation, SONIC)	Correct MIS price	2-Sep
4	Number of Admin Phones	0		
5	Lines	4 Up to 8 x 911 10 Up to 12 x Admin		
6	MIS Package Included?	Yes		
7	Mapping Included?	No		
8	Voice Recorder Included?	No- Contract left on existing		
9	Standalone Client Workstations?	No		
10	Provider of Monitors	AT&T- 24"		
11	Provider of UPS	Customer		
12	Arbitrators?	Yes- 4 Port		
13	Genovation Keypads?	Yes; 48 Button		
14	NetClock Included	Yes- Single Port all other PSAP timed from Customer NetClock		
15	Admin Training	Yes		
16	Agent/User Training	1 Train the Trainer		
17	Other	Cutover assistance		
18	Printer	Yes- Color Laser		
19	Busy Lights	6 positions with Lights, 10" Pole, mounting bracket and power supply(No Charge to the Agency)		

RESOLUTION _____

AWARDING THE PURCHASE OF REPLACEMENT POLICE DEPARTMENT 911 TELEPHONE EQUIPMENT THROUGH THE STATE OF CALIFORNIA 911 BRANCH CUSTOMER PREMISE FUNDING FROM AT&T, DOING BUSINESS THROUGH A STATE OF CALIFORNIA MASTER PURCHASE AGREEMENT (MPA), CONTRACT NUMBER 5-12-58-01, A COOPERATIVE PURCHASE AGREEMENT, PER TRACY MUNICIPAL CODE SECTION 2.20.220, AND AUTHORIZING THE MAYOR TO EXECUTE A FIVE-YEAR CONTRACT

WHEREAS, This purchase completes the replacement of the Tracy Police Department's 9-1-1 telephone equipment, and

WHEREAS, The Department's current 9-1-1 telephone equipment will no longer be covered under warranty as of March 26, 2016 and the equipment is outdated and needs to be updated, and

WHEREAS, The Department has \$330,000 in funds available through the State 911 Branch allocated to purchase new 9-1-1 telephone equipment with a five year maintenance agreement. The equipment will be purchased through a State of California MPA, and

WHEREAS, The total cost for new 9-1-1 telephone equipment is \$270,000 and will be fully funded by the allocated funds through the State 9-1-1 Branch;

NOW, THEREFORE, BE IT RESOLVED, The City Council approves awarding the purchase of replacement Police Department 911 telephone equipment through the State of California 911 Branch Customer Premise Funding from AT&T, doing business through a State of California Master Purchase Agreement (MPA), Contract Number 5-12-58-01, a cooperative purchase agreement, per Tracy Municipal Code section 2.20.220, and authorizes the Mayor to execute a five-year contract.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the _____ 19th _____ day of January, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.E

REQUEST

APPROVE RESOLUTION AUTHORIZING THE PURCHASE OF 50 ELECTRONIC CITATION DEVICES AND RELATED EQUIPMENT FROM TYLER TECHNOLOGIES THROUGH A GENERAL SERVICES ADMINISTRATION CONTRACT GSA, CONTRACT NUMBER GS-35F-0096X, PURSUANT TO TRACY MUNICIPAL CODE SECTION 2.20.220 AND AUTHORIZE THE MAYOR TO EXECUTE A ONE-YEAR CONTRACT WITH TYLER TECHNOLOGIES AND A THREE-YEAR FACTORY HARDWARE SERVICES AGREEMENT AND APPROPRIATE \$255,447 FROM THE COMPUTER AIDED DISPATCH/RECORDS MANAGEMENT SYSTEM REPLACEMENT CIP PROJECT (CIP 71063) TO COMPLETE THE PURCHASE

EXECUTIVE SUMMARY

This request would approve the purchase of 50 Electronic Citation Devices to increase officer efficiency, capture additional data and decrease data entry. Staff further recommends that the Mayor execute the factory hardware services agreement for a period of three-years.

DISCUSSION

The electronic citation devices will provide benefits from saving time and reducing costs, to increasing efficiency. The devices will be equipped with a Driver's license bar code scanner that can save an officer on the street a great deal of time by alleviating the need to manually enter data on a paper ticket. This device also promotes officer safety by allowing the officer to spend more time observing a violator rather than diverting his attention to writing a ticket. Furthermore, there will be a reduction of data entry by the Records and Court personnel as data will be electronically transferred from the citation device via a wireless technology.

The Electronic Citation Devices will be purchased from Tyler Technologies using using a competitive bid cooperative purchase program per section 2.20.220 of the Tracy Municipal Code. The Government Services Administration Contract offers a wide variety of commodities, non-IT services and information technology products and services at prices which have been assessed to be fair, reasonable and competitive (Attachment A). Staff further recommends that the Mayor execute the factory hardware services agreement for a period of three-years (Attachment B) and agree to the Payment Terms (Attachment C). Tyler Technologies will be completing the services of providing the services of installing the software and licenses in the Statement of Work (Attachment D). This will complete the purchase for Electronic Citation Devices that were part of the CAD/RMS Replacement Project.

STRATEGIC PLAN

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

FISCAL IMPACT

\$255,477; Not budgeted; budget transfer from CIP 71063; General Fund

RECOMMEDATION

Staff recommends that the City Council approve, by resolution, the purchase of 50 Electronic Citation Devices and related equipment to Tyler Technologies, through a General Service Administration Contract, contract number GS-35F-0096X, a cooperative purchase agreement per Tracy Municipal Code section 2.20.220, and authorize the Mayor to execute a one-year contract with Tyler and three-year factory hardware agreement and appropriate \$255,447 from the Computer Aided Dispatch/Records Management (CAD/RMS) Replacement CIP Project (CIP 71063) to complete the purchase.

Prepared by: Lani Smith, Support Operations Manager

Reviewed by: Jeremy Watney, Acting Police Chief
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

- Attachment A- Tyler Technologies License and Services Agreement, GSA Contract GS-35F-0096X
- Attachment B- Tyler Technologies Invoicing and Payment Policy
- Attachment C- Tyler Technologies Maintenance and Support Agreement
- Attachment D- Tyler Technologies Statement of Work



LICENSE AND SERVICES AGREEMENT

This License and Services Agreement is made between Tyler Technologies, Inc. and Client.

WHEREAS, Client selected Tyler to license the software products and perform the services set forth in the Investment Summary and Tyler desires to perform such actions under the terms of this Agreement; and

WHEREAS, Tyler is an authorized vendor under General Services Administration Contract GS-35F-0096X;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth in this Agreement, Tyler and Client agree as follows:

SECTION A – DEFINITIONS

- **“Agreement”** means this License and Services Agreement.
- **“Business Travel Policy”** means our business travel policy. A copy of our current Business Travel Policy is attached as Schedule 1 to Exhibit B.
- **“Client”** means the City of Tracy, California.
- **“Defect”** means a failure of the Tyler Software to substantially conform to the functional descriptions set forth in our written proposal to you, or their functional equivalent. Future functionality may be updated, modified, or otherwise enhanced through our maintenance and support services, and the governing functional descriptions for such future functionality will be set forth in our then-current Documentation.
- **“Developer”** means a third party who owns the intellectual property rights to Third Party Software.
- **“Documentation”** means any online or written documentation related to the use or functionality of the Tyler Software that we provide or otherwise make available to you, including instructions, user guides, manuals and other training or self-help documentation.
- **“Effective Date”** means the date on which your authorized representative signs the Agreement.
- **“Force Majeure”** means an event beyond the reasonable control of you or us, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, or any other cause that could not with reasonable diligence be foreseen or prevented by you or us.
- **“Hosting Services”** means the hosting services we will provide for the Tyler Software as set forth in the Investment Summary, for the fees set forth therein.
- **“Investment Summary”** means the agreed upon cost proposal for the software, products, and services attached as Exhibit A.
- **“Invoicing and Payment Policy”** means the invoicing and payment policy. A copy of our current Invoicing and Payment Policy is attached as Exhibit B.
- **“Maintenance and Support Agreement”** means the terms and conditions governing the provision of maintenance and support services to all of our customers. A copy of our current Maintenance and

- Support Agreement is attached as Exhibit C.
- **“SLA”** means the service level agreement. A copy of our current SLA is attached hereto as Schedule 1 to Exhibit C.
 - **“Support Call Process”** means the support call process applicable to all of our customers who have licensed the Tyler Software. A copy of our current Support Call Process is attached as Schedule 2 to Exhibit C.
 - **“Third Party End User License Agreement(s)”** means the end user license agreement(s), if any, for the Third Party Software attached as Exhibit E.
 - **“Third Party Hardware”** means the third party hardware, if any, identified in the Investment Summary.
 - **“Third Party Products”** means the Third Party Software, Third Party Hardware, and Third Party Services.
 - **“Third Party Services”** means the services provided by third parties, if any, identified in the Investment Summary.
 - **“Third Party Software”** means the third party software, if any, identified in the Investment Summary.
 - **“Tyler”** means Tyler Technologies, Inc., a Delaware corporation.
 - **“Tyler Software”** means our proprietary software and related interfaces identified in the Investment Summary and licensed to you through this Agreement.
 - **“we”, “us”, “our”** and similar terms mean Tyler.
 - **“you”** and similar terms mean Client.

SECTION B – HARDWARE AND SOFTWARE

1. License Grant and Restrictions.

- 1.1 We grant to you a license to use the Tyler Software for your internal business purposes only, in the scope of the internal business purposes disclosed to us as of the Effective Date. You may make copies of the Tyler Software for backup and testing purposes, so long as such copies are not used in production and the testing is for internal use only. Your rights to use the Tyler Software are perpetual but may be revoked if you do not comply with the terms of this Agreement.
- 1.2 The Documentation is licensed to you and may be used and copied by your employees for internal, non-commercial reference purposes only.
- 1.3 You may not: (a) transfer or assign the Tyler Software to a third party; (b) reverse engineer, decompile, or disassemble the Tyler Software; (c) rent, lease, lend, or provide commercial hosting services with the Tyler Software; or (d) publish or otherwise disclose the Tyler Software or Documentation to third parties.
- 1.4 The license terms in this Agreement apply to updates and enhancements we may provide to you or make available to you through your Maintenance and Support Agreement.
- 1.5 The right to transfer the Tyler Software to a replacement hardware system is included in your license. You will give us advance written notice of any such transfer and will pay us for any required or requested technical assistance associated with such transfer.
- 1.6 We reserve all rights not expressly granted to you in this Agreement. The Tyler Software and

Documentation are protected by copyright and other intellectual property laws and treaties. We own the title, copyright, and other intellectual property rights in the Tyler Software and the Documentation. **The Tyler Software is licensed, not sold.**

2. License Fees. You agree to pay us the license fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.
3. Escrow. We maintain an escrow agreement with a third party under which we place the source code for each major release of the Tyler Software. You may be added as a beneficiary to the escrow agreement by completing a standard beneficiary enrollment form and paying the annual beneficiary fee (currently \$750) directly to the escrow agent. You will be responsible for maintaining your ongoing status as a beneficiary, including payment of the then-current annual beneficiary fees. Release of source code for the Tyler Software is strictly governed by the terms of the escrow agreement.
4. Limited Warranty. We warrant that the Tyler Software will be without Defect(s) as long as you have a Maintenance and Support Agreement in effect. If the Tyler Software does not perform as warranted, we will use all reasonable efforts, consistent with industry standards, to cure the Defect as set forth in the Maintenance and Support Agreement.
5. Hardware. We agree to sell to you the hardware (which may include Third Party Hardware) identified in the Investment Summary.

SECTION C – PROFESSIONAL SERVICES

1. Services. We will provide you the services, if any, itemized in the Investment Summary. You will receive those services according to our industry-standard implementation plan, which outlines roles and responsibilities in calendar and project documentation. We will finalize that documentation with you upon execution of this Agreement.
2. Professional Services Fees. You agree to pay us the professional services fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy. You acknowledge that the fees stated in the Investment Summary are good-faith estimates of the amount of time and materials required for the requested services. We will bill you the actual fees incurred based on the in-scope services provided to you.
3. Additional Services. The Investment Summary contains the scope of services and related costs (including programming and/or interface estimates) required for the project based on our understanding of the specifications you supplied. If additional work is required, or if you use or request additional services, we will provide you with an addendum or change order, as applicable, outlining the costs for the additional work. The price quotes in the addendum or change order will be valid for thirty (30) days from the date of the quote.
4. Cancellation. We make all reasonable efforts to schedule our personnel for travel, including arranging travel reservations, at least two (2) weeks in advance of commitments. Therefore, if you cancel services less than two (2) weeks in advance (other than for Force Majeure or breach by us), you will be liable for all (a) non-refundable expenses incurred by us on your behalf, and (b) daily fees associated with cancelled

professional services if we are unable to reassign our personnel. We will make all reasonable efforts to reassign personnel in the event you cancel within two (2) weeks of scheduled commitments.

5. Services Warranty. We will perform the services in a professional, workmanlike manner, consistent with industry standards. In the event we provide services that do not conform to this warranty, we will re-perform such services at no additional cost to you.
6. Site Access and Requirements. At no cost to us, you agree to provide us with full and free access to your personnel, facilities, and equipment as may be reasonably necessary for us to provide our services, subject to any reasonable security protocols or other written policies provided to us.
7. Client Assistance. You acknowledge that the provision of services for the Tyler Software is a cooperative process that may require the time and resources of your personnel. You agree to use all reasonable efforts to cooperate with and assist us as may be reasonably required. This cooperation includes at least working with us to schedule the services outlined in this Agreement. We will not be liable for failure to meet any deadlines and milestones when such failure is due to Force Majeure or to the failure by your personnel to provide such cooperation and assistance (either through action or omission).

SECTION D – MAINTENANCE AND SUPPORT

1. This Agreement includes the period of free maintenance and support services identified in the Invoicing and Payment Policy. If you have purchased ongoing maintenance and support services, and continue to make timely payments for them according to our Invoicing and Payment Policy, we will provide you with maintenance and support services for the Tyler Software under the terms of our standard Maintenance and Support Agreement.
2. If you have opted not to purchase ongoing maintenance and support services or fail to make timely payment under this Agreement, the Maintenance and Support Agreement does not apply to you. Instead, you will only receive ongoing maintenance and support on the Tyler Software Products on a time and materials basis. In addition, you will:
 - (i) receive the lowest priority under our Support Call Process;
 - (ii) be required to purchase new releases of the Tyler Software Products, including fixes, enhancements and patches;
 - (iii) be charged our then-current rates for support services, or such other rates that we may consider necessary to account for your lack of ongoing training on the Tyler Software Products;
 - (iv) be charged for a minimum of two (2) hours of support services for every support call; and
 - (v) not be granted access to the support website for the Tyler Software Products or the Tyler Community Forum;

SECTION E – THIRD PARTY PRODUCTS

1. Third Party Hardware. We will sell, deliver, and install onsite the Third Party Hardware, if you have purchased any, for the price set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.

2. Third Party Software. Upon payment in full of the Third Party Software license fees, you will receive a non-transferable license to use the Third Party Software and related documentation for internal business purposes only. Your license rights to the Third Party Software will be governed by the Third Party End User License Agreement(s).
 - 2.1 We will install onsite the Third Party Software. The installation cost is included in the installation fee in the Investment Summary.
 - 2.2 If the Developer charges a fee for future updates, releases, or other enhancements to the Third Party Software, you will be required to pay such additional future fee.
 - 2.3 The right to transfer the Third Party Software to a replacement hardware system is governed by the Developer. You will give us advance written notice of any such transfer and will pay us for any required or requested technical assistance associated with such transfer.
3. Third Party Products Warranties.
 - 3.1 We are authorized by each Developer to grant or transfer the licenses to the Third Party Software.
 - 3.2 The Third Party Hardware will be new and unused, and upon payment in full, you will receive free and clear title to the Third Party Hardware.
 - 3.3 You acknowledge that we are not the manufacturer of the Third Party Products. We do not warrant or guarantee the performance of the Third Party Products. However, we grant and pass through to you any warranty that we may receive from the Developer or supplier of the Third Party Products.
4. Maintenance. If you have a Maintenance and Support Agreement in effect, you may report defects and other issues related to the Third Party Software directly to us, and we will (a) directly address the defect or issue, to the extent it relates to our interface with the Third Party Software; and/or (b) facilitate resolution with the Developer, unless that Developer requires that you have a separate, direct maintenance agreement in effect with that Developer. In all events, if you do not have a Maintenance and Support Agreement in effect with Tyler, you will be responsible for resolving defects and other issues related to the Third Party Software directly with the Developer.

SECTION F – HOSTING SERVICES

1. We will either host or engage Third Party Services in order to host the Tyler Software set forth in the Investment Summary for the fees set forth therein. You agree to pay those fees according to the Invoicing and Payment Policy. In exchange for those fees, we agree to provide the Hosting Services according to the terms and conditions set forth in this Section F, and the other applicable terms of this Agreement. If you fail to pay those fees, after advance written notice to you, we reserve the right to suspend delivery of our applicable Hosting Services.
2. We will utilize hosting services through a Third Party Services provider, Rackspace, in accordance with the terms set forth in the Investment Summary. The fees contained in the Investment Summary are subject to annual increases. You acknowledge and agree that, in our sole discretion, we may migrate the Hosting

Services to a replacement system (including our own) and will undertake reasonable efforts to complete such transfer during maintenance windows as set forth in the SLA. We will undertake reasonable efforts to provide you with advance written notice of any such transfer. You agree to provide all reasonable assistance and access in connection with any such transfer. In the event the Tyler Software is transferred to our data center and we provide hosting services directly to you, the terms of the SLA will also apply.

3. Where applicable, we will perform or cause to have performed upgrades of the applications, hardware, and operating systems that support your Hosting Services. These upgrades are performed in commercially reasonable timeframes and in coordination with third-party releases and certifications. We will make available information on industry-standard minimum requirements and supported browsers for accessing the Hosting Services.

SECTION G - INVOICING AND PAYMENT; INVOICE DISPUTES

1. Invoicing and Payment. We will invoice you the fees for the license(s), products, and services in the Investment Summary per our Invoicing and Payment Policy, subject to Section G(2).
2. Invoice Disputes. If you believe any delivered product or service does not conform to the warranties in this Agreement, you will provide us with written notice within fifteen (15) days of your receipt of the applicable invoice. The written notice must contain sufficient detail of the issues you contend are in dispute. We will provide a written response to you that will include either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in your notice. We will work together as may be necessary to develop an action plan that outlines reasonable steps to be taken by each of us to resolve any issues presented in your notice. You may only withhold payment of the amount(s) actually in dispute until we complete the action items outlined in the plan. If we are unable to complete the action items outlined in the action plan because of your failure to complete the items agreed to be done by you, then you will remit full payment of the invoice. We reserve the right to suspend delivery of all services, including maintenance and support services, if you fail to pay an invoice not disputed as described above.

SECTION H – TERMINATION

1. Term. The initial term of this Agreement is one (1) year. Thereafter, the term will renew automatically for additional one (1) year terms, at our then-current rates, unless terminated by either party at least thirty (30) days in advance of the upcoming renewal date.
2. For Cause. You may terminate this Agreement for cause in the event we don't cure, or create a mutually agreeable action plan to address, a material breach of this Agreement within forty-five (45) days of receiving a written notice of the alleged breach. You agree to comply with Section J(3), Dispute Resolution, prior to termination. In the event of termination for cause, you will pay us for all undisputed fees and expenses related to the software, products, and/or services you have received, or we have incurred or delivered, prior to the effective date of termination.
3. Lack of Appropriations. If you should not appropriate or otherwise make available funds sufficient to purchase, lease, operate, or maintain the products or services set forth in this Agreement, you may unilaterally terminate this Agreement upon thirty (30) days written notice to us. In the event of

termination due to a lack of appropriations, you will pay us for all undisputed fees and expenses related to the software, products, and/or services you have received, or we have incurred or delivered, prior to the effective date of termination. You will not be entitled to a refund or offset of previously paid license and other fees. You will not use a termination for lack of appropriations as a substitute for termination for convenience.

4. Force Majeure. Either party has the right to terminate this Agreement if a Force Majeure event suspends performance of scheduled tasks for a period of forty-five (45) days or more. In the event of termination due to Force Majeure, you will pay us for all undisputed fees and expenses related to the software, products, and/or services you have received, or we have incurred or delivered, prior to the effective date of termination. You will not be entitled to a refund or offset of previously paid license and other fees.

SECTION I – INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE

1. Intellectual Property Infringement Indemnification.

- 1.1 We will defend you against any third party claim(s) that the Tyler Software infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.
- 1.2 Our obligations under this Section I(1) will not apply to the extent the claim or adverse final judgment is based on your: (a) use of a previous version of the Tyler Software and the claim would have been avoided had you installed and used the current version of the Tyler Software; (b) combining the Tyler Software with any product or device not provided, contemplated, or approved by us; (c) altering or modifying the Tyler Software, including any modification by third parties at your direction or otherwise permitted by you; (d) use of the Tyler Software in contradiction of this Agreement, including with non-licensed third parties; or (e) willful infringement, including use of the Tyler Software after we notify you to discontinue use due to such a claim.
- 1.3 If we receive information concerning an infringement or misappropriation claim related to the Tyler Software, we may, at our expense and without obligation to do so, either: (a) procure for you the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent, in which case you will stop running the allegedly infringing Tyler Software immediately.
- 1.4 If, as a result of an infringement or misappropriation claim, your use of the Tyler Software is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which we consent), we will, at our option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; (c) replace it with a functional equivalent; or (d) terminate your license and refund the license fees paid for the infringing Tyler Software. This section provides your exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

2. Property Damage and Personal Injury Indemnification.



2.1 We will indemnify and hold harmless you and your agents, officials, and employees from and against any and all direct claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for personal injury or property damage to the extent caused by our negligence or willful misconduct.

2.2 To the extent permitted by applicable law, you will indemnify and hold harmless us and our agents, officials, and employees from and against any and all direct claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for personal injury or property damage to the extent caused by your negligence or willful misconduct.

3. **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
4. **LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, OUR LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO THE LESSER OF (A) YOUR ACTUAL DIRECT DAMAGES OR (B) THE AMOUNTS PAID BY YOU UNDER THIS AGREEMENT. THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTIONS I(1) AND I(2).
5. **EXCLUSION OF CERTAIN DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
6. **Insurance.** During the course of performing services under this Agreement, we agree to maintain the following levels of insurance: (a) Commercial General Liability of at least \$1,000,000; (b) Automobile Liability of at least \$1,000,000; (c) Professional Liability of at least \$1,000,000; and (d) Workers Compensation complying with applicable statutory requirements. We will add you as an additional insured and provide you with copies of certificates of insurance upon written request.

SECTION J – GENERAL TERMS AND CONDITIONS

1. **Additional Products and Services.** You may purchase additional products and services at the rates set forth in the Investment Summary for twelve (12) months from the Effective Date, and thereafter at our then-current list price, by executing a mutually agreed addendum. The terms of this Agreement will control any such additional purchase(s), unless otherwise specifically provided in the addendum.
2. **Optional Items.** Pricing for any listed optional products and services in the Investment Summary will be valid for twelve (12) months from the Effective Date.
3. **Dispute Resolution.** You agree to provide us with written notice within thirty (30) days of becoming aware of a dispute. You agree to cooperate with us in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative to meet and engage in good faith



negotiations with our appointed senior representative. Senior representatives will meet at your office within thirty (30) days of the written dispute notice, unless otherwise agreed. All meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If we fail to resolve the dispute, either of us may assert our respective rights and remedies in a court of competent jurisdiction. Nothing in this section shall prevent you or us from seeking necessary injunctive relief during the dispute resolution procedures.

4. Taxes. The fees in the Investment Summary do not include any taxes, including, without limitation, sales, use, or excise tax. If you are a tax-exempt entity, you agree to provide us with a tax-exempt certificate. Otherwise, we will pay all applicable taxes to the proper authorities and you will reimburse us for such taxes. If you have a valid direct-pay permit, you agree to provide us with a copy. For clarity, we are responsible for paying our income taxes, both federal and state, as applicable, arising from our performance of this Agreement.
5. Nondiscrimination. We will not discriminate against any person employed or applying for employment concerning the performance of our responsibilities under this Agreement. This discrimination prohibition will apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. We will post, where appropriate, all notices related to nondiscrimination as may be required by applicable law.
6. E-Verify. We have complied, and will comply, with the E-Verify procedures administered by the U.S. Citizenship and Immigration Services Verification Division for all of our employees assigned to your project.
7. Subcontractors. We will not subcontract any services under this Agreement without your prior written consent, not to be unreasonably withheld.
8. No Assignment. Neither party may assign this Agreement without the prior written consent of the other party; provided, however, that your consent is not required in the event we have a change of control.
9. Force Majeure. Neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure; provided, however, that within ten (10) business days of the Force Majeure event, the party whose performance is delayed provides the other party with written notice explaining the cause and extent thereof, as well as a request for a reasonable time extension equal to the estimated duration of the Force Majeure event.
10. No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of you and us. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement. This provision does not affect the rights of third parties under any Third Party End User License Agreement(s).
11. Entire Agreement; Amendment. This Agreement represents the entire agreement between you and us with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and



representations, whether written, oral, expressed, implied, or statutory. This Agreement may only be modified by a written amendment signed by an authorized representative of each party.

12. Severability. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.
13. No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this Agreement, nor will such non-enforcement prevent such party from enforcing each and every term of this Agreement thereafter.
14. Independent Contractor. We are an independent contractor for all purposes under this Agreement.
15. Notices. All notices or communications required or permitted as a part of this Agreement must be in writing and will be deemed delivered upon the earlier of the following: (a) actual receipt by the receiving party; (b) upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the receiving party; (c) upon receipt by sender of proof of email delivery; or (d) if not actually received, five (5) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the other party at the address set forth on the signature page hereto or such other address as the party may have designated by proper notice. The consequences for the failure to receive a notice due to improper notification by the intended receiving party of a change in address will be borne by the intended receiving party.
16. Client Lists. You agree that we may identify you by name in client lists, marketing presentations, and promotional materials.
17. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (e.g., social security numbers) and trade secrets, each as defined by applicable state law. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This obligation of confidentiality will not apply to information that:
 - (a) is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents;
 - (b) a party can establish by reasonable proof was in that party's possession at the time of initial disclosure;
 - (c) a party receives from a third party who has a right to disclose it to the receiving party; or
 - (d) is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing this Agreement; provided, however, that in the event you receive an open records or other similar applicable request, you will give us prompt notice and otherwise perform the functions required by applicable law.



- 18. Business License. In the event a local business license is required for us to perform services hereunder, you will promptly notify us and provide us with the necessary paperwork and/or contact information so that we may timely obtain such license.
- 19. Client Authority. You represent and warrant that you enter into this Agreement with the approval of your governing body and in accordance with all applicable statutory requirements.
- 20. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its rules on conflicts of law.
- 21. Multiple Originals and Signatures. This Agreement may be executed in multiple originals, any of which will be independently treated as an original document. Any electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature.
- 22. Contract Documents. This Agreement includes the following exhibits:
 - Exhibit A Investment Summary
 - Exhibit B Invoicing and Payment Policy
 Schedule 1: Business Travel Policy
 - Exhibit C Maintenance and Support Agreement
 Schedule 1: Service Level Agreement
 Schedule 2: Support Call Process
 - Exhibit D Statement of Work

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

Tyler Technologies, Inc.
Local Government Division

The City of Tracy, California

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address for Notices:

Tyler Technologies, Inc.
5519 53rd Street
Lubbock, Texas 79414
Attention: Brett Cate

Address for Notices:

City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Attention: Records Unit Supervisor

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





Investment Summary

The following Investment Summary details the software, products, and services to be delivered by Tyler Technologies, Inc. to you under your License and Services Agreement. This Investment Summary is effective as of the Effective Date. Capitalized terms not otherwise defined will have the meaning assigned to such terms in your License and Services Agreement.

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Quote Date: 10/5/2015

GSA Contract GS-35F-0096X

Tyler Technologies
888.693.2811

City of Tracy, CA

BUNDLE SKU	DESCRIPTION	GSA Quote	Quantity	Total
IB-BRAZMOT67-ECIT8-GOV	IN-A-BOX, COP, ELECTRONIC CITATION, MOTOROLA MC67 W/PRINTER, VERIZON, PORTABLE TECHNOLOGY (QTY. 8)			
	Motorola, MC67, GPS, 4G WWAN HSPA+, WLAN 802.11 A/B/G/N, 2D DL imager, camera, WM 6.5, 512MB/2GB, QWERTY key, Bluetooth, extended 1.5X 3600 MAH battery (QTY. 8)			
	Tyler MAEKIT (RDC) SOFTWARE (QTY. 8)			
	(EXCLUDE) MOTOROLA, MC67 MAGNETIC STRIPE READER (QTY. 8)			
	MOTOROLA, MC67 BRONZE SUPPORT WARRANTY 3-YR (QTY. 8)			
	ZEBRA, ZQ520, PRINTER 4" DT RUGGED MOBILE RECEIPT, CPCL/EPL/ZPL, 8MB/16MB, LCD, IP54, USB, SERIAL, BLUETOOTH, INCL. BATTERY, BELT CLIP (QTY. 8) -- EXCLUDED			
	SYSTEM INTEGRATION VALUE ADD SERVICES AT \$50			
	BLUESTAR WARRANTY			
		\$28,208	6	169,248

BUNDLE SKU	DESCRIPTION	GSA Quote	Quantity	Total
IB-BRAZMOT67-ECIT1-GOV	IN-A-BOX, COP, ELECTRONIC CITATION, MOTOROLA MC67 W/PRINTER, VERIZON, PORTABLE TECHNOLOGY (QTY. 1)			
	Motorola, MC67, GPS, 4G WWAN HSPA+, WLAN 802.11 A/B/G/N, 2D DL imager, camera, WM 6.5, 512MB/2GB, QWERTY key, Bluetooth, extended 1.5X 3600 MAH battery (QTY. 1)			
	Tyler MAEKIT (RDC) SOFTWARE (QTY. 1)			
	(EXCLUDE) MOTOROLA, MC67 MAGNETIC STRIPE READER (QTY. 1)			
	MOTOROLA, MC67 BRONZE SUPPORT WARRANTY 3-YR (QTY. 1)			
	ZEBRA, ZQ520, PRINTER 4" DT RUGGED MOBILE RECEIPT, CPCL/EPL/ZPL, 8MB/16MB, LCD, IP54, USB, SERIAL, BLUETOOTH, INCL. BATTERY, BELT CLIP (QTY. 1) - EXCLUDED			
	SYSTEM INTEGRATION VALUE ADD SERVICES AT \$50			
	BLUESTAR WARRANTY			
		\$3,566	2	7,132

BUNDLE SKU	DESCRIPTION	GSA Quote	Quantity	Total
	IN-A-BOX, COP, ELECTRONIC CITATION, INTEGRATION SERVICES, IMPLEMENTATION, ON-SITE TRAINING OFFICER, ADMINISTRATOR, AND COURT			
	Tyler, INTEGRATION, SERVICES, SETUP, IMPLEMENTATION, CONFIGURATION			
	Tyler, TRAINING, OFFICER/ADMINISTRATOR/COURT CUSTOMIZED CLASSROOM, UP TO 15 PARTICIPANTS, USE OF SOFTWARE/HARDWARE/REPORTING			
	SYSTEM INTEGRATION VALUE ADD SERVICES AT \$50			
	BLUESTAR WARRANTY			
		\$ 12,675	1	\$ 12,675



Valid for 30 days from date of quote.

Quote Date: 10/5/2015

GSA Contract GS-35F-0096X

Tyler Technologies
888.693.2811

BUNDLE SKU	DESCRIPTION	GSA Quote	Quantity	Total
	IN-A-BOX, COP, ELECTRONIC CITATION, 4 SLOT CRADLE (QTY. 2)			
	MOTOROLA, MC67 FOUR SLOT ETHERNET CRADLE KIT, INCLUDES POWER SUPPLY, DC LINE CORD, AC POWER CORD (QTY. 2)			
	BLUESTAR WARRANTY			
		\$ 907	6	\$ 5,441

BUNDLE SKU	DESCRIPTION	GSA Quote	Quantity	Total
	IN-A-BOX, COP, ELECTRONIC CITATION, MOTOROLA, MC67 BATTERY QUAD CHARGER KIT W/ 4 BATTERIES (QTY. 1)			
	MOTOROLA, MC67 BATTERY QUAD CHARGER KIT, INCLUDES POWER SUPPLY AND US AC LINE CORD (QTY. 1)			
	MOTOROLA, MC67 1.5X EXTENDED LIFE BATTERY (QTY. 4)			
	SYSTEM INTEGRATION VALUE ADD SERVICES AT \$50			
	BLUESTAR WARRANTY			
		\$ 515	2	\$ 1,030

Non-GSA Items

Interface: CMS - San Joaquin County, CA	\$ -		
Interface: RMS - West Covina	\$ -		
Task: Driver Exchange Module	\$ -		
License: Crash Report with Drawing Tool (Qty: 50)	\$ 12,500		
Services: Crash Reporting Setup and Configuration	\$ 2,500		
Training: Crash Reporting Training (1 day onsite)	\$ 1,500		
Zebra, MC67 4 Slot Ethernet Cradle Kit (Qty: 1)	\$ 425		
Zebra, ZQ520 Li Ion Batter (Qty: 8)	\$ 624		
Zebra ZQ520 Quad Battery Charger (Qty: 2)	\$ 690		
Zebra ZQ520 Li Ion Fast Charger (Qty: 6)	\$ 420		
Zebra ZQ520 Paper (Qty: 7)	\$ 665		
Zebra, ZQ520, Battery Eliminator Power Supply (Qty: 45)	\$ 4,365		
Zebra, ZQ500, DC Vehicle Adapter (Qty: 45)	\$ 1,800		
Zebra, ZQ520, Vehicle Cradle (Qty: 45)	\$ 4,365		
Zebra, ZQ500, RAM Mount Kit (Qty: 45)	\$ 2,790		
Zebra, ZQ520, Magnetic Card Reader (Qty: 50)	\$ 4,950		
	\$ 37,594		
Total		\$	233,120

Valid for 30 days from date of quote.



Quote Date: 10/5/2015

GSA Contract GS-35F-0096X

Tyler Technologies
888.693.2811

Estimated taxes to be paid by City of Tracy	\$ 12,327
GRAND TOTAL	\$ 245,447

Non GSA - Annual Licensing/Maintenance Fees (After 1st year)

Tyler e-Citation License Annual Maintenance - 50 @ \$250ea.	\$ 12,500
Tyler eCrash (CHP 555) License Annual Maintenance -- 50 @ \$150ea	\$ 7,500
Tyler Interface to CMS - 1 @ \$1000ea.	\$ 1,000
Tyler Interface to RMS - 1 @ \$1000ea.	<u>\$ 1,000</u>
Total Annual Maintenance	\$ 22,000

Valid for 30 days from date of quote.





Invoicing and Payment Policy

Tyler Technologies, Inc. will provide you with the software, products, and services set forth in the Investment Summary of your License and Services Agreement. Capitalized terms not otherwise defined will have the meaning assigned to such terms in your License and Services Agreement.

Invoicing: We will invoice you for the applicable license fees, products, and services in the Investment Summary as set forth below. Your rights to dispute any invoice are set forth in your License and Services Agreement.

1. Tyler Software.

1.1 *License Fees:* License fees are invoiced as follows: (a) 25% on the Effective Date; (b) 60% on the date when we make the applicable Tyler Software available to you for downloading (the "Available Download Date"); and (c) 15% on the earlier of first use of the Tyler Software in live production or (180) days after the Available Download Date.

1.2 *Maintenance and Support Fees:* Maintenance and support fees for the first annual term are included in the license fees. Subsequent maintenance and support fees, at Tyler's then-current rates, are invoiced annually in advance on the anniversary of the Effective Date.

2. Professional Services.

2.1 *Professional Services:* Professional services are billed as delivered and invoiced as incurred.

2.2 *Requested Modifications to the Tyler Software:* Requested modifications to Tyler Software are invoiced 50% upon delivery of specifications and 50% upon delivery of the applicable modification. You must report any failure of the modification to conform to the specifications within thirty (30) days of delivery; otherwise, the modification will be deemed to be in compliance with the specifications after the 30-day window has passed.

3. Other Services and Fees.

3.1 *Hosting Fees:* Hosting Fees for the Tyler Software identified on the Investment Summary are invoiced annually in advance on the Effective Date and will renew automatically for additional one (1) year terms at our then-current Hosting Services fee, unless terminated in writing by either party at least thirty (30) days prior to the end of the then-current term.

4. Third Party Products.

4.1 *Third Party Software License Fees:* License fees for Third Party Software are invoiced when we make it available to you for downloading.



4.2 *Third Party Software Maintenance*: The first year maintenance for the Third Party Software is invoiced when we make it available to you for downloading.

4.3 *Third Party Hardware*: Third Party Hardware costs are invoiced upon delivery.

4.4 *Third Party Services*: Third Party Services fees are invoiced upon delivery.

5. Expenses. Travel expenses for one trip to your site are included. The service rates in the Investment Summary do not include travel expenses for any additional travel requested or required. If additional travel is requested or required, expenses will be billed as incurred and only in accordance with our then-current Business Travel Policy, plus a 10% travel agency processing fee. Our current Business Travel Policy is attached to this Exhibit B at Schedule 1. Copies of receipts will be provided on an exception basis for an administrative fee. Receipts for mileage or miscellaneous items less than twenty-five dollars are not available.

Payment. Payment for undisputed invoices is due within forty-five (45) days of the invoice date. Maintenance and support fees are due on each anniversary of the Available Download Date. We prefer to receive payments electronically. Our electronic payment information is:

Bank: Wells Fargo Bank, N.A.
420 Montgomery
San Francisco, CA 94104
ABA: 121000248
Account: 4124302472
Beneficiary: Tyler Technologies, Inc. – Operating



Business Travel Policy

1. Air Travel

A. Reservations & Tickets

Tyler's Travel Management Company (TMC) will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within \$100 (each way) of the lowest logical fare. If a net savings of \$200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

Employees are encouraged to make advanced reservations to take full advantage of discount opportunities. Employees should use all reasonable efforts to make travel arrangements at least two (2) weeks in advance of commitments. A seven day advance booking requirement is mandatory. When booking less than seven days in advance, management approval will be required.

Except in the case of international travel where a segment of continuous air travel is scheduled to exceed six hours, only economy or coach class seating is reimbursable.

B. Baggage Fees

Reimbursement of personal baggage charges are based on trip duration as follows:

- Up to five days = one checked bag
- Six or more days = two checked bags

Baggage fees for sports equipment are not reimbursable.

2. Ground Transportation

A. Private Automobile

Mileage Allowance – Business use of an employee's private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations. Employees who have been designated a home office should calculate miles from their home.



B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience, and the specific situation reasonably require their use. When renting a car for Tyler business, employees should select a “mid-size” or “intermediate” car. “Full” size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; additional insurance on the rental agreement should be declined.

C. Public Transportation

Taxi or airport limousine services may be considered when traveling in and around cities or to and from airports when less expensive means of transportation are unavailable or impractical. The actual fare plus a reasonable tip (15-18%) are reimbursable. In the case of a free hotel shuttle to the airport, tips are included in the per diem rates and will not be reimbursed separately.

D. Parking & Tolls

When parking at the airport, employees must use longer term parking areas that are measured in days as opposed to hours. Park and fly options located near some airports may also be used. For extended trips that would result in excessive parking charges, public transportation to/from the airport should be considered. Tolls will be reimbursed when receipts are presented.

3. Lodging

Tyler’s TMC will select hotel chains that are well established, reasonable in price, and conveniently located in relation to the traveler's work assignment. Typical hotel chains include Courtyard, Fairfield Inn, Hampton Inn, and Holiday Inn Express. If the employee has a discount rate with a local hotel, the hotel reservation should note that discount and the employee should confirm the lower rate with the hotel upon arrival. Employee memberships in travel clubs such as AAA should be noted in their travel profiles so that the employee can take advantage of any lower club rates.

“No shows” or cancellation fees are not reimbursable if the employee does not comply with the hotel’s cancellation policy.

Tips for maids and other hotel staff are included in the per diem rate and are not reimbursed separately.

4. Meals and Incidental Expenses

Employee meals and incidental expenses while on travel status are in accordance with the federal per diem rates published by the General Services Administration. Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem rates are available at www.gsa.gov/perdiem.

A. Overnight Travel

For each full day of travel, all three meals are reimbursable. Per diems on the first and last day of a trip are governed as set forth below.

Departure Day

Depart before 12:00 noon	Lunch and dinner
Depart after 12:00 noon	Dinner

Return Day

Return before 12:00 noon	Breakfast
Return between 12:00 noon & 7:00 p.m.	Breakfast and lunch
Return after 7:00 p.m.*	Breakfast, lunch and dinner

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

- Breakfast 15%
- Lunch 25%
- Dinner 60%

B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00 p.m.*

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner

5. Internet Access – Hotels and Airports

Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to \$10.00 per day. Charges for internet access at airports are not reimbursable.



Maintenance and Support Agreement

Tyler Technologies, Inc. will provide you with the following maintenance and support services for the Tyler Software licensed to you. Capitalized terms not otherwise defined will have the meaning assigned to such terms in your License and Services Agreement.

1. **Term.** We provide maintenance and support services on an annual basis. The initial term commences on the Effective Date and remains in effect for one (1) year. The term will renew automatically for additional one (1) year terms unless terminated in writing by either party at least thirty (30) days prior to the end of the then-current term.
2. **Maintenance and Support Fees.** Your initial maintenance and support fees for the Tyler Software licensed to you are listed in the Investment Summary of your Agreement. Those amounts are payable in accordance with our Invoicing and Payment Policy. We reserve the right to suspend maintenance and support services if you fail to pay undisputed maintenance and support fees within sixty (60) days of the due date. We will reinstate maintenance and support services only if you pay all past due maintenance and support fees, including all fees for the periods during which services were suspended.
3. **Maintenance and Support Services.** As long as you are trained on the Tyler Software, and timely pay your maintenance and support fees, we will, consistent with our then-current Support Call Process:
 - 3.1 perform our maintenance and support obligations in a professional, good, and workmanlike manner, consistent with industry standards, to conform the Tyler Software to the warranty set forth in your Agreement; provided, however, that if you modify the Tyler Software without our consent, our obligation to provide maintenance and support services on and warrant the Tyler Software will be void;
 - 3.2 provide telephone support during our established support hours;
 - 3.3 maintain personnel that are sufficiently trained to be familiar with the Tyler Software and Third Party Software in order to provide maintenance and support services;
 - 3.4 provide you with a copy of all releases to the Tyler Software (including updates and enhancements) that we make generally available without additional charge to customers who have a maintenance and support agreement in effect; and
 - 3.5 support prior releases of the Tyler Software in accordance with our then-current release life cycle policy.
4. **Client Responsibilities.** We will use all reasonable efforts to perform any maintenance and support services remotely. Currently, we use a third-party secure unattended connectivity tool called Bomgar, as



well as GotoAssist by Citrix. Therefore, you agree to maintain a high-speed internet connection capable of connecting us to your PCs and server(s). You agree to provide us with a login account and local administrative privileges as we may reasonably require to perform remote services. We will, at our option, use the secure connection to assist with proper diagnosis and resolution, subject to any reasonably applicable security protocols. If we can't resolve a support issue remotely, we may be required to provide onsite services. In such event, you agree to provide us with full and free access to the Tyler Software, working space, adequate facilities within a reasonable distance from the equipment, and use of machines, attachments, features, or other equipment reasonably necessary for us to provide the maintenance and support services, all at no charge to us. We strongly recommend that you also maintain a VPN for backup connectivity purposes.

5. Excluded Services. Maintenance and support fees do not include fees for the following services: (a) initial installation or implementation of the Tyler Software; (b) onsite maintenance and support (unless Tyler cannot remotely correct a defect in the Tyler Software); (c) application design; (d) other consulting services; (e) maintenance and support of an operating system or hardware; (f) support outside our normal business hours as listed in our then-current Support Call Process; or (g) installation, training services, or third party product costs related to a new release. Requested maintenance and support services beyond those outlined in this section will be billed to you at our then current rates. We do not guarantee resolution of a Defect in a version of the Tyler Software Products older than one version behind the then-current release. We reserve the right to decline support calls from users who have not received the required training on the Tyler Software.

6. Current Support Call Process. Our current Support Call Process for the Tyler Software is attached to this Exhibit C at Schedule 2.





Service Level Agreement

Agreement Overview

This SLA outlines the information technology service levels that Tyler will provide to Client to ensure the availability of the Hosting Services that Client has requested Tyler to provide. All other support services are documented in the applicable Support Call Process. All defined terms not defined below have the meaning set forth in the Agreement.

Definitions

Attainment: The percentage of time a service is available during a billing cycle, with percentages rounded to the nearest whole number.

Client Error Incident: Any service unavailability resulting from Client's applications, content or equipment, or the acts or omissions of any of Client's service users or third-party providers over whom Tyler exercises no control.

Downtime: Those minutes during which the applicable software products are materially unavailable for Client's use. Downtime does not include those instances in which only a Defect is present.

Service Availability: The total number of minutes in a billing cycle that a given service is capable of receiving, processing, and responding to requests, excluding maintenance windows, Client Error Incidents and Force Majeure.

Service Availability

The Service Availability of the applicable software products is intended to be 24/7/365. Tyler sets Service Availability goals and measures whether Tyler has met those goals by tracking Attainment.

Client Responsibilities

Whenever Client experiences Downtime, Client must make a support call according to the procedures outlined in the applicable Support Call Process exhibit. Client may escalate through the hosting hotline. Client will receive a support incident number. Any Downtime is measured from the time Tyler intakes Client's support incident.

To track attainment, Client must document, in writing, all Downtime that Client has experienced during a billing cycle. For purposes of this Service Level Agreement, billing cycle shall be based on each calendar

quarter. Client must deliver such documentation to Tyler within thirty (30) days of a billing cycle's end.

The documentation County provides must substantiate the Downtime. It must include, for example, the support incident number(s) and the date, time and duration of the Downtime(s).

Tyler Responsibilities

When Tyler's support team receives a call from Client that a Downtime has occurred or is occurring, Tyler will work with Client to identify the cause of the Downtime (including whether it may be the result of a Client Error Incident or Force Majeure). Tyler will also work with Client to resume normal operations.

Upon timely receipt of Client's Downtime report, outlined above, Tyler will compare that report to Tyler's own outage logs and support tickets to confirm that a Downtime for which Tyler was responsible indeed occurred.

Tyler will respond to Client's Downtime report within thirty (30) days of receipt. To the extent Tyler has confirmed Downtime for which Tyler is responsible, Tyler will provide Client with the relief set forth below.

Client Relief

When a Service Availability goal is not met due to Client's confirmed Downtime, Tyler will provide Client with relief that corresponds to the percentage amount by which that goal was not achieved, as set forth in the Client Relief Schedule below.

Notwithstanding the above, the total amount of all relief that would be due under this SLA will not exceed 5% of the fee for any one billing cycle. Issuing of such credit does not relieve Tyler of its obligations under the Agreement to correct the problem which created the service interruption. A correction may occur in the billing cycle following the service interruption. In that circumstance, if service levels do not meet the corresponding goal for that later billing cycle, Client's total credits will be doubled, with equal relief being provided in that later billing cycle.

Client Relief Schedule

Targeted Attainment	Actual Attainment	Client Relief
100%	98-99%	Remedial action will be taken at no additional cost to Client.
100%	95-97%	Remedial action will be taken at no additional cost to Client. 4% credit of fee for affected billing cycle will be posted to next billing cycle

100%	<95%	Remedial action will be taken at no additional cost to Client. 5% credit of fee for affected billing cycle will be posted to next billing cycle
------	------	---

Client may request a report from Tyler that documents the preceding billing cycle's Service Availability, Downtime, any remedial actions that have been/will be taken, and any credits that may be issued. That report is available by contacting the hosting hotline through the support portal(s).

Applicability

The commitments set forth in this SLA do not apply during maintenance windows, Client Error Incidents, and Force Majeure.

Tyler performs maintenance during limited windows that are historically known to be reliably low-traffic times. If and when maintenance is predicted to occur during periods of higher traffic, Tyler will provide advance notice of those windows and will coordinate to the greatest extent possible with Client. When maintenance is scheduled to occur, Tyler will provide approximately two (2) weeks' advance written notice to the contact information that Client supplies on Client notification form. When emergency maintenance is scheduled, Client will receive an email at that same contact point.

Force Majeure

Client will not hold Tyler responsible for meeting service levels outlined in this SLA to the extent any failure to do so is caused by Force Majeure. In the event of Force Majeure, Tyler will file with Client a signed request that said failure be excused. That writing will include the details and circumstances supporting Tyler's request for relief with clear and convincing evidence pursuant to this provision. Client will not unreasonably withhold its acceptance of such a request.

Local Government Division Support Call Process

Products Covered

Incode		
Incode Financials	Incode CIS/CRM	Incode Court Case Management
Incode Tyler Public Safety		
Eagle		
Eagle Recording	Eagle Tax (Assessor/Treasurer)	Tyler Content Manager
Other		
Energov	Infinite Visions	

Support Channels

Tyler Technologies, Inc. provides the following channels of software support:

- (1) Telephone – for urgent or complex questions, users receive toll-free, unlimited telephone software support.
- (2) Email – for less urgent situations, users may submit unlimited emails directly to the software support group. Email will be used for responses.
- (3) On-line submission – for less urgent and project-based questions, users may create unlimited support incidents through the customer relationship management portal available at the Tyler Technologies website.
- (4) Tyler Community – an on-line resource, Tyler Community provides a venue for all Tyler clients with current maintenance agreements to support one another, share best practices and resources, and access documentation.

During the Implementation to Support handoff meeting, at the conclusion of the client’s project, Tyler representatives will provide the most current toll-free telephone number and email address for submitting support incidents, based on the software licensed.

Support Availability

Our established software support hours are Monday through Friday from 7:00 AM – 7:00 PM Central Time.

Tyler’s holiday schedule is outlined below. There will be no support coverage on these days.

New Year’s Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Eve
Labor Day	Christmas Day

The hours and holiday schedule set forth above does not apply to users of Tyler Public Safety, who have 24/7/365 access to software support personnel for critical issues. Each incident will be billed at the hourly



rate and minimum charges, according to the terms of our then-current Tyler Public Safety 24/7/365 Support document. Our current Tyler Public Safety 24/7/365 Support document is provided below.

Issue Handling

Incident Tracking

When a support incident cannot be resolved during its initiation, the client receives an incident tracking number for that issue. The incident tracking number is used to track and reference open issues when clients contact support.

Incident Escalation

Tyler's software support consists of four levels of personnel:

- (1) Software Support Analysts – front-line representatives
- (2) Software Support Advisors – more senior in their support role, the Advisors assist Software Support Analysts and take on escalated issues
- (3) Software Support Team Leads – responsible for the day-to-day supervision of Analysts and Advisors and may assist in incident escalations
- (4) Software Support Managers – responsible for the management of support teams for either a single product or a product group

On occasion, the priority or immediacy of a software support incident may change after initiation. Tyler encourages clients to communicate the level of urgency or priority of software support issues so that we can respond appropriately. A software support incident can be escalated by any of the following methods:

- (1) Telephone – for immediate response, call toll-free to either escalate an incident's priority or to escalate an issue through management channels as described above.
- (2) Email – clients can send an email to software support in order to escalate the priority of an issue
- (3) On-line Support Incident Portal – by logging into the client incident portal and referencing the appropriate incident tracking number, clients can modify the priority of an issue.

Incident Priority

Each incident is assigned a priority number, which corresponds to the client's needs and deadlines. The client is responsible for reasonably setting the priority of the incident per the below chart. The goal of this structure is to clearly understand and communicate the importance of the issue and to describe expected responses and resolutions.

Issue Priorities & Resolutions			
Priority Level	Characteristics of Support Incident	Resolution Targets	Development Actions
1	Support incident that causes (a) complete application failure or application unavailability; (b) application failure or unavailability in one or more of the client's remote location; or (c) systemic loss of multiple essential system functions.	Tyler shall provide an initial response to Priority Level 1 incidents within one (1) business hour of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within one (1) business day. Tyler's responsibility for loss or corrupted data is limited to assisting the client in restoring its last available database.	Hot Fix – Emergency patch to software as soon as possible
2	Support incident that causes (a) repeated, consistent failure of essential functionality affecting more than one user or (b) loss or corruption of data.	Tyler shall provide an initial response to Priority Level 2 incidents within four (4) business hours of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedures within five (5) business days. Tyler's responsibility for loss or corrupted data is limited to assisting the client in restoring its last available database.	Regularly-scheduled patch
3	Priority Level 1 incident with an existing circumvention procedure, or a Priority Level 2 incident that affects only one user or for which there is an existing circumvention procedure.	Tyler shall provide an initial response to Priority Level 3 incidents within one (1) business day of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents without the need for a circumvention procedure with the next published maintenance update or service pack, which shall occur at least quarterly. Tyler's responsibility for lost or corrupted data is limited to assisting the client in restoring its last available database.	Next Release – Scheduled for the next major release

Issue Priorities & Resolutions			
Priority Level	Characteristics of Support Incident	Resolution Targets	Development Actions
4	Support incident that causes failure of non-essential functionality or a cosmetic or other issue that does not qualify as any other Priority Level.	Tyler shall provide an initial response to Priority Level 4 incidents within two (2) business days. Tyler shall use commercially reasonable efforts to resolve such support incidents within two version release cycles and a cosmetic or other support incident that does not qualify as any other Priority Level incident with a future version release.	Future release – not scheduled; reviewed at next planning stage

Hardware and Other Systems

If in the process of diagnosing a software support issue it is discovered that a peripheral system or its software is the cause of the issue, Tyler will notify the client so that the client may contact the support agency for that peripheral system. Tyler cannot support or maintain third-party software or hardware.

In order for Tyler to provide the highest level of software support, the client bears the following responsibility related to hardware and software:

- (1) All infrastructure executing Tyler software shall be managed by the client.
- (2) Support contracts for all third-party software (ex: operating systems, database management systems) associated with Tyler software shall be maintained. Tyler does not support these third-party products.
- (3) Daily database backups must be performed; client shall verify the backups are successful.

Tyler Public Safety 24/7 Support

Overview

The purpose of Tyler Public Safety (TPS) 24/7 Support is to provide Tyler Public Safety clients with after-hours support for only critical Public Safety software issues. Support is considered to be after-hours if an incident is reported before 7:00 AM or after 7:00 PM (Central) on normal business days, or any time on weekends and holidays. Calls received outside normal support hours are routed to an answering service equipped to record information regarding the incident. The call center contacts Tyler Public Safety Support personnel via telephone and email with instructions for client call back. The Tyler staff handling the issue contacts the reporting client to troubleshoot the issue through to resolution, calling on second-level resources if necessary to address solutions or conflicts.

Pricing

If, after contacting the client, the Tyler staff determines the incident to be an issue with the client's hardware or non-TPS software, the client will be billed \$250.00/hour, with a one-hour minimum. If the issue is determined to be a fault of the Tyler software, the customer will not be billed. Clients are encouraged to first contact their own IT personnel to diagnose the issue and avoid a charge.

Process

Personnel involved in Tyler Public Safety 24/7 Support have domain knowledge and skills to resolve critical issues. They include:

- (1) Primary on-call contact
- (2) Secondary on-call contact
- (3) Extended support team staff – utilized in the event additional resources or domain experience, such as development expertise, is required. Development resources will be utilized after hours only if the supported system is completely down due to a programmatic issue. All other development issues will be reported to development and worked on the following business day.

Figure 1 – Contact Flow illustrates the following:

- (1) Outside published support hours, client calls the toll-free telephone number provided during the Implementation to Support Handoff meeting
- (2) Call is auto-routed to an answering service; answering service personnel gather requisite information about the incident
- (3) Answering service staff calls the primary on-call contact; answering service staff calls the secondary on-call contact if unable to speak with the primary on-call contact or other backup staff
- (4) Answering service staff submits issue to a group email, resulting in the creation of an incident in Tyler's incident tracking system

Services Provided

Support services consist of diagnosis and resolution of catastrophic systemic issues that cause failure of live Tyler Public Safety software. The client site must be able to provide Tyler access to all servers involved with the TPS software, application server, and SQL Server. Access to the module with the issue is also required.

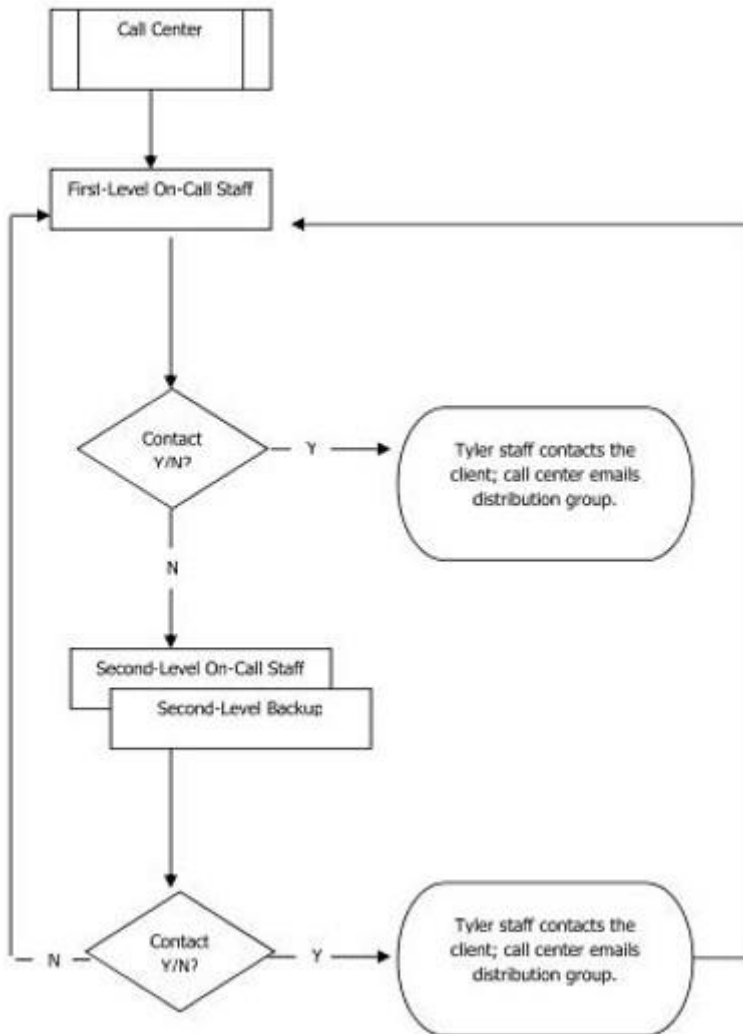
Supported issues include:

- Inability to run CAD
- Inability to create or close calls in the CAD screen
- Inability to activate officers in dispatch
- Inability to assign officers to a call in the Dispatch screen
- Inability to change the status of calls in the Dispatch screen
- Inability of all users to log into Mobile CAD
- Inability of all users to run NCIC queries (if applicable)
- Inability to use the RMS system
- Inability of all mobile users to access Mobile RMS
- Inability of all mobile users to access Mobile Citations

Non Supported issues include:

- One user or one workstation cannot get in software (unless this is a dispatch station in dispatch)
- One user cannot get into CAD or get NCIC returns
- Password issues
- Easy Street Draw, Scene PD, Smart Roads (non?TPS Software)
- Inability to print from a specific workstation or user, or inability to print a specific incident, arrest number, etc.
- Issues related to NetMotion (used for Mobile CAD VPN), Citrix, or Terminal Server, used for Mobile RMS and Mobile Citations. (These are not Tyler Products – we can assist with troubleshooting issues with these, but it will be billable time).

Figure 1 – Contact Flow





Statement of Work

***Brazos eCitation & eCrash Reporting
Software and Implementation Services***

Prepared for:

The City of Tracy, CA

Prepared by:

Tyler Technologies, Inc.
www.tylertechnologies.com



November 9th, 2015

Acronyms

The following acronyms are used throughout the SOW.

- **WP** – Work Plan
- **RMS** – Records Management System
- **CMS** – Court Management System
- **ECS** – Electronic Citation System
- **PDA** – Portable Data Assistant (any handheld or other mobile platform running a standard operating system)
- **SYNC** – A process through which citation data is transmitted from the Device to the Brazos Server, and through which new software updates are transmitted from the Brazos Server to the device.

Definitions

The following definitions are used throughout the SOW.

- **Acceptance of Deliverable** - Written notification from the City of Tracy to Tyler, signed by the responsible the City of Tracy Project Manager, indicating that the Deliverable has been evaluated and satisfies the Acceptance Criteria of each Deliverable
- **Deliverables** - Any materials procured or prepared by Brazos or services provided by Tyler to the City of Tracy

PROJECT SCOPE & SUMMARY

This Statement of Work provides the understanding of the objectives, approach, schedule, and deliverables for this engagement.

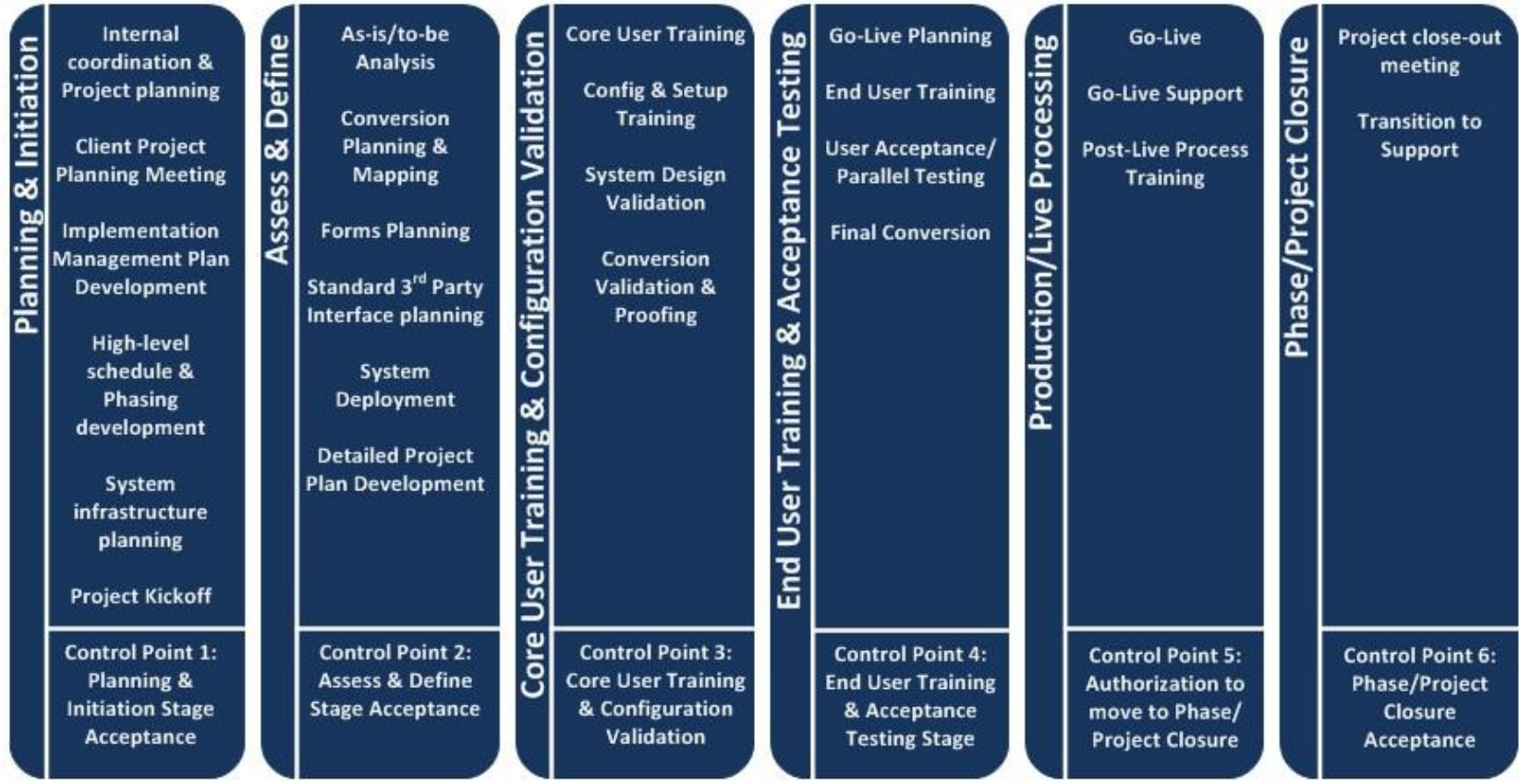
Any standard interfaces purchased are detailed in SOW Attachment D – Brazos Solutions Summary. It is important for the Client to read the portion of the Attachment related to each interface purchased to understand its full functionality.

The **summary scope** of this project includes the following:

1. The ECS will, at a minimum, conform to the requirements as outlined in the final proposal (Tracy CA – Initial 50 Units – PDAs_v4). It is expected that further details of how each requirement will be accomplished will be determined at the Kick-Off Meeting and subsequent requirements gathering meetings.
2. Once the citation information is captured in the ECS, it must be sent to the correct systems with no manual data entry, except for specific approvals to be defined later.
3. The ECS must provide intuitive, easy-to-use software that requires minimal training.
4. The ECS will provide the ability to add additional customized forms (at additional cost) - driver information exchange, traffic collision (CHP555), etc. that also meet the flow process as desired by the client.
5. The ECS must enable officers to enter notes via text (voice recording will also be available).
6. The ECS must support the Court's citation numbering system.
7. The ECS must allow the client to customize the layout of the citation printout.
8. The ECS must create an electronic data file when a citation is completed and approved and provide the ability to transfer that data file which will then be made available for import into the West Covina Records Management System (RMS).
9. The ECS must create an electronic data file when a citation is completed and approved and provide the ability to transfer that data file which will then be made available for import into the San Joaquin County Superior Court (NOTE: contingent upon the San Joaquin Superior Court approval of the interface).
10. The ECS will include the Citation Entry Screen (CES) that will allow authorized users with the ability to enter data from manual (paper) citations into the ECS through the secure web portal.

Implementation Stages

Tyler provides a well-defined, multi-stage roadmap which can be applied to a single phase project or to projects with multiple phases. For multi-phase projects, the stages are repeated as necessary.



Each stage, as established above, is designed to provide a point at which a full review of the stage objectives is assessed for completeness. When a stage is complete, a Work-Acknowledgement Form (see SOW Attachment A (sample) – Work Acknowledgement Form) is completed and signed by the Client signifying acceptance of that stage and the beginning of the next stage. Each stage is dependent on the results of the previous stage and therefore, each stage of the methodology cannot begin until the previous stage is completed and approved.

DATA CONVERSION

Data Conversion is referenced in the Implementation stages methodology graphic, however no data conversion is included within the scope of this project for the City of Tracy. The graphic is representative of the standard implementation methodology utilized throughout the various product lines offered by Tyler Technologies.

KEY PROJECT ASSUMPTIONS

- Client and Tyler shall review their responsibilities before work begins to ensure that Services can be satisfactorily completed.
- Client will provide Tyler with access to its equipment, systems, and personnel to the extent needed to complete the defined Services.
- Client will provide work space for Tyler Services for work completed on Client premises.
- Tyler shall initially implement the most current version of the Tyler software at the time of the contract signing. During the implementation Tyler will provide newer releases of the software that meet or exceed the version available at contract signing.
- Client will maintain primary responsibility for the scheduling of Client employees and facilities in support of project activities.
- Client shall provide Tyler with network access for remote installation and testing through industry standards such as Virtual Private Network (VPN) or other secure access methods.
- Client will allow users to access the following websites to ensure adequate access to system resources:
 - www.brazostech.com
 - My.brazostech.com
 - Get.brazostech.com
 - Support.brazostech.com
- Client will provide/purchase/acquire the appropriate hardware, software and infrastructure assets to support all purchased Tyler software products in both support/testing and production environments.
- Client is responsible for proper site preparation, hardware, software and network configuration in accordance with Tyler specifications.
- Client has, or will provide, access licenses and documentation of existing system to any 3rd party system software which Tyler will be required to read, write or exchange data.



- Client has, or will provide, a development/testing environment for data conversion and interface testing as they are developed by Tyler.
- Tyler shall be responsible for implementing a functioning version of the application software (assuming Client has installed the proper hardware, software, and networking devices).
- All deliverables and timelines assigned to the Client will be held to the same standards of delivery as those assigned to Tyler Technologies.
- Installation of Hardware required in City Vehicles shall be completed by City Personnel and facilities.
- The Client will deploy initially on Fifty (50) PDA's (Zebra MC67s).
- Deployment of the Tyler Brazos ECS for the Client will utilize Tyler's hosted server environment.
- All Client personnel involved in the Pilot Project will participate fully in the training provided by Tyler Technologies.
- The Interface to the West Covina Records Management System (RMS) is included in this Phase of the project and will include the synchronization of tables/files.
- Interface to the San Joaquin County Superior Court System is included in this Phase of the project, but is contingent on the Court's ability to devote the resources required.

OUT OF SCOPE

- **Custom interfaces.** Custom interfaces involve the development of a standard, repeatable process for transferring information into or out of the Tyler software. These interfaces may take the form of a user-initiated import/export program, an API, or a web service. There are no custom interfaces included in the scope of the agreement unless detailed in Attachment D – Brazos Solutions Summary
- **Custom Reports.** Custom Reports involve the development of new reports that are not offered as part of the standard reporting package and modifications to existing reports. There are no custom reports included in the scope of the agreement unless detailed in Attachment D – Brazos Solutions Summary
- **Undocumented requirements.** Undocumented requirements include requirements not specified in this Statement of Work and associated attachments.
- **Post System Acknowledgement Configuration.** System Acknowledgement requirements are met at the completion of End User Training and User Acceptance Testing stage. Any changes requested of the Tyler implementation team to alter the configuration, post acknowledgement of these milestones, must be documented through a Change Order and may incur additional time and/or costs. Client may have access to built-in configuration tools, so, when available, is free to reconfigure or create new configuration as required or desired. If assistance using these tools is required, additional change orders may apply.

RISK / MITIGATION STRATEGY

Unavailability/Incompatibility of Staff

Risk: Tyler recognizes that individuals assigned to projects may become unavailable due to various causes. Further, Tyler recognizes that individuals sometimes clash for reasons of incompatibility. Tyler schedules team members based on all the projects to which those individuals are assigned. Unavailability may occur due to unforeseen circumstances such as family matters or the employee's departure from Tyler employment. Incompatibility creates intolerance in project objectives and tasks and creates unnecessary delays and can lead to project failure if not corrected.

Mitigation: In the event a Tyler project member is determined to be unavailable, a Tyler manager will consult with Client on alternatives such as a temporary replacement or substitute of the person. Likewise a similar response is expected from the Client if their team member is unavailable.

Incompatibility is addressed first through attempts to resolve the compatibility issues between individuals. Failing resolution, team members must be replaced. In the event a Tyler team member is determined to be incompatible, Tyler will replace with a new team member and provide time to orient to the project before assuming their respective responsibilities.

Client Staff unavailability

Risk: Delays in the project timeline will occur if appropriate Client staff is unavailable to meet with or respond to Tyler for timely decisions and or directions.

Mitigation: Client should ensure that staff assigned to this project is given sufficient priority and authority to work with Tyler while completing other Client responsibilities in a timely fashion. Decisions must be made in hours and days, not weeks.

Scope Changes

Risk: Poorly defined projects always take longer than expected or cost more than expected because of poorly defined scope at the beginning of the project.

Mitigation: Both parties must ensure that the scope of the project is well stated and completely defined to the best of each party's knowledge. Functional requirements should be reviewed carefully to ensure completeness. Change Orders are required to document any subsequent impact on schedule and/or costs.

Activity Focus

Risk: Activity Focus is the risk that minor activities consume time that should otherwise be



dedicated to major activities of the project, with the end result of time and/or costs overrunning budget. This risk is sometimes associated with efforts that lead to scope changes. Examples include meetings of little substance or that go longer than they need, or time consumed investigating undocumented functionality or other activities not in scope.

Mitigation: Project Managers for both Parties must guard themselves to avoid focus drift by ensuring the focus is squarely on meeting deadlines, services, and configuration requirements of the implementation as planned and documented in the planning, assessment and definition stages.

Achievable Goals

Risk: The expectations of this project are set too high or are not explicit or clear to Client Staff and thus not communicated to Tyler through Functional Requirements and clearly stated scope.

Mitigation: The parties must ensure, through the Contract and Task Orders, that the goals of the project are explicit, well defined and attainable, and that both parties have “signed off” on the requirements.

Technology Age

Risk: This risk is highly dependent on the choice of Tyler products and whether the Client is hosting any of those products. If the Client will be hosting its own servers, the technology utilized should be robust enough to meet the Client’s needs for several years into the future. Technology that barely meets minimum requirements today will be insufficient as the system and its needs grow.

Mitigation: Tyler will assist Client in determining optimal technology and plans to guard against premature obsolescence.

CRITICAL SUCCESS FACTORS

In order to successfully execute the services described herein, there are several critical success factors for the project that must be closely monitored. These factors are critical in setting expectations between the Client and Tyler, identifying and monitoring project risks, and promoting strong project communication.

- **Knowledge Transfer** - While Tyler cannot guarantee specific expertise for Client staff as a result of participating in the project, Tyler shall make reasonable efforts to transfer knowledge to the Client. It is critical that Client personnel participate in the analysis, configuration and deployment of the Tyler software in order to ensure success and to transfer knowledge across



the organization. After completion of the production phase, the Client will be responsible for administering the configuration and introduction of new processes in the Tyler system.

- **Dedicated Client Participation** – Tyler fully understands that Client staff members have daily responsibilities that shall compete with the amount of time that can be dedicated to the Tyler implementation project. However, it is critical that the Client understands and acknowledges that its staff must be actively involved throughout the entire duration of the project as defined in the Project Plan. Tyler shall communicate any insufficient participation of Client and Tyler resources, as well as the corresponding impact(s), through Project Status Reports.
- **Acknowledgement Process** – Acknowledgment must be based on criteria. The objectives and tasks of each stage of a project provide the basic criteria by which to judge acceptance of a stage is to be granted. Within each stage additional criteria will be developed by team members on which to judge future stages. For example, User Acceptance Testing will be based on criteria developed in earlier stages.

As resources are consumed, Tyler shall provide the Client with a Work Acknowledgement Form (see Attachment A-(Sample) Work Acknowledgement Form) to formalize receipt. The Work Acknowledgment Form is subsequently signed by the appropriate Client stakeholder(s), and faxed or emailed to Tyler. Timely and honest acceptance is required to maintain project momentum. Failure to properly establish acceptance criteria or failure to accept a properly completed stage will cause delays in the project.

In an effort to ensure quality and complete satisfaction with each stage of the project, Tyler's Professional Services Division has established the following rule: A Signed Work Acknowledgement Form (see Attachment A) is required upon completion and Client-acknowledgement of the resources consumed on the project. Stage signoff is also required before proceeding to the next stage in the process.

- **Managing Project Scope** - In an effort to implement the project on time and within budget, both Tyler and Client agree to limit the software and professional services to only those items identified in this Statement of Work. Expanded scope results in additional costs.

Change orders or contract addendums for additional items outside the scope of the defined project requirements must be submitted in advance and signed by project stakeholders before work can be accomplished on those items. Likewise, reductions of the defined scope will also require a Change Order.

FUTURE AMENDMENTS TO SCOPE

Future changes in the project scope, beyond the capability of a Change Order, will assume the appropriate processes outlined in this Statement of Work and in the Agreement, unless future



scope changes require a different or modified process. If no new Statement of Work is required, then new functionality and payment requirements are provided for in an amendment to the initial Agreement.

PROJECT MANAGEMENT

Tyler performs ongoing project management services throughout the implementation in order to plan and monitor execution of the project. Project Management includes the following tasks:

- Project plan
- Project document management
- Issue log management and escalation
- Status reporting
- Change order management
- Resource management
- Executive project oversight via Executive Sponsor and Project Review Committee

By mutual agreement some project management tasks are shared between the Tyler Project team and the Client Project Manager/Stakeholders.

STAFFING

Every reasonable effort is made to maintain a consistent project team from Tyler for the duration of the project. Should the Client have concerns related to assigned resources, those concerns should be submitted to the Tyler Project Manager or Tyler Management Staff for review and consideration. Tyler will make staffing decisions based on appropriate skill set and other soft skills of resources deemed compatible to the success of the project.

Tyler Brazos Team

Project Manager – TBD

As Project Manager, TBD will be responsible for establishing and administering controls to ensure the quality of deliverables are acceptable to the Client, monitoring project activities to ensure project schedules are met, and providing monthly Full Status Meetings. Project Manager will be able to authorize changes and will be expected to refer any problems or issued that cannot be resolved by on-site implementation staff to company management.

Technical Lead – TBD

The Technical Lead, will be responsible for design and architecture of the Tyler Brazos software



Training Lead – TBD

The Training Lead, will be responsible for ensuring that all the Client Personnel specified in this SOW are appropriately trained according to the requirements of their participation in the project.

CITY OF TRACY Team

Project Manager – TBD

The Project Manager for the Client will be responsible for establishing and administering controls to ensure the quality of deliverables are acceptable to the Client. The Project Manager will also make decisions about any changes to the implementation plan or technical aspects of the system.

Resource – Department Lead (POLICE) – TBD

Resource – Department Lead (COURT) – TBD

Resource – Department Lead (IT) – TBD

PROJECT SCHEDULE

Upon execution of the contract, the parties will subsequently collaborate during the project planning and initiation stage to determine a start date for services to be rendered. Upon initiation of these services, Tyler shall work with Client to collaboratively define a baseline or preliminary project schedule/plan. Given the fact that project schedules are working documents that change over the course of the project, Tyler shall work closely with Client to update, monitor, agree, and communicate any required changes to the project schedule. A Sample Project Schedule is included in Attachment E – Deliverables and Project Schedule

DEVELOPMENT TOOLS

No special development tools are required for the Tyler software. Tyler source code is not accessible (unless through the requirements of an Escrow Agreement).

The configuration tools are built into the software, and the Client has full access. The Tyler implementation staff will use these same configuration tools to set up the system with the Client. The Client will receive training on the use of these tools. If assistance using these tools is required, additional change orders may apply.

Documentation



Tyler-provided documentation

Over the course of the 6 stage implementation lifecycle, the Tyler project team will provide stage-specific documentation in a range of formats (both editable and non-editable). Examples include:

- Data Collection docs (MS Excel and/or MS Word) for configuration
- Training Documentation Templates (MS Word and MS PowerPoint)
- Other documentation as required for the specifics of the project.

Client-provided documentation

A definitive list of Client-provided documentation is not possible until all aspects of the implementation are determined, usually in the beginning stages of the project. Certainly, Client's assistance in completing the Tyler-provided forms and requests for configuration information is essential to a successful project. The Tyler Project Manager will provide the Client with detail of the documentation necessary for each product to be successfully implemented. The list below is a sample of the types of documentation that is likely to be requested.

Documentation originated by the Client includes:

- Application Programming Interface documents (API's) for any third-party software system to which the Tyler software will interface and exchange data.
- Legacy system data documentation and data, when applicable, in a format suitable for conversion into the Tyler System (please refer to section titled Data Conversion)
- Workflow documentation on the Client's current business processes
- Copies of pertinent ordinances or other controlling authorities
- Fee Schedules, when applicable
- Copies of existing forms and other documents presented to the public and expected to be derived from the Tyler Software.

PROJECT STATUS MEETINGS

Communication is crucial to the success of the project. Regular communication between Tyler and the Client staff are required.

Full Status Meetings

Monthly Reports to the Client Staff (may be done remotely)

- Presented by Tyler project manager
- The full status meeting schedule will begin upon acceptance of the SOW
- Status of major activities
- Target dates for completion of remaining tasks
- Potential delays in reaching target dates and the basis for those delays

- Proposed revisions to the overall work schedule – if any

Progress Meetings

Bi-weekly In Writing – prepared by Tyler Project Manager

- Recap of previous period's work
- Preview of next period's tasks
- Status of major activities
- Target dates for completion of remaining tasks
- Potential delays in reaching target dates and the basis for those delays
- Proposed revisions to the overall work schedule – if any

Communication Plan

- The purpose of the Communication Plan is to define and document on-going communication commitments between Tyler and the Client. The Project Manager will provide a contact list to Tyler for each agency representative for direct communications with that respective agency. These individuals will be responsible for department policy, budget and overall strategic direction of the project.
- The Tyler Project Manager, will create, maintain and distribute a contact list for all Project Team members. This list will be distributed to all Team members as required or requested via email and will include phone extension, cell number, email addresses, etc. of all Tyler Project Team members, the Client Project Team members as applicable.

SOW ATTACHMENTS LISTING

SOW Attachment A – (Sample) Work Acknowledgement Form

This form provides the means for the Client to accept work provided or provide reason for denial of a work.

SOW Attachment B – (Sample) Change Order Form

Any change in the project must have a completed and approved Change Order.

SOW Attachment C - Hardware / Software Requirements

This document provides the recommended hardware/software requirements for the Tyler system. Performance using systems which do not meet these requirements may not have expected performance levels.

SOW Attachment D – Brazos Solutions Summary

This document provides a summary description of the purpose and function of the Brazos Applications included in the scope of this project

SOW Attachment E – Deliverables and Project Schedule

This document provides a summary description of the purpose and function of the Brazos Applications included in the scope of this project

Attachment A – Work Acknowledgment

Work Acknowledgment

Client:

Date:

Visit/Deliverable:

Accomplishments	Performed by	Notes

- I am satisfied with the work performed for this stage, and/or deliverable.
- I am NOT satisfied with the work performed for this stage, and/or deliverable.

In an effort to ensure quality and complete satisfaction with each phase of the project Tyler Technology's Professional Services division has established the following rules:

1. Projects will not be allowed to move from one phase to another without a sign off indicating satisfaction with the work performed. The Tyler Technology project team will immediately stop all other tasks, complete the phase at hand, and obtain sign off before moving to the next phase.
2. Customer understands that any payment not received within 30 days of invoice will result in work stoppage. All related project tasks will be stopped until payment is received.

Print Name: _____

Signature: _____

Date: _____

(Please return signed copy to the Tyler Technology project team)



Change Order Form

Client: _____

Date: _____

Generated _____ By: _____

Authorized By: _____

Change Overview:

--

Narrative Description of Change:

--

Impact of Change:

Schedule Impact: Delay of milestone & sub-tasks on Tyler Technologies Implementation Project Plan including:

Task	Proposed Date Changes

Cost Impact:

Change Detail	Credit	Debit	Total

Revision No.: _____

No changes may be made to this project without the agreement of the Project Manager(s), and must be approved by the Project Director. Submit endorsed Change order to the Tyler Technologies Project Manager

Date Approved	Comments	Approved By	Signature



Brazos eCitation – Hardware

If you have any questions about this document, please contact your Project Manager.

Tyler's software is designed to operate on networks and operating systems that meet certain requirements. Systems that do not meet the required specifications may not provide reliable or adequate performance, and Tyler cannot guarantee acceptable results.

LOCALLY INSTALLED SERVER SPECIFICATIONS

NOT APPLICABLE WITH THIS PROJECT

Brazos eCitation Applications

Tyler Technologies will work with the Client to deliver the Electronic Citation System (ECS). The system will be installed on City of Tracy's PDA's and allow officers to capture all information for citations/warnings, print a copy of the citation for the violator, and electronically transfer all information into the respective Court system(s).

Tyler is committed to delivering a successful Electronic Citation System (ECS) project to our customers. Our implementation approach has been highly successful, and we feel that this process provides the best method to minimize risks and ensure a successful project. The key is to involve the customer in all phases of developing and implementing software specifically for them, to meet their specific needs. This process is comprised of the following:

- **Kick-off Meeting.** An on-site meeting or conference call style meeting with the project owners to define roles, responsibilities, and outline the schedule. This meeting will also include review of all initial requirements of the SOW document and RFP, and identification of areas within the SOW that will require modification / clarification.
- **Completion and acceptance of the final SOW document.** Tyler will update the Statement of Work and provide it to the Client for review. The SOW will include all significant work tasks, steps, timeframes and deliverables required to complete Phase I, including software installation, interface customization, implementation, testing, and training.
- **Setup and Configuration.** Tyler Technologies will work with the Client to install and configure the locally-installed servers, the ECS client software, import offenses, layout the defendant's receipt, configure reports, and any other configuration required by the Client. The Client will perform any tasks related to enabling the department to install any vehicle mounted hardware prior to Tyler arriving onsite for the initial training.
- **Begin Pilot.** The pilot program should involve up to 14 key officers per 2-day session, with 2 of these 2-day sessions are included in purchase. These users should be designated by the Client, will adapt to this technology quickly. They will be given full software training in order to understand and become familiar with the technology. The training process includes going out on the street and writing warning-citations with a Tyler trainer to ensure comfort with the technology.
- **Operational Pilot.** The operational phase of the pilot begins once the officers are familiar with the technology and we have verified successful data transfer to the San Joaquin County Superior Court System. At this point the pilot officers will begin writing actual citations. This process serves two purposes: 1) validation of the entire process prior to engaging the entire police force and, 2) providing positive feedback to circulate within the

department prior to full rollout. The duration of this phase is different for every department but needs to encompass the complete court cycle (life-cycle) of a citation, which is defined as a person receiving a citation and resolving/disposing that citation at the Court. The duration of this phase will be discussed and defined during the planning stages of the project.

- **Full Rollout.** The rollout process is primarily the training of all additional officers specified as participants in Phase I in use of the new system. The preferred process for training is to provide a class room style of instruction, followed by a “hands on” session that may include DL checks, ride-alongs, etc., to ensure every officer has used the system in the field. It is the intent of this project that certain officers identified as train-the-trainers from the Pilot Project will be utilized at this stage to assist with the training of the additional officers.
- **Post Action.** Finally, after the full rollout, we will convene with the project owners to determine what went well and what improvements are required of the system, process, or any other aspect of the project. A full project review will be documented by Tyler and provided to the Client Project Manager.

The delivery and training processes are the most significant keys to the success of this project. We will jointly determine the Operational Pilot duration, depending upon officer success and satisfaction and their recommendations for deployment. When all parties agree, Full Rollout training and deployment will begin.

TRAINING

Tyler will provide all training associated with the Electronic Citation System (ECS) and will identify the Training Lead at the beginning of the project.

In order for this project to be successful, the officers need to know not only the basics of the software, but first-level troubleshooting tips for the hardware and operating system as well. It is our experience that the officers must be proficient in the mobile hardware for this project to have the long term success that the Client and Tyler are looking to achieve.

The delivery and training processes are the most significant key to the success of this project. The Tyler Training Lead will ensure that all levels of the Client personnel who utilize the Tyler Brazos Solution will receive adequate training. Tyler will incorporate measurement tools to assist in monitoring the end-users competence in using the system.

Classroom Training. The Train-the-Trainer course shall involve all officers specified to participate in the Operational Pilot (limit = 14 Officers). They will be given full software training in order to understand and become familiar with the technology. The training process includes producing several test citations with a trainer to ensure comfort with the application.

Practical Application. The practical application phase begins once the officers are familiar with the technology. At this point the pilot officers will begin writing real citations.



Administrator Training. The Tyler Brazos ECS provides powerful management tools with great ease of use for agency administrators and management. Tyler will provide sufficient training to designated management personnel for them to be able to utilize those tools as well as have a solid understanding of the capabilities of the system.

ECITATION CLIENT SOFTWARE

The Tyler Brazos ECS client software will be installed on 50 PDA's allowing the officers to write, print, and push citations electronically to the Court software system(s). All ECS software is embedded on the PDA and is completely functional with or without a network connection. The software will be configured for the Client and the Client will have the ability to define, approve and modify the layout of all screens and print jobs under the scope of this agreement.

The software will have the ability to:

- Allow officers to quickly and easily capture citation information.
- Print the citation in the field for the violator using a Bluetooth connection to a mobile printer.
- Capture pictures of the violator and associate the pictures with the citation.
- Capture voice, diagrams, and general text notes fields on each citation.
- Push citations via a network connection.
- The Client will have the ability to VOID a citation on the PDA, after save but before sync. Notations as to the reason for VOID can also be required.
- Capture a digital signature for the violator at the time of issuance
- The citation number sequence shall follow a unique numbering system, dictated by the Court.
- Ticket types will consist of Criminal and Traffic for Municipal eCitation and Warning Tickets.
- Charges identified will be specific to each Ticket type, as further defined during the design phase.
- Ability for System Administrator to add/modify/delete statutes, codes, etc. as further defined during the design phase.

The applications included in the scope of this project are:

- eCitation/Summons Task
- eCrash (w/drawing tool)
- Driver Information Exchange (standard)



ECS SERVER SOFTWARE

The Client will utilize the Hosted Tyler Brazos ECS server for all reporting, interface and administrative functions. There are no limitations to the number of users of the system and any future hardware/software requirements or upgrades are the responsibility of the Client. The ECS server provides the following benefits:

- Access to add/change/delete any dropdown on the PDA (i.e. offenses, streets, officers, etc.).
- Access to all reports (i.e. STEP reports, Citation Detail, and over 35 other standard reports).
- Configuration and management of all users of the ECS for both the server and the clients.
- View and query images of citations captured via the mobile devices via internet browser.
- Creation/modification of interfaces to new/existing systems.
- Citation Entry Screen (CES) for entry of either paper tickets or modification to previously captured information by an authorized court assigned user (Program should also have some type of tracking capabilities for changes made in the CES).

The Citation Entry Screen (CES) will also be configured for the Client and available through the locally-installed ECS server. The CES is configured with the same business rules as the ECS client software, providing the Client with a complete solution for all citations

INTERFACE WITH COURT SYSTEM

The ability to export citation information from the Tyler Brazos ECS to the San Joaquin County Superior Court Management System is included in this phase of the project.

Tyler will assist the Client with developing a solution that will provide the citations to the Court in the most efficient manner. It is expected that the exact methodology (business rules) involved in the interface will be determined at the Kick-Off Meeting and subsequent requirements gathering meetings.

Tyler has the ability to export any/all of the data contained within a record in the format required by the recipient system. It is expected that the identification of the data fields and the parameters (business rules) of those fields will be dictated by the recipient system to which the ECS will interface.

SYNCHRONIZATION (DEVICE TO ECS SERVER)

The Tyler Brazos Solution allows officers to create, save, and print citations or other record types with or without network connectivity. When an officer creates a citation, it is saved to non-volatile memory on the device. The citation record can then be uploaded to the ECS server via



one of the following methods:

- Real-time via cellular connection (aircard required)
- 802.x wireless connection to hotspots
- Via placement in sync cradle

The frequency and method of upload is defined and controlled by the Client via the Tyler Brazos web-based configuration tool, BuildIT. Once uploaded, the data are processed through the system according to the agency-specific workflow, which is also defined and controlled by the Client via BuildIT. All new updates and changes are also passed from the ECS Server to the device through this same process.

Attachment E – Project Deliverables and Project Schedule

PROJECT DELIVERABLES

Existing Citation Process

The existing process flow will be identified and documented in partnership with the Client and Tyler as a separate Appendix during the Design phase of the project.

Proposed System

The proposed process flow will be identified and documented in partnership with the Client and Tyler as a separate Appendix during the Design phase of the project

Acceptance Testing Plan (ATP)

The ATP will provide the Client with the testing plan for verification of the installed system, including interfaces, which will allow the Client to certify the ECS performs in according with the requirements. The testing plan will include strategies and test cases to assist with the verification. The Client will have the ability to certify the ATP prior to both the certification from Tyler as well as the beginning of the acceptance test.

System Installation

TYLER BRAZOS ECS SERVER:

Tyler will host the ECS server, database server and verify operation of the system. Any hardware purchases required to meet system specifications are the responsibility of Tyler.

TYLER CLIENT SOFTWARE:

The Tyler Brazos Client Software will be installed on any devices purchased through Tyler. The initial installation will be completed by Tyler. If the Client elects to purchase hardware through another vendor, the hardware will be sent to Tyler for off-site installation and verification at an additional cost.

TYLER INTERFACES:

During the setup and configuration process, connectivity for the interfaces will also be verified. The Client will provide Tyler personnel with the proper access to complete tasks required to complete this effort. Any installation requirements with regards to security or setup must be provided to Tyler one-week prior to the scheduled interface testing.

HARDWARE IN VEHICLES:

Tyler will not install any hardware in the vehicles.



Training

Operational Pilot – Tyler will provide full Train-the-Trainer training to the officers specified by the Client to participate in the pilot (limit = 14 Officers). The training will consist of two formal days of training.

- Day 1 should occur in a classroom setting where the officers will be thoroughly exposed to training that covers the hardware, operating systems, application, troubleshooting, and proper care/maintenance.
- Day 2 is focused on field training and includes Tyler personnel at the side of the Client officers, as the officers complete citations in “real world” environments.

This training may incorporate such tactics as DL checks, standard traffic stops, etc. to ensure that all the officers involved are exposed to several different types of scenarios and receive the maximum effective training. Upon completion of the field training portion, Tyler will train the officers on how to review their citations via the web based tool and any workflow processes specified by the Client. Tyler will also train any specified supervisors in procedures for reviewing citations and voids, as well as statistical reports. .

Full Rollout – The Client will provide full training to the officers specified to participate in Phase I rollout. The format of this training shall be the same as that of the Operational Pilot training. Select officers from the Operational Pilot group who have been identified as “ECS Trainers” will be utilized to assist in this training.

System Administrator – Instructor led, hands-on training will be provided for up to three (3) City of Tracy Staff members who will ultimately be actively involved in administering the ECS.

Acceptance

The purpose and the net result of the acceptance test is to determine that the ECS proposed and installed meets the technical and functional requirements outlined in these specifications. The ECS will be considered “acceptance test ready” once it has completed a full system test, including interfaces and data conversion, with no known outstanding material defects.

Tyler will provide the Client with a proposed “Acceptance Test Plan” (ATP). The Client will provide written approval that the proposed ATP is complete and acceptable.

During the Pilot Project, Tyler will work closely with the Client personnel to ensure that each requirement specified in this Statement of Work is fully satisfied. Acceptance of the ECS shall be by conformity to the written Acceptance Testing Plan. Any functionality processes, or other aspects not specified in the approved Acceptance Testing Plan are considered out-of-scope and would require a written and approved Change Order.

In accordance with the SOW, “Final Acceptance” shall mean written notice from the Client that it has accepted the ECS following the 30 day Final Acceptance Period, during which time the ECS has conformed in all material respects to the applicable specifications, including any approved change



orders for the ECS, with all defects discovered during the acceptance period fixed by Brazos and tested and accepted by the Client.

Full Rollout

Upon completion of the Pilot Project and written approval of the FINAL ACCEPTANCE, the Client will initiate the full rollout of the ECS. Tyler will assist the Client by providing training materials, support and consultation to the Client training officers.

Milestones

- 1) Contract Award
- 2) Contract Signature
- 3) Kick-Off Project
- 4) Sign-off of Work Plan by CITY
- 5) Order hardware
- 6) Setup Configuration of ECS (off-site)
- 7) Create ATP Plan
- 8) On-Site testing
- 9) Training of 'Pilot Users'
- 10) Acceptance Testing by CITY
- 11) Final Acceptance
- 12) Full Rollout of First Phase

SCHEDULE

This schedule is a draft only. It does not represent a commitment by Tyler or the Client and will be modified post Kick-Off Meeting

T – Tyler, City of Tracy, J – Joint (both are responsible)

Phase	Task	Activity	Description	Task Duration	Total Duration (Weeks)	Owner	Deliverables
1			First Phase				
	1		Contract Award	TBD		J	
	2		Contract Signature	TBD		TRACY	
	3		Kick-Off Project	2w	2w	J	Official Work Plan
		1	On-Site Meeting/Conference Call			J	
		2	Gather requirements from all project owners			J	
		3	Build official Work Plan			J	
		4	Verify Work Plan with hardware vendors			J	Work Plan to be signed off by City
	4		Sign-off of Work Plan by CITY	3 Days	2.5w	TRACY	
	5		Order hardware	TBD		T	
	6		Setup Configuration of ECS (off-site)	3 weeks	5.5w		
		1	Setup and Configure mobile software			T	
		2	Receive all incoming interface samples to load into mobile device from CITY			TRACY	
		3	Setup and Configure all interfaces			T	Interface Documentation
		4	Layout the citation printouts			T	Sample Layouts for Approval
		6	Install mobile software onto CITY hardware (off-site)			T	
		7	Test solution using CITY hardware			T	
		8	Create sample interface files for CITY system(s)			J	
		9	Test sample interface files			J	
		10	Approve sample interface files			EC	
	7		Create ATP Plan	1w			
		1	Build ATP Plan			T	
		2	Approve ATP Plan			EC	
	8		On-Site testing	TBD	6.5w		
		1	Test PDAs and connectivity to server			T	



		2	Test all interfaces for server			T	
		3	Test web-citation entry screen			T	
		4	Test web based reporting			T	
		5	Certify ECS based upon ATP			T	
	9		Training of 'Pilot Users'	3d	7w		
		1	Train officers on Classroom Train-the-Trainer and Field Training			J	
		2	System Administrator Training			J	
		3	Court Training				
	10		Acceptance Testing by CITY	32d	TBD		
		1	Evaluate Hardware				
		2	Compile and Evaluate hardware observations				
		3	Finalize hardware selection				
		4	Initial Acceptance Test for "go live"				
		5	Initiation of Final Acceptance Period	30d			
	11		Final Acceptance	1d		T	the Client signs off on project
	12		Full Rollout of First Phase		TBD		
			Task are TBD				
	13		End of Phase I				Debrief of all project principals



RESOLUTION _____

AWARDING THE PURCHASE OF 50 ELECTRONIC CITATION DEVICES AND RELATED EQUIPMENT TO TYLER TECHNOLOGIES, THROUGH A GENERAL SERVICES ADMINISTRATION CONTRACT, CONTRACT NUMBER GS-35F-0096X, A COOPERATIVE PURCHASING AGREEMENT, PER TRACY MUNICIPAL CODE SECTION 2.20.220, AND AUTHORIZING THE MAYOR TO EXECUTE A ONE-YEAR CONTRACT WITH TYLER TECHNOLOGIES AND A THREE-YEAR FACTORY WARRANTY AGREEMENT AND APPROPRIATING \$255,447 FROM THE COMPUTER AIDED DISPATCH/RECORDS MANAGEMENT SYSTEM REPLACEMENT CIP PROJECT (CIP 71063) TO COMPLETE THE PURCHASE

WHEREAS, The 50 Electronic Citation Devices will enhance efficiency of Officers, as well as capture additional information and require less data entry, and

WHEREAS, The Department has \$255,447 available from the CAD/RMS Replacement CIP Project 71063, and

WHEREAS, The Electronic Citation Devices were originally part of the project, and

WHEREAS, The total cost for the Electronic Citation Devices, warranties, mounting hardware and installation, is \$255,447;

NOW, THEREFORE, BE IT RESOLVED that the City Council approves the purchase of 50 Electronic Citation Devices from Tyler Technologies, through a General Services Administration Contract, Contract Number GS-35F-0096X, pursuant to Tracy Municipal Code section 2.20.220, authorizes the Mayor to execute a one year contract with Tyler Technologies and three-year factory warranty agreement and appropriates \$255,447 from the CAD/RMS Replacement CIP Project (CIP 71063) to complete the purchase.

* * * * *

The foregoing Resolution _____ is hereby passed and adopted by the Tracy City Council this 19th day of January, 2016 by the following vote:

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

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.F

REQUEST

AUTHORIZATION TO AWARD THE PURCHASE OF A FORENSIC 3-D LASER SCANNER SYSTEM, MANUFACTURED BY LEICA GEOSYSTEMS, DISTRIBUTED BY PRECISION SURVEY SUPPLY, A LIMITED LIABILITY CORPORATION, AND FIND IN THE BEST INTEREST OF THE CITY OF TRACY TO FOREGO THE FORMAL BID PROCESS PURSUANT TO TRACY MUNICIPAL CODE SECTION 2.20.180(B)(2)-SOLE SOURCE PURCHASE AND REQUEST TO APPROPRIATE \$100,500 FROM THE EQUITABLE SHARING FUNDS TO COMPLETE THE PURCHASE

EXECUTIVE SUMMARY

This request would approve the purchase of a Forensic 3-D Laser Scanner System manufactured by Leica Geosystems. This purchase would include hardware, software and training staff.

DISCUSSION

This request would approve the purchase of a Leica Forensic 3-D Laser Scanner Station. The use of 3-D laser scanners in law enforcement for collision and criminal/forensic investigations has become a contemporary and efficient tool for evidence collection and scene documentation. The use of this technology would enhance the documentation and integrity of crime scenes or collision scenes by significantly reducing the exclusion of evidence capturing or documentation. This technology reduces the otherwise labor intensive process of scene diagraming and measuring.

The Leica Scanner Station offers features and infrastructure required to support the investigation mission of the Tracy Police Department. Some of the unique features include:

- Leica has earned the IP54 rating which certifies the scanner performs under tough weather conditions including rain, dust and extreme weather temperatures.
- Leica has Hot Swappable battery technology.
- Leica is the sole manufacturer that has satisfied the Daubert standard in U.S. Courts.
- Leica is the sole manufacturer with a court decision regarding the data deemed as Scientific Evidence.
- 24/7 Technical Support for Emergency Response Support at no cost to the agency.

Staff recommends the purchase of the Leica Forensic 3-D Laser Scanner Station from Precision Survey Supply. They are the sole source distributor with Leica Forensic Scanner for the United States and the sole source provider of the unique features desired by the department (Attachment A). Staff conducted a thorough product review of several scanners and manufacturers. The testing and evaluation consisted of customer reviews, use and evaluation by other law enforcement agencies, vendor demonstrations and a

final assessment by the department's major collision investigators based on the reasons set forth above.

STRATEGIC PLAN

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

FISCAL IMPACT

The total cost of the scan system, hardware, software, and on-site training, is \$100,500 (Attachments B,C).

The purchase of the scan system is within the guidelines of equipment acquisition executive order 13688.

There is no fiscal impact to the Fiscal Year 2015-16 General Fund.

\$100,500 Account 23169301, Equitable Sharing Funds.

RECOMMEDATION

Staff recommends that the City Council approve, by resolution, and award the purchase of a Forensic 3-D Laser Scanner Station System, manufactured by Leica Geosystems, distributed by Precision Survey Supply and find the best interest to forego the formal bid process pursuant to Tracy Municipal Code 2.20.180(b)(2)-Sole source purchase and request to appropriate \$100,500 from the equitable sharing funds to complete the purchase.

Prepared by: Octavio Lopez, Police Corporal

Reviewed by: Jeremy Watney, Acting Police Chief
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A- Precision Survey Supply Sole Source Letter
Attachment B- Precision Survey Supply Quote Number 21971
Attachment C- Visual Statement Quote Number S-000062493
Attachment D- Memorandum to City Manager Troy Brown



8628 Utica St, Suite 800 – Rancho Cucamonga, CA. 91786
 909-931-4040 Main / 909-931-4009 Fax / 888-275-3054 Toll Free
www.precisionsurveysupply.com

December 16, 2015

Tracy Police Department
 Corporal Octavio Lopez
 1000 Civic Center Drive
 Tracy, Ca. 95376

Re: Sole Source Letter for Leica Geosystems Forensic ScanStation

To Whom It May Concern:

The ScanStation Forensic 3-D laser scanner system manufactured by Leica Geosystems is the only 3-D laser scanning system made which combines all of the features and support infrastructure required to support the investigation mission of the Tracy Police Department.

The unique features combined in the system include:

- Safety: No need for laser safety goggles or erection of safety barriers to protect public.
- Scanner: Environmentally enclosed optics with a dust/humidity rating of at least IP54.
- Scanner: 3-D positional accuracy of a single measurement ≤ 6 mm.
- Scanner: Integrated color digital camera with zoom and real-time streaming.
- Scanner: On-board ability to view target scans in 3-D and to do detailed scans of selected areas.
- Scanner: Able to support GPS antenna or survey prism attached to top of scanner.
- Scanner: Hot Swappable battery technology.
- Key accessory: NIST traceable artifact for confirming measurement accuracy.
- Integration: All hardware and software from one source, Leica Geosystems & Precision Survey Supply.
- Training: Crime Scene Specific Training and course materials.
- Training: Accident Reconstruction Specific Training and course materials.
- Support: One-call support for all products-- scanner and software which are manufactured by Leica.
- Support: True 24/7 Precision Survey Supply Technical Support.
- Support: Precision Survey Supply Emergency Response Support.
- Precedent: Trial exhibits created from Leica ScanStation data have a 100% acceptance in U.S. courts.
- Precedent: The Leica ScanStation has satisfied the Daubert standard in a U.S. court.
- Precedent: California Decision where Leica Scan Station Data as scientific evidence.
- Validation: Leica scanners have been validated as accurate for bullet path reconstruction.
- Validation: Leica scanners have been court accepted.

Precision Survey Supply holds the sole source for this opportunity and distribution which combines the unique features within the package listed and built specifically for the Tracy Police Department. Precision Survey Supply is the sole distributor with the Leica Forensic Scanner for the US.

The Leica Geosystems 3D Forensic Laser Scanner is unique from any other manufacture and can only be combined by Precision Survey Supply:

- Leica is the sole manufacture that publishes their accuracy measurements and provides a diagnostic report for court. Other manufactures do NOT publish their accuracy or measurement of uncertainty.
- Leica has earned the rating of IP54, which means the scanner can be used in increment weather and rain. Other manufactures cannot operate in rain or increment weather.
- Leica is the sole manufacture that has passed the standard of Daubert in federal court under scrutiny. Leica is sole manufacture with a court decision regarding the data deemed as Scientific Evidence.





8628 Utica St, Suite 800 – Rancho Cucamonga, CA. 91786
909-931-4040 Main / 909-931-4009 Fax / 888-275-3054 Toll Free
www.precisionsurveysupply.com

- Leica is the sole manufacture which can complete a detailed scan within the existing scan to document a crime scene in higher definition. No other manufacture can complete a scan within a scan, as a detailed scan.
- Leica is the sole manufacture where the training has been certified and accredited by IAI (International Association of Identification). No other manufacture has had their training accredited by a governing body.
- Leica is the sole manufacture where the tools and software have been validated and passed the scrutiny of bullet path trajectory for court. No other manufacture has a validation of bullet path trajectory.
- Leica is the sole manufacture which incorporates NIST Targets for laser scanning.
- Precision Survey Supply is the sole distributors which provide 24/7 technical support. Other vendors do not offer 24/7 support for free.
- Precision Survey Supply is the sole distributor which provides the Leica 3D Forensic Laser Scanner in the configuration, service, training, and support as specifically built for Tracy Police Department as a one total solution. No other company provides a single source solution for equipment, software, forensic based training, technical support, and service.

Please contact me if you have any additional questions.

Sam El-Said
General Manager
sam@precisionsurveysupply.com
Precision Survey Supply
909-931-4040 Office
909-241-7422 Cell



Quote

Precision Survey Supply LLC

Precision Survey Supply, LLC
 8628 Utica Avenue, Suite 800
 Rancho Cucamonga, CA 91730

Phone # 909-931-4040 alex@precisionsurveysupply.com
 Fax # 909-931-4009 www.precisionsurveysupply.com

Date	Quote #
12/3/2015	21971

Name / Address
Tracy Police Dept 1000 Civic Center Dr Tracy, Ca.95376

Project

Item	Qty	Description	Unit Price	Total
6010381	1	Leica ScanStation PS16 Laser Scanner Kit 1x 827496 Leica ScanStation P16 Laser Scanner, 1x 769625 GVP645, ScanStation C10/C5 transport container, 1x 667304 Tribrach GDF121 PRO, without optical plummet, pale green., 4x 793975 GEB242, Large Li-Ion Battery 14.8V/5.8Ah for MS/TS/TM50 instruments 1x 799185 GKL311 Single Charger Prof 3000. Charger for one Li-Ion battery including AC/DC adaptor and cigarette lighter cable, 1x766567 GEV228, ScanStation C10/P20 data cable, 2.5m, standard ethernet jack to Lemo (8pin). Connects ScanStation C10/P20 with computer, 1x 827809 Leica ScanStation P16 System USB Quick Guide, 1x 829121 Leica ScanStation P16 System USB Stick, 1x 755609 Software CD - Cyclone/CloudWorx, 1x 8245741 Leica ScanStation PS16 Public Safety Label, 1x 6009460 1 Year ScanStation P16 CCP Basic P16 Regular Price \$85,000.00 Disocounted \$17,000.00	68,000.00	68,000.00T

Thank you for your business.	Subtotal
	Sales Tax (8.75%)
	Total

Precision Survey Supply LLC

Precision Survey Supply, LLC
 8628 Utica Avenue, Suite 800
 Rancho Cucamonga, CA 91730

Phone # 909-931-4040 alex@precisionsurveysupply.com
 Fax # 909-931-4009 www.precisionsurveysupply.com

Quote

Date	Quote #
12/3/2015	21971

Name / Address
Tracy Police Dept 1000 Civic Center Dr Tracy, Ca.95376

Project

Item	Qty	Description	Unit Price	Total
6009469	1	1st yr ScanStation P16 CCP Silver consisting of: 1 yr Hardware Maintenance, 1 yr SW Maintenance, 1 yr Customer Support	3,504.00	3,504.00T
799187	1	Discounted \$876.00 GKL341 Charger Prof 5000 / Charges up to 4 batteries, including power cable.	600.00	600.00T
670238	1	Discounted \$150.00 Leica Tripod - heavy duty surveying tripod	420.00	420.00T
5610-00	1	Discounted \$105.00 Heavy Duty Tripod Stabilizer with O-Ring Set	99.95	99.95T
PSS32230	1	High Definition Scanning External Data Collector / Intel® Core™ i7 Processor / High Res Display / 16GB RAM / 2GB Video / 1TB Hard Drive 8-cell battery 150W AC adapter Owner's manual	1,895.00	1,895.00T
		Discounted \$600.00		

Thank you for your business.	Subtotal
	Sales Tax (8.75%)
	Total

Precision Survey Supply LLC

Precision Survey Supply, LLC
 8628 Utica Avenue, Suite 800
 Rancho Cucamonga, CA 91730

Phone # 909-931-4040 alex@precisionsurveysupply.com
 Fax # 909-931-4009 www.precisionsurveysupply.com

Quote

Date	Quote #
12/3/2015	21971

Name / Address
Tracy Police Dept 1000 Civic Center Dr Tracy, Ca.95376

Project

Item	Qty	Description	Unit Price	Total
798751	1	Leica Cyclone - REGISTER - Permanent License - CCP not included	6,680.00	6,680.00T
6007859	1	Discounted \$1670.00 CCP Basic for Cyclone REGISTER (1 year) - Technical Support: Access to software support hotline - Software maintenance: Includes all software updates	1,200.00	1,200.00T
5003303	5	Discounted \$300.00 5 Days On Site Consulting Services for Public Safety Discounted \$4,825.00 Total Package Discount \$27,139.00	1,580.00	7,900.00

Thank you for your business.		Subtotal	\$90,298.95
		Sales Tax (8.75%)	\$7,209.91
		Total	\$97,508.86



PROFORMA INVOICE

VS Visual Statement Inc.
 900 - 175 2nd Avenue
 Kamloops, BC V2C 5W1
 Ph: 1 (888) 828-0383 Fax: (250) 984-7454

Order No.: S-000062493
 Date: Dec 03, 2015
 Page: 1
 Sales Rep:

Sold To:
Tracy Police Department
 David McClanahan
 1000 Civic Center Drive
 Tracy, CA 95376
 USA

Ship To:
 Tracy Police Department
 Mike Roehlk
 1000 Civic Center Drive
 Tracy, CA 95376
 USA

Business No.: 894701283RP0001

Item No.	Ordered	Description	Tax	Unit Price	Amount
APS004740	1	Upgrade - EdgeFX Forensic Advanced to EdgeFX Forensic Elite Edition		2,000.00	US\$2,000.00
APS004714	1	Software Update for EdgeFX Advanced or Crash Advanced to EdgeFX Forensic Ad		695.00	US\$695.00
APS005295	1	Free Insured Shipping & Handling			
1		CA Tax of 8.75%		235.81	US\$235.81

This is a ProForma Invoice on the goods named above, subject to conditions. To accept this ProForma invoice, sign below, indicate payment method and return via fax to 1.250.984.7454 OR email accounting@visualstatement.com

Total Amount	US\$2,930.81
---------------------	--------------

X _____

Purchase / Payment Options:

Make Checks payable to VS Visual Statement Inc. Purchase Order (please fax or email as indicated above)

Wire Information

Bank Name: SCOTIABANK PO BOX 48700, BENTALL CENTRE 595 BURNARD ST. VANCOUVER, BC V7X 1V6 CANADA
 Bank# 002 Transit#: 03020 USD Acct# 030208733317
 SWIFT #: NOSCCATT ABA #: 026002532

Credit Card Information

Card holder Name: _____ Card #: _____ Exp Date: _____ CV#: _____

Cardholder Signature: _____

Memorandum

Date: December 18, 2015
To: Troy Brown, City Manager
From: Octavio Lopez, Police Department
Subject: Request Approval of Sole Source Provider

The purpose of this memorandum is to request the approval of the purchase of the 3-D Scanner Station manufactured by Leica GeoSystems and distributed by Precision Survey Supply as the Sole Source Vendor.

Precision Survey Supply holds the sole source for this opportunity and distribution which combines the unique features within the package and built specifically for the Tracy Police Department. The 3-D Laser Scan Station is a contemporary and efficient use of technology for law enforcement in collision and forensic/crime investigations. This technology will increase the effectiveness and efficiency of investigators, reduce personnel costs, and reduce the potential for exclusion of evidence. Some unique features specific to Leica 3-D Scanners include:

1. Leica has earned the IP54 rating which certifies the scanner performs under tough weather conditions including rain, dust and extreme weather temperatures.
2. Leica has Hot Swappable battery technology.
3. Leica is the sole manufacturer that has satisfied the Daubert standard in U.S. Courts.
4. Leica is the sole manufacturer with a court decision regarding the data deemed as Scientific Evidence.
5. 24/7 Technical Support for Emergency Response Support at no cost to the agency.
6. Precision Survey Supply is the sole distributor which provides the Leica 3-D Laser Scan Station in the configuration, service, training, and support specifically built for the Tracy Police Department as one total solution.

For additional unique features refer to attached Sole Source Letter.

The funds have been approved to be appropriated form the Equitable Sharing Funds.



Staff recommends that it is in the best interest of the City of Tracy to dispense with the bid process in Section 2.20.180(b)(2) of the Tracy Municipal Code when the purchase can be obtained from one source which has been reviewed and approved in writing by the City Manager.

Reviewed by Jeremy Watney
Acting Police Chief

Date: _____

Approve/Concur
Toy Brown, City Manager

Date: _____



RESOLUTION _____

AWARDING THE PURCHASE OF A FORENSIC 3-D LASER SCANNER SYSTEM, MANUFACTURED BY LEICA GEOSYSTEMS, DISTRIBUTED BY PRECISIONS SURVEY SUPPLY AND FINDING IN THE BEST INTEREST OF THE CITY OF TRACY TO FOREGO THE FORMAL BID PROCESS PURSUANT TO TRACY MUNICIPAL CODE SECTION 2.20.180(B)(2)-SOLE SOURCE PURCHASE AND REQUESTING AND APPROPRIATING \$100,500 FROM THE EQUITABLE SHARING FUNDS TO COMPLETE THE PURCHASE

WHEREAS, The purchase and use of a 3-D laser Scanner System will increase the effectiveness and enhance the efficiency of crime scene and collision scene processing, investigation and documentation, and

WHEREAS, The Leica Geosystems is the sole source provider of unique features and infrastructure required to support the investigation mission of the Tracy Police Department therefore forgoing the formal bid process per the City of Tracy Municipal Code Section 2.20.180(b)(2), and

WHEREAS, The funding is available through the Equitable Sharing Funds, and

WHEREAS, The Forensic 3-D Scanner System will be purchased from Precision Survey Supply and finds in the best interest of the City of Tracy to forego the formal bid process on section 2.20.180(b)(2) of the Tracy Municipal Code, and requests the appropriation of \$100,500 from the Equitable Sharing Funds to complete the purchase;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves awarding the purchase of a Forensic 3-D laser scanner system, manufactured by Leica Geosystems, distributed by Precisions Survey Supply and finding in the best interest of the City of Tracy to forego the formal bid process pursuant to Tracy Municipal Code Section 2.20.180(B)(2) as a Sole Source purchase and appropriating \$100,500 from the Equitable Sharing Funds to complete the purchase.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the 19th day of January, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.G

REQUEST

APPROVE THE DOWNTOWN TRACY COMMUNITY BENEFIT DISTRICT MANAGEMENT DISTRICT PLAN AND APPROVE A DISBURSEMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND THE TRACY CITY CENTER ASSOCIATION, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

EXECUTIVE SUMMARY

On December 15, 2009, City Council approved the creation of the Downtown Tracy Community Benefit District (CBD) pursuant to the Property and Business Improvement Area Law of 1994 (California Streets and Highways Code Section 36600, et seq) for a term beginning January 1, 2011 to December 31, 2015 as outlined in the CBD Management District Plan. On July 6, 2010, City Council amended the term of Management District Plan to begin district operations as of July 1, 2010 and terminating on June 30, 2015. Council also approved a Disbursement Agreement between the City of Tracy and the Tracy City Center Association (the "Association"), which outlined how the property assessment funds will be transferred from the City to the Association.

During a public hearing on November 18, 2014, City Council approved the renewal of the CBD for an additional 10-year period. Due to changes in the district term, extended district boundary, and property assessments collected, an update is necessary.

DISCUSSION

TRACY COMMUNITY BENEFIT DISTRICT MANAGEMENT DISTRICT PLAN:

Upon initial approval of the creation of the CBD, City Council approved a Management District Plan as a requirement of the Notice of Intention to establish the District, which was adopted by the City Council on October 20, 2009. The July 2015 Management District Plan provides detailed information related to the district boundaries, budget, improvement and activity plan, assessment methodology, district rules and regulations, implementation timetable, and the full assessment roll of included properties. In addition to a new 10-year term, updates included in the July 2015 Management District Plan are an expanded boundary, which added four new properties to the assessment roll, resulting in an increase of \$15,850 to the district assessment.

A new Disbursement Agreement between the City of Tracy and the Association outlining the terms of how the assessment funds will be transferred from the City to the Association and describing how the Association must operate in using any assessment disbursements is enclosed as Attachment A. The new Community Benefit District Management District Plan, reflecting the new expanded boundaries and extended 10-year term commencing on July 1, 2015, is included within Disbursement Agreement as Exhibit A.

DISBURSEMENT AGREEMENT:

The CBD is funded entirely by property assessments received, which are projected at \$148,064 annually. A Disbursement Agreement (attached as Attachment B) between the City of Tracy and the Association outlines the terms of how the assessment funds will be transferred from the City to the Association. In addition, the agreement describes how the Association must operate in using any assessment disbursements from the City to implement and administer the Management District Plan.

STRATEGIC PLAN

This agenda item supports the Economic Development Strategic Plan.

Goal 2: Attract retail and entertainment uses that offer residents quality dining, shopping, and entertainment experiences.

Objective 2c: Collaborate with and support the Tracy City Center Association in an effort to increase the drawing power of the downtown.

FISCAL IMPACT

Budgeted from General Fund: \$24,359.30; payment for City parcels subject to special tax within district.

RECOMMENDATION

That Council approve the Downtown Tracy Community Benefit District Management District Plan and approve a Disbursement Agreement by and between the City of Tracy and the Tracy City Center Association, and authorize the City Manager to execute the Agreement on behalf of the City.

Prepared by: Barbara Harb, Economic Development Analyst

Reviewed by: Shelley Burcham, Economic Development Manager
Andrew Malik, Development Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A – Disbursement Agreement

**DISBURSEMENT AGREEMENT
BETWEEN THE CITY OF TRACY
AND
THE DOWNTOWN TRACY CITY CENTER ASSOCIATION**

Whereas, on December 15, 2009, the City Council, by Resolution No. 2009-240, approved the creation of the Downtown Tracy Community Benefit District ("District" or "CBD") pursuant to the Property and Business Improvement District Law of 1994, (California Streets and Highways Code Sections 36600, et seq.), and

Whereas, on November 18, 2014, the City Council, by Resolution No. 2014-191 adopted a resolution of formation to renew the property and business improvement district known as the "Downtown Tracy Community Benefit District" for the years referred to in the July 25th, 2014 District Management Plan, and

Whereas, the District is intended to benefit the businesses in the District and revitalize the Downtown by promoting the Downtown District identity, providing and maintaining sidewalk beautification and public parking, providing business attractions and activities, and marketing activities and improvements of particular benefit to the properties located within the District as more specifically identified in the Downtown Tracy Community Benefit District Management District Plan for the District ("District Plan"), attached hereto as **Exhibit A** and on file with the City Clerk, and

Whereas, pursuant to Sections 36614.5 and 36651 of the California Streets and Highways Code, the Downtown Tracy City Center Association ("Recipient"), a non-profit entity, has been established and renewed to continue administering and implementing the activities and improvements specified in the District Plan, and

Whereas, the District will be funded entirely by property assessments in the boundaries and is projected at \$148,064, which will be disbursed to the Association to administer and implement the improvements and activities set forth in the District Plan, and

Whereas, this Disbursement Agreement between the City of Tracy and the Downtown Tracy City Center Association ("Agreement") sets forth the terms and conditions under which the District must operate in using any assessment disbursements ("CBD funds") from the City to implement and administer the District Plan;

Now Therefore, the parties to this Agreement covenant as follows:

1. Parties and Effective Date. This Renewal Agreement is made and entered into as of _____, 2016, between the City of Tracy, a municipal corporation ("City"), located at 333 Civic Center Plaza, Tracy, California 95376 and the Downtown Tracy City Center Association, a California non-profit corporation ("Recipient").

2. Scope of Disbursement Duties. Recipient agrees to perform the tasks, responsibilities and obligations as specified in this Agreement and in the July 25th, 2014 District Management Plan (“Disbursement Duties”), attached hereto as **Exhibit A** and on file with the City Clerk, and in the annual reports and budgets approved by the City. Recipient shall designate an individual who shall be responsible for communications with City for the duration of this Agreement. Nothing in this Agreement shall be construed to require Recipient to perform as specified in the District Plan if funds are not available to perform those duties from the District revenues collected from the District assessments.
3. Method of Performing Disbursement Duties. Recipient will determine the method, details and means of performing the Disbursement Duties described in **Exhibit A**.
4. Time of Performance. Recipient’s Disbursement Duties began on July 1, 2015, and shall continue contingent upon the annual review and approval of the District by the City and the annual collection of revenues generated from the assessments collected from the District, unless this Agreement is otherwise terminated pursuant to Section 13 of this Agreement, or until it is terminated by law on June 30, 2025.
5. Recipient Responsibilities.
 - 5.1. Program Implementation and Operation. Recipient shall be fully responsible for developing, implementing, directing and operating the District Plan. Recipient assumes all responsibility for completing activities as required in implementing the District Plan (Exhibit A) and its programs.
 - 5.2. Competitive Bidding. Recipient shall competitively bid all contracts over \$5,000 and shall keep and provide copies of all bids submitted for review to any affected property owners or to the City upon request. The lowest qualified bidder shall receive any service contract that is bid. Recipient shall present its written bidding policy and procedures to the City. Once the contract has been publicly bid and the lowest qualified applicant has been selected, that selected contract may remain for up to three years from the commencement of the contract, but may not extend beyond the term of this Agreement without the express written consent of the City and is subject to provisions outlined in Section 5.9.3 below.
 - 5.3. Separate bank account for District (CBD) funds. All CBD funds received by Recipient pursuant to this Agreement shall be held in a bank account separate and apart from any other funds managed or administered by Recipient. CBD funds are not to be co-mingled with any other funds. Tracking of assessment funds is to occur separately and copies of all CBD bank account statements shall be made available to the City upon request. Prior to disbursement of any funds from the City under this Agreement, Recipient shall provide the City with evidence of the required CBD bank account.

- 5.4. CBD name on all activities funded by the CBD. The name “Downtown Tracy Community Benefit District” or an appropriate abbreviation or substitute shall appear on all marketing and promotional materials funded in part or in whole by CBD moneys. Prior to holding a special event Recipient shall consult with City for use of City of Tracy name.
- 5.5. Reporting to affected property owners. A statement of activities funded by CBD moneys and the cost of each shall be distributed to every affected property owner once a year within 60 days of each fiscal year end. A copy of this statement and a list of property owner names, addresses and/or e-mail addresses to which the notice was sent shall be made available to the City and the public upon request.
- 5.6. Rate Payer Survey. Recipient may administer a rate payer survey to all affected property owners. Results of the survey shall be compiled by Recipient and a summary submitted to the City. Such survey shall be performed at a time specified by the City at its sole discretion but in no event shall such survey be required more than once every three (3) years. The City may request that copies of each separate property owner response also be submitted to the City by Recipient as an attachment to the summary report.
- 5.7. Open Meetings. Recipient shall comply with the open meeting requirements of the Ralph M. Brown Act with regard to all business conducted in performing the terms and conditions of this Agreement.
- 5.8. Maintenance of Central Files and Records. Recipient shall maintain central files and records for the District which shall contain documents designated by the City. Such files and records shall be made available for inspection as specified in Section 17 below and shall at a minimum include a copy of the Articles of Incorporation and Bylaws of the Recipient, a current copy of this Agreement between Recipient and the City, the District Plan, the assessment methodology used to calculate assessments, the latest annual report submitted by the Recipient and approved by the City, a list of Recipient board members, proof of insurance coverage required pursuant to this Agreement, and all other financial and operational records related to this Agreement, including, but not limited to, those required by the Ralph M. Brown Act pursuant to Section 5.7 above. Recipient files and records shall be subject to public disclosure pursuant to the California Public Records Act (California Government Code Sections 6250 et seq.).
- 5.9. Program and Budget Reports.
 - 5.9.1. Annual Report and Budget. Recipient shall submit to the City an annual report and budget for each fiscal year for which assessments are to be levied and collected, in a format to be designated by the City. Annual reports shall be submitted on or before May 1st of each

year commencing in 2016, and shall describe improvement and activities provided in the prior fiscal year in addition to other information required by the above-referenced legislation. The District's next annual report and budget shall be submitted on or before May 1, 2016. Any proposed changes to the assessments, including allowable percentage increases, if any, shall not be implemented until the following fiscal year. If there are changes requested that would require a public hearing and/or a public meeting pursuant to state law as amended, then the report shall be submitted at a time to be determined by the City and in sufficient time to comply with public notice requirements and the City agenda processing timelines then in effect. The budget for any year shall not be effective until approved by the City as being in compliance with the District Plan.

- 5.9.2. Budget. Each program specified in the Plan and succeeding budgets shall be implemented within the budget amount specified and in accordance with the District Plan in **Exhibit A** and in annual reports and budgets approved by the City. Any obligations or expenditures for items not budgeted shall not be paid from the assessments collected for the District.
- 5.9.3. General Fund Not Liable. Neither the General Fund of the City, nor any other fund, revenue source or monies whatsoever of the City, except the actual collected District assessment net revenue, shall be liable for payment of any obligations arising from this Agreement. Any obligations incurred by Recipient are not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon its income, receipts or revenues.
- 5.10. Financial Statements.
- 5.10.1. Within 60 days of each fiscal year end, Recipient shall submit a full disclosure financial statement, including an Actual versus Budgeted Expenditures summary. In addition to the financial statement, Recipient shall provide the following within 60 days of fiscal year end:
- (a) On years when the fiscal year ends in an even number, commencing with fiscal year 2015/2016, a Certified Public Accountant's (CPA) Review Report .
 - (b) On years when the fiscal year ends in an odd number, commencing with fiscal year 2016/2017, a CPA Compilation Report.

Both reports must be prepared by an independent CPA acceptable to the City. Upon the City's review of the CPA Review Report or CPA

Compilation Report, if the City is not satisfied with the statement or report or with regard to the propriety of Recipient's commitment or expenditure of funds during the corresponding reporting period, then the City may request that the Recipient provide either an Expanded Review of the District or require that the Recipient prepare full audited financial statements. For purposes of preparing the above financial statements and reports, Budgeted Expenditures shall mean expenditures approved by the City and on file with the Office of the City Clerk for the corresponding fiscal year, as amended by the City pursuant to applicable legislation.

- 5.10.2. Where applicable, the statement or audits must be conducted in accordance with Government Auditing Standards (2003 and subsequent revisions) prescribed by the Comptroller General of the United States. All other reports and audits shall be prepared in accordance with Generally Accepted Accounting Principles in the United States of America.
- 5.10.3. The audit must be conducted by a Certified Public Accounting (CPA) firm acceptable to the City. Recipient is encouraged, to the extent feasible to procure its reports and audits from qualified small, local and minority and women-owned Tracy firms.
- 5.10.4. Funds to cover only the CBD portion of the financial statement, report or audit can be set aside in the CBD budget.
- 5.10.5. If a full audited financial statement is required, a Management Letter shall be requested from the Certified Public Accounting firm and be presented to the City.
- 5.10.6. The statement, report or audited financial statement and the Management Letter shall be delivered to the City at the address provided in Section 27 of this Agreement.
- 5.10.7. Recipient shall make available on-line current copies of the CBD quarterly financial statements for access by all interested parties.
- 5.10.8. Assessment Records. Recipient shall maintain a complete database for each business assessed within the District, containing the following information:
 - (i) Assessor's Parcel Number
 - (ii) Street Address
 - (iii) Name and Address of Owner of Record

- (iv) Amount of the Assessment Levied
- (v) Proportionate Financial Obligation Imposed, compared to District
- (vi) Assessment Calculations, including all variables used
- (vii) Recipient agrees to maintain such information and make it available to businesses within the District during regular business hours.

5.11. Annual Assessment Preparation. By June 1 of each operating year, Recipient shall supply the City with assessment data for the subsequent tax year (July 1 – June 30), in a format to be prescribed by the Director of Finance of the City of Tracy. The assessment data shall include all of the information required in “Assessment Records,” paragraph 5.10.8, above.

5.12. Liaison with Community. Recipient shall maintain an on-going relationship with the assessed District property owners and any affected residents and business owners, which shall include:

5.12.1. Annual Public Meeting. Recipient shall organize and conduct, at a minimum, one annual public meeting to be noticed in writing and mailed to all property owners of record in the District. This meeting will be conducted at a location convenient to the District. A representative of the City Manager or his/her designee may attend as a member of the panel to provide information and assistance.

5.12.2. Regular Meetings of the Recipient Board to conduct business to implement the District Plan.

5.12.3. Other Events and activities which involve the members of the District and which encourage attainment of the goals and objectives of the District Plan.

5.12.4. Recipient shall notify all assessees in writing when an increase in assessments is proposed.

5.12.5. Recipient shall deliver to each affected District member of record, written notice of any and all upcoming Recipient board elections with lead time sufficient to allow all interested parties to participate in the process of board member election. Recipient shall allow members to participate in the board elections by mail.

5.12.6. Cost and Expense Records. In accordance with generally accepted

accounting principles, Recipient shall maintain full and complete records of activities performed under this Agreement. Such records shall be open to inspection by the City, board members and the public pursuant to the Public Records Act. Recipient agrees to maintain all such records a minimum of four years after the termination of this Agreement.

- 5.12.7. Program Coordination. Recipient shall complete Disbursement Duties and shall cooperate with the City Manager or his/her designee and shall utilize and cooperate with such personnel as the City Manager or his/her designee shall designate in the implementation of the District Plan, including program development and coordination of District activities with City functions.

6. City Responsibilities.

- 6.1. Administration. This Agreement shall be administered by the City Manager or his/her designee on behalf of the City. The City Manager or his/her designee shall:
 - 6.1.1. Coordinate the collection of the annual assessment through the City's Finance Department.
 - 6.1.2. Provide general assistance, clarification, or information to Recipient, the assessed parties and the public.
 - 6.1.3. Direct the disbursement of funds to Recipient in accordance with this Agreement, the District Plan and subsequent approved budgets. City shall promptly forward funds to Recipient in accordance with the terms of this Agreement.
 - 6.1.4. Maintain a liaison with Recipient, including coordination of services with and from various City agencies, departments or divisions, as mutually agreed to by the City Manager or his/her designee and Recipient.
 - 6.1.5. Provide free meeting space for Recipient board and committee meetings at the Tracy Transit Center, the Fire Administration Building, or City Hall to the extent that meeting rooms are available in those facilities during the normal business hour operations for each facility.
- 6.2. Discrepancies and Assessment Disputes. The City Manager or his/her designee may assist with the resolution of any discrepancies in individual assessment amounts or calculations. The City Manager or his/her designee reserves the right to:

- 6.2.1. Conduct reviews of existing primary data; verify assessment data as compiled by any consultant, subcontractor or other party hired by Recipient; and perform field or on-site inspections to verify the accuracy of existing or secondary data, or to investigate the claim of any business license holder in the District.
 - 6.2.2. Recalculate the assessment amount due and direct the City Finance Department to respond appropriately.
- 6.3. Disbursements. The annual District assessments will be collected by the County pursuant to the City Finance Department collection procedures and will be transmitted to Recipient less the City's cost of billing and collection which shall be in addition to costs defined in Paragraph 6.3.4, below. The City shall not be obligated to disburse amounts of the assessments not collected at the time called for pursuant to the schedule for disbursements. Upon request by Recipient and with approval of the City Manager (or his or her designee) funds in an amount in excess which have actually been received by the City may be disbursed at an earlier time than provided for herein.

- 6.3.1. Disbursement of funds shall be on the following schedule. City shall provide upfront disbursements from the anticipated annual appropriations in the following approximate percentages on or around the following dates:

- July 1: Fifty percent (50%) of annual appropriation
- January 1: Fifty percent (50%) of annual appropriation

City shall collect and retain the assessments from the County as reimbursement for the upfront disbursements, which are expected to be received in the following percentages on or around the following dates:

- December 31: Forty percent (40%) of annual appropriation
- Mid-February: Next 13% (total 53%)
- April 30: Next 27% (total 80%)
- June 30: Next 20% (total 100%)

- 6.3.2. Funds shall be disbursed automatically by the City to Recipient at the time and in the amounts designated in Section 6.3.1 above. Disbursements shall be contingent upon Recipient being in compliance with all provisions set forth in this Agreement. The applicable City costs and fees outlined in Section 6.3.4 below shall be subtracted from the disbursements. The City reserves the right to request at any time a current financial summary of all CBD funds committed and/or spent during the previous quarter(s) from Recipient. Such financial summary shall be submitted by Recipient to the City within ten (10) business days of the City's request. The City

reserves the right to review the summary and to refuse to disburse any further installments if it is not satisfied with the statement or with regard to the propriety of Recipient's commitment or expenditure during the previous quarter(s). This provision is solely for the benefit of the City and does not confer any rights or cause of action on behalf of any third parties including the Advisory Board or assessees of the district.

- 6.3.3. If there is an adjustment due to changes in the receipts of the District, it may be adjusted in the following year. The City shall not be responsible for delays in payment by affected assessees.
- 6.3.4. Costs and Expenses. The City of Tracy and the County of San Joaquin will deduct from the funds collected on behalf of the district the respective costs and fees of the City and County collection, including the City's costs of administering the District. Such costs and fees shall include amounts charged by the County in addition to a 1% (one percent) fee charged by the City. The City's 1% fee shall be calculated on the basis of total funds received from the County on behalf of the District plus 1% of all amounts received from tax-exempt property owners billed directly by the City. Deduction for this 1% of the collected funds shall be made from the second payment as described in the schedule in Section 6.3.1 above. Such costs and fees will be withheld prior to making any distribution to Recipient. At the request of Recipient, City shall provide Recipient with a detailed statement of any costs and fees incurred and deducted by City.
7. Ownership of Documents. The designs, plans, reports, files, invoices, investigation materials documents prepared or acquired by or for Recipient pursuant to this Agreement become the joint property of the City and Recipient. Recipient agrees to exercise diligence in providing for the secure storage of all such materials and to provide copies for official City records on request from City.
8. Independent Contractor. It is expressly agreed that in the performance of the Disbursement Duties necessary to carry out this Agreement, Recipient shall be, and is, an independent contractor, and is not an employee of City. Recipient has and shall retain the right to exercise full control and supervision of the activities, and full control over the employment, direction, compensation and discharge of all persons assisting Recipient in the performance of its Disbursement Duties hereunder. Recipient shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Recipient's own acts and those of Recipient's subordinates and employees.
9. Recipient Not Agent of City. Neither Recipient nor any of its employees, agents, representatives, contractors or subcontractors is or shall be deemed to be an agent

of the City for any purpose, including fulfillment of Recipient's obligations pursuant to this Agreement.

10. Recipient's Qualifications. Recipient represents that it has the qualifications and skills necessary to perform the Disbursement Duties under this Agreement in a competent and professional manner without the advice or direction of City. This means Recipient is able to fulfill the requirements of this Agreement. Failure to perform all of the Disbursement Duties required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Recipient has complete and sole discretion for the manner in which the work under this Agreement is performed. Recipient will arrange for any necessary staff and board training regarding Recipient's obligations under this Agreement, as well as the requirements of the California Streets and Highways Code Section 36600 *et seq.*, as amended, relating to the operation of a Property and Business Improvement District.
11. Termination on Notice. The City may terminate this Agreement for Recipient's breach of any provision of this Agreement. In addition to the foregoing, annually the City Manager or his/her designee may review the performance of Recipient under this Agreement and, at the City Manager's or his/her designee's sole discretion, the City Manager or his/her designee may terminate this Agreement without cause by giving sixty (60) days' written notice to Recipient. Such notice shall be made in accordance with the "Notices" section of this Agreement.
12. Agents/Brokers. Recipient warrants that it has not employed or retained any subcontractor, agent, company or person other than bona fide, full-time employees of Recipient working solely for it, to solicit or secure this Agreement, and that Recipient has not paid or agreed to pay any contactor, subcontractor, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift.
13. Non-Discrimination/Equal Employment Practices. Recipient shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, Recipient and Recipient's contractors, subcontractors, if any, shall not discriminate against any employee or applicant for employment in any manner prohibited by federal, state or local laws. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
14. Inspection of Books and Records.

- 14.1. During the term of this Agreement, and for a period of four (4) years after the termination of this Agreement, or two (2) years after the closure of any disputed matter, whichever occurs later, (the "Audit Period"), Recipient shall maintain financial and operational records related to this Agreement. Recipient shall make all books and records open to inspection by the governing agency, City Auditor or their individually assigned designee during normal business hours at a location within a twenty-five (25) mile radius of the City of Tracy for the period designated.
- 14.2. During the Audit Period, Recipient hereby grants to City or its designee(s), upon one (1) days prior notice to Recipient, access to and the right to make copies of any of Recipient's books, statements, documents, papers or records ("Financial Information") which arise from or relate to the terms and conditions of this Agreement and the performance of any duties pursuant to this Agreement, or any other agreement between the parties, in order to permit City to conduct audits, examinations, excerpts and transition audits (collectively hereafter referred to as "Audit or Audits"). Recipient authorizes the City's Finance Director or designee to obtain such information directly from these sources. City's right to Audit and to make copies shall apply whether such Financial Information is located at Recipient's offices or at Recipient's banks, financial institutions or lenders, or at the offices of Recipient's financial consultants, accountants or bookkeepers. For the purposes of such Audit, Recipient waives its right to the confidentiality of all Financial Information and Recipient authorizes the City or its designee(s) to access, obtain and make copies of Financial Information directly from Recipient's banks, financial institutions or lenders, or from Recipient's financial consultants, accountants or bookkeepers.
- 14.3. Such Audits may be performed by City through its employees or by its designees including, without limitation, a third party auditor retained by City. City's right to Audit under this section is independent, separate and distinct from any right to audit such books and records reserved by law or contract, or as a condition of funding, by the county, state or federal government.
- 14.4. If any Audit reveals any variance from any financial record or report received from Recipient by City in excess of one percent (1%) of the amount shown on such financial record or report, Recipient shall immediately reimburse City for all costs and expenses incurred in conducting such Audit. Such reimbursement shall be paid for by Recipient using Recipient's own funds, separate and apart, from any funds received by Recipient pursuant to this Agreement. Failure to pay such variance and the cost of the Audit as required herein shall constitute a material breach of the Agreement and City may terminate the Agreement in accord with the termination provisions of Section 13 of this Agreement and Recipient shall be subject to a breach of contract claim for damages by City and a claim for return of all funds provided

to Recipient by City pursuant to this Agreement.

15. Insurance. Unless a written waiver is obtained from the City's Risk Manager, Recipient must provide the insurance listed in **Exhibit B** attached hereto and incorporated herein by reference.

16. Indemnification

16.1. Notwithstanding any other provision of this Agreement, Recipient shall indemnify and hold harmless (and at City's request, defend) City, and each of their respective Councilmembers, officers, partners, agents, employees and volunteers (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:

- (i) Breach of Recipient's obligations, representations or warranties under this Agreement;
- (ii) Act or failure to act in the course of performance by Recipient under this Agreement;
- (iii) Negligent or willful acts or omissions in the course of performance by Recipient under this Agreement;
- (iv) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Recipient;
- (v) Unauthorized use or disclosure by Recipient of confidential information that the City may provide Recipient; and
- (vi) Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

16.2. For purposes of the preceding Subsections (i) through (vi), the term "Recipient" includes Recipient, its officers, directors, employees, representatives, agents, servants, consultants, volunteers, contractors and subcontractors.

16.3. City shall give Recipient prompt written notice of any such claim of loss or damage and shall cooperate with Recipient, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with

City's interests.

- 16.4. Notwithstanding the foregoing, if Recipient fails or refuses to defend City with Counsel acceptable to City, City shall have the right to engage its own counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due Recipient in the amount of anticipated defense costs plus additional reasonable amounts as security for Recipient's obligations under this Section 19. In no event shall Recipient agree to the settlement of any claim described herein without the prior written consent of City.
 - 16.5. Recipient acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to Recipient by City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Recipient's liability under this Agreement shall not apply to any action or claim arising from the sole negligence, or willful misconduct of an Indemnitee.
 - 16.6. All of Recipient's obligations under this Section 19 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.
 - 16.7. The indemnity set forth in this Section 19 shall not be limited by the City's insurance requirements contained in this Agreement, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to payment of Recipient in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.
17. Political Prohibition. Subject to applicable State and Federal laws, moneys paid pursuant to this agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.
18. Religious Prohibition. There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of the Agreement.
19. Conflict of Interest
- 19.1. Recipient
The following protections against conflict of interest will be upheld:

- (i) Recipient certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- (ii) Recipient certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.
- (iii) Recipient shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Recipient.
- (iv) Recipient warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Recipient shall exercise due diligence to ensure that no such official will receive such an interest.
- (v) Recipient further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Recipient to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Recipient or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 the previous year. Recipient agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Recipient's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act

(California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).

- (vi) Recipient understands that in some cases Recipient or persons associated with Recipient may be deemed a “city officer” or “public official” for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Recipient further understands that, as a public officer or official, Recipient or persons associated with Recipient may be disqualified from future City contracts to the extent that Recipient is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.
- (vii) Recipient shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

19.2. No Waiver

Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation.

19.3. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Recipient understands and agrees that, if the City reasonably determines that Recipient has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Recipient to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Recipient is responsible for the conflict of interest situation.

20. Assignment. Recipient shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of City and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

21. Business Tax Certificate. Recipient shall obtain and provide proof of a valid City business tax certificate, if applicable. Said certificate must remain valid during the duration of this Agreement.

22. Governing Law. This Agreement shall be governed by the laws of the State of California.

23. Notice. If either party shall desire or be required to give notice to the other, such notice shall be given in writing, by prepaid U.S. certified or registered postage, addressed to recipient as follows:

For the City of Tracy:
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Attention: City Manager

For Recipient
Tracy City Center Association
1025 Central Avenue
Tracy, CA 95376
Attention: Dino Margaros

24. Entire Agreement of the Parties. This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of Disbursement Duties by Recipient for City with regard to the District and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those duties. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any parties, which are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

25. Modification. Any modification of this Agreement will be effective only if it is in a writing signed by both parties.

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

INTENTIONALLY LEFT BLANK

27. Approval. If the terms of this Agreement are acceptable to Recipient and City, then sign and date below.

CITY:
CITY OF TRACY,
a municipal corporation

By: Troy Brown
Title: CITY MANAGER
Date: _____


Attest:

By: Nora Pimentel
Title: CITY CLERK
Date: _____

Approved As To Form:

By: Daniel G. Sodergren
Title: CITY ATTORNEY
Date: _____

RECIPIENT:
TRACY CITY CENTER ASSOCIATION,
a California non-profit corporation



By: Dino Margaros
Title: President
Date: 01/07/2016
Fed. Employer ID No. 37-1605304

Exhibit A

Downtown Tracy Community Benefit District Management District Plan



THE DOWNTOWN TRACY COMMUNITY BENEFIT DISTRICT MANAGEMENT DISTRICT PLAN

*Formed Under California Streets and Highway Code Section 36600
Property Business Improvement District Act of 1994*

Final Plan – July 25th, 2014

Prepared by:
New City America, Inc.
and the Downtown Tracy CBD Renewal Committee



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mail@newcityamerica.com ■ www.newcityamerica.com ■ Facebook: New City America, Inc.

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For the Renewed Downtown Tracy Community Benefit District

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Attachment

- A. Engineer's Report

Section 1

Management District Plan Summary

The name of this renewed and expanded Property-Based Community Benefit District is the **Downtown Tracy Community Benefit District** (the “CBD). The District is being renewed and expanded pursuant to the sections 36600 et seq. of the California Streets and Highways Code, the “Property and Business Improvement District Law of 1994 as “amended,” hereafter to as the State Law.

Reason for the Renewal:

Over the past 2 years, and arising from the Great Recession, Downtown Tracy has begun to attract new businesses and restaurants at a greater pace than at any time in the last 20 years.

The new Central Park, Transit Center and public art in the roundabout at 6th and Central have demonstrated the City’s commitment to provide the necessary capital improvements to identify Downtown Tracy as the key City Center in a 20 mile radius. The creation of the Downtown Tracy CBD and the Tracy City Center Association (TCCA) in 2010, created a partnership with the City made of up committed Downtown stakeholders to take Downtown Tracy to the next level.

In 2013, New City America, Inc. was contracted by the Tracy Center City Association to conduct a study on business attraction to Downtown. We have included excerpts from that study to explain to property owners where there is a need for the renewal of this District for the next 10 years.

Overview of why the Tracy Downtown CBD Needs to be Renewed:

There is no book to read about how to create or renew a vibrant commercial district. Much of how this Downtown will conceptually be put together is based upon **seeing what has not worked in other areas**, and how to profit from their lack of success. There are more examples of failure in existing urban based business districts and “lifestyle centers” than there are examples of ones that function, are popular and are dynamic.

We need to sell Downtown Tracy as a product, with a target market, based upon its history and what we hope will happen.

We have seen too many times what happens when a product, concept or business gets stale and does not change with the times. Not too long ago there was a Mervyns, Woolworths, Circuit City, Broadway Dept Store, Buffums, May Company, Filenes Warehouse, Borders Books, Tower Records, Blockbuster video (and soon K Mart and Sears, and perhaps JC Penney’s will leave our retail world). These are all entities that in their heyday, made an incredible impact on the way America shopped.

The lack of understanding how the market was changing as well as the brutal impact of new technology such as Amazon.com and other internet providers, forced these businesses to adapt or die.

Understanding Social vs. Economic Value:

People don't go to places such as Downtown San Francisco or Oakland because they perceive them to be safe, because parking is cheap, and consumer goods are inexpensive. People flock to places such as Union Square/Westfield Center and increasingly Rockridge and Broadway and Grand in Oakland because of the concentration of unique restaurants and retail.

People go to areas including Fisherman's Wharf, Noe Valley, Post Street, the Ferry Building, Rockridge, Lake Merritt/Uptown, Healdsburg, Downtown Pleasanton and Downtown Livermore because of their "social value," not economic value.

Downtown Tracy is stuck between both. When discussions are held about paid parking on the streets to increase turnover, the immediate reaction is that it will drive customers away. But those same customers don't mind driving 60 to 70 miles to go to Oakland, Berkeley or San Francisco and paying outrageous parking meter fees, or off street parking, simply to shop or eat. No, it is not the cost of parking that determines if someone comes to an area, it is what one finds when they get there.

People currently will come to Downtown Tracy for a number of reasons including:

- a. They have fond memories of going to Downtown when they were growing up, before the advent of freeways, malls and peripheral retail;
- b. They attend one of the excellent performances at the Grand Theatre;
- c. They attend the weekly farmers market;
- d. They bring their kids Downtown for the dance studio;
- e. They want to attend the many quality special events in Downtown;

The reason why people come to Downtown Tracy is due to its social value, NOT economic value. This social value is intangible. It is based upon interaction with others on the sidewalk, enjoying public spaces, people watching, walking with no destination in mind and dining at one of the many growing eateries in Downtown. Downtown is one of the most walkable places in the region and this, by itself, makes it desirable.

Economic value takes the form of large big box stores, many of which (as mentioned above), are cannibalizing each other and constantly trying to re-invent themselves. Downtown cannot, nor should it ever try to attract a big box retailer such as Costco, Wal Mart, Target, Smart and Final. People shop at these places not for their social value, but their economic value. They want to drive up, shop, and get out of the store as quickly as possible because by its very nature, the store doesn't want you to linger. There is no basis in which to "people watch," socially engage friends, or just hang out. The big box stores are designed to repel people from attaching any type of social ties to the store.

Functional Traits of Downtown Tracy:

Downtown Tracy should see itself as a walkable community, something that it has not considered in the past. Key to walkability is how it functions. When we say how it functions, we mean.....

- *how do the buildings relate to each other;*
- *how does the landscaping complement and not block sight lines;*
- *how do visitors and customer “feel” when they enter the Downtown;*
- *does the Downtown have a well-defined beginning and an end;*
- *how does it integrate public space so it becomes an integral part of the district as compared to an afterthought;*
- *how do people park and circulate;*
- *how do people find the restroom, particularly for their children;*
- *how is the district branded and does that brand live up to what people experience;*
- *how does the TCCA blend the old and the new, accentuate the history of Downtown, but also reveal that the function of that history is to bring forward new ideas;*
- *how does one manage the brand of the district on a day-to-day basis, etc;*

Assets:

- ✓ **Downtown Tracy has great inventory of public spaces** that were thoughtfully designed, well-constructed and took full advantage of tax increment financing before it was made illegal to finance public improvements in this fashion;
- ✓ **The City of Tracy wisely allocated its redevelopment funds toward new sidewalks, street lights, corner pop outs, and the new Transit Center;**
- ✓ **The City of Tracy thoughtfully determined that it would re-create the Town Center at former rail related land at 6th and Central.** The changes with the building of the Transit Center, 6th and Central Plaza and the roundabout was visionary and creates the public space foundation similar to Downtown Pleasanton and Downtown Livermore;
- ✓ **The Firehouse Plaza Tribute** incorporates a well-designed mid-block public space close to the core of the business district. However it is not used or activated;
- ✓ More than most other cities I have worked with nationwide, the **Tracy City Council and City management is results oriented, productive and responsive** to the TCCA’s needs, providing an inordinate amount of staff support;
- ✓ The **Downtown Specific Plan** has been funded and acts as a good guide for future re-development of Downtown;
- ✓ The **City has ownership of key properties** throughout Downtown, providing opportunities for redevelopment and new mixed use or housing;
- ✓ Unlike its neighbor to the east, the **City is relatively speaking, financially stable;**
- ✓ Downtown has an **excellent inventory of well-preserved functioning historic buildings;**
- ✓ Members of the TCCA Board have a phenomenal **knowledge of the history of places and buildings in Downtown,** lending a lot of credibility to their efforts;
- ✓ Geographically speaking, **Downtown Tracy is flat and very walkable;**

- ✓ The Central Valley has a **high water table** so much like Sacramento, trees will grow fast and full, giving a sense of intimacy to Downtown;
- ✓ Tracy is located within **60 miles of the Port of Oakland** so it makes it a key location for new job creation based upon Bay Area distribution centers;
- ✓ **The TCCA Board** (all volunteers) are knowledgeable, smart, committed and have a long term view of where Downtown can go. The depth of knowledge of key Board members is highly impressive, as well as their knowledge of the real estate market and why things happened in Downtown as they did. The weakness in the Board is that the leadership is carrying most of the weight of the responsibilities for the overall corporation. However, based upon my experience in forming over 70 CBDs and BIDs nationwide, the TCCA Board is perhaps more entrepreneurial, more productive and more results oriented than some multi-million dollar districts that I have worked with.
- ✓ **The real estate market** has yet to discover Downtown Tracy where land and buildings are cheap. Paying less than 20 dollars per square foot for urban land is nearly unheard of in the greater Bay Area. From that standpoint, the land values for post-recession 2008 have not increased as other areas, particularly to the west.
- ✓ **The retail rental market** is starting to ignite with rents which were previously marketed at less than 75 cents per square foot in gross rent, beginning to edge up to \$1.25 per square foot triple net.
- ✓ **The DISI Committee has done an excellent job of re-branding the events in Downtown and developing a well done website and social media network.** The Committee has also commenced the creation of short videos which can be used as recruiting media tools for new businesses. These tools are universal and can be sent out nationwide to pique interest in Downtown;
- ✓ The **RailTown Tracy** concept has been proposed to the TCCA Board and would provide a potential new draw and added dimension to Downtown and should be supported;
- ✓ **Downtown Tracy already has a very successful dance studio and local music store.** These locally owned businesses are prized possessions and must be seen as great assets. The music store and dance studio bring hundreds of young talented artists and their parents to Downtown on a weekly basis, and with the Grand Theatre, provide an excellent foundation for growth of the arts community in Downtown. It has been demonstrated through recent IDA studies that young people will move to an area first, and then look for employment, which contradicts traditional Economic Development thought on its head. The internet and high tech economy has allowed young people to create their own entrepreneurial opportunity, but they need a “place” that is conducive to their intellectual and social growth needs. Providing a solid framework for arts is just a foundation for place.
- ✓ **The Grand Theatre has recently been reorganized and placed under new management.** This sleeping giant of a Downtown asset was fully refurbished by the City Redevelopment Agency and the new management team plans to aggressively promote new shows on a regular basis, thereby drawing thousands of people to Downtown over the coming year. There is no competition to the Grand Theatre within a 50 mile radius of Tracy. The Grand, as an art anchor, and under new management, can completely

transform the retail and commercial fabric of Downtown thereby expanding the normal retail day from 8 hours to 12 to 13 hours on event and show days;

- ✓ **Amazon opened their 1,000,000 square foot distribution center** in September with the first 300 employees on site. These employees, by their very nature, are exposed to the internet and the internet shopping. However, they also need a dynamic urban outlet. Distribution employees tied to internet and high tech companies are transforming areas throughout the country including in Silicon Valley/San Jose/Tracy and San Francisco, San Diego, Tracy, Chicago, New York City, Downtown Las Vegas, Austin TX, to name a few. These employees can create tremendous demand for retail, restaurants and bars in Downtown Tracy. They are by nature, part of the “walkable, urban” generation. By late November, Amazon anticipates they will have 1,000 employees over two shifts. The current distribution site is 1 million square feet and Prologis has submitted plans to the City for another 200,000 SF expansion. The total building size will be 1.2M square feet which includes 80,000 square feet of office space. Plans are also in review to convert a 30,000 SF space of the existing warehouse to refrigeration for Amazon Fresh.
- ✓ **Cordes Ranch/Prologis Land Acquisition:** The recent approved Cordes Ranch project is a 1,783 acre annexation of agricultural land from San Joaquin County to the City of Tracy. It involves a General Plan Amendment, a Cordes Ranch Specific Plan, a City Council approved development agreement with Prologis and a new EIR. Prologis is the world’s largest industrial land developer. The project will include:
 - ✓
 - a. 591,980 square feet of general commercial spaces;
 - b. 2,465,932 square feet of general office space;
 - c. 27,789.102 million square feet of Business Park Industrial space
 - d. 88.6 acres of parks and open spaces
 - e. 5 million dollars of public benefit to be used at the City Council’s discretion.

Consideration should be given to enhancing Downtown as a new arts and entertainment venue for all of these new employees and having the City Council invest a portion of these anticipated revenues, or around \$ 250,000 in public improvements for bricks and mortar amenities in Downtown.

However, Downtown Tracy, as any other business or product, has its share of product liabilities. Those liabilities include:

Liabilities:

- ❖ Though Property owners might have vacancies in Downtown and the **highest and best use of the building would be food related or restaurants, there are some property owners that will not allow such uses in their property.** Some don’t want to allow alcohol consumption in their storefronts and others do not want to transform current commercial uses as office to restaurant, which would entail the installation of fire safety and venting equipment. If the demand exists for restaurant space, and property owners aren’t willing to accommodate that use, it will greatly harm the ability of commercial

real estate brokers and agents to conclude a deal and create the necessary critical mass of restaurants and bars to extend the retail day.

- ❖ **Controlled parking doesn't exist** and is resisted by some of the businesses in Downtown. Due to the lack of parking enforcement, business owners and employees use 10th Street and Central Avenue to park their cars near their place of business. Parking meters and parking meter revenues have always been used to “turn over parking spaces” so customers would have access to the storefronts, whether they be office, professional, retail or restaurant. Until this issue has been openly discussed, business owners, and their employees who are NOT dependent upon walk-in traffic will continue to use street parking for their convenience. It is not as if Downtown Tracy doesn't have a large reservoir of peripheral parking, it does with the well-lit and maintained City parking lots. Even in the event that the parking lots become full, there is still free street parking in the peripheral residential areas that could accommodate business owners and employees alike. It is not as if Downtown Tracy is unsafe at any hour of the day. The practice of walking to one's car up to 500 to 1,000 feet away is a practice that employees at major malls must do on a daily basis.
- ❖ **Very few businesses stay open after 6 p.m. in the evening.** Not even a coffee shop is open late for those people who want to go on the internet and interact with friends in a non-alcohol serving setting. This demonstrates that the 8 hour retail day, with the exception of restaurants, is the rule in Downtown Tracy. As more restaurants, pubs, etc. enter Downtown, this will change. The goal is to move toward a 14 hour retail day with most restaurants, coffee shops and pubs staying open until 10 p.m. Monday through Saturday.
- ❖ **A key property, the Opera House, has been foreclosed upon.** When coupled with the closed business at 10th and Central, the Westside Market and the Tracy Press Building, these are four critical corners that could help rapidly transform Downtown if a high density usage was to be built there. The Opera House demonstrates that a 3 story building fits within the fabric of Downtown.
- ❖ **The City should formally lift all parking requirements** for all new retail and restaurant through 2020. Though this is done on a case by case basis, it should really be a marketing tool for attracting new restaurants to Downtown. There is ample parking on the street and in the evening to accommodate even 10 more restaurants in Downtown;
- ❖ **Banks take up some of the best retail spots in the Downtown** and only have 40 – 46 hour work week. Banks take up the key western corners at 10th and Central and the B of A lot takes up nearly a half an acre for a part-time use. The presence of banks rarely brings new business to a Downtown. Usually it is the other way around. New business brings many more bank deposits.
- ❖ **Downtown is filled with many non-historically significant, one story, first generation buildings.** By this, I mean to say that simply because the building is there today, doesn't necessarily mean it will be there in the future. Sooner or later, land values will rise to such an extent that developers will assemble up to 10,000 square feet of adjacent parcels and construct mixed use buildings;
- ❖ **There are absolutely NO Downtown residential opportunities.** Many people who come to work for Amazon or in the new Prologis Cordes Ranch office parks, may want to live

close to work, as compared to dealing with the 580/209 every day. Downtown Tracy could easily accommodate hundreds of live work or residential condos, apartments or lofts within the footprint of the CBD.

- ❖ **There are no schools or satellite branches of higher education in Downtown.** Young people want to live in an urban environment and the daily population of students; faculty and staff would alter the perception of Downtown and create a huge new economic development anchor. The Opera building could be a great opportunity for a satellite private college, medical vocational school or satellite community college campus.
- ❖ **Specific Plan uses.** Increasingly, city planners are realizing that well developed and thought out specific plans could wind up hindering the growth of the new economy. We don't know which uses might be magnets for consumers or customers in the next ten years, but the current specific plan under consideration, encourages only retail and public uses on the ground floor. The City should remain open to a variety of customer uses, and deal with each application on a case by case basis, working with the CenTen Committee, since there isn't an endless inventory of available land. What the City should strive to see is as much flexibility as possible on the ground floor of new developments. Since the retail market is changing so dramatically, we don't know which uses will be creating demand in the future years.
- ❖ **Peripheral neighborhoods:** As the new developments at Amazon and Cordes Ranch put greater demand on the commercial properties along 10th and Central, inevitably, non-retail uses will want to locate within walking distance of the critical mass of retail and businesses found in the Downtown. The historic single family housing stock to be found directly adjacent to Downtown provides a great reservoir of mixed use possibilities and a supplemental "demand" population for Downtown. Eventually, professionals will want to put their dentist offices, law offices, medical offices, research facilities, engineering offices, and ideally high tech/internet/software development headquarters surrounding Downtown. The current historic housing stock surrounding the formal Downtown and CBD footprint provides a huge reservoir of demand and professional critical mass for Downtown. Rules should be instituted that ease the transformation from residential to commercial uses without having to conform to strict commercial building standards, as is currently the case.

Executive Summary of the Renewal Plan:

Boundary: See Section 2, Page 13 and Map on page 14.

Budget: The total first year Downtown Tracy CBD budget for FY 2015 - 16 is approximately \$ 148,064.00 and is composed of the following elements:

Improvements, Activities, Services: The Improvements and Activities for the first year of the renewed and expanded Downtown Tracy Community Benefit District are as follows. The categories of special benefit services are based upon five general areas including District Identity, Business Attraction, Sidewalk Operations, Administration, and Contingency/Reserve. The amount allocated per service and the percentage a listed below.

PROGRAM OR ACTIVITY FUNDED BY THE DOWNTOWN TRACY COMMUNITY BENEFIT DISTRICT	APPROXIMATE % OF FIRST YEAR ANNUAL BUDGET	ESTIMATED ANNUAL COSTS AND BASIS FOR FUNDING (PROPERTY VARIABLE)
District Identity, Special Events, Business Attraction programs	46%	\$ 68,000.00 (Approximately 100% building square footage assessments)
Sidewalk Operations, Beautification	20%	\$ 30,000.00 (Approximately 100% of linear frontage assessments)
Enhanced Residential Beautification and Evening Security (for future use when condos are built in the district)	0%	\$ 00.00 (future condo building square footage)
Administration/Corporate Operations	30%	\$ 44,000.00 (Approximately 90% of Lot assessments)
Contingency – Parking Lot Maintenance	4%	\$ 6,064.00 (Approximately 10% of lot size assessments)
TOTAL	100%	\$ 148,064.00

Benefit Zones:

There will be one “benefit zone” in the proposed Downtown Tracy CBD. The State Law and State Constitution, Article XIII (d), require that special assessments be levied according to the special benefit each parcel receives from the improvements. In order to match assessment rates to special benefits received, four categories of assessments have been created within the Downtown Tracy Community Benefit District.

A line item for special benefits for new single family residential units (which do not currently exist but are anticipated), has been included, since the benefit they would receive from the CBD will be different that the benefits received by businesses or commercial property owners. All services will only be provided within the District Boundaries.

First Year Annual Costs:

Annual assessments are based upon an allocation of program costs by categories of parcels. Three property assessment variables, including street frontage, parcel square footage, and building square footage, will be used in this calculation. For condo residential unit parcels, only building square footage will be assessed since livable square footage is a measure of the impact and draw of the specific special benefits (security and beautification, etc.) derived as residential stakeholders.

Ground floor commercial condominiums will be assessed based on all three regular assessment variables. Whereas, upper floor commercial condominiums will be assessed for building square footage only due to their indirect access to street frontage.

PROPERTY VARIABLE	FIRST YEAR ANNUAL COST
Building Square Footage (Non-residential)	\$ 0.17 per square foot
Lot or Parcel square footage	\$ 0.0875 per square foot
Linear Frontage	\$ 3.50 per linear foot
Single Family Residential Parcel - (building square footage only)	\$ 0.20 per square foot of

Methods of Financing: A levy of special assessments upon real property that receives special benefits from the improvements and activities. (See Section 4, for assessment methodology)

Public owned property will be assessed based on all three assessment variables, for all services that provide special benefits. Freestanding parking structures and surface parking lots will be assessed based on all three regular assessment variables.

Cap:

An annual increase in assessments shall be allowable for the full term of the CBD. As approved by the Board of Directors of the Owner’s Association (The Tracy City Center Association), the management corporation shall have the option to increase the annual assessment rates to an amount not to exceed 5% (five percent) per year. Any determination of an annual increase will be communicated in writing to the City Manager’s Office.

District Formation:

The District modification requires a submission of petitions from property owners representing at least 50% plus one of the total assessments. In the case of the proposed renewed and expanded Downtown Tracy CBD, that assessment amount totals \$ 74,033.00. Once, the petitions representing \$ 74,033.00 from the area parcels have been accepted by the City Council, the City Council may adopt an Resolution of Intention to mail out ballots to all affected property owners. The District is formed if the weighted majority of all returned ballots support the District formation and if the City Council approves Resolution of Formation for the renewed and expanded Downtown Tracy CBD.

Duration:

The Downtown Tracy CBD shall have a ten-year term which shall commence on July 1, 2015 and expire on June 30, 2025.

Governance:

The Owners' Association will review District budgets and policies annually within the limitations of the Management District Plan. Annual reports, financial statements and newsletter will be filed with the City of Tracy, (City). The Owners' Association will oversee the day-to-day implementation of services as defined in the Management District Plan. The Owners Association will continue to be the Tracy City Center Association.

Section 2

Downtown Tracy Renewed and Expanded CBD Boundaries

Boundaries: Parcels in the renewed and expanded commercial corridors of the Downtown Tracy CBD/CBD will include as follows:

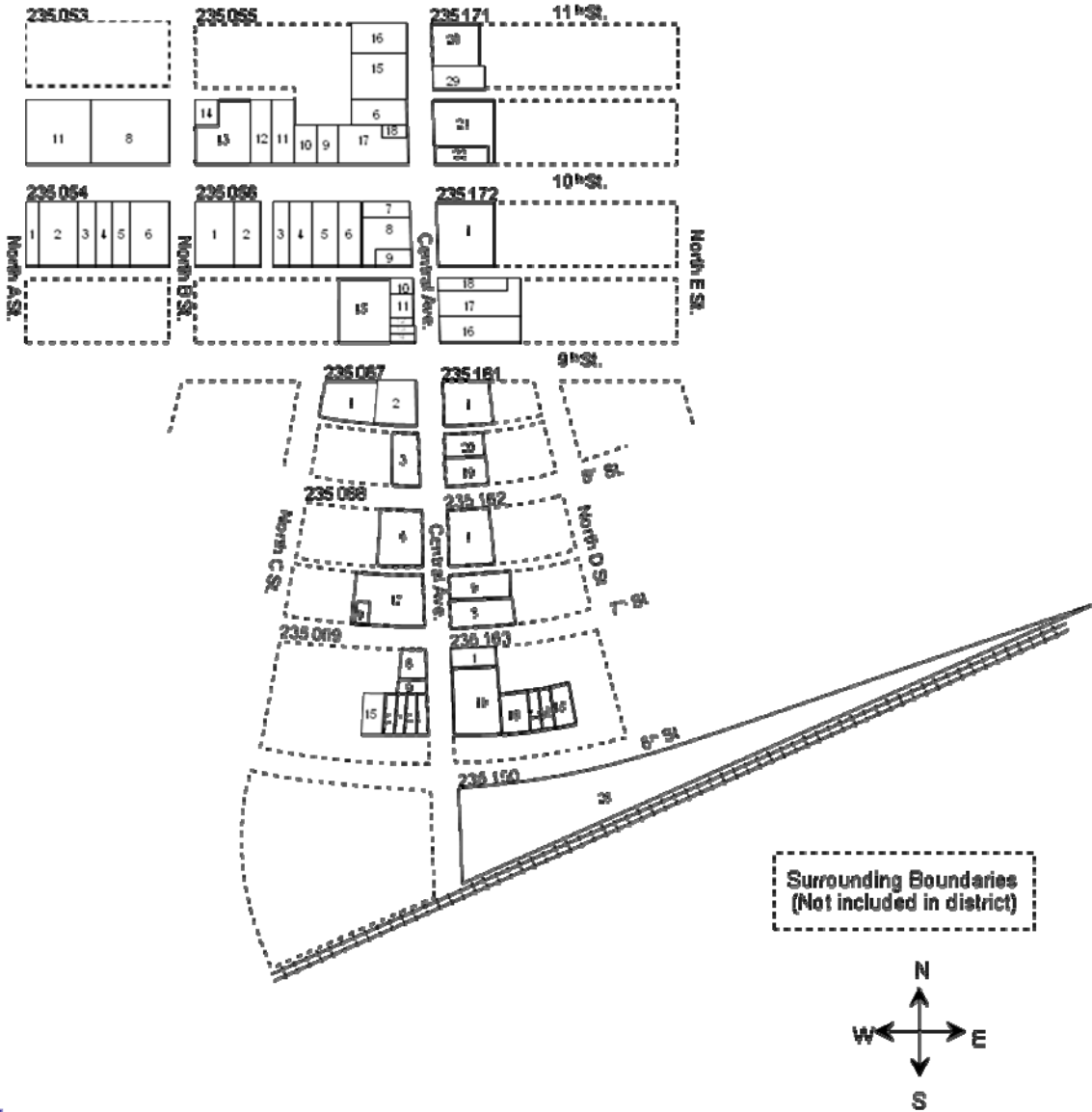
- **Northern Boundary:** All corner parcels on the south side of 11th Street from the northeastern corner of the intersection of 11th Street and Central Avenue (including parcels # 235-171-028, 029, 021, 022 and 235-055-016, 015, 006,), running westward to include all parcels along the north side of 10th Street up to and including the northeastern corner parcel at the intersection of North Street and 10th Street (parcel #235 53 011).
- **Southern Boundary:** All parcels on the north side of 6th Street between the commercial parcels from North D Street on the east, parcel 235-250 015, running westward to parcel 235-069-015.
- **Western Boundary:** The parcels on the east side of North A Street from the northeastern corner of the intersection of 10th Street and North A, (parcel # 235-053 -011), including the southeastern corner of the intersection of 10th Street and North Street, (parcel # 235-054-001) shall serve as the northwestern corner of the district. Continuing eastward to include the parcels on the northwestern and southwestern corners of the intersection of 10th Street and Central Avenue, (parcels # 235-055-006, 235-055-018, 235-055-011 and 235-056-007). Running southward along the west side of Central Avenue to include all parcels fronting onto Central Avenue (including parcel # 235-067-001 at 9th Street), continuing southward to the western most parcel at 6th Street and Central Avenue (parcel # 235-069-015).
- **Eastern Boundary:** Beginning at northeastern corner of the intersection of 10th Street and Central Avenue (parcels 235-171-021 and 235-171-022), running south to include all of the parcels fronting along the east side of Central Avenue to the easternmost parcel at the intersection of 6th Street and Central Avenue (parcel # 235 -163-015).

District Boundary Rationale

The property uses within the general boundaries of the Downtown Tracy Community Benefit District are a mix of retail, commercial, entertainment, office, civic, and parking. Services and improvements provided by the District are primarily designed to provide special benefits to the retail, entertainment and commercial land uses and eventually including condo residential unit parcels once they are built within the boundaries of the District. The assessment methodology has been created to provide adequate funding for the varying special benefit needs of these various land uses.

DOWNTOWN TRACY CBD

May 22, 2014



NEW-CITY
America, Inc. Map created by NewCity America Inc.

Section 3

Downtown Tracy CBD Improvement and Activity Plan

Explanation of Special Benefit Services:

All of the improvements and activities detailed below are provided only to properties defined as being within the boundaries of the Downtown Tracy CBD, as they provide special benefits only to the owners of those individual parcels. None of these improvements or activities will be provided to properties outside the Downtown Tracy CBD boundaries. The assessments outlined in this Management District Plan only fund services directly benefiting the property owners in this special benefit district.

Subject to the City Council decision, the City will continue to provide services from the general fund to the benefitting parcels, which will include public safety, street tree trimming, street sweeping, trash collection of public refuse containers, street repair, emergency services, fire protection, etc. The frequency of these general benefits may change from year to year based upon budget constraints. However, City general benefits will not be withdrawn from the Downtown Tracy CBD unless they are withdrawn by a proportional amount City wide. The CBD funded special benefits cannot by law replace City funded general benefits, but instead provide special benefits to parcel owners over and above the general benefits provided by the City of Tracy.

These CBD special benefit services shall support increased commerce, greater safety, support business attraction and retention, attract new residents, retain and increase commercial and residential property rentals, enhance cleanliness in the CBD, improve district identity, and promote specialized beautification for the individual parcel owners within the entire District.

The total improvement and activity plan budget for 2014-15, which is funded entirely by property assessments within the CBD boundaries, is projected to be \$ 148,064.00.

Improvements, Activities and Services of the Downtown Tracy CBD Plan:

There are four basic categories of special benefit services that will be funded by the Downtown Tracy Community Benefit Improvement District. All of these services will confer a special benefit to the individual parcels within the Downtown Tracy Community Benefit District. The categories of special benefits are as follows:

1. *District Identity*
2. *Sidewalk Operations, Beautification*
3. *Administration and Corporate Operations*
4. *Contingency/Parking Lot Maintenance*

Demands for prioritization of one special benefit need over another *within the same category* will occur year by year. Sidewalk cleaning may be a priority one year, however, beautification

programs may be a priority another year. Both of these services fall within the same special benefit category of Sidewalk Operations, Beautification.

Table 3 - A
First Year Downtown Tracy
Renewed CBD Service Budget
 (Figures are rounded off)

PROGRAM OR ACTIVITY FUNDED BY THE DOWNTOWN TRACY COMMUNITY BENEFIT DISTRICT	APPROXIMATE % OF FIRST YEAR ANNUAL BUDGET	ESTIMATED ANNUAL COSTS AND BASIS FOR FUNDING (PROPERTY VARIABLE)
District Identity, Special Events, Business Attraction programs	46%	\$ 68,000.00 (Approximately 100% building square footage assessments)
Sidewalk Operations, Beautification	20%	\$ 30,000.00 (Approximately 100% of linear frontage assessments)
Enhanced Residential Beautification and Evening Security (for future use when condos are built in the district)	0%	\$ 00.00 (future condo building square footage)
Administration/Corporate Operations	30%	\$ 44,000.00 (Approximately 90% of Lot assessments)
Contingency – Parking Lot Maintenance	4%	\$ 6,064.00 (Approximately 10% of lot size assessments)
TOTAL	100%	\$ 148,064.00

The following categories of special benefit services shall only be provided to parcels within the renewed and expanded Downtown Tracy CBD property owners.

DISTRICT IDENTITY SERVICES:

46%

This category of special benefit services provides property owners with the following services that enhance the positive identity and brand of Downtown Tracy. The function of these services is to create greater demand for property, office space, business and eventually residential tenancies throughout the CBD. These services are over and above current City general benefit services. The priorities listed within the category percentages budgeted for the special benefit services listed below may be prioritized differently each year as determined by the CBD management corporation Board of Directors. Such District Identity special benefit services include:

- Web site maintenance and updating
- Development of short videos of the district to attract new tenants to the CBD
- App development
- Management and coordination of special Events at Central Park and 10th Avenue

- Social media programs
- Holiday decorations installation and maintenance
- Branding of Downtown Tracy thru a PR firm so a positive image is supported
- Banner programs
- Public art displays
- Public space design and management
- Other marketing and promotion strategies and programs
- Management of district identity related services
- Signage

SIDEWALK OPERATIONS AND BEAUTIFICATION:

20%

This category of special benefit services provides property owners with the following services for the area predominantly from curb to property line. The function of these services is to provide a cleaner, more orderly, more attractive and dynamic Downtown and reduce problems within the public rights of way of the CBD area. These services are over and above current City general benefit services. The priorities listed within the category percentages budgeted for the special benefit services listed below may be prioritized differently each year as determined by the CBD management corporation Board of Directors. Such sidewalk operations and beautification special benefit services include:

- Regular sidewalk and gutter sweeping
- Regular sidewalk steam cleaning (over and above city services)
- Enhanced trash emptying (over and above city services)
- Flower and vegetation maintenance (over and above city services)
- Maintenance and planning of new outdoor public spaces
- Installation and maintenance of hanging plants, planting flowers throughout the district
- Other programs that provide special benefits in the sidewalks of the CBD

Possible Frequency of Sidewalk Operations Special Benefit Services:

Possible Scenario: 8,475 linear feet x \$ 3.50 per linear foot = \$ 29,662.00 in annual Sidewalk Operations funds (rounded to \$30,000 for the first year. A ratio of 80% for labor and 20% for supplies would equal around 25 - 33 hours per week, or an average of approximately 4 to 6 hours per day, Monday through Saturday. Contracted employees could provide cleaning services, provide directions to visitors, empty special benefit trash receptacles, paint out graffiti, and work with Tracy Police Department by reporting vagrancy or minor criminal complaints.

ADMINISTRATION AND CORPORATE OPERATIONS:

30%

These are overhead expenses to oversee the implementation of programs and activities in the CBD.

- Staff and administrative costs
- Directors' and Officers' insurance, general liability insurance
- Office related expenses, equipment, rent

- Financial reporting, accounting
- Legal work

CONTINGENCY/PARKING MAINTENANCE/CAPITAL IMPROVEMENTS

4%

The City advances 100% of the anticipated property assessments at the beginning of each fiscal year. However, there has also been 100% compliance in the County's collection of assessments from the properties in the District during the 4 year existence of the CBD. When the CBD was first established in 2010, it assumed the function of providing special benefit services as a successor to the simultaneously terminated parking district that had been in place between 2005 and 2010. The role of the parking district was to maintain the services of the publicly used and City owned parking lots spread throughout Downtown Tracy.

It has cost the CBD an average of \$4 – 6,000 year per year to slurry seal and maintain these free parking lots. *Therefore the contingency component of the CBD budget will serve as a reserve account to continue to maintain these parking lots, as needed through 2025.*

If the parking lots are sold by the City or it is found that the contingency has a surplus of funds, the Tracy City Center Association, as the Owners Association, may use those surplus funds for special projects and capital improvements of a special benefit nature, to enhance the Downtown properties and increase the special benefits to the assessed parcel owners.

Ten Year Operating Budget:

A projected ten year operating budget for the Downtown Tracy CBD is provided. The projections are based upon the following assumptions:

- Increases will be determined annually by the District Management Corporation and in no case shall increases exceed 5% per year.

The budget for specific programs may be reallocated within the categories by up to 10% of each budget category. The Tracy City Center Association Board may alter the budget based upon service needs and such changes shall be included in the Annual report and submitted to the City Manager's office and approved by the City Council.

Table 3 – B
Ten-Year Projection of Maximum Assessment for the
Renewed Downtown Tracy CBD

Projected Budget	FY 1	FY 2	FY 3	FY 4	FY 5
District Identity	\$68,000.00	\$71,400.00	\$74,970.00	\$78,718.50	\$82,654.43
Sidewalk Operations	\$30,000.00	\$31,500.00	\$33,075.00	\$34,728.75	\$36,465.19
Administration	\$44,000.00	\$46,200.00	\$48,510.00	\$50,935.50	\$53,482.28
Contingency	\$6,064.00	\$6,367.20	\$6,685.56	\$7,019.84	\$7,370.83
Total	\$148,064.00	\$155,467.20	\$163,240.56	\$171,402.59	\$179,972.73

Projected Budget	FY 6	FY 7	FY 8	FY 9	FY 10
District Identity	\$86,787.15	\$91,126.50	\$95,682.83	\$100,466.97	\$105,490.32
Sidewalk Operations	\$38,288.45	\$40,202.87	\$42,213.01	\$44,323.66	\$46,539.85
Administration	\$56,156.39	\$58,964.21	\$61,912.42	\$65,008.04	\$68,258.44
Contingency	\$7,739.37	\$8,126.34	\$8,532.66	\$8,959.29	\$9,407.25
Total	\$188,971.35	\$198,419.92	\$208,340.92	\$218,757.96	\$229,695.86

Notes:

- Assumes a 5% yearly increase on all budget items.
- Any accrued interest or delinquent payments received will be expended in the above categories.

Section 4

Assessment Methodology

The Downtown Tracy CBD is a property-based benefit assessment district being established pursuant to the Property Business Improvement District Act set forth in California Streets and Highway Code, section 36600, et seq. Due to the methods of special benefit assessments levied within a CBD, program costs are distributed among all CBD properties based on the proportional amount of special program benefits each property is expected to derive from the assessments collected.

The legislation refers to the concept of relative “benefit” received from CBD funded programs and activities versus amount of assessment paid. Only those properties expected to derive special benefits from CBD funded programs and activities may be assessed, and only in an amount proportional to the relative special benefits expected to be received.

The method used to determine special benefits derived by each identified property within a CBD begins with the selection of a suitable and tangible “basic benefit unit.” For property related services, such as those proposed in the Downtown Tracy CBD, the benefit unit may be measured in terms of linear feet of primary street frontage, or parcel size in square feet, or building size in square feet, or number of building floors, or proximity to major corridors in average linear feet, residential condo square footage, or any combination of these factors.

Based on the factors described above and the nature of the programs and activities proposed, an assessment formula is developed which is derived from a singular or composite “basic benefit unit” factor or factors. Within the assessment formula, different factors may be assigned different “weights” or percentage of values based on their relationship to programs/services to be funded.

All program and activity costs, including incidental costs, District administration and other program costs, and benefit zones are estimated. **Proposition 218 requires that indirect or general benefits not be incorporated into the assessment formula and levied on the District properties in property based assessment Districts; only direct or “special” benefits and costs may be considered.** Indirect or general benefit costs, if any, must be identified and, if quantifiable, must be calculated and factored out of the assessment costs to produce a “net” cost figure.

Based on the foregoing methodology, the value of the “basic net unit cost” can be computed by dividing the total amount of estimated net program costs by the total number of “basic benefit units.” The amount of assessment for each parcel is computed by multiplying the “basic net unit cost” times the number of “basic benefit units” per parcel. This is known as “spreading the assessment” or the “assessment spread” as all costs are allocated or “spread” proportionally amongst all properties within the CBD.

The methodology used to spread program costs varies from one CBD to another based on local geographic conditions, types of programs and activities proposed, and the size and development complexity of the CBD.

In the DTCBD, the program costs spreading variables include benefit zones, linear frontage, lot or parcel size, building square footage, and residential condo parcels as set forth below.

The following data represents the foundation of the assessments that will generate the revenue to fund the renewed Downtown Tracy Community Benefit District: (verified as of May 20th 2014);

<i>Building Square footage:</i>	<i>402,662 sq. feet</i>
<i>Lot size square footage:</i>	<i>570,840 sq. feet</i>
<i>Linear Frontage:</i>	<i>8,475 linear feet</i>
<i>Residential Condos</i>	<i>0</i>

Assessment District Revenue Generation in Fiscal Year 2014-15 from each property variable:

Linear Frontage – all sides of the parcel	\$ 29,662.50	20%
Building Square Footage:	\$ 68,452.54	46%
Lot Square Footage:	\$ 49,948.50	20%
Residential Condos:	<u>\$00</u>	<u>%</u>
Total:	\$ 148,063.54	100%

Costs:

Annual assessments are based upon an allocation of program costs by adding the property's assessable linear frontage; PLUS lot or parcel square footage; PLUS assessable building square footage. All three property variables will be used in the calculation of the annual assessment.

In the case of residential condominiums, only the actual building square footage is used to determine the "benefit unit" for annual assessments. The residential condo owners are assessed differently since they are, in essence, acquiring air rights with the condos, and linear frontage and lot size is not relevant to their parcels. This alternate assessment methodology is created to respond to the special needs of homeowners within this potentially ascending sector within the Downtown Tracy district.

The FY 2014-15 year annual assessments per property variable and Benefit Zone are as follows:

Linear Frontage costs: \$ 3.50 per linear foot/year

Building Square Footage costs: \$ 0.17 per square foot/year

Lot Size costs: \$ 0.0875 per square foot/year

Residential Condo costs: \$0.20 per square foot of parcel unit square foot. Residential condo owners will NOT be assessed for linear frontage or lot size, but rather only the actual building square footage of their residential condo. (Regardless of benefit zone within the district)

There are 68 parcels in the proposed CBD with 44 property owners.

**Renewed Downtown Tracy CBD Plan 2014-15
Generation of Revenues by Property Variables**

Variable	Annual Costs	Generates
Building	\$0.17	\$ 68,453.00
Lot	\$0.0875	\$ 49,949.00
Linear	\$3.50	\$ 29,662.00
Total Budget		\$ 148,064.00 – 100%

Program	Funded by Property Variable	Estimated Amount First Year - %
District Identity	Funded by 100% of the building square footage district wide*	\$ 68,000 – 46%
Sidewalk Operations and Beautification	Funded by 100% of the linear frontage assessments	\$ 30,000 – 20%
Administration	Funded by Lot Size assessments	\$ 44,000 – 30%
Contingency	Balance of Lot size assessments	\$ 6,064 – 4%
Total First Year Budget of Renewed CBD		\$ 148,064.00

Linear Frontage Defined:

Individual parcels will be assessed for all sides of the parcel fronting a sidewalk, since they are receiving services on all “frontage” sides. Linear front footage data was obtained from the County Assessor’s parcel maps and reviewed by staff at New City America.

Building Square Footage Defined:

Building square footage is defined as gross building square footage throughout the CBD. The percentage of building square footage that is dedicated to private or internal tenant parking needs may be deducted from the gross building square footage. Only parking structures that are open to the public and charge fees to the general public on a regular basis will have their building square footage assessed like any other commercial building. Apartment buildings within the boundaries of the CBD will be assessed as commercial buildings since there is a landlord/tenant relationship. Building square footage data was obtained from the County Assessor’s property records and reviewed by staff at New City America.

Lot Square Footage Defined:

Lot square footage is defined as the total amount of area within the borders of the parcel. The lot square footage of a parcel is defined on the County Assessor’s parcel maps and was confirmed by New City America.

Commercial Condominium Parcels Defined:

Ground floor commercial condominiums will be treated like independent “mini” commercial buildings and assessed based on their actual building area, the footprint of land they cover, and the amount of direct street frontage towards the exterior of the building.

Residential Condo/Single residential unit parcels

Condominium residential unit parcels built on commercially zoned parcels are assessed as a separate category. These condo residential units are not built on residentially zoned land, but rather on commercially zoned parcels within the boundaries of the Downtown Tracy CBD. There are currently no residential condo single residential unit parcels within the boundaries of the renewed Downtown Tracy CBD.

If developed, condo residential unit parcels will be assessed for their building square footage only at the rate of \$0.20 per square foot in the first year in which they have been given a parcel number. However, these condo assessments will be allocated within the same percentages of special benefit categories as the rest of the district. The residents will benefit from cleaning, sidewalk operation services, district identity services, beautification, public space development and management and the other services in the same proportion as non-residential parcels of the district.

Distinctions between residential tenants and residential condominium owners as it pertains to the CBD assessment methodology and the special benefits they will receive are as follows:

1. *Distinctions between residential condo owners and tenants are codified in sections 4000 – 6150 of the California Civil Code, known as the Davis-Stirling Act. This piece of legislation creates an entire set of rules and regulations on how residential condo owners have obligations based upon their “separate interests.” Renters have no such rights.*
2. *In the daily residential life of Downtown Tracy, residential condominium unit owners will have greater concern and are anticipated to be more forceful for ensuring quality of life issues such as noise levels, alcohol permits and placement of poor land uses, etc.*
3. *The state constitution requires that the CBD “confers special benefits to real property owners.” Residential condo owners are “real property owners” and have the right to vote in a Proposition 218 assessment ballot proceeding which creates the proposed CBD. Residential tenants do not have the right to vote in these proceedings.*
4. *Residential owners have legal rights and entitlements to have pets, which impact their neighborhood. Tenants have no such legal entitlements.*
5. *Residential tenants may be evicted due to a building sale or have their rents increased with no prior notice; residential condo owners do not face the same conditions or challenges.*

Calculation of Assessments:

The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the improvement, or the maintenance and operation expenses of an improvement, or for the cost of property service being provided. Per California Constitutional Amendment Article XIII D, Section 2(i), “Special Benefit” means a particular and distinct benefit over and above general benefits conferred on a real property located in the district or to the public at large.

No assessment will be imposed on any parcel that exceeds the reasonable cost of the proportional special benefits conferred upon that parcel. Only special benefits are assessable and these benefits must be separated from any general benefits.

Properties are assessed as defined on the San Joaquin County Assessor’s most current parcel maps. The preceding methodology is applied to the database of parcels within the CBD. The process for compiling the property database includes the following steps:

- A report was submitted to the City Manager’s office using the data obtained from the San Joaquin County Tax Assessors office.
- A list of properties to be included within the Downtown Tracy CBD is provided in Section 7.

The Calculation of Assessment for each parcel in the Downtown Tracy CBD is as follows:

Parcel Assessment

The annual assessment method for all parcels and ground floor commercial condominiums is:

$$\begin{aligned} & \text{Total Street Frontage X \$ 3.50 per linear foot} \\ & \quad + \\ & \text{Total Lot Square Footage X \$0.0875 per square foot} \\ & \quad + \\ & \text{Total Building Square footage X \$0.17 per square foot} \end{aligned}$$

Equals

TOTAL PARCEL ASSESSMENT

Residential Condo Assessment:

The annual assessment method for a residential condo will be:

$$\text{Total Residential Unit Building Square footage X \$0.20 per Square Foot}$$

Equals

TOTAL RESIDENTIAL CONDO UNIT ASSESSMENT

Public and Tax exempt parcel assessments:

In addition, tax exempt, non-profit and other public or government owned properties are not exempt from being assessed and if special benefit is determined to be conferred upon government owned properties, then those properties must be assessed in proportion to the special benefits conferred in a manner similar to privately owned property assessments.

Future Development:

As a result of continued new development, the Downtown Tracy CBD will experience the addition or subtraction of assessable commercial buildings or the conversion of empty parcels into new commercial and residential buildings and units. The Management District Plan assessment methodology will accommodate any and all changes anticipated within the term of the CBD, with annual adjustments being submitted to the City as these assessment formula and property variable alterations occur.

In future years, the assessments for the special benefits bestowed upon the benefitting CBD parcels may change in accordance with the assessment methodology formula listed in this Management District Plan and the Engineer’s Report. Any proposed increase in the assessment formula listed in this Plan would have to be approved through a Proposition 218 mail ballot procedure.

Budget Adjustments

Annual budget surpluses, if any, will be rolled into the following year's budget.

Benefit Analysis, Special vs. General Benefits:

As stipulated by Proposition 218, assessment District programs and activities confer a combination of general and special benefits to properties, but the only program benefits that can be assessed are those that provide special benefit to the assessed properties. For the purposes of this analysis, a "general benefit" is hereby defined as: "A benefit to properties in the area and in the surrounding community or benefit to the public in general resulting from the improvement, activity, or service to be provided by the assessment levied". "Special benefit" as defined by the California State Constitution means a distinct benefit over and above general benefits conferred on real property located in the District or to the public at large. Services, programs and improvements provided by the CBD are primarily designed to provide special benefits to identified commercial parcels and live-work condominium parcels within the District boundaries.

Existing City of Tracy general benefit services will remain and are not replaced or duplicated by CBD services. The purpose of this Renewed Downtown Tracy CBD is to fund supplemental programs, improvements and services within the CBD boundaries which are above and beyond what is being currently funded from normal tax supported methods or other funding sources.

These special services, programs and improvements are designed to enhance the commercial core uses, including increased tenancy and marketing of the properties in the CBD, and to improve the aesthetic appearance of areas adjacent to each identified parcel. All benefits derived from the assessments levied on parcels within the CBD are for services, programs and improvements directly benefiting each individual parcel within this area, and support increased cleanliness, commerce, business attraction and retention, increased property rental income and improved District identity. No CBD funded services, activities or programs will be provided beyond the CBD boundaries.

While every attempt is made to provide CBD services and programs to confer benefits only to those identified assessed parcels within the CBD, the California State Constitution was amended via Proposition 218 to stipulate that general benefits exist, either by design or unintentional, in all assessment districts, and that a portion of the program costs must be considered attributable to general benefits and assigned a value. General benefits cannot be funded by assessment revenues. General benefits might be conferred on parcels within the District, or "spillover" onto parcels surrounding the District, or to the public at large who might be passing through the District with no intention of transacting business within the District or having any interest in the District itself.

Conventional assessment engineering experience has found that general benefits within a given district tend to range from 2-5% of the total costs. There are three methods that have been used by the Assessment Engineer for determining general and special benefit ratios within assessment districts:

- (1) The parcel by parcel allocation method
- (2) The program/activity line item allocation method, and
- (3) The composite district overlay determinant method.

Since the enactment of Proposition 218, Method #3 (composite district overlay) has been the method chosen by a majority of the CBDs or PBIDs in California for which the Assessment Engineer has provided assessment engineering services. This method involves a composite of computing the value of two distinct types of general benefit – benefit to the public at large within the District, and benefit to parcels outside the District. This composite district overlay method will be used for the Downtown Tracy District CBD.

Separate General Benefits from Special Benefits and Related Costs (Prop 218):

Total costs are estimated at \$ 148,064 (see Table below). General benefits are factored at 3% of total (see Finding 2 on page 6 of the Assessment Engineer’s report) with special benefits set at 97%. Prop 218 limits the levy of property assessments to costs attributed to special benefits only. The 3% general benefit cost is computed to be \$ 4,579 with a resultant 97% special benefit limit computed at \$ 152,643. This is the maximum amount of revenue that can be derived from property assessments from the subject CBD. The total amount of revenue proposed to be derived from CBD assessments and general benefits for Year 1 is \$ 152,643.

Total Year 1 – 2015 Special + General Benefit Revenue

Service	YR 1 - 2015 Assessment Allocation	YR 1 – FY2015 Non-Assessment Allocation	YR 1 - 2014 Total Allocation	% of Total
District Identity	\$68,000	\$2,103	\$70,103	46%
Sidewalk Operations	\$ 30,000	\$ 928	\$ 30,928	20%
Administration	\$ 44,000	\$ 1,361	\$ 45,361	30%
Contingency	\$ 6,064	\$ 187	\$ 6,251	4%
Total	\$ 148,064	\$ 4,579.00	\$ 152,643.00	100%

All program costs associated with general benefits will be derived from sources or credits *other* than CBD assessments. Other revenue sources of at least \$4,579 can be derived from special events, grants, or volunteer hours to satisfy the general benefit cost of 3% of the computed total CBD cost of \$152,643 based on the Table above.

Time and Manner for Collecting Assessments:

As provided by the California Streets and Highway Code, the CBD assessments will appear as a separate line item on annual property tax bills prepared by the County of San Joaquin.

Maximum Assessment Annual Cap:

The Downtown Tracy CBD budget and assessments may be subject to annual increases which may be determined by the Owners’ Association/District Management Corporation and will vary between 0% and 5% annually.

Changes in land use, development of empty parcels, conversion of tax exempt to profitable land uses, demolition of existing buildings, and creation of new parcels through new building or residential condo development may alter the budget from year to year based upon the changes in the building square footage of individual parcels. Since linear frontage and lot size normally are not altered in the development of a site, the only changes realized in the CBD will be through the building square footage. In addition, changes in the budget may occur due to the conversion of single parcels to multiple parcels due to the construction of residential or commercial condominiums.

The CBD District Management Corporation may request the increase in assessments annually, but cannot exceed 5% from the previous year’s assessment amounts.

The following projections illustrate a potential 5% maximum annual increase.

Maximum Assessments by Property Variable, Ten-Year Period Commencing FY 2014-15

Projected Assessment	FY1	FY2	FY3	FY4	FY5
Linear Frontage	\$ 3.5000	\$ 3.6750	\$ 3.8588	\$ 4.0517	\$ 4.2543
Building Sq. Ft.	\$ 0.1700	\$ 0.1785	\$ 0.1874	\$ 0.1968	\$ 0.2066
Lot Square Footage	\$ 0.0875	\$ 0.0919	\$ 0.0965	\$ 0.1013	\$ 0.1064
Condo Bldg. Sq. Ft.	\$ 0.2000	\$ 0.2100	\$ 0.2205	\$ 0.2315	\$ 0.2431

Projected Assessment	FY6	FY7	FY8	FY9	FY10
Linear Frontage	\$ 4.4670	\$ 4.6903	\$ 4.9249	\$ 5.1711	\$ 5.4296
Building Sq. Ft.	\$ 0.2170	\$ 0.2278	\$ 0.2392	\$ 0.2512	\$ 0.2637
Lot Square Footage	\$ 0.1117	\$ 0.1173	\$ 0.1231	\$ 0.1293	\$ 0.1357
Condo Bldg. Sq. Ft.	\$ 0.2553	\$ 0.2680	\$ 0.2814	\$ 0.2955	\$ 0.3103

Budget Adjustments

Annual budget surpluses, if any, will be rolled into the following year’s budget. Assessments will be set annually, within the constraints of the CPI or land use changes. Revenues from any delinquent accounts may be expended in the year they are received.

CBD Renewal

If the CBD renews and money is left over from the previous term, the balance of remaining funds will be rolled over into the renewed district. However, the rolled over funds may only be

used within the boundaries of the old district. Funds collected from the previous CBD term cannot be expended for activities, services, or improvements in the expanded area but may be used to finish Steering activities. If the District is not renewed, any remaining funds will be returned to property owners in the proportion by what each property owner paid.

Assessment of Possessory Interests

The Downtown Tracy CBD Plan provides for the levy of assessments for the purpose of providing improvements and promoting activities that benefit property owners and business owners within the District. These assessments are not taxes for the general benefit of the city, but are assessments for the improvements and activities that confer special benefits upon owners of interest in real property for which the improvement and activities are provided.

The assessments are levied on the basis of the estimated benefit to the real property within the property and business improvement district. Owners of “possessory interest” in real property within the district are owners of real property and benefit from the proposed improvements and activities. Because assessments are levied based on estimated benefit, owners of possessory interest are required to pay their fair share of assessments.

Possessory interest tax is collected by San Joaquin County as per California Revenue and Taxation(R&T) Code sections 61, 107-107.9, 480.6 and Property Tax Rules 20, 21-22 and 27-28, only in those instances where an underlying property owner is not paying real property taxes. Likewise, as it relates to owners of possessory interests, the assessment for the proposed district shall be levied on these owners only where no underlying assessment is levied. Therefore, fair share shall be determined on the same basis as the assessment calculation for all other owners.

All possessory interest owners (except condominium owners) shall be assessed based on the total for all assessment variables, including parcel frontage, lot square footage and building square footage, which is equal to the assessment that would be levied on the underlying property owner. This assessment represents the benefit from the proposed activities and improvements.

The assessment shall be collected at the same time and in the same manner as the possessory interest tax paid to the County of San Joaquin. These assessments shall provide for the same lien priority and penalties for delinquent payment as is provided for the possessory interest tax.

The “property owner” of the possessory interest shall be any person shown as the owner of land on the last equalized possessory interest assessment roll or otherwise known to be the owner of land by the City Council. The City Council has no obligation to obtain other information as to the ownership of the interest, and its determination of ownership shall be final and conclusive for the purposes of the district.

**Government Owned Parcels in the Downtown Tracy
Community and Benefit Improvement District CBD**

APN	Legal Owner	Site #	Site Street	Annual Assessment	Percent
235 056 15	City of Tracy	15	W 9th St	\$2,060.88	1.39%
235 067 01	City of Tracy	835	N Central Ave	\$3,386.41	2.29%
235 067 02	City of Tracy	885	N Central Ave	\$2,707.51	1.83%
235 068 06	City of Tracy	729	N Central Ave	\$3,166.92	2.14%
235 068 09	City of Tracy	25	W 7th St	\$391.95	0.26%
235 068 17	City of Tracy	713	N Central Ave	\$6,454.66	4.36%
235 150 28	City of Tracy	50	E Sixth St	\$6,190.97	4.18%
TOTAL				\$24,359.30	16.45%

Section 5

District Rules and Regulations and Governance

Disestablishment:

The California Streets and Highway Code provides for the disestablishment of the CBD pursuant to an annual review process. Each year that the Downtown Tracy CBD is in existence, there will be a 30-day period during which the property owners will have the opportunity to request disestablishment of the district. This 30-day period begins each year on the anniversary date that the district was first established by the City Council. Within that 30-day period, if a written petition is submitted by owners of real property who together pay 30% or more of the assessments levied, disestablishment of the CBD must be considered. The City Council will hold a public hearing prior to making a final decision whether to disestablish the CBD.

Upon the termination of the CBD, any remaining revenues shall be transferred to the renewed District, if one is established, pursuant to Streets and Highways Code Section 36660(b). Unexpended surplus funds will be returned to property owners based upon each parcel's percentage contribution to the previous fiscal year's assessments if the District is not renewed.

Management Corporation:

The management structure of the Renewed CBD will be the existing non-profit corporation entitled the Tracy Civic Center Association (TCCA) that currently is under contract with the City of Tracy for the existing CBD. The TCCA serves in the capacity of the Owners Association set forth in section 36614.5 of the California Streets and Highways Code.¹

The TCCA will continue to act in the capacity of the Owners Association and its Board shall manage the day to day operations of the Renewed CBD.

There are no specific rules and regulations prescribed for the proposed Downtown Tracy District Management Corporation except that it will adhere to the open meeting provisions of the Ralph M. Brown Act and the Public Records Act and will be open and transparent to the CBD assesses and the public at large as required by law.

Pursuant to the City of Tracy CBD Ordinance and the California Streets and Highway Code, the District Management Corporation will review District budgets and policies annually within the limitations of the Management District Plan. The Management Corporation will file Annual

¹ Section 36614.5 of the Streets and Highway Code states:

"The "Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement activities and improvements specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose."

Reports with the City of Tracy and will oversee the day-to-day implementation of services as defined in the Management District Plan.

Assessment Engineer's Report

New City America, Inc. has contracted with Ed Henning and Associates to compile the required Engineer's Report under the guidelines of Proposition 218, Article XIII D of the California State Constitution.

In preparing the Engineer's Report for the Downtown Tracy CBD Management District Plan, the engineer concluded that the special benefit to each parcel in the various benefit zones was found to be proportional to the property variable and their apportionment.

The Engineer's Report for the CBD is provided in the Appendix.

Bonds:

The District will not issue any bonds related to any program.

Section 6 Implementation Timetable

District Formation:

The District formation and modification requires a submission of petitions from property owners representing 50% plus one of the total assessments.

Once the City verifies the petitions totaling a minimum of 50% plus one of the weighted property owners, or a combined \$74,033.00 in assessment contributions to the renewed CBD, the City Council may adopt a Resolution of Intention, and mail out ballots to all affected property owners. The City will then hold a public hearing and tabulate the mail ballots. The Downtown Tracy Community and Benefit Improvement District will be formed if the weighted majority of all returned mail ballots support the CBD formation, and if the City Council adopts a resolution of formation to levy the assessments on the benefiting parcels. We anticipate that this process will be completed by the end of November 2014.

Section 7

Assessment Roll of Properties Included

APN	Annual Assessment		
235 053 08	\$5,328.83	235 067 01	\$3,386.41
235 053 11	\$6,795.59	235 067 02	\$2,707.51
235 054 01	\$2,176.78	235 067 03	\$2,896.79
235 054 02	\$2,375.38	235 068 06	\$3,166.92
235 054 03	\$1,191.23	235 068 09	\$391.95
235 054 04	\$1,371.62	235 068 17	\$6,454.66
235 054 05	\$1,315.18	235 069 08	\$1,115.95
235 054 06	\$4,653.36	235 069 09	\$303.98
235 055 06	\$1,538.72	235 069 10	\$636.13
235 055 09	\$1,462.50	235 069 11	\$322.00
235 055 10	\$1,281.11	235 069 12	\$322.00
235 055 11	\$1,681.25	235 069 13	\$309.75
235 055 12	\$1,735.94	235 069 15	\$624.75
235 055 13	\$4,671.92	235 150 28	\$6,190.97
235 055 14	\$1,848.63	235 161 01	\$3,326.93
235 055 15	\$3,380.88	235 161 19	\$918.75
235 055 16	\$3,227.40	235 161 20	\$677.51
235 055 17	\$3,036.63	235 162 01	\$3,037.01
235 055 18	\$418.99	235 162 08	\$1,481.55
235 056 01	\$4,042.21	235 162 09	\$2,648.75
235 056 02	\$2,603.95	235 163 01	\$1,728.84
235 056 03	\$1,267.73	235 163 15	\$2,002.56
235 056 04	\$1,620.34	235 163 16	\$848.33
235 056 05	\$2,030.16	235 163 17	\$634.30
235 056 06	\$1,565.94	235 163 18	\$3,196.43
235 056 07	\$2,224.90	235 163 19	\$3,671.18
235 056 08	\$1,858.40	235 171 21	\$3,585.31
235 056 09	\$1,671.68	235 171 22	\$1,801.13
235 056 10	\$1,009.56	235 171 28	\$1,655.33
235 056 11	\$1,298.56	235 171 29	\$1,462.50
235 056 12	\$861.41	235 172 01	\$3,580.90
235 056 13	\$456.55	235 172 16	\$4,523.53
235 056 14	\$766.30	235 172 17	\$2,469.33
235 056 15	\$2,060.88	235 172 18	\$1,153.19

Exhibit B

Certificate of Liability Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/1/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Calender-Robinson Company, Inc. FB0267063 300 Montgomery St., Suite 888 San Francisco CA 94104		CONTACT NAME: Katherine Berkman PHONE (A/C, No, Ext): (415) 978-3800 E-MAIL ADDRESS: kberkman@calrob.com FAX (A/C, No): (415) 978-3825	
INSURED Tracy City Center Association 1025 Central Avenue Tracy CA 95376		INSURER(S) AFFORDING COVERAGE INSURER A: Great American Insurance Group INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** CL1510114086 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSP WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		GLP1437926-05	10/15/2015	10/15/2016	EACH OCCURRENCE	\$ 1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
						MED EXP (Any one person)	\$ 5,000
						PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS - COMP/OP AGG	\$ 2,000,000
							\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident)	\$
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
							\$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$					EACH OCCURRENCE	\$
						AGGREGATE	\$
							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A			PER STATUTE	OTH-ER
						E.L. EACH ACCIDENT	\$
						E.L. DISEASE - EA EMPLOYEE	\$
						E.L. DISEASE - POLICY LIMIT	\$
A	Liquor Liability		GLP 1437926-05	10/15/2015	10/15/2016	Each common cause	\$ 1,000,000
						Aggregate	\$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Certificate holder is included as additional insured as per the attached endorsement

CERTIFICATE HOLDER

City of Tracy
 333 Civic Center Plaza
 Tracy, CA 95376

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

POLICY NUMBER: GLP 1437926-05

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

All entities named on the attached certificate of insurance

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your operations or premises owned by or rented to you.

THE INSURANCE provided under this endorsement is primary and non-contributory to any other valid & collectible insurance carried by the additional insured entity.

RESOLUTION 2016 - _____

APPROVING THE DOWNTOWN TRACY COMMUNITY BENEFIT DISTRICT MANAGEMENT DISTRICT PLAN AND APPROVING A DISBURSEMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND THE TRACY CITY CENTER ASSOCIATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

WHEREAS, The Property and Business Improvement District Law of 1994 (California Streets and Highways Code Sections 36600 et seq.) authorizes cities to establish property and business improvement districts for the purpose of levying assessments on real property for certain purposes, and

WHEREAS, On December 15, 2009, City Council approved the creation of the Downtown Tracy Community Benefit District (CBD) pursuant to the aforementioned Property and Business Improvement Area Law of 1994, and

WHEREAS, On December 15, 2009, City Council approved the term of the CBD as stated in the Management District Plan on file with the City Clerk to commence on January 1, 2011 and terminate on December 31, 2015, and

WHEREAS, On July 6, 2010, City Council amended the term of the District Management Plan to begin operations as of July 1, 2010 and terminating operations on June 30, 2015, and

WHEREAS, On July 6, 2010, City Council approved a Disbursement Agreement between the City of Tracy and the Tracy City Center Association (the "Association") which outlined how the property assessment funds will be transferred from the City to the Tracy City Center Association, and

WHEREAS, During a public hearing on November 18, 2014, a majority protest did not exist and the City Council adopted Resolution 2014-191, the Resolution of Formation, renewing the CBD for a new 10-year term, and

WHEREAS, A new Management District Plan, corresponding with the new 10-year term, is necessary to describe updated district boundaries, district budget, improvement and activity plan, assessment methodology, district rules and regulations, the implementation timetable, and the full assessment roll of included properties, and

WHEREAS, A new Disbursement Agreement, corresponding with the new 10-year term, between the City of Tracy and the Association is necessary to outline the terms of how the assessment funds will be transferred from the City to the Association and how the Association must operate in using any assessment disbursements from the City to implement and administer the Management District Plan, and

NOW THEREFORE BE IT RESOLVED, That City Council approves the Downtown Tracy Community Benefit District Management District Plan and also approves a Disbursement Agreement by and between the City of Tracy and the Tracy City Center Association, and authorizes the Mayor to execute the agreement on behalf of the City.

The foregoing Resolution 2016-_____ was passed and adopted by the Tracy City Council on the 19th day of January, 2016, by the following votes:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.H

REQUEST

AWARD A CONSTRUCTION CONTRACT TO MOZINGO CONSTRUCTION OF OAKDALE, CALIFORNIA, IN THE AMOUNT OF \$4,075,750 FOR THE LARCH ROAD RECONSTRUCTION AND HANSEN ROAD WASTEWATER COLLECTION SYSTEM UPGRADE, CIPs 73125, 74097, 74106 & 74113; AUTHORIZE AN APPROPRIATION OF \$800,000 FROM THE WASTEWATER ENTERPRISE FUND 523 TO CIP 74097; AUTHORIZE THE MAYOR TO EXECUTE THE CONSTRUCTION CONTRACT; AUTHORIZE THE CITY MANAGER TO APPROVE LEE & RO PROFESSIONAL SERVICES AGREEMENT TO PROVIDE DESIGN SUPPORT DURING CONSTRUCTION IN AN AMOUNT NOT TO EXCEED \$40,000

EXECUTIVE SUMMARY

This project is a combination of two smaller projects, the Larch Road Reconstruction and the Hansen Road Wastewater Collection System Upgrade. The scope of work includes full reconstruction and installation of a 24-inch sewer force main in a three-quarter mile segment of Larch Road, along with upgrades to the Hansen Lift Station. The Project will provide much needed road improvements and an approximate doubling of the current sewage pumping capacity within the collection subsystem. The need for the 24-inch sewer force main was identified in the Wastewater System Master Plan.

DISCUSSION

This project is a combination of two smaller projects bid together for economies of scale and the fact that the projects are in close proximity to each other. The Larch Road Reconstruction portion of the project involves full reconstruction of the road between Tracy Boulevard and the Wastewater Treatment Plant. This section, approximately three-quarters of a mile of Larch Road, is in very poor condition due to heavy truck traffic.

The Hansen Road Wastewater Collection System portion of the project consists of a gravity main beginning at Hansen Road near Schulte Road, discharging to the Hansen Pump Station (near the intersection of Larch Road and Corral Hollow Road), and a force main discharging into the Larch Road Pump Station (near the intersection of Larch Road and Tracy Boulevard). The force main was identified in the Wastewater System Master Plan, but more specifically the system requires upgrading to accommodate additional flows from ongoing development to the west. The scope of work for the Hansen Road Wastewater Collection System Upgrade includes:

- Reconfiguration of piping to change the operation of the Hansen and Larch pump stations from series to parallel operation.
- Replacement of an existing 12 inch force main with a 24 inch diameter force main between the Larch Road Pump Station and the Wastewater Treatment Plant.
- Installation of higher flow pumps, rehabilitation of the wet-well and miscellaneous site improvements at the Hansen Lift Station.

The road and force main project plans and specifications were prepared by City engineering staff. The Hansen pump station plans and specifications were prepared by Lee and Ro Inc. The project was advertised for competitive bids on October 23 and October 30, 2015. The following six bids were received and publicly opened on December 7, 2015.

Contractor	Bid Amount
• Mazingo Construction, Oakdale	\$4,075,750
• Mountain Cascade, Livermore	\$4,285,598
• Knife River Construction, Stockton	\$4,494,250
• Preston Pipelines, Milpitas	\$4,817,075
• Cratus Inc., San Francisco	\$4,850,250
• Teichert Construction, Stockton	\$5,503,145

Mazingo Construction of Oakdale, California, is the lowest monetary responsible bidder. Bid analysis indicates that the bid is responsive. The contractor has good references and has completed similar projects for the City and other agencies.

Staff recommends that this contract be awarded to the low bidder, Mazingo Construction of Oakdale, California, for their bid amount of \$4,075,750.

Staff also recommends approval of a Professional Services Agreement (PSA) to Lee and Ro Inc. for design support services during construction of the Hansen Road Pump Station not to exceed \$40,000.

The anticipated cost of construction of this project, if awarded to Mazingo Construction of Oakdale, California, is estimated as follows:

Contractor's Bid for Construction	\$4,075,750
Design Support during Construction	\$ 40,000
Inspection and Construction Management (5%)	\$ 204,000
Contingency (15%)	\$ 600,000
Total Construction Cost	\$4,919,750
Total Project Cost is as follows:	
Project Management	\$ 350,000
Total Project Cost	\$5,269,750
Available Budget	\$4,470,100
Requested Additions Funds (Wastewater Enterprise)	<u>\$ 800,000</u>
	\$5,270,100

Since Larch Road Reconstruction is scheduled for 2015/2016 and funding for Hansen Road Wastewater Collection System Upgrade is projected for 2016/2017, an additional \$800,000 is requested to be appropriated from the Wastewater Enterprise Fund 523 to complete the project and avoid delays to the Larch Road Reconstruction.

Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by the City Council. The estimated construction contingency amount for this project is \$600,000.

It is anticipated that construction will commence by March 2016, with completion expected in December 2016.

STRATEGIC PLAN

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

FISCAL IMPACT

CIPs 73125, 74097, 74106 and 74113, are approved CIP projects with \$4,470,100 available. An additional \$800,000 is requested to be appropriated from the Wastewater Enterprise Fund 523 to complete the project.

RECOMMENDATION

Staff recommends that City Council, by resolution, award a construction contract to Mozingo Construction of Oakdale, California, in the amount of \$4,075,750 for the Larch Road Reconstruction and Hansen Road Wastewater Collection System Upgrade, CIPs 73125, 74097, 74106, 74113, authorize an appropriation of \$800,000 from the Wastewater Fund 523, to CIP 74097, authorize the Mayor to execute the construction contract, authorize the City Manager to approve a Professional Services Agreement to Lee and Ro to provide design support during construction in an amount not to exceed \$40,000.

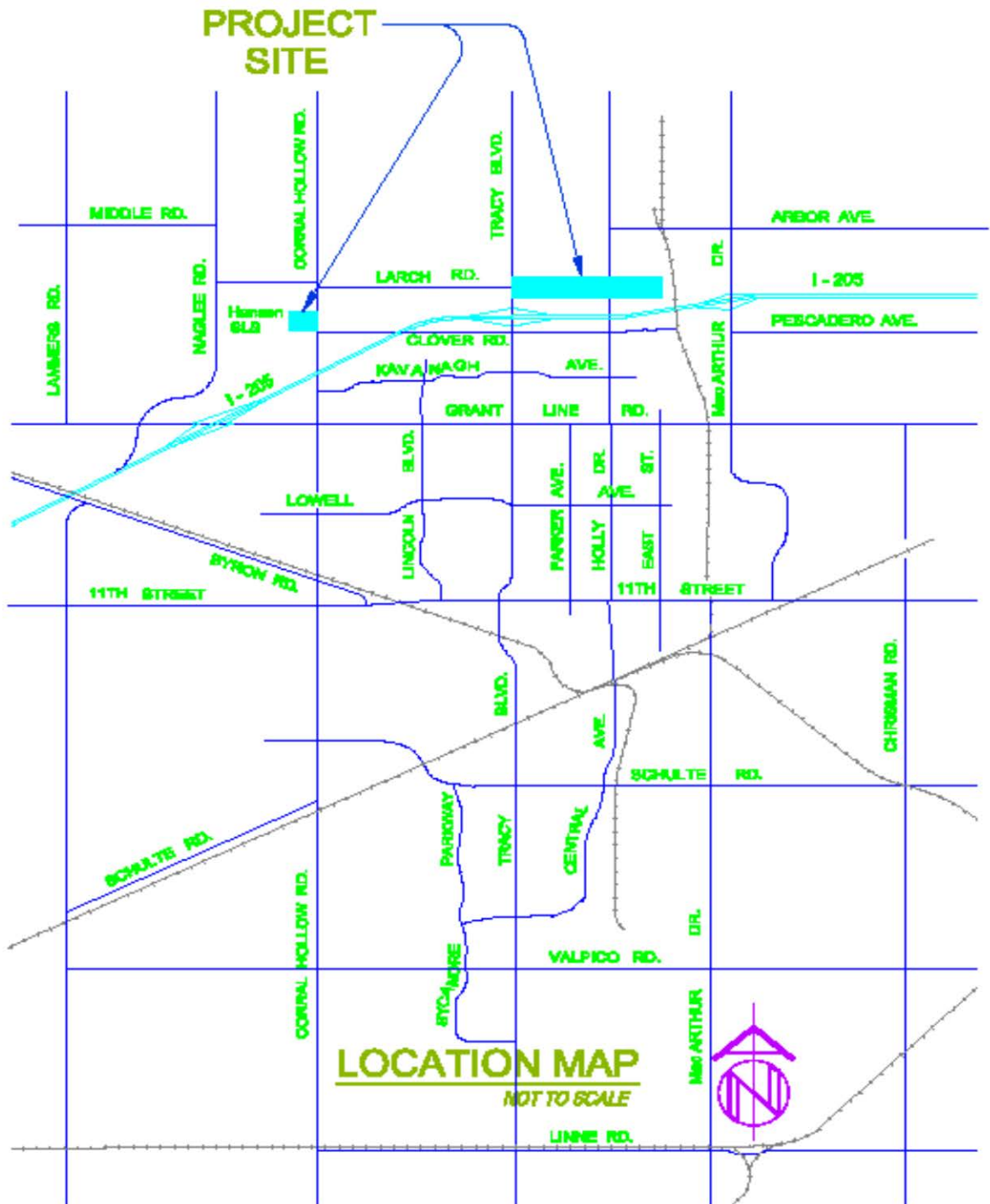
Prepared by: Binh Nguyen, Senior Civil Engineer
Zabih Zaca, Senior Civil Engineer

Reviewed by: Robert Armijo, City Engineer
Andrew Malik, Director of Development Services
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENT

A - Location Map
B - Lee & Ro Agreement



City of Tracy
PROFESSIONAL SERVICES AGREEMENT
FOR DESIGN SERVICES DURING CONSTRUCTION OF HANSEN ROAD WASTEWATER
COLLECTION SYSTEM UPGRADE, CIP 74097, 74106 & 74113

This Professional Services Agreement (Agreement) is entered into between the City of Tracy, a municipal corporation (City), and LEE & RO, Inc., a California corporation (Consultant).

Recitals

- A.** Consultant prepared engineering construction documents and calculations for the Hansen Road Wastewater Collection System Upgrade CIP 74097, 74106, 74113 under Task Order 1 (pursuant to Resolution No. 2011- 058 dated March 15, 2011) of Master Professional Services Agreement (MPSA) dated March 18, 2008.
- B.** Since the MPSA has expired, another Task Order cannot be issued to provide needed design support during construction. It is in the City's best interest to waive RFP's and enter into a Professional Services Agreement (PSA) with Consultant to provide design support services during construction.
- C.** On December 7, 2015, City requested a proposal from Consultant to provide Design Support Services during construction for the project. On December 17, 2015, Consultant submitted its proposal to the City. After negotiations between the City and Consultant, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

Now therefore, the parties mutually agree as follows:

- 1. Scope of Services.** Consultant shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: James Pollock. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use any subcontractors or subconsultants, without City's prior written consent.
- 2. Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.
- 3. Compensation.**
 - 3.1 General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B," attached and incorporated by reference. Consultant's fee for this Agreement is Not to Exceed \$40,000. Consultant's billing rates shall cover all costs and expenses for

Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without the City's prior written approval.

3.2 Invoices. Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.

3.3 Payment. Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.

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

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

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 5 relating to insurance.

5. Insurance.

5.1 General. Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.

5.2 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$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") "claims made" coverage shall be maintained in an amount not less than \$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 Professional Liability "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.

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

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

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

5.7 Notice of Cancellation. Consultant shall notify the City if the policy is 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. Consultant shall immediately obtain a replacement policy.

5.8 Authorized Insurers. All insurance companies providing coverage to Consultant 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.

5.9 Insurance Certificate. Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

5.10 Substitute Certificates. No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.

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

6. Independent Contractor Status; Conflicts of Interest. Consultant is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Consultant is free to work for other entities while under contract with the City. Consultant, and its agents or employees, are not entitled to City benefits.

Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.

7. Termination. The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

8. Ownership of Work. All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

9. Miscellaneous.

9.1 Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

To City:

Binh Nguyen, Sr. Engineer
City of Tracy
Development Services
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

James Pollock, Sr. Engineer
LEE & RO, Inc.
8880 Cal Center Drive, Suite 120
Sacramento, CA 95826

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

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

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

9.4 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.

9.5 Assignment and Delegation. Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

9.6 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.

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

9.8 Business Entity Status. Contractor is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Contractor. City may void this Agreement if Contractor is a suspended corporation, limited liability company or limited partnership at the time it enters into this Contract, City may take steps to have this Agreement declared voidable.

9.9 Business License. Before the City signs this Agreement, Consultant shall obtain a City of Tracy Business License.

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

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

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

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

City of Tracy

By: Troy Brown
Title: City Manager
Date: _____

Approved by City Council on _____ by
Resolution No. 2016-_____.]

Attest:

Nora Pimentel, City Clerk

Approved as to form:

Daniel G. Sodergren, City Attorney

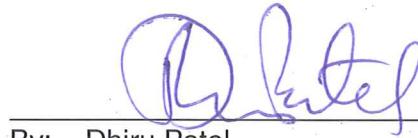
Consultant

Lee & Ro, Inc. a California corporation



By: Charles Ro
Title: Vice President
Date: 1/5/15

Federal Employer Tax ID No.95-3443396



By: Dhiru Patel
Title: President
Date: 1/5/15

Exhibits:

- A Scope of Services, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 5.)

EXHIBIT "A"
SCOPE OF SERVICES
December 17, 2015

TASK 1 – PROJECT MANAGEMENT

CONSULTANT will provide project management for the pump station portion of the project and will maintain communication with the City's Construction Manager and City staff throughout the project. Specific project management activities include preparing a detailed work plan, monitoring project budget and schedules, preparing monthly invoices and progress reports relating to the task order.

Total Estimated Fee for Task 1 Services = \$2,460

TASK 2 – PROGRESS MEETINGS

CONSULTANT will attend progress meeting as needed and requested by the City to discuss construction progress, problems, or other issues affecting completion of the Project. CONSULTANT will attend a maximum of fifteen (15) meetings in person or by phone.

Total Estimated Fee for Task 2 Services = \$11,823

TASK 3 – CHANGE ORDER REVIEW

CONSULTANT will assist the City's Construction Manager with review of contractor change order requests and assist in redesign efforts leading to change order preparation. A maximum of four (4) change orders are budgeted for this task. Cost estimates and negotiations to be conducted by Construction Manager.

Total Estimated Fee for Task 3 Services = \$3,474

TASK 4 – SUBMITTAL REVIEW

CONSULTANT will answer questions and review construction submittals prepared by the Contractor. A submittal-tracking log will be provided and coordinated with City's Construction Manager. Forty five (45) submittals and resubmittals are budgeted for this task.

Total Estimated Fee for Task 4 Services = \$13,674

TASK 5 – REQUEST FOR INFORMATION

CONSULTANT will review and respond to Contractor Requests for Information (RFIs) or clarification during construction, based on varying field conditions or contract documents/drawings. Issues will be resolved fairly, equitably, and expeditiously. A maximum of twenty (15) Requests for RFI are budgeted for this task.

Total Estimated Fee for Task 5 Services = \$4,705

TASK 6 – LARCH COORDINATION

CONSULTANT will conduct a hydraulic analysis of Larch Pump Station under the new force main alignment. A maximum of twenty four (24) hours are budgeted for this task.

Total Estimated Fee for Task 6 Services = \$3,864

FEE

CONSULTANT's "Not-to-Exceed" fee for completing the Design Support Services During Construction described above is \$40,000 as detailed in Exhibit A.

Total Estimated Fee all Services = \$40,000

COMPLETION OF THE SCOPE OF SERVICES.

CONSULTANT shall complete the services identified in this Exhibit "A" within 300 working days of receipt of authorization to proceed from the CITY.

PERSONNEL.

CONSULTANT shall assign the following person/persons to perform the tasks set forth in this Agreement.

Managing Engineer, E8, Tony Park
Principal Engineer, E6, Greg Debois
Senior Engineer E5, James Pollock
Engineer E3, Associate Engineer

EXHIBIT "B"

FEE SCHEDULE

The billing rate schedule for this Project is as depicted below:

Managing Engineer, E8 – Tony Park, Charles Ro	\$223/hour
Principal Engineer, E6, Greg Debois	\$178/hour
Senior Engineer E5, James Pollock	\$161/hour
Engineer E3, Associate Engineer	\$131/hour

RESOLUTION 2016-

AWARDING A CONSTRUCTION CONTRACT FOR LARCH ROAD RECONSTRUCTION AND HANSEN ROAD WASTEWATER COLLECTION SYSTEM UPGRADE, CIPs 73125, 74097, 74106 & 74113, AUTHORIZING THE MAYOR TO EXECUTE THE CONSTRUCTION CONTRACT, APPROVING A PROFESSIONAL SERVICE AGREEMENT TO PROVIDE DESIGN SUPPORT DURING CONSTRUCTION NOT TO EXCEED \$40,000, AUTHORIZING THE CITY MANAGER TO EXECUTE THE TASK ORDER, AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION OF \$800,000 FROM WASTEWATER FUND 523, TO CIP 74097

WHEREAS, This project consists of full reconstruction and installation of a 24-inch sewer force main in a three-quarter mile segment of Larch Road between Tracy Boulevard and the Wastewater Treatment Plant, along with upgrades to Hansen Lift Station, and

WHEREAS, Construction of this project will provide much needed road improvements and approximate doubling of current sewage pumping capacity within the collection subsystem, and

WHEREAS, The Hansen Road Lift Station design, improvement plans, and specifications were prepared by Lee and Ro Inc., of Sacramento, California, and

WHEREAS, Lee and Ro Inc. should be retained for continuity during construction, council finds that a waiver of RFP to procure design support services is in the City's best interest, and

WHEREAS, The project was advertised for competitive bids on October 23, 2015, and October 30, 2015, and

WHEREAS, The lowest monetary bid is Mozingo Construction of Oakdale, California, in the amount of \$4,075,750, and

WHEREAS, The bid is responsive and the bidder is responsible, has good references and has completed similar projects for City of Tracy and other public agencies, and

WHEREAS, The anticipated cost for construction of this project, if awarded to Mozingo Construction is estimated as follows:

Design Support During Construction	\$40,000
Construction Bid Amount	\$4,075,750
Contingency (~15%)	\$ 600,000
Construction Management & Inspection (~5%)	\$ 204,000
City Wide Management	\$ 350,000
Total Project Cost	\$5,269,750
Available Budget	\$5,270,100

WHEREAS, Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the amount approved by Council. The recommended contingency amount for this project is \$600,000;

WHEREAS, Larch Road Reconstruction is scheduled for 2015/2016 and additional funding for Hansen Road Wastewater Collection System Upgrade is projected for 2016/2017, an \$800,000 appropriation from the Wastewater Enterprise Fund 523 is needed to avoid delays to the project, and;

NOW, THEREFORE, BE IT RESOLVED, That City Council awards a construction contract to Mozingo Construction, of Oakdale, California, in the amount of \$4,075,750 for the Larch Road Reconstruction and Hansen Road Wastewater Collection System Upgrade CIPs 73125, 74097, 74106, 74113, authorizes an appropriation of \$800,000 from Wastewater Fund 523, to CIP 74097, authorizes the Mayor to execute the construction contract, authorizes the City Manager to approve a Professional Services Agreement to Lee and Ro Inc. in an amount not to exceed \$40,000.

* * * * *

The foregoing Resolution 2016-_____ was passed and adopted by the Tracy City Council on the 19th day of January, 2016, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.I

REQUEST

APPROVE THE FINAL SUBDIVISION MAP AND SUBDIVISION IMPROVEMENT AGREEMENT FOR PRIMROSE - PHASE 2, TRACT 3821, AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT, AUTHORIZE THE CITY CLERK TO FILE THE SUBDIVISION IMPROVEMENT AGREEMENT WITH THE SAN JOAQUIN COUNTY RECORDER, AND APPROVE THE STREET NAME CHANGE FROM “KAGEHIRO COURT” TO “AURORA ASTORGA DRIVE”

EXECUTIVE SUMMARY

City Council’s approval of the Final Subdivision Map will allow: 1) the applicant to record the Final Subdivision Map, and 2) City staff to issue building permits for the construction of residential houses. CalAtlantic, previously Standard Pacific Corporation (Subdivider), has signed the Subdivision Improvement Agreement (SIA) for construction of the subdivision improvements to serve 57 single family dwelling lots of Primrose – Phase 2, Tract 3821. As part of the approval of the Final Subdivision Map, staff requests that City Council approve the existing street name change from “Kagehiro Court” to “Aurora Astorga Drive” to match the proposed street name within the subdivision.

DISCUSSION

On August 20, 2013, City Council approved the Concept, Preliminary and Final Development Plan and the Vesting Tentative Subdivision Map (Tentative Map), to create 252 residential lots for single family dwelling units known as the “Kagehiro Phase 3 Subdivision”, located at the southeast corner of Corral Hollow Road and Kagehiro Drive. This subdivision is approximately 47.1 acres and is designated in the General Plan as LDR for low density residential development.

The Kagehiro Phase 3 Subdivision was subdivided into two parcels. The western parcel is approximately 23.85 acres. This parcel was re-subdivided and the first phase is called Primrose Phase 1, Tract 3772, comprised of 71 single family dwelling lots. The final map for Primrose Phase – 1, Tract 3772, was approved by the City Council on October 21, 2014.

The second phase which is called Primrose – Phase 2, Tract 3821, is composed of 57 single family dwelling units and will be situated on the remainder of the western parcel.

The Final Subdivision Map of Primrose – Phase 2, has been reviewed as to its substantial compliance with the design of the approved Vesting Tentative Subdivision Map. The Subdivider has executed the Subdivision Improvement Agreement for completion of the subdivision improvements.

The City’s Engineering Division has reviewed the Improvement Plans and all improvements required of Primrose – Phase 2, Tract 3821, are guaranteed as part of the Subdivision Improvement Agreement with security. The Subdivision Improvement

Agreement, Final Subdivision Map, and Improvement Plans are on file with the City Engineer and are available for review upon request.

Kagehiro Court is an existing street that is connected from Kagehiro Drive and it is approximately 100 feet in length. Kagehiro Court does not serve any residential lots and it was originally planned to become a court. The Tentative Map (that was approved by the City Council) showed Kagehiro Court to be extended to the south as a street connection from the Primrose – Phase 2 subdivision to Kagehiro Drive. In order to match the name of the street that is shown on the Final Subdivision Map of Primrose – Phase 2, Tract 3281, the street name “Kagehiro Court” should be changed to “Aurora Astorga Drive”.

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 impact to the General Fund; the Subdivider has paid the applicable engineering review fees which include the cost of processing the Final Subdivision Map and Subdivision Improvement Agreement.

STRATEGIC PLAN

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

RECOMMENDATION

Staff recommends that City Council approve the Final Subdivision Map for Primrose – Phase 2, Tract 3821, authorize the Mayor to execute the Subdivision Improvement Agreement, approve the street name change from “Kagehiro Court” to “Aurora Astorga Drive, and authorize the City Clerk to file the Agreement and the resolution approving the street name change with the San Joaquin County Recorder.

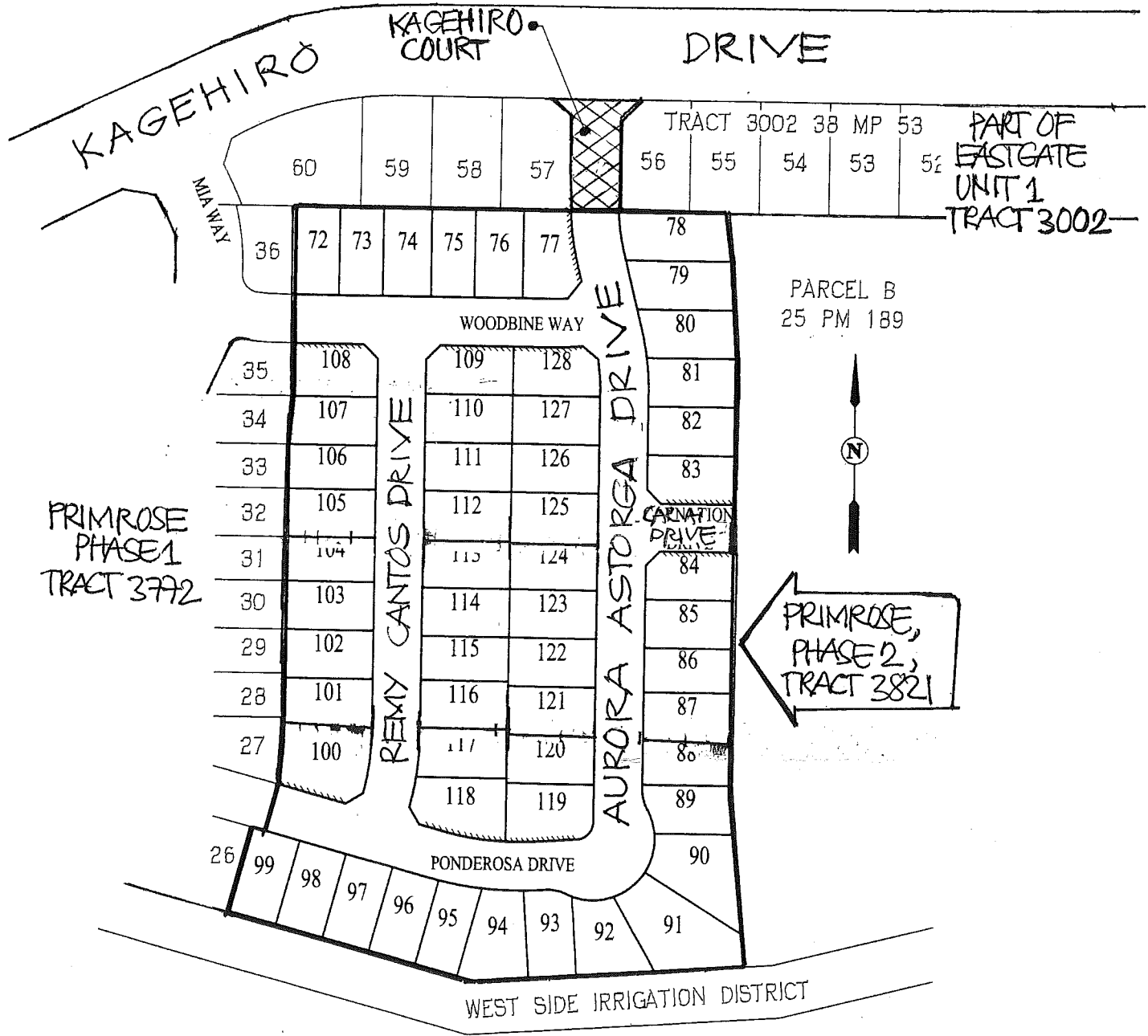
Prepared by: Criseldo Mina, Senior Civil Engineer

Reviewed by: Robert Armijo, City Engineer
Andrew Malik, Development Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

Attachment A - Vicinity Map

PRIMROSE, PHASE 2
TRACT #3821



LOCATION MAP
NOT TO SCALE

RESOLUTION 2016-_____

APPROVING THE FINAL SUBDIVISION MAP AND SUBDIVISION IMPROVEMENT AGREEMENT FOR PRIMROSE – PHASE 2, TRACT 3821, AUTHORIZING THE MAYOR TO EXECUTE THE SUBDIVISION IMPROVEMENT AGREEMENT, AND AUTHORIZING THE CITY CLERK TO FILE THE AGREEMENT WITH THE SAN JOAQUIN COUNTY RECORDER

WHEREAS, The Concept, Preliminary and Final Development Plan, and the Vesting Tentative Subdivision Map for Kagehiro Phase 3 Subdivision, a single-family residential development with a total of 252 single family dwelling lots, was approved by City Council on August 20, 2103, pursuant to Resolution 2013-134, and

WHEREAS, Kagehiro Phase 3 Subdivision was subdivided into two parcels and the western parcel is approximately 23.85 acres, and

WHEREAS, Primrose – Phase 2, Tract 3821, is the remaining residential development with 57 single family dwelling units which will be constructed within the western parcel, and

WHEREAS, CalAtlantic Homes, a Delaware corporation, has requested to construct public improvements to serve the proposed residential development, and

WHEREAS, The Subdivider has executed the Subdivision Improvement Agreement and posted security for construction of the subdivision improvements, and

WHEREAS, Upon completion of all the public improvements, the City will accept the public improvements for maintenance and will accept all offers of dedication of public right-of-way, and

WHEREAS, There will be no impact to the General Fund. The Developer has paid the applicable engineering review fees which include the cost of processing the Final Subdivision Map, Improvement Plans, and Subdivision Improvement Agreement;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the Final Subdivision Map for Primrose – Phase 2, Tract 3821, authorizes the Mayor to execute the Subdivision Improvement Agreement, and authorizes the City Clerk to file the Agreement with the San Joaquin County Recorder.

* * * * *

The foregoing Resolution was adopted by the City Council on the 19th day of January, 2016, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

January 19, 2016

AGENDA ITEM 1.J

REQUEST

AUTHORIZATION TO ESTABLISH A CAPITAL IMPROVEMENT PROJECT (CIP) TO CONSTRUCT A TEMPORARY ASPHALT CONCRETE SIDEWALK ALONG LAMMERS ROAD BETWEEN KIMBALL HIGH SCHOOL AND THE REDBRIDGE SUBDIVISION, AND APPROVAL OF AN APPROPRIATION OF \$25,000 FROM GAS TAX FUND 245 FOR PRELIMINARY DESIGN

EXECUTIVE SUMMARY

Lammers Road (south of Eleventh Street up to Kimball High School) includes a concrete sidewalk on the west side of the street providing pedestrian access to the residential neighborhood to the north and east of Kimball High School to the Redbridge subdivision. This sidewalk does not continue south along Lammers Road after the boundary of the high school to the Redbridge subdivision because this section of the roadway is in the County. Since Lammers Road south of Kimball High School is in the County, students and residents residing on the south side of the high school are walking on an unpaved and uneven dirt surface.

Pursuant to previous Council direction, staff recommends that the City Council authorize a new CIP allowing staff to initiate preliminary design of the proposed sidewalk while the Stringer/Bates project developers complete their development entitlement at which point the developer would complete the remaining sidewalk project.

DISCUSSION

Establishing a New CIP

Lammers Road is a major arterial street that runs north to south. The northern portion (south of Eleventh Street up to the entrance of Kimball High School) recently has been widened to two travel lanes in each direction including construction of a sidewalk on the east and west side of the road. South of the school the road merges back to one travel lane in each direction as this segment is in the County. The Redbridge subdivision is located on the west side of Lammers Road and is approximately 3,500 feet south of Kimball High School.

Students and residents who reside on the south and north sides of the high school, including the Redbridge subdivision, walk along Lammers Road on an uneven and unpaved surface next to the travel lane to enter the school site.

On November 17, 2015, Council discussed whether to consider installation of a temporary sidewalk along the east side of Lammers Road, south of Kimball High School up to the Redbridge subdivision, ahead of future development to provide a safe pedestrian route for the school and residents. Council directed staff to create a CIP and begin preliminary steps to survey and design the temporary sidewalk while the Stringer/Bates residential project completed their entitlements. It was acknowledged that the Stringer/Bates project would ultimately be conditioned to construct the

temporary sidewalk; however, the City would move the CIP project along in the interim. At the present time, the Stringer/Bates project approval is expected to come before City Council in February 2016. If approved, the City, on behalf of the developer, would begin construction of the sidewalk in November 2016.

The preliminary cost estimate of this project (which includes planning, design and construction) is \$375,000. If this project is approved by the City Council, the preliminary design of the project will be completed by June 2016, for the approximate cost of \$25,000.

A portion of Lammers Road is within San Joaquin County's jurisdiction and staff is working with the County for installation of School Zone signage south of the high school boundaries for an expanded school speed zone. In addition, the City's Public Works Department has installed additional school area signs between Redbridge Road and the City limits to inform motorists of school pedestrians in the area.

Staff is also coordinating with the property owners to obtain the right of entry permit to remove certain obstructions that will keep pedestrians a safe distance from the travelled roadway.

STRATEGIC PLAN

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

FISCAL IMPACT

Not budgeted: \$25,000; Gas Tax Fund 245: increase appropriation from fund balance.

RECOMMENDATION

That the City Council, by resolution, authorize establishing a Capital Improvement Project to construct a temporary asphalt concrete sidewalk along Lammers Road between Kimball High School and the Redbridge subdivision, and approve a supplemental appropriation of \$25,000 from Gas Tax Fund 245 for preliminary design of the project.

Prepared by: Zabih Zaca, Senior Civil Engineer

Reviewed by: Robert Armijo, City Engineer
Andrew Malik, Development Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

RESOLUTION 2016-_____

AUTHORIZING ESTABLISHING A NEW CAPITAL IMPROVEMENT PROJECT FOR CONSTRUCTION OF A TEMPORARY ASPHALT CONCRETE SIDEWALK ALONG LAMMERS ROAD BETWEEN KIMBALL HIGH SCHOOL AND THE REDBRIDGE SUDDIVISION AND APPROVING AN APPROPRIATION OF \$25,000 FROM GAS TAX FUND 245 FOR PREMINARY DESIGN

WHEREAS, Lammers Road is a major arterial street on the west side of the City of Tracy and runs south and north, and was recently widened to two travel lanes including construction of a concrete sidewalk in each direction between Eleventh Street and Kimball High School, and

WHEREAS, There is no sidewalk between Kimball High School and the Redbridge subdivision, and

WHEREAS, High school students and other residents who are living on the south side of the City are walking on an uneven and unpaved surface next to travel lane, and

WHEREAS, The absence of sidewalk on that portion of Lammers Road has created an unsafe condition for students and residents who reside on the south side of Kimball High School and the Redbridge subdivision, and

WHEREAS, To eliminate this unsafe condition, and based on City Council direction of November 17, 2015, staff is recommending construction of a temporary asphalt concrete sidewalk to connect Kimball High School and the Redbridge subdivision, and

WHEREAS, The proposed project will be constructed under Fiscal Year 2016-17, for an approximate cost of \$425,000, and

WHEREAS, An amount of \$25,000 to be appropriated from Gas Tax Fund 245;

NOW, THEREFORE, BE IT RESOLVED, That City Council authorizes establishing a new Capital Improvement Project for construction of a Temporary Asphalt Concrete Sidewalk along Lammers Road between Kimball High School and the Redbridge Subdivision, and approves an appropriation of \$25,000 from Gas Tax Fund 245 for preliminary planning and design of this project.

* * * * *

The foregoing Resolution 2016-_____ was passed and adopted by the Tracy City Council on the 19th day of January, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.K

REQUEST

APPROVE AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND BECKER COMMERCIAL PROPERTIES FOR THE REMAINDER OF THE CITY-OWNED PROPERTY LOCATED AT THE SOUTHWEST CORNER OF NAGLEE ROAD AND PAVILION PARKWAY (APN 212-290-39), AND AUTHORIZE THE MAYOR TO SIGN THE AGREEMENT

EXECUTIVE SUMMARY

The City of Tracy is the owner of a 2.78-acre property located near the southwest corner of Naglee Road and Pavilion Parkway, currently in use as a Park and Ride Lot. Becker Commercial Properties (the developer), a California Corporation, has secured two separate retail development contracts on approximately 50,000± square feet of this parcel under an existing Exclusive Negotiating Rights Agreement (ENRA) and is interested in continuing their effort for the remainder of the property shown in Attachment A to this staff report. Staff recommends that City Council approve a new ENRA with Becker Commercial Properties (DEVELOPER) for the remainder of the property and provide the parameters for good faith negotiations for a period of six months.

DISCUSSION

Background

The City of Tracy (CITY) owns a 2.78-acre property located near the southwest corner of Naglee Road and Pavilion Parkway, which has been in use as Tracy Park and Ride (SITE) since the completed project was accepted by Council Resolution 2000-157 on April 18, 2000. The City of Tracy approached the Developer with an interest in developing the Site for a restaurant or retail use, and on April 5, 2014, the City entered into an ENRA with the Developer, which was extended a number of times. Within the term of the ENRA, the Developer demonstrated success in marketing the site and securing contracts with tenants identified as highly desired by Tracy residents.

Helping inform the Developer's efforts was the City's 2013 Retail Survey, whereas the City sought input on what specific retailers, restaurants, and entertainment uses were most highly desired by Tracy residents. Residents were able to communicate their desires by completing a hard-copy paper survey, which was included in residents' utility bills and available at City Hall or by completing an online survey, accessible through a link posted to the City's website and on the City's Facebook page. Nearly 1,300 residents completed the survey and the results were shared with the Developer for use in recruitment efforts. The Developer successfully negotiated contracts with Chipotle Mexican Grill and Panera Bread, ranked fifth and seventh respectively by the results of the 2013 Retail Survey, and City Council approved the development on January 5, 2016. As the national economy begins to recover, staff believes renewing the ENRA with the Developer will allow for continued marketing and negotiation of the balance of the site.

It should also be noted that under an ENRA for another site, this Developer successfully marketed and negotiated a Purchase and Sale Agreement for an El Pollo Loco

restaurant on the property next to the Texas Roadhouse Restaurant. This restaurant ranked as the number 13th most highly desired restaurant by Tracy residents through the results of the 2013 Retail Survey, and is now open for business.

Action Request

The attached ENRA (Attachment B) has been prepared to provide the parameters for a six-month period, allowing the Developer to continue marketing efforts to attract an additional restaurant or retail use on the remainder of the undeveloped parcel. During that time, if the Developer is successful in obtaining a signed Letter of Intent (LOI) from a tenant(s) that is acceptable to the City, then a Purchase and Sale Agreement will be prepared for City Council consideration. The Agreement does provide a provision for a four-month extension period should the Developer make sufficient progress in negotiating an LOI or lease agreement with a desired tenant(s).

Park & Ride Lot

Staff continues to be in discussions with representatives from San Joaquin Council of Governments (SJCOG) regarding the relocation of the existing Park and Ride Lot to a neighboring property. Potential relocation sites include the current and/or expanded Park and Ride spaces at the Shops at Northgate Village, the estimated 120 spaces south of the Tracy Transit Station, or other private parking interest from retail areas in the I-205 Specific Plan Area. Before escrow closes on the site, staff in partnership with SJCOG, will conduct outreach to the community relative to parking alternatives. While staff has a few tenants interested in a portion of the project site, escrow would not close until development review approval is completed for each project. In other words, there would be adequate time for sufficient outreach.

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

There is no fiscal impact associated with this action.

RECOMMENDATION

Staff recommends that City Council approve, by resolution, an Exclusive Negotiating Rights Agreement by and between the City of Tracy and Becker Commercial Properties and authorize the Mayor to sign the Agreement.

Prepared by: Shelley Burcham, Economic Development Manager
Reviewed by: Andrew Malik, Development Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager
Approved by: Troy Brown, City Manager

Agenda Item 1.K
January 19, 2016
Page 3

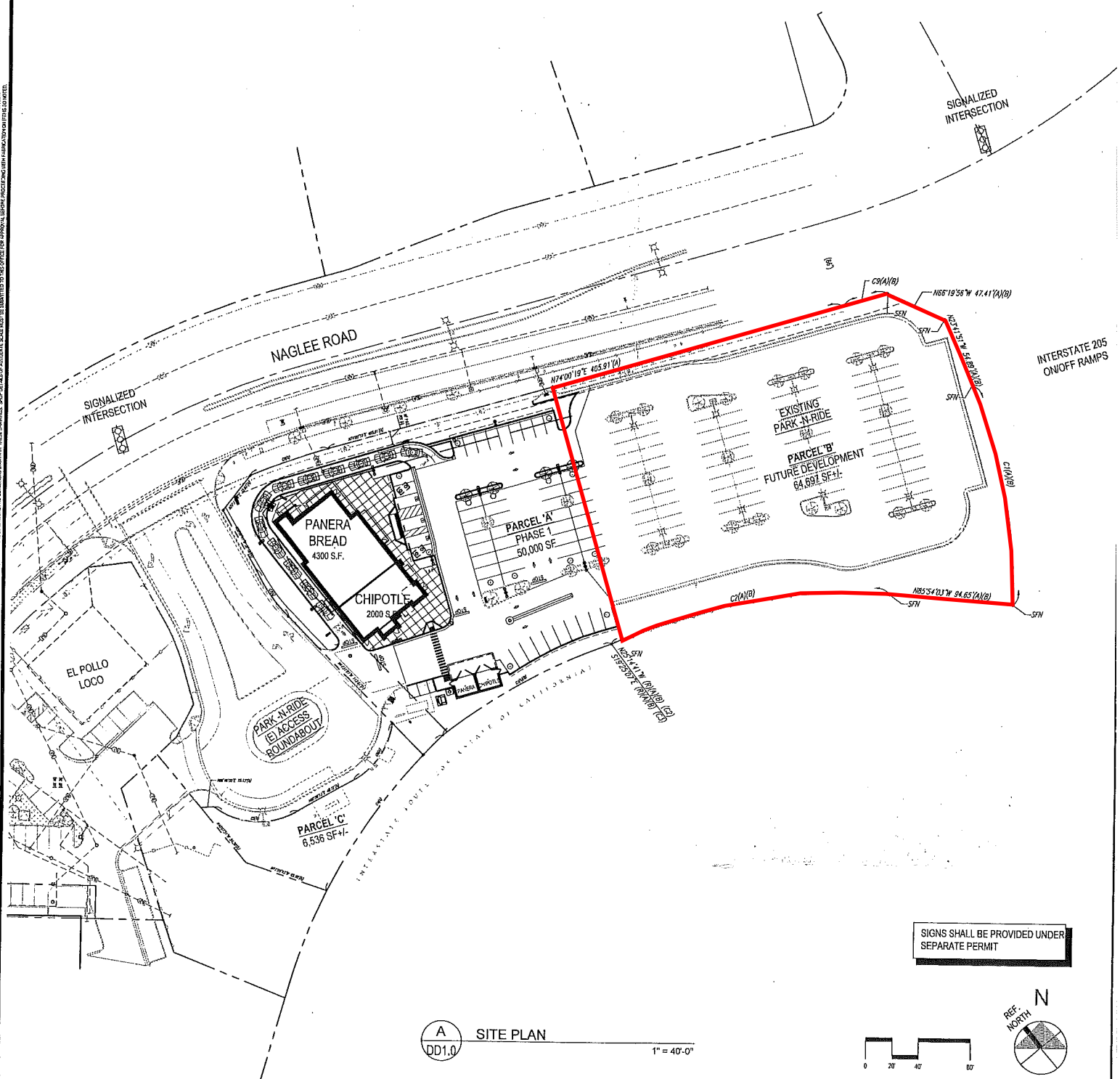
ATTACHMENTS:

Attachment A: Site Map of Subject Property

Attachment B: Exclusive Negotiating Rights Agreement with Becker Commercial Properties

1464_Beeker_Trac_Naglee_ParknRide.dwg, 1464_DD1.dwg By: HMURPHY Saved on: 8/17/2015 8:22:07 AM

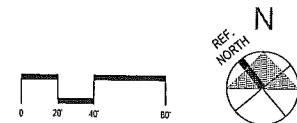
THIS PLAN IS THE PROPERTY OF THE ENGINEER AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER. THE ENGINEER'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED AND DOES NOT INCLUDE ANY OTHER SERVICES OR DAMAGES OF ANY KIND. THE ENGINEER'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED AND DOES NOT INCLUDE ANY OTHER SERVICES OR DAMAGES OF ANY KIND.



SIGNS SHALL BE PROVIDED UNDER SEPARATE PERMIT

A SITE PLAN DD1.0

1" = 40'-0"



EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
(APN's 212-290-39)

This Exclusive Negotiating Rights Agreement (the "Agreement") is entered into as of _____, 2016 by and between the City of Tracy (the "City"), a California Municipal Corporation, and Becker Commercial Properties, a California corporation (the "Developer"), with reference to the following facts:

Recitals

A. The City of Tracy (the "City") is the owner of real property located at the southwest corner of Naglee Road and Pavilion Parkway (APN 212-290-39) in the City of Tracy, as indicated in Exhibit A (the "Site"); and

B. Becker Commercial Properties (the "Developer") has proposed the development of commercial projects for the parcel (the "Projects") on the Site; and

C. The purpose of this Agreement is to establish procedures and standards for the negotiation by the City and the Developer of a Purchase Agreement for disposition the Site. As more fully set forth in Section 4.1, this Agreement in itself does not obligate the City to convey the Site or any portion thereof to the Developer, nor does it grant the Developer the right to redevelop the Projects.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

ARTICLE 1
EXCLUSIVE NEGOTIATING RIGHT

Section 1.1 Good Faith Negotiations. The City and the Developer shall negotiate diligently and in good faith, during the Negotiating Period described in Section 1.2, the terms of a Purchase Agreement(s) for the disposition of the Site. During the Negotiating Period, the parties shall use good faith efforts to accomplish the respective tasks outlined in Article 3 to facilitate the negotiation of a mutually satisfactory Purchase Agreement(s).

Among the issues to be addressed in the negotiations are land disposition and method and land price for the Site, physical and land title conditions of the Site, the development schedule for the Projects, financing of Project development, use of the

Projects, marketing and management of the Projects, design and aesthetic considerations of the Projects, and the provision of public improvements related to the Projects.

Section 1.2 Negotiating Period. The negotiating period under this Agreement (the "Negotiating Period") shall commence as of the date of this Agreement and terminate one hundred eighty (180) calendar days from the date of this Agreement. The Negotiating Period may be extended on the City's behalf for an additional one hundred twenty (120) day period(s) by written notice to the Developer from the City Development Services Director, if in the City Development Services Director's judgment the Developer has made sufficient progress in meeting the requirements of Section 3.2.

If a Purchase Agreement has not been executed by the City and Developer by the expiration of the Negotiating Period, then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement except as set forth in Section 4.5. If a Purchase Agreement is executed by the City and Developer, then upon such execution this Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed Purchase Agreement(s). In the event that a Purchase Agreement is executed for only one of the Sites, the remaining Site shall continue to be included as part of this Agreement until the end of the Negotiating Period.

Section 1.3 Exclusive Negotiations. Subject to Section 4.14, during the Negotiating Period the City shall not negotiate with any entity, other than the Developer, regarding development of the Site or any portion thereof, or solicit or entertain bids or proposals to do so. This provision shall not preclude the City from providing copies of documents or information related to the Site in response to a request under the California Public Records Act or other applicable statutory provisions.

ARTICLE 2 THE DEVELOPER

Section 2.1 Identification of Developer Representatives. The Developer, its address, and its authorized representatives to negotiate the Purchase Agreement(s) with the City are as follows:

Becker Commercial Properties
P.O. Box 590
Wilton, CA 95693

Representatives: Jon Becker, President

Section 2.2 Development Entity. The Developer shall make full disclosure to the City of all information pertinent to the ownership, control, and financial ability of the development entity that is proposed to serve as developer under the Purchase Agreement(s).

ARTICLE 3
NEGOTIATION/PRE-CONSTRUCTION TASKS

Section 3.1 Overview. During the Negotiating Period, the parties shall use reasonable good faith efforts to accomplish the pre-construction tasks set forth in this Article 3 and to accomplish the negotiation of a mutually acceptable Purchase Agreement(s). To facilitate negotiation of the Purchase Agreement(s), the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 3 in a timeframe that will support achievement of these goals.

Section 3.2 Letter of Intent; Lease as Condition to Conveyance. The Developer intends to enter into a long term lease of the Site with a tenant(s) who will operate a business(es) in the Project. During the Negotiating Period, the Developer shall make good faith efforts to enter into a letter of intent for the long-term lease of the Site with a tenant(s) who will operate the Projects (the "Letter of Intent"). The tenant(s) entering into the Letter of Intent with Developer shall have demonstrated experience in operating well-maintained and successful business establishments similar to the business that will be operated on the prospective Site (the "Tenant(s)"). An executed Letter of Intent, with terms that are consistent with this Agreement and with a tenant that is acceptable to the City, shall be a condition precedent to the City entering into any Purchase Agreement(s) with Developer. The City and Developer agree that any Purchase Agreement(s) will require the Developer to enter into a lease with a Tenant(s), and satisfy or waive any and all contingencies contained therein concurrent with Developer's acquisition of the Site from the City.

Section 3.3 Reports. The Developer shall provide the City with copies of all reports, studies, analyses, and similar documents, prepared or commissioned by the Developer with respect to this Agreement, the Site and the Projects, promptly upon their completion. The City shall provide the Developer with copies of all reports, studies, analyses, and similar documents prepared or commissioned by the City or within the City's possession or control with respect to this Agreement, the Site and the Projects, promptly upon their completion; provided; however, that in no event shall the City be obligated to provide Developer with documentation or materials that are subject to attorney- client privilege or otherwise confidential. The Developer acknowledges that the City will need sufficient, detailed information about the proposed Projects to make informed decisions about the content and approval of the Purchase Agreement. Nothing in this Section 3.3 obligates the City to undertake any studies or analyses.

Section 3.4 Planning Approvals. The Developer acknowledges that the Projects requires approvals and entitlements from the City (the "Planning Approvals"). During the Negotiating Period, the Developer may submit Site plans and designs for the Projects and architectural designs for all buildings within the Projects to the City and the appropriate City departments for their informal review. The Developer understands that a formal application for the Planning Approvals would not occur until after the execution

of a Purchase Agreement, and that such application for and issuance of the Planning Approvals will be a pre-disposition condition under any Purchase Agreement, in addition to other pre-disposition conditions.

Section 3.5 Environmental Review. The Developer shall prepare at its sole cost, and submit to the City such plans, specifications, drawings, and other information, as specified by the City, that are reasonably necessary to perform the environmental review process required by CEQA for the Projects, and the Developer shall prepare, at its sole cost, all environmental documentation required by CEQA. The City shall assist and cooperate with the Developer in the Developer's compliance with this Section 3.5.

Section 3.6 Utilities. The Developer shall consult with the utility companies serving the area of Site to determine if existing utility facilities require expansion, relocation or underground installation in connection with development of the Projects. The City shall assist and cooperate with the Developer in such consultations.

Section 3.7 Purchase Price for the Site. The City and the Developer shall seek to agree upon the purchase price for the Site.

Section 3.8 Financial Ability. Prior to the execution of a Purchase Agreement, the Developer shall provide the City with proper documentation to indicate the Developer's financial ability to complete the Projects.

Section 3.9 Progress Reports. Upon reasonable notice, as from time to time requested by the City, the Developer shall make oral or written progress reports advising the City on studies being made and matters being evaluated by the Developer with respect to this Agreement and the Projects.

ARTICLE 4 GENERAL PROVISIONS

Section 4.1 Limitation on Effect of Agreement. This Agreement (and any extension of the Negotiating Period) shall not obligate either the City or the Developer to enter into a Purchase Agreement or to enter into any particular Purchase Agreement. By execution of this Agreement, the City is not committing itself to or agreeing to undertake disposition or exercise of control over any Site or any portion of the Site. By execution of this Agreement, the City is not committing itself to or agreeing to finance any portion of the Site or Projects. Execution of this Agreement by the City is merely an agreement to conduct a period of negotiations in accordance with the terms hereof, reserving for subsequent City Council action the final discretion and approval regarding the execution of a Purchase Agreement and all proceedings and decisions in connection therewith. Any Purchase Agreement resulting from negotiations pursuant to this Agreement shall become effective only if and after such Purchase Agreement has been considered and approved by the City Council of the City, following conduct of all legally required procedures, including without limitation, all required environmental

review processes and all other applicable governmental approvals, and executed by duly authorized representatives of the City and the Developer. Until and unless a Purchase Agreement is signed by the Developer, approved by the City Council, no agreement drafts, actions, deliverables, or communications arising from the performance of this Agreement shall impose any legally binding obligation on either party to enter into or support entering into a Purchase Agreement or be used as evidence of any oral or implied agreement by either party to enter into any other legally binding document. As such, the City retains absolute discretion before action on a Purchase Agreement by the City Council (if required by law) to (i) subject to the agreement of the parties, make such modifications to the Purchase Agreement and Projects as may be necessary to mitigate significant environmental impacts or as may otherwise be necessary or appropriate, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided or (iv) determine not to proceed with the Projects.

Section 4.2 Notices. Formal notices, demands and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, with signature required, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

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

Developer: Becker Commercial Properties
 PO Box 590
 Wilton, CA 95693
 Attn: Jon Becker, President

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 4.3 Waiver of Lis Pendens. It is expressly understood and agreed by the parties that no lis pendens shall be filed against the Site, or any portion of the Site, with respect to this Agreement or any dispute or act arising from it.

Section 4.4 Costs and Expenses. Each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each party's obligations under this Agreement.

Section 4.5 No Commissions. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any Purchase Agreement that may result from this Agreement. The City represents that it has engaged no broker, agent, or finder in connection with this transaction, and the Developer shall defend and hold the City harmless from any claims by any broker, agent, or finder retained by the Developer.

Section 4.6 Default and Remedies.

(a) Default. Failure by either party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured thirty (30) days after receipt by the defaulting party of such notice, the non-defaulting party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by the City, the Developer's sole remedy shall be to terminate this Agreement. Following such termination, neither party shall have any further right, remedy, or obligation under this Agreement; provided, however, that the Developer's obligation to turn over work pursuant to Section 3.3, and the Developer's indemnification obligation pursuant to Section 4.5 shall survive such termination.

In the event of an uncured default by Developer, the City's sole remedy shall be to terminate this Agreement. Following such termination, neither party shall have any right, remedy, or obligation under this Agreement; provided, however, that the Developer's obligation to turn over work pursuant to Section 3.3, and the Developer's indemnification obligation pursuant to Section 4.5 survive such termination.

Except as expressly provided above, neither party shall have any liability to the other for damages or otherwise for any default, nor shall either party have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims they may otherwise have at law or in equity.

Section 4.7 Assignment. The Developer may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the City, which consent shall be granted or withheld in the City's sole discretion, and any such attempted transfer or assignment without the prior written consent of the City shall be

void. The City hereby consents to the Developer's assignment of this Agreement to a California limited liability company that is wholly owned and controlled by Developer. The City also consents to the Developer's assignment of this Agreement to a California limited liability company in which Developer wholly controls the limited liability company and is the managing member of such limited liability company; provided that any transfer of control to another member of such limited liability company must be approved in advance by the City. Any assignment of this Agreement shall not be valid unless the assignee expressly assumes Developer's rights and obligations under this Agreement pursuant to an assignment agreement approved in advance by the City.

Section 4.8 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and the Developer and no other person shall have any right of action under or by reason of this Agreement.

Section 4.9 Attorneys' Fees. The prevailing party in any action to enforce this Agreement shall be entitled to recover attorneys' fees and costs from the other party.

Section 4.10 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in San Joaquin County, California.

Section 4.11 Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matters of this Agreement.

Section 4.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 4.13 Authority to Execute: The undersigned represent and warrant they are each duly authorized to execute this Agreement on behalf of the respective party and to take the actions necessary to perform hereunder without the need to seek further authorization from the entity each represents.

* * * * *

WHEREFORE, the parties have executed this Agreement on or as of the date first above written.

CITY:

By: _____
Michael Maciel
Mayor

Date: _____

APPROVED AS TO FORM:

By: _____
Daniel G. Sodergren
City Attorney

DEVELOPER:

Becker Commercial Properties, a California Corporation

By: Jonathan P. Becker

Title: President

Date: 1/7/2016

RESOLUTION 2016- _____

APPROVING AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND BECKER COMMERCIAL PROPERTIES FOR THE REMAINDER OF THE CITY-OWNED PROPERTY LOCATED AT THE SOUTH WEST CORNER OF NAGLEE ROAD AND PAVILION PARKWAY, AND AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT

WHEREAS, The City of Tracy owns 2.78-acre property located near the south west corner of Naglee Road and Pavilion Parkway, further described as APN 212-290-39 (the "Site"), and

WHEREAS, The City is interested in pursuing the development of the Site for a restaurant or retail user, and

WHEREAS, Becker Commercial Properties (the "Developer") has successfully negotiated retail development contracts for a portion of the parcel, and

Whereas, the Developer desires to continue marketing and negotiating efforts for the remainder of the Site to an appropriate tenant(s), and

WHEREAS, The City and the Developer desire to enter into an Exclusive Negotiating Rights Agreement (the "Agreement") to negotiate in good faith terms to a Purchase Agreement;

NOW, THEREFORE, BE IT RESOLVED, that City Council hereby approves an Exclusive Negotiating Rights Agreement by and between the City of Tracy and Becker Commercial Properties, and authorizes the Mayor to sign the agreement.

* * * * *

The foregoing Resolution 2016-_____ was adopted by the Tracy City Council on the 19th day of January, 2016, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.L

REQUEST

APPROVE REQUEST FOR OUT-OF-STATE TRAVEL BY COUNCIL MEMBER YOUNG

EXECUTIVE SUMMARY

Pursuant to Council Policy (Fiscal Management A-1) and pursuant to Resolution 2007-075 (Travel and Expense Reimbursement for Elected and Appointed Officials), expenses for International and out-of-state travel, other than the annual "One Voice" trip to Washington D.C. coordinated through the San Joaquin County Council of Governments, require prior City Council approval.

DISCUSSION

Council Member Young has expressed an interest in attending the National League of California Cities 2016 Congressional City Conference in Washington D.C. on March 5-9, 2016. Approving this request requires council action by resolution, pursuant to Tracy Resolution 2007-075 and would comply with Council Policy.

The approximate expense for the Congressional City Conference is \$3,000. There is a current balance available for FY15-16 of \$11,399.13 for Council travel. Annually two Council Members attend the San Joaquin One Voice Trip to Washington, D.C. during month of April the week of April 16 – 21, 2016. The average expense incurred for the One Voice trip is approximately \$6224.00, leaving a balance of \$5175.13.

STRATEGIC PLAN

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

FISCAL IMPACT

\$3,000 Budgeted in the General Fund

RECOMMENDATION

That the City Council adopt a resolution authorizing the out-of-state travel request.

Prepared by: Nora Pimentel, City Clerk

Reviewed by: Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENT

A. Tracy City Council Policy Resolution 2007-075

Resolution No. 2007-075

REVISING THE POLICY AND PROCEDURES
FOR TRAVEL AND EXPENSES REIMBURSEMENT
FOR ELECTED AND APPOINTED OFFICIALS

WHEREAS, the City Council finds that it is in the best interests of the City that elected and appointed officials remain informed and trained in activities, developments and professional trends affecting the affairs of the City and that attendance at institutes, hearings, meetings, conferences, or other gatherings is of value to the City and its citizens; and

WHEREAS, appointed officials include Planning Commission, Parks and Recreation Commission members, and other non-employee members of boards, commissions, and committees; and

WHEREAS, the City of Tracy takes its stewardship over the use of its limited public resources seriously; and

WHEREAS, public resources should only be used when there is a substantial benefit to the City; and

WHEREAS, such benefits include:

- a. The opportunity to discuss the community's concerns with state and federal officials;
- b. Participating in regional, state and national organizations whose activities affect the City;
- c. Attending educational seminars designed to improve officials' skill and information levels; and
- d. Promoting public service and morale by recognizing such service; and

WHEREAS, a) legislative and other regional, state and federal agency business is frequently conducted over meals; b) sharing a meal with regional, state and federal officials is frequently the best opportunity for a more extensive, focused and uninterrupted communication about the City's policy concerns; and c) each meal expenditure must comply with the limits and reporting requirements of local, state and federal law; and

WHEREAS, this Policy provides guidance to elected and appointed officials on the use and expenditure of City resources, as well as the standards against which those expenditures will be measured; and

WHEREAS, Government Code section 36514.5 allows council members to be reimbursed for actual and necessary expenses incurred in the performance of their official duties; and

WHEREAS, On April 17, 2007, Council revised the policy to include a remedy for non-compliance by Board and Commission members; and

WHEREAS, this Policy satisfies the requirements of Government Code sections 53232.2 and 53233.3.

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

SECTION 1: Resolution No. 2007-023 is hereby repealed. The Travel and Expenses Reimbursement Policy and Procedures for Elected and Appointed Officials in the City of Tracy, attached hereto as Exhibit "A", is hereby adopted.

SECTION 2: This resolution shall take effect immediately upon adoption.

The foregoing Resolution 2007-075 was passed and adopted by the Tracy City Council on the 17th day of April, 2007, by the following vote:

AYES: COUNCIL MEMBERS: SUNDBERG, TOLBERT, TUCKER, IVES

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: ABERCROMBIE

ABSTAIN: COUNCIL MEMBERS: NONE



Mayor

ATTEST:

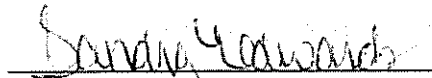

City Clerk

EXHIBIT "A" TO RESOLUTION NO. 2007-075

POLICY FOR REIMBURSEMENT
FOR TRAVEL AND EXPENSES
FOR ELECTED AND APPOINTED OFFICIALS

The City Council of the City of Tracy believes that it is important that elected and appointed officials (including Planning Commissioners, Parks and Recreation Commissioners, and other volunteer members of boards, commissions, and committees) remain informed and trained in issues affecting the affairs of the City and that attendance at institutes, hearings, meetings, conferences, or other gatherings is of value to the City and its citizens. The benefits include:

- a. The opportunity to discuss the community's concerns with state and federal officials;
- b. Participation in regional, state and national organizations whose activities affect the City;
- c. Attending educational seminars improve officials' skill and information levels; and
- d. Promoting public service and morale by recognizing such service.

In order to promote these endeavors, to protect public resources and foster public trust in the use of those resources, as well as comply with state law requirements regarding reimbursement of expenses, the City Council hereby sets forth the travel and expense reimbursement policies for the City of Tracy.

All anticipated conferences, conventions and professional meetings shall be budgeted for in the current operating budget. As the trip is being paid for with public funds, it shall be the responsibility of the official undertaking the trip to make every effort to attend the entire conference and/or as many sessions as possible.

All elected officials and appointed officials (including the City Manager and City Attorney) who receive compensation for their service or reimbursement for their expenses shall comply with this Policy. This shall include Planning Commissioners, Parks and Community Services Commissioners, and Cultural Arts Commissioners.

A. AUTHORIZED EXPENSES

City funds, equipment, supplies (including letterhead), titles, and staff time must only be used for authorized City business. Expenses incurred in connection with the following types of activities generally constitute authorized expenses, as long as the other requirements of this Policy are met:

1. Communicating with representatives of regional, state and national government on City adopted policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels;
3. Participating in regional, state and national organizations whose activities affect the city's interests;

4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);

5. Attending City events;

6. Implementing a City-approved strategy for attracting or retaining businesses to the City, which will typically involve at least one staff member;

7. Meetings such as those listed above for which a meeting stipend is expressly authorized under this Policy, and

8. City council members may be reimbursed for Internet and/or Cable TV expenses related to, and used in connection with, their official duties.

All other expenditures require prior approval by the City Council.

Expenses for international and out-of-state travel, other than the annual "One-Voice" trip to Washington D.C. coordinated through the San Joaquin County Council of Governments, require prior City Council approval.

For the purposes of this Policy, if the City pays directly for the expenses it is not considered a reimbursement (e.g. conference fees).

B. EXPENSES NOT ELIGIBLE FOR REIMBURSEMENT

Examples of personal expenses that the City will not reimburse include, but are not limited to:

1. The personal portion of any trip;

2. Political or charitable contributions or events;

3. Family expenses, including partner's expenses, when accompanying official on agency-related business¹, as well as children- or pet-related expenses;

4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other cultural events;

5. Alcohol/personal bar expenses;

6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and

7. Personal losses incurred while on City business.

8. Any questions regarding the propriety of a particular type of expense should be resolved by the approving authority before the expense is incurred.

¹ If trip arrangements are made, as a convenience, for spouse or family members, reimbursement to the City for any advanced expenses must be received by the City prior to the trip.

C. COMPENSATION FOR ATTENDANCE AT MEETINGS

Compensation for meeting attendance, for elected and appointed members of city boards and commissions, shall be as follows:

1. City Council members' salaries shall be set and enacted as mandated by the California Government Code.
2. Compensation for meeting attendance for members of the Planning Commission, Parks and Community Services Commission, and the Community Cultural Arts Commission, shall be established by resolution of the City Council.

D. TRANSPORTATION

When attending conferences or meetings that are of such distance that it is more economical to take commercial transportation, if an official proposes to drive his/her car in those cases, commercial air fare will be paid and not automobile mileage. Government and group rates must be used when available.

1. **Airfare.** Airfares that are reasonable and economical shall be eligible for reimbursement.
2. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service ("IRS") rates in effect at the time of travel. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable.
3. **Car Rental.** Rental rates that are reasonable and economical shall be eligible for reimbursement.
4. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a fifteen (15%) percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

E. LODGING

Lodging expenses will be reimbursed, or paid for, when travel on official city business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question if such rates are available at the time of booking. Travelers must request government rates, when available. If the group rate is not available, reimbursement at the IRS rate in effect at the time of travel shall apply (IRS Publication 463).

F. MEALS

A local expense reimbursement policy identifying a "per diem" of reasonable rates for meals is not adopted. Receipts for expenses for meals shall be required. Actual expenses shall be reimbursed subject to the maximum per diem for the meal as set by the IRS rate in effect at the time of travel. (See Cal. Gov't Code §53232.2(c) and Publication 1542 at www.irs.gov or www.policyworks.gov/perdiem.) The City will not pay for alcohol/personal bar expenses.

G. MISCELLANEOUS EXPENSES

Officials will be reimbursed for actual telephone, fax, and parking expenses incurred on City business. Telephone bills should identify which calls were made on City business.

H. CASH ADVANCE POLICY

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Manager ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. The benefits of such expenditure to the residents of City;
3. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
4. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used. In the event the City Manager is uncertain as to whether a request complies with this Policy, such individual must seek resolution from the City Council.

I. CREDIT CARD USE POLICY

City does not issue credit cards to individual office holders but does have an agency credit card for selected City expenses. City office holders may use the city's credit card for such purposes as airline tickets and hotel reservations by following the same procedures for cash advances. Receipts documenting expenses incurred on the City credit card and compliance with this Policy must be submitted within five (5) working days of use. Except as allowed under Section B(3), city credit cards may not be used for personal expenses, even if the official subsequently reimburses the City.

J. EXPENSE REPORT CONTENT AND SUBMISSION DEADLINES

All cash advance expenditures, credit card expenses and expense reimbursement requests must be submitted on an expense report form provided by the city. This form shall include the following advisory:

"All expenses reported on this form must comply with the city's policies relating to expenses and use of public resources. The information submitted on this form is a public record. Penalties for misusing public resources and violating the city's policies include loss of reimbursement privileges, restitution, civil and criminal penalties as well as additional income tax liability."

Expense reports must document that the expense in question met the requirements of this Policy. Officials must submit their expense reports within thirty (30) calendar days of an

expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation.

Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

In the event the official does not attend the trip and non-refundable expenses have been incurred for registration, lodging and/or travel, the non-attending official shall submit a written explanation of the reasons for non-attendance to the City Manager. The City Manager shall determine if the public funds advanced must be reimbursed to the City. Any decision of the City Manager may be appealed to the City Council.

All expenses are subject to verification that they comply with this Policy.

K. REPORTS TO CITY COUNCIL, BOARD OR COMMISSION

At the next regular City Council (or Board or Commission) meeting, each official shall make a brief report (written or oral) on meetings attended at City expense. If multiple officials attended, a joint report may be made.

L. COMPLIANCE WITH LAWS; VIOLATION

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act and other applicable laws. Use of public resources or falsifying expense reports in violation of this Policy may result in any or all of the following: 1) loss of reimbursement privileges, 2) a demand for restitution to the City, 3) the agency's reporting the expenses as income to the elected official to state and federal tax authorities, 4) civil penalties of up to \$1,000 per day and three times the value of the resources used, and 5) prosecution for misuse of public resources.

Failure of an appointed Board or Commission member, after forty-five (45) days written notice, to complete the training required by AB1234 and this Policy shall result in the automatic removal of the member from their Board or Commission position.

RESOLUTION 2016-

APPROVE REQUEST FOR OUT-OF-STATE TRAVEL BY COUNCIL MEMBER YOUNG

WHEREAS, pursuant to Council Policy (Fiscal Management A-1) and pursuant to Resolution 2007-075 (Travel and Expense Reimbursement for Elected and Appointed Officials), expenses for International and out-of-state travel, other than the annual "One Voice" trip to Washington D.C. coordinated through the San Joaquin County Council of Governments, require prior City Council approval; and

WHEREAS, Council Member Young has expressed an interest in attending the National League of California Cities 2016 Congressional City Conference in Washington D.C. on March 5-9, 2016; and

WHEREAS, approving this request requires council action by resolution, pursuant to Tracy Resolution 2007-075.

NOW, THEREFORE, the Tracy City Council does authorize Council Member Young's request to travel out-of-state.

The foregoing Resolution 2016- , was passed and adopted by the Tracy City Council on the 19th day of January, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.M

REQUEST

ADOPT RESOLUTION APPROVING AN EMPLOYMENT AGREEMENT BETWEEN LARRY ESQUIVEL AND THE CITY OF TRACY TO SERVE AS POLICE CHIEF

EXECUTIVE SUMMARY

The City Manager recommends that the City Council approve an at-will employment agreement with Larry Esquivel to serve as Police Chief.

DISCUSSION

The City Manager recommends that the City Council approve an at-will employment agreement with Larry Esquivel to serve as Police Chief.

Larry Esquivel began his career in 1984 as a Police Reserve Officer for the City of San Jose. He was later sworn in as a Police Officer in 1986 where he gained experience working in patrol, narcotics enforcement, and covert investigations. He was later promoted to Sergeant in 1997, Lieutenant in 2005, and Captain in 2010. In February 2012, Larry was promoted to Deputy Chief, and one year later, assumed the role of Acting Chief of Police upon the retirement of former San Jose Police Chief Chris Moore. Larry was then officially appointed as San Jose's Chief of Police on December 10, 2013.

Under the proposed at-will employment agreement, Chief Esquivel will:

- begin employment on February 1, 2016;
- receive an initial base annual salary of \$190,000;
- receive retirement benefits provided through the California Public Employees' Retirement System ("CalPERS"). The benefit formula will be dependent on hire date and member status in CalPERS;
- receive the same leave and benefits provided to Department Heads (however he will be credited with 80 hours of vacation leave at the start of his employment and shall accrue vacation leave at the 16 to 20-year service rate of 220 hours per year;
- be provided with a uniform allowance in the amount of \$1,000 per year;
- be reimbursed for relocation and moving expenses not to exceed \$3,000; and
- be provided with a vehicle

Finally, under the proposed agreement, Chief Esquivel will also receive 6 months severance pay if he is terminated or asked to resign while still willing and able to perform the duties of Police Chief.

STRATEGIC PLAN

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

Governance Strategy

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

Objective 1b: Affirm organizational values.

FISCAL IMPACT

\$120,000; Budgeted; General Fund

RECOMMENDATION

The City Manager recommends that the City Council adopt a resolution approving an at-will employment agreement with Larry Esquivel to serve as Police Chief.

Prepared and Approved by: Troy Brown, City Manager

Attachment: Proposed Employment Agreement

EMPLOYMENT AGREEMENT BETWEEN
LARRY B. ESQUIVEL AND THE CITY OF TRACY

This Employment Agreement (“Agreement”) is made and entered into by and between Larry B. Esquivel (“Esquivel”) and the City of Tracy, a municipal corporation (“City”).

RECITALS

WHEREAS, City, acting by and through its City Manager, desires to employ Esquivel as its Police Chief subject to the terms and conditions set forth in this Agreement; and

WHEREAS, Esquivel desires to be employed by the City as its Police Chief subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the parties agree as follows:

1. Employment. City agrees to employ Esquivel as Police Chief, in accordance with the following provisions:

(a) Esquivel shall serve as Police Chief and shall be responsible for managing and directing the operations of the Police Department.

(b) Esquivel shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by the City.

(c) Esquivel shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Esquivel shall comply fully with his reporting and disclosure obligations under regulations promulgated by the Fair Political Practices Commission.

(d) Esquivel agrees to remain in the exclusive employ of the City during the term of this Agreement. Esquivel shall dedicate his full energies and qualifications to employment as Police Chief, and shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, except as may be specifically approved in writing in advance by the City Manager.

2. Start Date. Esquivel shall begin work on February 1, 2016. From February 1, 2016 to March 31, 2016, Esquivel shall serve as Acting Police Chief. Esquivel shall assume his duties as Police Chief on April 1, 2016.

3. Duration of Employment. Esquivel understands and agrees that he has no constitutionally protected property or other interest in his employment as Police Chief. He understands and agrees that, notwithstanding any provision contained in state law or the City's Personnel Rules and Regulations, he has no right to pre- or post-disciplinary due process or a right to an administrative appeal and expressly waives any such rights that may exist under state law or the City's Personnel Rules and Regulations. He understands and agrees that he works at the will and pleasure of the City Manager and that he may be terminated, or asked to resign, at any time, with or without cause, upon 30 days written notice to Esquivel. Esquivel may terminate this agreement upon 30 days written notice to the City Manager.

4. Compensation. Esquivel shall receive an initial annual base salary of \$190,000 per year, payable in installments at the same time as other employees of the City are paid and subject to legally required withholdings and deductions. Not less than once each year, the City Manager shall meet with Esquivel for the express purpose of evaluating the performance of Esquivel. Subject to a satisfactory performance evaluation, the City Manager, at his or her sole discretion, may increase the salary of Esquivel so long as the increase conforms to the City Council adopted position control roster.

5. Benefits. Esquivel shall receive the following benefits:

(a) Esquivel shall receive the same deferred compensation, leave, and benefits as provided to management employees in accordance with the City Council-approved Department Heads Compensation and Benefits Plan ("Department Heads Plan"), as it may be amended, except as modified by this Agreement.

(b) At the start of employment, Esquivel shall be credited with 80 hours of vacation leave and shall accrue vacation leave at a 16 to 20-year service rate of 220 hours per year.

(c) Esquivel shall receive retirement benefits provided through the California Public Employees' Retirement System ("CalPERS"). The benefit formula will be dependent on hire date and member status in CalPERS

(d) City shall provide Esquivel with a uniform allowance in the amount of \$1,000 per year.

(e) City shall reimburse Esquivel for relocation and moving expenses not to exceed \$3,000.00.

(f) Esquivel's duties as Police Chief, including responding to emergencies, require the personal use at all times during the duration of this Agreement of an unmarked vehicle provided by City. Therefore, in lieu of a car allowance and mileage reimbursement, as contained in the Department Heads Plan, City shall provide Esquivel with the exclusive use of an unmarked vehicle at all times during his employment. City shall be responsible for maintaining liability, property damage, and comprehensive insurance, and for the purchase, operation, maintenance,

repair, and replacement of the vehicle. Esquivel shall not use the vehicle for vacation or recreation trips.

8. Severance.

(a) If Esquivel is terminated, or is asked to resign, while still willing and able to perform the duties of Police Chief, he shall receive six months severance pay.

(b) To be eligible for such severance pay, Esquivel shall sign a release of liability for all claims connected with the employment relationship (“Release Agreement”) in a form approved by the City Attorney.

(c) “Severance pay” shall include salary and health benefits. Severance pay shall be paid in a lump sum payment to Esquivel within 15 working days after the effective date of the Release Agreement, or as agreed to by Esquivel and the City. Severance pay shall not be included in final compensation for the purposes of PERS retirement nor shall any payments of the employee’s share of the PERS rates be deemed to extend the date of separation past termination or resignation of the employee.

(d) Esquivel shall not be entitled to severance pay if he is terminated because he has been convicted of a felony.

9. Notice. All notices required pursuant to this Agreement shall be sent first class mail to the parties as follows:

To City: City of Tracy
City Manager
333 Civic Center Plaza
Tracy, California 95376

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

To Esquivel: Larry Esquivel
Address provided via separate document
exempt from disclosure under California
Public Records Act

10. Entire Agreement. This Agreement contains the entire agreement between the parties concerning the subject matter of this agreement. This Agreement shall supersede, and render null and void any and all prior agreements between the parties to this Agreement concerning the subject matter of this Agreement. This Agreement may only be amended by written instrument signed by Esquivel and the City Manager and specifically approved by the City Council in open session.

11. Representation by Counsel. Esquivel and City acknowledge that they each did, or had the opportunity to, consult with legal counsel of their respective choices with respect to the subject matter of this Agreement prior to signing it.

12. Applicable Law. This Agreement is signed and delivered in the State of California and the rights and obligations of the parties under this Agreement shall be construed and enforced in accordance with the laws of the State of California.

13. Waiver. No waiver by any party of any breach of any term or provision of this Agreement shall be construed to be, nor shall be, a waiver of any preceding, concurrent or succeeding breach of the same or any other term or provision of this Agreement.

14. Interpretation. This Agreement is deemed to have been drafted jointly by the parties to this Agreement. Any uncertainty or ambiguity shall not be construed for or against any party based upon attribution of drafting to any party.

15. Severability. If any provision of this Agreement is held unconstitutional, invalid or unenforceable, that invalidity shall not affect any other provisions which could be given effect without the invalid provision.

16. Counterparts. This Agreement may be executed in several counterparts, and shall be admissible in counterparts. All executed copies are duplicate originals and are equally admissible in evidence.

City of Tracy

Larry Esquivel

Michael Maciel, Mayor

Date: _____

Date: _____

Attest:

By: Nora Pimentel
Title: CITY CLERK

Date: _____

Approved as to Form:

City Attorney

RESOLUTION 2016 - _____

APPROVING AN EMPLOYMENT AGREEMENT BETWEEN LARRY ESQUIVEL AND
THE CITY OF TRACY TO SERVE AS POLICE CHIEF

WHEREAS, The City, acting by and through its City Manager, desires to employ Larry Esquivel as its Police Chief subject to the terms and conditions set forth in the Employment Agreement between Larry Esquivel and the City of Tracy ("Agreement"), and

WHEREAS, Larry Esquivel desires to be employed by the City as its Police Chief subject to the terms and conditions set forth in the Agreement.

NOW, THEREFORE, BE IT RESOLVED, That the Agreement is approved and the Mayor is authorized to sign the Agreement on behalf of the City.

The foregoing Resolution 2016 - _____ was adopted by the Tracy City Council on the 19th day of January, 2016 by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.N

REQUEST

APPROVE RESOLUTION EXERCISING THE OPTION TO EXTEND A LEASE AGREEMENT WITH MIZUNO FARMS, INC., FOR ONE ADDITIONAL TWO-YEAR PERIOD, FOR FARMING OPERATIONS AT PROPERTY LOCATED AT THE CORNER OF ELEVENTH STREET AND CHRISMAN ROAD, AND AUTHORIZE THE MAYOR TO EXECUTE AMENDMENT NO. 3

EXECUTIVE SUMMARY

In 2010, City Council approved a four-year lease agreement with Mizuno Farms, Inc. for City owned property located at the corner of Eleventh Street and Chrisman Road (approximately 113 acres). As provided in the agreement, it was extended for the first of two possible two-year extensions. The City of Tracy and Mizuno Farms, Inc., both wish to exercise the second two-year option to extend the Agreement for one additional two-year period, from January 1, 2016 to December 31, 2017, as outlined in Section 19 of the Agreement.

DISCUSSION

In 2009, Staff issued a Request for Proposals (RFP) to seek out competitive bids to farm the City owned property located at the corner of Eleventh Street and Chrisman Road, commonly referred to as the Chrisman Property (approximately 113 acres). Mizuno Farms, Inc., (Lessee) was the highest successful bidder and a four year lease was executed on December 15, 2009. The original term of the agreement was scheduled to end on December 31, 2013. The lease included a provision allowing extension of the agreement for two additional two-year periods. The first of these extensions was exercised by Council on November 19, 2013 and covered the period from January 1, 2014 to December 31, 2015. The second possible extension of the agreement covers the period from January 1, 2016 to December 31, 2017.

Per the terms of the current lease, the Lessee has submitted a written request that the lease be extended for one additional period from January 1, 2016 to December 31, 2017. The lease rates will follow the same format as the previous years of the agreement, with the lease rate receiving an increase each year of the agreement by the annual percentage increase in the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose, CA, All Items, with a minimum increase of 3%. Lastly, language reducing the lease payment amount to \$0 for years in which no irrigation water is available to the site has been added to the agreement.

STRATEGIC PLAN

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

FISCAL IMPACT

The General Fund will realize additional revenue over the next two years as a result of the lease amendment as outlined below:

FY 2016/2017:	\$25,440
<u>FY 2017/2018:</u>	<u>\$26,203</u>
TOTAL:	\$51,643

RECOMMENDATION

Approve resolution exercising the option to extend a Lease Agreement with Mizuno Farms, Inc., for one additional two-year period, for farming operations at property located at the corner of Eleventh Street and Chrisman and authorize the Mayor to execute the Amendment.

Prepared by: Don Scholl, Public Works Director

Reviewed by: Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENT

Exhibit "A" – Amendment No. 3 to the Lease Agreement

**AMENDMENT NO. 3 TO LEASE AGREEMENT
BETWEEN THE CITY OF TRACY AND MIZUNO FARMS, INC.**

This Amendment No. 3 (hereinafter "Amendment") to the Lease Agreement between the City of Tracy and Mizuno Farms, Inc. is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "CITY"), and Mizuno Farms, Inc., a California corporation (hereinafter "LESSEE").

RECITALS

- A. CITY and LESSEE entered into a Lease Agreement (hereinafter "Agreement") which commenced on or about January 1, 2010 and was subsequently amended, by Amendment No. 1, to extend the Agreement through December 31, 2015; and Amendment No. 2, to reduce lease payment by LESSEE due to unavailability of irrigation water for the 2015 farming season.

- B. LESSEE has submitted a written request that the lease be extended for one additional period from January 1, 2016 to December 31, 2017. This request was received within the 90-day notification requirements of the agreement.

- C. Upon written proof provided to CITY by LESSEE of unavailability of irrigation water to the Property for the entirety of the growing season, or at an amount considered by CITY to be insufficient for crop production, the lease payment amount will be reduced to \$0 for that year.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **Incorporation By Reference.** This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.

- 2. **Amendment.** The term of the Agreement is hereby extended through December 31, 2017. Upon written proof provided to CITY by LESSEE of unavailability of irrigation water to the Property for the entirety of the growing season, or at an amount considered by CITY to be insufficient for crop production, the lease payment amount will be reduced to \$0 for that year.

- 3. **Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.

CITY OF TRACY
Amendment No. 3 to Lease Agreement
Between City of Tracy and Mizuno Farms, Inc.
Page 2 of 2

- 4. Severability.** In the event any term of this Amendment is held invalid by a court of competent jurisdiction, the Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in full force and effect.
- 5. Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of LESSEE and CITY. This Amendment shall inure to the benefit of and be binding upon the parties thereto 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

MIZUNO FARMS, INC.

By: _____
Michael Maciel

By: Gordon M. Mizuno
Gordon M. Mizuno

Title: Mayor

Title: Vice president

Date: _____

Date: 01/07/2016

Attest:

By: _____
Nora Pimentel

By: Clark Mizuno
Clark Mizuno

Title: City Clerk

Title: CFO

Date: _____

Date: 01/07/2016

Approved as to form

By: _____
Bill Sartor

Title: Assistant City Attorney

Date: _____

RESOLUTION _____

APPROVING AMENDING THE LEASE AGREEMENT WITH MIZUNO FARMS, INC. TO
EXTEND THE AGREEMENT FOR TWO YEARS FOR FARMING OPERATIONS AT
PROPERTY LOCATED AT THE CORNER OF ELEVENTH STREET AND CHRISMAN ROAD,
AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT

WHEREAS, In 2013, City Council approved a two-year Lease Agreement extension with Mizuno Farms, Inc. for farming operations at property located at the corner of Eleventh Street and Chrisman Road, and the current lease expired on December 31, 2015, and

WHEREAS, The Agreement includes a provision allowing an extension of the Agreement for one additional two-year periods from January 1, 2016 to December 31, 2017, and

WHEREAS, The parties desire to amend the Agreement to allow for a single two-year extension from January 1, 2016 to December 31, 2017;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby approves amending the Lease Agreement with Mizuno Farms, Inc., to extend same for an additional two-year period for farming operation at property located at the corner of Eleventh Street and Chrisman Road, and authorizes the Mayor to execute the amendment.

* * * * *

The foregoing Resolution _____ was passed and adopted by the City Council of the City of Tracy on the 19th day of January, 2016, by the following vote:

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

Mayor

ATTEST:

City Clerk

AGENDA ITEM 3

REQUEST

AUTHORIZE THE CITY MANAGER TO ENROLL THE CITY OF TRACY IN THE COMMUNITY FOUNDATION OF SAN JOAQUIN (CFOSJ), APPROPRIATE \$10,000 FROM THE GENERAL FUND TO BE USED AS INITIAL FUNDS IN THE CITY OF TRACY FUND WITHIN THE CFOSJ, AUTHORIZE RETURN OF THE \$10,000 TO THE GENERAL FUND WHEN THE CHARITABLE FUNDS FOR THE CITY REACH \$50,000, AND DESIGNATE THE CITY MANAGER AS THE FUND ADVISOR

EXECUTIVE SUMMARY

The Community Foundation of San Joaquin (CFOSJ) is a non-profit public charity that provides a mechanism for not-for-profit entities, such as the City of Tracy, to receive and use tax deductible donations. The Foundation provides secure investment services for donations, provides tax and other legal documentation to both donor and Fund holders, and provides due diligence on the use of funds. The City of Tracy can enroll as a designated fund, with targeted uses as the Council directs, such as Legacy Fields, Aquatics Center, Animal Shelter and/or Police K-9 Support.

DISCUSSION

The City of Tracy is the recipient of a small number of donations each year, most of which are earmarked for specific uses such as the Animal Shelter or the Police K-9 unit. When the City does receive donations, there are certain legal and tax formalities that must be followed, and the City does not now have any universal guidelines to follow and no staff allocated to ensure that our procedures are continuously updated. This means that each donation is dealt with separately by the staff most closely related to the targeted use, who discuss procedures attaching to each donation with our Finance and City Attorney staff. The City does not engage in any targeted charitable fundraising activities.

Creating a fund within the CFOSJ would solve many of these issues and would add the benefit of presenting more opportunities to attract donations to City programs and projects. Council and Staff have recently discussed how to enhance opportunities for the public or for corporations to donate to the City, particularly for some of our new sports endeavors, such as the Aquatics Center and Legacy Fields, yet we do not have any mechanism to process to solicit or process donations for this purpose. Participation in the CFOSJ would make donating to the City very easy, would solve all issues surrounding compliance with tax laws and processing, would preserve and grow donated funds, and would present a transparent process for both the City and for the donor for a very low fee while retaining total control over donated funds. By joining the CFOSJ, the City will be able to leverage the expertise in fund management and fundraising and attract a new level of charitable donations.

There are dozens of Community Foundations throughout the state and there is no more than one Community Fund within each county, with some Funds covering groups of counties. Community Foundations are well-established and accepted targets not only

for corporate donations in California and throughout the United States, but for bequeaths and endowments from families and individuals. Community Foundations from each county are a common beneficiary of local businesses residing within the Fund's community. Some Community Funds are extremely successful, such as the Silicon Valley Community Foundation, which has nearly \$9 Billion in assets, largely due to the charitable giving from Silicon Valley businesses, most notable being the Facebook founder, Mark Zuckerberg, who donated \$1.5 Billion to the Fund. By joining the CFOSJ, Tracy can easily be the target for corporate giving, as businesses or developers working in Tracy can easily make donations to the City, or to specific targeted uses with the City, such as Legacy Fields.

CFOSJ was established in 2008 and serves the San Joaquin area. As a "community foundation", it is a tax exempt public charity that enables people to donate, pool and invest charitable funds. Donations are managed professionally so that assets grow over time and are overseen by a volunteer board who hire wealth management professionals with expertise in financial and investment planning. The Foundation also takes care of all administrative activities, which include sending letters and notices to donors that comply with state and federal tax laws. Current and former members of the CFOSJ Board include Tracy residents Cynthia Souza and Ray McCray. The administration fee to be a part of the fund is 1% annually and includes all administrative charges, correspondence to donors and fund activities, including fundraising and advertising.

Within the CFOSJ, there are various designated funds where donations may be directed. The Foundation's website lists the various funds and gives recognition to donors. Each fund can also have their own website to describe the charitable uses, list donors and solicit funds. Within the CFOSJ, only one other City has a fund, Ripon, which was initiated by private donors. Funds typically have sub-funds within their funds. For example, the Ripon Community Fund has within it certain sub-funds which include the "Kenneth and Margaret De Jong Memorial Fund DAF" and the "Love Ripon Fund", which donors to the Ripon Fund can specify as a target for their donations. Other Funds within the CFOSJ include these Tracy-based funds: McHenry House Tracy Family Shelter, Hearts of Harvest Foundation, Scoop Ministries, Inc., West Side Pioneers Association and the Tracy Learning Center, all of which have total control over the use of their funds, subject only to any stated intention of a particular donor as to their own donated funds. Agency endowments include the Boys and Girls Club of Tracy Endowment and the Grand Foundation Endowment. There are also Donor Advised Funds, which are typically begun by a family, organization or individual, such as the Tracy-based Lorna L. Boothroyd Fund, Robert and Becki Brown Family Charitable Fund, Grewal Family Fund and the Bill Pollard Scholarship Fund. Donors can donate to a donor-advised fund when they simply trust the fund manager of that particular fund will use their donations towards endeavors that they support, much like someone would donate to the Gates Foundation because they believe in the goals of that foundation.

The City of Lodi is the only other City, aside from Ripon, in San Joaquin County that has a Fund within a Community Foundation. However, their fund was instituted within the Sacramento Region Community Foundation before the CFOSJ was established.

The CFOSJ not only performs all of the administrative and outreach functions for the Foundation, it also engages in fundraising activities to raise money for the Foundation. One such fundraiser is the annual Superbowl raffle, which raised over \$500,000 this year for 32 charities in San Joaquin County including McHenry House, Boys and Girls Club of Tracy and others. AG Spanos, owner of the San Diego Chargers, donated six sets of tickets to the Superbowl, and these, along with approximately 50 additional prizes, were raffled off with representatives from the various agencies selling tickets and splitting the proceeds after overhead has been paid. In the last few years, donors have covered overhead costs so that the charities selling tickets could receive 100% of the ticket sales with no overhead. If the Tracy were to establish a fund, Tracy community leaders might be invited to sell tickets to benefit the Tracy fund.

To participate in the CFOSJ, the City of Tracy must do the following:

- Select a name for the fund. For the City of Tracy, it can be simply The City of Tracy Fund and it can have as many subcategories as desired, so that donors can more easily target their gifts. For example, the City could form a Tracy Fund, and then have a subfund for Legacy Fields. Donors could then make contributions to Legacy Fields and be assured that their donations are going toward development and maintenance of the fields.
- Designate a fund advisor, such as the City Manager. The advisor will make the specific decisions on how donated funds are used and can give annual or semi-annual reports to Council on how funds were used, or to receive direction on how to use undesignated funds.
- Choose an investment strategy for the fund. There are a number of different strategies to choose from, ranging from aggressive to conservative, dependent on the risk tolerance of the fund manager, much like the strategies one chooses when one enrolls in a retirement plan.
- Invest \$10,000 or more in cash or securities in the fund. The City of Tracy could “seed” the fund with \$10,000, that could be reimbursed once the fund balance in the Tracy Fund exceeded a certain amount, such as \$50,000, to assure that the Fund did not drop below \$10,000
- Sign a fund agreement.

Once the fund is established,

- Anyone can add to the fund at any time in any dollar amount.
- There is no limit to the number of grants that can be awarded each year.

STRATEGIC PLAN

This item is related to all of Tracy’s stated strategies in that it can enable and encourage more charitable donations to be made to the City which has the potential of: 1) Enhancing fiscal stability and city services, (Goals 2 and 3, Governance); 2) Enhance competitiveness of the City (Economic Development Strategy); 3) Enhancing public safety initiatives as donations are targeted to public safety initiatives (Public Safety Strategy); and 4) Enhancing City amenities by improving current recreation and

entertainment programming and services and cultivating community engagement (Quality of Life Strategy).

FISCAL IMPACT

If Council were to approve the recommendation, the fiscal impact would be \$10,000 from the General Fund reserve, which would be returned when the balance within the Tracy Fund in the CFOSJ reaches \$50,000. The 1% administration fee would be automatically deducted from the Tracy Fund each year.

RECOMMENDATION

Authorize the City Manager to enroll the City of Tracy in the Community Foundation of San Joaquin (CFOSJ), appropriate \$10,000 from the general fund to be used as initial funds in the City of Tracy fund within the CFOSJ, authorize return of the \$10,000 to the general fund when the charitable funds for the City reach \$50,000, designate the City Manager as the fund advisor, with authorization to create sub-funds within the City of Tracy fund, with reports to be given to Council bi-annually to report on the status and use of the funds and to receive direction on the use of undesignated funds. It is further recommended that the following funds are immediately created within the Tracy Fund: Legacy Fields Fund, Tracy Aquatics Center Fund, The Tracy Animal Shelter Fund, and the Tracy Police Fund.

Prepared by: Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

RESOLUTION

AUTHORIZING THE CITY MANAGER TO ENROLL THE CITY OF TRACY IN THE COMMUNITY FOUNDATION OF SAN JOAQUIN (CFOSJ), APPROPRIATING \$10,000 FROM THE GENERAL FUND TO BE USED AS INITIAL FUNDS IN THE CITY OF TRACY FUND WITHIN THE CFOSJ, AUTHORIZE RETURN OF THE \$10,000 TO THE GENERAL FUND WHEN THE CHARITABLE FUNDS FOR THE CITY REACH \$50,000, DESIGNATING THE CITY MANAGER AS THE FUND ADVISOR, AND AUTHORIZING THE CITY MANAGER TO CREATE SUB-FUNDS WITHIN THE CITY OF TRACY FUND

WHEREAS, The Community Foundation of San Joaquin (CFOSJ) is a non-profit public charity that provides a mechanism for not-for-profit entities to receive and use tax deductible donations, and

WHEREAS, The City of Tracy may participate in the CFOSJ as a Tracy Fund, which would allow donors to make charitable contributions to the City which could benefit the City in many ways by encouraging and increasing fundraising for public facilities and services, and

WHEREAS, The CFOSJ will manage donated funds, communicate with donors, provide administrative activities including sending appropriate correspondence to donors and others that comply with Federal and State tax laws for a fee of 1% which would ease the administrative burden of the City, and

WHEREAS, Authorization to join the CFOSJ will incur a general fund expense of \$10,000 for the remainder of the 2015-16 fiscal year, which will be returned to the general fund when total Tracy Fund assets within the CFOSJ reach \$50,000, and will incur an additional expense of 1% of fund assets each year;

NOW, THEREFORE, BE IT RESOLVED, That the City Council authorizes the City Manager to enroll the City of Tracy in the CFOSJ, authorizes an appropriation of \$10,000 from the general fund to be used as initial funds in the City of Tracy Fund within the CFOSJ, authorizes return of the \$10,000 to the general fund when the charitable funds for the City reach \$50,000, designates the City Manager as the fund advisor, and authorizes the City Manager to create sub-funds within the City of Tracy fund.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the 19th day of January, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 4

REQUEST

PUBLIC HEARING TO INTRODUCE AN ORDINANCE AMENDING THE CONCEPT DEVELOPMENT PLAN, AND ADOPTING A RESOLUTION AMENDING THE PRELIMINARY AND FINAL DEVELOPMENT PLAN, FOR THE 71-LOT SOUTHGATE RESIDENTIAL SUBDIVISION LOCATED SOUTH OF THE WESTERN TERMINUS OF SCHULTE ROAD AND EAST OF MABEL JOSEPHINE DRIVE. THE APPLICANT AND OWNER IS BRIGHT DEVELOPMENT – APPLICATION NUMBERS PUD15-0003 AND D14-0027

EXECUTIVE SUMMARY

This agenda item is a request to change the rear yard setback requirement from 15 feet to 10 feet and to approve new architectural elevations and house plans to be built in the Southgate subdivision consisting of one single-story plan and three two-story plans of four different elevation styles per plan.

DISCUSSION

Background

In 1995, the Corral Hollow West area, consisting of approximately 294 acres located adjacent to and west of the existing terminus of Schulte Road, was annexed into the City of Tracy and zoned Planned Unit Development (PUD) for residential uses (Attachment A). Corral Hollow West is made up of the Redbridge subdivision, Gabriel Estates subdivision, and the Southgate project area. The Southgate project area is approximately 81 acres being developed in phases.

On January 3, 2006, the City Council granted approvals for the first phase of the Southgate project, which consists of an amendment to the Corral Hollow West Concept Development Plan for the subdivision design and development standards (Application Number 4-99-D), a 71-lot Vesting Tentative Subdivision Map (Application Number 3-99-TSM), and a Preliminary and Final Development Plan for residential architecture consisting of one single-story plan and three two-story plans (Application Number 4-99-D). Subsequently, the final map was recorded and one residence was constructed and occupied. The remaining 70 lots have not yet been constructed.

The applicant would like to construct the remaining 70 lots and has submitted applications for new architecture and a revised rear yard setback requirement. According to the applicant, the revised architecture incorporates more current design features and livability features than were previously approved almost a decade ago.

Concept Development Plan Amendment

The project area is bordered on the south (Gabriel Estates) and east (San Marco) sides by existing single-family homes zoned PUD. To the north is the site designated for multi-family residential, and to the west an area designated low density residential and park.

The proposed Concept Development Plan amendment is to change the established rear yard setback minimum from fifteen feet to ten feet. The proposed ten foot rear yard setback is similar to the rear yard setback requirements of the adjacent residential subdivisions: ten feet minimum with 675 square feet of rear yard open space in San Marco, and ten feet minimum with 825 square feet of rear yard open space in Gabriel Estates. As shown on the Development Plan (Attachment B), approximately 75% of the homes are proposed to have rear yard setbacks of 15 feet or greater. Establishing a ten foot minimum setback would provide flexibility by allowing homeowners in the future to build into the rear yards without conflicting with lot coverage regulations. If a house were to be constructed up to the minimum setbacks on the smallest lot, the house would still be under the maximum lot coverage allowance of 70% for single-story homes and 60% for two-story homes, and the homeowner would still be able to construct a small structure, such as a storage shed, in the rear of the property.

Preliminary and Final Development Plan Amendment

In accordance with the Design Goals and Standards for residential subdivisions of 50 to 100 lots, a total of sixteen houses are proposed consisting of four floor plans and four architectural styles to be built on the remaining 70 lots. The plans consist of one single-story plan at approximately 2,400 square feet and three two-story plans ranging from approximately 2,800 to 3,300 square feet in size. The existing lot sizes range from 5,000 to 11,773 square feet, with most lots in the general range of 5,600 to 6,200 square feet. The footprints of the proposed homes fit on the lots within the established setbacks, with the exception of approximately 25% of the houses proposed to be built closer to the rear than 15 feet. The requested amendment to the rear yard setback would need to be granted by the City Council before a Preliminary and Final Development Plan for homes to be located closer than 15 feet to the rear property line may be approved.

A good mix and distribution of each plan type and elevation is proposed throughout the subdivision, and nearly a quarter of the subdivision has homes whose garages are setback at least 30 feet, as encouraged in the Design Goals and Standards.

There are four different architectural styles of each floor plan, including Spanish, Italianate, Craftsman, and Cottage, and each elevation style will be available in four color schemes, for a total of sixteen different color schemes to be used throughout the subdivision (Attachment C). There is variation between elevations of each floor plan, utilizing a range of materials and façade details appropriate to each architectural style, decorative garage doors, and different roofing materials that are unique to the elevation style, making each feel like a different house. The house plans incorporate numerous windows that visually break up the otherwise large and flat side elevations. Architecture-specific details, such as siding, ironwork, brackets and braces, and shutters are used on all four sides of the houses. Every elevation style incorporates porch and front wall pop outs to de-emphasize the presence of garage doors facing the street, and there are substantial variations in building planes on the rears and sides as well. The variation in building planes is helpful in breaking up front, rear and side facades, reducing the effect of a monotonous streetscape or a two-dimensional feeling within the subdivision.

In summary, as listed in the findings within the Planning Commission Resolution, and as conditioned, the project complies with the Design Goals and Standards through the use of varying architectural styles, architectural elements on all four sides of the houses, emphasized entries, de-emphasized garage presence, and variation in building planes.

Planning Commission Recommendation

The Planning Commission reviewed the proposed project at the November 18, 2015, regularly scheduled public hearing and, after discussion about the architectural relationship between the proposed architecture and the architecture of the existing house, voted unanimously to recommend City Council approval of the Southgate PUD amendments.

Environmental Document

The project is exempt from the California Environmental Quality Act per Section 15162 pertaining to projects with a certified Environmental Impact Report (EIR) where the project does not propose substantial changes that will result in a major revision of the previous EIR. On February 1, 2011, the City of Tracy adopted the General Plan. The associated EIR (SCH# 1992 122 069) was certified February 1, 2011. Furthermore, the project is consistent with the Negative Declaration approved by the City Council for the Corral Hollow West Annexation. The project does not propose new significant changes to the environment that were not analyzed in the General Plan EIR, including the areas of traffic, air quality, land use, and aesthetics. Therefore, no further documentation is needed.

STRATEGIC PLAN

This agenda item is not related to any of the Council's Strategic Plans.

FISCAL IMPACT

This agenda item will not require any expenditure of funds. The applicant paid the application processing fees established by the City Council for the CDP amendment and PDP/FDP applications. The applicant will also pay all of the appropriate building permit and development impact fees upon the commencement of construction of the dwelling units and other improvements.

RECOMMENDATION

Staff and the Planning Commission recommend that the City Council:

1. Introduce an ordinance amending the Concept Development Plan for the Southgate Residential Subdivision; and
2. Adopt a resolution amending the Preliminary, and Final Development Plan for the Southgate Residential Subdivision, subject to conditions.

Prepared by: Kimberly Matlock, Associate Planner

Reviewed by: Bill Dean, Assistant Development Services Director
Andrew Malik, Development Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

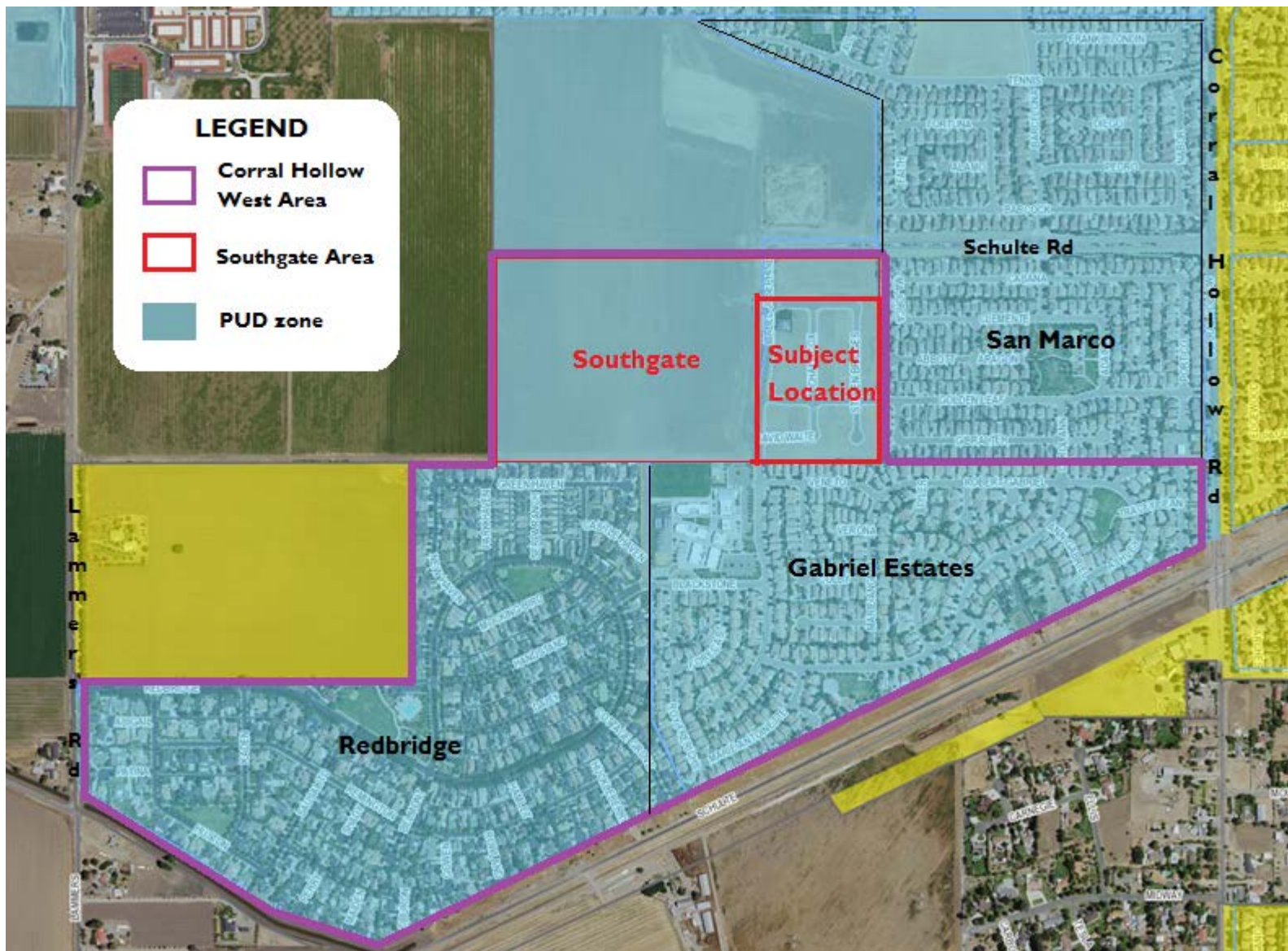
ATTACHMENTS

Attachment A: Project Location Map

Attachment B: Development Plan (Oversized and available in the City Clerk's office)

Attachment C: Preliminary and Final Development Plan (Oversized and available in the City Clerk's office)

Project Location Map



ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY AMENDING THE MINIMUM REAR YARD SETBACK ESTABLISHED IN THE CONCEPT DEVELOPMENT PLAN FOR THE SOUTHGATE PLANNED UNIT DEVELOPMENT LOCATED SOUTH OF THE WESTERN TERMINUS OF SCHULTE ROAD AND EAST OF MABEL JOSEPHINE DRIVE. THE APPLICANT AND OWNER IS BRIGHT DEVELOPMENT APPLICATION NUMBER PUD12-0002

The City Council of the City of Tracy does ordain as follows:

SECTION 1: The minimum rear yard setback established in the Concept Development Plan of the Southgate Planned Unit Development, a subdivision located south of the western terminus of Schulte Road, is amended to ten feet.

SECTION 2: This Ordinance shall take effect thirty (30) days after its final passage and adoption.

SECTION 3: This Ordinance shall be published once in the Tri-Valley Herald, a newspaper of general circulation, within fifteen (15) days from and after its final passage and adoption.

* * * * *

The foregoing Ordinance _____ was introduced at a regular meeting of the Tracy City Council on the 19th day of January, 2016, finally adopted on the 2nd day of February, 2016, and became effective on the 16th day of February, 2016, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

RESOLUTION 2016-_____

APPROVING A PRELIMINARY AND FINAL DEVELOPMENT PLAN AMENDMENT TO THE ARCHITECTURE FOR THE SOUTHGATE RESIDENTIAL SUBDIVISION LOCATED SOUTH OF THE WESTERN TERMINUS OF SCHULTE ROAD AND EAST OF MABEL JOSEPHINE DRIVE. THE APPLICANT AND OWNER IS BRIGHT DEVELOPMENT – APPLICATION NUMBER D14-0027

WHEREAS, The subject property was annexed to the City of Tracy in 1995 and is a part of the Corral Hollow West Planned Unit Development, with a zoning of Planned Unit Development and a General Plan land use designation of Residential Low, and

WHEREAS, On January 3, 2006, The City Council approved a Vesting Tentative Subdivision Map, a Concept Development Plan amendment, and a Preliminary and Final Development Plan for the Southgate residential subdivision consisting of 71 single-family dwelling units on approximately 18 gross acres located to the south of the western terminus of Schulte Road and east of Mabel Josephine Drive, and

WHEREAS, To date, one of the lots has been constructed and occupied, and the remaining 70 lots have not yet been developed, and

WHEREAS, The applicant has submitted an application for an amendment to the Preliminary and Final Development plan for four new house plans consisting of four architectural styles each and three color schemes each, and

WHEREAS, The Preliminary and Final Development Plans meet the goals and policies of the City's General Plan and Zoning Ordinance for low density residential development, and

WHEREAS, The proposed architecture is in compliance with Tracy's Design Goals and Standards because there is significant variation between floor plans and elevations, design details and materials specific to each architectural style, architectural features are used on all four sides of each house, the presence of garages on the street are de-emphasized, and the plans are evenly distributed throughout the subdivision, and

WHEREAS, The project is exempt from the California Environmental Quality Act per Section 15162 pertaining to projects with a certified Environmental Impact Report (EIR) where the project does not propose substantial changes that will result in a major revision of the previous EIR. On February 1, 2011, the City of Tracy adopted the General Plan. The associated EIR (SCH# 1992 122 069) was certified February 1, 2011. Furthermore, the project is consistent with the Negative Declaration approved by the City Council for the Corral Hollow West Annexation. The project does not propose new significant changes to the environment that were not analyzed in the General Plan EIR, including the areas of traffic, air quality, land use, and aesthetics, and, therefore, no further documentation is needed, and

WHEREAS, The Planning Commission conducted a public hearing to review and consider the amendments to the Concept, Preliminary, and Final Development Plans on November 18, 2015, and recommended, by adoption of a resolution, that the City Council approve the above mentioned applications;

NOW, THEREFORE, BE IT RESOLVED, That the Tracy City Council does hereby approve the amendments to the Preliminary and Final Development Plan for revised

architecture and house plans, subject to conditions stated in "Exhibit 1," attached and made part hereof.

The foregoing Resolution 2016-_____ was adopted by the City Council on the 19th day of January 2016, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

City of Tracy
Conditions of Approval
Southgate CDP/PDP/FDP Amendment
Application Numbers PUD15-0003 & D14-0027
January 19, 2016

A. General Provisions and Definitions.

A.1. General. These Conditions of Approval apply to:

The Project: Southgate Concept, Preliminary, and Final Development Plan
Amendments

The Property: 71 lots located East of Mabel Josephine Drive and south of Schulte
Road

A.2. Definitions.

- a. "Applicant" means any person, or other legal entity, defined as a "Developer."
- b. "City Engineer" means the City Engineer of the City of Tracy, or any other duly licensed Engineer designated by the City Manager, or the Development Services Director, or the City Engineer to perform the duties set forth herein.
- c. "City Regulations" means all written laws, rules and policies established by the City, including those set forth in the City of Tracy General Plan, the Tracy Municipal Code, ordinances, resolutions, policies, procedures, and the City's Design documents (the Streets and Utilities Standard Plans, Design Standards, Parks and Streetscape Standard Plans, Standard Specifications, and Manual of Storm Water Quality Control Standards for New Development and Redevelopment, and Relevant Public Facilities Master Plans).
- d. "Development Services Director" means the Development Services Department Director of the City of Tracy, or any other person designated by the City Manager or the Development Services Director to perform the duties set forth herein.
- e. "Conditions of Approval" shall mean the conditions of approval applicable to the Project. The Conditions of Approval shall specifically include all Development Services Department conditions set forth herein.
- f. "Developer" means any person, or other legal entity, who applies to the City to divide or cause to be divided real property within the Project boundaries or who applies to the City to develop or improve any portion of the real property within the Project boundaries. The Developer may be the property owner or the leasee, where responsibilities for improvements are distributed among each party. The term "Developer" shall include all successors in interest.

A.3. Compliance with submitted plans. Except as otherwise modified herein, the floor plans and architectural elevations shall be in substantial compliance with the plans received by the Development Services Department on November 10, 2015 for the remaining 70

lots in the Southgate Subdivision. The 10-foot rear yard setback shall apply to all 71 lots in the subdivision.

- A.4. Payment of applicable fees. The applicant shall pay all applicable fees for the project, including, but not limited to, development impact fees, building permit fees, plan check fees, grading permit fees, encroachment permit fees, inspection fees, school fees, or any other City or other agency fees or deposits that may be applicable to the project.
- A.5. Compliance with laws. The Developer shall comply with all laws (federal, state, and local) related to the development of real property within the Project, including, but not limited to:
- the Planning and Zoning Law (Government Code sections 65000, et seq.)
 - the California Environmental Quality Act (Public Resources Code sections 21000, et seq., "CEQA"), and
 - the Guidelines for California Environmental Quality Act (California Administrative Code, title 14, sections 1500, et seq., "CEQA Guidelines").
- A.6. Compliance with City regulations. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all City regulations, including, but not limited to, the Tracy Municipal Code (TMC), Standard Plans, and Design Goals and Standards.
- A.7. Protest of fees, dedications, reservations, or other exactions. Pursuant to Government Code section 66020, including section 66020(d)(1), the City HEREBY NOTIFIES the Developer that the 90-day approval period (in which the Developer may protest the imposition of any fees, dedications, reservations, or other exactions imposed on this Project by these Conditions of Approval) has begun on the date of the conditional approval of this Project. If the Developer fails to file a protest within this 90-day period, complying with all of the requirements of Government Code section 66020, the Developer will be legally barred from later challenging any such fees, dedications, reservations or other exactions.

B. Project Conditions

- B.1. Unless specifically modified by these Conditions of Approval, the Applicant shall comply with all applicable mitigation measures identified in the General Plan Environmental Impact Report, dated February 11, 2011, and the Corral Hollow West Planned Unit Development Mitigation Monitoring Program, dated October 26, 1994.
- B.2. Except as proposed in the Southgate Concept, Preliminary, and Final Development Plan and as modified by these conditions of approval, the project shall comply in all respects with the development standards that would apply to the Low Density Residential Zone of the Tracy Municipal Code.
- B.3. The Development Services Director may approve changes to the Development Plan and approve building permits in compliance with the modified Development Plan provided that the following criteria are met:

- a. No same floor plan may occur on two consecutive side-by-side lots or two lots across directly the street from each other, unless they are constructed with substantially different elevations as determined by the Development Services Director. The same floor plan and elevation may be used on two back-to-back lots provided that different color schemes are used.
 - b. No same floor plan shall be used on three consecutive side-by-side lots.
 - c. No same floor plan may occur more than thrice for every grouping of six neighboring lots facing each other.
 - d. At least twenty percent of the subdivision (14 lots) shall be placed such that the garage is setback at least 30 feet from the back of sidewalk.
 - e. A minimum of 17 lots shall be single-story, and the single-story homes should be distributed throughout the subdivision such that there is no obvious concentration of single-story homes in a particular area to the satisfaction of the Development Services Director.
 - f. Each two-story plan shall be used not less than 10% nor more than 30% of the total lots in the subdivision.
- B.4. Prior to issuance of a building permit for Lot 53, the Applicant shall cause a certificate of lot line adjustment with the necessary deed to be recorded at the San Joaquin County Recorder, to adjust the property line between Assessor's Parcel Number 240-670-17 and 240-050-38 such that the resulting Lot 53 (Assessor's Parcel Number 240-670-17) is consistent in size and shape with that shown in the Preliminary and Final Development Plan. The deed shall include the dedication of the portion of Assessor's Parcel Number 240-670-17 to the City for Mabel Josephine Drive right-of-way.
- B.5. Prior to issuance of a building permit for Lot 53, the Applicant shall cause a grant of easement to be recorded at the San Joaquin County Recorder, for the dedication of a 10 feet wide Public Utility Easement (PUE) along the frontage of Lot 53 on Mabel Josephine Drive.
- B.6. Prior to issuance of building permits for lots 53 through 68, the Applicant shall demonstrate that no building or structure is proposed in any easement which does not permit buildings or structures. The Applicant shall disclose to lot buyers presence and restrictions of the easement.
- B.7. Prior to any work in the public right-of-way, the Applicant shall obtain applicable encroachment permits required for any work to be done in the public right-of-way. The Applicant shall submit improvement plans that shows the extent of work and construction detail of driveway modification and relocation of water and/or sewer services, if applicable, and pay plan checking, permit processing, testing, and engineering inspection fees. All work on City's right of way shall be completed, prior to final building inspection of the last residential house constructed within the property.
- B.8. Prior to issuance of any permits for ground disturbance, the Applicant shall comply with the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and a signed copy of the Incidental Take Minimization Measures shall be submitted to the City as verification of compliance.

- B.9. If the Applicant installs on-site landscaping, then the Applicant shall demonstrate compliance with the Department of Water Resources' Water Efficient Landscape Ordinance to the satisfaction of the Utilities Director prior to the issuance of building permits. The landscape and irrigation plans and documentation shall be submitted with the master plans.
- B.10. Prior to the issuance of building permits, the Applicant shall document compliance with all applicable school mitigation requirements consistent with City Council standards and obtain certificate of compliance from the Tracy Unified School District for each new residential building permit.
- B.11. Prior to the issuance of building permits, the Applicant shall include a copy of these Conditions of Approval in the building permit plan set.
- B.12. Prior to the issuance of a building permit, the Applicant shall reimburse the City for annexation and Planned Unit Development planning costs pursuant to the Reimbursement Agreement between the City and Corral Hollow West Group dated August 22, 1994.

AGENDA ITEM 5

REQUEST

APPROVE A LIST OF CITY OF TRACY PROJECTS FOR SAN JOAQUIN COUNCIL OF GOVERNMENT'S ONE VOICE TRIP TO WASHINGTON D.C., FOR CONGRESSIONAL FUNDING APPROPRIATION REQUESTS

EXECUTIVE SUMMARY

Approval of the list of projects by City Council will make these projects eligible for San Joaquin Council of Government's (COG) One Voice trip to Washington D.C. for congressional funding appropriation requests.

DISCUSSION

Every year the City of Tracy submits a list of projects for consideration at the annual congressional funding appropriations during the One Voice trip to Washington D.C., by San Joaquin County, Council of Governments, and cities elected officials. Each city is requested to submit a total of two projects; one project of regional significance, and one project for local improvements.

Staff has reviewed the existing needs of various transportation projects and is recommending the following two projects for the 2016 One Voice trip.

- I-205/Lammers Road Interchange Improvements
Total Construction Cost - \$62 million
Requested appropriation - \$5 million
- New MacArthur Drive above grade crossing over UPRR Mococo line
Total Construction Cost - \$28 million
Requested appropriation - \$5 million

Both of these projects were submitted for consideration for the 2013, and 2014, One Voice trip; however, the City did not receive any funding in 2014. The City has received funds for the I-205/Lammers Road Interchange during previous years and the City's consultant is presently working on completion of the project design, improvement plans and construction documents.

The I-205/Lammers Road project is of regional significance and will connect Byron Road and Contra Costa County to Highway 580. This project is also essential for development on the west side of Tracy and the future Caltrans project located just north of the interchange. In addition, this project will initiate developments north of I-205 along Lammers Road.

The existing at-grade Union Pacific Railroad (UPRR) Mococo line crossing with MacArthur Drive (adjacent to Sixth Street) will divide the City into two separate unconnected areas for the duration of the freight trains movement through the City when the line is activated for higher volumes of train traffic. The proposed above grade

crossing at the new MacArthur Drive alignment over the Mococo line will alleviate this condition. The above grade crossing at the new alignment of MacArthur Drive (east of the UPRR switch yard) intersecting with the Eleventh Street overpass will allow for an uninterrupted flow of traffic including quick movement of emergency vehicles on both sides of the Mococo rail line.

This list of projects, after approval from City Council, will be submitted to the San Joaquin Council of Governments for inclusion in the One Voice trip to Washington for congressional funding.

Submittal of projects to the SJCOG's One Voice effort does not necessarily mean continued participation in the program. Other alternatives can also be considered in the future to advocate for Tracy projects.

STRATEGIC PLAN

This agenda item is consistent with the Council's adopted Economic Development Strategy to ensure the availability of infrastructure necessary for development in Tracy.

FISCAL IMPACT

Approving the proposed projects for the One Voice trip will not impact the General Fund. The City is requesting approximately \$10 million in congressional appropriations. In addition to this funding, the proposed projects will be supported through other sources, including Measure K Sales Tax and development impact fees.

RECOMMENDATION

That City Council approve the list of City of Tracy projects for the San Joaquin Council of Government's One Voice trip to Washington D.C. for congressional funding appropriation.

Prepared by: Robert Armijo, City Engineer

Reviewed by: Andrew Malik, Development Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

RESOLUTION _____

APPROVING A LIST OF CITY OF TRACY PROJECTS FOR SAN JOAQUIN COUNCIL OF GOVERNMENT'S ONE VOICE TRIP TO WASHINGTON D.C., FOR CONGRESSIONAL FUNDING APPROPRIATION

WHEREAS, The City of Tracy submits a list of projects for consideration at the annual congressional funding appropriations during One Voice trip to Washington D.C., by San Joaquin County, Council of Governments, and cities elected officials, and

WHEREAS, Staff has reviewed the existing needs of various transportation projects and is recommending the following two projects for the One Voice trip:

- I-205/Lammers Road Interchange Improvements
Total Construction Cost - \$62 million
Requested appropriation - \$5 million
- New MacArthur Drive above grade crossing over UPRR Mococo line Total Construction Cost - \$28 million
Requested appropriation - \$5 million

WHEREAS, There is no fiscal impact to the General Fund. In addition to the requested congressional appropriations, funding of the above projects will be shared by a variety of sources including Measure K Sales Tax and development impact fees;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the list of City of Tracy projects for the San Joaquin Council of Government's One Voice Trip to Washington D.C. for congressional funding appropriation.

* * * * *

The foregoing Resolution 2016-_____ was passed and adopted by the City of Tracy City Council on the 19th day of January, 2016, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 6

REQUEST

COMPARATIVE ANALYSIS OF EXISTING 1998 TRACY HILLS APPROVALS TO THE PROPOSED 2016 PROJECT

EXECUTIVE SUMMARY

On January 5, 2016, City Council asked for information related to the Tracy Hills project prior to the project going to public hearing. City Council requested a comparison of the existing (1998) approvals and current project requirements as compared to the proposed (2016) project and development requirements.

DISCUSSION

On January 5, 2016, City Council requested an agenda item and report related to the Tracy Hills project. Specifically, City Council asked that prior to the project going to public hearing, a comparison between the existing (1998) project approvals and requirements and the current (2016) project and development requirements be completed. Attached is a basic matrix comparing components of the project (Attachment A).

The matrix illustrates topical areas of utilities, public works, public safety, roadways, parks, zoning, and development/growth management. Several things have occurred since the original approvals that add to the discussion/comparison. Namely, Measure A passed, limiting residential building activity to lower prescribed limits, the City adopted a new General Plan and new Infrastructure Master Plans, the City limits have expanded with several annexations (Gateway, Cordes Ranch, and Ellis), and residential growth allotment processes and priorities have been amended several times. Additionally, standards of cover and performance standards for public safety have evolved. All of these items both directly and indirectly affects (and reflects) the City's comprehensive planning for future development, including Tracy Hills. Comparing previous approvals to current development proposals as shown in the matrix also requires recognition of these actions taken in the intervening time period since the original approvals.

FISCAL IMPACT

The costs for processing the Tracy Hills project are being fully borne by the project applicant through a Cost Recovery Agreement.

RECOMMENDATION

Staff recommends that the Council discuss the information provided and provide direction to staff.

Prepared by: Bill Dean, Assistant Development Services Director
Kul Sharma, Utilities Director
Andrew Malik, Development Services Director
Jeremy Watney, Interim Police Chief
Dave Bramell, Fire Division Chief
Robert Armijo, City Engineer/Assistant Development Services Director
Don Scholl, Public Works Director
Steve Bayley, Project Specialist, Utilities

Reviewed by: Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A – Comparison Matrix

**Basic Comparison Matrix for Tracy Hills 1998 (existing approvals)
and 2016 (proposed approvals)**

Key Element Description	1998 Approvals	Implementation Authority	2016 Proposals	Implementation Authority
<p>Utilities</p> <p>Water</p>	<p>Water Distribution Tracy Hills had its own water distribution network starting from the Water Treatment Plant.</p> <p>Water Source & Reliability A major portion of the water supply was listed from the Widren Water District (Fresno County) and the remaining portion was identified from South San Joaquin County Irrigation District. However, no agreements were executed.</p> <p>The Widren Water District Supply, due to its Agricultural reliability, was dropped from consideration.</p>	<p>2015 EIR</p>	<p>No change in concept, however design criteria and alignments have changed.</p> <p>Water Source & Reliability The current water supply for Tracy Hills is from Byron Bethany Irrigation District for the whole development with pre-1914 appropriations. This is more reliable than the previously proposed Widren Water District Agricultural Water reliability. However, this supply was also curtailed by the State Water Resources Control Board.</p>	<p>2015 EIR</p>
<p>Utilities</p> <p>Wastewater Treatment</p>	<p>Tracy Hills would construct an interim treatment facility by land application and chemical treatment on multiple acres contained in that facility.</p> <p>Once enough fees are received from the building permits, a new treatment facility compatible with the existing WWTP would be constructed and the interim facility will be cleaned up.</p> <p>In 1998, there were no infill or plan C approved developments and Tracy Hills was located approximately three miles away from the City boundaries as a self-contained full service satellite city. The cost of wastewater collection lines along Corral Hollow Road up to Old Schulte Road to go to the City's WWTP was not cost effective at that time. In addition, the expansion of the WWTP was not an approved project.</p>	<p>1998 EIR MM, page 4.10-11.</p>	<p>WW treatment at the existing City plant (which has capacity through planned expansions)</p> <p>Tracy Hills wastewater will be treated at the City's existing WWTP which is a part of the Master Plan improvements and Tracy Hills will pay its fair share towards expansion of the existing WWTP.</p> <p>One WWTP facility benefits the City for reduced cost of operations due to one versus two treatment plants.</p> <p>Tracy Hills pays for the construction of sewer collection mains from the project site to south of Linne Road (approximately 1.5 miles). This is an additional sewer line the City will have to maintain if the City has one WWTP.</p> <p>All other improvements for the wastewater collection system are part of the Master Plan and Tracy Hills will pay its fair share of the fees.</p>	<p>2013 Citywide Master Plans, 2015 EIR pages 4.12-43, Phase 1a Tent Map COAs, and DA</p>
<p>Utilities</p> <p>Storm drainage</p>	<p>Storm drainage collected in detention ponds/basins with flow-metering to discharge to Corral Hollow Creek. Construction of diversion structures to discharge water from Corral Hollow Creek to the terminal drainage facilities at the gravel pits located near MacArthur Drive.</p>	<p>1998 EIR MM 4.6-1 and MM 4.6-2.</p>	<p>Terminal storage on-site</p>	<p>Tracy Hills Storm Drainage Master Plan, 2015 EIR MM 4.9-2.</p>
<p>Roadways</p>	<p>Tracy Hills was a stand-alone development and was responsible for all local roadway impacts and its fair share impacts on the existing City roadway network.</p> <p>The local roadway network included major interchange improvements on I-580 and widening of Corral Hollow Road from Linne Road to the project site.</p> <p>Impacts on the existing roadway network were limited to fair share improvements on signals and road widening.</p>	<p>1998 EIR, MM 4.3-1 page 4.3-19 and table 4.3-3 on page 4.3-20.</p> <p>MM 4.3-2, MM 4.3-3a through e.</p> <p>MM 4.3-4a through e, page 4.3-24</p> <p>MM 4.3-5 page 4.3-29</p> <p>MM 4.3-6 page 4.3-35</p>	<p>Tracy Hills is part of the City's Roadway Master Plan and pays its fair share fees toward all improvements listed in the City's master plan.</p> <p>The cost of the interchanges will be shared by all the developments within the Master Plan area. However if Tracy Hills triggers any major improvements, Tracy Hills will pay the full cost upfront and will be reimbursed later from fees collected from other developments.</p> <p>Tracy Hills also pays its fair share impacts on roadway improvements as far as Mountain House Parkway and I-205.</p>	<p>2015 EIR</p>

**Basic Comparison Matrix for Tracy Hills 1998 (existing approvals)
and 2016 (proposed approvals)**

Key Element Description	1998 Approvals	Implementation Authority	2016 Proposals	Implementation Authority
Public Safety Fire	1 new fire station on a 1 acre site, and unquantified number of new personnel funded through assessments. 100 foot fire break required adjacent to conservation areas. Provisions related to emergency vehicle access on long cul-de-sacs, and steep roads.	1998 EIR MM pages 4.10-23 to 4.10-28	\$4,000,000 toward 1 new fire station on a 1-acre site, staffed with 9 personnel, for Phases 1A and B required prior to 289 BPs. Additional fire station required in subsequent phases in accordance with PSMP and SOC to satisfaction of Fire Chief. Prior to BPs, all weather access for emergency response required from Lammers Road to Phase 1a areas. 100 foot fire break required adjacent to conservation areas.	2015 EIR pages 4.12-47, Tent Map COAs, DA, and proposed Citywide Fiscal CFD
Police	19 new officers and facilities required (assumed 1 officer per 1000 residents), funded through assessments and fees.	1998 EIR MM pages 4.10-21 to 4.10-23	Approximately 19 new officers, although a higher number than 1 per 1000 is required up front. Up front (Phase 1a), the requirement is \$390,000 for 4 patrol cars and equipment for 6 officers.	2015 EIR, pages 4.12-48, Tent Map COA, DA, and proposed Citywide Fiscal CFD
Public Safety Communications Tower	No specific requirement		Fair share cost included as part of Public Safety Facilities fee applicable to Tracy Hills and other projects as part of Master Plan fees	Project COAs
Public Works Maintenance	Not specifically identified in 1998 documents		\$115 per unit for parks maintenance proposed in CFD. All other maintenance of City facilities is part of CFD.	SP, Tent Map COA, DA
Development Concept	Specific Plan includes a golf course, and lakes	SP	Specific Plan changes golf course and lakes areas to open space, partially accessible	SP
Zoning	5500 units in land use mix	SP	5500 units in land use mix in renamed zones	SP
Development Standards	Design standards for entire SP	SP	Design standards for Phase 1a, future Phases subject to future actions by City Council	SP
Residential Growth Allotments (RGAs) and vesting to Growth Management Ordinance Guidelines	Equal competition among projects in Tracy, no guarantee for RGAs	No Vesting Map or DA exists under 1998 approval, thereby providing no RGA priority or guarantee	Majority percentage of RGAs go to Tracy Hills meaning Tracy Hills is principal development project in Tracy for 25+ years (term of DA, plus terms of vesting maps)	DA, Vesting Map
Parks	4 acres per 1000 people		4 acres per 1000 people, plus 30 acres for Community Park to be located adjacent to open space at no cost to City for the land.	
Public Services Funding	Requirement for assessment districts		Proposed Community Facilities District (CFD)	
Development Agreement	No DA approved		Development Agreement provides vesting rights to existing laws (including Growth Management Ordinance) to developer and \$5 million dollar public benefit payment to City, plus land for park.	Outlined in DA, see staff report to CC dated 11-3-15

Key: MM = Mitigation Measure
 SP = Specific Plan
 Tent Map = Tentative Subdivision Map
 DA = Development Agreement
 COA = Condition of Approval
 CFD = Community Facilities District
 WWTP = Wastewater Treatment Plant
 RGA = Residential Growth Allotment

AGENDA ITEM 8.A

REQUEST

APPOINT APPLICANTS TO THE PARKS AND COMMUNITY SERVICES COMMISSION

EXECUTIVE SUMMARY

On January 31, 2016, terms will expire for three of the Parks and Community Services Commissioners. A recruitment was conducted and appointments need to be made.

DISCUSSION

On January 31, 2016, terms will expire for three of the Parks and Community Services Commissioners. To fill the upcoming vacancies, the City Clerk's office conducted a four week recruitment from November 17 to December 15, 2015, during which time seven applications were received.

On January 13, 2016, a Council subcommittee consisting of Council Member Young and Council Member Mitracos interviewed seven applicants. In accordance with Resolution 2004-152, the Council subcommittee will recommend applicants for appointment to serve four year terms, which will begin on February 1, 2016, and end on January 31, 2020.

STRATEGIC PLAN

This item is a routine operational item and does not relate to any of the Council's Strategic Plans.

FISCAL IMPACT

None.

RECOMMENDATION

That Council approve the subcommittee's recommendations and appoint applicants to the Parks and Community Services Commission to serve four year terms which will end on January 31, 2020.

Prepared by: Adrienne Richardson, Deputy City Clerk

Reviewed by: Nora Pimentel, City Clerk
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

AGENDA ITEM 8.B

REQUEST

REVIEW APPOINTMENTS TO COUNCIL COMMITTEES

EXECUTIVE SUMMARY

Annual review of Council committees.

DISCUSSION

Appointments to Council subcommittees are reviewed on an annual basis. The appointments were last reviewed on January 20, 2015. Attached is the list of appointments approved by the Council for 2015 (Exhibit A).

Some committees may need to be deleted from the list if they are no longer active or if Council participation is no longer required. Likewise, active committees not on the list may need to be added. Council members may be reappointed to the same committees on which they are currently serving, or new assignments can be made upon request.

STRATEGIC PLAN

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

FISCAL IMPACT

None

RECOMMENDATION

That the City Council, by motion, deletes or adds to the attached list of committees, and make appointments to the remaining committees as appropriate.

Prepared by: Nora Pimentel, City Clerk

Reviewed by: Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS:

Attachments: Exhibit A - List of Council Appointments for 2015

2015 - COUNCIL COMMITTEES/COMMISSIONS

Committee/Commission	Meetings Held	Council Members
City/Chamber Liaison	Quarterly	Mayor Maciel Council Member Young
City/Schools Liaison	Every other month	Mayor Pro Tem Rickman Mayor Maciel
Investment Review Committee	Quarterly	Council Member Mitracos Mayor Maciel
South County Fire Authority	Quarterly	Mayor Maciel Mayor Pro Tem Rickman
*Tracy Area Public Facilities Financing Agency	As needed, with an annual meeting in May	Council Member Mitracos Council Member Young
**City Selection Committee	Annually, additional meetings as needed	Mayor Maciel
**Community Development Block Grant Policy Advisory Committee	As needed, in conjunction with the distribution of the CDBG grants.	As needed
**Council of Governments	Monthly, in Stockton at 5:30 p.m. on the fourth Thursday of the month.	Mayor Maciel Council Member Young - Alternate
**Duel Vocational Institution, Citizen's Advisory Committee	Alternate Months	Council Member Young
**San Joaquin County Water Advisory Commission	Monthly	Council Member Mitracos, Alternate
**San Joaquin Partnership	Monthly, on the fourth Thursday of each month	Mayor Maciel
**San Joaquin Regional Rail Commission	Monthly	Mayor Maciel
**Solid Waste Management Plan Advisory Task Force	As needed	Council Member Young
**Special City Selection Committee, SJVAPCD	As needed	Council Member Mitracos Council Member Vargas -Alternate
**League of California Cities, Central Valley Division Executive Committee	Quarterly	Council Member Vargas
***Oversight Board of the Successor Agency to the City of Tracy Community Development Agency	First Tuesday of Each Month at 3:30 p.m.	Mayor Maciel
Joint City/County Criminal Justice Task Force (Appointed at 08/20/2013 Council Meeting)	As needed	Mayor Pro Tem Rickman Council Member Vargas Mayor Maciel (Alternate)
San Joaquin Council of Government's One Voice - Washington	Annual Meeting – April 19 – 25, 2015	Mayor Maciel Council Member Young (Alternate)
Altamont Regional Authority	As needed	Mayor Maciel
Tri-Valley Regional Rail Advisory Group	Twice a month	Council Member Vargas

*Ad Hoc Committee **Outside Agencies

COUNCIL COMMITTEES - 2015

Following is a current list of both standing committees and ad hoc committees. Some of these appointments are City of Tracy appointments to a larger body, while others are City directed activities only.

I. **STANDING COMMITTEES**

A. **City/Chamber Liaison Committee**

1. Michael Maciel, Mayor
2. Nancy Young, Council Member
3. Troy Brown, City Manager

Meets quarterly typically on the third Monday of the designated month at 5:00 p.m. at the Chamber to discuss issues of concern to both the City and the Chamber, i.e. Fourth of July activities, Downtown activities, Bean Festival, etc.

B. **City/Schools Liaison Committee**

1. Michael Maciel, Mayor
2. Robert Rickman, Mayor Pro Tem
3. Troy Brown, City Manager
4. Police Chief Hampton
5. Kuldeep Sharma, City Engineer
6. Andrew Malik, Director of Development Services
7. Maria Hurtado, Assistant City Manager

Meets every other month with School District officials to discuss issues of mutual concern, i.e. school pedestrian routes, bus routes, facilities, crossing guards, etc.

C. **Investment Review Committee**

1. Mary Mitracos, Council Member
2. Michael Maciel, Mayor
3. Ray McCray, Treasurer
4. Administrative Services Department Director
5. Troy Brown, City Manager

Meets on a quarterly basis to address issues involving investment of the City's funds and management of the City's portfolio. Meetings are usually held on the last Monday of the quarter at 5:30 p.m. in Room 109 at City Hall.

D. **South County Fire Authority (SCFA)**

1. Michael Maciel, Mayor
2. Robert Rickman, Mayor Pro Tem
3. Alternate

The SCFA consists of four members - two Council Members appointed annually by the City Council, and two Board Members of the Tracy Rural

Fire Protection District appointed annually by the Board. The Board of Directors meets on a quarterly basis, and has the responsibility to manage and administer the fire protection services provided to the jurisdictional area of the South County Fire Authority.

II. **AD HOC COMMITTEES**

- A. **Downtown Revitalization Task Force** – (Disbanded by Council - City Council meeting 01/06/09)
- B. **Community Park Design Subcommittee** (Disbanded by Council - City Council meeting 01/02/07)
- C. **Tracy Area Public Facilities Financing Agency (TAPFFA)**
 - 1. Mary Mitracos, Council Member
 - 2. Nancy Young, Council Member
 - 3. Administrative Services Department Director

TAPFFA was formed as a Joint Power Authority between the City, Tracy School District, and Jefferson School District. The JPA was authorized to issue Mello-Roos bonds primarily to build new schools in the Residential Specific Plan area. With the ultimate build out of the TAPFFA area usually only a brief annual meeting of the TAPFFA Board of Directors is necessary in order to approve the budget and levy the necessary tax for the duration of the bonds. The annual meeting is normally held in May.

III. **THIRD AGENCY MEMBER APPOINTMENTS**

A. **City Selection Committee**

- 1. Michael Maciel, Mayor
- 2. Alternate

This committee is composed of the Mayors of the cities in San Joaquin County and addresses issues related to membership and appointments to regional boards, such as LAFCO, Delta Protection Agency, and the San Joaquin Valley Unified Air Pollution Control District, etc.

B. **Community Development Block Grant Policy Advisory Committee**

- 1. Vacant

Meets as needed in conjunction with the distribution of the CDBG grants.

C. **Council of Governments (COG)**

- 1. Michael Maciel, Mayor
- 2. Nancy Young, Council Member (Alternate)

The Council of Governments meets monthly and deals with regional issues, including transportation issues, habitat mitigation, regional rail issues, airport land use matters, etc. Meetings are held in Stockton at 5:30 p.m. on the fourth Thursday of the month.

- D. Deuel Vocational Institution, Citizens Advisory Committee**
Contact: Martina Virrey, Community Partnership Manager (209/830-3891)
or martina.virrey@cdcr.ca.gov

1. Nancy Young, Council Member

This subcommittee serves in an advisory capacity to Deuel Vocational Institution, a state prison located to the southeast of Tracy. The subcommittee's primary objective is to promote effective communication between the Institution and the community at large. California Penal Code Section 5056 requires two persons shall be appointed for two year terms from nominations submitted by the local City Council in whose district the prison is located. Individuals nominated may be elected officials or involved residents of the City. Meetings are normally held on the second Thursday of odd numbered months from 9:00 a.m. to 10:00 a.m.

- E. Local Transportation Authority Citizens Advisory Committee (COG)**
Contact: COG (468-3913)

1. Vacant (Citizen appointed by Mayor)

- F. San Joaquin County Library Task Force** – (Disbanded by Council - City Council meeting 01/06/09)

- G. San Joaquin County Water Advisory Commission**
Contact: Mel Lytle, San Joaquin County Public Works Dept. (468-3000)

1. David Ferguson, Director of Public Works
2. Mary Mitracos, Council Member (Alternate)

Appointed by the Board of Supervisors, this Commission acts in an advisory capacity to the San Joaquin County Flood Control and Water Conservation District. Consists of 22 members from the various cities and water agencies in San Joaquin County. Meets monthly.

- H. San Joaquin Partnership**
Contact: Chris Youngsma, (956-3380)

1. Michael Maciel, Mayor
2. (Alternate)

The San Joaquin Partnership is a non-profit, private-public economic development corporation assisting business and industry to locate into San Joaquin County. Meets on the fourth Thursday of each month.

- I. San Joaquin Regional Rail Commission**
Contact: Rail Commission staff (468-3025)

1. Michael Maciel, Mayor

The San Joaquin Regional Rail Commission oversees the development of rail services on a regional basis. Meets monthly.

J. Solid Waste Management Plan Advisory Task Force

Contact: Tom Horton, SJC Public Works Department – (209/468-3066)

1. Nancy Young, Council Member
2. David Ferguson, Director of Public Works

This task force is comprised of elected representatives of the governmental agencies responsible for preparing the County Integrated Waste Management Plan. The duties of the task force include: identifying solid waste management issues of County-wide or regional concern; facilitating the development of multi-jurisdictional arrangements for the marketing of recyclable materials; developing goals, policies and procedures consistent with guidelines and regulations adopted by the Department of Resources Recycling and Recovery, and advising the Board of Supervisors on matters pertaining to the County-wide Household Hazardous Waste Program. Meets as needed.

K. Special City Selection Committee, SJVAPCD

Contact: Sayed Sadredin, Executive Director – (559/230-6036)

1. Mary Mitracos, Council Member
2. Veronica Vargas, Council Member (Alternate)

The Committee is charged with making appointments of city representatives to the San Joaquin Valley Air Pollution Control District's Governing Board.

L. League of California Cities, Central Valley Division Executive Committee

1. Veronica Vargas, Council Member
2. Troy Brown, City Manager (Alternate)

Meets Quarterly

M. Oversight Board of the Successor Agency to the City of Tracy Community Development Agency

1. Michael Maciel, Mayor
2. (Alternate)

Meets on the first Tuesday of each month at 3:30 p.m.

N. Joint City/County Criminal Justice Task Force

1. Robert Rickman, Mayor Pro Tem
2. Veronica Vargas, Council Member
3. Michael Maciel, Mayor (Alternate)

Meets when needed.

O. San Joaquin Council of Government's One Voice Trip to Washington

1. Michael Maciel, Mayor
2. Nancy Young, Council Member

This annual trip to Washington

P. Altamont Regional Authority

1. Michael Maciel, Mayor

Q. Tri-Valley Regional Rail Advisory Group

1. Veronica Vargas, Council Member

Meets twice a month