

Tuesday March 1, 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.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

PRESENTATIONS – Employee of the Month
– Introduction of New Tracy Librarian, Stella Beratlis
– Proclamation - Multiple Sclerosis Awareness Week

1. CONSENT CALENDAR

- A. Adopt Council Minutes – February 9, 2016, Closed Session minutes, and February 16, 2016, Special meeting minutes.
- B. Approval of a Two Year General Service Agreement, with a Possible One Year Extension, with Van De Pol Petroleum Diesel Fuel Supply Services and Authorization for the Mayor to Execute the Agreement
- C. Increase Fees Charged by Towing Service Operators for Services Rendered, Effective March 2, 2016, to Equal Fees Charged by the Tracy Office of the California Highway Patrol
- D. Approve an Offsite Improvement Agreement (OIA) for International Park of Commerce - Phase 1D Non-Program Roadway Improvements and Other Associated Improvements on Promontory Parkway (New Schulte Road), and Hopkins Road (Road "E") for International Park of Commerce - Building 6, and Authorize the Mayor to Execute the Agreement
- E. Approve an Offsite Improvement Agreement with Prologis L.P., a Delaware Limited Partnership, for the International Park of Commerce, Phase 1D Roadway Improvements on Promontory Parkway (New Schulte Road) Approximately 2,000 Feet West of Hansen Road, a 16-Inch Diameter Potable Water Main on Hopkins Road (Road "E"), and a Recycled Water Line on Promontory Parkway from the Existing Drainage Canal to Hansen Road and Associated Improvements, for Building 6 and Authorization for the Mayor to Execute the Agreement
- F. Approve a Professional Services Agreement (PSA) With VVH Design Group Inc. DBA VVH Consulting Engineers (VVH Consulting Engineers) of Modesto, California to Provide Technical Support Services for Multiple Capital Improvement Projects, Authorize the Mayor to Execute the Agreement, and Authorize the Development Services Director to Extend the Agreement for Another Year if Needed
- G. Approve First Amendment to Agreement for Purchase and Sale of Real Property, Extending the Scheduled Close of Escrow Date by 90 Days, for Real Property Between the City of Tracy and BCP Tracy LLC on a Portion of City-Owned Property Located at the Southwest Corner of Naglee Road and Park & Ride Drive Referred to as Parcel "A" (APN# 212-290-39)
- H. Authorize Amendment of the City's Position Control Roster by Adding a New Position of Executive Assistant in the Parks and Community Services Department and Approve a General Fund Appropriation in the Amount of \$27,717

- I. Authorize Appropriation to the Public Works Department and Amend the City's Classification and Compensation Plan and Position Control Roster by the Addition of a Full-Time Recreation Coordinator I, 3 Part Time Pool Managers, 6 Part Time Senior Lifeguards and 25 Part Time Lifeguards to the Parks & Community Services Department to Operate the Joe Wilson Pool
 - J. Approve an Appropriation of an Additional \$50,000 from the General Fund to the Cultural Arts Budget
 - K. Waive Second Reading and Adopt Ordinance 1209, an Ordinance of the City of Tracy Amending Sections of Tracy Municipal Code Chapter 2.20, Contracts and Purchasing, to Provide for a Local Bidder Preference for Public Projects with a Cost of \$45,000 or Less, to Remove Newspaper Publication Requirements for Requests for Certain Bids for General Services, Equipment and Commodities, and to Make Minor Changes to the Bidding Process
 - L. Adopt the Memorandum of Understanding Between the City of Tracy and the Tracy Police Officers Association (TPOA)
2. ITEMS FROM THE AUDIENCE
 3. UPDATE ON STATUS OF TRACY VILLAGE DEVELOPMENT PROPOPSAL AND REQUEST FOR CITY COUNCIL DIRECTION ON RELATED ANNEXATION ISSUES
 4. ITEMS FROM THE AUDIENCE
 5. COUNCIL ITEMS
 6. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

February 9, 2016, 5:00 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Maciel called the meeting to order at 5:00 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: Troy 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 5:01 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 7:15 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: 7:15 p.m.

The agenda was posted at City Hall on February 4, 2016. The above are action minutes.

Mayor

ATTEST:

City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

February 16, 2016, 4:30 p.m.

333 Civic Center Plaza, Room 203, Tracy

1. CALL TO ORDER – Mayor Maciel called the meeting to order at 4:30 p.m.
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 no speakers.
4. CITY COUNCIL WORKSHOP REGARDING LAND USE, DEVELOPMENT STANDARDS AND DESIGN GUIDELINES FOR NEW DEVELOPMENT ALONG INTERSTATE 205 (I-205) WITHIN THE CITY LIMITS

Andrew Malik, Development Services Director, presented the staff report.

William Dean, Development Services Assistant Director, followed up with next steps for the I-205 corridor.

Council comments and questions followed.

Public comments followed: Lance Collins with YRC known as Yellow Freight provided some comments on zoning and overlay and did not agree with making it similar to Cordes Ranch. Mr. Collins stated that development is demand driven.

Les Brown, land owner in the NEI area for ten years expressed his opposition to the 500 ft. overlay but was not as opposed to a smaller overlay.

Greg Boehn, shared a visual with the Council of a potential \$35 million dollar investment on the corridor that would enhance it as well as bring in jobs. Mr. Boehn urged the Council to consider this project and think about the industrial users as becoming sophisticated.

Tom Davis expressed his involvement with development over the years in Tracy.

JP suggested that the Council look at successful cities in California to streamline the current process.

Council comments and questions ensued.

Upon consensus by the Council it was agreed that staff would come back with design standards, using an overlay, using the Cordes Ranch overlay as a model. It was also agreed to review the permitting process and bring this back for a vote.

5. ADJOURNMENT - Mayor Pro Tem Rickman motioned to adjourn. Council Member Young seconded the motion. Voice vote found all in favor; passed and so ordered. Time: 7:01 p.m.

The agenda was posted at City Hall on February 9, 2016.

ATTEST:

Mayor

City Clerk

AGENDA ITEM 1.B

REQUEST

APPROVAL OF A TWO YEAR GENERAL SERVICE AGREEMENT, WITH A POSSIBLE ONE YEAR EXTENSION, WITH VAN DE POL PETROLEUM DIESEL FUEL SUPPLY SERVICES AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

The Fire Department purchases diesel fuel for department apparatus. This agenda item is to award the diesel fuel supply services to Van De Pol Petroleum.

DISCUSSION

The City's Fire Department requires diesel fuel for the daily operation of department apparatus. The fuel is delivered to four Fire Stations (91, 93, 94 and 96). Diesel fuel is also provided for backup generators.

On January 7, 2016, staff issued a Request for Bids to provide the City's Fire Department with diesel fuel. The Fire Department received three bid packages which were opened on January 21, 2016. Staff reviewed all the bids received which are summarized as follows:

<u>SUPPLIER</u>	<u>(CENTS) PER GALLON MARK-UP</u>	
SC Fuels	Diesel	\$0.3890
E.R. Vine and Sons	Diesel	\$0.2150
Van De Pol Petroleum	Diesel	\$0.2000

The lowest responsive bid, which was based on meeting the bid requirements, cents per gallon mark-up and City fuel consumption, was submitted by Van De Pol Petroleum.

Upon approval, the initial term of the Agreement will be from March 1, 2016, through February 28, 2018. In the event that the City determines that the Contractor has satisfactorily performed all requirements in this Agreement, and per recommendation from the Fire Department to the City Manager, the City may extend the Agreement for one additional year.

STRATEGIC PLAN

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

FISCAL IMPACT

Sufficient funds have been appropriated in the Fiscal Year 2015/2016 operational budget that Council adopted in June 2015.

RECOMMENDATION

That City Council approved a two year General Services Agreement with Van De Pol Petroleum, with a possible one year extension, for diesel supply services and authorize the Mayor to execute the Agreement.

Prepared by: Patrick Vargas, Acting Fire Division Chief

Reviewed by: Randall Bradley, Fire Chief
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

Attachment: Exhibit A - General Services Agreement

City of Tracy
GENERAL SERVICES AGREEMENT
DIESEL FUEL - TRACY FIRE DEPARTMENT

This General Services Agreement (Agreement) is entered into between the City of Tracy, a municipal corporation (City), and Van De Pol Enterprises Incorporated (Provider).

Recitals

- A. On January 7, 2016, the Fire Department issued a Request for Proposal for Diesel Fuel for the Tracy Fire Department
- B. On January 21, 2016, Provider submitted its proposal for the project to the City of Tracy.
- C. After negotiations between the Fire Department and Provider, the parties have reached an Agreement for the performance of services in accordance with the terms set forth in this agreement. On March 1, 2016, City Council authorized the execution of this agreement pursuant to Resolution No. _____.

Now therefore, the parties agree as follows:

1. **Scope of Services.** Provider 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, Provider's Authorized Representative: Russ Vanderpol. Provider shall not replace its Authorized Representative, nor shall Provider replace any of the personnel listed in Exhibit A, nor shall Provider use any subcontractors, 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. Provider shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit A. Provider shall start and complete any services for which times for performance are not specified in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Provider. Provider 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 under this Agreement, City shall pay Provider on a time and expense basis, at the billing rate set forth at \$0.20 per gallon mark-up of the OPIS Stockton Daily Rack Average price per gallon for diesel fuel. Provider's billing rates shall cover all costs and expenses for Provider's performance of this Agreement. No work shall be performed by Provider in excess of the Not to Exceed amount without City's prior written approval.
 - 3.2 **Invoices.** Provider 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 Provider based upon the services described on the invoice and approved by the City.

4. Indemnification. Provider 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 Provider'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; "Provider" means the Provider, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 5 relating to insurance.

5. Insurance.

5.1 General. Provider shall, throughout the duration of this Agreement, maintain insurance to cover Provider, 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 General Liability "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Provider in an amount not less than \$1,000,000 per claim.

5.6 Endorsements. Provider 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, Provider's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Provider's insurance and shall not contribute with it.

5.7 Notice of Cancellation. Provider shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Provider shall immediately obtain a replacement policy.

5.8 Authorized Insurers. All insurance companies providing coverage to Provider 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. Provider 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 before the policy expiration date of any insurance policy required by this Agreement, Provider shall provide a substitute certificate of insurance.

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

6. Independent Contractor Status; Conflicts of Interest. Provider is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Provider is not City's employee and Provider 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. Provider is free to work for other entities while under contract with the City. Provider, and its agents or employees, are not entitled to City benefits.

Provider (including its employees or agents) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Provider maintains or acquires such a conflicting interest, City may terminate any contract (including this Agreement) involving Provider's conflicting interest.

7. Termination. The City may terminate this Agreement by giving ten days written notice to Provider. Upon termination, Provider shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Provider for this Agreement. The City shall pay Provider 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 Provider 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 Provider's services, or upon demand from the City. No such documents shall be revealed or made available by Provider to any third party without 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:

Patrick Vargas
Acting Division Chief
835 Central Avenue
Tracy, CA 95376

To Provider:

Russ Vanderpol
Van De Pol Petroleum
4895 South Airport Way
Stockton, CA 95206

With a copy to:

City Attorney
333 Civic Center Plaza

Tracy, CA 95376

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

9.2 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Provider's services will be the degree of skill and diligence ordinarily used by reputable providers 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. Provider 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. Provider 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, Provider 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.

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

City of Tracy

By: Michael Maciel
Title: Mayor
Date: _____

Approved by City Council on March 1,
2016 by Resolution No. _____

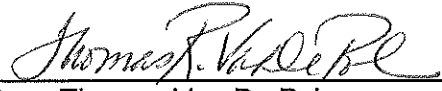
Attest:

Nora Pimentel, City Clerk

Approved as to form:

Daniel G. Sodergren, City Attorney

Van De Pol Enterprises Inc.



By: Thomas Van De Pol
Title: Owner
Date: 2/10/16

Federal Employer Tax ID No. 94-2428381

Exhibits: A - Specifications for Diesel Fuel

SPECIFICATIONS

FOR

DIESEL FUEL

FOR THE

TRACY FIRE DEPARTMENT

CITY OF TRACY, A MUNICIPAL CORPORATION,

OF SAN JOAQUIN COUNTY, CALIFORNIA

1. DESCRIPTION OF WORK:

The intent and purpose of these specifications are to provide for delivery of diesel fuel to the Tracy Fire Department, City of Tracy, a municipal corporation.

2. SCOPE OF WORK:

Provider shall have diesel fuel supply contracts which shall assure the continuous supply of product during the contract period. Provider may be required to furnish information support its ability to supply, without major interruption, the products covered in this bid.

3. DELIVERY REQUIREMENTS:

- A. Product shall be delivered as ordered by the Tracy Fire Department.
- B. The Tracy Fire Department reserves the right to add or delete delivery locations as required by its operations. Provider shall not charge a zone price differential for delivery.
- C. All deliveries shall be made in a metered truck or temperature correction adjustments to 60° F shall be made.
- D. All deliveries shall be F.O.B. destination to delivery locations as required. No delivery charges shall be made.
- E. All deliveries shall be made within 24-48 hours after order has been placed. Orders shall be placed by phone or electronic monitoring of the fuel vaults.

4. DELIVERY LOCATIONS:

By submitting a bid, Provider agrees to furnish product at the following Fire Station locations:

EXHIBIT A

<u>Address</u> Station 91 1701 W. 11 th Street Tracy, California	<u>Fuel vault Capacity (gallons)</u> 500
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<u>Address</u> Station 93 1400 Durham Ferry Road Tracy, California	<u>Fuel vault Capacity (gallons)</u> 500
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<u>Address</u> Station 94 16502 W. Schulte Road Tracy, California	<u>Fuel vault Capacity (gallons)</u> 500
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<u>Address</u> Station 96 1400 W. Grantline Road Tracy, California	<u>Fuel vault Capacity (gallons)</u> 500
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Fuel delivery is not limited to these locations. The Tracy Fire Department also requires periodic fuel at other Fire Stations that are to be determined as necessary.

5. QUANTITY:

In order to assist bidders in evaluating this proposal, the Tracy Fire Department's annual fuel usage is indicated below. There shall be no guarantee as to actual quantities required during the period of the contract.

<u>Fuel</u> Ultra Low Sulfur Diesel (No. 2) UN 1993, Diesel Fuel 3 PGIII	<u>Estimated Annual Usage</u> 25,000
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6. QUALITY:

Only products of new manufacture or distillation will be accepted. No reclaimed products will be accepted. Products shall be seasonally blended with appropriate vapor pressures. All bidders shall provide in writing with their proposal, a written guarantee that the fuel provided shall be of the highest quality and shall meet the intent of the specifications. Failure to include the written guarantee with proposal may result in the bid being rejected as incomplete.

7. PRICE VERIFICATION:

During the contract period, the Provider will be required to provide price verification. This may be supplied in the form of rack prices in effect at time of delivery and/or copy of Bidder's Rack Supplier invoices that show prices paid for product delivered. The Provider agrees to make available at their office at reasonable times during the period of the contract any of the above records for inspection or audit by an authorized representative of the Tracy Fire Department.

8. EXCEPTIONS:

Any exceptions to the specifications must be clearly noted. Details concerning exceptions must be clearly explained.

9. CONTRACT PERIOD:

The bid proposal shall cover the Tracy Fire Department's requirements for diesel fuel for the period March 1, 2016 through February 28, 2018. The City of Tracy reserves the option to extend the contract period for one (1) additional year. The same prices shall remain in effect for the option year as proposed in years one through three of the contract.

10. CANCELLATION:

The City of Tracy reserves the right to cancel without prior notice the balance of the contract if the Provider fails to deliver the product within the time specified herewith.

RESOLUTION _____

APPROVING A TWO YEAR GENERAL SERVICES AGREEMENT WITH
VAN DE POL PETROLEUM, WITH A POSSIBLE ONE YEAR EXTENSION,
FOR DIESEL FUEL SUPPLY SERVICES AND AUTHORIZING THE
MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The Fire Department purchases diesel fuel for the daily operation of
department apparatus, and

WHEREAS, On January 21, 2016. Staff opened and reviewed all three bids that were
received for diesel fuel supply services, and

WHEREAS, Staff had negotiated an Agreement with Van De Pol Petroleum to perform
the services and tasks necessary to carry out terms outlined in the General Services Agreement
(GSA);

NOW, THEREFORE, BE IT RESOLVED, That the City Council approves a two year
General Services Agreement (GSA), with a possible one year extension, with Van De Pol
Petroleum for diesel fuel supply services; and authorizes the Mayor to execute the GSA.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council
on the _____ day of _____, 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

INCREASE FEES CHARGED BY TOWING SERVICE OPERATORS FOR SERVICES RENDERED, EFFECTIVE MARCH 2, 2016, TO EQUAL FEES CHARGED BY THE TRACY OFFICE OF THE CALIFORNIA HIGHWAY PATROL

EXECUTIVE SUMMARY

This staff report is to provide the City Council with background information supporting a request to increase the fees that local tow companies may charge for towing services and daily storage fees. The fees that these tow companies may charge the owners of vehicles towed and stored were last established on August 16, 2005, pursuant to Resolution No. 2005-220.

DISCUSSION

Tracy Police Department staff requested information from all of the local tow companies to support the request to increase the fees they may charge for rotational list towing and vehicle storage services. The responding tow companies provided information related to operational costs from 2005-2013. Staff also found that the local California Highway Patrol (CHP) office conducts annual surveys based on operational costs for tow companies and adjusts the rates those companies may charge for rotational towing and storage accordingly. Based on CHP's rate schedule, average operation costs for tow companies have remained consistent up to 2016. Listed below is a summary of the information the police department received regarding the increases in costs from 2005 to 2016:

1. Worker's Compensation rates vary between companies but on average, they reported an increase of approximately **30%**.
2. Salaries increased on average by approximately **25%**.
3. Fuel costs increased on average by approximately **67%**.
4. Tow truck maintenance costs vary widely between the companies, but all reported costs increased on average by approximately **24%**.
5. Vehicle insurance rates have increased on average by approximately **29%**.
6. Vehicle replacement costs vary depending on the type of equipment purchased but on average, those costs have increased by approximately **26%**.
7. Tow companies can receive profits from junk vehicles in the form of scrap metal. Most companies reported a loss due to the decline in steel prices since 2005. In addition, companies reported an increase in fees for hazardous waste disposal for

oil, tires, and batteries. Overall, profits and losses associated with junk vehicles varied between companies.

8. DMV fees and rates have increased but varied depending on the age of the trucks.
9. Employee medical benefits increased on average by approximately **100%**. Most companies reported a decrease in benefits offered, due to the overwhelming increases.
10. Other operating expenses that were not reported in the survey but should be taken into consideration as increased operational costs are:
 - a. Facility/property maintenance
 - b. Utilities and Support Equipment (i.e. gas, electric, phones and water/sewer)
 - c. Rent/lease agreements

The owners of the tow companies would prefer the fees remain consistent with rates approved by the local CHP office. If the City adopts the proposed fee schedule, it would provide consistency throughout the local area.

In January of 2016, the remaining four tow companies (Ace Towing, All Star Towing, Central Towing, and Myers Towing) were again surveyed regarding the fees they were allowed to charge for CHP requested towing and storage services. There were no changes from the 2013 survey, except for Central Towing, which actually had to reduce its daily fee by five dollars to stay consistent with the average of the other companies.

Tracy Police Department staff believes that the fees charged by tow companies under contract for rotational tow services should be consistent with what the CHP (Tracy branch office) allows. Below are the proposed rates:

TOW COMPANY SERVICES

	<u>Current Rate</u>	<u>Proposed Rate</u>
1. Standard Tow	\$130	\$180
2. Heavy Vehicle Towing	\$290	\$350
3. Very Large Vehicle Tow	\$290	\$400
4. Hourly Rate	\$130	\$180
5. City Vehicle (half standard rate)	\$65	\$90
6. Storage per Day – Standard Vehicle	\$35	\$60
7. Police Impounds (first 48 hours)	\$35	\$65
8. After Business Hour Release	\$65	\$65 *Same
9. Heavy Vehicle Storage (per day)	\$60	\$80

The proposed rate increase is a reasonable request due to the increased operating expenses for business owners since the last rates were adopted in 2005. Currently, the City of Tracy does not employ its own vehicle tow service and relies heavily on local, privately owned tow companies to perform all towing and vehicle storage services.

FISCAL IMPACT

There is no cost to the City of Tracy. Approval of this request would allow privately owned tow companies that are contracted with the City of Tracy to increase their fees for towing services and vehicle storage, when providing contract services

RECOMMENDATION

Approve the increased tow company fee schedule as listed above and in Attachment A for City of Tracy rotational tow services.

Prepared by: Charles Baker, Police Officer
Steve Bailey, Traffic Sergeant

Reviewed by: Larry Esquivel, Acting Chief of Police
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment: A – Proposed Tow Fee Schedule
Attachment: B - Local Fees Survey Results

Attachment A

SERVICES

<u>Rate</u>	<u>Current Rate</u>	<u>Proposed</u>
1. Standard Tow	\$130	\$180
2. Heavy Vehicle Towing	\$290	\$350
3. Very Large Vehicle Tow	\$290	\$400
4. Hourly Rate	\$130	\$180
5. City Vehicle (half standard rate)	\$65	\$90
6. Storage Per Day – Standard Vehicle	\$35	\$60
7. Police Impounds (1 st 48 hours)	\$35	\$65
8. After Business Hour Release	\$65	\$65 *Same
9. Heavy Vehicle Storage (per day)	\$60	\$80

Attachment B

A.C.E. 24hr Towing (830-0587)

CHP Tracy: Tow \$210, Storage \$80 (per day)

San Joaquin County Sheriff: Same as CHP Tracy

All-Star Towing (833-7107)

CHP Tracy: Tow \$200, Storage \$80 (per day)

Manteca PD: Tow \$180, Storage \$65 (per day)

Ripon PD: Tow \$180, Storage \$40 (per day)

Heavy Vehicle Tow \$300-\$500, Storage \$100 (per day)

Central Towing (836-5705)

CHP Tracy: Tow \$200, Storage \$70 (per day)

San Joaquin County Sheriff: Same as CHP Tracy

Alameda County Sheriff's Dept.: Tow \$200, Storage \$70 (per day)

Myers Towing (836-5705)

CHP Tracy: Tow \$200, Storage \$75 (per day)

San Joaquin County Sheriff: Same as CHP Tracy

RESOLUTION _____

INCREASING FEES CHARGED BY TOWING SERVICE OPERATORS FOR SERVICES RENDERED, EFFECTIVE MARCH 2, 2016, TO EQUAL FEES CHARGED BY THE TRACY OFFICE OF THE CALIFORNIA HIGHWAY PATROL

WHEREAS, The towing and vehicle storage fees tow companies on the Tracy Police Department rotation list charge to customers have not been increased since September 2005, and

WHEREAS, Representatives from the tow companies have indicated that the cost of doing business for the City of Tracy has increased significantly since 2005, and

WHEREAS, Tracy Police Department staff requests adoption of the Tracy Office of the California Highway Patrol established fees, which are reviewed annually for increased costs to more accurately reflect the cost of doing business, and

WHEREAS, In accepting this fee schedule there will be no fiscal impact on the City of Tracy, and

WHEREAS, The increase will be effective March 1, 2016, and will be reviewed annually beginning on July 1, 2017 to adjust for cost increases;

NOW, THEREFORE, BE IT RESOLVED, That City Council does hereby approve the increase of fees tow truck operators charge, effective March 2, 2016, to reflect those charged by the Tracy Office of the California Highway Patrol as set forth in Attachment A to the staff report accompanying this agenda item.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 1st day of March, 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

APPROVE AN OFFSITE IMPROVEMENT AGREEMENT (OIA) FOR INTERNATIONAL PARK OF COMMERCE - PHASE 1D NON-PROGRAM ROADWAY IMPROVEMENTS AND OTHER ASSOCIATED IMPROVEMENTS ON PROMONTORY PARKWAY (NEW SCHULTE ROAD), AND HOPKINS ROAD (ROAD "E") FOR INTERNATIONAL PARK OF COMMERCE - BUILDING 6, AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

The conditions of approval for the International Park of Commerce (IPC) – Building 6 project, Prologis L.P., a Delaware limited partnership (Developer), the construction of frontage improvements on Promontory Parkway (New Schulte Road) and Hopkins Road (Road "E"). These improvements are required to be completed prior to building occupancy of Building 6. The approval of the Offsite Improvement Agreement (OIA) will allow the Developer to proceed with construction of the frontage improvements.

DISCUSSION

At the November 10, 2015, public hearing, the Development Services Director approved the Development Review application for the construction of an industrial facility, IPC – Building 6, which includes a 403,560 square feet industrial building, parking, and associated improvements such as landscaping, and storm water treatment facilities. IPC – Building 6 will be located on the north side of Hopkins Road west of Hansen Road.

Approval of the IPC – Building 6 project requires completion of frontage roadway improvements on Promontory Parkway (face of curb to the property line) and Hopkins Road (property line to the centerline of the street), prior to occupying the building. The frontage roadway improvements include concrete curb, gutter, asphalt concrete pavement, parkway landscaping, driveway, street light, water and sewer laterals, storm drain line and inlets, recycled water line (purple pipe) irrigation service, fire hydrant, pavement marking and striping, signing and striping, and other improvements. These frontage roadway improvements described above are considered non-program roadway improvements and are not subject to development impact fee credits or reimbursements.

The Developer has completed the design of the frontage roadway improvements on Promontory Parkway and Hopkins Road and has submitted the Improvement Plans and Cost Estimates. City staff has reviewed the Improvement Plans and Cost Estimates and found them to be complete.

To guarantee completion of the frontage improvements as described above by the Developer in an orderly manner under the City's inspections and directions, the Developer was required to execute an Offsite Improvement Agreement and post insurance and surety bonds. The Developer has executed the Offsite Improvement Agreement and submitted the required security to guarantee completion of the frontage roadway improvements. The Offsite Improvement Agreement, Improvement Plans, and

Cost Estimates are on file with the City Engineer and are available for review upon request.

The developer has requested that the public parkway and median landscaping improvements be excluded as part of the work described in the OIA, to allow the Developer sufficient time to resolve landscape design issues related to new regulations on water conservation measures and work with City staff in finalizing the improvement plans for the parkway and median irrigation and landscaping improvements. The work related to parkway and median irrigation and landscaping improvements will be added through an amendment to the OIA at a later date. After completion of the irrigation and landscaping plans, the Developer will sign an agreement to amend the OIA and submit the required improvement security. Improvement plans for the parkway irrigation and landscaping improvements is anticipated to be completed in 5 to 6 weeks.

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

FISCAL IMPACT

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

STRATEGIC PLAN

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

RECOMMENDATION

That City Council, by resolution, approve the Offsite Improvement Agreement for the International Park of Commerce - Phase 1D Non-Program Roadway Improvements on Promontory Parkway (New Schulte Road) and Hopkins Road (Road "E") and associated improvements to serve the IPC – Building 6 within the IPC Business Park, and authorize the Mayor to execute the Offsite Improvement Agreement.

Prepared by: Cris 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

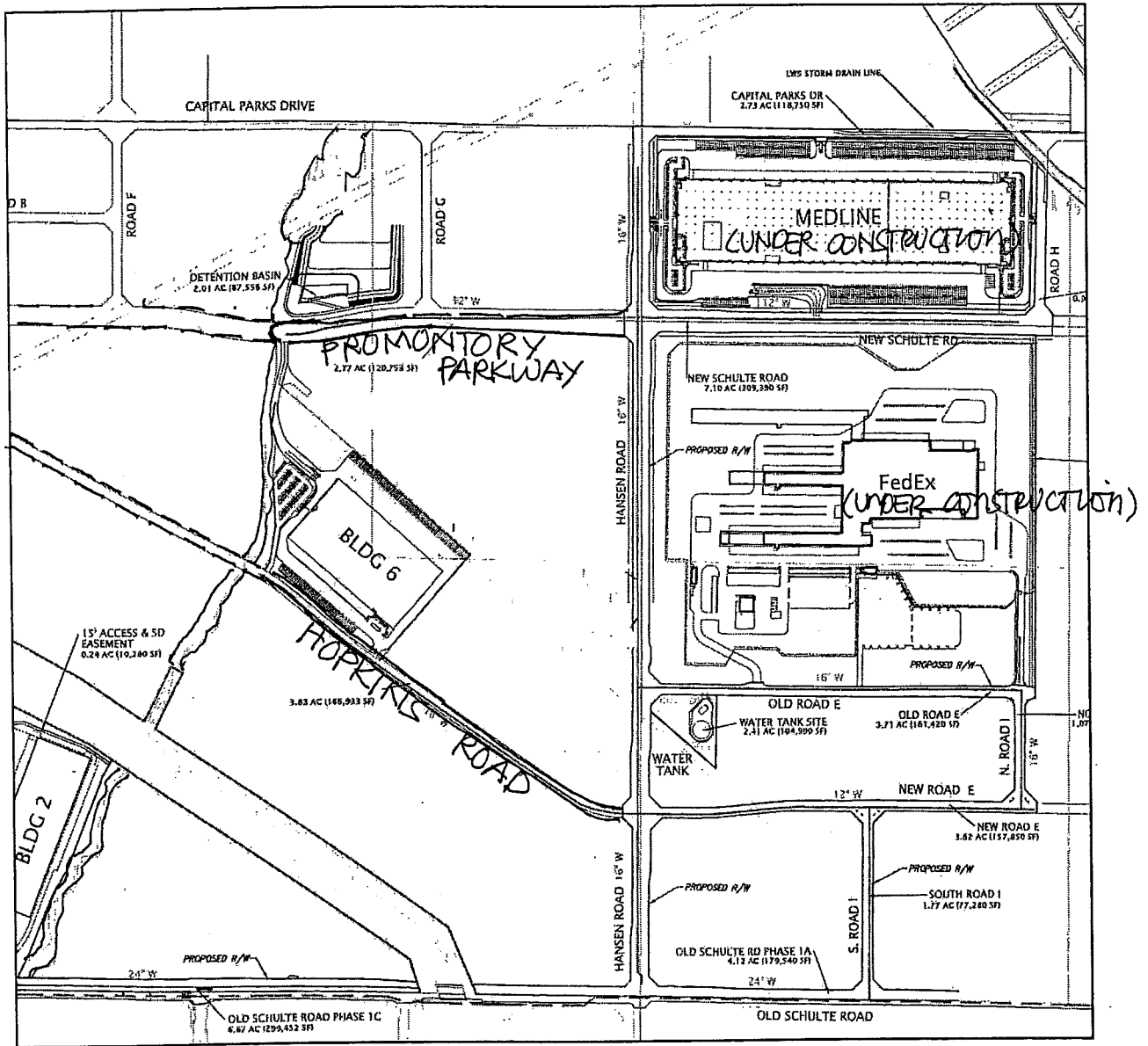
ATTACHMENTS

- A – Location Map
- B – Offsite Improvement Agreement for the Cordes Ranch - Phase 1D Non-Program Roadway Improvements

CORDES RANCH - PHASE 1D NON-PROGRAM ROADWAY IMPROVEMENTS FOR BUILDING 6

Location Map

Cordes Ranch- Building 6



**CITY OF TRACY
OFFSITE IMPROVEMENT AGREEMENT
CORDES RANCH – PHASE 1D NON-PROGRAM ROADWAY IMPROVEMENTS FOR
BUILDING 6**

This OFFSITE IMPROVEMENT AGREEMENT FOR CORDES RANCH – PHASE 1B NON-PROGRAM ROADWAY IMPROVEMENTS FOR BUILDING 6 ("**Agreement**") is made and entered into by and between the CITY OF TRACY, a municipal corporation ("**City**") and PROLOGIS, L. P., a Delaware limited partnership (referred to as "**Developer**").

RECITALS

- A. Developer is the legal owner of approximately one thousand two hundred and forty two (1,242) acres of real property, as shown and more particularly described in attached Exhibit A ("**Property**").
- B. The Property is within the Cordes Ranch Specific Plan Area, which consists of approximately one thousand seven hundred and eighty (1,780) acres ("**Specific Plan Area**"). The Cordes Ranch Specific Plan ("**Specific Plan**") is intended to create a state-of-the-art commerce and business park within the Specific Plan Area by establishing land use, zoning and development standards and regulations to provide for the phased development of approximately thirty one (31) million square feet of general commercial, general office and business park industrial uses, related on- and off-site infrastructure, and passive and active use open space areas, trails, joint use park/detention facilities, and other related improvements, as described more fully therein ("**Project**").
- C. On September 3, 2013, the Tracy City Council ("**City Council**") adopted the Specific Plan and approved related land use entitlements to enable the Project to proceed. In connection therewith, the City Council approved that certain *Development Agreement By and Between the City of Tracy and Prologis, L.P.* (the indirect parent of Developer) ("**Development Agreement**").
- D. The Development Review Application (D15-0018) for the construction of approximately 403,560 square feet distribution building and associated parking and landscaping improvements ("**Building 6**"), as approved by the Development Services Director on November 10, 2015, is on file with the Office of the City Engineer, and is incorporated herein by reference. The approval of the Development Review Application, D15-0018 was subject to specific conditions of approval (hereinafter "**Conditions of Approval**"), attached hereto as Exhibit "B," and incorporated
- E. In accordance with the Development Agreement, the Specific Plan, Conditions of Approval, and the Citywide Water System Master Plan ("**Master Plan**"), Developer has submitted, and City has approved, those certain improvement plans and specifications relating to the construction of frontage improvements on Promontory Parkway (New Schulte Road) west of Hansen Road and Hopkins Road (New Road "E") west of Hansen Road, and all associated improvements (collectively, "**Phase 1D Non-Program Roadway Improvements**" or "**Work**"). The Work is described more fully in the forty-three (43) sheets of improvement plans entitled "International Park of Commerce – Phase 1D Street Improvement Plans for Hansen Road, and Road "E", prepared by Kier & Wright Engineers

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
CORDES RANCH – PHASE 1D NON-PROGRAM ROADWAY IMPROVEMENTS FOR
BUILDING 6
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of Livermore, California ("**Plans and Specifications**"). The Plans and Specifications are on file with the City Engineer, and are incorporated herein by reference.

F. The Plans and Specifications have been prepared on behalf of Developer and City, and approved by the City Engineer, which describe in more detail the Work required in this Agreement.

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

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** Developer shall perform, or cause to be performed, the Work, to the satisfaction of the City Engineer, pursuant to Section 4 of the Development Agreement. The Work shall be performed, and all materials and labor shall be provided, at Developer's expense, in the manner described in the Plans and Specifications, subject to fee reconciliation provisions set forth in Section 6 of the Development Agreement. No material change shall be made to the scope of Work unless authorized in writing by the City Engineer, such approval not to be unreasonably withheld. Developer may submit a written request to the City Engineer for a change in the scope of Work, as required by Tracy Municipal Code Section 12.36.060(f). Any portion(s) of the Work that are within City's right(s)-of-way and/or easement(s) are to be performed by the Developer in accordance with the requirements of the State prevailing wage laws, in the event and to the extent applicable.
 - 1.1. Developer shall complete the design and preparation of improvement plans, specifications, and cost estimates for the irrigation and landscaping improvements within the area between the curb and property line along Building 6's frontage on Promontory Parkway (New Schulte Road) and Hopkins Road (New Road "E") (Additional Work) within one hundred twenty (120) calendar days from the date of City Council's approval of this Agreement. Prior to construction of the Additional Work, the Developer shall enter into an amendment to the Agreement for the Additional Work, as approved by the City Engineer, in substantially the form set forth in Exhibit "C" to this Agreement (First Amendment to the Agreement) with the City and post improvement security for the Additional Work.
2. **DEVELOPER'S AUTHORIZED REPRESENTATIVE.** At all times during the progress of the Work, Developer shall have a competent foreman or superintendent ("**Authorized Representative**") on site with authority to act on Developer's behalf. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the name and telephone number of the Authorized Representative. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the names and telephone numbers of all contractors and subcontractors performing the

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
CORDES RANCH – PHASE 1D NON-PROGRAM ROADWAY IMPROVEMENTS FOR
BUILDING 6
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Work. Exhibit D attached hereto includes the initial contact information referenced herein.

3. LOCATION OF PERFORMANCE. Developer shall perform the Work at the locations and grades shown on the Plans and Specifications or as otherwise approved by the City Engineer. Subject to Section 3.8 of the Development Agreement, in the event and to the extent required for the Work, Developer shall acquire all easements and/or rights-of-way necessary for the performance of the Work, at Developer's expense, subject to fee reconciliation provisions set forth in Section 6 of the Development Agreement.

The Developer shall offer for dedication to the City, all rights-of-way and/or permanent easement(s), prior to City Council's acceptance of the Work.

4. IMPROVEMENT SECURITY. Concurrently with the execution of this Agreement, and prior to the commencement of any Work, Developer shall furnish contract security, in a form authorized by the Subdivision Map Act (including Government Code Sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:

Frontage or Non-Program Improvements on Promontory Parkway Road and Hopkins Road

- 4.1 Faithful Performance security in the amount of **\$1,856,879.70** to secure faithful performance of this Agreement (until the date when the City Council accepts the Work as complete) pursuant to Government Code section 66499.1, 66499.4, and 66499.9.
- 4.2 Labor and Material security in the amount of **\$1,856,879.70** to secure payment by Developer to laborers and materialmen (until the date when any and all claims in connection with the Work are required to be made by laborers and materialmen in accordance with applicable laws) pursuant to Government Code Sections 66499.2, 66499.3, 66499.4, and 66499.7(b).
- 4.3 Warranty security in the amount of **\$185,687.97** to secure faithful performance of this Agreement (from the date when the City Council accepts the Work as complete until one (1) year thereafter) pursuant to Government Code Section 66499.1, 66499.4, and 66499.9.

5. INSURANCE. Concurrently with the execution of this Agreement, and prior to the commencement of any Work, Developer shall furnish evidence to City that all of the following insurance requirements have been satisfied by the Developer or its general contractor responsible for the Work.

- 5.1. General. Developer shall, throughout the duration of this Agreement, maintain or cause to be maintained insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
CORDES RANCH – PHASE 1D NON-PROGRAM ROADWAY IMPROVEMENTS FOR
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with the performance of services for the Work covered by this Agreement at the minimum levels set forth herein.

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

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
CORDES RANCH – PHASE 1D NON-PROGRAM ROADWAY IMPROVEMENTS FOR
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Page 5 of 10**

- 5.10. Developer's Obligation. Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any of its obligations hereunder (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary or desirable.
6. PERMITS, LICENSES AND COMPLIANCE WITH LAW. Developer shall, at its expense, obtain and maintain all necessary permits, approvals and licenses for performance of the Work, subject to City's cooperation pursuant to Sections 3.4 and 3.5 of the Development Agreement. In its performance of the Work, Developer shall comply with all applicable local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
7. TIME OF PERFORMANCE. Time is of the essence in the performance of the Work, and Developer shall with diligence and in good faith adhere to the timing requirements set forth herein unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to City, in writing, no later than ten (10) days after the start of the condition that purportedly caused the delay, and not later than the date on which performance is due.
- 7.1. Commencement of Work. No later than fifteen (15) days prior to the commencement of the Work, Developer shall provide written notice to the City Engineer of the date on which Developer intends to commence the Work. Developer shall not commence the Work until after the notice required by this Section 7.1 is provided, and Developer shall not commence Work prior to the date specified in said written notice.
- 7.2. Schedule of Work. Concurrently with the written notice of commencement of Work, Developer shall provide City with a written estimated schedule of Work, which shall be updated in writing as necessary to accurately reflect Developer's prosecution of the Work.
- 7.3. Completion of Work. Developer shall complete all Work prior to the issuance of building certificate of occupancy of Building 6 or no later than three hundred sixty-five (365) calendar days after Developer's submittal of its notice of commencement of work pursuant to Section 7.1 above, whichever occurs first, and subject to extension for force majeure.
8. INSPECTION BY CITY. In order to permit City to inspect the Work, Developer shall, at all times, provide to City reasonable and safe access to the Work site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation. City inspections of the Work shall be conducted in accordance with Section 4 of the Development Agreement.

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
CORDES RANCH – PHASE 1D NON-PROGRAM ROADWAY IMPROVEMENTS FOR
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9. INSPECTION, OTHER FEES AND PROGRAM FEE CREDITS. All fees due to City in connection with the Work shall be paid in accordance with the Development Agreement. Accordingly, concurrently with the execution of this Agreement, and prior to the commencement of any Work, Developer shall pay City the applicable Program Soft Costs (as that term is defined in the Development Agreement) in accordance with Section 5.1(b) of the Development Agreement.
10. DEFAULT.
- 10.1. Notice of Default. Subject to compliance with Sections 4.4(a) and (b) of the Development Agreement, in the event that Developer is in default of this Agreement, as defined in this Section 10, the City Engineer shall provide written notice to Developer and Developer's surety (if any) in which the default is described.
- 10.2. Material Breach. Developer shall be in default of this Agreement if Developer fails to perform one or more material requirements of this Agreement, and fails to cure any such non-performance pursuant to Section 10.3, below.
- 10.3. Cure of Default. In the event that Developer fails, within thirty (30) calendar days after receipt of written notice, to either cure the default or provide adequate written assurance to the reasonable satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in its discretion, take any or all of the following actions:
- 10.3.1. Cure the default in accordance with Section 4.4(b) of the Development Agreement.
- 10.3.2. Demand that Developer complete performance of the Work.
- 10.3.3. Demand that Developer's surety (if any) complete performance of the Work.
11. REPAIR OF ANY DAMAGE. In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other property owners, then Developer shall promptly take all reasonable steps to repair or replace (as necessary) such property to remedy the damage caused thereto.
12. ACCEPTANCE OF WORK. Prior to acceptance of the Work by the City Council, Developer shall be solely responsible for maintaining the quality of the Work, and maintaining safety at the Work site.
13. WARRANTY PERIOD. Developer shall warrant the quality of the Work, in accordance with the terms of the Plans and Specifications, for a period of one (1) year after acceptance of the Work by the City Council. In the event that (during said

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
CORDES RANCH – PHASE 1D NON-PROGRAM ROADWAY IMPROVEMENTS FOR
BUILDING 6**

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one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this Agreement, Developer shall be in default and shall cure such default as required hereunder.

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

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
CORDES RANCH – PHASE 1D NON-PROGRAM ROADWAY IMPROVEMENTS FOR
BUILDING 6
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19. NOTICES.

20.1. Notice in Writing. All notices, demands, or other communications that this Agreement contemplates, authorizes or requires shall be in writing and shall be personally delivered or mailed to the respective party as follows:

City: City of Tracy
Attn: City Engineer
333 Civic Center Plaza
Tracy, CA 95376

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

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

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

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

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

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

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

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
CORDES RANCH – PHASE 1D NON-PROGRAM ROADWAY IMPROVEMENTS FOR
BUILDING 6
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23. SEVERABILITY. In the event a court of competent jurisdiction holds any term of this Agreement invalid, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.
24. JURISDICTION AND VENUE. The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
25. ENTIRE AGREEMENT. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the Work. This Agreement supersedes all prior negotiations, representations or agreements as such may relate to performance of the Work.

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**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
CORDES RANCH – PHASE 1D NON-PROGRAM ROADWAY IMPROVEMENTS FOR
BUILDING 6**

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

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

CITY OF TRACY, a municipal corporation

Michael Maciel
MAYOR

Date: _____

Attest:

Nora Pimentel
CITY CLERK

Date: _____

APPROVED AS TO FORM:

Daniel Sodergren
CITY ATTORNEY

Date: _____

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

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



Matt Drury

Its: Vice President

Date: 1/21/2010

01-110215cm

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

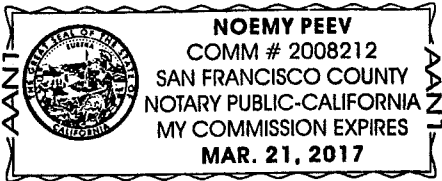
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of SAN FRANCISCO)
On JANUARY 21ST, 2016 before me, Noemy Peev, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Matthew Patrick Drury
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document.
Title or Type of Document: CITY OF TRACY OFFICE IMPROVEMENT Agreement Document Date: 1/21/2016
Number of Pages: 10 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)
Signer's Name: Matthew Patrick Drury Signer's Name: _____
 Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____
 Partner — Limited General Partner — Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian or Conservator Trustee Guardian or Conservator
 Other: Vice President Other: _____
Signer Is Representing: PROLOGIS Signer Is Representing: _____

RESOLUTION 2016-_____

APPROVING AN OFFSITE IMPROVEMENT AGREEMENT (OIA) FOR INTERNATIONAL PARK OF COMMERCE - PHASE 1D NON-PROGRAM ROADWAY IMPROVEMENTS AND OTHER ASSOCIATED IMPROVEMENTS ON PROMONTORY PARKWAY (NEW SCHULTE ROAD), AND HOPKINS ROAD (ROAD "E") FOR INTERNATIONAL PARK OF COMMERCE - BUILDING 6, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, On November 10, 2015, the Development Services Director approved the Development Review application for construction of an industrial distribution facility now called Project Hawk or IPC – Building 6, which includes a 403,560 square foot industrial building, parking, and associated improvements, and

WHEREAS, Approval of the IPC- Building 6 required completion of frontage roadway improvements on Promontory Parkway and Hopkins Road prior to occupying the building, and

WHEREAS, The Developer has completed the design of the frontage roadway improvements on Promontory Parkway and Hopkins Road and has submitted the Improvement Plans and Cost Estimates, and

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

WHEREAS, The Developer has requested that the public parkway and median landscaping improvements be excluded as part of the work described in the OIA, to allow the Developer sufficient time to resolve landscape design issues related to new regulations on water conservation measures, and

WHEREAS, Work related to parkway and median irrigation and landscaping improvements will be added through an amendment to the OIA at a later date, and

WHEREAS, After completion of the irrigation and landscaping plans, the Developer will sign an agreement to amend the OIA and submit the required improvement security, and

WHEREAS, Upon completion of all improvements, the City will accept the improvements and will accept all offers of dedication of public right-of-way, and

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

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the Offsite Improvement Agreement for the International Park of Commerce Phase 1D Non-Program Roadway Improvements and other associated improvements for the International Park of Commerce Building 6, and authorizes the Mayor to execute the Agreement.

The foregoing Resolution 2016-_____ was passed and adopted by the Tracy City Council on the 1st day of March 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 AN OFFSITE IMPROVEMENT AGREEMENT WITH PROLOGIS L.P., A DELAWARE LIMITED PARTNERSHIP, FOR THE INTERNATIONAL PARK OF COMMERCE, PHASE 1D ROADWAY IMPROVEMENTS ON PROMONTORY PARKWAY (NEW SCHULTE ROAD) APPROXIMATELY 2,000 FEET WEST OF HANSEN ROAD, A 16-INCH DIAMETER POTABLE WATER MAIN ON HOPKINS ROAD (ROAD "E"), AND A RECYCLED WATER LINE ON PROMONTORY PARKWAY FROM THE EXISTING DRAINAGE CANAL TO HANSEN ROAD AND ASSOCIATED IMPROVEMENTS, FOR BUILDING 6 AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

Approval of the Offsite Improvement Agreement (OIA) will allow Prologis L.P., a Delaware limited partnership, to proceed with construction of street and utility improvements that are necessary for the business operation of Building 6, the fourth building to be constructed within the Cordes Ranch Business Park (also known as "International Park of Commerce" or IPC).

DISCUSSION

On November 10, 2015, the Development Services Director approved the Development Review application for construction of IPC Building 6, to be located on Hopkins Road west of Hansen Road, which includes an approximately 403,560 square foot light industrial building, parking, and associated improvements such as landscaping and storm water treatment facilities.

Approval of IPC Building 6 required the construction of certain program and frontage infrastructure improvements. The program improvements are ultimately funded from development impact fees and the frontage improvements are the responsibility of the individual developer.

Prologis L.P., a Delaware limited partnership (Prologis) is the master developer of the International Park of Commerce (IPC). The existing Development Agreement between Prologis and the City (Prologis DA) allows Prologis to elect and construct program improvements and receive development fee credits and reimbursements.

Prologis has elected to construct the program roadway improvements on Promontory Parkway from Hansen Road to the secondary entrance to Building 6, the 16-inch diameter potable water distribution main on Hopkins Road from Hansen Road to approximately 2,700 feet to the west, and recycled water line (purple pipe) on Promontory Parkway from Hansen Road to the existing drainage canal/creek. Prologis is also responsible for constructing frontage improvements on Promontory Parkway and Hopkins Road which are to be completed prior to building occupancy of IPC Building 6. To guarantee completion of these improvements by Prologis in an orderly manner under

the City's inspections and directions, Prologis was required to execute an Offsite Improvement Agreement and post insurance and bonds.

Prologis has completed the design of the improvements described above and has submitted the Improvement Plans and Cost Estimates. City staff has reviewed the Improvement Plans and Cost Estimates and found them to be complete. Prologis has executed the Offsite Improvement Agreement and submitted the required security to guarantee completion of these improvements. The Offsite Improvement Agreement, Improvement Plans, and Cost Estimates are on file with the City Engineer and are available for review upon request.

The frontage improvements for IPC Building 6 will be constructed by Prologis under a separate improvement agreement. Upon completion of all improvements, the City will accept the improvements for maintenance and will accept all offers of dedication of public right-of-way at that time.

FISCAL IMPACT

There will be no fiscal impact to the General Fund. The Developer will pay for the cost of plan checking, engineering inspection, and all regulatory processing fees described in the Prologis DA.

STRATEGIC PLAN

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

RECOMMENDATION

That City Council, by resolution, approve the Offsite Improvement Agreement for Cordes Ranch Phase 1D Program Roadway Improvements on Promontory Parkway approximately 2,000 feet west of Hansen Road, a 16-inch Potable Water Main on Hopkins Road, and a Recycled Water Line on Promontory Parkway between the drainage canal and Hansen Road, and associated improvements to serve IPC Building 6, and authorize the Mayor to execute the Offsite Improvement Agreement.

Prepared by: Cris 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

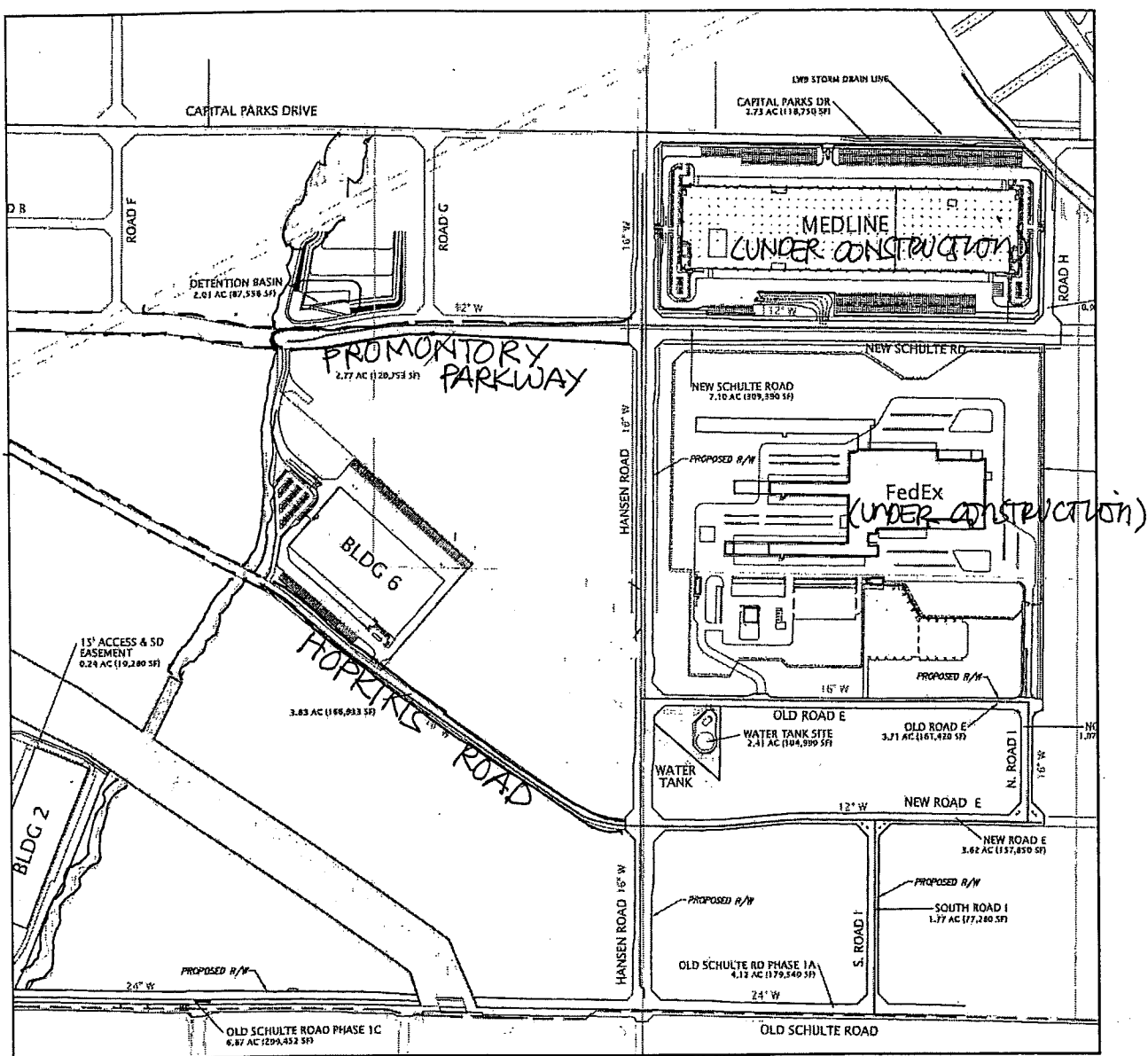
ATTACHMENTS

- A – Location Map
- B – Offsite Improvement Agreement

CORDES RANCH - PHASE 1D PROGRAM ROADWAY, POTABLE WATERLINE, AND RECYCLED WATERLINE IMPROVEMENTS FOR BUILDING 6

Location Map

Cordes Ranch- Building 6



**CITY OF TRACY
OFFSITE IMPROVEMENT AGREEMENT
CORDES RANCH – PHASE 1D PROGRAM ROADWAY, POTABLE WATER LINE, AND
RECYCLED WATER LINE IMPROVEMENTS FOR BUILDING 6**

This OFFSITE IMPROVEMENT AGREEMENT FOR CORDES RANCH – PHASE 1A PROGRAM ROADWAY, POTABLE WATER LINE, AND RECYCLED WATER LINE IMPROVEMENTS FOR BUILDING 6 (“*Agreement*”) is made and entered into by and between the CITY OF TRACY, a municipal corporation (“*City*”) and PROLOGIS, L. P., a Delaware limited partnership (referred to as “*Developer*”).

RECITALS

- A. Developer is the legal owner of approximately one thousand two hundred and forty two (1,242) acres of real property, as shown and more particularly described in attached Exhibit A (“*Property*”).
- B. The Property is within the Cordes Ranch Specific Plan Area, which consists of approximately one thousand seven hundred and eighty (1,780) acres (“*Specific Plan Area*”). The Cordes Ranch Specific Plan (“*Specific Plan*”) is intended to create a state-of-the-art commerce and business park within the Specific Plan Area by establishing land use, zoning and development standards and regulations to provide for the phased development of approximately thirty one (31) million square feet of general commercial, general office and business park industrial uses, related on- and off-site infrastructure, and passive and active use open space areas, trails, joint use park/detention facilities, and other related improvements, as described more fully therein (“*Project*”).
- C. On September 3, 2013, the Tracy City Council (“*City Council*”) adopted the Specific Plan and approved related land use entitlements to enable the Project to proceed. In connection therewith, the City Council approved that certain *Development Agreement By and Between the City of Tracy and Prologis, L.P.* (the indirect parent of Developer) (“*Development Agreement*”).
- D. The Development Review Application (D15-0018) for the construction of approximately 403,560 square feet distribution building and associated parking and landscaping improvements (“*Building 6*”), as approved by the Development Services Director on November 10, 2015, is on file with the Office of the City Engineer, and is incorporated herein by reference. The approval of the Development Review Application, D15-0018 was subject to specific conditions of approval (hereinafter “*Conditions of Approval*”), attached hereto as Exhibit “B,” and incorporated herein by reference.
- E. In accordance with the Development Agreement, the Specific Plan, Conditions of Approval, and the Citywide Water System Master Plan (“*Master Plan*”), Developer has submitted, and City has approved, those certain improvement plans and specifications relating to the construction of street improvements on New Schulte Road (Promontory Parkway) west of Hansen Road (half of the street from the median curb) and a traffic signal and associated improvements at the intersection of Promontory Parkway/ Hansen Road, 16-inch diameter water main on Road E (Hopkins Avenue), and Recycled water line and appurtenances on New Schulte Road from the Drainage Channel to Hansen Road (collectively, “*Phase 1D Program Improvements*” or “*Work*”). The Work is described more

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fully in the forty three (43) sheets of improvement plans entitled "International Park of Commerce – Phase 1D Street Improvement Plans for Hopkins Road (New Road "E") and Promontory Parkway (New Schulte Road) prepared by Kier & Wright Engineers of Livermore, California ("**Plans and Specifications**"). The Plans and Specifications are on file with the City Engineer, and are incorporated herein by reference.

F. The Plans and Specifications have been prepared on behalf of Developer and City, and approved by the City Engineer, which describe in more detail the Work required in this Agreement.

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

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. SCOPE OF WORK. Developer shall perform, or cause to be performed, the Work, to the satisfaction of the City Engineer, pursuant to Section 4 of the Development Agreement. The Work shall be performed, and all materials and labor shall be provided, at Developer's expense, in the manner described in the Plans and Specifications, subject to fee reconciliation provisions set forth in Section 6 of the Development Agreement. No material change shall be made to the scope of Work unless authorized in writing by the City Engineer, such approval not to be unreasonably withheld. Developer may submit a written request to the City Engineer for a change in the scope of Work, as required by Tracy Municipal Code Section 12.36.060(f). Any portion(s) of the Work that are within City's right(s)-of-way and/or easement(s) are to be performed by the Developer in accordance with the requirements of the State prevailing wage laws, in the event and to the extent applicable.
 - 1.1. Developer shall complete the design and preparation of improvement plans, specifications, and cost estimates for the irrigation and landscaping improvements within the median, if applicable, and in the area between the curb and property line along Building 6's frontage on Promontory Parkway (New Schulte Road) (Additional Work) within one hundred eighty (180) calendar days from the date of City Council's approval of this Agreement. Prior to construction of the Additional Work, the Developer shall enter into an amendment to the Agreement for the Additional Work, as approved by the City Engineer, in substantially the form set forth in Exhibit "C" to this Agreement (First Amendment to the Agreement) with the City and post improvement security for the Additional Work.
2. DEVELOPER'S AUTHORIZED REPRESENTATIVE. At all times during the progress of the Work, Developer shall have a competent foreman or superintendent ("**Authorized Representative**") on site with authority to act on Developer's behalf. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the name and telephone number of the Authorized Representative. Developer

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
CORDES RANCH – PHASE 1D PROGRAM ROADWAY, POTABLE WATER, AND
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shall, at all times, keep the City Engineer reasonably informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work. Exhibit "D" attached hereto includes the initial contact information referenced herein.

3. LOCATION OF PERFORMANCE. Developer shall perform the Work at the locations and grades shown on the Plans and Specifications or as otherwise approved by the City Engineer. Subject to Section 3.8 of the Development Agreement, in the event and to the extent required for the Work, Developer shall acquire all easements and/or rights-of-way necessary for the performance of the Work, at Developer's expense, subject to fee reconciliation provisions set forth in Section 6 of the Development Agreement.
4. IMPROVEMENT SECURITY. Concurrently with the execution of this Agreement, and prior to the commencement of any Work, Developer shall furnish contract security, in a form authorized by the Subdivision Map Act (including Government Code Sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:
 - 4.1 Faithful Performance security in the amount of **\$3,233,348** to secure faithful performance of this Agreement (until the date when the City Council accepts the Work as complete) pursuant to Government Code section 66499.1, 66499.4, and 66499.9.
 - 4.2 Labor and Material security in the amount of **\$3,233,348** to secure payment by Developer to laborers and materialmen (until the date when any and all claims in connection with the Work are required to be made by laborers and materialmen in accordance with applicable laws) pursuant to Government Code Sections 66499.2, 66499.3, 66499.4, and 66499.7(b).
 - 4.3 Warranty security in the amount of **\$323,335** to secure faithful performance of this Agreement (from the date when the City Council accepts the Work as complete until one (1) year thereafter) pursuant to Government Code Section 66499.1, 66499.4, and 66499.9.
5. INSURANCE. Concurrently with the execution of this Agreement, and prior to the commencement of any Work, Developer shall furnish evidence to City that all of the following insurance requirements have been satisfied by the Developer or its general contractor responsible for the Work.
 - 5.1. General. Developer shall, throughout the duration of this Agreement, maintain or cause to be maintained insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services for the Work covered by this Agreement at the minimum levels set forth herein.

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

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Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary or desirable.

6. PERMITS, LICENSES AND COMPLIANCE WITH LAW. Developer shall, at its expense, obtain and maintain all necessary permits, approvals and licenses for performance of the Work, subject to City's cooperation pursuant to Sections 3.4 and 3.5 of the Development Agreement. In its performance of the Work, Developer shall comply with all applicable local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
7. TIME OF PERFORMANCE. Time is of the essence in the performance of the Work, and Developer shall with diligence and in good faith adhere to the timing requirements set forth herein unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to City, in writing, no later than ten (10) days after the start of the condition that purportedly caused the delay, and not later than the date on which performance is due.
 - 7.1. Commencement of Work. No later than fifteen (15) days prior to the commencement of the Work, Developer shall provide written notice to the City Engineer of the date on which Developer intends to commence the Work. Developer shall not commence the Work until after the notice required by this Section 7.1 is provided, and Developer shall not commence Work prior to the date specified in said written notice.
 - 7.2. Schedule of Work. Concurrently with the written notice of commencement of Work, Developer shall provide City with a written estimated schedule of Work, which shall be updated in writing as necessary to accurately reflect Developer's prosecution of the Work.
 - 7.3. Completion of Work. Developer shall complete all Work prior to the issuance of building certificate of occupancy of Building 6 or no later than three hundred sixty-five (365) calendar days after Developer's submittal of its notice of commencement of work pursuant to Section 7.1 above, whichever occurs first, and subject to extension for force majeure.
8. INSPECTION BY CITY. In order to permit City to inspect the Work, Developer shall, at all times, provide to City reasonable and safe access to the Work site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation. City inspections of the Work shall be conducted in accordance with Section 4 of the Development Agreement.
9. INSPECTION, OTHER FEES AND PROGRAM FEE CREDITS. All fees due to City in connection with the Work shall be paid in accordance with the Development Agreement. Accordingly, concurrently with the execution of this Agreement, and prior to the commencement of any Work, Developer shall pay City the applicable Program Soft Costs (as that term is defined in the Development Agreement) in accordance with Section 5.1(b) of the Development Agreement.

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10. DEFAULT.

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

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

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

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

10.3.2. Demand that Developer complete performance of the Work.

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

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

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

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

14. INDEPENDENT CONTRACTOR STATUS. Developer is an independent contractor, and the parties agree that City shall have no responsibility for any acts of

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Developer's employees, agents, representatives, contractors or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of City as an agent, or to bind City to any obligation whatsoever, unless City provides prior written authorization to Developer.

15. OWNERSHIP OF WORK. All original documents prepared by Developer for this Agreement shall be given to City upon City's acceptance of the Work; provided, however, ownership of said documents shall be determined in accordance with applicable laws.
16. ATTORNEY'S FEES. In the event any legal action or proceeding is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
17. INDEMNIFICATION. Consistent with the security provisions contained herein, Developer shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting in the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees until such time as the City Council accepts the Work, and the City becomes responsible for the maintenance, operation and repair of the Work, at which time the indemnification obligations under this Section 17 shall automatically terminate, with regard to any cause of action arising after such date. For avoidance of doubt, this termination shall not affect Developer's warranty obligations set forth in Section 13, above.
18. ASSIGNMENT AND DELEGATION. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the written consent of City, which shall not be unreasonably withheld, delayed or denied. Any attempt to assign or delegate this Agreement without City's written consent shall be void and of no force and effect. Consent by City to one assignment shall not be deemed to be consent to any subsequent assignment.
19. NOTICES.
 - 19.1. Notice in Writing. All notices, demands, or other communications that this Agreement contemplates, authorizes or requires shall be in writing and shall be personally delivered or mailed to the respective party as follows:

City: City of Tracy
Attn: City Engineer
333 Civic Center Plaza
Tracy, CA 95376

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

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

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

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

- 19.2. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated above, or (2) two (2) business days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.
20. MODIFICATIONS. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
21. 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.
24. 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.
25. 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.

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

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

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

CITY OF TRACY, a municipal corporation

Michael Maciel
MAYOR
Date: _____

Attest:

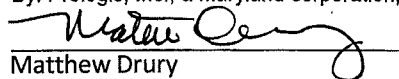
Nora Pimentel
CITY CLERK
Date: _____

APPROVED AS TO FORM:

Dan Sodergren
CITY ATTORNEY
Date: _____

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

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



Matthew Drury
Its: VICE PRESIDENT
Date: 1/21/2014

02-102915cm

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

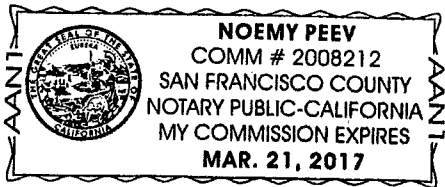
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of SAN FRANCISCO)
On January 21st, 2016 before me, Noemy Peev, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Matthew Patrick Drury
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: Gift of Tracy Park Improvement Agreement Document Date: 1/21/2016
Number of Pages: 10 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)
Signer's Name: Matthew Patrick Drury Signer's Name: _____
 Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____
 Partner — Limited General Partner — Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian or Conservator Trustee Guardian or Conservator
 Other: Vice President Other: _____
Signer Is Representing: PLUGS Signer Is Representing: _____

RESOLUTION 2016-_____

APPROVING AN OFFSITE IMPROVEMENT AGREEMENT WITH PROLOGIS LP., A DELAWARE LIMITED PARTNERSHIP, FOR THE CORDES RANCH PHASE 1D PROGRAM ROADWAY IMPROVEMENTS ON PROMONTORY PARKWAY APPROXIMATELY 2,000 FEET WEST OF HANSEN ROAD, A 16-INCH DIAMETER POTABLE WATER MAIN ON HOPKINS ROAD, AND A RECYCLED WATER LINE ON PROMONTORY PARKWAY BETWEEN THE DRAINAGE CANAL AND HANSEN ROAD, AND ASSOCIATED IMPROVEMENTS TO SERVE IPC BUILDING 6, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, On November 10, 2015, the Development Services Director approved the Development Review application for construction of an industrial distribution facility now called IPC - Building 6, which includes a 403,560 square foot industrial building, and

WHEREAS, The existing Development Agreement allows the Developer to elect and construct program roadway improvements and receive development fee credits and reimbursements, and

WHEREAS, The Developer has elected to construct the program roadway improvements on Promontory Parkway, and

WHEREAS, The Developer has also elected to install a 16-inch diameter potable water main on Hopkins Road, and a recycled water line on Promontory Parkway from the existing drainage canal to Hansen Road, and

WHEREAS, The Developer is entitled to receive development fee credits for the program roadway, potable water main, and recycled water line improvements, and

WHEREAS, The Developer has completed the design of the program roadway, potable water main, and recycled water line improvements and has submitted the Improvement Plans, Specifications and Cost Estimates, and

WHEREAS, The Developer has executed the Offsite Improvement Agreement and submitted the required security to guarantee completion of the program roadway, potable water main, and recycled water line improvements, and

WHEREAS, 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, and

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

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the Offsite Improvement Agreement with Prologis LP, a Delaware Limited Partnership, for the Cordes Ranch - Phase 1D Roadway Improvements on Promontory Parkway west of Hansen Road, a 16-inch diameter Potable Water Line on Hopkins Road, and a Recycled Water Line on Promontory Parkway from the existing drainage canal to Hansen Road and associated improvements to serve the IPC Building 6, and authorizes the Mayor to execute the Offsite Improvement Agreement.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 1st day of March 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

APPROVE A PROFESSIONAL SERVICES AGREEMENT (PSA) WITH VVH DESIGN GROUP INC. DBA VVH CONSULTING ENGINEERS (VVH CONSULTING ENGINEERS) OF MODESTO, CALIFORNIA TO PROVIDE TECHNICAL SUPPORT SERVICES FOR MULTIPLE CAPITAL IMPROVEMENT PROJECTS, AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT, AND AUTHORIZE THE DEVELOPMENT SERVICES DIRECTOR TO EXTEND THE AGREEMENT FOR ANOTHER YEAR IF NEEDED

EXECUTIVE SUMMARY

Due to projected new capital improvement projects and limited engineering staff with computer-aided drafting (CAD) drafting experience, outside services for CAD is required for a limited time on an “as needed” basis to complete these projects in a timely manner.

DISCUSSION

Due to an increasing workload in the Engineering Division, services of two consultants were obtained for the past three years to provide CAD to complete various capital improvement projects in a timely manner.

Both consultant agreements will expire on March 15, 2016. Both consultants have informed the City that they will not be able to extend their PSAs for another year as identified in their current agreements.

In accordance with the Tracy Municipal Code, Section 2.20.140, on December 2, 2015, a “Notice of Request for Proposals” was posted on the City of Tracy’s website. The City received proposals from three consultants on December 22, 2015.

After careful review and evaluation of proposals, VVH Consulting Engineers of Modesto, California was found by the Development Services Department to be the most qualified consultant to provide the necessary services. VVH Consulting Engineers will provide design/drafting services for a period of up to two years on an hourly basis as needed. This agreement allows the City to extend the agreement for an additional year after satisfactory completion of the subject agreement.

The selected consultant has the capacity to perform the required services if needed within the City of Tracy premises.

The scope of work for the proposed consultant agreement will be on an as-needed basis and shall not exceed \$330,000 over a two year period.

The cost of services will be charged to the Capital Improvement Projects for which the consultants will be required to work.

FISCAL IMPACT

\$330,000; budgeted; Fund 301.

STRATEGIC PLAN

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

RECOMMENDATION

Staff recommends that City Council approve a Professional Services Agreement with VVH Consulting Engineers of Modesto, California for a not-to-exceed amount of \$330,000, to provide professional support services assisting with design/drafting of Capital Improvement Projects on an hourly as-needed basis for a period of two years, authorize the Mayor to execute the Professional Services Agreement and authorize the Development Services Director to extend the agreement for another year if needed.

Prepared by: Zabih Zaca, Senior Civil Engineer

Reviewed by: Robert Armijo, City Engineer
Andrew Malik, Development Services Director
Stephanie Garrabrant-Sierra, Assistant City Manger

Approved by: Troy Brown, City Manager

ATTACHMENT:

A – Professional Services Agreement with VVH Consulting Engineers

City of Tracy
PROFESSIONAL SERVICES AGREEMENT
FOR
CAPITAL IMPROVEMENT PROJECT TECHNICAL SUPPORT

This Professional Services Agreement (Agreement) is entered into between the City of Tracy, a municipal corporation (City), and VH Design Group Inc., dba VVH Consulting Engineers, a California Corporation (Consultant).

Recitals

- A. On December 2, 2015, the City issues a Request for Proposals (RFP) for the Capital Improvement Project Technical Support (Project). On December 22, 2015, Consultant submitted its proposal for the Project 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.
- B. CONSULTANT services are needed for computer aided drafting (CAD) to complete the anticipated workload in capital improvement projects.
- C. CONSULTANT represents it has the qualifications, skills and experience to provide these services and is willing to provide services according to the terms of 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: Chris T. Vierra. 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 \$330,000. 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:

City of Tracy
Attn: Zabih Zaca
Senior Civil Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

VVH Consulting Engineers
Attn: Chris T. Vierra
Principal
430 Tenth Street
Modesto, CA 95354

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: Michael Maciel
Title: Mayor
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

VH Design Group Inc.,
dba VVH Consulting Engineers,
a California Corporation



By: Chris T. Vierra

Title: President
Date: 2-8-16

Federal Employer Tax ID No. 27-2604454



By: Ryan Vance

Title: Treasurer
Date: 2-8-16

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

TASK NO. 1

I. Project Documentation, Review and Coordination

- A. Review the project scope, requirements, coordination and schedule with City staff and consultants
 - Review and confirm each project scope of service
 - Confirm roles of project participants
 - Discuss City's expectations and goals
- B. Review and coordinate with City for design / drafting and processing requirements.
- C. Complete necessary project research, obtain and review (with City staff) available information, plans, reports and other documents (relative to each assigned projects.)
- D. The Project Documentation, Review and Coordination services will be performed or completed at the City of Tracy offices, or at other locations (as mutually agreed upon by both parties)

TASK NO. 2

II. Item 2 - Design / Drafting Technician Services

- A. The Design/Drafting Technician will provide design/drafting services to the City for the preparation of professional plans and details on a variety of Capital Improvement Projects, including roads, parks, utilities, off-site improvements, and all other projects as assigned.
- B. The Design/Drafting Technician will complete all work with minimum (or no) support and/or supervision provided by the City Engineer or other City staff.
- C. All plans and details will be prepared using AutoCAD – Civil 3D or newer format. Finished drawings (at stages and/or at final completion) shall be delivered by electronic file to the City for review, comments, and/or approval.
- D. The Design/Drafting Technician will report directly to the City's Senior Civil Engineer or his designated representative as authorized by the City Engineer.
- E. During all phases of each project, the Design/Drafting Technician shall maintain clear and open communications, coordination and cooperation with the City Engineer, other staff, and other City departments.
- F. During each project, periodic meetings may be held at the City offices for project and plan reviews and comments.

EXHIBIT B

HOURLY RATE SCHEDULE FOR CASEY BARKMAN

Year	Hourly Rate
2016	\$90.00 per hour
2017	\$95.00 per hour

Reimbursable Expenses:

Mileage: \$0.54/mile (Modesto – Tracy roundtrip)

Note: For services and expenses other than the Design / Drafting Technician services provided by Casey Barkman under this agreement, Consultant will be compensated in accordance with Consultant's Standard Fee Schedule.

Exhibit C

VVH Consulting Engineers
430 10th Street
Modesto, CA 95354
Ph: (209) 568-4477
Fax: (209) 568-4478



2016 FEE SCHEDULE
EFFECTIVE THROUGH DECEMBER 31, 2016
(Hourly Rates Will Adjust January 1, 2017)

<u>ENGINEERING STAFF</u>	<u>HOURLY RATES</u>
Principal	\$160.00/hour
Sr. Engineer / Sr. Surveyor / Sr. Project Mgr.	\$145.00/hour
Project Mgr. / Surveyor / Engineer.	\$125.00/hour
Sr. Designer / Drafter	\$105.00/hour
Admin / Clerical	\$80.00/hour
 <u>SURVEY CREWS</u>	
1 Person Survey Crew	\$120.00/hour
2 Person Survey Crew	\$175.00/hour
3 Person Survey Crew	\$235.00/hour
 <u>REIMBURSABLE</u>	
Mileage	\$0.54/mile
Printing, Photos, Copies, Shipping / Overnight	Cost Plus 15%
<u>SPECIAL CONSULTANTS</u>	Cost Plus 15%

Note: Fees are due and payable upon receipt. Fees past 30 days from date of billing may be subject to a finance charge computed on the basis of 1-1/2 % of the unpaid balance per month

RESOLUTION 2016-_____

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH VVH DESIGN GROUP INC. DBA VVH CONSULTING ENGINEERS (VVH CONSULTING ENGINEERS) OF MODESTO, CALIFORNIA, TO PROVIDE TECHNICAL SUPPORT SERVICES FOR MULTIPLE CAPITAL IMPROVEMENT PROJECTS, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT, AND AUTHORIZING THE DEVELOPMENT SERVICES DIRECTOR TO EXTEND THE AGREEMENT FOR ANOTHER YEAR IF NEEDED

WHEREAS, Services of a consultant is needed to provide computer aided drafting to complete various Capital Improvement Projects in a timely manner, and

WHEREAS, On December 2, 2015, in accordance with the Tracy Municipal Code Section 2.20.140, a "Notice of Request for Proposals" was posted on the City of Tracy's website, and

WHEREAS, In response to the "Notice of Request for Proposals," on December 22, 2015, the City received three proposals from consultants, and

WHEREAS, After careful review and evaluation of the proposals, VVH Consulting Engineers of Modesto, California was found to be the most qualified consultant to provide the necessary services, and

WHEREAS, The scope of work for the proposed consultant agreement will be on an as-needed basis and shall not exceed \$330,000 over a two year period, and

WHEREAS, The cost of services will be charged to the Capital Improvement Projects for which the consultant will be required to work, and

WHEREAS, There will be no impact to the General Fund;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves a Professional Services Agreement with VVH Consulting Engineers of Modesto, California, for a not-to-exceed amount of \$330,000 to provide professional support services in assisting with design/drafting of Capital Improvement Projects for a period of two years, authorizes the Mayor to execute the Professional Services Agreement, and authorizes the Development Services Director to extend the agreement for another year if needed.

The foregoing Resolution 2016-_____ was adopted by the Tracy City Council on the 1st day of March, 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 FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY, EXTENDING THE SCHEDULED CLOSE OF ESCROW DATE BY 90 DAYS, FOR REAL PROPERTY BETWEEN THE CITY OF TRACY AND BCP TRACY LLC ON A PORTION OF CITY-OWNED PROPERTY LOCATED AT THE SOUTHWEST CORNER OF NAGLEE ROAD AND PARK & RIDE DRIVE REFERRED TO AS PARCEL "A" (APN# 212-290-39)

EXECUTIVE SUMMARY

On April 21, 2015, City Council adopted Resolution 2015-059, authorizing a Purchase and Sale Agreement with BCP Tracy LLC (Attachment A) for a portion of the City-owned parcel located at the southwest corner of Naglee Road and Park & Ride Drive, referred to as Parcel "A" (Attachment B). The Buyer in this agreement, BCP Tracy LLC (BCP), has requested a 90-day extension to the "Scheduled Closing Date" and wishes to execute the First Amendment to the Agreement (Attachment C).

DISCUSSION

On April 21, 2015, City Council authorized a Purchase and Sale Agreement with BCP for a portion of the City-owned parcel located at the southwest corner of Naglee Road and Park & Ride Drive. The agreement required that close of escrow "...shall occur, subject to the satisfactions of the conditions precedent, within 30 days following satisfaction of the conditions precedent, but not later than 365 days following the Effective Date, unless otherwise extended by the mutual written consent of the parties."

In executing this transaction, staff identified a discrepancy in Title Ownership of the subject property. The deed listed both the City of Tracy and the Successor Agency to the Tracy Community Development Agency (the "Successor Agency") as owners of the subject property. This discrepancy delayed the City from processing the sale of Parcel A until the City and Successor Agency received approval of the Long Range Property Management Plan from the Successor Agency's Oversight Board and the State Department of Finance.

BCP Tracy LLC has negotiated contracts with two retail establishments for this property and is requesting the additional time to finalize the commitment to these users. The City received final approval from the State on December 30, 2015, and staff recommends Council approve the extension of the "Scheduled Closing Date" as requested by BCP Tracy, LLC.

STRATEGIC PLAN

This agenda item supports Goal 2, Objective 1 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 to the General Fund as a result of this staff item.

RECOMMENDATION

That City Council approve First Amendment to Agreement for Purchase and Sale of Real Property, extending the scheduled close of escrow date by 90 days, for Real Property between the City of Tracy and BCP Tracy LLC, on a portion of City-owned property located at the southwest corner of Naglee Road and Park & Ride Drive referred to as Parcel "A" (APN 212-290-39).

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

ATTACHMENTS

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

Attachment B – Parcel Map

Attachment C – First Amendment to Agreement for Purchase and Sale of Real Property

ATTACHMENT "A"

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

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

RECITALS

A. City owns a certain parcel of real property ("*City Parcel*") located at the southwest corner of Naglee Road and Park & Ride Drive, in the City of Tracy, San Joaquin County, California, containing approximately 121,097 square feet of land area, as more particularly described in Exhibit A, attached.

B. The City Council has determined that the Park & Ride facility on the City Parcel should be relocated and that the City Parcel is surplus land.

C. City wishes to subdivide the City Parcel into three parcels, A, B and C, as shown on the Site Plan attached as Exhibit B. Proposed Parcel A will be approximately 50,000 square feet, and is referred to here as the Property (or Proposed Parcel A). City further wishes to sell fee title interest in said Property.

D. City and Buyer entered into an Exclusive Negotiating Rights Agreement dated February 10, 2015 (and that Agreement superseded an Exclusive Negotiating Rights Agreement dated May 17, 2013, extended by City letter dated September 29, 2014). Following negotiations, City wishes to sell the Property and Buyer wishes to purchase the Property from City under the terms set forth in this Agreement.

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

AGREEMENT

1. Purchase and Sale.

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

(b) Nonwaivable Condition. The parties acknowledge that the Property is currently not a legal parcel that may be sold under the California Subdivision Map Act ("*SMA*") and therefore agree that the sale of Property contemplated by this Agreement is expressly conditioned upon the City's initiating and approving a parcel map that makes the Property a legal parcel under the SMA. The parties may not waive this condition.

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2. Purchase Price. The purchase price ("**Purchase Price**") for the Property is Five Hundred Fifty Thousand Dollars (\$550,000). The Purchase Price shall be payable by Buyer to City through Escrow at the Close of Escrow.

3. Escrow.

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

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

(c) Buyer's Inspections and Due Diligence. From the date that Escrow is opened (the "**Opening of Escrow**") until 5:00 p.m. Pacific Time ten days before the Scheduled Closing Date or such other date agreed to by the parties for Close of Escrow (the "**Due Diligence Period**"), Buyer may conduct examinations, inspections, testing, studies and investigations of the Property. Within five business days following the Opening of Escrow, City shall provide Buyer with any and all existing reports, studies and other related information in its possession or under its control that reasonably relate to the Property, including, without limitation, any Phase I and Phase II environmental reports, surveys, and geotechnical studies. Buyer may conduct such due diligence activities, inspections, and studies of the Property as it deems necessary or appropriate, and examine and investigate to its full satisfaction all facts, circumstances, and matters relating to the Property. Buyer shall notify City before conducting any invasive testing of the Property. Buyer shall repair any damage to the Property caused by Buyer's inspections and tests and shall restore the Property to substantially the condition existing as of the date of the inspection. Buyer agrees to defend, indemnify and hold City harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, and all costs incurred in connection therewith, including without limitation actual attorneys' fees and costs of experts and consultants (collectively "**Claims**") arising directly out of the conduct of any investigative activities of Buyer or its agents or representatives on the Property at any time following the Effective Date, but not as to any such Claims as may arise out of any factual information that may be disclosed by such investigation, such as, but not limited to any environmental problems with the Property.

4. Conditions of Title. It shall be a condition to the Close of Escrow and a covenant of City that title to the Property be conveyed to Buyer by City by a Grant Deed, which shall be in the form customarily used by Escrow Holder in the County ("*Grant Deed*"), subject only to:

(a) those exceptions shown in a preliminary title report to be ordered by Buyer (the "*Preliminary Report*"), if approved by Buyer; and

(b) such other title matters affecting the Property created by or with the written consent of Buyer (collectively, "*Approved Conditions of Title*").

City covenants and agrees (and it shall be a condition to the Close of Escrow) that between the Effective Date and the Close of Escrow, it will not, except as specifically provided in this Agreement, cause or permit the condition of title to the Property to differ from that disclosed by the Preliminary Report. Subject to the foregoing, any liens, encumbrances, encroachments, easements, restrictions, conditions, covenants, rights, rights-of-way or other matters which appear of record or are revealed after the date of the Preliminary Report are subject to Buyer's approval, which approval may be withheld in Buyer's sole and absolute discretion. If the Buyer objects to any exception to title, City, within five business days after receipt of Buyer's objection, shall notify Buyer in writing whether City elects to (i) cause the exception to be removed of record, (ii) obtain a commitment from Escrow Holder for an appropriate endorsement to the policy of title insurance reasonably acceptable to Buyer to be issued to the Buyer, insuring against the objectionable exception, or (iii) terminate this Agreement unless the Buyer elects to take title subject to such exception.

5. Conditions to Close of Escrow.

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

(i) Title. Buyer shall have the right to receive fee title to the Property subject only to the Approved Conditions of Title.

(ii) Title Insurance. As of the Close of Escrow, Escrow Holder shall have issued or shall have committed to issue the Title Policy (defined below) to Buyer.

(iii) Lease. Buyer shall have entered into a lease with Panera, LLC ("*Panera*"), or another tenant approved by the City, on such terms and conditions as are satisfactory to Buyer in its sole and absolute discretion, and all conditions to the Panera lease which can be satisfied before Close of Escrow have been satisfied.

(iv) Governmental Permits. All governmental permits, approvals, licenses and authorizations required for construction and operation of a Panera restaurant on the Property, including, without limitation, a building permit, any required encroachment permits, and architectural review approval (collectively

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“Governmental Permits”), shall have been issued and all applicable appeal periods shall have expired with no appeals then outstanding. This condition to Buyer’s Obligations does not commit the City to any particular decision regarding the Governmental Permits.

(v) Parcel Map. Seller shall take all actions and process all documents necessary to record a parcel map so as to convert the City Parcel into two (2) separate legal parcels (identified as **“Parcel A”** and **“Parcel B”** on the Site Plan attached as Exhibit B), and otherwise satisfy the condition set forth in Section 1(b) above.

(vi) Reciprocal Easements and Restrictive Covenant Agreement. City and Buyer shall execute for recording at the Close of Escrow that certain Reciprocal Easements and Restrictive Covenant Agreement (**“REA”**) in substantially the form of Exhibit C attached hereto and made a part hereof, for Parcel A and Parcel B as shown on the Site Plan.

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

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

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

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

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

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

(b) REA. The REA, duly executed and acknowledged in recordable form by City and Buyer, subject only to the Approved Conditions of Title.

(c) FIRPTA Certificate. If deemed to be required by Escrow Holder, a certification, acceptable to Escrow Holder and duly executed by City under penalty of perjury setting forth



City's address and federal tax identification number in accordance with and/or for the purpose of the provisions of Sections 7701 and 1445, as may be amended, of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

7. Deposits By Buyer. At least one business day prior to the Close of Escrow, Buyer shall deposit or cause to be deposited with Escrow Holder (a) the Purchase Price, (b) Buyer's share of Title Policy costs under Section 8, (c) Costs under Section 9, (d) any prorations payable by Buyer under Section 10, and (e) the REA duly executed and acknowledged in recordable form by City and Buyer.

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

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

10. Prorations.

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

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

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

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

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

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

12. Buyer's Acknowledgements.

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

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

Buyer affirms that Buyer has not relied on the skill or judgment of City or any of its respective agents, employees or contractors to select or furnish the Property for any

particular purpose, and that City makes no warranty that the Property is fit for any particular purpose. Buyer acknowledges that it shall use its independent judgment and make its own determination as to the scope and breadth of its due diligence investigation which it shall make relative to the Property and shall rely upon its own investigation of the physical, environmental, economic and legal condition of the Property (including, without limitation, whether the Property is located in any area which is designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wild land fire area, by any federal, state or local agency). Buyer undertakes and assumes all risks associated with all matters pertaining to the Property's location in any area designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wild land fire area, by any federal, state or local agency.

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

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

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

15. Broker's Commission. Buyer and City each represent to the other that they have dealt with no real estate broker or agent other than Chris Sill of Lee & Associates, who represents Buyer ("**Buyer's Broker**"). Buyer shall pay a commission to Buyer's Broker under the terms of



(b) Waivers. No waiver of any breach of any provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach, or of any other provision. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

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

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

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

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

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

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

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

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

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

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

(m) Exchange. Each party agrees upon the request of the other to cooperate with the other in consummating this transaction as an exchange pursuant to Internal Revenue Code Section 1031 provided: (a) the cooperating party shall incur no additional expense or liability in connection therewith; (b) there shall be no delay in the Close of Escrow; and (c) the requesting party shall not be released from its obligation hereunder if the exchange fails for any reason, and the requesting party shall remain liable for all its duties and obligations under this Agreement.

** INTENTIONALLY LEFT BLANK **


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

CITY:

THE CITY OF TRACY,
a California general law city


BUYER:

BCP Tracy LLC,
A California limited liability company

By: 
Name: Michael Maciel
Title: Mayor
(Authorized by City Council Resolution No.

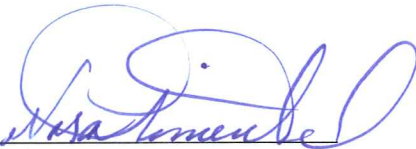
2015-059)

Date: 4-30-15

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

Date: 4/7/15

Attest:


City Clerk

Approved as to Form:

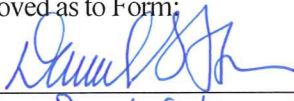
By: 
Name: Danrel Soderque
Title: City Attorney

EXHIBIT A
LEGAL DESCRIPTION OF PARCEL

gms

**PARK AND RIDE PARCEL
LEGAL DESCRIPTION**

**EXHIBIT A
PAGE 1 OF 1**

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A PORTION OF 39 OF "NAGLEE BURK TRACT," ACCORDING TO THE OFFICIAL MAP THEREOF, FILED FOR RECORD MARCH 7, 1911, AND RECORDED IN VOLUME 5 OF MAPS AND PLATS AT PAGE 18, SAN JOAQUIN COUNTY RECORDS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF PARCEL "D", AS SHOWN UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD JULY 13, 2005, IN BOOK 23 OF PARCEL MAPS, AT PAGE 125 OF THE SAN JOAQUIN COUNTY RECORDS.

CONTAINING 2.78 ACRES OR 121,097 SQUARE FEET, MORE OR LESS.

02-040615cm

Jan

Exhibit A Page 2

212-29

THIS MAP IS FOR ASSESSMENT USE ONLY

POR. NAGLEE BURK TRACT

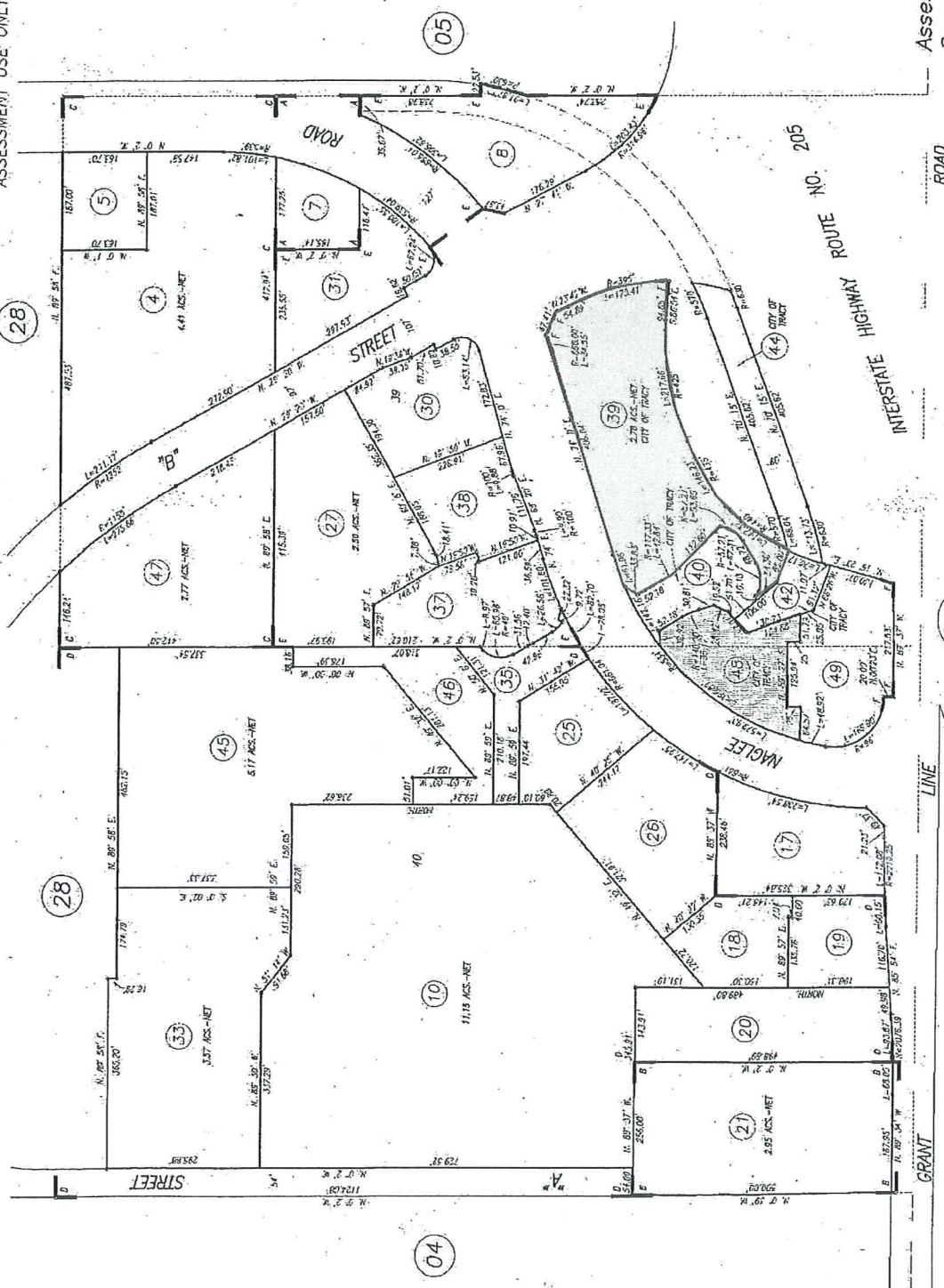


- A - R: S. Blk. 19 Pg. 122
- B - P. M. Blk. 09 Pg. 047
- C - P. M. Blk. 21 Pg. 026
- D - P. M. Blk. 22 Pg. 044
- E - P. M. Blk. 22 Pg. 076
- F - P. M. Blk. 23 Pg. 125

HIGHEST A.P.N. USED	
TRUNK	PAR. & PAR. #
04-04	21
04-05	33
05-06	38
06-07	44
07-08	47
17-15	48

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

03-04



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

Bk. 238

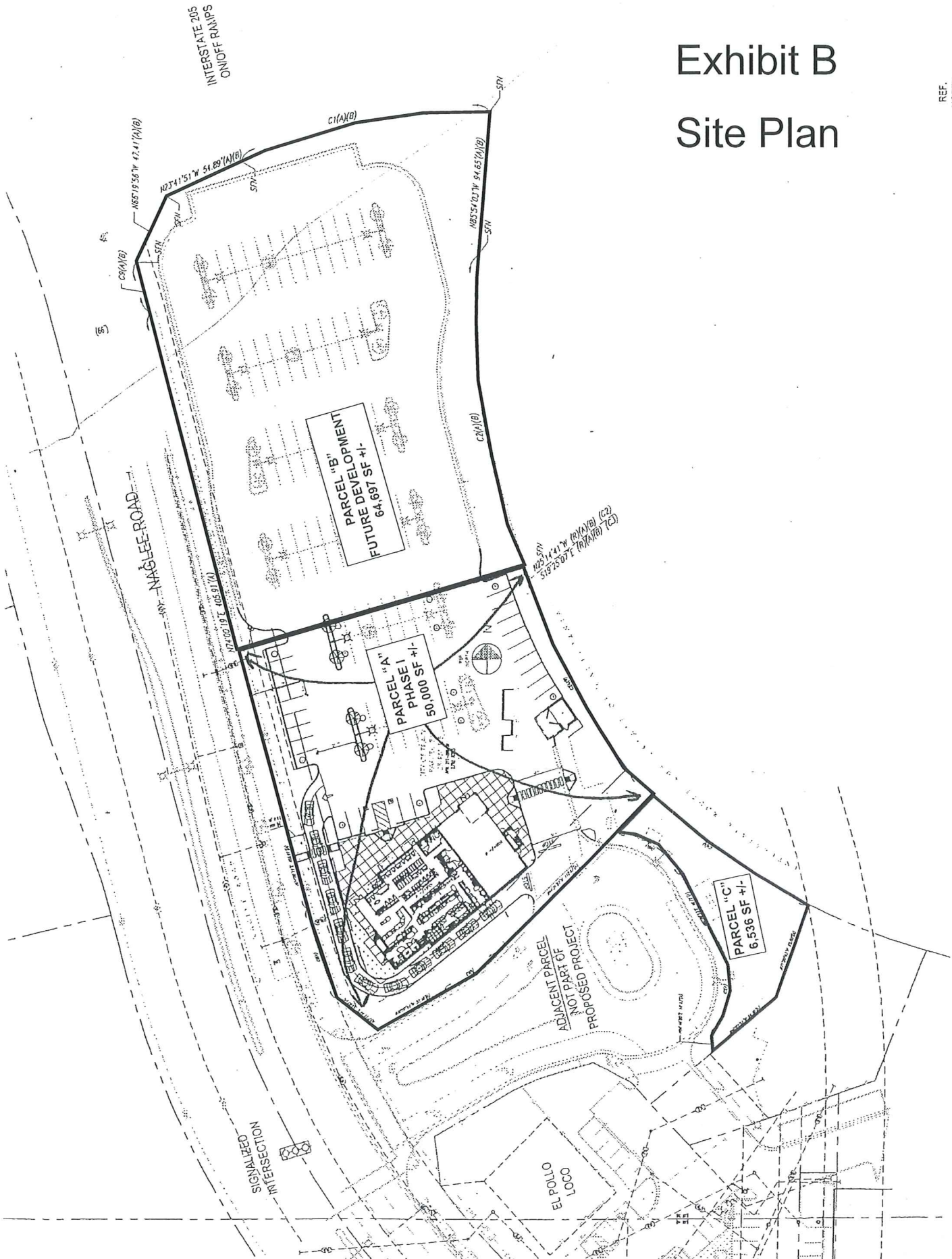
JPS

EXHIBIT B

Site Plan

Exhibit B Site Plan

REF.
NORTH



ppp

EXHIBIT C

Reciprocal Easement and Restrictive Covenant Agreement



Exhibit C

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City Clerk
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

(SPACE ABOVE RESERVED FOR RECORDER'S USE ONLY)

RECIPROCAL EASEMENTS AND RESTRICTIVE COVENANT AGREEMENT

THIS RECIPROCAL EASEMENTS AND RESTRICTIVE COVENANT AGREEMENT (“**Agreement**”) is entered into this _____, 201_, between the CITY OF TRACY, a California general law city (“**City**”), and BCP TRACY, LLC, a California limited liability company, and any successor or assign thereof (collectively “**BCP**”).

RECITALS

A. City is the owner in fee simple of certain real property located in the City of Tracy, San Joaquin County, California as more particularly described on Exhibit A attached hereto and incorporated herein for all purposes (“**Parcel A**”). BCP is the owner in fee simple of certain real property located in the City of Tracy, San Joaquin County, California as more particularly described on Exhibit B attached hereto and incorporated herein for all purposes (“**Parcel B**”). *[After recording of Parcel Map creating the parcels, substitute revised property descriptions based on that Parcel Map reference.]* Both parcels are located on Naglee Road and are shown in a diagram as Exhibit C.

B. BCP and City have entered into an Agreement for Purchase and Sale of Real Property (“**PSA**”) dated _____ 2015 whereby BCP will purchase Parcel A from City, and City will continue to own Parcel B.

C. As a condition of the PSA, and as a material inducement to City’s agreement to sell Parcel A to BCP and BCP’s agreement to purchase Parcel A, BCP and City have agreed to enter into this Agreement, effective immediately after the transfer of Parcel A from City to BCP, as evidenced by the recordation of the Grant Deed for Parcel A in the official records of San Joaquin County, California. This Agreement shall be recorded concurrently with the recordation of the Grant Deed.

D. City and BCP may each be individually referred to herein as an “**Owner**” or collectively as the “**Owners**”, and Parcel A and Parcel B may each be individually referred to herein as a “**Parcel**” and collectively as the “**Parcels**”.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BCP and City hereby agree as follows:

ARTICLE 1 RESTRICTIVE USES

1.1 City shall not permit the operation of a **“Bakery-Café”** restaurant, including, but not limited to, Corner Bakery, on Parcel B. This exclusive shall only be in effect as long as Panera, LLC is operating a Panera Bread Bakery Café on Parcel A. If Panera, LLC, discontinues the operation of a Panera Bread Bakery Café on Parcel A, this restriction shall terminate and shall thereafter be of no further force or effect. In this Agreement, **“Bakery-Café”** means use as a Bakery Café concept, a sandwich shop concept, or a coffee house concept. Examples of Bakery Café concepts include Corner Bakery, Cosi, Boudin, and Atlanta Bread. Examples of sandwich shop concepts include Mendocino Farms, Jimmy John’s, and Jersey Mike’s. Examples of coffee house concepts include Starbucks, Peet’s Coffee, Einstein Bagels, and Coffee Bean Tea and Leaf.

1.2 The foregoing shall not apply in any way to any full service sit- down style restaurant located on Parcel B.

ARTICLE 2 RECIPROCAL GRANT OF EASEMENTS

2.1 BCP hereby grants, bargains, sells and conveys a perpetual, irrevocable, non-exclusive right to City, its successors and assigns, and their occupants, employees, agents, contractors, vendors, customers, guests and invitees, for the purpose of and vehicular and pedestrian ingress and egress (but not for parking) over Parcel A, to and from Parcel B and Park & Ride Drive (a public street), over and across the paved drive lane portions that are not otherwise used for buildings, parking or loading as they may exist from time to time on Parcel A.

2.2 City hereby grants, bargains, sells and conveys a perpetual, irrevocable, non-exclusive right to BCP, its successors and assigns, and their occupants, employees, agents, contractors, vendors, customers, guests and invitees, for the purpose of and vehicular and pedestrian ingress and egress and turn arounds (but not for parking) over Parcel B, to and from Parcel A and Parcel B, over and across the paved drive lane portions that are not otherwise used for buildings, parking or loading as they may exist from time to time on Parcel B.

2.3 Each Parcel Owner shall maintain in good condition and repair, at its sole cost and expense (subject to any obligation of the other Owner pursuant to Section 2.5 below), the paved drive lanes on its Parcel so as to permit the unobstructed use of such area for the purposes set forth herein. All such maintenance shall be performed in a good and workmanlike manner in accordance with all applicable ordinances, rules and regulations of duly constituted governmental authority.

2.4 The easements described in this Article 2 shall be subordinate to the actual construction of any buildings or other improvements on a Parcel, and each Owner shall have the right to relocate any buildings, driveways or paved areas within its Parcel, provided any change in the access points along the common boundary of the Parcels shall be subject to the other Owner's reasonable approval (and provided a route for vehicular access through Parcel A between Parcel B and a public street shall be maintained). Nothing in this Agreement is intended to limit the manner in which either Parcel is developed or used, so long as a vehicular access route is maintained through each Parcel. Upon the actual construction of improvements to a Parcel, these easements shall be limited with respect to such Parcel to the use of paved surfaces and/or pedestrian ways that support such access and do not in any way interfere with the use or operation of such improvements or the use of the Parcel. Notwithstanding anything to the contrary herein, each Parcel shall be developed and improved in such a manner that it shall contain sufficient parking for such Parcel's development and use, and in no event shall any Parcel have an easement, license or any other right to park vehicles on the other Parcel.

2.5 Each Owner shall be liable only for damage to any improvements within another Owner's Parcel caused by the active negligence of, or willful damage by the Owner, or the Owner's agents or employees, arising out of or related to the Owner's agent's or employee's use of this reciprocal easement. An Owner shall not be liable to another Owner for damage caused by guests or invitees of such Owner or due to normal wear and tear.

2.6 At all times during the term of this Agreement, each Owner shall, at its sole expense, continuously maintain or cause to be continuously maintained a commercial general liability policy of insurance on an occurrence basis providing coverage in an amount not less than Two Million Dollars (\$2,000,000), endorsed to cover property damage and personal injury on its Parcel, and naming the other Owner as an additional insured. Each Owner shall provide the other Owner with a certificate of insurance evidencing its policy required herein (and upon an occurrence, and at the request of the other Owner, a copy of such policy), and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Agreement, without at least thirty (30) days' prior written notice to the named insureds, and each additional insured. Said policy limit may be adjusted from time to time to reflect commercial standards then in effect with the mutual approval of the Owners which approval shall not be unreasonably withheld or delayed.

ARTICLE 3 MISCELLANEOUS

3.1 The covenants, easements and agreements set forth in this Agreement shall run with the Parcels, and shall apply to the successors-in-interest to each Parcel for the benefit of the other Parcel and the Owner thereof. This Agreement shall be binding upon, and inure to the benefit of, the respective successors, assigns and transferees of the Owners. The covenants, easements and agreements set forth in this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the Parcels pursuant to applicable law, including, without limitation, sections 1468, 1469 and 1470 of the California Civil Code.

3.2 This Agreement shall be recorded in the official records of San Joaquin County, California, and shall serve as notice to and shall be binding upon and inure to the benefit of, as applicable, BCP, City and the successive owners of the Parcels.

3.3 If either party defaults in the performance of any of its obligations under this Agreement, the non-defaulting party shall be entitled to all rights and remedies at law or in equity including, without limitation, injunctive relief.

3.4 Should either party employ attorneys to enforce any of the provisions of this Agreement, the prevailing party in such action shall be entitled to collect from the other party, in addition to any other amounts awarded to such prevailing party, all reasonable costs, charges and expenses, including attorney's fees, expended or incurred connection therewith, or with executing upon or appealing any judgment.

3.5 This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings with respect to the matters contemplated herein. This Agreement may be amended or terminated only by an instrument in writing, executed by BCP and City or their respective successors and assigns.

3.6 All notices, demands and requests which may be given or which are required to be given by either party to the other by this Agreement, shall be in writing and shall be deemed effective either (a) on the date personally delivered to the address below, as evidenced by written receipt therefor, whether or not actually received by the person to whom addressed, (b) upon receipt by U.S. express or registered mail, return receipt requested, addressed to the intended recipient at the address specified below, or (c) on the first (1st) business day after being deposited into the custody of a nationally recognized next business day delivery service such as Federal Express Corporation, Emery or Purolator, addressed to such party at the address specified below. For purposes of this Section 3.6, the addresses of the parties for all notices are as follows:

If to City	Development Services Director City of Tracy 333 Civic Center Plaza Tracy, CA 95376
------------	---

If to BCP	Jon Becker BCP Tracy, LLC P.O. Box 590 Wilton, CA 95693
-----------	--

Anyone entitled to receive notice hereunder may, from time to time, change its address for receiving notices by giving written notice thereof in the manner outlined above. In the event any notice using an address provided in accordance with this Section 3.6 is returned undeliverable, such notice shall be effective five (5) days after being mailed to the Owner at the address as shown on the most recent records of the County Tax Assessor for such Owner's Parcel.

3.7 This Agreement shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of California.

3.8 This Agreement may be executed in counterparts, each of which shall be deemed an original and when taken together constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

Property Owner
CITY:

CITY OF TRACY,
a California general law city

By: _____
Name: _____
Title: _____

Property Owner
BCP:

BCP TRACY, LLC,
a California limited liability company

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

*Notarial acknowledgment required

Attest:

City Clerk

APPROVED AS TO FORM:

By: _____
Name: _____
Title: City Attorney

EXHIBIT A
LEGAL DESCRIPTION OF PARCEL A

To be provided upon completion of parcel split.

EXHIBIT B
LEGAL DESCRIPTION OF PARCEL B

To be provided upon completion of parcel split.

EXHIBIT C

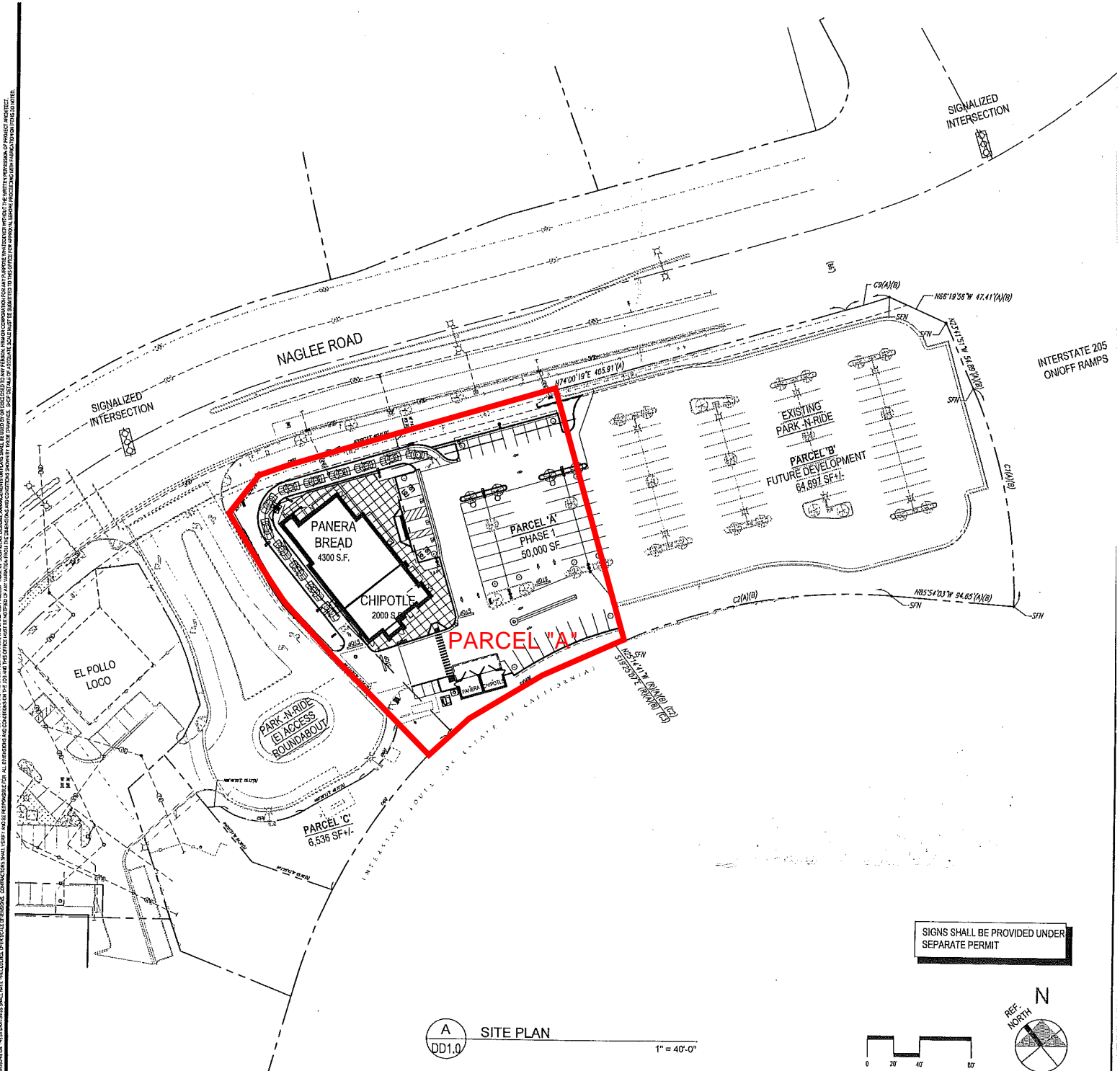
DIAGRAM OF PARCELS A AND B

To be provided upon completion of parcel split.

gpb

Attachment "B"

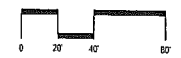
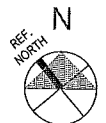
1464_Beeker_Tecy_Naglee_Park-n-Ride.dwg DD: Jdwg By: HMURPHY Saved on: 8/17/2015 8:22:07 AM
 DD1.0
 THE INFORMATION CONTAINED HEREIN IS THE PROPERTY OF THE CONSULTING ENGINEER AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. NO PART OF THIS DOCUMENT IS TO BE REPRODUCED 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 CONSULTING ENGINEER. THE CONSULTING ENGINEER'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED HEREIN AND DOES NOT EXTEND TO ANY OTHER SERVICES OR TO ANY OTHER PROJECTS. THE CONSULTING ENGINEER'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED HEREIN AND DOES NOT EXTEND TO ANY OTHER SERVICES OR TO ANY OTHER PROJECTS.



A SITE PLAN
 DD1.0

1" = 40'-0"

SIGNS SHALL BE PROVIDED UNDER SEPARATE PERMIT



FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF
REAL PROPERTY

THIS FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (the "First Amendment"), effective as of the date last signed below, is entered into between BCP Tracy LLC, a California limited liability company, its nominee or assigns ("Buyer"), and the City of Tracy, a municipal corporation ("City").

Recitals

A. On April 30, 2015, the City and Buyer entered into an Agreement for Purchase and Sale of Real Property ("Agreement").

B. The Agreement provides in relevant part that "the close of escrow shall occur . . . not later than 365 days following the effective date of the Agreement."

C. The City and Buyer wish to extend this period by 90 days.

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Subdivision (b) of section 3 (Escrow) of the Agreement is amended to read as follows:

(b) Close of Escrow. The Close of Escrow shall occur, subject to the satisfactions of the conditions precedent, within 30 days following satisfaction of the conditions precedent, but not later than 455 days following the Effective Date, unless otherwise extended by the mutual written consent of the parties, which date is referred to herein as the "***Scheduled Closing Date.***" If Buyer is satisfied as to all conditions set forth in Section 5 (a) (Conditions to Buyer's Obligations) sooner than 455 days, Buyer shall send written notice to the City, and City shall submit the necessary documents into Escrow within ten working days after that. For Purposes of this Agreement, "***Close of Escrow***" is defined as the date that the Grant Deed to the Property is recorded in the Official Records of San Joaquin County.

Section 2. Other than amended above, the Agreement remains in full force and effect.

Section 3. This First Amendment may be executed in any number of

counterparts, each of which shall constitute an original document.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this First Amendment as of the day and year first above written.

CITY:

CITY OF TRACY, a municipal corporation

Date: _____, 2016

By: _____
Mayor

APPROVED AS TO FORM:

Buyer:

BCP Tracy LLC, a California limited liability company

Date: 2/17, 2016

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

RESOLUTION 2016- _____

APPROVING A 90-DAY EXTENSION TO THE SCHEDULED CLOSE OF ESCROW DATE PURSUANT TO THE MUTUAL WRITTEN AGREEMENT CLAUSE AS STATED IN THE PURCHASE AND SALE AGREEMENT FOR REAL PROPERTY BETWEEN THE CITY OF TRACY AND BCP TRACY LLC ON A PORTION OF CITY-OWNED PROPERTY LOCATED AT THE SOUTHWEST CORNER OF NAGLEE ROAD AND PARK & RIDE DRIVE REFERRED TO AS PARCEL "A" (APN 212-290-39)

WHEREAS, City Council adopted Resolution 2015-059 on April 21, 2015 to enter into a Purchase and Sale Agreement (the Agreement) for a portion of the City-owned property located near the southwest corner of Naglee Road and Park & Ride Drive, further described as Parcel "A" APN 212-290-39 (the "Site"), and

WHEREAS, The City remains interested in pursuing the development of the Site for a restaurant or retail user, and

WHEREAS, BCP Tracy LLC (the Buyer) has provided a request to execute the mutual written consent clause in the Agreement to extend the Scheduled Close of Escrow Date, and

WHEREAS, The City and the Buyer mutually agree to written consent to extend the Scheduled Close of Escrow Date for 90-days past the date of the Agreement;

NOW, THEREFORE, BE IT RESOLVED, That City Council hereby approves a 90-day extension to the scheduled close of escrow date pursuant to the mutual written agreement clause as stated in the Purchase and Sale Agreement for real property between the City of Tracy and BCP Tracy LLC on a portion of City-owned property located at the southwest corner of Naglee Road and Park & Ride Drive referred to as parcel "A" (APN 212-290-39).

* * * * *

The foregoing Resolution 2016-_____ was adopted by the Tracy City Council on the 1st day of March, 2016, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.H

REQUEST

AUTHORIZE AMENDMENT OF THE CITY'S POSITION CONTROL ROSTER BY ADDING A NEW POSITION OF EXECUTIVE ASSISTANT IN THE PARKS AND COMMUNITY SERVICES DEPARTMENT AND APPROVE A GENERAL FUND APPROPRIATION IN THE AMOUNT OF \$27,717

EXECUTIVE SUMMARY

This report recommends adding the position of Executive Assistant to the Parks and Community Services Department. The addition of an Executive Assistant position will assist the Director in organizing, planning and managing the administrative functions of the department in an efficient manner.

DISCUSSION

In 2011, the Parks and Community Services Department was dissolved and staff duties were divided between the City Manager's Office and the Public Works Department with ten Recreation divisions becoming divisions within the City Manager's Office and the Airport, Transit and Facilities divisions becoming divisions within the Public Works Department. With the 2011 reorganization, the Executive Assistant position in the Parks and Community Services Department was eliminated with the duties being divided up between multiple administrative staff in each division.

The Park and Community Services Department has been reinstated with City Council approval in June, 2015 for Fiscal Year 2015/2016. An Executive Assistant position to assist the Parks and Community Services Director in planning, organizing and managing the administrative functions of the department is essential to efficient operations. The Executive Assistant will perform a variety of complex advanced executive support duties for departmental management and assigned department programs, may exercise functional and technical supervision over administrative support staff, and perform other related duties as assigned.

STRATEGIC PLAN

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

Goal 1: Further develop an organization that attracts, motivates, develops and retains a high-quality, engaged, informed and high-performing workforce.

Objective 1b: Affirm organizational values.

FISCAL IMPACT

For FY 2015/2016, \$27,717 is being requested to be appropriated from fund balance of the General Fund to cover the cost of the changes. Future annual costs of \$83,150 will be incorporated into the next Parks and Community Services Departmental budget.

RECOMMENDATION

That the City Council, by resolution, authorize the Administrative Services Director to amend the City's Classification and Compensation Plan, and the Budget Officer to amend the Position Control Roster by approving the addition of the position of Executive Assistant in the Parks and Community Services Department; and approve a general fund appropriation of fund balance in the amount of \$ 27,717 to fund these changes.

Prepared by: André Pichly, Parks and Community Services Director

Reviewed by: Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A: Executive Assistant Job Description

EXECUTIVE ASSISTANT

Bargaining Unit: Technical and Support Services
Class Code: 40108
Revision Date: May 18, 2011
FLSA: Non-Exempt

DESCRIPTION:

Under general supervision, to plan, organize, coordinate and manage administrative functions of an assigned department; perform a variety of complex advanced executive support duties for departmental management and assigned department programs; may exercise functional and technical supervision over administrative support staff; and to perform other related duties as assigned.

DISTINGUISHING CHARACTERISTICS INCLUDING SUPERVISION RECEIVED AND EXERCISED:

Executive Assistant is an advanced journey level classification responsible for providing a full range of advanced administrative and executive support to Department Heads and management staff on assignments in a wide variety of departmental areas requiring independent decision making, judgment and initiative, application of in-depth and comprehensive knowledge of department policies and procedures, and the ability to problem-solve and use sound judgment. The scope of duties may include, but is not limited to, independently researching and compiling data for reports and projects, displaying information in charts and spreadsheets, developing and maintaining various sensitive documents and files, assisting in administering department programs and budgets, and providing lead direction over lower level administrative office support staff.

ESSENTIAL AND MARGINAL DUTIES:

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

Participate and assist in the administration of the department and assigned department programs; perform a wide variety of complex, highly responsible administrative duties; meet time sensitive deadlines

Interact with the public, all levels of City personnel, representatives from businesses and community organizations, City Council, commissions, and boards in the performance of assigned duties

Participate in budget preparation and administration; prepare cost estimates for budget recommendations; submit justifications for budget items; monitor and control expenditures; maintain financial statistics

Perform independent complex research; identify sources; collect and assemble detailed data, materials, and manuals; compile, organize and display information for special projects and various reports

ATTACHMENT A

Prepare comprehensive detailed reports and summaries; display information in charts and spreadsheets; perform arithmetical and statistical calculations
Prepare and monitor documents related to contracts, plans, and claims; ensure compliance with agreements, rules, and regulations

Enter data into computer; initiate and maintain a variety of detailed and accurate files and records; maintain manuals and update resource material; manage and maintain calendars and schedules

Coordinate administrative work flow; organize and evaluate administrative functions; recommend organizational or procedural changes affecting support activities; develop administrative methods for new projects; monitor administrative operations, policies, and procedures

Provide direction to administrative support staff including planning, prioritizing, assigning, reviewing and overseeing work; monitor staff performance; determine work priorities and methods; participate in staff selection and training; provide input to performance evaluations; work with employees to correct deficiencies; recommend corrective action

Schedule and coordinate training; manage personnel files and training records

Screen calls, visitors, mail, and e-mail; respond to requests for information and assistance; resolve and answer citizen questions, concerns, and complaints; interpret and explain City policies, procedures, laws, and regulations

Compose a variety of sensitive and detailed documents, letters, memoranda and instructions from brief notes or verbal information

Maintain schedules and calendars; plan, schedule, coordinate and oversee meetings, conferences and civic functions; make travel arrangements

Oversee, authorize, and monitor orders for office supplies and other departmental purchases

Use standard computer office software and equipment including word processing and spreadsheet packages, databases, graphics, and may use desktop publishing or software particular to the area assigned

Perform related duties as assigned.

MINIMUM QUALIFICATIONS:

Knowledge of:

Principles of office management and organizational methods

Principles and techniques of research methods

Modern office practices, policies, procedures and methods; standard office equipment and applicable computer software

ATTACHMENT A

Policies and vision of the City; procedures and precedents of the department to which assigned; organization and procedures of outside organizations dealt with in the course of work

Proper English usage, spelling, grammar, punctuation, math; business letter writing; report preparation; proof-reading

Principles of bookkeeping, record-keeping, basic accounting and/or basic budgeting

Record-keeping and file systems

Applicable Federal, State, local laws, codes, and regulations

Government contracting procedures

Basic principles of lead supervision; personnel practices and procedures

Methods of customer service

Ability to:

Plan, coordinate, organize, analyze and perform responsible, detailed and complex administrative support work using independent judgment and personal initiative

Research and analyze information gathered in order to compose reports and special projects

Work cooperatively with other departments, City officials, the public, and outside agencies; establish and maintain effective relationships

Communicate clearly, concisely and effectively, both verbally and in writing

Read, interpret, and apply laws, ordinances, and departmental procedures

Evaluate and recommend change to policies, programs, and practices

Understand and carry out directions and work effectively under pressure with frequent interruptions

Exercise discretion, initiative, and independent judgment; maintain confidential information

Compile and maintain accurate, complex, and extensive data and reports; set priorities and meet critical deadlines

Effectively operate computers with expertise in applicable programs

Assist in the formation of policies, procedures, and budgets

Analyze situations and adopt effective, appropriate course of action; analyze, evaluate, and resolve potentially sensitive issues through discussion and persuasion in order to gain concurrence and cooperation

Organize, delegate, and direct work of administrative support staff

Establish and maintain constructive and harmonious relationships with department heads, coworkers and the general public

EDUCATION AND EXPERIENCE

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

Education:

High School Diploma or equivalent, supplemented by specialized secretarial or college level courses in business, computer software, or courses related to assigned area

Experience:

Five years of increasingly responsible administrative support and customer service experience, including one year of experience providing direct support to a senior management level staff and/or serving in a lead or supervisory capacity. Office management experience preferred.

LICENSES AND CERTIFICATES

Possession of, or ability to obtain, a valid California driver license

TOOLS AND EQUIPMENT:

Requires frequent use of personal computer and related software programs; calculator, telephone, copy machine, and fax machine.

PHYSICAL DEMANDS AND WORK ENVIRONMENT:

PHYSICAL DEMANDS

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

While performing the duties of this job, the employee is frequently required to sit, talk, or hear. The employee is required to use hands to finger, handle, feel, or operate objects, tools, or controls and reach with hands and arms and perform simple grasping and fine manipulation. On a continuous basis the employee must sit at a desk and in meetings for long periods of time. Intermittently the employee must twist to reach equipment surrounding the desk. May be expected to lift and move containers weighing up to 25 lbs. Specific vision abilities required include close vision and the ability to adjust focus.

WORK ENVIRONMENT

ATTACHMENT A

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. The positions work in an office environment where the temperature remains constant. The noise level in the work environment is moderate to noisy. There may be intermittent interruptions from phones, public inquiries, and other staff.

RESOLUTION

AUTHORIZE AMENDMENT OF THE CITY'S POSITION CONTROL ROSTER BY APPROVING THE ADDITION OF A NEW POSITION OF EXECUTIVE ASSISTANT IN THE PARKS AND COMMUNITY SERVICES DEPARTMENT AND APPROVE A GENERAL FUND APPROPRIATION IN THE AMOUNT OF \$27,717 FOR THE CHANGES

WHEREAS, The City has a Position Control Roster, and

WHEREAS, The Parks and Community Services Director needs an Executive Assistant to assist in planning, organizing and the managing the administrative duties of the Director, and

WHEREAS, The fiscal impact for approving these changes is estimated at \$27,717 during the current fiscal year;

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

1. The City Council authorizes the Administrative Services Director to amend the City's Position Control Roster as follows:

- a) This action will be effective March 16, 2016.
- b) Create position: Executive Assistant as described in the attached job description.

2. That the City Council approve a general fund appropriation from fund balance to in the amount of \$27,717 for these changes.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 1st day of March, 2016 by the following votes:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.I

REQUEST

AUTHORIZE APPROPRIATION TO THE PUBLIC WORKS DEPARTMENT AND AMEND THE CITY'S CLASSIFICATION AND COMPENSATION PLAN AND POSITION CONTROL ROSTER BY THE ADDITION OF A FULL-TIME RECREATION COORDINATOR I, 3 PART TIME POOL MANAGERS, 6 PART TIME SENIOR LIFEGUARDS AND 25 PART TIME LIFEGUARDS TO THE PARKS & COMMUNITY SERVICES DEPARTMENT TO OPERATE THE JOE WILSON POOL

EXECUTIVE SUMMARY

The Public Works Department is requesting supplemental appropriations for additional funding to operate the Joe Wilson Pool in the Fiscal Year (FY) 2015/2016 budget. The Parks & Community Services Department is requesting the addition of Aquatics Program staffing positions for the same purpose. These requests are essential to operate the renovated Joe Wilson Pool in a safe and efficient manner.

DISCUSSION

In FY 2010/11, the Joe Wilson Pool was closed for budgetary reasons and unsafe conditions. All City aquatics programming was then shifted to the Tracy Unified School District's (TUSD) pool at West High School. An agreement was negotiated with TUSD that included rental rates, reimbursable costs, days of operation for City programming, liability and other items, including the payment of pool maintenance costs to TUSD. In October, 2014, TUSD exercised their option to discontinue the agreement, thus requiring the City to rent the West High pool from them for the 2015 aquatics season. The City's agreements with TUSD included the payment of approximately \$90,000 per year to TUSD for maintenance of the pool.

Recognizing that the City's long-term need to provide a quality aquatics facility for local users, on September 15, 2015, the City Council approved the contract for renovation of the Joe Wilson Pool. As a result of the Joe Wilson pool reopening this spring, and the previous elimination of operating budgets for the facility's maintenance and repair and the elimination of the \$90,000 for the maintenance costs for the West High pool, the Public Works Department is requesting operations and maintenance funding (prorated) for the remainder of this fiscal year in the amount of \$37,000.

For programming, for the past five years, the City had contracted with the YMCA of San Joaquin County to operate the City's aquatics operations. The contract to perform these services expired on September 15, 2015. The newly reformed Parks & Community Services Department's Recreation Division is requesting to again directly oversee the daily operations of the newly renovated Joe Wilson pool. This request will facilitate a much better service delivery within the Recreation Division, provide a higher level of programming and greatly improve customer service in the Aquatics Program.

The Recreation Division is requesting additional staff to administer this day-to-day programming, which includes recruiting, training and supervising of part-time and

temporary staff and volunteers. Staff will have direct supervision over developing, organizing and implementing the Aquatics Program for the newly renovated Joe Wilson Pool. In the future, staff will also oversee the daily operations of the future Aquatics Center at Ellis. The positions requested include a full-time Recreation Coordinator I and the following part-time staff: (3) Pool Managers, (6) Senior Lifeguards and (25) Lifeguards. The cost of these additional positions for the remainder of the fiscal year will be offset by the current 2015/16 Aquatics budget and by expected revenue from Aquatics activities.

Required funding for on-going programming, operations and maintenance for FY 2016/17 will be submitted through the regular budget process.

STRATEGIC PLAN

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

1. This agenda item supports the Quality of Life Strategy, specifically:

Goal 2: Improve current recreational, cultural arts and entertainment programming and services to reflect community interests and demands.

Objective 1: Develop recreational, cultural arts and entertainment programs and services that reflect community demographics, evaluation feedback and trends.

2. This agenda item supports the Governance Strategy, specifically:

Goal 1: Further develop an organization that attracts, motivates, develops, and retains a high-quality, engaged, high-performing, informed and high performing workforce.

FISCAL IMPACT

Not Budgeted; General Fund: \$37,000 for FY 2015/16; Transfer appropriations from Fund Balance

RECOMMENDATION

That the City Council, by resolution authorize the supplemental appropriations to the Public Works Departments; and authorize the Administrative Service Director to amend the City's Classification and Compensation Plan, and the Budget Officer to amend the Position Control Roster by approving the addition of a Recreation Coordinator I, 3 Pool Managers, 6 Senior Lifeguards and 25 Lifeguards in the Parks and Community Services Department to operate and maintain the Joe Wilson Pool beginning in Spring, 2016.

Prepared by: Jolene Jauregui, Recreation Services Supervisor
Brian MacDonald, Management Analyst II, Public Works Department

Agenda Item 1.1
March 1, 2016
Page 3

Reviewed by: Kim Scarlata, Recreation Division Manager II
Don Scholl, Public Works Director
Andre Pichly, Parks and Community Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Exhibit A: Recreation Coordinator I/II Job Description
Exhibit B: Pool Manager Job Description
Exhibit C: Senior Lifeguard Job Description
Exhibit D: Lifeguard Job Description

RECREATION PROGRAM COORDINATOR I/II

Class Title: Recreation Program Coordinator I/II Class Code: 40401 / 40402
Department: Parks & Community Services Bargaining Group: Technical & Support Services
EEO Code: 79 Effective Date:
FLSA Status: Non-exempt Revision History: 4/00;12/03,1/2012

DESCRIPTION

Under the direction of the Recreation Services Supervisor, the Recreation Program Coordinator is responsible for developing, organizing, implementing and supervising Department programs and events in one or more program areas. Responsibilities include the recruiting, training and supervising of part-time and temporary staff and volunteers, providing direct leadership to program participants, customers and staff; and performing other duties as assigned.

DISTINGUISHING CHARACTERISTICS

The Recreation Program Coordinator I is the journey level in the Recreation Program Coordinator series. The primary focus is on developing, organizing and supervising activities and temporary staff in one or more program areas.

The Recreation Program Coordinator II is the advanced level in the Recreation Program Coordinator series, requiring a higher level of decision making and independent action required to carry out assignments including liaison with internal and external boards and commissions, grant administration, and administration of major and/or multiple programs with varying operational models.

The Recreation Program Coordinator I is distinguished from the higher level Recreation Program Coordinator II by the type, scope, nature and variety of duties assigned on a consistent and regular basis at the higher level such as liaison with internal and external boards and commissions; grant administration, and administration of major and/or multiple programs with varying operational models.

The Recreation Program Coordinator is distinguished from Recreation Services Supervisor in that the latter has full first-line supervisory responsibility for direction and coordination of assigned recreation programs and activities.

The Recreation Program Coordinator receives supervision from a higher level supervisor or manager and may supervise staff, volunteers and/or program contractors.

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES

The level at which duties are performed is based on the position level as indicated under Distinguishing Characteristics. Duties include, but are not limited to the following:

Develops, organizes and supervises activities in one or more program area.

Recruits, trains, supervises, evaluates part-time, seasonal and temporary staff.

Monitors and assists program contractors and contractual agreements.

Prepares promotional materials and undertakes publicity activities.

Schedules facilities, secures supplies and equipment.

Prepares program/activities reports, maintains records, and mailing lists.

Prepares and monitors program/activities budget.

Oversees enrollment and participation data.

Attends and leads training sessions and meetings as assigned.

Coordinates and conducts program/activities with community and school groups.

Understands community needs in a variety of program and service areas.

Identifies methods to maximize service effectiveness and efficiency.

Establishes and maintains effective working relations with staff, Boards, Commissions, public groups, agencies, school officials, the media and others contacted in the course of work.

Prepares and submits grants and proposals; assists in developing funding sources for programs.

Recommends staffing needs, participates in recruitment and selection, provides training and evaluation of staff, participates in monitoring employee performance objectives; provides or coordinates staff training; works with employees to correct deficiencies.

Answers questions and provides information to the public; investigates complaints and recommends corrective action as necessary to resolve complaints.

Conduct surveys, researches data and determines community service programs and special projects to be offered and resources required to implement them; researches, compiles and analyzes data for special projects; collects and assembles data and background materials for a variety of reports

Performs other duties as assigned.

MINIMUM QUALIFICATIONS

Knowledge of:

Goals, objectives, principles, procedures, materials, rules and regulations, and skills associated with a variety of recreational services activities

Regulations, codes and restrictions related to the assigned area of responsibility

Principles and practices used in planning, implementing, and supervising, community recreational programs

Methods and practices associated with working with boards, commissions and community organizations, and the public

Essential elements of contracts and agreements; elements of grant preparation and grants administration

Program marketing and promotion techniques, principles of customer service and public relations.

Basic program management principles, including budgeting, purchasing, inventory control, facility scheduling and staff and program management

Ability to:

Work effectively with the public, commissions, and staff

Resolve conflicts effectively; respond to public inquires and complaints

Organize, develop, implement, supervise and evaluate effectiveness of programs

Recruit, train, schedule staff and volunteers to meet program needs

Effectively use written, oral and presentation communication techniques

Establish and maintain effective working relations with Boards, Commissions, public groups, agencies, school officials, the media and other contacted in the course of work

Prepare program budgets and reports

Coordinate programs and activities with community groups; understand community needs in a variety of programs and service areas

Schedule staff and volunteers to meet program goals

EDUCATION AND EXPERIENCE

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

Recreation Program Coordinator I

Education:

An AA/AS degree with emphasis in general recreation activities, community services or non-profit administration.

Experience:

Two years of progressive work experience in designated program areas, with at least six months supervisory or assistant supervisory capacity, preferred.

Recreation Program Coordinator II

Education:

An AA/AS degree with emphasis in general recreation activities, community services or non-profit administration.

Experience:

Four years of increasingly difficult experience in multiple program areas; with at least one year supervising temporary, permanent, part-time or full-time program staff.

LICENSES AND CERTIFICATES

Possession of, or ability to obtain, an appropriate, valid California driver license.

Ability to pass criminal background check and fingerprinting requirements for positions working with minors.

PHYSICAL DEMANDS

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

While performing the duties of this job, the employee is frequently required to sit and communicate effectively. The employee is occasionally required to use hands and fingers to handle, reach, feel or operate objects, tools, or controls.

The employee must occasionally lift and/or move up to 15 pounds. Ability to read, write and interpret information and data.

WORK ENVIRONMENT

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

The noise level in the work environment is usually quiet while in the office, or moderately loud when in the field.

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

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

**POOL MANAGER
(Temporary/Seasonal Position)**

Class Title: Pool Manager
Department: Parks & Community Services
EEO Code: 70
FLSA Status: Non-Exempt

Class Code: 90638
Bargaining Unit: N/A
Effective Date: 12/20/02
Revision History: N/A

Definition

Under supervision of the Recreation Coordinator, to organize and plan daily activities of the Aquatics program and Swim Center facility; monitor the activities of the pool, water, decks and surrounding area; enforce City rules and regulations; ensure safety of pool patrons; perform swimming rescues and first aid and CPR; maintain facilities and equipment; follow oral and written instructions.

Examples of Duties

Guard the pool and surrounding area, as needed.
Perform swimming rescues, first aid and CPR, as needed.
Develop and implement training curriculum for lifeguards and other Aquatics staff.
Supervise other department staff, volunteers and contractors.
Assist in conducting program evaluations.
Assign staff work duties and schedules.
Assist with participant registration and inquiries.
Oversee the collection and security of revenues.
Facilitate problem solving.
Prepare and disseminate program publicity materials.
Conduct frequent inspections of pool facility.
Enforce City, department, and program rules, policies and regulations.
Maintain a safe environment in the pool and surrounding area and ensure safety of pool patrons.
Remain present at the pool during work shift.
Assist other City staff and members of the public.
Attend and conduct staff meetings and trainings.
Prepare and maintain reports and records of program activities.
Work a flexible work schedule that may include evenings, holidays and weekends.
Provide swimming instruction to persons of all ages and abilities, as needed.
Maintain professional, courteous behavior toward co-workers, members of the public and all others contacted in the course of work.
Perform duties assigned by supervisor.

Employment Standards

Must be at least 18 years of age. Possession of a California driver's license is required. Equivalent to three years of experience at an aquatic facility as a lifeguard and swim instructor. Prior experience in supervision and leading of others. Maintain and possess

current certification in Lifeguard training, CPR for the Professional Rescuer and First Aid. A Water Safety Instructor certificate is required. Must pass a water skills test. In accordance with Education Code 10911.5, employees having direct contact with minors must be fingerprinted and in accordance with Public Resources Code 5163, employees must be free of communicable tuberculosis to perform work for recreational purposes. Applicants selected must pass a physical exam, which includes drug screening and TB testing, fingerprint background check, and submit a work permit, if applicable.

Work Environment and Physical Demands

Work will take place in an environment that will cause exposure to the sun and light chemical substances, such as chlorine. All work activities are performed in a public swimming facility. Must be able to see and hear; sit and stand for long periods of time; possess an audible voice for communication; ability to perform water rescue; ability to lift objects up to 50 pounds

**SENIOR LIFEGUARD
(Temporary/Seasonal Position)**

Class Title: Senior Lifeguard
Department: Parks & Community Services
EEO Code: 70
FLSA Status: Non-Exempt

Class Code: 90637
Bargaining Unit: N/A
Effective Date: 12/2002
Revision History: N/A

Definition

Under supervision of the Pool Manager and Recreation Coordinator, to monitor the activities of the pool, water, decks and surrounding area; enforce City rules and regulations; ensure safety of pool patrons; prevent accidents; perform swimming rescues and first aid and CPR; provide swimming instruction; maintain facilities and equipment; follow oral and written instructions.

Examples of Duties

Guard the pool and surrounding area.
Perform swimming rescues and first aid and CPR.
Assist in the training of other lifeguards.
Enforce City, department, and program rules, policies and regulations.
Maintain a safe environment in the pool and surrounding area and ensure safety of pool patrons.
Remain present at the pool during work shift.
Assist other City staff and members of the public.
Attend staff meetings and trainings.
Complete accident and incident reports in an accurate and timely manner.
Work a flexible work schedule that may include evenings, holidays and weekends.
Provide swimming instruction to persons of all ages and abilities.
Maintain professional, courteous behavior toward co-workers, members of the public and all others contacted in the course of work.
Perform duties assigned by supervisor.

Employment Standards

Must be at least 17 years of age. Equivalent to twelve months of experience at an aquatic facility as a lifeguard or swim instructor. Maintain and possess current certification in Lifeguard training, and CPR for the Professional Rescuer and First Aid. A Water Safety Instructor certificate is required. Must pass a water skills test.

In accordance with Education Code 10911.5, employees having direct contact with minors must be fingerprinted and in accordance with Public Resources Code 5163, employees must be free of communicable tuberculosis to perform work for recreational purposes. Applicants selected must pass a physical exam, which includes drug screening and TB testing, fingerprint background check, and submit a work permit, if applicable.

Work Environment and Physical Demands

Work will take place in an environment that will cause exposure to the sun and light chemical substances, such as chlorine. All work activities are performed in a public swimming facility. Must be able to see and hear; sit and stand for long periods of time; possess an audible voice for communication; ability to perform water rescues; ability to lift objects up to 50 pounds

**LIFEGUARD
(Temporary/Seasonal Position)**

Class Title: Lifeguard	Class Code: 90636
Department: Parks & Community Services	Bargaining Unit: N/A
EEO Code: 70	Effective Date: 12/20/02
FLSA Status: Non-Exempt	Revision History: N/A

Definition

Under direct supervision of the Pool Manager and Recreation Coordinator, to monitor the activities of the pool, water, decks and surrounding area; enforce City rules and regulations; ensure safety of pool patrons; prevent accidents; perform swimming rescues and first aid and CPR; provide swimming instruction; maintain facilities and equipment; follow oral and written instructions.

Examples of Duties

Guard the pool and surrounding area.
Perform swimming rescues and first aid.
Assist in the training of volunteers and students.
Enforce City, department, and program rules, policies and regulations.
Maintain a safe environment in the pool and surrounding area and ensure safety of pool patrons.
Remain present at the pool during work shift.
Assist other City staff and members of the public.
Attend staff meetings and trainings.
Prepare and maintain reports and records.
Work a flexible work schedule that may include evenings, holidays and weekends.
Provide swimming instruction to persons of all ages and abilities.
Maintain professional, courteous behavior toward co-workers, members of the public and all others contacted in the course of work.
Perform duties assigned by supervisor.

Employment Standards

Must be at least 15 years of age. Maintain and possess current certification in Lifeguard training, and CPR for the Professional Rescuer and First Aid. Must pass a water skills test.

In accordance with Education Code 10911.5, employees having direct contact with minors must be fingerprinted and in accordance with Public Resources Code 5163, employees must be free of communicable tuberculosis to perform work for recreational purposes. Applicants selected must pass a physical exam, which includes drug

screening and TB testing, fingerprint background check, and submit a work permit, if applicable.

Work Environment and Physical Demands

Work will take place in an environment that will cause exposure to the sun and light chemical substances, such as chlorine. All work activities are performed in a public swimming facility. Must be able to see and hear; sit and stand for long periods of time; possess an audible voice for communication; ability to perform water rescues; ability to lift objects up to 50 pounds

RESOLUTION _____

AUTHORIZE SUPPLEMENTAL APPROPRIATIONS TO THE PUBLIC WORKS DEPARTMENT BUDGET AND AMEND THE CITY'S CLASSIFICATION AND COMPENSATION PLAN AND POSITION CONTROL ROSTER BY THE ADDITION OF A FULL-TIME RECREATION COORDINATOR I, 3 PART TIME POOL MANAGERS, 6 PART TIME SENIOR LIFEGUARDS AND 25 PART TIME LIFEGUARDS TO THE PARKS & COMMUNITY SERVICES DEPARTMENT TO OPERATE THE JOE WILSON POOL

WHEREAS, The City Council adopted the FY 2015/2016 Operating Budget in June 2015, and subsequent budget appropriations and/or supplemental appropriations beyond the adopted budget require Council approval, and

WHEREAS, The Public Works and Parks and Community Services Department need additional funding and staffing to operate the renovated Joe Wilson Pool in a safe and efficient manner;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. That City Council approves a budget appropriations from the General Fund , amending the Public Works adopted FY 2015/16 Budget in the amount of \$37,000 to the Public Works Department;
2. The City Council authorizes the Administrative Services Director to amend the City's Position Control Roster and the City's Classification and Compensation Plan to establish positions for Recreation Coordinator I, Pool Manger, Senior Lifeguard and Lifeguard as described in the attached job descriptions.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 1st day of March, 2016 by the following votes:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.J

REQUEST

APPROVE AN APPROPRIATION OF AN ADDITIONAL \$50,000 FROM THE GENERAL FUND TO THE CULTURAL ARTS BUDGET

EXECUTIVE SUMMARY

Since re-opening the Grand Theatre Center for the Arts in 2007, the City, through the Cultural Arts Division, has maintained a Presenting Season enlisting professional artists from a wide range of genres to enrich and promote the overall programming of the Center. At the beginning of each Presenting Season, a headline act has been chosen to kick off and market the whole season, as well as foster new interest in the Center's overall programming. This season, 2016-2017, we are celebrating the 10th Anniversary of the re-opening of the Grand Theatre Center for the Arts.

DISCUSSION

To provide publicity and marketing of the entire Grand Theatre Presenting Season, as well as the downtown area, staff is recommending that the City contract with a headline entertainer, such as Peter Frampton or a performer of similar stature, to perform one night at the Grand Theatre Center for the Arts. The date of the event will be August 27, 2016 with an 8:00 pm start time. The contract amount would be \$75,000 plus incidentals such as hospitality, security, lighting, insurance, etc., totaling \$79,500 estimated expense, not including any city staff time. \$29,500 of these expenses have been budgeted for Fiscal Year 2016-2017. An additional amount of \$50,000 is being requested from the General Fund.

Proposed Gross Ticket sales providing \$63,900 of revenue and a proposed \$15,600 of sponsorship revenue will help offset the costs. \$46,500 in additional revenue is anticipated over the projected \$33,000 for a season opening performance. Any expenses over the revenue generated will be considered a marketing expense that will propel the City's 10th Anniversary Presenting Season forward as well as being an excellent opportunity for downtown businesses that will benefit from this concert.

STRATEGIC PLAN

This agenda item supports the Quality of Life strategic priority and specifically implements the following goal:

Goal 2, *Improve Current Recreational, Cultural Arts and Entertainment Programming and Services to Reflect Community Interests and Demands*

Objective 1: Develop recreational, cultural arts and entertainment programs and services that reflect community demographics, evaluation feedback, trends.

FISCAL IMPACT

\$50,000; not budgeted; General Fund; Expected increase revenue will offset increase; Requested appropriation: \$50,000 from General Fund balance.

RECOMMENDATION

That City Council approve an appropriation of an additional \$50,000 to the Cultural Arts budget for the Grand Theatre 2016-2017 Presenting Season's Opening Concert celebrating the 10th Anniversary.

Prepared by: Kim Scarlata, Division Manager II

Reviewed by: Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

RESOLUTION

APPROPRIATING AN ADDITIONAL \$50,000 FROM THE GENERAL FUND TO THE CULTURAL ARTS BUDGET FOR A HEADLINE ACT FOR THE GRAND THEATRE 2016-2017 PRESENTING SEASON'S OPENING CONCERT

WHEREAS, Since re-opening the Grand Theatre Center for the Arts in 2007 the City, through the Cultural Arts Division, has maintained a Presenting Season enlisting professional artists from a wide range of genres to enrich and promote the overall programing of the Center, and

WHEREAS, This season 2016-2017 we are celebrating the 10th Anniversary of the re-opening of the Grand Theatre Center for the Arts, and

WHEREAS, To provide publicity and marketing of the entire Grand Theatre Presenting Season, as well as the downtown area, staff is recommending that the City contract with a headline entertainer, to perform one night at the Grand Theatre Center for the Arts, and

WHEREAS, \$50,000; not budgeted; General Fund; Expected increase revenue will offset increase; Requested appropriation: \$50,000 from General Fund balance;

NOW, THEREFORE, BE IT RESOLVED, That City Council authorizes a supplemental appropriation of \$50,000 from the General Fund to the Cultural Arts budget.

The foregoing Resolution ___ was adopted by the Tracy City Council on the 1st day of March, 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

WAIVE SECOND READING AND ADOPT ORDINANCE 1209, AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS OF TRACY MUNICIPAL CODE CHAPTER 2.20, CONTRACTS AND PURCHASING, TO PROVIDE FOR A LOCAL BIDDER PREFERENCE FOR PUBLIC PROJECTS WITH A COST OF \$45,000 OR LESS, TO REMOVE NEWSPAPER PUBLICATION REQUIREMENTS FOR REQUESTS FOR CERTAIN BIDS FOR GENERAL SERVICES, EQUIPMENT AND COMMODITIES, AND TO MAKE MINOR CHANGES TO THE BIDDING PROCESS

EXECUTIVE SUMMARY

Ordinance 1209 was introduced at the Council meeting held on February 16, 2016. Ordinance 1209 is before Council for adoption.

DISCUSSION

Ordinance 1209 was introduced at a regular City Council meeting held on February 16, 2016, amending Sections of the Tracy Municipal Code Chapter 2.20, Contracts and Purchasing. Ordinance 1209 will provide for a local bidder preference for public projects costing \$45,000 or less, that would replace, with publication on the City's website, the requirement for newspaper publication of certain notices inviting bids for general services, equipment and commodities, and to allow the City Clerk to designate other City staff for the purpose of opening those bids.

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That Council adopt Ordinance 1209.

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

ATTACHMENTS:

Attachment A – Ordinance 1209

ORDINANCE 1209

AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS OF TRACY MUNICIPAL CODE CHAPTER 2.20, CONTRACTS AND PURCHASING, TO PROVIDE FOR A LOCAL BIDDER PREFERENCE FOR PUBLIC PROJECTS WITH A COST OF \$45,000 OR LESS, TO REMOVE NEWSPAPER PUBLICATION REQUIREMENTS FOR REQUESTS FOR CERTAIN BIDS FOR GENERAL SERVICES, EQUIPMENT AND COMMODITIES, AND TO MAKE MINOR CHANGES TO THE BIDDING PROCESS

The City Council of the City of Tracy does ordain as follows:

SECTION 1: Subsection (a)(1) of Tracy Municipal Code section 2.20.180 is hereby amended to read as follows:

“(1) *Notice inviting bids.* The notice inviting sealed bids shall include a general description of the articles or general services to be purchased, and shall state where bid forms and specifications may be secured, and the time and place for opening bids.

(i) *Published notice.* The notice inviting bids shall be posted on the City’s website at least ten (10) days before the date of the opening of the bids.

(ii) *Bidders’ list.* The City shall also solicit sealed bids from responsible prospective suppliers whose names are on the bidders’ list.”

SECTION 2: Subsection (a)(3) of Tracy Municipal Code section 2.20.180 is hereby amended to read as follows:

“(3) *Bid opening procedure.* Bidders shall submit sealed bids to the City Clerk or designee and shall identify them as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) calendar days after the bid opening.”

SECTION 3: Subsection (a)(1) of Tracy Municipal Code section 2.20.260 is hereby amended to read as follows:

“(1) *Informal and formal bidding procedures.* Public projects, as defined by Public Contract Code section 22002 and in accordance with the monetary limits described in Public Contract Code section 22032 (as amended from time to time by the California Uniform Construction Cost Accounting Commission) shall be let to contract by procedures described in Public Contract Code section 22030 et seq. For negotiated contracts or purchase orders for public projects falling within the monetary limits of subsection (a) of Public Contract Code section 22032, the local vendor preference provisions of section 2.20.230 shall apply.”

SECTION 4: Subsection (b) of Tracy Municipal Code section 2.20.260 is hereby amended to read as follows:

“(b) *Uniform cost accounting procedures.* Whenever the City uses its own employees to perform a public project valued at or less than the monetary limit described in Public Contract Code section 22032 (as amended from time to time by the Commission) it must implement the Uniform Construction Cost Accounting Policies and Procedures described in Public Contract Code sections 22042 et seq. and the Commission’s Policies and Procedures Manual.”

SECTION 5: The City Council finds that the adoption and implementation of this ordinance is exempt from the California Environmental Quality Act (CEQA) in that there is no possibility that the implementation of this ordinance may have a significant effect on the environment.

SECTION 6: This Ordinance shall take effect 30 days after its final passage and adoption.

SECTION 7: This Ordinance shall either (1) be published once in the TriValley Times, a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk's office at least five days before the ordinance is adopted and within 15 days after adoption, with the names of the Council Members voting for and against the ordinance. (Gov't. Code §36933.)

* * * * *

The foregoing Ordinance 1209 was introduced at a regular meeting of the Tracy City Council on February 16, 2016, and finally adopted on March 1, 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

ADOPT THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE TRACY POLICE OFFICERS ASSOCIATION (TPOA)

EXECUTIVE SUMMARY

The Memorandum of Understanding between the City of Tracy and the Tracy Police Officers Association expired on June 30, 2015. Representatives from the City and the Tracy Police Officers Association (TPOA) met and conferred in good faith and negotiated a new Memorandum of Understanding. The attached agreement covers a period of 36 months (three years), effective on July 1, 2015, and expires June 30, 2018.

DISCUSSION

There are three key changes in the Tracy Police Officers Association (TPOA) Memorandum of Understanding. These include the following:

1. Salary Adjustments for all classifications:

January 2016	3% salary adjustment
July 2016	2% salary adjustment
January 2017	3% salary adjustment
July 2017	2% salary adjustment
January 2018	2.5% salary adjustment

2. One-time payment:

Following Council Adoption	5% lump sum of base salary
----------------------------	----------------------------

3. Employees pay a portion of Employer's CalPERS obligation:

Effective as soon as administratively possible, each employee in this unit shall pay three percent (3%) towards the employer's share of CalPERS pension regardless of what CalPERS pension formula is applicable to the employee. In exchange, the City shall pay the corresponding salary increase that represents the three percent (3%) contribution. This is a cost neutral item for the City.

Other provisions of the contract were added or altered to include updated statutory language regarding pension reform or to further clarify current practices.

- Public Employees' Pension Reform Act- Statutory Language updates: Public Employment pension laws changed effective January 1, 2013. For new employees entering the California Public Employees Retirement System (CalPERS) membership for the first time on or after January 1, 2013, those employees are subject to all the provisions of the law, including but not limited to the two point seven percent at age 57 (2.7@ 57) retirement formula with a three year final compensation period. Additionally, these employees shall pay the full Employee Paid Member Contribution (EPMC) as required under the Public Employee Pension Reform Act which took effect in 2013.

- Incorporate 4-11 Alternative Work Schedule and accompanying workweek language including overtime provisions: This MOU incorporates a September 2015 side letter that provides for a 4-11 alternative work schedule for Patrol Officers. The new schedule, which went into effect January 3, 2016, applies only to Police Sergeants, Corporals and Officers assigned to the Patrol Unit, within the Field Operations Division.

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

The fiscal impact for approving this MOU package is estimated at \$2,408,000 during the term of the contract with approximately \$1,341,000 in ongoing costs. For FY 2015/16, \$513,000 is being requested to be appropriated from fund balance to cover the cost of the MOU. Future year costs will be incorporated into the appropriate departmental operational budget.

RECOMMENDATION

That the City Council, by resolution, adopt the Memorandum of Understanding between the City of Tracy and the Tracy Police Officers Association (TPOA).

Prepared by: Midori Lichtwardt, Human Resources Manager

Reviewed by: V. Rachele McQuiston, Administrative Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

Attachment: Tracy Police Officers Association (TPOA) Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CITY OF TRACY

AND

TRACY POLICE OFFICERS ASSOCIATION
(TPOA)

~~August 22, 2012 Through June 30, 2015~~
July 1, 2015 Through June 30, 2018



Think Inside the Triangle™

Human Resources Department
333 Civic Center Plaza
Tracy, CA 95376
(209) 831-6150
www.ci.tracy.ca.us

TRACY POLICE OFFICERS' ASSOCIATION MOU

~~**AUGUST 22, 2012 – JUNE 30, 2015**~~

July 1, 2015 – June 30, 2018

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**MEMORANDUM OF UNDERSTANDING
Between**

**CITY OF TRACY
and**

TRACY POLICE OFFICERS ASSOCIATION

**Effective ~~August 22, 2012 through June 30, 2015~~
July 1, 2015 through June 30, 2018**

Tracy Police Officers and representatives of the City of Tracy have met and conferred in good faith regarding wages, hours and other terms and conditions of employment of employees in the Police Officers Association, have freely exchanged information, opinions and proposals, and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

This Memorandum of Understanding, hereinafter referred to as "The Agreement," is entered into pursuant to the Meyers-Milias-Brown Act (Government Code Sections 3500, et. seq.) and has been jointly prepared by the parties.

This Agreement shall be presented to the City Council as the joint recommendations of the undersigned for salary and employee benefit adjustments for the period commencing ~~August 22, 2012~~ July 1, 2015 and ending June 30, 2015~~8~~.

Section 1. Recognition

1.1 Association Recognition

Tracy Police Officers Association, hereinafter referred to as the "Association," is recognized as the exclusive representative as provided in the City's Employer-Employee Relations resolution for all employees assigned to the classifications set forth below:

Police Corporal ~~—Effective January 1, 2013~~
Police Officer ~~(Inclusive of Master Patrol Officer, Until Dec 31, 2012)~~
Police Sergeant ~~(Inclusive of Master Patrol Sergeant, Until Dec 31, 2012)~~
Police Officer Trainee

1.2 City Recognition

The City Manager or, where the authority has been delegated by the City Manager, the City Manager's representative is the representative of the City of Tracy, hereinafter referred to as the "City".

Section 2. No Discrimination

The City agrees not to discriminate against any employee because of membership in the Association or because of any activities on behalf of the Association. Association activities shall not interfere with the normal operation of the City. Neither the City nor the Association shall discriminate for or against any employee or applicant for employment on account of race, color, creed, national origin, age, sex, sexual orientation, physical or mental disability, which does not prevent an employee from meeting the minimum standards established.

Section 3. Association Security

3.1 Association Dues

The Association shall be entitled to have the regular dues of its members deducted from their paychecks in accordance with the procedures set forth herein.

Employees shall be entitled to have dues deducted by filling out, signing and filing with the City an authorization form provided by the City.

The employee's earnings must be regularly sufficient, after other legal and required deductions are made, to cover the amount of the dues check-off authorized. When an employee, in good standing in the Association, is in a non-pay status, for the full pay period when his/her dues would normally be withheld, no dues deduction will be made to cover that withholding from the current or future earnings; nor will the employee deposit the amount with the City which would have been withheld if the employee had been in a pay status during that period. In the case of an employee who is in a non-pay status during only a part of the pay period and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all other legal and required deductions have priority over Association dues.

Dues withheld by the City shall be transmitted monthly to the party designated in writing by the employee organization as the party authorized to receive the funds, at the address specified.

Association shall indemnify, defend, and hold the City harmless against the claims made and any suit instituted against the City on account of check-off of employee organization dues. Any amounts paid in error shall be adjusted in subsequent payment.

3.2 Use of City Facilities and Bulletin Boards

The Association may, with the prior approval of the City Manager, or his/her designee, use the City facilities during non-work hours for meetings of City employees, provided space is available.

The use of City equipment, normally used in the conduct of business meetings, such as desks, chairs, and blackboards, will be made available to the Association.

The Association may use portions of City bulletin boards under the following conditions:

Copies of materials must be sent to the department or division head in charge of the department bulletin board.

All materials must be dated and must identify the organization that published them.

The City reserves the right to determine where bulletin boards shall be placed.

3.3 Meetings

Elected officers may use the time bank defined in Section 4.3, or their own accrued vacation or compensatory time, to attend meetings for the benefit of the Association, with forty-eight (48) hour notice to the Department, providing such absence does not create additional overtime.

Section 4. Association Representatives

4.1 Attendance at Meetings by Employees

Any employee who is directed to attend a meeting, at which one of the issues is the proposed discipline of said employee, shall be entitled to a representative at such meeting; provided, however, such representation shall include no more than one City employee in addition to the employee being disciplined. The City agrees to provide the Association's representative reasonable release time to prepare for grievance or discipline meetings with the City. The limitation of this Section shall apply to employees on paid release time and not to Association staff or witnesses who may be necessary to the meeting.

4.2 Access to Work Locations

Reasonable access to employee work locations shall be granted Association officers and their officially designated representatives, for the purpose of contacting employees concerning business within the scope of representation. Such employees or representative shall not enter any work location without the consent of the Police Chief.

Access shall be restricted so as not to interfere with the normal operations of the department or with established security requirements.

Solicitation of membership and activities concerned with the internal management of the Association such as collecting dues, holding membership meetings, campaigning for office, conducting elections and distributing literature shall not be conducted during on-duty hours.

The Association shall designate, in writing to the Personnel Officer, the names of the representatives listed above.

4.3 Donate Compensatory Time

TPOA members may contribute compensatory time to a special account for the use of Association officers or their designee(s). Contributions or use shall be by written authorization of the Association President. Individual officers may use up to, but no more than, thirty-two 32 hours per fiscal year from the special account for attendance at meetings, seminars, etc. on the behalf of the Association. The special account shall accumulate no more than sixty-four (64) hours of compensatory time at any time.

4.4 List of Employees

Up to twice a year and upon request, the City shall furnish to the designated Association representative the names and classifications of employees assigned to classifications in the Association; provided, however, the City shall not be required to provide such information in any format other than one already used by the City.

4.5 Advance Notice

Except in emergency cases, the City will give the Association reasonable advance written notice of any proposed ordinance, resolution, rule or regulation directly relating to matters within the scope of representation. The Association shall be given the opportunity to meet with management representatives prior to adoption.

4.6 Release Time for Representation

Up to four (4) Association representatives shall be released from duty, without loss of compensation or benefits, to participate in meet and confer sessions with the City.

4.7 Investigation of Employee

The City agrees that, except in cases of alleged criminal misconduct, an employee shall be notified, either orally or in writing, within a reasonable time frame, of the initiation,

by the City or Department, of any investigation involving the employee and the nature of the complaint and/or conduct under investigation.

4.8 Peace Officers Bill of Rights

The City agrees to adhere to the provisions of the Peace Officers Bill of Rights (POBR) as contained in California Government Code Sections 3300-3311, in all matters in which the provisions of the POBR apply.

Section 5. Salary

5.1 Salary Plan

The semi-monthly salary range for each classification is shown in Exhibit A Salary Schedule.

The rates of pay set forth in this Section represent the standard rate of pay for each classification.

Employees occupying a position in a classification covered by this Agreement shall be paid at a base salary within the range established for that position's classification.

~~There shall be no Cost of Living Adjustments (COLAs) or equity increases for the employees covered under this Agreement.~~

Effective the first full pay period in January 1, 2016, salary ranges for classifications in this unit shall be increased by 3%.

Effective July 1, 2016, salary ranges for classifications in this unit shall be increased by 2%.

Effective January 1, 2017, salary ranges for classifications in this unit shall be increased by 3%.

Effective July 1, 2017, salary ranges for classifications in this unit shall be increased by 2%.

Effective January 1, 2018, salary ranges for classifications in this unit shall be increased by 2.5%.

In addition, TPOA Members employed at the time of Council adoption shall be paid a one-time bonus equal to five percent (5%) of the employee's base salary. This one-time payment shall be made at the first full pay period following Council Adoption.

5.2 Pay Days

Employees shall be paid twice monthly. Routine paychecks shall be for the purpose of compensating for regular and overtime hours. Other compensation or reimbursement shall be separately identified and shall not include withholding for tax purposes, except as required by law.

All exceptions to pay, such as work in a higher classification, vacation, and sick leave usage shall be processed and paid or reported on the subsequent paycheck.

5.3 Entry Salary

Each new employee shall be paid at the first step at the range for the classification in which he/she is hired **which is in effect at the time of hire.** If the employee possesses exceptional training or experience, that employee may start at a step above the first step with the approval of the Police Chief or the City Manager in accordance with the City's Personnel Rules and Regulation.

5.4 Salary Range

Each classification shall have a salary range with pre-established advancement steps within the range.

Salary range adjustments for a classification will not set a new salary anniversary date for employees serving in the classification.

Whenever the schedule of compensation for a classification is revised, the employee shall be paid at the same step in the revised range as the step at which the employee was paid in the previous range

5.5 Salary Upon Promotion

When an employee is promoted, he/she shall normally receive the first step in the salary range for his/her new position. However, if such step results in a salary increase of less than five percent (5%), he/she shall receive a minimum of five percent (5%) increase, provided that in no event will the new salary be above Step E of the promoted salary range.

5.6 Salary Upon Demotion

When an employee is demoted, that employee's compensation shall be adjusted to the salary, which most closely approximates the employee's salary in the higher

classification; in no event shall that new salary be above Step E of the lower classification. If a vacancy exists in a position in a lower classification, an employee who has previously held that vacant position may voluntarily choose to demote to fill the vacancy.

5.7 Work in a Higher Classification

An employee who is assigned to perform the duties of a position in a higher classification shall receive the pay for that higher classification (out of class pay) for all hours so assigned when the employee has worked in that classification for the period of a regularly assigned shift or longer. After making such assignments, the City shall not reassign for the sole purpose of avoiding payments for such higher amounts.

Employees temporarily assigned to a higher classification shall be covered by this Agreement and shall receive the benefits afforded by it except when temporarily assigned to a position that is FLSA exempt, the employee so assigned shall not be entitled to the overtime benefits contained in this agreement. Employees who are appointed to a higher classification, in an acting capacity, will receive a minimum five percent (5%) increase but no less than Step A and no more than Step E of the higher classification. If the five percent (5%) increase causes the salary to fall between two steps, the appointment will be made at the higher step. Details regarding the processing of Personnel Action Forms and effective dates for Out of Class Pay are contained in the Administrative Procedure on Out of Class pay, effective March 1994.

Sergeants: When Sergeants are appointed to fill the duties of a higher classification, compensation will be paid at Step A of the higher classification or at five percent (5%) over the member's current class, whichever is greater, after ten consecutive calendar days of working in the higher classification, retroactive to the first day.

5.8 Retirement Benefits

Employees hired by the City of Tracy on or before July, 1, 2010 and covered by this agreement shall receive CalPERS 3% at 50 and single highest year formula. Employees hired by the City of Tracy on or after July 2, 2010 through December 31, 2012 and covered by this agreement shall receive CalPERS 3% at 55 and single highest year formula.

Employee hired by the City of Tracy on or after January 1, 2013 meeting the definition of "new member" under the Public Employees' Pension Reform Act shall be subject to all the provisions of the law, including, but not limited to the two point seven percent at age 57 (2.7@57) retirement formula with a three year compensation period.

~~Employees who receive the CalPERS retirement formula of 3% @ 50, or 3% @ 55 shall share payment of the 9% of salary employee contribution towards employee statutory share of CalPERS retirement as follows:~~

Employees who receive the CalPERS retirement formula of 3% @50, or 3% @55 shall pay the 9% of salary of employee contribution towards employee statutory share of CalPERS retirement. Employees who receive the CalPERS retirement formula of 2.7% @ 57 shall pay the employee contribution required by the Public Employees' Pension Reform Act, currently calculated at fifty percent (50%) of normal cost.

~~Fiscal 2012-2013 – Effective the pay period including August 16, 2012, each employee shall pay 3% of salary and the City shall pay 6% of salary to fund the employee contribution for the CalPERS retirement benefit.~~

~~Fiscal 2013-2014 – Effective the pay period including July 1, 2013, each shall pay 6% of salary and the City shall pay 3% of salary to fund the employee contribution for the CalPERS retirement benefit.~~

~~Fiscal 2014-2015 – Effective the pay period including July 1, 2014, each employee shall pay 9% of salary to fund the entire employee contribution for the CalPERS benefit. Employee payments of the employee share of the CalPERS retirement benefit cost shall be made as a payroll deduction on a pre-tax basis to the extent allowed by law.~~

Effective as soon as administratively possible, in accordance with CalPERS Section 20516 contract amendment process requirements, each employee in this unit shall pay 3% towards the employer's share of CalPERS pension regardless of what CalPERS pension formula is applicable to the employee. In exchange, the City shall pay the corresponding salary increase that represents the 3% contribution. The parties agree that should the parties negotiate elimination of the 3% employer rate contribution by the employee or such employee contribution to the employer share becomes contrary to any subsequent rules, regulations and/or law(s) rendering the contribution null and void, the corresponding salary increases by the City conferred in this section shall also cease and become null and void.

EPMC

~~In addition, the City provides the Employer Paid Member Contribution (EPMC) to be treated as special compensation for all classifications in the unit for the portion that the City pays towards employee share of CalPERS retirement. Effective the pay period including July 1, 2014, when the employee begins paying the full 9% of the employees share, the City will cease paying towards EPMC.~~

Retirement Payment

Upon completion of thirteen (13) years of continuous employment with the Tracy Police Department, Police Officers, **Corporals**, and Sergeants shall be eligible for one (1) month of pay to be paid at the time of retirement from the City of Tracy or upon promotion to a position elsewhere in the City. Employees who terminate employment for other reasons shall not be entitled to the retirement payment.

5.8.1 Flexible Leave Hours (NEW SECTION)

~~The City shall credit each employee with a block of paid leave hours each fiscal year of this Agreement. These hours shall be labeled Flexible Leave. Each employee may use these leave hours during the fiscal year. Each employee will receive the Flexible Leave hours for that fiscal year on July 1st of each year. Each employee has the option of using such hours as leave in the same manner as vacation leave, or periodically selling the hours. A code will be set up for each option and employees can note the use of or selling of such hours on each time card throughout the fiscal year. Employees must use the current fiscal year hours by June 15th of each year and cannot carry the hours over to a new fiscal year. If an employee terminates before June 30th of any fiscal year, the employee is only eligible for a proration of hours for the period of July 1st to the date of their termination.~~

Amount

~~During fiscal year 2012-2013, each employee shall receive 50 hours of Flexible Leave during the pay period beginning August 16, 2012. During fiscal year 2013-2014, each employee shall receive 100 hours of Flexible Leave during the pay period beginning July 1, 2013. During fiscal year 2014-2015, each employee shall receive 150 hours of Flexible Leave during the pay period beginning July 1, 2014.~~

~~The parties acknowledge that the block of paid leave hours labeled Flexible Leave is credited to each full time, regular employee at the beginning of each fiscal year of this Agreement and ends when the Agreement expires on June 30, 2015.~~

Sell Back

~~An employee may sell back some or all of the employee's accrued Flexible Leave balance with any pay period during the fiscal year, so long as it does not generate a separate paycheck. If a separate paycheck is desired, the leave hours will be paid on a separate paycheck on June 30th and/or December 15th of each contract year.~~

City Buy Back of Accumulated Leave

~~Should an employee not utilize Flexible Leave as time off during a fiscal year, or should an employee not sell back his/her Flexible Leave during the fiscal year, the City shall cash out each employee's Flexible Leave balance at the end of the fiscal year in which it was provided and pay it to the employee. There shall be no carry-over of Flexible Leave~~

~~hours from one fiscal year to the next, and no Flexible Leave balance shall be allowed to remain after the June 30, 2015 expiration date of this Agreement.~~

5.9 Advancement (Step Increases)

At the completion (see section 17.2 – entry level officers start at step A and received a step increase after 12 months although their probation does not end until completion of 18 months) of the applicable probationary period of employment, employees appointed to Step A are eligible for a step increase. Additional step increases will be on an annual basis thereafter until the attainment of Step E. All step increases shall be based upon satisfactory performance, as shown from the evaluation by the employee's Supervisor. Denial of step increases shall be based on documented performance evaluations. Increases of more than one step for superior performance may be provided. Recommendation by the Police Chief and approval of the City Manager will be required.

~~5.10 Establish Corporal Classification (NEW SECTION)~~

~~City shall establish a Corporal classification consistent with City's Policies and Procedures by January 1, 2013.~~

~~During the first year of the MOU (8/22/12-7/31/13), the City and the TPOA will conduct labor management committee meetings periodically as needed to meet and discuss implementation and policy issues concerning the Corporal program.~~

Section 6. Hours of Work

6.1 Workweek

Unless otherwise designated by the Police Chief, **or for employees assigned to a 4-11 schedule as detailed in Exhibit D, Alternative Work Schedule Agreement 4-11 Alternative Work Schedule**, the workweek for all Police Unit employees shall be from Sunday through the following Saturday, or halfway through the work day on Friday until halfway through the work day on the following Friday if on a 9/80 workweek. The designated workweek shall remain permanent and may be changed only as a result of major changes in operations, payroll procedures, or as otherwise necessary in order to deliver services as efficiently and economically as possible.

6.2 Detective Standby Duty

Detectives will be assigned to work holidays as part of their regular work schedule and shall receive holiday pay in accordance with this Agreement in the same manner and application as Patrol.

When detectives are assigned standby duty at times other than their normal work hours, the City will provide a City-owned car which may be taken home and driven by the standby detective when called back to work. In addition, each Detective assigned the weekly stand by rotation will be paid sixteen (16) hours of straight-time pay for each week so assigned. In the event an employee assigned Standby is unable to complete the full week so assigned, the pay shall be prorated and the employee who provided the standby coverage shall be paid for the dates served.

The Sergeant assigned to the Detective Unit shall be paid Two Hundred Ninety Dollars (\$290.00) per month for standby duties.

Effective upon adoption of this Agreement, Standby Pay shall be issued on the pay check following the pay period in which the standby occurred.

In the event a detective is called back to work at a time other than the regularly scheduled work hours, he/she will be compensated in accordance with the provisions of Section 7 of this Memorandum of Understanding.

6.3 Scheduling of School Attendance

Shift trades between employees, arranged by an employee for the purpose of attending school, will be approved whenever operationally feasible.

6.4 Notice of Schedule Change

The Department shall provide at least forty-eight (48) hours advance written notice to each employee whose regular hours of work are being changed.

Section 7. Overtime Call-Back

7.1 Definition

Overtime is work which is in excess of the regularly scheduled work shift or in excess of one hundred and sixty (160) hours worked per twenty eight (28) calendar day work cycle or in excess of forty (40) hours per work week, which has the approval of the Police Chief or his/her designated representative. **Notwithstanding the foregoing, employees who work the 4-11 schedule as set forth in Exhibit D are entitled to overtime for any hours worked in excess of 171 hours in a 28-day work cycle. Overtime shall be paid for work in excess of the regularly scheduled 11 hour and 10 minute work shift and as described in Exhibit D, Section 3b.** Overtime shall also be paid for work performed on the employee's scheduled days **off except as set forth in Exhibit D for employees working a 4-11 schedule.**

7.2 Scheduled and Emergency Overtime

Unless excused by the Police Chief, an employee, upon request, shall not fail or refuse to perform emergency or scheduled overtime. Scheduled means at least twenty-four (24) hours prior notice. A sign-up sheet will be used for scheduled overtime and will go up as soon as the need is known or at least two weeks in advance whenever possible. This sign-up sheet will be taken down 72 hours prior to the overtime shift and the shift will then be assigned. Failure or refusal by the employee, to work overtime in accordance with this provision, shall be grounds for discipline.

7.3 Overtime Compensation

The regular rate of pay is computed by the following formula: monthly salary times twelve (12) months divided by two thousand eighty (2080) hours. Overtime shall be compensated at the rate of one and one-half (1 1/2) times the regular rate of pay if paid, or taken as compensatory time.

7.4 Compensatory Time

The employee, at the employee's option, may request, through the Police Chief, compensatory time off or overtime pay for overtime worked. Use and accrual of compensatory time shall be at the discretion of the Police Chief to assure assignment of adequate personnel to provide and maintain the City services. No employee may accrue more than one hundred twenty (120) hours of compensatory time. The employee shall receive paid overtime for all hours worked in excess of the one hundred twenty (120) hours.

Employees assigned by the Police Chief to a Detective assignment shall be allowed to accrue up to a maximum of one hundred and forty (140) hours of compensatory time during the time period so assigned. Detectives shall receive paid overtime for all hours worked in excess of the one hundred ~~twenty~~ **forty** (140) hours.

7.5 Call-Back Pay

Any employee, who is called back to duty, shall be paid at the overtime rate for a minimum of three (3) hours for each call back. In the event that separate call-backs overlap within a three (3) hour period, the employee will be paid for one minimum of three (3) hours at the overtime rate and for any additional hours worked at the overtime rate.

Notwithstanding the above, if the return to work is contiguous with the employee's scheduled work day and the employee is provided with a minimum of four (4) hours

advance notice, the employee shall not be paid Call Back Pay but will be paid at the overtime rate for hours worked prior to the start of the employee's regular shift.

7.6 Court Appearances

Employees who are required to testify in court in their official capacity as a police officer within one (1) hour after their scheduled work shift, or conclude the court appearance within one (1) hour before, their scheduled work shift, that is, as an extension of his/her work shift, shall be compensated at the overtime rate for actual time worked and up to one (1) hour waiting time.

Employees who are off duty for more than one (1) hour, or on vacation, compensatory time off, or their regularly scheduled shift off, who are called back to testify in court in their official capacity as a police officer shall be compensated for a minimum of four (4) hours (each call back providing that the call back periods do not overlap) or actual hours worked in excess of four (4) hours, computed at the overtime rate of pay.

Section 8. Differentials

8.1 Special Assignment Pay

Regular Continuous Assignment

Special assignment pay shall be provided in the amount of five percent (5%) for base salary per month for the sworn personnel who are assigned to and perform in the assignments of:

Detective (assigned to General and Special Investigations Unit) *

~~Field Training Officer**~~

~~Professional Standards Officer *~~

School Resource Officer

~~Training/Crime Prevention Officer~~

~~Administrative Sergeant~~

~~Communications Sergeant~~

Detective Sergeant (assigned to General and Special Investigations Units)

Traffic Safety Unit Sergeant*

Only assignments noted with "" are applicable to Corporals performing those duties.

~~**In conjunction with the creation of the Police Corporal classification on January 1, 2013, the Field Training Officer special assignment will be eliminated as of 12/31/2012~~

Short Term Assignments

Additional employees assigned short term Field Training Officer duties, shall receive special assignment pay for those pay periods in which such duties are performed.

K-9 and Motorcycle Assignments

The K-9 officer will provide feeding, grooming and other normal chores associated with maintaining a dog in a clean and healthy environment, in exchange for twelve (12) hours of overtime credited to him/her each month during which he/she is assigned as the K-9 officer.

The motorcycle officer or Police Corporal on a motorcycle special assignment will provide normal maintenance, washing and waxing of his/her assigned motorcycle, in exchange for eight (8) hours of overtime credited to him/her each month, during which he/she is assigned as the motorcycle officer. In addition, the motorcycle officer or Police Corporal on a motorcycle special assignment will transport the motorcycle, during normal work hours, to "the designated vendor" for detailed maintenance and repairs as needed.

Removal from Assignment

The assignment of Officers to any of these special assignments or the removal of Officers from these special assignments shall be based on performance and at the sole discretion of the Police Chief.

8.2 Education Incentive Pay

Police Officers and Police Corporals

The City shall pay a two and one-half percent (2 1/2%) incentive on the existing salary step and range of employees who possess a POST Intermediate Certificate.

The City shall pay a five percent (5%) incentive on the existing salary step and range of employees who possess an Associates of Arts degree in Police Administration, or a related field.

The City shall pay a two and one-half percent (2 1/2%) incentive on the existing salary step and range of employees who possess a POST Advanced Certificate.

Sergeants

The City shall pay five percent (5%) on the existing salary step and range of Sergeants who possess an Associate of Arts Degree or higher degree in Police Administration, or a related field. The City shall pay a two and one half percent (2 ½%) incentive on the existing salary step and range of Sergeants who possess a POST Advanced Certificate.

The City shall pay a two and one-half percent (2 ½%) incentive on the existing salary step and range of Sergeant who possess a POST Supervisory Certificate.

Education incentive pay will be included in the base pay rate for the calculation of overtime and holiday-in-lieu pay. Details regarding procedures for education pay are contained in the Administrative Procedures on Education Incentive Pay.

Section 9. Allowances

9.1 Uniforms – Sworn Personnel

The City shall provide a uniform allowance for new employees and an annual maintenance allowance of nine hundred dollars (\$900.00).

The City shall provide newly assigned motorcycle officers with one new helmet, one leather uniform jacket, one pair of motorcycle boots, two pairs of breeches, two pairs of safety glasses (one clear and one tinted), and one pair of leather riding gloves, in addition to the annual maintenance allowance.

The uniform allowance shall be paid on the regular payday for the pay period that includes June 30, by a separate check.

9.2 Replacement/Repair of Equipment

The City shall pay for the replacement or repair of Association member's uniform and equipment damaged in the line of duty.

9.3 Equipment and Clothing Return

All City furnished equipment and clothing remains in the ownership of the City and must be returned when an employee leaves employment.

9.4 Mileage Reimbursement

An employee who is required to provide transportation for the performance of his/her job shall be compensated at a rate equal to the Internal Revenue Service (IRS) rate. Such reimbursement does not apply to commuting, to or from his/her residence, by an employee.

9.5 Education Reimbursement

An employee who completes a course of study and receives a grade of C or better may be reimbursed, with the prior approval of the Police Chief, for books, supplies and tuition only for courses taken at public colleges or universities in California, up to a maximum of \$1800.00 per fiscal year. Courses taken at any accredited colleges or universities shall be reimbursed at a cost not to exceed the cost of comparable courses

offered at the University of California up to a maximum of \$1800.00 per fiscal year. Reimbursement shall be made for courses taken towards an Associate of Arts, Bachelor Degree or Master's Degree in the area of Criminal Science, Psychology, Organizational Management, Public Administration or other curriculum pre-approved by the Police Chief.

For employees who achieve a degree through an accelerated degree program, the employees shall receive reimbursement up to a maximum amount of \$7200.00. Employees who receive such reimbursement agree to remain employed with the City of Tracy for a period of five (5) years, starting on the date program enrollment begins. Failure to complete this service may result in the employee re-paying the City of Tracy a prorated fee, based upon the cost of \$1800.00 per year. Employees who wish to participate in an accelerated program will sign an individual agreement with the City regarding re-payment.

Mileage reimbursement shall only be provided for courses the City directs the employee to attend.

9.6 Credit for Training

The Police Chief, or his/her designee, is responsible for developing employee-training programs. Such training programs may include lecture courses, demonstrations, assignment of reading matter, or other such devices for the purpose of improving the efficiency and broadening the knowledge of municipal employees in the performance of their duties.

Participation in and successful completion of special training courses may be considered in making advancements and promotions. The Police Chief shall file evidence of such activity with the City Manager.

9.7 Bilingual Pay

Employees shall be entitled to receive, in addition to their regular compensation, an additional two percent (2%) of base pay if they meet the following criteria:

- a. Certification from the City that the employee possesses the needed language skills; and
- b. Certification from the Police Chief that a particular assignment involves the need for the required skills on a regular basis.

Qualifying languages are Spanish, American Sign Language, and any other language designated by the Police Chief as beneficial to the City.

Section 10. Holidays

10.1 Paid Holidays for Employees on Monday through Friday Work Schedules

Regular full-time employees, except as otherwise provided herein, shall be entitled to observe all authorized holidays at full pay, not to exceed eight (8) hours for any one day.

The following are authorized holidays:

New Year's Day	(January 1)
Martin Luther King, Jr. Day	(3rd Monday in January)
President's Birthday	(3rd Monday in February)
Memorial Day	(Last Monday in May)
Independence Day	(July 4)
Labor Day	(1st Monday in September)
Veteran's Day	(November 11)
Thanksgiving Day	(4th Thursday in November)
Day after Thanksgiving Day	(4th Friday in November)
Christmas Eve	(December 24)
Christmas Day	(December 25)
Floating Holidays (2)	

Saturday and Sunday Holidays

If a holiday should fall on a Sunday, the employee shall be granted Monday as a holiday. If a holiday falls on a Saturday, the employee shall be granted Friday as a holiday.

10.2 Holiday In-Lieu Pay for Employees Working in a Seven (7) Day Operation

Employees shall be credited with six and one-half (6-1/2) holidays for each six (6) months. Employees shall be compensated for holidays not used during a given six (6) month period at the holiday pay rate. Requests for use of holidays shall be subject to Police Chief's approval.

The holiday pay rate shall be calculated as follows:

Annual salary divided by 2,080 hours = Hourly Rate x 8 = Holiday-in-Lieu Pay.

Holiday pay will be paid on separate checks on the regular payday for the pay period that includes June 30 and December 15. Holidays will be paid at the pay rate during the period in which the holidays were earned.

10.3 Proclaimed Holidays

All holidays proclaimed by the Governor of the State of California or the President of the United States shall be granted as holidays. Holiday pay will be paid on separate checks on the regular payday July 15 and December 15.

Section 11. Vacation Leave

11.1 Vacation Schedule

Police Officers

Employees shall be entitled to vacation pay in accordance with the following schedule:

Date of employment through completion of 5th year - 96 hours per year (4 hours per pay period).

6 - 10 years of continuous employment - 144 hours per year (6 hours per pay period).

11 - 15 years of continuous employment - 160 hours per year (6.67 hours per pay period).

16 years or more of continuous employment - eight (8) additional hours per year up to a maximum of twenty-eight (28) days or two hundred and twenty-four (224) hours maximum annual accrual.

~~Vacation schedule for Sergeants classification will continue as per the Personnel Rules.~~

11.2 Vacation Accumulation

Earned vacation time may be accumulated, but the employee shall not be allowed to have an accumulation of more than two (2) times the annual accrual credit at any time without prior approval of the City Manager.

In the event, that an employee's scheduled vacation is canceled by the City, for whatever reason, the employee will be granted an additional six (6) months from the time of such cancellation to reschedule vacation without any loss of vacation accumulation.

Employees as of April 1, 2002, who accrue vacation in excess of twenty-eight (28) days or two hundred and twenty-four (224) hours per year, are considered "grandfathered".

Any such employee shall be entitled to continue to accrue the same number of days as he/she accrues as of the date March 31, 2002, but shall not receive increased accrual levels after April 1, 2002.

11.3 Vacation Scheduling

Employees shall schedule a minimum of 80 hours of vacation annually with the approval of the Police Chief. Vacations shall be scheduled for the following year by January 15 of each calendar year. Employees, who have insufficient accrued vacation leave to take eighty (80) hours, may utilize compensatory time or may be advanced up to forty (40) hours of vacation leave upon approval of the Police Chief. Employees may not be advanced said vacation leave if the employee has sold vacation leave hours within the last year. Scheduling shall be based upon department seniority.

Representatives of the Association and the Department will meet to discuss details of the vacation selection system.

11.4 Vacation

No employee may take vacation during his/her first six months of employment. All employees shall be entitled to vacation leave upon completion of six months of employment. The vacation schedule shall be established with primary consideration for the needs of the City, but with as much regard, as possible, for the wishes of the employee. Leave may be taken only after it has been earned, subject to the above restrictions.

11.5 Vacation Pay

Upon termination, an employee shall be paid for vacation earned, but not taken, up to the maximum accrual permitted. If the termination date occurs between the first and the 15th day of the month, the employee will not receive vacation credit or pay for that month. If the termination occurs between the 16th and the 30th day of the month, the employee shall be credited and paid for a full month's vacation earnings.

11.6 Leave Buy-Back

Association members are allowed an optional buyback of accumulated leave. Once per calendar year, they may have the City buy back up to 50 percent of accumulated leave, but not more than the equivalent of one year's earning rate for vacation, floating holiday leave, and compensatory time off. The hourly rate for buy back is the annual salary, divided by the annual hours of work.

Section 12. Sick Leave

12.1 Accrual

All employees shall be eligible to accrue sick leave at the following rates **of:**

Eight (8) hours of full pay sick leave for each month of service. ~~during the first twenty (20) years of employment.~~ For the purpose of this section, month of service shall mean consecutive calendar months.

12.2 Approval

Sick leave may be requested and used as approved by the Police Chief. Approved sick leave shall be paid until the employee's accumulated total of sick leave hours has been exhausted. At that time, the employee shall receive no further pay for sick leave.

An employee requesting sick leave should exercise reasonable diligence in notifying the on-duty supervisor prior to the time set for reporting to work. Failure to make reasonable efforts to notify the on-duty supervisor for the use of sick leave, prior to the commencement of the shift for which leave is requested, may result in loss of the sick leave privilege for the subject shift.

12.3 Usage

Sick leave may be requested only in cases of actual personal sickness or disability, medical or dental treatments, or for absences due to serious illness or injury of a member of the employee's immediate family.

Employees may utilize up to one-half (1/2) of their annual accrual of sick leave for the care of their immediate family. Immediate family is defined pursuant to California Law.

12.4 Doctor's Certificate

The City has a legitimate concern in preventing abuse of sick leave use. If the City has a reason to believe that sick leave is being abused, it may request that an absence be verified. The City's right to verify an absence includes the right to require a doctor's excuse at any time. The City may prescribe forms to be used for said verification.

The Police Chief may require a written statement from an attending physician or dentist that an employee is capable and released to return to performance of all duties of his/her position.

12.5 Sick Leave Pay Off

Upon death, the employee's estate shall receive straight-time pay for all accrued sick leave. If an Association Member employee terminates or is terminated for any reason, all accumulated sick leave shall be canceled. Such accumulated sick leave, however, shall be credited to such employee if he/she returns to City employment within two (2) years of such termination.

12.6 Sick Leave Conversion at Retirement

An employee who retires with at least ten (10) years of service may elect to convert all accrued sick leave to a medical insurance bank. The value of the medical insurance bank shall be determined by multiplying the number of accrued sick leave hours by the employee's hourly rate of pay. The retired employee and his/her dependents shall be entitled to continued group health insurance coverage, dental and/or vision coverage currently in effect, with premiums for such coverage being deducted from the medical insurance bank until said bank is exhausted. Thereafter, the employee and his/her dependents may continue to participate in the City's group health plan, at group rates, provided the City receives the employee's payment for the premium by the 10th of each month for the following month's coverage.

Terms of the Policy Agreement with the City's insurance carrier regarding coverage and eligibility shall apply to the employee and his/her dependents.

12.7 Catastrophic Leave Program

Members of the Association shall be covered by, and eligible to participate in, the City's Catastrophic Leave Program. The Program is described in detail in Personnel Rule 10, Section 15.

Section 13. Workers' Compensation

An employee receiving disability payments under Workers' Compensation Laws shall be entitled to industrial accident leave in accordance with state laws and employment status.

Section 14. Long Term Disability

The City of Tracy will provide PORAC Long Term Disability at \$19.50 to all members of the Tracy Police Officers Association. These members must be actively working and members of PORAC. Any additional costs will be deducted from the employee's checks on an after tax basis.

Section 15. Leaves of Absence

15.1 Approved Absence Without Pay

Upon written request, the City Manager may grant an employee a leave of absence without pay for a definite period not to exceed one (1) year. Failure on the part of the employee absent without pay to return to duty within twenty-four (24) hours after notice of return may be cause for discharge.

A leave of absence without pay, up to three (3) days can be approved by the Police Chief.

The City may pay health benefits, for up to sixty (60) days, for employees on approved leave of absence without pay as a result of illness or injury **in accordance with applicable laws.**

15.2 Bereavement Leave

In the event of a death in the immediate family of an employee, absence, not to exceed five (5) working days, shall be allowed. The employee may, with his/her department head's permission, use vacation, sick leave, or compensatory time, if additional leave is required. Such permission shall not be unreasonably refused.

In the event of the death of a relative, not a member of the immediate family, absence from duty shall not be allowed to exceed one (1) day. Such absences shall not be charged to sick leave. Leave begins on the day of the funeral.

The immediate family of an employee is defined as: Parents, step-parents, parents in-law, spouse, child, step-child, brother, sister, grandparents; grandchildren, brother/sister in-law son/daughter-in-law, or legal guardian or a person who is at least fifty percent (50%) dependent on an employee.

15.3 Military Leave

- (a) Military leave shall be granted in accordance with provisions of State and Federal laws. All employees entitled to military leave shall give the department head an opportunity, within the limits of military regulations, to determine when such leave shall be granted. An employee on military leave of absence who has been an employee of the City for not less than one year shall be entitled to receive City salary for the first 30 calendar days of such absence. Pay for such purposes shall not exceed 30 days in any one fiscal year.
- (b) An employee returning from military duty shall be entitled to appointment to the same or a corresponding position with full salary and benefits, including within-class-pay step increases as would have been received had the employee remained for that period of time in active service with the City. Application to the City must be made within six months of discharge. An employee returning to employment following military leave shall not be discharged without cause within one year after reinstatement.
- (c) A person employed by the City to fill a position made vacant by an employee on military leave of absence, shall hold the position, subject to being laid off upon reinstatement of said employee to his/her former position. An employee

promoted to fill a position made vacant by an employee on military leave, shall hold such position, subject to being reinstated to his/her former position upon return of the employee.

15.4 Maternity Leave

Maternity leave shall be granted in accordance with applicable state and federal laws. A request for maternity leave must be submitted to the City Manager no later than the end of the sixth month of pregnancy.

The City agrees to provide temporary transfer for a pregnant employee to a less strenuous or hazardous position for the duration of the pregnancy: (1) if the employee requests such a transfer and (2) submits verification from her doctor that such reassignment is medically advisable. The type of duty shall be at the discretion of the City and where the transfer can be reasonably accommodated. The City reserves the right to assign the employee to other duties within the City as may be available or as needed.

The City agrees to comply with the provisions of the Family Medical Leave Act and California Family Rights Act.

15.5 Family and Medical Leave Act

The parties acknowledge the applicability of the Family and Medical Leave Act and intend to apply and implement this M.O.U. so as to comply with the Act.

15.6 Jury Duty

All employees shall be entitled to leaves of absence for a reasonable time necessary to appear as a witness in court, other than as a litigant, pursuant to a lawful subpoena, to serve on a jury, or to respond to an official order from another governmental jurisdiction for reasons not brought about through the connivance or misconduct of the employee. Such leaves of absence shall be granted, with pay, up to the amount of the difference of the employee's regular earnings and any amount he/she receives for jury or witness fees, with the exception of any mileage allowance, which shall be retained by the employee.

Such leaves of absence shall not be charged against the employee's sick leave or vacation leave.

15.7 Voting Leave

Employees shall be granted sufficient time to vote during municipal, primary, and general elections.

Section 16. Health Insurance

16.1 Medical

16.1.1 Plans Provided.

The City offers medical insurance through Kaiser and Health Net. During the term of this Agreement the City reserves the right to change medical providers and the parties shall meet and confer regarding any such change.

16.1.2 New Employees.

New employees hired on or after September 1, 2006 shall be required to select a medical plan for at least the employee and are not eligible for cash benefits except as may be required by provisions of the IRS regulations covering Flexible Benefits plans.

16.2 Dental

The City shall offer dental insurance coverage for full-time employees and their eligible dependents through the existing providers.

16.3 Vision Care

The City shall offer vision care benefits for full-time employees and their eligible dependents through the existing providers.

16.4 Life Insurance

The City provides Life Insurance in the amount of Fifty Thousand Dollar (\$50,000). This coverage will be mandatory for all TPOA employees. The City will fully pay the premium by adding the actual cost of the premium to the amount provided in the Cafeteria Plan each month.

16.5 Cafeteria Plan

16.5.1. City Contribution.

The City shall maintain an account for each full-time employee in regular or probationary status within the City's Cafeteria Plan. The City shall make monthly payments of no more than the annual maximum amount for the employee's benefit level, either family, employee plus one, or employee only to each employee's account.

16.5.2 Future Contributions and Cash Out Options.

For employees hired before September 1, 2006, the maximum cash payment shall be set at Nine Hundred and Forty-Three Dollars (\$943.00) per month for employees who do not elect a medical plan. For employees hired on or after September 1, 2006, each employee shall be required to select a medical plan and the cash payment shall be limited to the minimum required by law (if any).

If premiums increase in the plans to which City employees subscribe effective January 1, ~~2013~~2016 and each January thereafter during the term of this Agreement, the City will increase the City's monthly contribution for employees by 75% of the average of the dollar increase of the family HMO plan premiums for employees electing family coverage.

Example: "If the Kaiser Family Plan monthly increase is \$100 and the Health Net Family Plan monthly increase is \$125 per month, the average dollar amount for the two plans would be \$112.50. The City's increase contribution will be \$84.38 per month (75% of the premium increase).

For employees who elect two-party or single coverage, the City will also increase the City's contribution to the Cafeteria Plan. The increase shall be limited to the amount necessary to fully cover the plan selected up to a maximum of the dollar amount allocated to employees who elect family coverage. There shall be no increase for employees who do not elect health insurance coverage.

In the event the above listed amounts are insufficient to fully pay the premiums required of employees enrolled in any one of the medical insurance plans, the City shall make a payroll deduction from the employee's pay to cover the difference in cost.

16.5.3 Approved Account Uses

The monies in an employee's account shall be used for one or more of the following purposes only: (1) payment of premium charges for the medical insurance program in which the employee is enrolled, (2) payment of premium charges for the dental insurance program in which the employee is enrolled, (3) payment of premium charges for the vision insurance program in which the employee is enrolled, (4) payment of premium charges for life insurance (mandatory).

Each employee shall provide the Personnel Officer or Human Resources designee in writing on a form provided, and at times designated by the City each year all information necessary to administer the Cafeteria Plan during the twelve month period beginning the first day of each plan benefit year. Thereafter, no changes to designations so made will be allowed until the following open enrollment period without a qualifying event.

16.5.4 Notification of Changes in Number of Dependents

Each employee shall be responsible for providing immediate written notification to the Personnel Officer or Human Resources designee of any change to the number of his/her dependents which affects the amount of the City payment on behalf of the employee. Changes in Cafeteria Plan payments required because of a change in an employee's number of dependents shall take effect at the start of the first pay period in the month following the month in which advice from the employee is received by the Personnel Officer or Human Resource Designee. No retroactive payments shall be allowed.

16.5.5 Continuance of Flexible Benefits Plan (IRS Section 125).

The City has implemented an Internal Revenue Code Section 125 Plan to redirect employees' pre-selected amount of base salary to pay employee paid insurance premiums and other approved expenses. The City will not treat these monies as compensation subject to income tax withholding unless the Internal Revenue Service or the Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state or local tax liabilities of the employee that may arise out of the implementation of this section or any penalty that may be imposed therefore.

Section 17. Probationary Period

17.1 Purpose

All new and promoted employees shall serve a probationary period. The probationary period shall be considered the last portion of the selection process. Its purpose is to allow the City Manager or, under his/her direction, the Police Chief, to observe and appraise the conduct, performance, attitude, adaptability and job knowledge of new or promoted employees and to determine whether the employee is fully qualified for the position.

17.2 Initial Probation

The probationary period for new employees with no prior police work experience shall be eighteen (18) months following successful completion of Police Academy training. Eligibility for a merit increase, from Step A to Step B, will occur after twelve (12) months.

The probationary period for new employees with acceptable prior police work experience shall be one (1) year. The Police Chief may extend the probationary period in increments of up to a maximum of six months.

The Police Chief may extend the probationary period in cases of paid medical or workers' compensation leave up to the remaining period left towards completing the original probationary period

An employee who is in a probationary status may be rejected without cause.

17.3 Promotional Probation

The probationary period for promoted employees shall be six (6) months.

An employee, who has gained regular status and, thereafter, accepts a promotion, may be rejected during the probationary period without cause. Said employee shall retain all other rights of a regular employee in the classification held prior to promotion. Those rights can only be affected for cause.

The Police Chief may extend the probationary period in three-month increments, not to exceed one (1) year, if he/she feels additional time is necessary to adequately evaluate the employee.

17.4 Probationary Reports

A performance report of each probationary employee shall be completed. The Police Chief will conduct the report at regular intervals during the probationary period according to rules established by the City Manager.

Section 18. Miscellaneous Personnel Actions

18.1 Vacancies in the Classified Service

All vacancies in higher positions in the classified service shall be filled by promotion from within if the following conditions are met:

- a) The City Manager determines that the best interests of the City will be served by promoting from within.
- b) The person to be promoted meets the minimum qualifications of the promotional position.

- c) Any promotional examination shall comply with the City, state and federal rules and regulations governing competitive examinations.

18.2 Vacancies in City Service

All vacancies in the City's service shall be filled by restoration, promotion, transfer, demotion, reinstatement, or by appointment from an employment list. When employment lists are used to fill vacancies, they shall be used in the following order:

- a) By appointment of eligible candidates from re-employment lists;
- b) By appointment of eligible candidates from promotional lists;
- c) By appointment of eligible candidates from an open eligibility list;

Provided, however, when the City Manager deems it necessary, individuals on a lateral entry employment list may be considered for appointment.

The number of eligible candidates on a promotional list shall exceed by two (2) the number of vacancies to be filled. If there are insufficient available eligible candidates on a promotional list, enough available eligible candidates shall be certified simultaneously from the promotional and eligible list to assure that the number eligible exceeds by two (2) the number of vacancies to be filled.

Promotional examinations scheduled by the City during an employee's regular working hours may be taken without loss of compensation.

18.3 Transfer

An employee may be transferred from one position to another position in the same or comparable classification upon approval of the Police Chief.

18.4 Demotion

The City Manager may demote an employee who so requests it, or whose ability to perform his/her required duties falls below standard, or for disciplinary purposes. No employee shall be demoted to a class for which he/she does not possess the minimum qualifications.

18.5 Suspension

The Police Chief may suspend an employee, without pay, from his/her position in accordance with disciplinary procedures indicated in Section 21.6. Suspension without

pay shall not exceed thirty (30) calendar days. However, notwithstanding this 30-day limit, suspensions of more than 30 days may be imposed as part of an agreement between the City and the employee and/or employee's representative. Such agreement shall not be precedent setting on either party.

Section 19. Layoff and Recall

Permanent employees may be laid off, without prejudice, due to lack of funds or curtailment of work. No permanent employee, however, may be separated while there are temporary employees serving in the same or allied class or position in the City service, unless that employee has been offered the temporary work.

When the Police Chief is instructed by the City Manager to reduce the number of employees, layoff shall be made in accordance with the following rules below, (a) through (e) inclusive:

- (a) Layoffs shall be by classification seniority within the Tracy POA. For example, in the event a Sergeant position is eliminated, the most junior Sergeant would bump back to the previous classification that he/she held permanently, unless a vacancy exists in the next lower classification, in which case the Sergeant shall bump to Corporal.
- (b) The employee to be laid off may displace the least senior employee in the lateral or next lower classification in which he/she previously held permanent status, provided the displaced employee has less seniority in the classification.
- (c) An employee may demote or transfer to a vacant position in a classification for which he/she possesses the necessary skills, as determined by the minimum qualifications and job specifications for the position.
- (d) The name of each laid off employee shall be entered, in order of seniority, on a Re-employment list for two (2) years.
- (e) A former employee appointed from a Re-employment list shall have restored all rights accrued prior to being laid off, such as sick leave, vacation credits, and credit for years of service. However, such recalled employee shall not be eligible for benefits for which he/she received compensation at the time of, or subsequent to the date he/she was laid off.

Section 20. Separation from Service

20.1 Resignation

An employee wishing to resign from employment shall file, with the Police Chief, a notice of intention to leave at least two (2) weeks in advance.

20.2 Reinstatement

An employee, in good standing, who has resigned may request a reinstatement and the City Manager may reinstate such employee to a vacant position, if the City Manager determines reinstatement will be in the best interest of the City.

Following a one (1) year period after resignation, the City Manager may request such employee to submit to a physical examination and may require the employee to serve a new probationary period.

20.3 Termination Interview

Employees terminating City employment, for whatever reason, shall be interviewed by their immediate supervisor who shall advise the employee of both his/her and the City's rights, under the terms of resignation, and shall ascertain the reasons for termination of employment.

20.4 Discharge

An employee may be discharged at any time by the Police Chief and/or City Manager for cause. Whenever it is the intention of the Police Chief to discharge an employee in the competitive service, the City Manager shall be notified and his/her prior approval obtained.

Section 21. Employee Conduct and Discipline

21.1 Personal Conduct

Employees are required at all times to conduct themselves in such a manner as to reflect no discredit upon the City of Tracy.

21.2 Financial Affairs

Employees shall so arrange their personal financial affairs that creditors and collection agencies will not have to make use of the Offices of the City Manager or the Police Chief, for the purpose of making collections.

21.3 Outside Employment

Employees may not carry on, concurrently with their public service, any private business, public office, employment or undertaking, attention to which affects the time or quality of their work, or which creates a conflict of interest with their City employment. Employees must annually obtain the approval of the Police Chief for any outside employment.

21.4 Private Use of City Equipment

No City facility or equipment shall be put to any private use without the permission of the City Manager.

21.5 Disciplinary Action

This section shall apply to the following disciplinary actions:

- Oral Reprimand
- Written Reprimand
- Suspension
- Demotion
- Temporary Reduction in Pay
- Discharge

21.6 Causes for Disciplinary Action

Disciplinary actions may be imposed upon any permanent employee for cause. The following shall constitute cause for disciplinary action against an employee:

- (a) Fraud in securing employment
- (b) Incompetence
- (c) Inefficiency
- (d) Inexcusable neglect of duty
- (e) Insubordination
- (f) Dishonesty
- (g) Being under the influence of alcohol or controlled substance while on duty
- (h) Inexcusable absence without leave
- (i) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea, or verdict of guilty, or conviction following a plea of nolo contendere, to a charge of a felony, or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section
- (j) Discourteous treatment of the public or other employees
- (k) Misuse of City property
- (l) Violation of any established City or departmental rule, regulation, policy, and/or manual

- (m) Unlawful discrimination or retaliation, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical disability, marital status, sex, sexual orientation or age, against the public or other employees while acting in the capacity of a City employee.

21.7 Manner of Reprimand

If the City has reason to reprimand an employee, it shall be done in a manner that will not embarrass the employee before other employees or the public.

21.8 Alternative Days

An employee being suspended may use up to fifteen (15) days' vacation or compensatory time in lieu of leave without pay upon the recommendation of the Police Chief and approval of the City Manager.

21.9 Personnel/Internal Affairs Files

An employee and/or his/her representative, if authorized in writing, shall be permitted to examine the entire contents of his/her personnel file during regular business hours of the Administrative Offices of the City or Police Department.

No material, which relates to the employee's conduct, attitude, work performance, or service, shall be included in his/her personnel file without being signed and dated by the author of such material. Before such material is placed in the employee's file, the department head, or designee, shall provide the employee the opportunity to review the material and sign and date it. The employee shall have the right to insert in his/her personnel file, supplementary material and a written response within thirty (30) days of the employer inserting an item in the file. Such response shall remain attached to the material it supplements for as long as the material remains in the file.

The above provisions shall not apply to files involving a criminal investigation of any employee, which requires confidentiality. However, no portion of any file material deemed to be confidential, shall be used in any disciplinary action until the affected employee has been afforded the opportunity to review such confidential material and respond in writing in accordance with the above provisions.

Citizen complaints, reports and findings which are at least five years old shall be purged except where there is litigation pending involving the complaint, pursuant to Sections 832.5, 832.7 and 832.8 of the California Penal Code.

Section 22. Grievance Procedure

22.1 Definition

A grievance is any dispute, which involves the interpretation or application of any provision of this Agreement excluding, however, those provisions of this Agreement, which specifically provide that the decision of any City official shall be final, the interpretation or application of those provisions not being subject to the grievance procedure.

22.2 Procedure

Grievances shall be processed in the following manner:

Police Officers

- (1) Any employee who believes that he/she has a grievance may discuss his/her complaint with such departmental management official as the department director may designate. Grievances shall be presented within thirty (30) calendar days of the incident or knowledge of the incident, which gave rise to the grievance. If the issue is not resolved within the department, or if the employee elects to submit his/her grievance directly to the Association, the procedures hereinafter specified may be invoked.
- (2) Any grievance, not been resolved by the procedure above, may be referred to the City Manager by the complainant or by the Police Chief. Such referral shall be in writing, detailing the specific issues involved in the referral, together with a statement of the resolution desired. The City Manager shall designate a personal representative, who is not the Police Chief, to investigate the merits of the complaint, to meet with the complainant and, if the complainant is not in the Association, to meet also with the officials of the Association, and to settle the grievance, or to make recommendations to the City Manager. The decision of the City Manager regarding appeals of oral reprimands shall be final and not subject to appeal to Step (3).
- (3) If the parties are unable to reach a mutually satisfactory accord on any grievance other than grievances concerning an oral reprimand, either the Association or the City may require that the grievance be referred to an impartial arbitrator.

The parties may mutually agree upon the selection of the arbitrator or jointly request the State of California Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators. The parties shall then meet to select the arbitrator. The right to strike the first name shall be determined by lot and the parties shall alternately strike one name from the list until only one (1) name remains, and that person shall be the arbitrator.

The fees and expenses of an arbitrator, and of a Court reporter, shall be equally shared by the Association and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post hearing briefs, if any.

(4) The decision of an arbitrator on matters properly before them shall be final and binding on the parties hereto, to the extent permitted by the laws governing General Law Cities in the State of California.

No arbitrator shall entertain, hear, decide or make recommendations on any dispute, unless such dispute involves a position in a unit represented by the Association and unless such dispute falls within the definition of a grievance as set forth in Section 22.

~~Sergeants Grievances shall be processed in accordance with the City's Personnel Rules.~~

22.3 No Change to Memorandum

Proposals to add to or change this Agreement, or written agreements or addenda supplementary hereto shall not be subject to arbitration. No proposals to modify, amend, or terminate this Agreement, nor any matter or subject arising out of or in connection with such proposal, may be referred to under this Section. No arbitrator shall have the power to amend or modify this Agreement, or written agreements, or addenda supplementary hereto, or to establish any new terms or conditions of employment.

22.4 Demotion, Suspension and Dismissal Grievances

No grievance involving demotion, suspension, or dismissal of an employee will be entertained unless it is filed in writing with the City Manager within ten (10) calendar days of the time at which the affected employee was notified of such action.

When the City Manager and Association, in pursuit of Section 22.2 (2) above, settles a grievance, which involves suspension or discharge, they may agree to payment for lost time or to reinstatement with or without payment for lost time. In the event the dispute is referred to arbitration, and the employee is found to have been properly discharged, under the provisions of Section 21.6, the employee may not be ordered reinstated and no penalty may be assessed upon the City.

22.5 Compensation Complaints

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the City Manager. Only complaints, which allege that an employee is not being compensated in accordance with the provisions of this Agreement, shall be considered as grievances. Any other matters of compensation are to be resolved in the meet and confer process and, if not detailed in the Agreement which results from such meet and confer process, shall be deemed withdrawn until the meet and confer process is next opened for such discussion. No adjustment shall be retroactive for more than sixty (60) days from the date upon which the complaint was filed.

22.6 Mutual Agreement on Changes

No changes in the Agreement or interpretations thereof (except—interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Association President.

22.7 No Strike

The Association, its members and representatives agree that during the term of this Agreement, it and they will not engage in, authorize, sanction, or support any strike, slow down, stoppage of work, curtailment of production, concerted refusal of overtime work, refusal to operate designated equipment (provided such equipment is safe and sound) or to perform customary duties; and neither the Association nor any representatives thereof shall engage in job actions for the purpose of effecting changes in the directives, or decisions, or management of the City, nor to effect a change of personnel, or operations of management, or of employees not covered by this Agreement.

Section 23. City Rights

- (a) The City of Tracy retains the exclusive right, among others, in accordance with and subject to applicable laws, civil service and other regulations, and the provisions of this Agreement, including, but not limited to the following:
 - (1) To direct employees.
 - (2) To hire, promote, transfer and assign employees in positions not inconsistent with applicable classifications and/or job specifications.
 - (3) To dismiss employees because of lack of work or for other just cause.
 - (4) To reprimand, demote, suspend, discharge or otherwise to discipline employees for proper cause or for violation of the City's Rules and Regulations.

- (5) To determine the mission of such employees, the budget, the organization, the number of employees and the methods and technology of performing their work.
- (6) To take whatever additional action may be necessary in order to carry out and direct the employees' mission in situations of emergency.
- (7) To review, revise and/or establish job duties, workloads and workload standards as necessary during the term of this Memorandum.
- (8) The City agrees, to the extent required by Government Code Sections 3500, et. seq., to meet and confer, upon request, with unit representatives concerning the practical consequences or impact upon the bargaining unit or bargaining unit members of any management decisions modifying or changing wages, hours and working conditions; provided that the City's duty to meet and confer hereunder shall require it to delay implementation of such management decisions for no more than thirty (30) days from the date it notifies, in writing, the Association of its proposed action (measured from date of mailing by certified mail). Nothing above shall allow the City to violate any provision of this Agreement, and Association shall have the right to grieve any such violation as provided in Section 22.

Section 24. General Provisions

24.1 Safety

The City shall provide and maintain safe working conditions, and the Association will cooperate to that end. Employees shall work in a safe manner.

No employee shall be required to work in an area where conditions exist that are unsafe or detrimental to health without adequate and proper protective clothing and/or equipment.

The City shall continue to supply employees with all safety equipment required by the City and/or Cal OSHA. Such equipment shall include but is not limited to firearms, holsters, leather goods, radios, flashlights, and soft body armor. All employees furnished such equipment shall use the equipment and their use shall only be for the purposes and uses specified under applicable safety rules and regulations.

24.2 Modified Duty Assignments

The City will endeavor to provide modified duty assignments, in a nondiscriminatory, manner to employees injured on the job; provided, however, that employees injured on-duty shall be given preference, for available modified duty assignments, before employees injured off the job. Such assignments shall be based upon the needs of the department and shall be within the medical limits set by the employee's treating physician.

The City will endeavor, where possible, to place an injured employee on modified duty assignments comparable to his/her regular duty assignments, preferably within his/her regular division.

24.3 Definition of Seniority

For purposes of this Agreement, seniority shall be defined as:

- a. Classification Seniority - Seniority accruing from continuous service from date of appointment to classification.
- b. Department Seniority - Seniority accruing from continuous service within the Department from date of appointment.
- c. City Seniority - Seniority accruing from continuous service within the City.
- d. Seniority shall not be affected by authorized paid leave of absence.

24.4 Americans with Disabilities Act (ADA)

The City and the Association recognize that the City has an obligation under law to meet with an individual employee who alleges a need for reasonable accommodation in the workplace because of a disability. If by reason of the aforesaid requirement, the City finds it necessary to comply with the ADA by setting aside any provision of this Agreement in order to provide reasonable accommodation to an individual employee, such action by the City shall not be subject to the grievance procedure set forth in Section 22 of this Agreement. The Association will be advised of proposed accommodations, prior to implementation by the City.

Any accommodation provided to an individual employee pursuant to the provisions of this Section shall not establish a past practice, nor shall it be cited or used as evidence of a past practice in the arbitration of a grievance filed by either party.

Section 25. Modification

There will be no alteration or modification of any provision contained in this Memorandum without its written consent of all parties hereto.

Section 26. Total Agreement

This Agreement constitutes a full and complete agreement by the parties and contains all of the matters upon which the parties reached agreement. Any matter not contained in this Agreement has not been agreed upon and, if raised in negotiations, was dropped by the party raising it as part of a good faith attempt to reach agreement.

Section 27. Separability of Provisions

Should any section, clause or provision of this Agreement be declared illegal by final judgment of a court of competent jurisdiction, invalidation of such section, clause or provision shall not invalidate the remaining portions hereof, and such remaining portions shall remain in full force and effect for the duration of this Agreement. In the event of such invalidation, the parties agree to meet and confer concerning substitute provisions for provisions rendered or declared illegal.

Section 28. Event of Conflict

This Agreement shall supersede any prior Agreement, rules or regulations in direct conflict with the provisions hereof.

APPROVED AND ACCEPTED:

**TRACY POLICE OFFICERS
ASSOCIATION (TPOA)**

CITY OF TRACY ("CITY")

By _____
David Topaz, TPOA
Sean Howell, Labor Consultant, Mastagni Law

By _____
R. Leon Churchill, Jr
Troy Brown, City Manager

By _____
~~Craig Kootstra~~ **Timothy Bauer**, TPOA
Timothy Bauer, TPOA President

By _____
~~Maria Hurtado, Assistant City~~
Midori Lichtwardt HR Manager

By _____
~~Octavio Lopez, TPOA~~

By _____
Dania TorresWong,
Renne Sloan Holtzman & Sakai

By _____
Steve Bailey, TPOA

By _____
Ryan Knight, TPOA

Dated _____

Dated _____

EXHIBIT A

Tracy Police Officers' Association Salary Schedule:

TPOA

SALARY SCHEDULES

Effective

Aug. 22, 2012

Class Code	Position Title...		Semi-Mon Salary	Monthly Salary	Annual Salary	Hourly Rate	
60102	Police Officer	A	2,758.20	5,516.40	66,196.80	31.8254	
		B	2,896.11	5,792.22	69,506.64	33.4167	
		C	3,040.92	6,081.84	72,982.08	35.0875	
		D	3,192.97	6,385.94	76,631.28	36.8420	
		E	3,352.62	6,705.24	80,462.88	38.6841	
-							
60105	Police Sergeant	A	3,323.81	6,647.62	79,771.44	38.3517	
		B	3,490.00	6,980.00	83,760.00	40.2692	
		C	3,664.50	7,329.00	87,948.00	42.2827	
		D	3,847.73	7,695.46	92,345.52	44.3969	
		E	4,040.12	8,080.24	96,962.88	46.6168	
-							
61101	Police Trainee (NON-SWORN)	A	2,398.36	4,796.72	57,560.64	27.6734	
		-					
		-					

EXHIBIT A

Tracy
Police
Officers'
Associati
on Salary
Schedule:

TPOA						
SALARY SCHEDULES						
3% Retroactive Effective 01-01-2016						
Class Code	Position Title...		Semi-Mon Salary	Monthly Salary	Annual Salary	Hourly Rate
60102	Police Officer	A	2,840.95	5,681.90	68,182.80	32.7802
		B	2,983.00	5,966.00	71,592.00	34.4192
		C	3,132.15	6,264.30	75,171.60	36.1402
		D	3,288.76	6,577.52	78,930.24	37.9472
		E	3,453.20	6,906.40	82,876.80	39.8446
60103	Police Corporal <i>effective 1/1/13</i>	A	3,125.05	6,250.10	75,001.20	36.0583
		B	3,281.30	6,562.60	78,751.20	37.8612
		C	3,445.37	6,890.74	82,688.88	39.7543
		D	3,617.64	7,235.28	86,823.36	41.7420
		E	3,798.52	7,597.04	91,164.48	43.8291
60105	Police Sergeant	A	3,423.52	6,847.04	82,164.48	39.5022
		B	3,594.70	7,189.40	86,272.80	41.4773
		C	3,774.44	7,548.88	90,586.56	43.5512
		D	3,963.16	7,926.32	95,115.84	45.7288
		E	4,161.32	8,322.64	99,871.68	48.0152
61101	Police Trainee (NON-SWORN)	A	2,470.31	4,940.62	59,287.44	28.5036
2% Effective 07-01-2016						
Class Code	Position Title...		Semi-Mon Salary	Monthly Salary	Annual Salary	Hourly Rate
60102	Police Officer	A	2,897.77	5,795.54	69,546.48	33.4358
		B	3,042.66	6,085.32	73,023.84	35.1076
		C	3,194.79	6,389.58	76,674.96	36.8630
		D	3,354.53	6,709.06	80,508.72	38.7061
		E	3,522.26	7,044.52	84,534.24	40.6415
60103	Police Corporal <i>effective 1/1/13</i>	A	3,187.55	6,375.10	76,501.20	36.7794
		B	3,346.93	6,693.86	80,326.32	38.6184
		C	3,514.28	7,028.56	84,342.72	40.5494
		D	3,689.99	7,379.98	88,559.76	42.5768
		E	3,874.49	7,748.98	92,987.76	44.7057
60105	Police Sergeant	A	3,492.00	6,984.00	83,808.00	40.2923
		B	3,666.60	7,333.20	87,998.40	42.3069
		C	3,849.93	7,699.86	92,398.32	44.4223
		D	4,042.43	8,084.86	97,018.32	46.6434
		E	4,244.55	8,489.10	101,869.20	48.9756
61101	Police Trainee (NON-SWORN)	A	2,519.72	5,039.44	60,473.28	29.0737

EXHIBIT B
Patrol Officer Shift Selection

- At least 60 days prior to January shift change of each calendar year, officers shall select shifts, by seniority, for the next full calendar year.
- The Department reserves positions on each shift for:
 - ~~Field Training Officers*~~
 - Canine Officers
 - Probationary Employees (limited to one slot per shift)
- Officers are provided with a minimum of 72 hour advanced notice of their scheduled shift selection time, which is a period of 15 minutes. Officers who cannot be present for their selection time may phone in their selection to the on-duty watch commander or supervisor, or submit a written selection in advance. In the event an officer fails to make a selection during his or her designated time, the officer is relegated to those shifts available when the officer reports to select his/her shift.
- During January, following shift selection, each officer is requested to schedule a minimum of 80 hours of vacation for the calendar year. Vacation selection shall be made in seniority order during shift selection. Vacation requested after annual leave selection shall be approved on a case-by-case basis.
- Officers returning to patrol from special assignments are assigned to existing shift vacancies, until they are able to participate in the next shift selection process.

Department agrees to continue the practice of anticipating special assignment rotations and to allow officers near the end of the special assignment rotation to participate in the annual shift selection process. In addition, the Department agrees to continue practice of allowing officers within the last three months of probation to participate in the annual shift selection process.

- Probationary officers are exempt from shift selection. The Department shall assign probationary officers to shifts and rotate as deemed appropriate by the Department.
- Vacancies that occur during the year following shift selection shall be filled/assigned by the Department until the next shift selection process.
- The Department reserves the right to propose modifications to the shift selection system during the term of the Agreement. The Department agrees to meet and confer with the Association prior to implementing any changes.
- ~~* Field Training Officer shall be eliminated effective December 31, 2012.~~

EXHIBIT C

**Patrol Sergeant Shift Selection *Effective January 1, 2013 this side letter shall be applicable to the new Corporal classification to be established on January 1, 2013
(Amended)**

July 2006

- The shift schedule for the calendar year will consist of two, six month periods with shift changes in early January and July.
- Sergeants are provided with a minimum of 72 hours advanced notice of their scheduled shift selection time, which will be a period of 15 minutes. Sergeants who cannot be present for their selection time may phone in their selection to the on-duty watch commander or supervisor, or submit a written selection in advance. In the event a sergeant fails to make a selection during his or her designated time, the sergeant will be relegated to the end of the seniority list.
- During January following shift selection, each sergeant is required to schedule a minimum of 80 hours of vacation for the calendar year. Vacation selection shall be made in seniority order during shift selection. Vacation requested after annual leave selections shall be approved on a case by case basis.
- Sergeants returning to patrol from special assignments are assigned to existing shift vacancies until they are able to participate in the next shift selection process. Department agrees to continue the practice of anticipating special assignment rotations and to allow sergeants near the end of the special assignment rotation to participate in the annual shift selection process. In addition, the Department agrees to continue practice of allowing sergeants within the last three months of probation to participate in the annual shift selection process.
- Vacancies that occur during the year following shift selection shall be filled/assigned by the Department until the next shift selection process.
- In addition, the Department reserves the right to propose modifications to the shift selection system during the term of the Agreement. The Department agrees to meet and confer with the Association prior to implementing any changes.
- Reducing this shift selection process to writing does not constitute a waiver of rights on the part of the City as enumerated in Section 23 of the MOU.

EXHIBIT D
Effective January 1, 2013

POLICE CORPORAL

Class Title: ~~Police Corporal~~ Class Code: ~~60XXX~~
Department: ~~Police~~ Bargaining Unit: ~~Tracy Police Officers Association~~
EEO Code: _____ Effective Date: ~~January 1, 2013~~
FLSA Status: ~~Non-Exempt~~

DESCRIPTION

~~Under the general supervision of a Police Lieutenant or Police Sergeant performs a wide variety of lead patrol and related duties involving the prevention of crime, the protection of life and property and the enforcement of laws and ordinances; makes investigations, assists in the preparation of cases and testifies in court; serves in specialized departmental roles as assigned; provide information and assistance to the public; performs related work as assigned.~~

DISTINGUISHING CHARACTERISTICS

~~The functions of a Police Corporal are similar to that of a Police Officer with additional duties to act as an assistant supervisor and to act as a Patrol, Traffic or Investigations Supervisor in the absence of a Sergeant. While incumbents are normally assigned to a specific geographic area for patrol or traffic enforcement, all functional areas of the law enforcement field, including investigations, community preservation, administration, and training are included. Positions in the class are occupied by sworn police officers. Officers may be armed and may be assigned to work in uniform or plain clothes. Shift schedules and job assignments may be changed periodically to assure the maximum delivery of effective police service. Incumbents are expected to display a significant degree of initiative, independent judgment, and discretion. This class is distinguished from Police Sergeant in that the latter is the first supervisory level in this sworn class series.~~

SUPERVISION RECEIVED AND EXERCISED

~~Receives direction from a Police Lieutenant, Police Sergeant, or other management staff, depending on assignment.~~

~~May act as an assistant supervisor to Patrol, Traffic, Investigations or other functional areas of the law enforcement field in the absence of a Sergeant or higher-ranking police personnel.~~

EXAMPLES OF INMPORTANT AND ESSENTIAL DUTIES

~~Assumes the role of supervisor in the absence of a Sergeant or higher-ranking police personnel.~~

~~Patrols the City within an assigned area in a radio dispatched automobile to secure life and property, observe situations, report suspicious or criminal activity, hazardous conditions and deter crime by providing high visibility.~~

~~Responds to emergency calls for service, disturbances, thefts, burglaries, vehicle accidents, domestic disputes, suspicious activities and other incidents to protect public safety and property, resolve problems, diffuse situations and enforce laws and ordinances.~~

~~Assists in developing community crime prevention programs; speaks and educates local businesses, school, civic, and social groups.~~

~~Observes, monitors and controls routine and unusual traffic situations; stops and warns drivers or issues citations as appropriate; provides direction and traffic control in accident or incident situations, special events or other congested situations.~~

~~Makes arrests and serves warrants and subpoenas; takes individuals into custody and may transport them for medical clearance and/or booking at a longer term facility, as required.~~

~~Secures crime scenes and evidence; interviews suspects, victims and witnesses; collects and preserves evidence; performs complete investigations and/or cooperates with other law enforcement agencies providing investigative and case development support.~~

~~Provides oversight on juveniles and delinquents and works on cases involving unfit homes and crimes committed against or by juveniles.~~

~~Assists the City Attorney or the District Attorney staff in preparing, documenting, and developing cases and gathering information; testifies in court as required.~~

~~Directs the activities of police support personnel and/or volunteers in office and field situations.~~

~~Provides mutual aid to the law enforcement agencies as dispatched and in accordance with departmental policy.~~

~~Prepares reports; prepares and maintains logs, records, and accurate files.~~

~~Serves writs, warrants, subpoenas and other legal documents.~~

~~May be assigned to assist in conducting special studies of crime prevention, traffic control, or other Police Services issues.~~

~~Performs other duties of a similar nature or level.~~

MINIMUM QUALIFICATIONS

Demonstrated knowledge of:

~~Law enforcement principles, practices and techniques related to patrol, traffic enforcement, crime scene control and investigations, protection of life and property, pursuit, apprehension, and transportation of suspects.~~

~~Investigations and identification techniques and equipment.~~

~~Rules of evidence regarding search and seizure and the preservation of evidence.~~

~~Courtroom procedures and techniques for testifying.~~

~~Applicable laws, codes, ordinances, court decisions, and departmental rules and regulations.~~

~~Safety practices and equipment related to the work, including the safe use and proper care of firearms, chemical agencies, and impact weapons.~~

~~Techniques of first aid and CPR.~~

~~Effective communication techniques to deal with and solve the problems presented, dealing with and solving the problems presented by a variety of individuals from various socio-economic, cultural, and ethnic backgrounds, in person and over the telephone, often when relations may be confrontational or stressed.~~

~~Basic English grammar, composition, spelling, punctuation and report writing techniques.~~

~~Standard office practices and procedures, including the use of standard office equipment, record keeping, business mathematics, and basic computer applications related to the work.~~

Ability to:

~~Make sound, independent decisions in emergency situations.~~

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

~~Develop and maintain effective working relationships with the community, including specific targeted groups, such as the elderly or school-age youth.~~

Provide information, direction and assistance to the public in a variety of situations; take reports and assist the public with complaints or unusual situations.

Demonstrated Skills to:

Observe accurately, recall faces, names, descriptive characteristics, facts of incidents and places.

Interpret, apply and explain complex laws, codes, regulations, and ordinances.

Prepare clear, accurate and grammatically correct reports, records, and other written materials.

Identify and be responsive to community issues, concerns, and needs.

Operate the equipment of the department in a safe and responsible manner.

Coordinate and carry out special assignments.

Operate a motor vehicle in a safe manner under patrol and emergency conditions.

Monitor changes in laws and court decisions and apply them in work situations.

Enter information into a computer with sufficient speed and accuracy to perform the work.

EXPERIENCE, EDUCATION AND TRAINING

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

Experience:

Three years of increasingly responsible Law Enforcement experience including a minimum of one year with Tracy Police Department.

Education:

Equivalent to a High School degree and/or an equivalent combination of education and experience sufficient to successfully perform the essential duties of the job is required.

Completion of college level coursework is desirable.

Training:

Any recent training related to law enforcement courses or certification programs relevant to the job classification.

Other Requirements:

Must be at least 21 years of age at the time of employment and have no state or federal convictions for a crime punishable by imprisonment in a federal penitentiary or state prison.

LICENSES AND CERTIFICATIONS:

Possession of a valid California Class C Driver's License and a satisfactory driving record as determined by the City is required.

Must possess a valid Intermediate certificate issued by the California State Commission on Peace Officer Standards and Training (P.O.S.T.).

TOOLS AND EQUIPMENT USED

Police car, police radio, radar gun, handgun and other weapons as required, chemical spray, baton, handcuffs, breathalyzer, taser, cell phone, first aid equipment, and computer equipment.

PHYSICAL DEMANDS

Must maintain P.O.S.T. physical standards, including mobility and physical strength and stamina to respond to emergency situations and apprehend suspects, lift and push or pull individuals or objects weighing up to 100 pounds; ability to work in a standard office setting and to operate a motor vehicle; vision to maintain firearms qualification, to read printed materials and a computer screen, discern colors and work in a night setting; and hearing and speech to communicate in person, before groups and over the telephone and radio.

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

While performing the duties of this job, the employee is required to see well enough to read fine print and video display's; hear well enough to converse on the telephone and in person over machinery noise; communicate frequently through the use of a telephone or in person on somewhat technical operational procedures.

Communicate through written means.

Specific vision abilities required by this job include close vision, color vision, and the ability to adjust focus.

WORK ENVIRONMENT

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

While performing the duties of this job the employee works inside but occasionally works in outside weather conditions. The employee is occasionally exposed to wet and/or humid conditions, toxic or caustic chemicals.

The noise level in the work environment is usually quiet while in the office, or moderately loud when in the field.

Must be willing to work over time, extended shifts, evening, night, weekend, and holiday shifts. May be called back in emergency situations and work with exposure to difficult circumstances, including exposure to dangerous situations, hazardous situations and all weather conditions. Must be able to pass a detailed background investigation. May travel to sites outside of the City.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or logical assignment to the position. The job description does not constitute an employment agreement between the City of Tracy and employee and is subject to change by the City as the needs of the City and requirements of the job change.

EXHIBIT E

City of Tracy and Tracy Police Officers Association
 Corporal – 10% above Police Officer (Top Step to Top Step)
 August 22, 2012

			Semi- Monthly	Monthly	Annually	Hourly Rate

60105	Police Corporal	A	3,034.02	6,068.04	72,816.48	35.0079
		B	3,185.72	6,371.44	76,457.28	36.7583
		C	3,345.01	6,690.02	80,280.24	38.5963
		D	3,512.27	7,024.54	84,294.48	40.5262
		E	3,687.88	7,375.76	88,509.12	42.5525

Side Letter
Work Schedule Alternatives

Employees may be assigned to a variety of shift arrangements inclusive of:

a. ~~4/10 Work Weeks~~

b. ~~9/80 Work Weeks~~

1. ~~4/10 Work Schedule~~

~~Patrol:~~

~~The employees sign up in accordance with the Patrol Officer and Sergeant Shift Selection system for the following year. During each six month period, after three months, employees rotate days off, giving employees three months of weekends and three months of weekdays off. Each team will remain intact during the six (6) month deployment schedule (except as may be affected by the sergeant rotation system). However, the Department reserves the right to move individual employees on a case by case basis, based on specific concerns of the Department, such as conflict among officers.~~

~~The Department reserves the right to propose modifications to the 4 10 work schedules during the term of the Agreement. The Department agrees to notify the Association at least six months in advance of consideration of any change and to meet and confer with the Association prior to implementing any changes.~~

2. ~~9/80 Work Schedule – Two Week Schedule~~

~~Employees may also be assigned four (4) nine (9) hour days one week and one eight (8) hour day and four (4) nine (9) hour days in a set two week schedule with one day off in each ten (10) work day schedule.~~

~~The Department reserves the right to propose modifications to the 9 80 work schedules or to return to a five (5) day forty (40) hour work week during the term of the Agreement. The Department agrees to meet and confer with the Association prior to implementing any changes.~~

3. ~~Alternative Schedules –~~

~~The Department agrees to meet with the TPOA to consider changes to the existing schedules or alternative schedules for some or all assignments within thirty (30) days of receipt of a written notice to meet.~~

APPROVED AND ACCEPTED

Dated: _____

TRACY POLICE OFFICERS ASSOCIATION _____ CITY OF TRACY

By _____ By _____
Marc Bergman, TPOA President _____ Maria Olvera, Director of H.R.

Side Letter

~~Master Patrol Officer - Shall be eliminated on December 31, 2012~~

~~Effective as soon as feasible after adoption of this Agreement, the City shall establish a Master Patrol Officer designation to promote retention of seasoned Patrol Officers with a broad base of Patrol experience.~~

~~Eligibility:~~

~~To be eligible for consideration as Master Patrol Officer, said officer must have at least five (5) years of Patrol experience with the City of Tracy Police Department plus an additional two years of special assignment experience at Tracy (as listed below), or have at least 7 years of combined Patrol and Special Assignment experience with another law enforcement agency and have at least two years Patrol experience with Tracy (one year with the Tracy Police Department may be waived with approval of the Chief and City Manager). Additionally, employees with ten years of Patrol experience shall have the special assignment requirement waived.~~

~~In addition and in order to advance to the next pay step, the officer must:~~

- ~~_____ a. Meet all job standards and expectations; and~~
- ~~_____ b. Either hold a POST Advanced Training Certificate or work toward the acquisition of the certificate. Master Patrol Officers shall complete the Advanced POST certificate no later than the 12th year of service.~~

~~Pay:~~

~~Officer eligible for Master Patrol Officer designation will receive a 5% pay differential after one year (provided the employee meets all other criteria) at the top salary step of Police Officer and will be eligible to receive an additional 2.5% pay differential for each additional 2 years of Patrol experience in the City, up to a total of 15% pay differential above the top salary step of Police Officer rank.~~

~~Placement on Steps:~~

~~Current officers who qualify for Master Patrol Officer shall be eligible to be placed on the appropriate step (based on years of Patrol or combined experience as outlined above and satisfactory job performance) effective the first pay period after creation of the new designation. The eligible employee's last two performance evaluations (or a period of one year) must not indicate "improvement needed" in any category and the employee shall meet all job standards and expectations. Any Officer who is eligible to move to the next step in the Master Patrol Officer pay range and does not meet performance standards, shall not have his/her pay increased until such time as the Officer does meet all job standards and expectations for minimum of one(1) year.~~

~~FTO Assignments:~~

~~A MPO who is also a Field Training Officer shall continue to receive five percent (5%) FTO differential above his/her current base salary, but in no event shall the employee be paid more than the top step of the MPO salary range.~~

Scheduling:

~~Employees in the Master Patrol Officer designation shall be assigned to work all shifts and shall select shifts as a separate classification in accordance with the shift selection policy and practice. The Department shall meet with the TPOA in October of each year to discuss the shift selection process and the slots assigned to MPO for the following January shift selection.~~

Special Assignment Requirement:

~~Special Assignments that meet the two year requirement shall include Investigations, Field Training Officers, Narcotics/Street Crimes, Motor/Traffic and Professional Standards Officer.~~

Review of Master Patrol Officer Implementation:

~~The parties will meet in the spring of 2009 to review implementation of the MPO designation and its impact on recruitment and retention, employee assignments and services provided. The City may propose changes to this Side Letter at such time and will consider suggestions from TPOA. The City agrees to meet and confer on the impact of such proposed changes prior to any changes in this Side Letter.~~

Master Sergeant:

~~At the same time that the Master Patrol Officer designation is established, Sergeants assigned to Patrol and who meet all the qualifications of a Master Patrol Officer (inclusive of performance standards) shall receive an additional 2.5% after one year at the top step of Sergeant and another 2.5% after three years at the top step of Sergeant. Master Sergeants may be assigned to shifts to provide for a balance of experienced Master Sergeants. Master Patrol Sergeants may have their shift rotated at the discretion of the Department based on operational needs.~~

- ~~• City will add chart in final document to show step placement based on Patrol/Special Assignment experience or for employee who took a lateral appointment with the City.~~
- ~~• Department will add new provision to Department Performance Evaluation System: Employee who receives an "Improvement Needed" on a performance evaluation may request a review and meeting through the chain of command up to Chief.~~

APPROVED AND ACCEPTED _____ Dated: _____

TRACY POLICE OFFICERS _____ CITY OF TRACY
ASSOCIATION

By _____ By _____

Marc Bergman, TPOA President

— Maria Olvera, Director of H.R.

Exhibit D

Alternative Work Schedule Agreement 4-11 Alternative Work Schedule

Purpose: The Memorandum of Understanding between the City of Tracy ("CITY") and Tracy Police Officers' Association ("TPOA") expired June 30, 2015 and the parties are currently in negotiations. However, both parties want to implement an alternative 4-11 work week effective January 3rd, 2016 regardless of the status of current negotiations. Since the 4-11 alternative work week is a benefit to TPOA members and a cost savings to the City of Tracy Police Department, thus constituting a "win-win" for both sides, neither party want the 4-11 work week or this Agreement to be used as a bargaining chip during negotiations. The intent of this Agreement is to codify the positions of the parties, to implement the alternative 4-11 work week as set forth in this Agreement, and to ensure that the alternative 4-11 work week continues and is considered part of the next Memorandum of Understanding between the parties once it is ratified.

Effective January 3rd, 2016 the City of Tracy, hereinafter "CITY" and Tracy Police Officers' Association, hereinafter "ASSOCIATION", agree to adopt all alternative 4-11 work schedule. The work schedule will be utilized exclusively for police sergeants, corporals and officers assigned to the Patrol Unit, within the Field Operations Division.

1. Description:

The 4-11 work schedule is a 4 day work week with 11 hour and 10 minute (11.17 hours) shifts, applied to the Patrol Unit within the Field Operations Division.

Personnel are assigned to one of two teams; "A- Team" and "B-Team" and will remain with the same team the entire year. Each team will have three squads; days, swings and graves, of which the start and stop times for each of these squads shall be determined based upon the needs of the Department, determined by the Chief of Police. Days off are rotating.

Employees assigned to the 4-11 work schedules shall have a regular work schedule not to exceed 171 hours within a 28 day work period. The work schedule rotation is based on an eight-day cycle with each employee working four (4) consecutive days of eleven (11) hour and ten (10) minute work shifts followed by four (4) consecutive days *off*. The eight-day cycle will advance the employee's workday and days off one day for every cycle. The cycle will repeat every eight (8) weeks. In thirteen (13) twenty-eight (28) day FLSA pay periods (one year), each employee will work 182 eleven-hour and ten-minute regular patrol shifts totaling 2032.94 hours. Employees shall work an additional forty seven hours and four minutes (47.06) hours during the thirteen (13) twenty-eight (28) day FLSA pay periods for a total work year of 2080 hours. The 47.06 hours will be scheduled as five 8 hour training days and the remaining 7.06 hours as special event sign up, further detailed herein under "Make-up Work Hours".

Employees shall be scheduled to work "Make-up Work Hours", without exceeding the (171) FLSA hours in the (28) day cycle to avoid overtime payment.

2. Make-up Work Hours:

Employees assigned to the 4-11 work schedule shall be scheduled to work 47.06 hours per year in addition to their scheduled workdays to attain 2080 work hours within a calendar year. These hours will not be compensable and are "Make-up Work Hours" already factored into the pay rate calculated for 2080 work hours annually. "Make-up Work Hours" will be scheduled on the employees' days off as follows:

- Five (8) hour training days each calendar year totaling 40 hours. The training days shall be pre-scheduled for all employees at the beginning of the calendar year.
- One (7.06) hour pre-scheduled work shifts to staff special events.

"Make-up Work Hours" shall be scheduled so they do not result in an employee working over the (171) FLSA hours in the (28) day cycle. To achieve this, employees' shall not be scheduled for more than one 8-hour training day within a 28-day work period.

Note: In order to not go over the FLSA 171 hours in a 28 day pay cycle members cannot schedule a training day and a "Make up Work Hours" day in the same 28 day pay cycle (month).

Make-up Work Hours will be recorded and tracked through an added code to the time sheet. If an Employee calls in sick on their scheduled Make-up Work day, sick leave shall not be used to make-up any part of the 7.06 hours. An employee calling in sick for scheduled Make-up Work Hours shall be rescheduled based upon the needs of the Department.

On September 15th of each calendar year, the Field Operations Division Commander will audit outstanding "make-up work hours" owed by each employee, ensuring remaining hours owed by individual employees have been-scheduled. If an employee is unable to pay back the .hours by December 31st of that year, the hours will be deducted from their pay on the last paycheck of that year, or to the extent permitted by law.

3. Implementation:

The 4-11 work schedule will be implemented on Sunday, January 3rd, 2016.

Employees assigned to the 4-11 work schedules shall select their team and squads in accordance with the *Patrol Officer, Corporal, and Patrol Sergeant Shift Selection Process* adopted in the ASSOCIATION Memorandum of Understanding.

The 4-1.1 work schedule may, or may not, have implications on compensable time listed hereafter and are addressed as follows:

a. Training – Officers assigned as Canine Handlers and to the Crisis Response Unit may be subject to training on their days off and shall be compensated with overtime pay if required to work on a scheduled day off. This determination shall be based upon the needs of the department, at the discretion of the Chief of Police.

b. Overtime and Overtime Call-Back - Overtime is work which is in excess of the regularly scheduled eleven hour (11) and ten minute (10) work shift or in excess of (171) hours worked per (28) day cycle, which has the approval of the Police Chief or his/her designated representative. Employees who are called to work prior to their normal work schedule but continuous with their normal work schedule shall receive overtime for hours worked before their normal work schedule begins.

c. Holiday In-Lieu Pay - No change from compensation detailed in the ASSOCIATION MOU.

d. Vacation Leave Accrual - No change from leave accruals detailed in the ASSOCIATION MOU.

e. Sick Leave Accrual and Usage – No change from the leave accrual detailed in the ASSOCIATION MOU. Sick leave may not be utilized to make-up any part of the 78 hours outlined in the "Make-up Work Hours". Employees who report sick and unable to work scheduled "make-up" work hours may be required to present a doctor's note certifying the inability to report to work.

4. Alternative Schedules

All employees not working in the Patrol Division who are currently working a 4-10 schedule will remain doing so. The Department agrees to meet with the TPOA to consider changes to the existing schedules or alternative schedules for some or all assignments within thirty (30) days of receipt of a written notice to meet.

APPROVED AND ACCEPTED.

Date: 9/17/15

TRACY POLICE OFFICERS
ASSOCIATION

By Timothy Bauer

Tim Bauer, TPOA President

CHIEF OF POLICE
TRACY POLICE DEPARTMENT

By Jeremy Watney 9/17/15
Jeremy Watney, Acting Chief

CITY OF TRACY

By -

Troy Brown, City Manager

2016
PROPOSED 4-11 SCHEDULE

A SQUAD
B SQUAD

9:00-11:17
Hours

Month	Day	Shift	Number of Shifts	Total Hours
January	1		1	89.36
	2		1	89.36
	3		1	89.36
	4		1	89.36
	5		1	89.36
	6		1	89.36
	7		1	89.36
	8		1	89.36
	9		1	89.36
	10		1	89.36
	11		1	89.36
	12		1	89.36
February	1		1	89.36
	2		1	89.36
	3		1	89.36
	4		1	89.36
	5		1	89.36
	6		1	89.36
	7		1	89.36
	8		1	89.36
	9		1	89.36
	10		1	89.36
	11		1	89.36
	March	1		1
2			1	89.36
3			1	89.36
4			1	89.36
5			1	89.36
6			1	89.36
7			1	89.36
8			1	89.36
9			1	89.36
10			1	89.36
11			1	89.36
April		1		1
	2		1	89.36
	3		1	89.36
	4		1	89.36
	5		1	89.36
	6		1	89.36
	7		1	89.36
	8		1	89.36
	9		1	89.36
	10		1	89.36
	11		1	89.36
	May	1		1
2			1	89.36
3			1	89.36
4			1	89.36
5			1	89.36
6			1	89.36
7			1	89.36
8			1	89.36
9			1	89.36
10			1	89.36
11			1	89.36
June		1		1
	2		1	89.36
	3		1	89.36
	4		1	89.36
	5		1	89.36
	6		1	89.36
	7		1	89.36
	8		1	89.36
	9		1	89.36
	10		1	89.36
	11		1	89.36
	July	1		1
2			1	89.36
3			1	89.36
4			1	89.36
5			1	89.36
6			1	89.36
7			1	89.36
8			1	89.36
9			1	89.36
10			1	89.36
11			1	89.36
August		1		1
	2		1	89.36
	3		1	89.36
	4		1	89.36
	5		1	89.36
	6		1	89.36
	7		1	89.36
	8		1	89.36
	9		1	89.36
	10		1	89.36
	11		1	89.36
	September	1		1
2			1	89.36
3			1	89.36
4			1	89.36
5			1	89.36
6			1	89.36
7			1	89.36
8			1	89.36
9			1	89.36
10			1	89.36
11			1	89.36
October		1		1
	2		1	89.36
	3		1	89.36
	4		1	89.36
	5		1	89.36
	6		1	89.36
	7		1	89.36
	8		1	89.36
	9		1	89.36
	10		1	89.36
	11		1	89.36
	November	1		1
2			1	89.36
3			1	89.36
4			1	89.36
5			1	89.36
6			1	89.36
7			1	89.36
8			1	89.36
9			1	89.36
10			1	89.36
11			1	89.36
December		1		1
	2		1	89.36
	3		1	89.36
	4		1	89.36
	5		1	89.36
	6		1	89.36
	7		1	89.36
	8		1	89.36
	9		1	89.36
	10		1	89.36
	11		1	89.36

184 182 2652.94 2872.94

First 2 shifts are 10 hours each. Annual schedule begins 1/3.

Proposed Paybook Dates:
A Shift: Training Day - No Vacations
B Shift: Training Day - No Vacations

RESOLUTION 2016 - _____

APPROVING A NEW MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF TRACY AND THE TRACY POLICE OFFICERS ASSOCIATION (TPOA) COVERING THE PERIOD OF JULY 1, 2015 TO JUNE 30, 2018

WHEREAS, The Memorandum of Understanding (MOU) between the City of Tracy and the Tracy Police Officers Association (TPOA) expired on June 30, 2015, and

WHEREAS, Representatives from the City and the Tracy Police Officers Association (TPOA) have met and conferred in good faith to negotiate a new MOU, and

WHEREAS, Agreement has been reached on a new MOU covering the period of July 1, 2015 through June 30, 2018, and

WHEREAS, All parties agreed to the newly negotiated Memorandums of Understanding covering the period of July 1, 2015 to June 30, 2018

NOW, THEREFORE, BE IT RESOLVED, That City Council approves a new Memorandum of Understanding between the City of Tracy and the Tracy Police Officers Association.

The foregoing Resolution 2016 - _____ was adopted by the Tracy City Council on the 1st day of March, 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

**UPDATE ON STATUS OF TRACY VILLAGE DEVELOPMENT PROPOSAL AND
REQUEST FOR CITY COUNCIL DIRECTION ON RELATED ANNEXATION ISSUES**

EXECUTIVE SUMMARY

The City has received an application to develop lands located on the south side of Valpico Road, east of Corral Hollow Road, as an age-restricted residential development for up to 600 single-family homes. The project, called Tracy Village, would require an amendment to the General Plan, approval of a Specific Plan, Tentative Map, and annexation. Staff is reviewing the most recent draft of the Specific Plan, and has commenced preparation of a project-level Environmental Impact Report for the project. The project was the subject of a special election on December 8, 2015 (Measure K) which amended the City's General Plan and Tracy Municipal Code and established a new residential growth allotment system for age-restricted projects and allocated 600 allotments to the site. Measure K did not approve the project and this agenda item identifies annexation issues with adjacent parcels that requires City Council direction.

DISCUSSION

Background

The City has received an application to develop land located on the south side of Valpico Road, east of Corral Hollow Road, as a gated, age-restricted residential development for up to 600 single-family homes. The project, called Tracy Village, would require an amendment to the General Plan, a Specific Plan, Tentative Map and annexation to the City. Staff is reviewing the most recent draft of the Specific Plan, and has commenced the preparation of a project-level Environmental Impact Report.

On June 4, 2015, a Notice of Intent to Circulate Petition was filed with the City, on September 1, 2015, the City determined to hold a special election, and on December 8, 2015, an election was held for Measure K. Generally, Measure K: (1) established a new Active Adult Residential Allotment Program; (2) exempted the Adult Residential Allotment Program from the City's Growth Management Ordinance; and (3) allocated 600 Adult Residential Allotments to the subject Tracy Village property. Measure K did not approve the Tracy Village project; the project is subject to normal City processing. In processing the application, given the location of the project in San Joaquin County abutting several existing residential parcels, a number of annexation issues have been identified that require City Council direction.

Annexation of Unincorporated Lands to the West and North

Annexation of the Tracy Village lands to the City raises the question of whether other lands in the immediate vicinity (consisting of existing lots located immediately to the west, between Corral Hollow Road and the project boundary, along with a row of lots

along the north side of Valpico Road opposite the project site) will also need to be annexed at this time. Collectively, there are 21 lots immediately to the west, and 21 lots on the north side of Valpico Road. Lot sizes range from less than one-half acre to over two acres. Many of these lots are developed with single family residences, though some of the lots are vacant. The developed lots are currently served with wells and private septic and sewage disposal systems.

If the Tracy Village lands are annexed, the lots to the west and north (“outparcels”) would in effect be islands of unincorporated County lands. Staff has discussed this situation with the Tracy Village applicant, who has indicated that they do not wish to have their Specific Plan or annexation application expanded to include these lots. However, there may be a number of reasons why comprehensive planning to include these parcels now makes sense, including ensuring adequate public safety access, emergency response and public service responsibilities, efficient traffic circulation, and public street maintenance in the future.

Staff has identified three options and seeks Council direction on how to proceed:

Option 1: Annex the parcels as part of the current development entitlement effort underway for Tracy Village. This effort would take the form of including the parcels in the Specific Plan for Tracy Village. An appropriate zoning district similar to the existing County zoning would be identified, and the environmental analysis would be folded into the EIR underway currently for the Specific Plan. The petition to LAFCO for annexation could be split, leaving flexibility for LAFCO to act on annexing the developers parcel as one action and the “outparcels” as a separate action.

Option 2: Annex the parcels as part of a stand-alone City-initiated application. Under this option, the Specific Plan would not include the “outparcels” and an appropriate zoning district similar to the existing County zoning would be identified. Separate CEQA analysis would be required, and likely funded by the City.

Option 3: Do not pursue annexation of the “outparcels” at this time as a City-led effort. Under this option, the existing parcels would remain in San Joaquin County until such time as a separate effort is undertaken, either by one or more property owners or the City at a future time.

Under any approach, coordination with the property owners is necessary.

Update on Key Issues

1. Access between Corral Hollow Road and Project Site

Figure 5-1, Roadway Classification and Conceptual Alignments, Circulation Element of the 2011 General Plan identifies a Minor Arterial/Major Collector running along a north-south alignment through the project site, connecting to Valpico Road on the north and to existing residential development to the south. Additionally, the exhibit shows a road listed as “Other Collector” running between the main north-south roadway in the project

site to the west connecting to Corral Hollow Road. Figure 5-1 also includes the following notes:

“Conceptual layout only” and “Revisions/additions to minor arterials and other collectors will occur during development process.”

The project site plan proposed by Ponderosa Homes does not show use of a collector roadway leading west to Corral Hollow Road. Staff has discussed this issue with the applicant, who has indicated they do not wish to have a collector street connecting to Corral Hollow Road. This collector roadway would require acquisition of rights-of-way lands off of the project site, presumably in the form of one of the existing lots which lie between Corral Hollow Road and the project site. Traffic analysis of the EIR will be used to further determine if the collector roadway will be necessary for circulation purposes, as well as for provision of adequate emergency vehicle access. Staff has informed the applicant that a General Plan Amendment is required to remove the collector roadway as currently shown in the Circulation Element.

2. Water Usage for Lakes

The Tracy Village project proposes to construct two lakes, collectively over seven acres in size. These lakes would provide storm drainage detention while also providing aesthetic value for the project. Water for the lakes would need to be provided by the City. Additionally, there are two wells on the project site: a small domestic well, and a large production well. The production well is inoperable and has been for some time. The estimated yield from this well, when operable, is approximately 1,100 gallons per minute (1.6 million gallons per day). However, the City's General Plan contains policy direction that the groundwater beneath Tracy should be reserved for emergencies and to address water shortages, and not used as an everyday supply, and therefore should not be used for proposed ornamental lakes:

Objective PF-6.1 P3. To the extent feasible, the City shall use surface water supplies to meet daily water needs and reduce reliance on groundwater supplies. (General Plan, page 7-25)

Objective PF-6.4 P1. Groundwater supplies should be reserved for emergency use during water treatment shutdowns, short-term shortages of surface water supplies or during droughts. (General Plan, page 7-28)

As such, staff will be requiring the use of recycled water for the proposed lakes, or replacement of the lakes with other features not reliant on the use of groundwater. The applicant has stated that they support the use of recycled water for the lakes, once the City completes its recycled water system. The system will be completed over many years as funding from development is collected as building permits are issued, and through a recently received State grant. Also noted is that the Tracy Village project will be the subject of an SB 610/221 water supply analysis (WSA) and verification, necessary to address water supply versus demand of the project; the City is in the process of preparing the WSA, and water supply issues will also be further addressed as part of the project-level EIR.

In recent discussions with the applicant, they have indicated that they may reconsider the use of ornamental lakes and instead enhance the project with parks and open space. However, such discussions are still on-going.

FISCAL IMPACT

The costs for processing the Tracy Village project entitlements and preparing the project-level EIR are being fully borne by the project applicant through a Cost Recovery Agreement. If Council directs staff to prepare a separate annexation application (Option 2) for the unincorporated lots along Corral Hollow and Valpico Roads by the project site, funds would need to be appropriated to allow for application preparation and processing. If Option 2 is selected, staff would return to the Council at a future meeting for a specific General Fund appropriation request, which is currently estimated at \$100,000.

RECOMMENDATION

Staff recommends that the Council receive the update on processing of the Tracy Village project, and provide appropriate direction to staff on annexation issues identified in the staff report. Staff further recommends that Option 1 described above be approved.

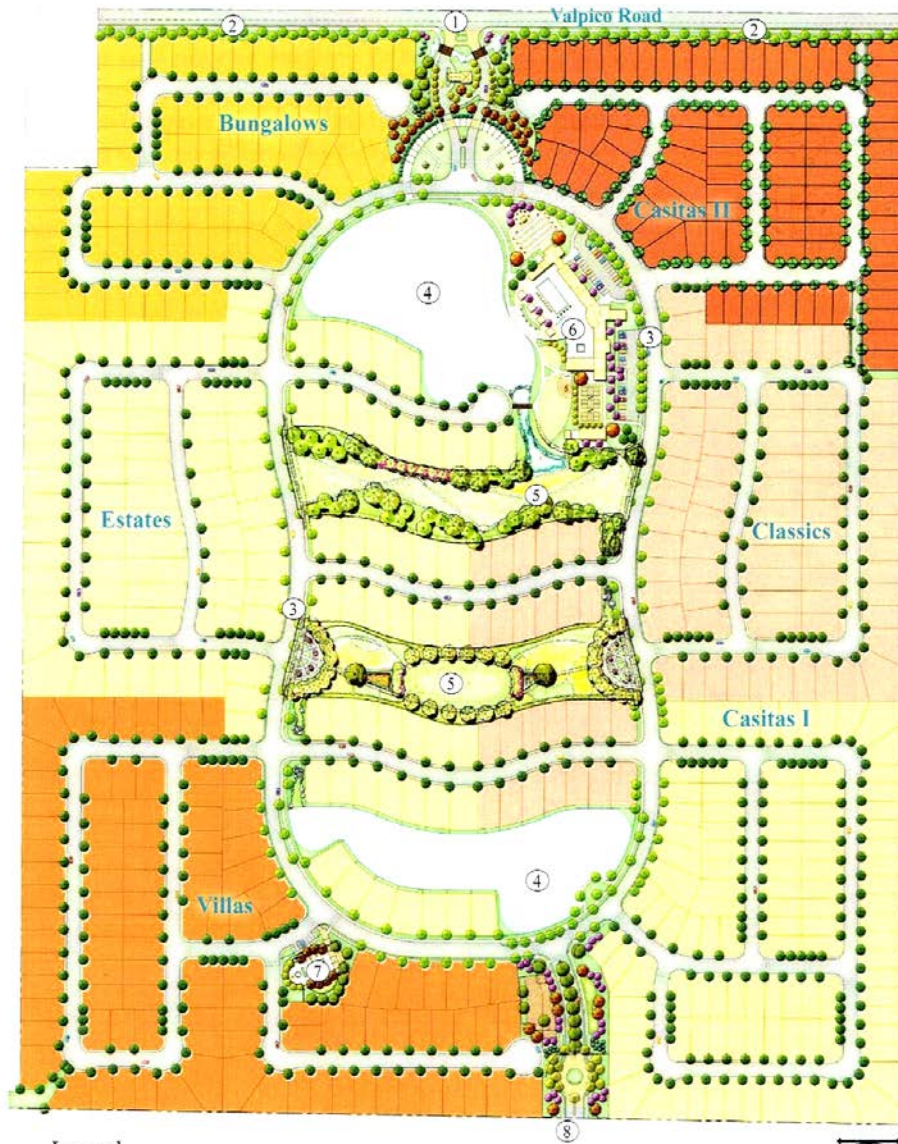
Prepared by: Brian Millar, Planning Consultant
Victoria Lombardo, Senior Planner
Bill Dean, Assistant Development Services Director

Reviewed by: Steve Bayley, Project Specialist, Utilities
Andrew Malik, Development Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A – Tracy Village Site Plan
Attachment B – Project Area Map
Attachment C – Figure 5-1, Circulation Element, 2011 Tracy General Plan

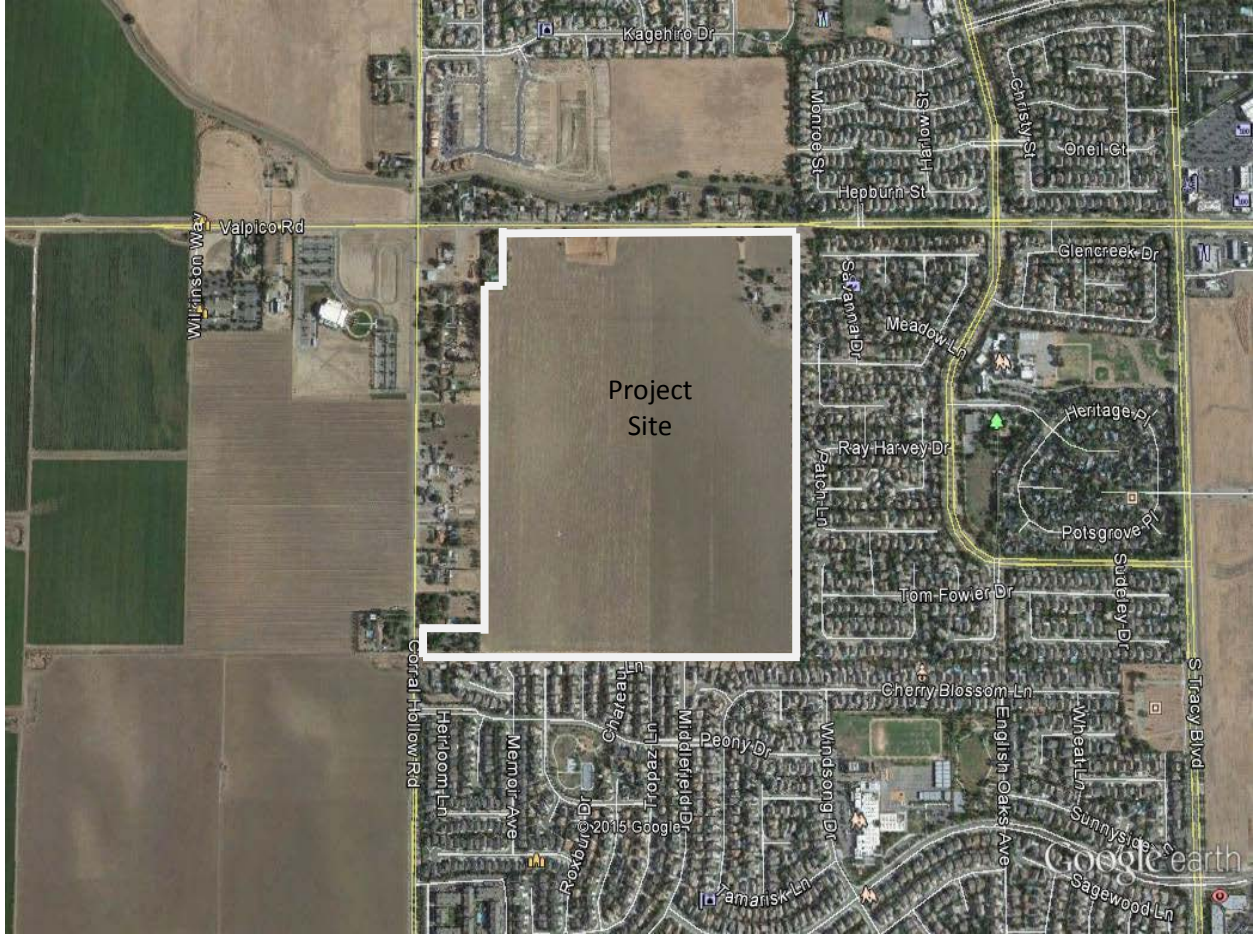


- Legend**
- | | |
|------------------|----------------------|
| ① Main Entrance | ⑤ Parks |
| ② Public ROW | ⑥ Main Recreation |
| ③ Main Loop Road | ⑦ Minor Recreation |
| ④ Lake | ⑧ Secondary Entrance |



Figure 1.1: Illustrative Site Plan
 Specific Plan | September 2015

**Attachment A
 Tracy Village Site Plan**



Attachment B
Project Location Map

FIGURE 5-1
ROADWAY CLASSIFICATION
AND CONCEPTUAL ALIGNMENTS

