

TRACY CITY COUNCIL  
AND THE SUCCESSOR AGENCY TO  
TRACY COMMUNITY DEVELOPMENT AGENCY

REGULAR MEETING AGENDA

**Tuesday, July 19, 2016, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

Web Site: [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)

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

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

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

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

**Presentations to Council** - Persons who wish to make presentations which may exceed the time limits are encouraged to submit comments in writing at the earliest possible time to ensure distribution to Council and other interested parties. Requests for letters to be read into the record will be granted only upon approval of the majority of the Council. Power Point (or similar) presentations need to be provided to the City Clerk's office at least 24 hours prior to the meeting. All presentations must comply with the applicable time limits. Prior to the presentation, a hard copy of the Power Point (or similar) presentation will be provided to the City Clerk's office for inclusion in the record of the meeting and copies shall be provided to the Council. Failure to comply will result in the presentation being rejected. Any materials distributed, including those distributed within 72 hours of a regular City Council meeting, to a majority of the Council regarding an item on the agenda shall be made available for public inspection at the City Clerk's office (address above) during regular business hours.

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

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

CALL TO ORDER  
PLEDGE OF ALLEGIANCE  
INVOCATION  
ROLL CALL  
PRESENTATION

1. CONSENT CALENDAR

- A. Adopt Council Minutes – Special Meeting minutes of May 24, 2016, and Closed Session minutes of July 5, 2016
- B. Adopt a Resolution of the Successor Agency to the Tracy Community Development Agency Authorizing Staff and the Board of the Successor Agency to Execute all Documents and Instruments and to do any and all Other Things Which they May Deem Necessary or Advisable to Effectuate the Long-Range Property Management Plan, Authorize a Purchase and Sale Agreement Between the City of Tracy (City), the Successor Agency to the Community Development Agency of the City of Tracy (Agency), and Becker Commercial Properties (BCP), a California Company, and Authorize the Mayor on Behalf of the City and the Chairman on Behalf of the Agency to Execute the Agreement and Related Documents
- C. Waive Second Reading and Adopt Ordinance 1222 an Ordinance of the City of Tracy Amending Sections 2.20.100 and 2.20.180(a)(1)(i), Adding Sections 2.20.095 and 2.20.255 to Chapter 2.20 (Contracts and Purchasing) of the Tracy Municipal Code
- D. Authorize Amendment of the City's Classification Plan and Position Control Roster by Reallocating Two Water Operator-in-Training Positions to Two Senior Water Treatment Plant Operator Positions; and Reclassifying the Incumbents
- E. Adopt the Compensation and Benefits Plan for Department Heads
- F. Authorize an Agreement with Jim Brisco Enterprises, Inc., for the Purposes of Loading, Hauling and Disposing of Wastewater Treatment Bio Solids and Authorize the Mayor to Execute the Agreement
- G. Authorize the Appointment of Five Youth Commissioners to the Youth Advisory Commission
- H. Acceptance of Subdivision Improvements for the Bungalows, Tract 3351, Constructed by Woodside 05N, LP, a California Limited Partnership
- I. Acceptance of Subdivision Improvements for Lyon Crossroads Unit 9, Tract 3781, Constructed by Lyon Homes Inc., a Delaware Corporation

- J. Approval of Five Master Professional Services Agreements with Kimley-Horn, First Carbon Solutions, Ascent Environmental, De Novo Planning Group, and Land Logistics for Environmental Analysis (CEQA) Services and Planning Assistance for Various Projects; Authorization for the Mayor to Execute the Agreements; and Authorization for the Development Services Director to Execute Task Orders Under the Agreements
2. ITEMS FROM THE AUDIENCE
3. PUBLIC HEARING TO DECIDE WHETHER TO APPROVE AN APPLICATION TO AMEND DEVELOPMENT REVIEW APPLICATION NUMBER D14-0003 FOR THE SUTTER TRACY CARE CENTER'S SOUTH PARKING AREA APPROVED AT 418, 424, 432, AND 434 W. EATON AVENUE TO INCLUDE THE PROPERTY AT 430 W. EATON AVENUE. THE RESULTING PARKING AREA WILL TOTAL APPROXIMATELY 65,210 SQUARE FEET; APPLICANT IS DAVID O. ROMANO FOR SUTTER GOULD MEDICAL FOUNDATION AND PROPERTY OWNER IS TRACY HOSPITAL FOUNDATION - APPLICATION NUMBER D16-0014
4. DISCUSS AND DECIDE WHETHER TO APPROVE ACTIONS RELATED TO THE PLACEMENT OF A TRANSACTIONS AND USE (SALES) TAX MEASURE OF UP TO ONE CENT ON THE NOVEMBER 8, 2016 BALLOT, INCLUDING
- (1) CALLING FOR A MUNICIPAL ELECTION TO SUBMIT TO THE VOTERS A LOCAL BALLOT MEASURE TRANSACTIONS AND USE (SALES) TAX OF UP TO ONE CENT, TO PROVIDE FUNDING FOR LOCAL CITY SERVICES; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURE; AND SETTING THE DATES FOR ARGUMENTS ON THE MEASURE
- (2) INTRODUCTION OF AN ORDINANCE ENACTING A TRANSACTIONS AND USE (SALES) TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION UPON APPROVAL BY THE VOTERS AT THE NOVEMBER 8, 2016 ELECTION
5. APPROVAL OF ACTIONS NECESSARY TO FORM COMMUNITY FACILITIES DISTRICT(CFD) NO. 2016-1 (TRACY HILLS), IMPROVEMENT AREA NO. 1 AND A FUTURE ANNEXATION AREA: CONDUCT PUBLIC HEARINGS TO CONSIDER: QUESTIONS OF (1) ESTABLISHING THE CFD, IMPROVEMENT AREA NO. 1 AND THE FUTURE ANNEXATION AREA, AND (2) THE PROPOSED DEBT ISSUE; APPROVE THE FORM OF ACQUISITION AGREEMENTS AND AUTHORIZE THE CITY MANAGER TO ENTER INTO SUCH AGREEMENTS; ACCEPT THE CFD REPORT; CONDUCT PROPERTY OWNER ELECTION; INTRODUCE ORDINANCE ORDERING THE LEVY OF SPECIAL TAXES; AUTHORIZE THE ISSUANCE AND SALE OF SPECIAL TAX BONDS AND APPROVE RELATED ACTIONS
6. PUBLIC HEARING TO DECLARE THE EXISTENCE OF WEEDS, RUBBISH, REFUSE AND FLAMMABLE MATERIAL ON EACH OF THE PARCELS LISTED IN EXHIBIT "A" TO THIS AGENDA ITEM A NUISANCE; CONSIDER OBJECTIONS TO ABATEMENT OF SAID NUISANCES, AND ADOPT A RESOLUTION AUTHORIZING FIRE DEPARTMENT STAFF TO ORDER CONTRACTOR TO ABATE SAID NUISANCES
7. DISCUSSION OF AND DIRECTION ON "LIVE WHERE YOU WORK" INCENTIVE PROGRAMS

8. RECEIVE UPDATE AND PROVIDE DIRECTION ON CITY COUNCIL STRATEGIC PRIORITY WORK PLANS FOR FISCAL YEARS 2015/16 and 2016/17
9. ITEMS FROM THE AUDIENCE
10. COUNCIL ITEMS
  - A. COUNCIL DESIGNATION OF VOTING DELEGATE AND UP TO TWO VOTING ALTERNATES FOR THE LEAGUE OF CALIFORNIA CITIES 2016 ANNUAL CONFERENCE BUSINESS MEETING
11. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

**May 24, 2016, 5:00 p.m.**

333 Civic Center Plaza, Council Chambers, Tracy

1. CALL TO ORDER – Mayor Maciel called the meeting to order at 5:00 p.m.
2. ROLL CALL – Roll call found Council Members Young, Mayor Pro Tem Rickman and Mayor Maciel present. Council Member Vargas arrived at 5:25 p.m. Council Member Mitracos was absent.
3. ITEMS FROM THE AUDIENCE – There were no speakers.
4. CONDUCT WORKSHOP TO REVIEW AND DISCUSS THE PROPOSED FISCAL YEAR (FY) 2016/17 AND 2017/18 CITY BUDGET, FIVE-YEAR FORECAST, GENERAL FUND RESERVE POLICY AND BUDGET PRINCIPLES AS THE NEXT STEP IN THE FY 2016/17 AND 2017/18 BUDGET ADOPTION

Troy Brown, City Manager, made a few opening remarks.

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

Council comments and questions followed related to the Senior Center Upgrades and expansion, and whether to strike the \$70,000 in the CIP and utilize impact fees for the expansion. After Council deliberation, it was agreed to retain the \$70,000 in fund 301 also fund the expansion through the CIP and bring this collectively back to Council so the scope is understood.

André Pichly, Parks and Community Services Director, provided a brief overview of the Legacy Fields priorities.

Council comments and questions followed related to the actual partnership with the leagues involvement, and how much would be contributed. After Council deliberation the Council reached a consensus to allocate \$25,000 to fund 301 and return on June 21, 2016 to further discuss Legacy Fields Use Agreements and ongoing partnerships and on July 1, 2016 to discuss whether or not the Council would like to allocate \$2.1 million.

Mayor Maciel called a recess at 6:46 p.m.

Mayor Maciel reconvened the meeting at 6:56 p.m.

Robert Tanner referenced a previous meeting where \$70,000 was allocated to fund 301 for Fire Station 96 which is used as a storage facility and asked why money is being spent on that.

Council Comments and questions followed, after further deliberation on whether to fund Fire Station 96 (Warehouse) or temporary Fire Station 97, the City Council agreed to return the \$70,000 from Fire Station 96 back into fund 301.

Roger Birdsall expressed concern about the City facing a structural deficit again and that the City Council should be discussing raising taxes. Mr. Birdsall stated that without Measure E there would have been serious problems. Mr. Birdsall expressed being in support of a tax increase and believes that the public would not object to a quarter percent tax. Mr. Birdsall urged the Council to consider having this conversation.

Steve Nicolaou agreed with Roger Birdsall's comments. Mr. Nicolaou referenced the 2010 tax initiative and how it kept the City out of hot water. The City now faces a structural deficit again. Mr. Nicolaou mentioned that the top three priorities from the community survey were: public safety, quality of life and infrastructure, those things aren't free and they have to be paid for, that is how today we have freeways, schools, aqueducts etc. Mr. Nicolaou urged the City Council to have the courage and honesty to discuss taxes and put something on the November ballot.

Ms. McQuiston continued with the budget presentation.

City Council comments and questions followed.

Ms. McQuiston continued with the Five Year Forecast and General Fund Reserves.

Council comments and questions followed related to the policy discussion about general fund reserves.

Ms. McQuiston concluded the staff report presentation with Budget principles.

Council comments and questions followed.

Council Member Young requested to have a discussion at a later time pertaining to additional funding sources. Mayor Maciel and Council Member Vargas agreed with Council Member Young's request and directed staff return at a later date with a staff report to discuss the increase of revenue opportunities.

Ms. McQuiston recapped the items that will be incorporated into the budget for adoption on June 7, 2016: Maintain the \$70,000 allocated for the Senior Center; Increase the CIP by \$2.5 million with the offset expected from the aquatic center funding up to \$2.5 million; fund Fire Station 97 upgrades and not Station 96 (warehouse).

5. Adjournment – Time 8:24 p.m.

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

The agenda was posted at City Hall on May 23, 2016.

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Mayor

ATTEST:

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City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

**July 5, 2016, 6:45 p.m.**

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Maciel called the meeting to order at 6:45 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 – None
4. CLOSED SESSION

Pending litigation pursuant to paragraph (1) of subdivision (d) of Government Code section 54956.9.

One case. This is based on the complaint filed on June 10, 2016 in the United States District Court, Eastern District of California, 2:16-cv-01290-WBS-EFB, titled Knight, et al v. City of Tracy.

5. MOTION TO RECESS TO CLOSED SESSION – Mayor Pro Tem Rickman motioned to recess the meeting to closed session at 6:46 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 7:00 p.m.
7. REPORT OF FINAL ACTION – There was no report of action.
8. ADJOURNMENT – Mayor Pro Tem Rickman motioned to adjourn the meeting, Council Member Vargas seconded the motion. Voice vote found all in favor; passed and so ordered. Time 7:00 p.m.

The agenda was posted at City Hall on June 28, 2016. The above are action minutes.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

AGENDA ITEM 1.B

REQUEST

**ADOPT A RESOLUTION OF THE SUCCESSOR AGENCY TO THE TRACY COMMUNITY DEVELOPMENT AGENCY AUTHORIZING STAFF AND THE BOARD OF THE SUCCESSOR AGENCY TO EXECUTE ALL DOCUMENTS AND INSTRUMENTS AND TO DO ANY AND ALL OTHER THINGS WHICH THEY MAY DEEM NECESSARY OR ADVISABLE TO EFFECTUATE THE LONG-RANGE PROPERTY MANAGEMENT PLAN, APPROVE THE LONG-RANGE PROPERTY MANAGEMENT PLAN, AUTHORIZE A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF TRACY (CITY), THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF TRACY (AGENCY), AND BECKER COMMERCIAL PROPERTIES (BCP), A CALIFORNIA COMPANY, AND AUTHORIZE THE MAYOR ON BEHALF OF THE CITY AND THE CHAIRMAN ON BEHALF OF THE AGENCY TO EXECUTE THE AGREEMENT AND RELATED DOCUMENTS**

EXECUTIVE SUMMARY

The City of Tracy and the Successor Agency to the City of Tracy Community Development Agency are joint owners of a 1.45± acre real property located to the immediate east of 2512 Naglee Road, shown on Attachment A as Parcel B. BCP is currently marketing the property under an Exclusive Negotiating Rights Agreement (ENRA) for the purpose of developing an 8,000 square foot, multi-tenant building.

State legislation implementing the dissolution of Redevelopment in California requires the disposal of all real property owned by the former Redevelopment Agency. The disposal process is to be carried out pursuant to a Long Range Property Management Plan (LRPMP) and approved by the Successor Agency Oversight Board and the California Department of Finance. The attached LRPMP (Attachment B) has already been approved by both agencies.

DISCUSSION

Prior to the dissolution of all California Redevelopment Agencies, the subject property was jointly owned by the City of Tracy and the Community Development Agency of the City of Tracy (CDA). On February 1, 2012, all assets, properties, contracts, leases, books and records, buildings, and equipment of the former CDA were transferred to the Successor Agency pursuant to Health and Safety Code Section 34175(b).

In accordance with Health and Safety Code Section 34191.5, the Successor Agency prepared and submitted to the Department of Finance on December 3, 2015, a Long-range Property Management Plan providing for the disposition and use of real property assets of the former Agency. On December 8, 2015, the Department of Finance issued a Finding of Completion, and on December 30, 2015, the City of Tracy received approval of the Long-range Property Management Plan, allowing for the sale of the subject property. Fifty-percent of the proceeds received by the City of Tracy will be placed in the City's General Fund and the remaining fifty-percent received by the Successor Agency will be remitted to the County Auditor Controller for distribution to the taxing entities.

BCP has been marketing the property under an Exclusive Negotiating Rights Agreement (ENRA) with the purpose of developing an 8,000 square foot, multi-tenant building. BCP has received fully executed Letters of Intent from two fast-casual restaurant uses, which plan to develop and occupy the site with an as-yet determined third retail tenant (Attachment C). In order for development of the property to move forward, the subject property must be conveyed to the new property owner upon the execution of a purchase and sale agreement (Attachment D).

On April 8, 2015, in accordance with State Government Code Section 65402(a), the Planning Commission reported that the disposal of the subject property was in conformance with the City's adopted General Plan. This section requires that any disposition of surplus property, defined in Section 54221 as land owned by any local agency that is determined to be no longer necessary for the agency's use, requires a report of conformity to the agencies General Plan. The City initiated this disposal of real property because it has been determined that the subject property can be better utilized as a restaurant or retail use.

Staff believes this is a good use for the site. Both proposed restaurant uses are unique users to Tracy and do not have a high parking requirement, which would complement the Panera Bread and Chipotle Mexican Grill uses approved for development on the neighboring Parcel A.

#### STRATEGIC PLAN

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

#### FISCAL IMPACT

Proceeds from the property sale will be equally split between the City of Tracy and the Successor Agency to the City of Tracy Community Development Agency. Funds received by the Successor Agency will be remitted to the County Auditor Controller for distribution to the taxing entities and the funds received by the City of Tracy will be placed in the City's General Fund.

#### RECOMMENDATION

That City Council:

- 1) Adopt a Resolution of the Successor Agency to the Tracy Community Development Agency authorizing staff and the Board of the Successor Agency to execute all documents and instruments, and to do any and all other things, which they may deem necessary or advisable to effectuate the Long-Range Property Management Plan and approve the Long-Range Property Management Plan.
- 2) Authorize a purchase and sale agreement between the City of Tracy, the Successor Agency to the City of Tracy Community Development Agency, and Becker Commercial Properties, a California Company, and authorize the Mayor on behalf of

the City and the Chairman on behalf of the Agency to execute the agreement and related documents.

Prepared by: Barbara Harb, Economic Development Management Analyst

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

Approved by: Troy Brown, City Manager

#### ATTACHMENTS

Attachment A – Location Map

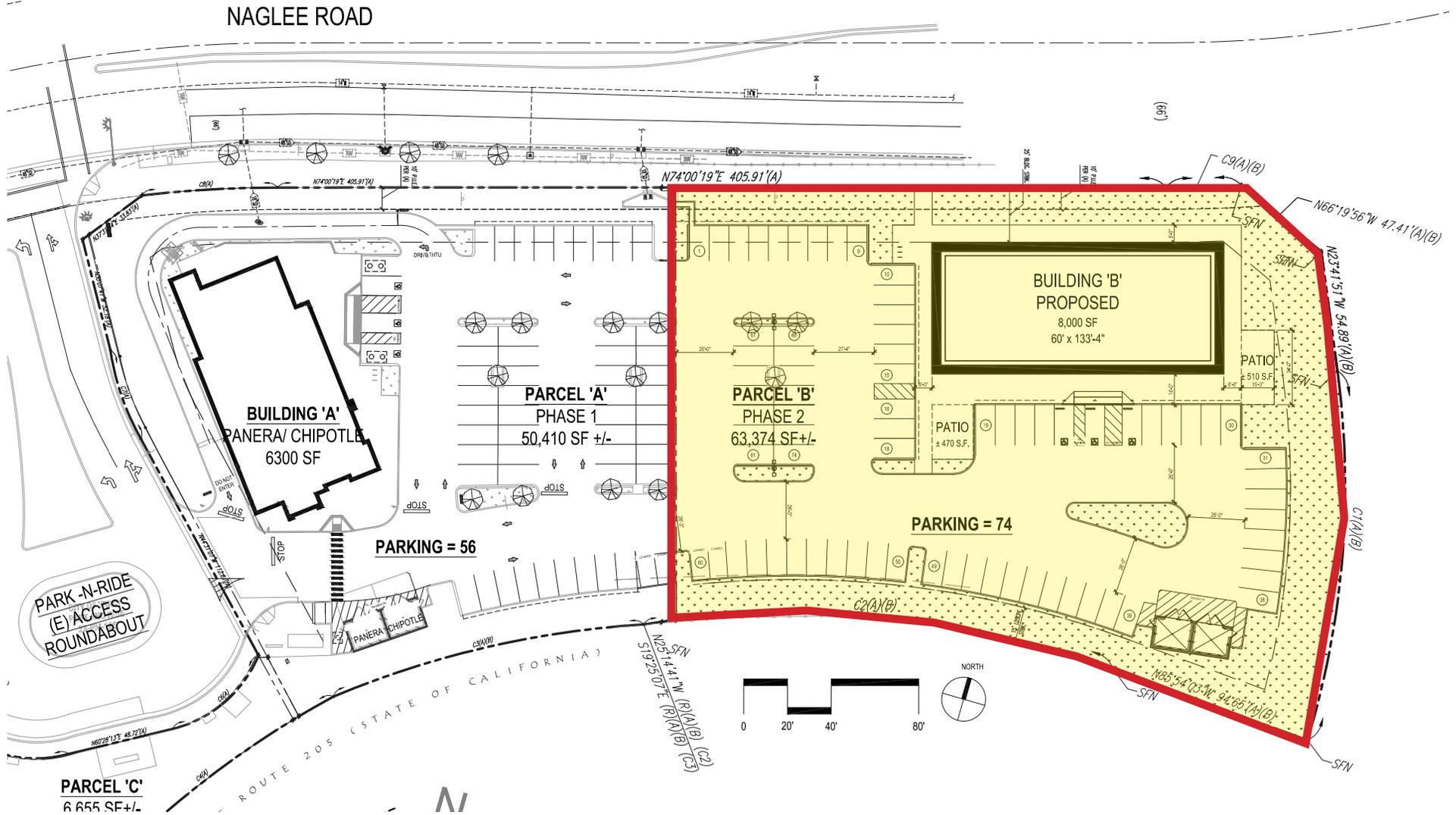
Attachment B – Long-Range Property Management Plan

Attachment C – Confirming Letters of Interest

Attachment D – Purchase and Sale Agreement between BCP Tracy, LLC, the City of Tracy,  
and the Successor Agency to the City of Tracy Community Development  
Agency

# Proposed Phase 2 Site Redevelopment Plan Naglee Rd

ATTACHMENT A



## PHASE 2 SITE REDEVELOPMENT PLAN, OPTION 4

DATE: JANUARY 14, 2016

OWNER: Becker Commercial Properties  
Jon Becker, Principal  
PO Box 590, Wilton, CA. 95693  
Phone: 916-714-9151, Email: jon.becker@bcprop.net

GRANT LINE ROAD/ INTERSTATE HWY. 205  
PARK AND RIDE, PHASE 2  
TRACY, CA. 95304

**VMI architecture**  
Design · Planning · Interiors  
637 5th Avenue San Rafael, CA 94901  
415-451-2500 · 415-451-2595 fax  
www.vmearch.com



## LONG-RANGE PROPERTY MANAGEMENT PLAN CHECKLIST

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**Instructions:** Please use this checklist as a guide to ensure you have completed all the required components of your Long-Range Property Management Plan. Upon completion of your Long-Range Property Management Plan, email a PDF version of this document and your plan to:

[Redevelopment\\_Administration@dof.ca.gov](mailto:Redevelopment_Administration@dof.ca.gov)

The subject line should state “[Agency Name] Long-Range Property Management Plan”. The Department of Finance (Finance) will contact the requesting agency for any additional information that may be necessary during our review of your Long-Range Property Management Plan. Questions related to the Long-Range Property Management Plan process should be directed to (916) 445-1546 or by email to [Redevelopment\\_Administration@dof.ca.gov](mailto:Redevelopment_Administration@dof.ca.gov).

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Pursuant to Health and Safety Code 34191.5, within six months after receiving a Finding of Completion from Finance, the Successor Agency is required to submit for approval to the Oversight Board and Finance a Long-Range Property Management Plan that addresses the disposition and use of the real properties of the former redevelopment agency.

### GENERAL INFORMATION:

Agency Name: **Successor Agency to the Community Development Agency of the City of Tracy**

Date Finding of Completion Received: Pending

Date Oversight Board Approved LRPMP: 12/01/2015

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### Long-Range Property Management Plan Requirements

For each property the plan includes the date of acquisition, value of property at time of acquisition, and an estimate of the current value.

Yes  No

For each property the plan includes the purpose for which the property was acquired.

Yes  No

For each property the plan includes the parcel data, including address, lot size, and current zoning in the former agency redevelopment plan or specific, community, or general plan.

Yes  No

For each property the plan includes an estimate of the current value of the parcel including, if available, any appraisal information.

Yes  No

For each property the plan includes an estimate of any lease, rental, or any other revenues generated by the property, and a description of the contractual requirements for the disposition of those funds.

Yes  No

For each property the plan includes the history of environmental contamination, including designation as a brownfield site, any related environmental studies, and history of any remediation efforts.

Yes  No

For each property the plan includes a description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.

Yes  No

For each property the plan includes a brief history of previous development proposals and activity, including the rental or lease of the property.

Yes  No

For each property the plan identifies the use or disposition of the property, which could include 1) the retention of the property for governmental use, 2) the retention of the property for future development, 3) the sale of the property, or 4) the use of the property to fulfill an enforceable obligation.

Yes  No

The plan separately identifies and list properties dedicated to governmental use purposes and properties retained for purposes of fulfilling an enforceable obligation.

Yes  No

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## ADDITIONAL INFORMATION

- If applicable, please provide any additional pertinent information that we should be aware of during our review of your Long-Range Property Management Plan.

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**Agency Contact Information**

Name: Robert Harmon

Name: Andrew Malik

Title: Senior Accountant

Title: Development Services Director

Phone: (209) 831-6828

Phone: (209) 831-6423

Email: Robert.Harmon@ci.tracy.ca.us

Email: Andrew.Malik@ci.tracy.ca.us

Date: 11/20/2015

Date: 11/20/2015

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**Department of Finance Local Government Unit Use Only**DETERMINATION ON LRPMP:  APPROVED  DENIED

APPROVED/DENIED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

APPROVAL OR DENIAL LETTER PROVIDED:  YES DATE AGENCY NOTIFIED: \_\_\_\_\_

RESOLUTION OB2015-003

**RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE TRACY COMMUNITY DEVELOPMENT AGENCY APPROVING A LONG-RANGE PROPERTY MANAGEMENT PLAN PURSUANT TO HEALTH AND SAFETY CODE SECTION 34191.5**

WHEREAS, the California state legislature enacted Assembly Bill X1 26 (the Dissolution Act") to dissolve Redevelopment Agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et.seq.); and

WHEREAS, pursuant to Health and Safety Code Section 34175(b) and the California Supreme Court's decision in California Redevelopment Association, et al. v. Ana Matosantos, et al. (53 Cal.4th 231(2011)), on February 1, 2012, all assets, properties, contracts, leases, books and records, buildings, and equipment of the former Community Development Agency of the City of Tracy (the "Agency") transferred to the control of the Successor Agency to the Community Development Agency of the City of Tracy (the "Successor Agency") by operation of law; and

WHEREAS, pursuant to AB 1484 ("AB 1484"), enacted June 27, 2012 to amend various provisions of the Dissolution Act, the Successor Agency is now declared to be a separate legal entity from the City; and

WHEREAS, in accordance with Health and Safety Code Section 34191.5, the Successor Agency has prepared a Long-Range Property Management Plan that provides for the disposition and use of real property assets of the former Agency; and

WHEREAS, pursuant to Health and Safety Code Section 34191.5(b), the Successor Agency must submit the Long-Range Property Management Plan to the Oversight Board and the California Department of Finance (the "DOF"); and

WHEREAS, pursuant to Health and Safety Code Section 34191.3, once approved by the Oversight Board and the DOF, the Long-Range Property Management Plan will govern, and supersede all other provisions relating to, the disposition and use of the real property assets of the Successor Agency; and

WHEREAS, as of the date of the adoption of this Resolution, the Successor Agency has not yet received a finding of completion from the DOF pursuant to Health and Safety Code Section 34179.7; and

WHEREAS, the accompanying staff report provides supporting information upon which the action set forth in this Resolution is based.

**NOW, THEREFORE, BE IT RESOLVED, That the Oversight Board of the Successor Agency to the Tracy Community Development Agency hereby finds, determines, resolves, and orders as follows:**

Section 1. The above recitals are true and correct and are a substantive part of this Resolution.

Section 2. The Oversight Board hereby finds and determines that the Long-Range Property Management Plan is created in accordance with Health and Safety Code Section

34191.5(b), and is subject only to the DOF's issuance of a finding of completion to the Successor Agency, pursuant to Health and Safety Code Section 34179.7.

Section 3. The Successor Agency is hereby authorized and directed to complete and submit the Long-Range Property Management Plan, with such changes therein as the officer executing the document may require or approve.

Section 4. The Successor Agency, as necessary, implement the disposition and use of the real property assets of the Former Community Development Agency of the City of Tracy in accordance with the terms approved in the Long-Range Property Management Plan and this Resolution.

Section 5. The staff of the Successor Agency is hereby directed to provide DOF written notice and information regarding the action taken by the Oversight Board pursuant to this Resolution. Such notice and information shall be provided by electronic means and in a manner of DOF's choosing.

Section 6. The staff and the Board of the Successor Agency are hereby authorized and directed, jointly and severally, to execute such documents and instruments and to do any and all other things which they may deem necessary or advisable to effectuate this Resolution.

Section 7. This Resolution shall take effect at the time and in the manner prescribed in Health and Safety Code Section 34179(h).

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ADOPTED, December 1, 2015 by the Oversight Board of the Successor Agency of the Tracy Community Development Agency.

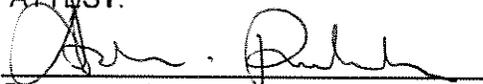
AYES: BORWICK, KHAN, MACIEL, THOMAS, SENSIBAUGH

NOES: NONE

ABSTAIN: NONE

ABSENT: MILLER, PUENTES-GRIFFITH

  
Chair

ATTEST:  
  
Successor Agency Secretary



Think Inside the Triangle™

**SUCCESSOR AGENCY TO THE CITY OF TRACY  
COMMUNITY DEVELOPMENT AGENCY**

**LONG-RANGE PROPERTY MANAGEMENT PLAN**

**November 20, 2015**

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# **Long Range Property Management Plan Successor Agency to the City of Tracy Community Development Agency**

## **Introduction**

As part of the dissolution process of former redevelopment agencies, State Assembly Bill 26 (ABX1 26) required successor agencies to dispose of real property assets owned by former redevelopment agencies “expeditiously and in a manner aimed at maximizing value.” State Assembly Bill 1484 (AB 1484) clarified how successor agencies should dispose of these assets with direction to prepare a Long Range Property Management Plan (LRPMP) governing the disposition and use of the former Agency owned properties to be submitted to their Oversight Board and the State Department of Finance (DOF) within six months of receiving a Finding of Completion. The Successor Agency to the City of Tracy Community Development Agency (Successor Agency) has not yet received its Finding of Completion; however, the dissolution statutes require that all LRPMP’s be approved by the DOF no later than December 31, 2015.

Section 34191.5 of the Health and Safety Code, which was added by AB 1484, requires that the LRPMP include an inventory and site history of each of the former Agency owned properties as well as a plan for the future use or disposition of each site. AB 1484 allows for four permissible uses of the properties, including: the retention of the property for governmental use, the retention of the property for future development, the use of the property to fulfill an enforceable obligation (either through sale of the property or revenue received), or the sale of the property. SB 107 further modifies this by allowing the retention of government use parking lots.

This document is the Long Range Property Management Plan for the Successor Agency to the City of Tracy Community Development Agency and incorporates the following:

- An inventory of all properties in the Property Trust Fund. The inventory consist of all of the following information:
  - The date of the acquisition of the property and the value of the property at that time, and an estimate of the current value of the property.
  - The purpose for which the property was acquired.
  - Parcel data, including address, lot size, and current zoning in the former agency redevelopment plan or specific, community, or general plan.
  - An estimate of the current value of the parcel including, if available, any appraisal information.

- An estimate of any lease, rental, or any other revenues generated by the property, and a description of the contractual requirements for the disposition of those funds.
- The history of environmental contamination, including designation as a brownfield site, any related environmental studies, and history of any remediation efforts.
- A description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.
- A brief history of previous development proposals and activity, including the rental or lease of property.
- Addresses the use or disposition of all of the properties in the Property Trust Fund. Permissible uses include the retention of the property for governmental use, the retention of the property for future development, the sale of the property, or the use of the property to fulfill an enforceable obligation. The LRPMP shall separately identify and list properties in the Property Trust Fund dedicated to governmental use purposes and properties retained for purposes of fulfilling an enforceable obligation. With respect to the use or disposition of all other properties, all of the following shall apply:
  - If the LRPMP directs the use of the property for a project identified in an approved redevelopment plan, the property shall transfer to the City.
  - If the LRPMP directs the liquidation of the property or the use of revenues generated from the property for any purpose other than to fulfill an enforceable obligation or other than that specified immediately above, the proceeds from the sale shall be distributed as property tax to the taxing entities.

According to Health and Safety Code 34180(f), if a city wishes to retain any properties or other assets for future redevelopment activities, it must reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the base property tax, as determined pursuant to Section 34188, for the value of the property retained.

This plan contains no properties which the City desires to retain for future development or that require negotiating a Compensation Agreement.

## Summary of Property Owned by the Successor Agency

The Successor Agency owns and controls various properties within the City of Tracy. Each site and the required information under AB 1484 will be discussed in greater detail in the “Summary” matrix. For three properties, the Successor Agency shares an undivided interest in the property with the City of Tracy. In those cases, the Successor Agency’s interest is deemed to be 50%. Table 1 below is an overview of the classification of the Successor Agency’s properties:

Table 1

Property/Parcel				AB 1484 Classification			
				Governmental Purpose Use	Enforceable Obligation Use	Approved Redevelopment Plan Use	Liquidation /Maximize Value of Proceeds Use
Ref #	APN	Description	Address				
1	235-056-15	Improved Public Parking Lot	15 W 9th St	X			
2	235-056-16	Improved Public Parking Lot	31 W 9th St	X			
3	235-056-17	Improved Public Parking Lot	41 W 9th St	X			
4	235-056-19	Improved Public Parking Lot	50 W Gillette Alley	X			
5	235-056-21	Improved Public Parking Lot	71 W 9th St	X			
6	235-056-22	Improved Public Parking Lot	918 “B” St	X			
7	212-040-28	Vacant Land/Sewer Easement *	Naglee Rd ROW	X			
8	212-290-44	Remnant Parcel 1	Abandoned Old Naglee Rd	X			
9	212-260-09	Remnant Parcel 2	3055 N Corral Hollow Rd				X
10	212-290-39	Park-N-Ride Lot *	(Parcels “A” & “B”)				X
* City of Tracy and Successor Agency shared property interest							

## Property Inventory

Health and Safety Code Section 34191.5 requires that the Long Range Property Management Plan include an inventory of all properties owned by the Former Community Development Agency of the City of Tracy, which are held in a Property Trust Fund. The Successor Agency to the City of Tracy Community Development Agency has possession of ten (10) parcels that were referenced in the previous section and have been included in this plan. The properties have been placed into different categories based upon the specifics of the property and approach to its disposition. Several of these parcels have been combined into a single property (e.g. parking lot) and the combined parcels are treated as a group. Exhibit B contains the specific inventory with additional relevant information.

**A. Properties that will be retained by the City for government purpose.** These properties have no commercial value and include remnant pieces, landscape areas, ROW, slope area, and properties that are governmental use, and also include parking lots. The staff recommends that these properties be conveyed to the City at no cost. There are eight (8) properties listed under this category. These have been further categorized into two groups: parking lots and remnant parcels.

City parking lots are considered governmental use and will continue to be used as such. These parking lots generate no revenue, as the City provides free downtown parking and these are dedicated solely to public parking. The City has been responsible for all maintenance, upkeep and insurance since the dissolution of the Community Development Agency.

The balance of the government use parcels are remnant parcels. Due to the roadway uses, undevelopable nature, irregular shape, and inadequate sizes of the remnant parcels, it is not possible to determine a marketable value for the parcels. The Successor Agency proposes to transfer title of these properties to the City to be used for storage or other uses.

### **Parking Lots**

The City parking lot consists of six (6) parcels combined to form two adjoining parking lots on a single city block. The parcels were purchased both separately and in a group over a period of 18 years for the purpose of providing free parking for retail, commercial and institutional businesses. The block is bounded by 9<sup>th</sup> St, B St and Gillette Alley with commercial buildings on the remaining side (N. Central). Two residences remain, abutting into the parcel on the 9<sup>th</sup> St side. The Successor Agency proposes transferring all six (6) parcels to the City of Tracy for government use. The City intends to continue to use these properties solely as public parking lots.

1. 15 W 9th St (APN 235-056-15) – Downtown public park parking lot which provides free public parking to commercial, retail and institutional businesses in the downtown Tracy area.
2. 31 W 9th St (APN 235-056-16) – Downtown public park parking lot which provides free public parking to commercial, retail and institutional businesses in the downtown Tracy area.
3. 41W 9thSt (APN 235-056-17) – Downtown public park parking lot which provides free public parking to commercial, retail and institutional businesses in the downtown Tracy area.

4. 50 W Gillette Aly (APN 235-056-19) – Downtown public park parking lot which provides free public parking to commercial, retail and institutional businesses in the downtown Tracy area.
5. 71 W 9th St (APN 235-056-21) – Downtown public park parking lot which provides free public parking to commercial, retail and institutional businesses in the downtown Tracy area.
6. 918 B St (APN 235-056-22) – Downtown public park parking lot which provides free public parking to commercial, retail and institutional businesses in the downtown Tracy area.

**Remnant Parcels & Easements for Public Use**

The remnant parcels consist of two (2) remnants from previous redevelopment activity and are not considered feasible for further development do to their roadway uses, irregular shape, inadequate size, location and accessibility. It is not possible to determine a marketable value for the parcels.

7. No address listed (APN 212-040-28) – This is vacant land with a sewer easement. The Successor Agency and the City of Tracy share an undivided interest in this property acquired through a condemnation and bankruptcy. The disposition of the Successor Agency’s interest in this property is discussed in detail in the Discussion of Properties section on page 8.
8. No address listed (APN 212-290-44) – Remnant parcel. This parcel was created with the abandonment of Old Naglee Rd. The parcel is both landlocked and also set-aside for the future expansion of the I-205 Naglee Rd Interchange. As such, this property has no market value is not considered developable. The Successor Agency proposes ratifying the transfer of this property to the City of Tracy and subsequently to the State of California for government use for the Interchange expansion.

**B. Properties for Liquidation.** The Successor Agency proposes to liquidate several properties. Those properties are to be sold under Exclusive Negotiating Rights Agreements (ENRA), marketed through direct contact with interested parties or through the use of brokers. Proposals would be evaluated based upon acceptable development plans. There are two (2) parcels listed under this category that represent three (3) properties. The City has a negotiated sale pending on one of these properties. A second property will be sold after an appraisal is obtained. Two of these properties have an undivided interest with the City of Tracy.

9. 3055 N Corral Hollow Rd (APN 212-260-09) – Remnant parcel. This parcel is land-locked and due to the roadway uses, undevelopable nature, irregular shape, and inadequate size of this parcel, it is not possible to determine a marketable value for the parcel. The Successor Agency proposes to attempt to sell the property to an adjacent landowner.

10. Park-N-Ride Lot (APN 212-290-39):

Parcel “A” – This is a remnant parcel leftover from prior redevelopment activity and a Condemnation order (see APN 212-290-28). The Successor Agency and the City of Tracy share an undivided interest in the property. The parcel currently contains one-half of a Park-N-Ride commuter parking lot. The Successor Agency proposes to liquidate in coordination with the City, the Successor Agency’s interest in this parcel. This property has been appraised and the City currently has an offer for the appraised value. The City has entered into an ENRA with a developer to purchase this parcel for use as a restaurant. The Successor Agency proposes to subdivide this parcel and sell Parcel “A” for the \$550,000 appraised value upon approval of this plan. If that sale cannot be fulfilled, the City and the Successor Agency propose to seek a buyer that would both maximize the value of the property and provide the most benefit to the surrounding area. Upon the sale of the parcel, the net proceeds of sales would be split equally between the Successor Agency and the City of Tracy. The Successor Agency share would be distributed to the taxing entities.

Parcel “B” – This is a remnant parcel leftover from prior redevelopment activity and a Condemnation order (see APN 212-290-28). The Successor Agency and the City of Tracy share an undivided interest in the property. The parcel currently contains a Park-N-Ride commuter parking lot. The Successor Agency proposes to subdivide this parcel and liquidate in coordination with the City, the Successor Agency’s interest in Parcel “B” which contains one-half of the Park-N-Ride lot. Because of the commercial nature of this parcel and the surrounding area, the City and the Successor Agency propose to seek a buyer that would both maximize the value of the property and provide the most benefit to the surrounding area. Upon the sale of the parcel, the net proceeds of sale would be split equally between the Successor Agency and the City of Tracy. The Successor Agency share would be distributed to the taxing entities.

## **Discussion and Disposition of Properties**

In researching each specific parcel, and in discussion with City staff, several abnormalities, ambiguities and peculiarities have surfaced regarding specific properties. This section discusses

each property, which may be a group of multiple parcels, the property history, where significant, specific issues with that property, and staff recommendations on the resolution and disposition of the property.

**Parking Lots (Properties 1 – 6)**

APN 235-056-15, APN 235-056-16, APN 235-056-17,  
APN 235-056-19, APN 235-056-21, APN 235-056-22

The CDA acquired six (6) mostly contiguous parcels (Table 1) between 1990 and 2004 which comprise the majority of a city block. These properties, taken as a whole, comprise the largest city-owned parking lot in the Downtown Business Improvement District. The purpose was to acquire properties to provide free parking for retail, commercial and institutional customers in an area immediately adjacent to shopping, restaurants and financial institutions in an effort to revitalize the downtown area. Parking is unmetered so these do not generate any revenue.

Disposition – These properties will be transferred to the City of Tracy for continued Government Use.

**Remnant – Old Naglee Rd (APN 212-290-44)**

This parcel represents “Old Naglee Rd” which was abandoned by the City for the development of the Grant Line Rd/Naglee Rd I-205 Freeway Interchange. This parcel is needed by CalTrans for the future expansion of this interchange. The parcel is essentially land-locked and had been excluded from any development plans due to its planned use as a future freeway interchange right-of-way.

On September 28, 2012, following the transfer of the Property to the City and prior to the State Controller’s Office (SCO) audit of the Other Funds and Accounts Due Diligence Review (OFADDR). This property was transferred to the State of California for the purpose outlined above. In the SCO audit, the City was ordered to return all properties transferred to the City.

Disposition – Ratify the transfer of the property to the City and the City’s subsequent transfer to the State of California for Government Use and authorize staff to prepare any necessary documents ratifying said transfers.

**Remnant – 3055 Corral Hollow Rd (APN 212-260-09)**

This is a remnant parcel leftover from a ROW access purchase for the I-205 freeway. The parcel is land-locked and, due to the roadway uses, undevelopable nature, irregular shape, and inadequate size of this parcel, it is not possible to determine a market value for the parcel. This property could have value in the future if a) one of the adjoining property owners is willing to purchase it, or b) future development occurs in this area.

Disposition – Liquidate the parcel to an adjacent landowner or offer to highest bidder with the net proceeds of sale to be disbursed to the local taxing agencies.

**APN 212-040-28**

In September 1996, The City of Tracy and the CDA were awarded joint title through a Final Order of Condemnation (FOC) from the U.S. Bankruptcy Court, Eastern District of California Case No. 92-94652-A-11. The Successor Agency believes that this FOC awarded both title to real property through the reference to APN 212-040-28 and to a sewer easement across said real property.

The legal description in the attached order had been interpreted by City staff and is attached as Exhibit D. Staff believes that this covers an area between the newly aligned Naglee Rd and several parcels that the CDA previously owned or currently owns, more specifically, the Park & Ride lots. However, prior to the Final Order of Condemnation, this property was subdivided into multiple parcels and this specific APN no longer existed.

With the exception of the Park & Ride lot, City staff does not believe that there is any remaining property contained in this order that has not been addressed elsewhere in the report or has not been disposed of the former CDA.

- **Park & Ride Parcel**

The CDA and the City acquired APN 212-290-39 in 1994 as part of the overall I-205/Naglee Rd redevelopment. This parcel was subsequently improved as a Park & Ride lot due to its proximity to the I-205/grant Line Rd freeway Interchange. The CDA planned future development as the area built-out. As of this date, the parcel remains a Park & Ride commuter lot.

As the area built out and the value of the property increased, the City began exploring commercial uses for this parcel and subsequently entered into an Exclusive Negotiating Rights Agreement (ENRA) for approximately one-half of the

parcel, deemed Parcel “A”.

In January 2015, the City had the parcel appraised and has since been working with a development interest on the acquisition of the parcel. The City has proposed dividing the parcel into Parcel “A” and Parcel “B” as it determined that this would provide maximum value in an expeditious manner while supporting the City’s planning objectives for the area. As title is vested in both the City of Tracy and the former CDA, the City has taken the lead in developing and liquidating the property.

Parcel “A” has been appraised for \$550,000 and the city has a sale pending for this property, subject to final approval and authorization to execute the transfer pursuant to this plan.

The City and the Successor Agency believe that Parcel “B” can be sold in an expeditious manner through an ENRA and has some interested parties. By using an ENRA, the value of the parcel can be maximized while supporting the planning and redevelopment objectives of the City. The property could also be auctioned; however, while an auction would be faster, it is unlikely to maximize the value of the property.

Disposition – In order to maximize value and provide for the most expeditious liquidation of the property, the disposition of APN 212-290-39 is being addressed in multiple parts:

- Parcel Split – City staff, at the direction of the Successor Agency, will separately transfer Parcel “A” comprising approximately 42% and Parcel “B” comprising approximately 58% of APN 212-290-39.
- Parcel “A” – Parcel “A” has a negotiated sale pending for the appraised value of \$550,000 and will be sold by the City and Successor Agency. As the City and the Successor Agency have an undivided interest in the property, the net sales proceeds will be split equally between both entities with the Successor Agency share distributed to the local taxing agencies.
- Parcel “B” – The City, acting in coordination with the Successor Agency, shall seek to enter into an ENRA agreement with a qualified developer to maximize the value of parcel and the subsequent sale of the parcel at or near its appraised value. As the City and the Successor Agency have an undivided interest in the property, the sales net proceeds will be split equally between both entities with the Successor Agency share distributed to the local taxing

agencies.

- **Sewer Easement**

As discussed in APN 212-040-28 above, the CDA and the City received title to a sewer easement. This easement is critical for the City to provide utility services to the area and is vital to the health and safety of the community.

Disposition – Transfer title of the Successor’s interest in the sewer easement to the City of Tracy for continued Government Use.

### **Environmental Remediation**

Health and Safety Code Section 34191.5 requires that the Long Range Property Management Plan include any environment contamination studies and/or remediation and designation of a brownfield site. None of the properties in this plan have any history of environment contamination or remediation or have been designated as a brownfield site.

EXHIBIT A

LEGAL DESCRIPTIONS OF THE PROPERTIES

Summary of Parcels

<u>Parcel</u>	<u>APN</u>	<u>SITUS ADDRESS</u>	<u>ACRES</u>	<u>DESCRIPTION</u>
1	235-056-15	15 W 9th St	0.373	Improved as Downtown Parking
2	235-056-16	31 W 9th St	0.162	Improved as Downtown Parking
3	235-056-17	41W 9thSt	0.155	Improved as Downtown Parking
4	235-056-19	50 W Gillette Aly	0.057	Improved as Downtown Parking
5	235-056-21	71 W 9th St	0.186	Improved as Downtown Parking
6	235-056-22	918 B St	0.373	Improved as Downtown Parking
7	212-040-28	None Listed	9.880	Land/Sewer Easement
8	212-290-44	None Listed	0.759	Remnant Parcel/Old Naglee Rd
9	212-260-09	3055 N Corral Hollow Rd	0.461	Remnant Parcel
10a	212-290-39	None Listed	1.154	50% Interest in Park & Ride Lot (Parcel "A")
10b	212-290-39	None Listed	1.626	50% Interest in Park & Ride Lot (Parcel "B")

PARCEL 1 (235-056-15) (Figure 1):

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

LOTS 14, 15 16 AND 17, BLOCK 58, AS SHOWN AND SO DESIGNATED ON THE OFFICIAL MAP OR PLAT THEREOF FILED FOR RECORD ON JUNE 29, 1892 IN VOLUME 2 OF MAPS AND PLATS, AT PAGE 63 OF THE SAN JOAQUIN COUNTY RECORDS.

PARCEL 2 (235-056-16) (Figure 1):

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

LOT 13, E. 16 2/3 OF LOT 12, IN BLOCK 58, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "MAP OF THE TOWN OF TRACY" FILED FOR RECORD ON JUNE 29, 1892, IN VOLUME 2 OF MAPS AND PLATS, AT PAGE 63 OF THE SAN JOAQUIN COUNTY RECORDS.

PARCEL 3 (235-056-17) (Figure 1):

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

THE EAST 8 1/3 FEET OF LOT 10, AND THE WEST 8 1/3 FEET OF LOT 12, IN BLOCK 58, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "MAP OF THE TOWN OF TRACY" FILED FOR RECORD ON JUNE 29, 1892, IN VOLUME 2 OF MAPS AND PLATS, AT PAGE 63 OF THE SAN JOAQUIN COUNTY RECORDS.

PARCEL 4 (235-056-19) (Figure 2):

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

THE NORTHERLY 50 FEET OF EACH LOTS 7 AND 8 IN BLOCK 58 SHOWN ON THE OFFICIAL MAP OR PLAT THEREOF FILED FOR RECORD ON JUNE 29, 1892 IN VOLUME 2 OF MAPS AND PLATS, AT PAGE 63 OF THE SAN JOAQUIN COUNTY RECORDS.

PARCEL 5 (235-056-21) (Figure 2):

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

THE EAST 8 1/3 FEET OF LOT 10, AND THE WEST 8 1/3 FEET OF LOT 12, IN BLOCK 58, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "MAP OF THE TOWN OF TRACY" FILED FOR RECORD ON JUNE 29, 1892, IN VOLUME 2 OF MAPS AND PLATS, AT PAGE 63 OF THE SAN JOAQUIN COUNTY RECORDS.

PARCEL 6 (235-056-22) (Figure 3):

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

LOTS 1, 2, 3 AND 41N BLOCK 58 AS SHOWN AND SO DESIGNATED ON THAT CERTAIN MAP ENTITLED "MAP OF THE TOWN OF TRACY" FILED FOR RECORD ON JUNE 29, 1892 IN VOLUME 2 OF MAPS AND PLATS, AT PAGE 63 OF THE SAN JOAQUIN COUNTY RECORDS.

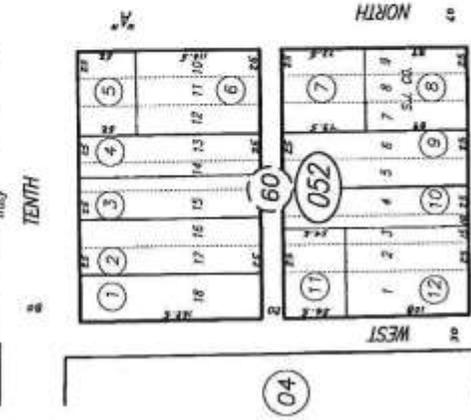
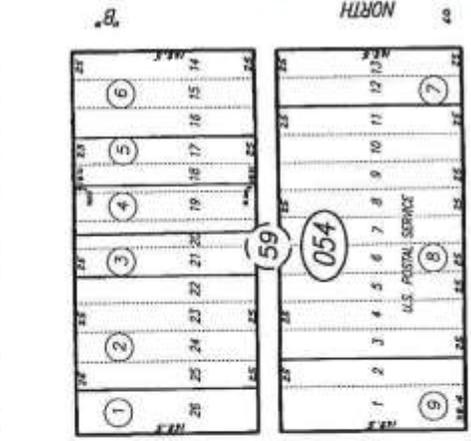
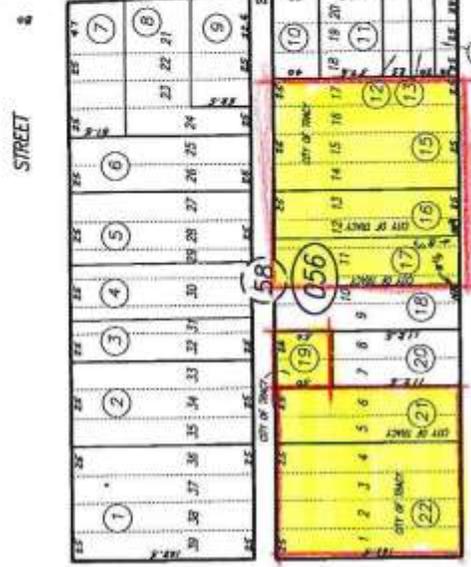
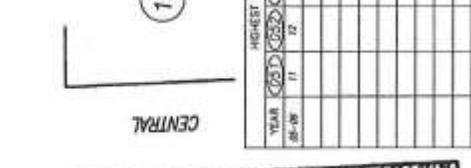
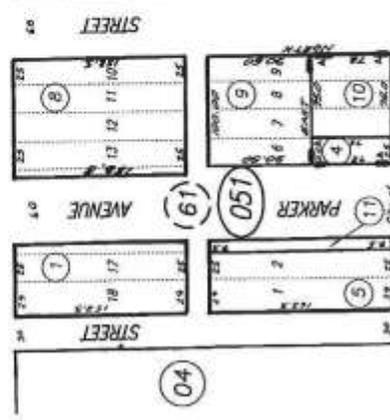
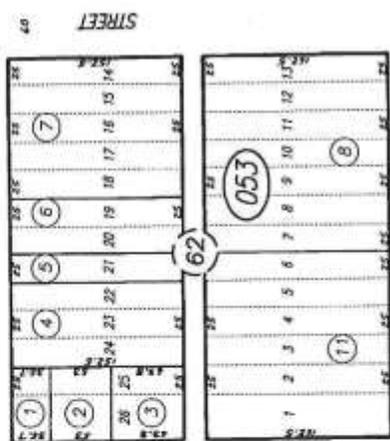
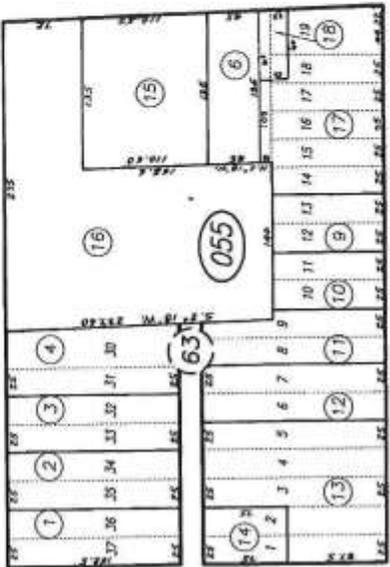
235-05



THIS MAP FOR ASSESSMENT USE ONLY

Bk. 233

POR. TRACY



CENTRAL

STREET

8

2

TENTH

YEAR	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20
HIGHEST A.P.A.L. USED																		

CITY OF TRACY

Assessor's Map Bk. 235 Pg. 05  
County of San Joaquin, Calif.

06

06

06

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

R. M. Bk. 02 Pg. 063  
A - R. S. Bk. 16 Pg. 017

APN

235-056-15

235-056-16

235-056-17

235-056-19

235-056-21

235-056-22



Figure 1 - 15, 31 & 41 W 9th St.



Figure 2 - 71 W 9<sup>th</sup> St & 818 B St



Figure 3 - 50 W Gillette Ally

PARCEL 7 (212-040-28):

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

THAT PORTION OF LOT 39 OF THE NAGLEE BURK TRACT IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, AS PER MAP RECORDED IN VOLUME 5, PAGE 18, OF BOOK OF MAPS AND PLATS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING at the intersection of the westerly line of said Lot 39 and the northerly line of Naglee Road as described as Parcel 5 in the Final Order of Condemnation recorded September 26, 1969 in Book 3338, Page 327, of Official Records in said office of the County Recorder, thence along said westerly line N. 0°02'45" W, 396.84 feet to the beginning of a curve concave to the southeast having a radius of 661.00 feet; thence leaving said line from a tangent line bearing N.58°01'49" E., northeasterly 184.30 feet along said curve through a central angle of 15°58'30"; thence N. 74°00'19" E, 405.89 feet to the beginning of a curve concave to the northwest having a radius of 539.00 feet; thence northeasterly 17.25 feet along said curve through a central angle of 1°50'00" to the beginning of a curve concave to the northwest having a radius of 35.00 feet; thence northerly 62.02 feet along said curve through a central angle of 101°31'52"; thence N. 29°21'33" W., 50.62 feet; thence N. 60°38'27" E, 134.50 feet; thence S. 29°21'33" E., 50.00 feet to the beginning of a curve concave to the north having a radius of 35.00 feet; thence easterly 62.23 feet along said curve through a central angle of 101°52'46" to the beginning of a curve concave to the northwest having a radius of 539.00 feet; thence easterly 180.50 feet along said curve through a central angle of 19°11'12" to the southerly line of Parcel B as per map recorded in Book 19, Page 122 of Surveys in the office of said County Recorder; thence along said line N. 89°57'15" E., 141.84 feet to the beginning of a Curve concave to the northwest having a radius of 666.00 feet; thence leaving said line from a tangent line bearing S. 23°31'57" W. southwesterly 306.71 feet along said curve through a central angle of 26°23'12" to Point A; thence on a non-tangent line S. 11°06'19" W., 43.87 feet; thence S. 27°41'51" E. 176.30 feet to the beginning of a curve concave to the northeast having a radius of 314.96 feet; thence southeasterly 20.20 feet along said curve through a central angle of 3°40'30" to said northerly line of Naglee Road the beginning of a curve concave to the northwest having a radius of 570.00 feet; thence along said line from a tangent line bearing S. 35°32'38" W., southwesterly 345.3 feet along said curve through a central angle of 34°42'42"; thence S. 70°15'20" W., 405.62 feet to the beginning of a curve concave to the north having a radius of 570.00 feet; thence westerly 200.21 feet along said curve through a central angle of 20°07'30"; thence N. 89°37'10" W., 72.10 feet to the point of beginning.

Containing an area of 430,263 square feet (9.58 acres) more or less

PARCEL 8 (212-290-44) (Figure 6):

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

A PORTION OF LOT 39 OF THE NAGLEE BURK TRACT IN THE RANCHO EL PESCADERO ACCORDING TO THE OFFICIAL MAP, FILED IN VOLUME 5 OF MAPS AND PLATS, AT PAGE 18 OF THE SAN JOAQUIN COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT PARCEL THAT IS SHOWN AND DESCRIBED AS ASSESSOR'S PARCEL NUMBER 212-290-44.

PARCEL 9 (APN 212-260-09):

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

THAT PORTION OF LOTS 39 AND 40 OF NAGLEE BURK TRACT PER MAP FILED IN BOOK 5 OF MAPS AND PLATS, AT PAGE 18, OF THE SAN JOAQUIN COUNTY RECORDS, DESCRIBED AS FOLLOWS:

CONTAINING MORE OR LESS 2.78 ACRES (121,096 SQUARE FEET)

PARCEL 10 (APN 212-290-39) (Figures 4, 5):

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

A PORTION OF LOT 39 OF THE NAGLEE BURK TRACT IN THE RANCHO EL PESCADERO ACCORDING TO THE OFFICIAL MAP, FILED IN VOLUME 5 OF MAPS AND PLATS, AT PAGE 18 OF THE SAN JOAQUIN COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT PARCEL THAT IS SHOWN AND DESCRIBED AS ASSESSOR'S PARCEL NUMBER 212-290-39.



POR. NAGLEE BURK TRACT

THIS MAP IS FOR ASSESSMENT USE ONLY

212-29



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

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Figure 4 - Park-N-Ride (Entrance view)



Figure 5 - Park-N-Ride (Street view)



Figure 6 - Remnant Parcel

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**Exhibit B – Department of Finance LRPMP Inventory**

	Property No.	1	2	3	4	5	6	7	8	9	10		
HSC 34191.5 (c)(1)(C)	Address or Description	15 W 9th St	31 W 9th St	41 W 9th St	50 W Gillette Ally	71 W 9th St	918 N B St	Sewer Easement	Old Naglee Rd	3055 N Corral Hollow Rd	Park & Ride Parcel "A"	Park & Ride Parcel "B"	
	APN	235-056-15	235-056-16	235-056-17	235-056-19	235-056-21	235-056-22	212-040-28	212-290-44	212-260-09	212-290-41 from 212-290-39	212-290-39 (Remainder)	
	Property Type	Improved Public Parking						Public Utility Easement	Remnant Parcel		Vacant Lot/Land		
HSC 34191.5 (c)(2)	Permissible Use	Governmental Use								Sale of Property			
	If Sale of Property, specify intended use of sale proceeds	N/A								Distribute to Taxing Entities	Properties share an undivided interest between Successor Agency & City of Tracy; Distribute 50% share to Taxing Entities		
	Permissible Use Detail	Transfer property to City of Tracy for Government Use (Parking Lots)						Transfer property to City of Tracy for Government Use		Liquidate property for taxing entities			
HSC 34191.5 (c)(1)(A)	Acquisition Date	09/30/2004	09/30/2004	09/30/2004	03/29/2007	07/10/1990	7/25/1990	9/3/1996	10/25/1994	05/24/1995	10/25/1994	10/25/1994	
	Value at Time of Acquisition	976,000			70,000	540,000	750,000	0	0	0	0	0	
	Estimated Current Value	3,422,470						0	0	0	550,000	600,000	
	Date of Estimated Current Value	06/30/15						06/30/2015	06/30/15	06/30/2015	01/23/2015	10/01/2015	
	Estimated Current Value Basis	Book						Book	Book	Book	Appraised	Staff Estimate	
SALE OF PROPERTY (If applicable)	Proposed Sale Value	0						0	0	0	550,000	600,000	
	Proposed Sale Date	N/A						N/A	N/A	06/30/2016	01/01/2016	01/01/2017	
HSC 34191.5 (c)(1)(B)	Purpose for which property was acquired	Public Parking						Sewer line easement	Remnant parcel from Condemnation	Right of Way Acquisition Remnant	Remnant parcel from Condemnation		
HSC 34191.5 (c)(1)(C)	Lot Size	0.373	0.162	0.155	0.057	0.186	0.373	9.88	0.709	0.461	1.154	1.154	
		Acres	Acres	Acres	Acres	Acres	Acres	Acres	Acres	Acres	Acres	Acres	
	Current Zoning	Gov't						Unknown	Unknown	Unknown	PUD/Freeway Commercial		

	Property No.	1	2	3	4	5	6	7	8	9	10	
HSC 34191.5 (c)(1)(D)	Estimate of Current Parcel Value	0						0	0	0	550,000	550,000
HSC 34191.5 (c)(1)(E)	Annual Estimate of Income/Revenue	\$0 - the City of Tracy provides free, unmetered parking.						0	0	0	0	0
	Are there any contractual requirements for use of income/revenue?	No						No	No	No	No	No
HSC 34191.5 (c)(1)(F)	Has there been historic environmental contamination, studies, and/or remediation, and designation as a brownfield site for the property?	No	No	No	No	No	No	No	No	No	No	No
HSC 34191.5 (c)(1)(G)	Does the property have the potential as a transit oriented development?	No						No	No	No	No	No
	Were there advancements to the successor agency's planning objectives?	Yes						No	No	No	Yes	Yes
HSC 34191.5 (c)(1)(H)	Does the property have a history of previous development proposals and activity?	No						No	No	No	Yes	Yes

Property No.	1	2	3	4	5	6	7	8	9	10
Other Property Info							<p>Sewer easement and narrow band of property acquired through condemnation &amp; bankruptcy.</p> <p>The City and the Successor Agency have an undivided interest in the property.</p>	<p>This parcel created from the split of 212-290-44 which was originally acquired through condemnation proceedings during the construction of the I-205/Grant line Rd Interchange project.</p>	<p>Parcel is a land-locked remnant left over from the I-205/Grant Line Rd Interchange project.</p>	<p>These parcels created from split of 212-290-44 which were all originally acquired through condemnation proceedings during the construction of the I-205/Grant Line Rd Interchange project.</p> <p>The City and the Successor Agency have an undivided interest in the property.</p>
								<p>Abandoned 'Old Naglee Rd'. CalTrans requires this property for the future expansion of the I-205/Grant Line Rd expansion project.</p>		

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C 96100070 O

1 GARY R. RINEHART, SBN 34787  
TODD A. AMSPOKER, SBN 111245  
2 RINEHART & AMSPOKER  
2201 Broadway, Suite 805  
3 Oakland, California 94612  
Telephone: (510) 763-5100

FILED

SEP 5 1996

4 Attorneys for plaintiffs  
5 City of Tracy and Tracy  
Community Development Agency

U.S. Bankruptcy Court

7 UNITED STATES BANKRUPTCY COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
9 (MODESTO DIVISION)

10

11 In re

No. 92-94652-A-11

12 M.Y. ASSOCIATES, INC. dba Y.M.  
13 ASSOCIATES,

Adversary Proceeding No.  
96-9044-A

14 Debtor.

15 CITY OF TRACY and TRACY COMMUNITY  
16 DEVELOPMENT AGENCY,

FINAL ORDER OF  
CONDEMNATION

17 Plaintiffs

18 vs.

19 M. Y. ASSOCIATES, et al.,

20 Defendants.

21 Pursuant to the Stipulation for Judgment and Judgment  
22 entered in this proceeding;

23 IT IS HEREBY ORDERED AND ADJUDGED that the real property  
24 situated in the County of San Joaquin, State of California, and  
25 more particularly described in Exhibit "A", attached hereto and  
26 made a part hereof, be condemned to Plaintiff in fee simple  
27 absolute.  
28



96100070

RECORDER  
COUNTY CLERK  
JAMES M. JOHNSON

96 OCT -1 AM 11:07

SAH JOAQUIN COUNTY  
ATTORNEY

FEE \_\_\_\_\_

*exempt*

Recording Requested By:

City of Tracy

Return to: TODD A. AMEPOKER  
RINEHART & AMEPOKER  
2201 Broadway, Suite 805  
Oakland, CA 94612  
Attorneys for  
City of Tracy

Document Title(s)

FINAL ORDER OF CONDEMNATION

RECORDED TO FILE



96100070

1 IT IS FURTHER ORDERED AND ADJUDGED that a certified copy of  
 2 this Order be recorded in the office of the Recorder of San  
 3 Joaquin County, State of California, and thereupon title to said  
 4 property described in Exhibit "A" shall vest in Plaintiff in fee  
 5 simple absolute and all interest of Defendants M.V. ASSOCIATES,  
 6 INC., dba Y.M. ASSOCIATES, GEORGE PADIS, JOSEPHINE PADIS, GEORGE  
 7 KASTELANIDES and his spouse, DONALD H. VALLEY, MARY J. POMBO,  
 8 JOYCE DONALDSON, individually and as trustee, ALICE E. BURROWS,  
 9 BETTY ROSE MATTOS, ALFRED P. POMBO, MABEL POMBO, VIRGINIA P.  
 10 ABEL, trustee, DAMON R. POMBO, PAULINE POMBO, ISABEL L. MATTOS,  
 11 KING, SHAPIRO, MITTELMAN & BUCHMAN, MILLER, STARR & REGALIA,  
 12 ANGELO TSAKOPOULOS, FROSA CHRISTOPHER, PELLE FINANCIAL  
 13 CORPORATION, ALL-AMERICAN FORECLOSURE SERVICE, YIANNI Y.  
 14 MICHAELIDES aka YIANNI Y. MICHAEL, JEAN MICHAELIDES, CALIFORNIA  
 15 TRUST DEEDS, INC., THE JONATHAN GROUP, FIRST AMERICAN TITLE  
 16 COMPANY, TRACY 19.6, a California general partnership, ANDREW  
 17 GIANULIAS, JULIE GIANULIAS, and GUS GIANULIAS shall be  
 18 terminated.

19 IT IS FURTHER ORDERED AND ADJUDGED that the underground  
 20 sewer easement more particularly described in Exhibit "B"  
 21 attached hereto and made a part hereof be condemned to Plaintiff  
 22 and as against Defendants M.V. ASSOCIATES, INC., dba Y.M.  
 23 ASSOCIATES, GEORGE PADIS, JOSEPHINE PADIS, GEORGE KASTELANIDES  
 24 and his spouse, DONALD H. VALLEY, MARY J. POMBO, JOYCE DONALDSON,  
 25 individually and as trustee, ALICE E. BURROWS, BETTY ROSE MATTOS,  
 26 ALFRED P. POMBO, MABEL POMBO, VIRGINIA P. ABEL, trustee, DAMON R.  
 27 POMBO, PAULINE POMBO, ISABEL L. MATTOS, KING, SHAPIRO, MITTELMAN  
 28 & BUCHMAN, MILLER, STARR & REGALIA, ANGELO TSAKOPOULOS, FROSA

96100070

1 CHRISTOPHER, PELLE FINANCIAL CORPORATION, ALL-AMERICAN  
 2 FORECLOSURE SERVICE, YIANNI V. MICHAELIDES aka YIANNI V. MICHAEL,  
 3 JEAN MICHAELIDES, CALIFORNIA TRUST DEEDS, INC., THE JONATHAN  
 4 GROUP, FIRST AMERICAN TITLE COMPANY, TRACY 19.6, a California  
 5 general partnership, ANDREW GIANULIAS, JULIE GIANULIAS, and GUS  
 6 GIANULIAS.

7  
8 Dated: 3 Sept. 1996

*Jh. mm*  
 JUDGE OF THE UNITED  
 STATES BANKRUPTCY COURT

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This is to certify  
 copy of the original  
 of the undersigned Bankruptcy Judge

Dated: 9-23-96 Michael S. McManus  
 Bankruptcy Judge

By *Beneck*  
 Deputy Clerk

96100070

LEGAL DESCRIPTION  
SANITARY SEWER EASEMENT

A 20 FOOT WIDE SANITARY SEWER EASEMENT SITUATE IN THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOT 39 OF THE NAGLEE BURK TRACT IN THE RANCHO EL PESCADERO AS SHOWN ON THE MAP FILED MARCH 7 1911 IN VOLUME 5 AT PAGE 18 OF OFFICIAL MAPS AND FLATS OF SAN JOAQUIN COUNTY AND BEING ALSO A PORTION OF THE LANDS OF M.Y ASSOCIATES, INC. AS DESCRIBED IN THE GRANT DEED SERIES 88-088612 OF OFFICIAL RECORDS OF SAID COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT A POINT ON THE EASTERLY LINE OF LOT 39 OF SAID NAGLEE BURK TRACT BEING MARKED UPON THE GROUND BY AN 3/4" IRON PIPE AS SHOWN ON THE RECORD OF SURVEY MAP FILED AUGUST 28 1969 IN BOOK 19 OF SURVEYS AT PAGE 122 OF OFFICIAL RECORDS OF SAN JOAQUIN COUNTY FROM WHICH THE NORTHEAST CORNER OF LOT 36A OF SAID NAGLEE BURK TRACT BEING MARKED UPON THE GROUND BY A SPIKE WITH CHISELED CROSS AS SHOWN ON SAID RECORD OF SURVEY BEARS NORTH 00°28'17" WEST 4588.84 FEET; THENCE FROM SAID POINT OF COMMENCEMENT COINCIDENT WITH THE CENTERLINE OF NAGLEE ROAD AND BEING ALSO THE EASTERLY LINE LOT 39 OF SAID NAGLEE BURK TRACT NORTH 00°28'17" WEST 875.77 FEET; THENCE SOUTH 89°31'43" WEST 30.00 FEET TO THE NORTHEASTERLY CORNER OF PARCEL "B" AS SHOWN ON SAID RECORD OF SURVEY; THENCE COINCIDENT WITH THE NORTHERLY LINE OF SAID PARCEL "B" SOUTH 89°31'43" WEST 264.00 FEET TO THE NORTHWESTERLY CORNER OF SAID PARCEL "B"; THENCE COINCIDENT WITH THE NORTHERLY LINE OF PARCEL "A" AS SHOWN ON SAID RECORD OF SURVEY SOUTH 89°31'43" WEST 685.09 FEET TO THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING COINCIDENT WITH SAID NORTHERLY LINE NORTH 89°31'43" EAST 30.85 FEET; THENCE SOUTH 49°07'16" WEST 141.52 FEET TO THE WESTERLY LINE OF LOT 39 OF SAID NAGLEE BURK TRACT SAID COURSE BEING PARALLEL AND DISTANT 85.00 FEET FROM THE CENTERLINE OF THE SOUTHERLY TRANSMISSION LINE TOWERS AS THEY NOW EXIST; THENCE COINCIDENT WITH SAID WESTERLY LINE NORTH 00°28'17" WEST 26.27 FEET; THENCE NORTH 49°07'16" EAST 101.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,425 SQUARE FEET OR 0.056 ACRES MORE OR LESS.

END OF DESCRIPTION

file is: c:\tracy\plats\legaldac  
parcel: m.y. associates - ssa  
apn 212-040-28

EXHIBIT B

96100070

City of Tracy  
County of San Joaquin

A.P. No. 212-040-28  
M.Y. Associates, et al

### Legal Description

That portion of Lot 39 of the Naglee Burk Tract in the City of Tracy, County of San Joaquin, State of California, as per map recorded in Volume 5, Page 18, of Book of Maps and Plans in the office of the County Recorder of said County, described as follows:

BEGINNING at the intersection of the westerly line of said Lot 39 and the northerly line of Naglee Road as described as Parcel 5 in the Final Order of Condemnation recorded September 26, 1969 in Book 3338, Page 327, of Official Records in said office of the County Recorder; thence along said westerly line N.  $0^{\circ}02'45''$  W., 396.84 feet to the beginning of a curve concave to the southeast having a radius of 661.00 feet; thence leaving said line from a tangent line bearing N.  $58^{\circ}01'49''$  E., northeasterly 184.30 feet along said curve through a central angle of  $15^{\circ}58'30''$ ; thence N.  $74^{\circ}00'19''$  E., 405.89 feet to the beginning of a curve concave to the northwest having a radius of 539.00 feet; thence northeasterly 17.25 feet along said curve through a central angle of  $1^{\circ}50'00''$  to the beginning of a curve concave to the northwest having a radius of 35.00 feet; thence northerly 62.02 feet along said curve through a central angle of  $101^{\circ}31'52''$ ; thence N.  $29^{\circ}21'33''$  W., 50.62 feet; thence N.  $60^{\circ}38'27''$  E., 134.50 feet; thence S.  $29^{\circ}21'33''$  E., 50.00 feet to the beginning of a curve concave to the north having a radius of 35.00 feet; thence easterly 62.23 feet along said curve through a central angle of  $101^{\circ}52'46''$  to the beginning of a curve concave to the northwest having a radius of 539.00 feet; thence easterly 180.50 feet along said curve through a central angle of  $19^{\circ}11'12''$  to the southerly line of Parcel B as per map recorded in Book 19, Page 122 of Surveys in the office of said County Recorder; thence along said line N.  $89^{\circ}57'15''$  E., 141.84 feet to the beginning of a curve concave to the northwest having a radius of 666.00 feet; thence leaving said line from a tangent line bearing S.  $23^{\circ}31'57''$  W. southwesterly 306.71 feet along said curve through a central angle of  $26^{\circ}23'12''$  to Point A; thence on a non-tangent line S.  $11^{\circ}06'39''$  W., 43.87 feet; thence S.  $27^{\circ}41'51''$  E., 176.30 feet to the beginning of a curve concave to the northeast having a radius of 314.96 feet; thence southeasterly 20.20 feet along said curve through a central angle of  $3^{\circ}40'30''$  to said northerly line of Naglee Road the beginning of a curve concave to the northwest having a radius of 570.00 feet; thence along said line from a tangent line bearing S.  $35^{\circ}32'38''$  W., southwesterly 345.33 feet along said curve through a central angle of  $34^{\circ}42'42''$ ; thence S.  $70^{\circ}15'20''$  W., 405.62 feet to the beginning of a curve concave to the north having a radius of 570.00 feet; thence westerly 200.21 feet along said curve through a central angle of  $20^{\circ}07'30''$ ; thence N.  $89^{\circ}37'10''$  W., 72.10 feet to the point of beginning.

Containing an area of 430,263 square feet (9.88 acres) more or less.

EXHIBIT A

96100070

This conveyance is made for the purpose of a freeway and the grantor hereby releases and relinquishes to the grantee any and all abutter's rights of access, appurtenant to grantor's remaining property, in and to said freeway over and across the following courses:

Beginning at the above-described Point A; thence S. 11°06'39"W., 43.87 feet; thence S. 27°41'51" E., 176.30 feet to the beginning of a curve concave to the northeast having a radius of 314.96 feet; thence southeasterly 20.20 feet along said curve through a central angle of 3°40'30" to said northerly line of Naglee Road, the point of termination.

The bearings and distances used are on the California Coordinate System of 1983, Zone 3. Multiply distances used by 1.0000675 to obtain ground level distances.

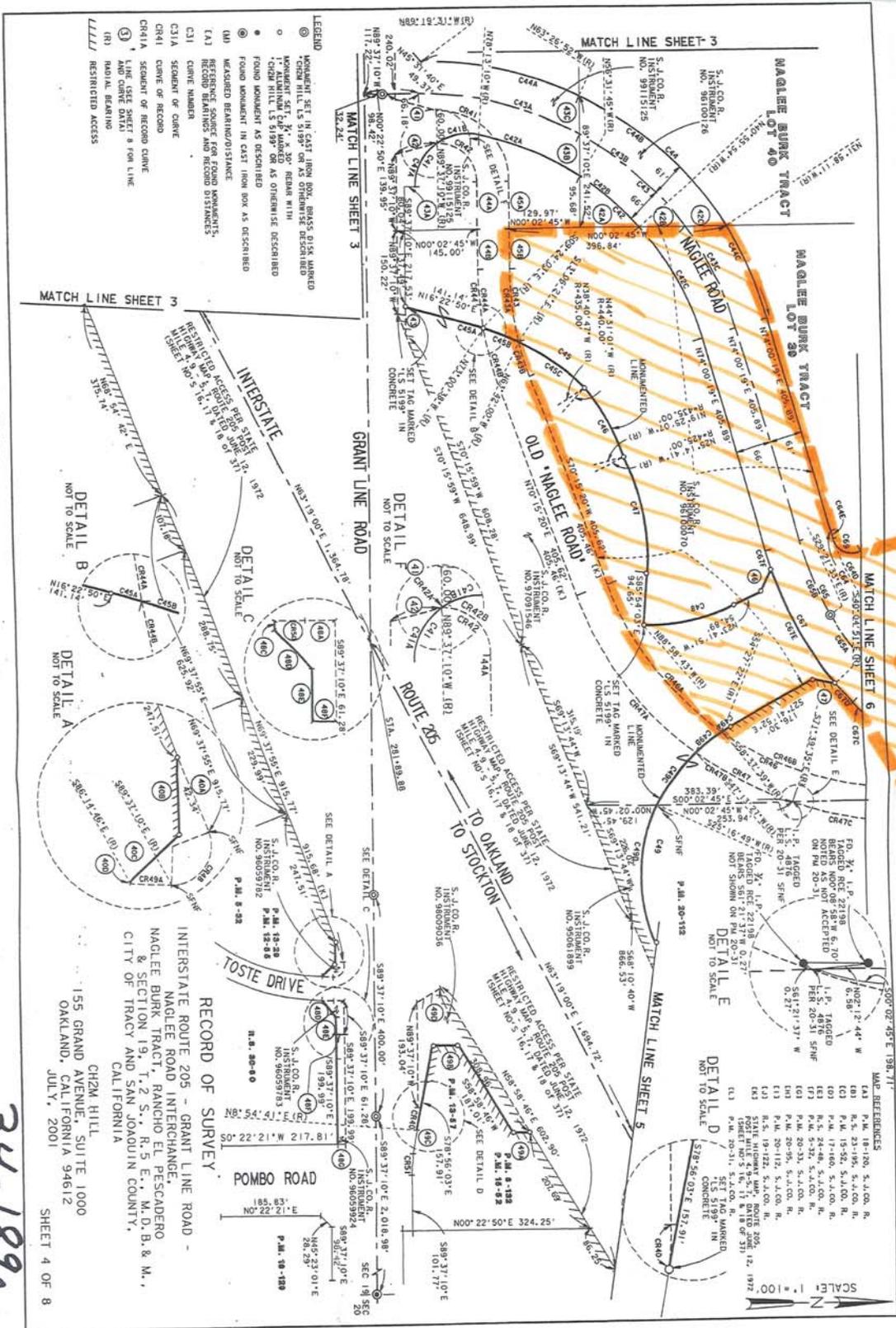
This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Robert Ray Vaughn  
Robert Ray Vaughn LS 5199

12-4-95  
Date



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34-189c

34-189c

The plot of APN 212-040-28's legal description as shown in the Final Order of Condemnation was interpreted by City staff. This has not been surveyed and is believed to be an accurate visualization of the Legal description of APN 212-040-28 but no warranty is express or implied.

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**RECORDING REQUESTED BY:**

**CITY OF TRACY**

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

Doc #: 2012-126277  
09/28/2012 08:49:08 AM  
Page: 1 of 5 Fee: \$0  
Kenneth W Blakemore  
San Joaquin County Recorders  
Paid By: SHOWN ON DOCUMENT



Space above this line for Recorder's Use

**QUITCLAIM DEED**

APN 212-290-44

District	County	Route	Post Mile	Number
10	SJ	205	5.3	16585-1

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
CITY OF TRACY, a municipal corporation,

does hereby remise, release, and quitclaim to the STATE OF CALIFORNIA, all of its rights, title, and interest in the following described real property in the City of Tracy, County of San Joaquin, State of California, as described in Exhibit "A" and "B", attached hereto and made a part hereof.

SEE

ATTACHED

LEGAL DESCRIPTION

for

"OLD NAGLEE ROAD"

APN 212-290-44

Number  
16585-1

IN WITNESS WHEREOF, said corporation has caused its corporate name to be hereunto subscribed and its corporate seal to be affixed hereto, this 20<sup>th</sup> day of SEPTEMBER 2012.

CITY OF TRACY

Brent H. Ives  
By: Brent Ives  
Title: City Mayor

Date: 9/20/12

Attest:  
Sandra Edwards  
By: Sandra Edwards  
Title: City Clerk

Date: 9-20-12

[CORPORATE SEAL]

**ACKNOWLEDGMENT**

State of California }  
County of San Joaquin } SS

(Here insert name and title of the officer)

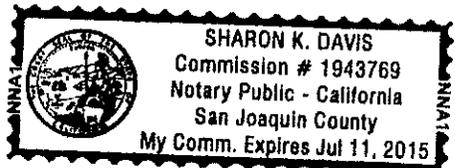
On 9/20/12 before me, Sharon K. Davis, Notary Public, personally appeared Brent H. Ives

\_\_\_\_\_, 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 Sharon K. Davis (Seal)



**THIS IS TO CERTIFY**, That the State of California, acting by and through the Department of Transportation (pursuant to Government Code Section 27281), hereby accepts for public purposes the real property described in the within deed and consents to the recordation thereof.

IN WITNESS WHEREOF, I have hereunto set my hand This 27<sup>th</sup> day of September, 2012.

MALCOM DOUGHERTY  
Acting Director of Transportation  
By Sharon A. Parsons  
Attorney in Fact

SHARON A. PARSONS  
RIGHT OF WAY ACQUISITIONS CHIEF  
E-2

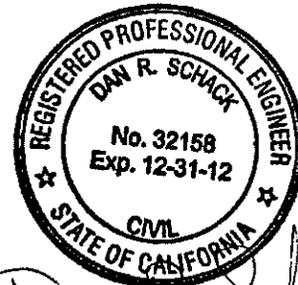
LEGAL DESCRIPTION  
"OLD NAGLEE ROAD"  
212-290-44

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

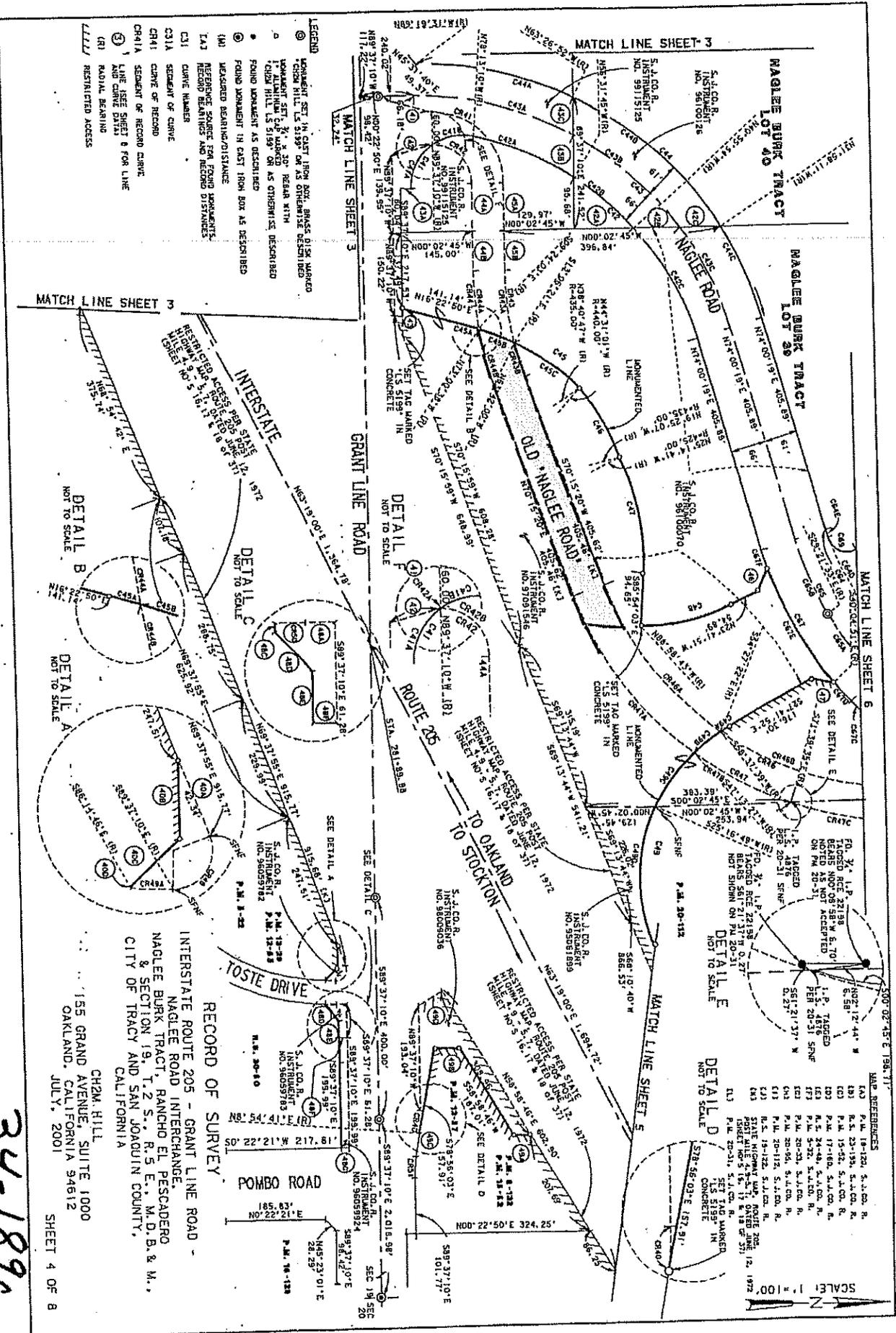
A PORTION OF LOTS 39 AND 40 OF NAGLEE BURK TRACT ACCORDING TO THE OFFICIAL MAP THEREOF, FILED IN VOLUME 5 OF MAPS AND PLATS, PAGE 18, SAN JOAQUIN COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF PARCEL A, AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED FOR RECORD JULY 13, 2005 IN BOOK 23 OF PARCEL MAPS, AT PAGE 125, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH 16 DEGREES 22 MINUTES 50 SECONDS EAST, ALONG THE EASTERLY LINE OF SAID PARCEL A AND PARCEL C OF SAID MAP, 141.14 FEET TO A POINT; THENCE CONTINUING ALONG SAID EASTERLY LINE OF PARCEL C, ALONG A CURVE TO THE NORTHWEST, HAVING A RADIUS OF 440.00 FEET, AN ARC LENGTH OF 4.67 FEET, A CENTRAL ANGLE OF 00 DEGREES 36 MINUTES 32 SECONDS AND A CHORD BEARING NORTH 16 DEGREES 41 MINUTES 07 SECONDS EAST, 4.67 FEET TO A POINT ON THE SOUTH LINE OF "OLD NAGLEE ROAD" AS SHOWN UPON THAT CERTAIN RECORD OF SURVEY MAP, FILED FOR RECORD ON AUGUST 30, 2001 IN BOOK 34 OF SURVEYS, AT PAGE 189, SAN JOAQUIN COUNTY RECORDS, SAID POINT ALSO BEING THE **TRUE POINT OF BEGINNING** OF THE HEREIN DESCRIBED STRIP OF LAND; THENCE CONTINUING ALONG THE EASTERLY LINE OF PARCEL C AS SHOWN ON SAID PARCEL MAP (BOOK 23, PAGE 125) ALONG A CURVE TO THE NORTHWEST, HAVING A RADIUS OF 440.00 FEET, AN ARC LENGTH OF 71.50 FEET, A CENTRAL ANGLE OF 09 DEGREES 18 MINUTES 38 SECONDS AND A CHORD BEARING 21 DEGREES 38 MINUTES 40 SECONDS EAST, 71.42 FEET TO A POINT ON THE NORTH LINE OF "OLD NAGLEE ROAD" AS SHOWN ON SAID RECORD OF SURVEY (BOOK 34, PAGE 189); THENCE ALONG SAID NORTH LINE OF "OLD NAGLEE ROAD" ALONG A CURVE TO THE NORTHEAST, HAVING A RADIUS OF 570.00 FEET, AN ARC LENGTH OF 66.04 FEET, A CENTRAL ANGLE OF 06 DEGREES 38 MINUTES 19 SECONDS AND A CHORD BEARING NORTH 73 DEGREES 34 MINUTES 31 SECONDS EAST, 66.00 FEET TO A POINT; THENCE CONTINUING ALONG SAID NORTH LINE OF "OLD NAGLEE ROAD" NORTH 70 DEGREES 15 MINUTES 20 SECONDS EAST, ALONG SAID NORTH LINE OF "OLD NAGLEE ROAD," 405.62 FEET TO A POINT; THENCE CONTINUING ALONG SAID NORTH LINE OF "OLD NAGLEE ROAD" ALONG A CURVE TO THE NORTHEAST, HAVING A RADIUS OF 570.00 FEET, AN

ARC LENGTH OF 78.68 FEET, A CENTRAL ANGLE OF 07 DEGREES 54 MINUTES 31 SECONDS, AND A CHORD BEARING NORTH 66 DEGREES 18 MINUTES 04 SECONDS EAST, 78.62 FEET TO A POINT; THENCE SOUTHERLY ALONG A CURVE TO THE SOUTHWEST, HAVING A RADIUS OF 395.00 FEET, AN ARC LENGTH OF 75.23 FEET, A CENTRAL ANGLE OF 10 DEGREES 54 MINUTES 46 SECONDS AND A CHORD BEARING SOUTH 11 DEGREES 33 MINUTES 08 SECONDS WEST, 75.12 FEET TO A POINT ON THE SOUTH LINE OF SAID "OLD NAGLEE ROAD"; THENCE ALONG SAID SOUTH LINE OF "OLD NAGLEE ROAD," ALONG A CURVE TO THE SOUTHWEST, HAVING A RADIUS OF 630.00 FEET, AN ARC LENGTH OF 39.43 FEET, A CENTRAL ANGLE OF 03 DEGREES 35 MINUTES 10 SECONDS AND A CHORD BEARING SOUTH 68 DEGREES 27 MINUTES 45 SECONDS WEST, 39.43 FEET TO A POINT; THENCE CONTINUING ALONG SAID SOUTH LINE OF "OLD NAGLEE ROAD" SOUTH 70 DEGREES 15 MINUTES 20 SECONDS WEST, 405.62 FEET TO A POINT; THENCE CONTINUING ALONG SAID SOUTH LINE OF "OLD NAGLEE ROAD", ALONG A CURVE TO THE SOUTHWEST, HAVING A RADIUS OF 630.00 FEET, AN ARC LENGTH OF 113.73 FEET, A CENTRAL ANGLE OF 10 DEGREES 20 MINUTES 37 SECONDS AND A CHORD BEARING SOUTH 75 DEGREES 25 MINUTES 39 SECONDS WEST, 113.58 FEET TO THE POINT OF BEGINNING.



34-189c



- LEGEND**
- ① MONUMENT SET IN CAST IRON BOX, BRASS DISC, MARCO CERAM TILE, 1/2" OR 3/4" DIA. OR OTHER DEVICE DESCRIBED
  - ② MONUMENT SET IN CAST IRON BOX, BRASS DISC, MARCO CERAM TILE, 1/2" OR 3/4" DIA. OR OTHER DEVICE DESCRIBED
  - ③ FOUND MONUMENT AS DESCRIBED
  - ④ FOUND MONUMENT IN CAST IRON BOX AS DESCRIBED
  - ⑤ MEASURED BEARING/DISTANCE
  - ⑥ REFERENCE SOURCE FOR FOUND MONUMENTS, RECORD BEARINGS AND RECORD DISTANCES
  - ⑦ CURVE NUMBER
  - ⑧ ELEMENT OF CURVE
  - ⑨ CURVE OF RECORD
  - ⑩ ELEMENT OF RECORD CURVE
  - ⑪ CURVE DATA
  - ⑫ RESTRICTED ACCESS

- RECORD OF SURVEY**
- INTERSTATE ROUTE 205 - GRANT LINE ROAD - NAGLEE ROAD INTERCHANGE, NAGLEE BURK TRACT, RANCHO EL PESCADERO & SECTION 19, T.2 S., R.5 E., M.D.B. & M., CITY OF TRACY AND SAN JOAQUIN COUNTY, CALIFORNIA
- CH2M HILL  
155 GRAND AVENUE, SUITE 1000  
OAKLAND, CALIFORNIA 94612  
JULY, 2001
- SHEET 4 OF 8

**NAD REFERENCES**

NO.	DIST.	DATE	BY
1	18-120	5.1.00	R.
2	23-158	5.1.00	R.
3	15-52	5.1.00	R.
4	17-160	5.1.00	R.
5	24-48	5.1.00	R.
6	5-32	5.1.00	R.
7	20-23	5.1.00	R.
8	19-122	5.1.00	R.
9	20-112	5.1.00	R.
10	15-122	5.1.00	R.
11	20-31	5.1.00	R.
12	20-31	5.1.00	R.
13	20-31	5.1.00	R.

34-189c

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June 15, 2016

Jon Becker  
Becker Commercial Properties  
9727 Elk Grove-Florin Road  
Suite 210  
Elk Grove, CA 95624

RE: MOD SUPER FAST PIZZA LOI

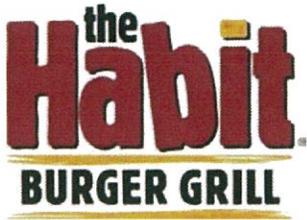
Dear Jon:

This letter shall confirm that MOD Pizza has entered into a letter of intent with Becker Commercial Properties for premises to be located in a building on Parcel B at Naglee Road.

Sincerely,  
Cushman & Wakefield

James Chung  
Executive Managing Director  
License# 01408190





June 14, 2016

To Whom It May Concern:

We, The Habit Burger Grill, have entered into a Letter of Intent with Jon Becker regarding the property in Tracy, CA. The Property is referred to as Parcel B at Naglee Road.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a long horizontal line that extends to the right.

Chris Schlueter  
Director of Real Estate

**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 the City of Tracy, a California municipal corporation ("City"), the Successor Agency to the Community Development Agency of the City of Tracy, collectively referred to herein as the "Seller", and Becker Commercial Properties, a California corporation, its nominee or assigns ("Buyer").

**RECITALS**

A. The Seller owns a 1.45± acre parcel of real property ("City Parcel") located at Naglee Road to the immediate east and adjacent to 2512 Naglee Road, in the City of Tracy, San Joaquin County, California, as more particularly described in Exhibit A, attached.

B. On April 21, 2015, The City's City Council deemed this City Parcel (APN#212-290-39) as surplus land.

C. City subdivided the City Parcel into three parcels, A, B and C, as shown on the Site Plan attached as Exhibit B. Parcel B contains approximately 63,193± square feet of land area, and is referred to here as the "Property". Seller further wishes to sell fee title interest in said Property.

D. City and Buyer entered into an Exclusive Negotiating Rights Agreement dated January 19, 2016 (and that Agreement superseded an Exclusive Negotiating Rights Agreement dated May 17, 2013, extended by City letter dated September 29, 2014, and subsequently extended by City Council Resolution date February 10, 2015). Following negotiations, Seller wishes to sell the Property and Buyer wishes to purchase the Property from Seller 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. Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller all said interest in the Property on the terms set forth in this Agreement. The "Effective Date" is the date on which the last party executes the Agreement.

2. Purchase Price. The purchase price ("Purchase Price") for the Property is Six Hundred and Sixty Thousand Dollars (\$660,000). The Purchase Price shall be payable by Buyer to Seller through Escrow at the Close of Escrow.

3. Escrow.

(a) Opening of Escrow. On or before the third business day following the Effective Date, Seller shall open an escrow ("Escrow") with Old Republic Title Company, 150 W. 10<sup>th</sup> Street, Tracy, CA 95376 (Tel: 209-835-1331) ("Escrow Holder"). Buyer and Seller 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 Seller, and Seller 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, Seller 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 Seller 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 Seller 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 Seller that title to the Property be conveyed to Buyer by Seller 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").

Seller 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, Seller, within five business days after receipt of Buyer's objection, shall notify Buyer in writing whether Seller 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 tenant(s) 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 tenant(s) lease agreement(s) which can be satisfied before Close of Escrow.

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

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

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

(b) Conditions to City's Obligations. The Close of Escrow and Seller'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 Seller or Buyer, this Agreement shall terminate, and the parties shall have no further obligations hereunder.

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

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

(b) FIRPTA Certificate. If deemed to be required by Escrow Holder, a certification, acceptable to Escrow Holder and duly executed by Seller 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.

8. Issuance of Title Insurance. At the Close of Escrow, Seller 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 Seller 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 Seller 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 Seller. All supplemental taxes billed after the Close of Escrow for periods before the Close of Escrow shall be paid promptly by Seller.

(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, Seller and Buyer as applicable make the following representations and warranties, each of which is material and is being relied upon by the other party:

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

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

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

12. Buyer's Acknowledgements.

(a) "AS IS" PURCHASE. Buyer specifically acknowledges and agrees that Seller 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 Seller, 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 Seller or any of its respective agents, employees or contractors to select or furnish the Property for any particular purpose, and that Seller 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. Seller 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 do not occur as a result of any default by Seller 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), Seller 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 Seller given not later than ten days after receipt of Seller'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 Seller 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 Seller each represent to the other that they have dealt with no real estate broker or agent other than Chris Sill of Lee & Associates, who represents Buyer ("Buyer's Broker"). Buyer shall pay a commission to Buyer's Broker under the terms of a separate commission agreement between Buyer and Buyer's Broker. Buyer and Seller each agree to indemnify and hold the other harmless from all expense, loss, damage and claims, including the attorneys' fees, if necessary, arising out of a breach of this Section 15.

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

To Seller:

Development Services Director  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376  
E-Mail: [Andrew.Malik@ci.tracy.ca.us](mailto:Andrew.Malik@ci.tracy.ca.us)

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

To Buyer: Becker Commercial Properties  
P.O. Box 590  
Wilton, CA 95693  
E-Mail: jon.becker@bcprop.net

ESCROW HOLDER: Old Republic Title Company  
150 W. 10<sup>th</sup> Street  
Tracy, CA 95376  
(209) 835-1331

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

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

18. Miscellaneous.

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

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

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

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

(e) Professional Fees. If either party commences an action against the other regarding this Agreement, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses and court costs and other costs of action incurred in connection with the prosecution or defense of the action, whether or not the action is prosecuted to a final judgment. For the purpose of this Agreement, the terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties, which may include printing, photocopying, duplicating and other expenses, delivery charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the

supervision of an attorney. The terms “attorneys’ fees” or “attorneys’ fees and costs” shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which the fees and expenses were incurred.

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

(g) Time of Essence. Buyer and Seller 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.

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

CITY:

BUYER:

**The City of Tracy,**  
a California municipal corporation

**Becker Commercial Properties,**  
A California corporation

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

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

Date: \_\_\_\_\_

Date: 6/27/16

*Approved as to Form:*

By: \_\_\_\_\_  
Name: Bill Sartor  
Title: City Attorney

Date: \_\_\_\_\_

SUCCESSOR AGENCY TO THE CITY OF  
TRACY COMMUNITY DEVELOPMENT  
AGENCY (SATCDA):

**SATCDA**, a public entity

By: \_\_\_\_\_  
Name: Michael Maciel  
Title: Chair  
Date: \_\_\_\_\_

*Approved as to Form:*

By: \_\_\_\_\_  
Name: Bill Sartor  
Title: Counsel for SATCDA

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Name: Nora Pimentel  
Title: City Clerk

Date: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

**EXHIBIT A  
PAGE 1 OF 1**

**LEGAL DESCRIPTION**

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

A PORTION OF LOT 39 OF THE NAGLEE BURK TRACT IN THE EL RANCHO PESCADERO, 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:

A PORTION 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, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF PARCEL "B", AS SHOWN UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD ON APRIL 27, 2016, IN BOOK 26 OF PARCEL MAPS, AT PAGE 54 OF THE SAN JOAQUIN COUNTY RECORDS.

CONTAINING 63,193 SQUARE FEET OR 1.4507 ACRES, MORE OR LESS

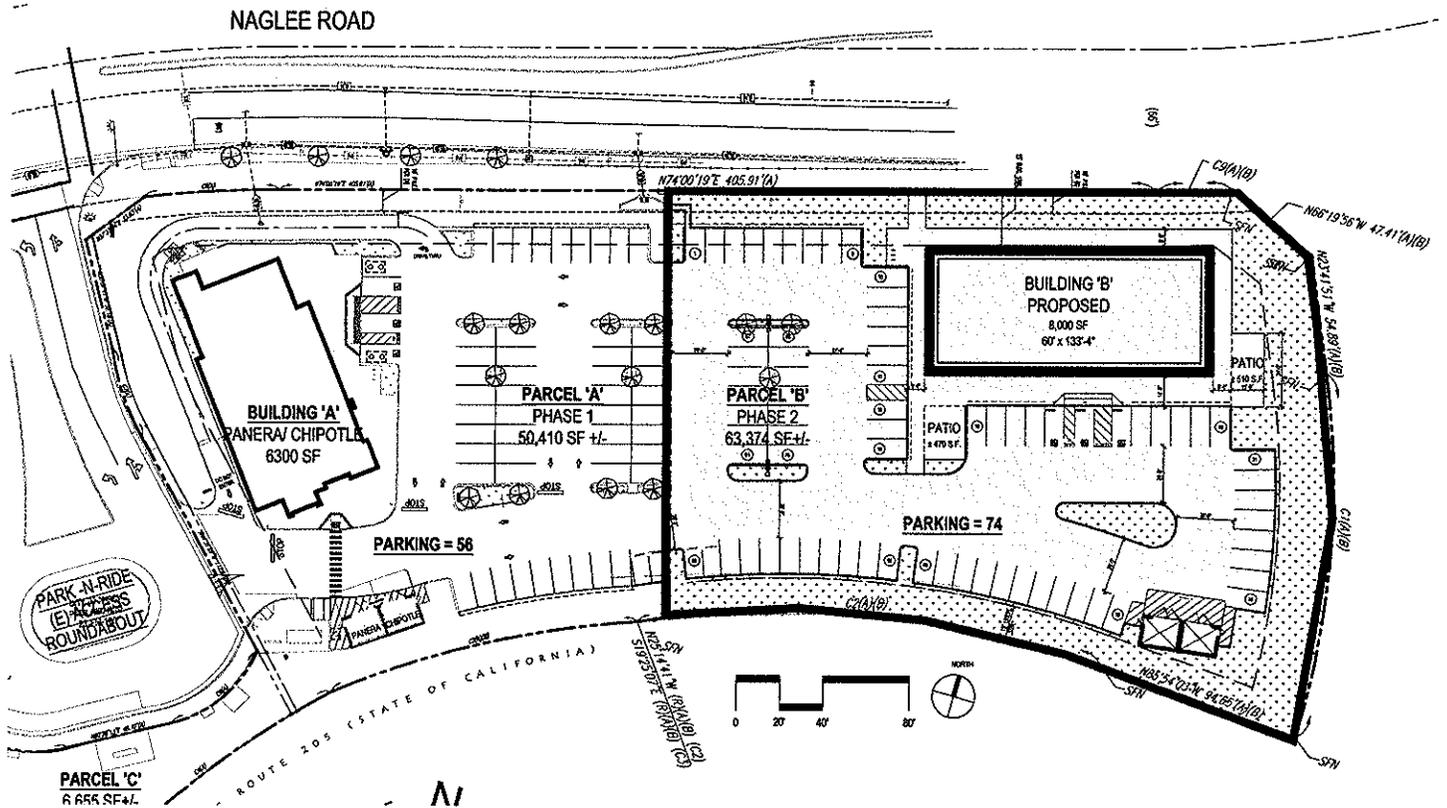
01-061316cm



EXHIBIT B

SITE PLAN

# Proposed Phase 2 Site Redevelopment Plan Naglee Rd



## PHASE 2 SITE REDEVELOPMENT PLAN, OPTION 4

DATE: JANUARY 14, 2016

OWNER: Becker Commercial Properties  
Jon Becker, Principal  
PO Box 590, Wilton, CA 95693  
Phone: 916-714-9151, Email: jon.becker@bcprop.net

GRANT LINE ROAD/ INTERSTATE HWY. 205  
PARK AND RIDE PHASE 2  
TRACY, CA 95304

**VMI architecture**  
Design - Planning - Interior  
12700 Riverbank Blvd., Suite 200  
Tracy, CA 95304  
Tel: 916-463-2000 Fax: 916-463-2001  
www.vmiarch.com

RESOLUTION 2016-\_\_\_\_\_

ADOPTING A RESOLUTION OF THE SUCCESSOR AGENCY TO THE TRACY COMMUNITY DEVELOPMENT AGENCY APPROVING THE LONG-RANGE PROPERTY MANAGEMENT PLAN AND AUTHORIZING STAFF AND THE BOARD OF THE SUCCESSOR AGENCY TO EXECUTE ALL DOCUMENTS AND INSTRUMENTS AND TO DO ANY AND ALL OTHER THINGS WHICH THEY MAY DEEM NECESSARY OR ADVISABLE TO EFFECTUATE THE LONG-RANGE PROPERTY MANAGEMENT PLAN

WHEREAS, The California state legislature enacted Assembly Bill X1 26 (the Dissolution Act") to dissolve Redevelopment Agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et.seq.), and

WHEREAS, Pursuant to Health and Safety Code Section 34175(b) and the California Supreme Court's decision in California Redevelopment Association, et al. v. Ana Matosantos, etal. (53 Cal.4th 231(2011)), on February 1, 2012, all assets, properties, contracts, leases, books and records, buildings, and equipment of the former Community Development Agency of the City of Tracy (the "Agency") transferred to the control of the Successor Agency to the Community Development Agency of the City of Tracy (the "Successor Agency") by operation of law, and

WHEREAS, Pursuant to AB 1484 ("AB 1484"), enacted June 27, 2012 to amend various provisions of the Dissolution Act, the Successor Agency is now declared to be a separate legal entity from the City, and

WHEREAS, In accordance with Health and Safety Code Section 34191.5, the Successor Agency has prepared a Long-Range Property Management Plan that provides for the disposition and use of real property assets of the former Agency, and

WHEREAS, Pursuant to Health and Safety Code Section 34191.5(b), the Successor Agency must submit the Long-Range Property Management Plan to the Oversight Board and the California Department of Finance (the "DOF"), and

WHEREAS, Pursuant to Health and Safety Code Section 34191.3, once approved by the Oversight Board and the DOF, the Long-Range Property Management Plan will govern, and supersede all other provisions relating to, the disposition and use of the real property assets of the Successor Agency, and

WHEREAS, The Oversight Board approved the Long-Range Property Management Plan on December 1, 2015, and

WHEREAS, The DOF approved the Long-Range Property Management Plan on December 30, 2015, and

WHEREAS, The accompanying staff report provides supporting information upon which the action set forth in this Resolution is based;

NOW, THEREFORE, BE IT RESOLVED, That the Successor Agency to the Tracy Community Development Agency hereby finds, determines, resolves, and orders as follows:

Section 1. The above recitals are true and correct and are a substantive part of this Resolution.

Section 2. The Successor Agency hereby finds and determines that the Long-Range Property Management Plan is created in accordance with Health and Safety Code Section 34191.5(b).

Section 3. The Successor Agency, as necessary, implement the disposition and use of the real property assets of the Former Community Development Agency of the City of Tracy in accordance with the terms approved in the Long-Range Property Management Plan and this Resolution.

Section 4. The staff and the Board of the Successor Agency are hereby authorized and directed, jointly and severally, to execute such documents and instruments and to do any and all other things which they may deem necessary or advisable to effectuate the Long-Range Property Management Plan.

Section 5. This Resolution shall take effect at the time and in the manner prescribed in Health and Safety Code Section 34179(h).

\*\*\*\*\*

ADOPTED, July 19, 2016, by the Successor Agency of the Tracy Community Development Agency.

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
CHAIR

ATTEST:

\_\_\_\_\_  
SUCCESSOR AGENCY SECRETARY

RESOLUTION 2016-\_\_\_\_\_

AUTHORIZING A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF TRACY (CITY), THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF TRACY (AGENCY), AND BECKER COMMERCIAL PROPERTIES (BCP), A CALIFORNIA COMPANY, AND AUTHORIZING THE MAYOR ON BEHALF OF THE CITY AND CHAIRMAN ON BEHALF OF THE SUCCESSOR AGENCY TO EXECUTE THE AGREEMENT AND RELATED DOCUMENTS

WHEREAS, The City and the Successor Agency to the City of Tracy Community Development Agency are joint owners of the 1.45± acre real property located to the immediate east of 2512 Naglee Road, and

WHEREAS, On February 1, 2012, all assets, properties, contracts, leases, books and records, buildings, and equipment of the former Community Development Agency of the City of Tracy were transferred to the Successor Agency pursuant to Health and Safety Code Section 34175(b), and

WHEREAS, On December 3, 2015, the Agency submitted a Long-Range Property Management Plan to the Department of Finance providing for the disposition and use of real property assets from the former Agency in accordance with Health and Safety Code Section 34191.5, and

WHEREAS, On December 8, 2015, the City received a Finding of Completion from the California Department of Finance, and

WHEREAS, On December 30, 2015, the City received approval of the Long-Range Property Management Plan from the Department of Finance, and

WHEREAS, BCP is currently marketing the property under an Exclusive Negotiating Rights Agreement with the purpose of developing an 8,000 square foot, multi-tenant building, and

WHEREAS, The City has performed extensive outreach and marketed the property to retailers and restaurants receiving little interest for development, and

WHEREAS, The City Council finds it is in the best interest of the City to base the disposition of this property on this outreach and marketing efforts rather than by soliciting competitive proposals conducted to market the property meets the Competitive Proposal Process requirement, and

WHEREAS, In order for development of the property to move forward, the subject property must be conveyed to the new property owner upon the execution of a purchase and sale agreement, and

WHEREAS, On April 8, 2015, in accordance with State Government Code Section 65402(a), the Planning Commission reported that the disposal of the subject property was in conformance with the City's adopted General Plan, and

WHEREAS, The City initiated this disposal of real property because it has been determined that the subject property can be better utilized as a restaurant or retail use, and

WHEREAS, Proceeds from the property sale will be equally split between the City of Tracy and the Successor Agency to the City of Tracy Community Development Agency;

NOW, THEREFORE, BE IT RESOLVED, That City Council authorizes a purchase and sale agreement between the City of Tracy, Successor Agency to the City of Tracy Community Development Agency, and Becker Commercial Properties, a California Company, and authorizes the Mayor on behalf of the City and Chairman on behalf of the Agency to execute the agreement and related documents.

\* \* \* \* \*

The foregoing Resolution 2016-\_\_\_\_\_ was passed and adopted by the Tracy City Council on the 19<sup>th</sup> day of July 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

**WAIVE SECOND READING AND ADOPT ORDINANCE 1222 AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 2.20.100 AND 2.20.180(a)(1)(i), ADDING SECTIONS 2.20.095 AND 2.20.255 TO CHAPTER 2.20 (CONTRACTS AND PURCHASING) OF THE TRACY MUNICIPAL CODE**

EXECUTIVE SUMMARY

Ordinance 1222 was introduced at the Council meeting held on July 5, 2016. Ordinance 1222 is before Council for adoption.

DISCUSSION

The Purchasing Ordinance was last updated in 2009 and revisions are necessary to improve the purchasing process to make it more efficient. Ordinance 1222 was introduced at a regular City Council meeting held on July 5, 2016, to amend Sections 2.20.100 and 2.20.180(a)(1)(i), adding Sections 2.20.095 and 2.20.255 to Chapter 2.20 (Contracts and Purchasing) of the Tracy Municipal Code. The proposed amendments to the Purchasing Ordinance (Chapter 2.20) will include: 1) Amendment to Section 2.20.100 granting the Assistant City Manager the same authority as that provided to other Department Heads. 2) Adding Section 2.20.095 granting the City Attorney the same authority as the City Manager for contracts for legal services. 3) Amending Section 2.20.255 authorizing the City Engineer to approve plans for public improvement projects; and 4) Revising Section 2.20.180(a)(1)(i) publication requirement so all calls for bids will be posted on the City's website.

Ordinance 1222 is before Council for adoption.

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That Council adopt Ordinance 1222.

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 1222

## ORDINANCE 1222

## AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 2.20.100 AND 2.20.180(a)(1)(i), ADDING SECTIONS 2.20.095 AND 2.20.255 TO CHAPTER 2.20 (CONTRACTS AND PURCHASING) OF THE TRACY MUNICIPAL CODE

WHEREAS, The proposed amendments to the Purchasing Ordinance would update the ordinance to grant authority to the Assistant City Manager and the City Attorney, authorize the City Engineer to approved plans for public improvement projects, and revise the publication requirements for calls for bids; and

WHEREAS, The Purchasing Ordinance was last updated in 2009 and revisions are necessary to improve the purchasing process to make it more efficient.

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

SECTION 1: Section 2.20.100, Department head authority, of the Tracy Municipal Code is amended to read as follows:

**“2.20.100, Department head authority.**

Department heads, including the Assistant City Manager, are authorized to enter into and sign on behalf of the City, without the prior approval of the City Manager or City Council, a contract:

- (a) Which is for the purchase or lease of commodities, equipment, general services, and professional services;
- (b) Which contains a maximum compensation amount up to \$25,000.00 Dollars. As to a change order, the limit of authority is 25% of the original contract, not to exceed a cumulative amount of \$31,250.00 Dollars; and
- (c) Which is not required by any State law to be let to the lowest responsible bidder.

SECTION 2: A new section 2.20.095, City attorney authority, is added to the Tracy Municipal Code to read as follows:

**“2.20.095 City Attorney authority.**

- (a) The City Attorney is granted, for purposes related to legal services and the activities or functions of the office of the city attorney, the same authority as the City Manager as set forth in section 2.20.090(a)(1) and (2).
- (b) The City Attorney is granted the authority to execute for City-managed professional legal services in an amount up to One Hundred Thousand Dollars and no/100ths (\$100,000.00) Dollars if the following criteria are met:
  - (1) A cost recovery agreement exists
  - (2) An applicant for development has deposited the required amount under the contract with the City; and
  - (3) The funds are to be used for development related legal services.
- (c) The City Attorney is granted authority to approve, without city council approval, contracts

which appoint and retain outside legal counsel to prosecute lawsuits for the city or defend lawsuits against the city provided that monies have been appropriated and for which there is an unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contracts.

- (d) In addition to the authority granted in section 2.20.095(a), the informal request for proposal procedure in section 2.20.130(a) may be dispensed with when the City Attorney in his or her best judgment makes a written finding that compliance with these procedures is not in the best interest of the City.”

SECTION 3: A new Section 2.20.255, City engineer approval, is added to the Tracy Municipal Code to read as follows:

**“2.20.255 City engineer approval.**

The city engineer is authorized to approve project design and plans before the city seeks bids on a project. (Reference: Gov’t. Code §§830, 835.)”

SECTION 4: Section 2.20.180(a)(1)(i) is amended to read as follows:

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

SECTION 5: This Ordinance shall take effect 30 days after its final passage and adoption.

SECTION 6: 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.)

\* \* \* \* \*

Ordinance 1222  
Page 3

The foregoing Ordinance 1222 was introduced at a regular meeting of the Tracy City Council on 5th day of July, 2016, and finally adopted on 19th day of July, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTEST:

---

MAYOR

---

CITY CLERK

AGENDA ITEM 1.D

REQUEST

**AUTHORIZE AMENDMENT OF THE CITY'S CLASSIFICATION PLAN AND POSITION CONTROL ROSTER BY REALLOCATING TWO WATER OPERATOR-IN-TRAINING POSITIONS TO TWO SENIOR WATER TREATMENT PLANT OPERATOR POSITIONS; AND RECLASSIFYING THE INCUMBENTS.**

EXECUTIVE SUMMARY

This report recommends reallocating two existing Operators-In-Training at the water treatment plant to Senior Water Treatment Plant Operators and reclassifying the incumbents upon certification.

DISCUSSION

As an outcome of the recent negotiations process with the Teamsters bargaining unit, the parties agreed to reallocate two existing Water Treatment Plant Operator-In-Training (OIT) positions to two Senior Water Treatment Plant Operator positions and reclassify the incumbents upon their receipt of appropriate State certification.

Vacancies for the City's water and waste treatment plant operator positions have traditionally been difficult to fill, due in part to the time it takes candidates to get through the States certification process, which involves both on the job training as well as classroom instruction.

Several years ago the City created an Operator-In-Training program to essentially "grow our own" operators. The program typically took two years to work through, culminating in an operator certified at the Grade II or III level. (Both City plants require a minimum Grade III in water or wastewater, respectively.) By the time the OIT received his or her Grade III certification, the City typically had a vacancy at the Senior Operator level and the OIT could be used to fill the vacancy. Currently, one of the City's OITs is certified at the Grade III level and is able to fill the role of a Senior Water Treatment Plant Operator; however, no vacancy currently exists. A second OIT is anticipated to have his Grade III certificate within the next couple of months. Rather than lose these two qualified employees to other jurisdictions, the City would like to reallocate resources by changing the current OIT positions to Senior Water Treatment Plant Operator positions.

It is further recommended that this action be made retroactive to July 1, 2016 as this change was anticipated by settlement of the Teamsters' MOU and one of the incumbents has been performing the duties of the higher level classification since that time. The second OIT will be promoted into the senior position when the appropriate State certification is obtained.

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

This was not budgeted for FY16/17, however the approximate funds needed in the amount of \$12,700 can be absorbed in the FY 16/17 adopted budget from Water Fund 511. There is no impact to the General Fund.

RECOMMENDATION

That the City Council, by resolution authorize the Administrative Services Director to amend the City's Classification Plan and Position Control Roster by approving the reallocation of two Operator-in-Training positions to two Senior Water Treatment Plant Operators and reclassification of the incumbents.

Prepared by: Midori Lichtwardt, Human Resources Manager

Reviewed by: Kul Sharma, Utilities Director  
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

RESOLUTION \_\_\_\_\_

AUTHORIZING AMENDMENT OF THE CITY'S CLASSIFICATION PLAN AND POSITION CONTROL ROSTER BY APPROVING THE REALLOCATION OF TWO OPERATOR-IN-TRAINING POSITIONS TO TWO SENIOR WATER TREATMENT PLANT OPERATOR POSITIONS AND RECLASSIFICATION OF THE INCUMBENTS

WHEREAS, The City has a Classification Plan and a Position Control Roster; and

WHEREAS, It is in the best interest and efficiency of the City to reallocate and reclassify two Operator-In-Training (OIT) positions to two Senior Water Treatment Operator positions;

NOW, THEREFORE, BE IT RESOLVED, As follows:

1. The City Council authorizes the Administrative Services Director to amend the City's Classification Plan and the Position Control Roster as follows:
  - a. Reallocate two OIT positions to two Senior Water Treatment Plant Operator positions;
  - b. Reclassify the current Water Plant OITs to Senior Water Treatment Plant Operators;
  - c. This action to be retroactive to July 1, 2016
2. The Budget Officer is authorized to amend the Position Control Roster to reflect the amendments set forth above.

\*\*\*\*\*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the 19<sup>th</sup> day of July, 2016, by the following votes:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk



### 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 general fund fiscal impact for approving this Compensation and Benefits Plan package is estimated at \$334K during the term of the contract with approximately \$115K in ongoing costs. For FY 2016/17, \$291K is being requested to be appropriated from fund balance to cover the cost of the Compensation and Benefits Plan. Future year costs will be incorporated into the appropriate departmental operational budgets.

### RECOMMENDATION

That the City Council, by resolution, adopt the Compensation and Benefit Plan for Department Heads.

Prepared and Approved by: Troy Brown, City Manager

Attachment: Department Heads Compensation and Benefit Plan

# COMPENSATION AND BENEFITS PLAN

BETWEEN

THE CITY OF TRACY

AND

THE DEPARTMENT HEADS

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



Think Inside the Triangle™

Human Resources Division  
333 Civic Center Plaza  
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(209) 831-6150  
[www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)

**Department Heads Compensation and Benefits Plan**  
~~**July 1, 2012 through June 30, 2015**~~  
**July 1, 2015 through June 30, 2018**  
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**CITY OF TRACY**  
**DEPARTMENT HEADS**  
**COMPENSATION AND BENEFITS PLAN**  
~~July 1, 2012 through June 30, 2015~~  
**July 1, 2015 through June 30, 2018**

**Section 1: Purpose and Intent**

The City Council has established a Department Heads Compensation and Benefits Plan. Department Heads are exempt from the Fair Labor Standards Act (FLSA), are at will employees, and serve at the pleasure of the City Manager. They are covered by the authority of the Personnel Rules and Regulations; however, they are not subject to the grievance or appeals procedure. (The City Manager is empowered to grant compensation adjustments as specified in the Department Heads Compensation and Benefits Plan.)

The City of Tracy is desirous of providing greater service to its citizens, and of recruiting and maintaining qualified Department Head staff. The following plan provides the basis for recognition, benefits and compensation, effective ~~July 1, 2012 through June 30, 2015~~ **July 1, 2015 through June 30, 2018.**

**Section 2: Department Heads Unit Membership**

Positions covered by this plan exclusively are as follows:

- Assistant City Manager
- ~~Finance and Administrative Services Director~~
- Administrative Services Director
- Development and Engineering Services Director
- Fire Chief
- Parks and Community Services Director
- Public Works Director
- Utilities Director

**Section 3: Compensation**

A. Salary Plan

There shall be a minimum and maximum salary for all classifications.

All rates of pay set forth in this Section represent the standard rate of pay for full-time employment for each classification. Employees occupying a position in a classification covered by this Plan shall be paid at a base salary within the range established for that position's classification.

The salary ranges for all classifications covered in the plan shall be increased as outlined in this Section.

1. Equity Increases

There shall be no equity increases for the duration of this term.

2. Cost of Living Adjustments

~~There shall be no Cost of Living Adjustments (COLAs) for the employees covered under this Compensation and Benefits Plan for the duration of this term.~~

**Effective the beginning of the first full pay period following adoption of this Compensation and Benefit Plan by City Council, employees who are employed by the City at the time of adoption of this agreement shall receive a one-time lump sum payment representing 8.0% of employee's base salary on the salary schedule at the time of the payment for employees.**

**Effective the beginning of the first full pay period following adoption of this Compensation and Benefit Plan by City Council, employees shall receive a wage increase equal to 8.0%.**

**Effective the first full pay period in January 2017, employees who are employed by the City at the time of ratification of this and adoption of this agreement, shall receive a one-time lump sum payment representing 6% of the employee's base salary on the schedule at the time of the payment.**

**Effective the first pay period of July 2017, employee shall receive a wage increase equal to 2.0%.**

B. Components of Salary

The City Manager is authorized to set the salary of Department Heads at any point within the salary range.

1. Base Salary

This is the amount set at any point within the range at initial appointment and will be subject to adjustment until the Department Head reaches the top of the range. Base salary may be adjusted on an annual basis by the City Manager, based on meritorious performance, but not to exceed the established range.

~~2. Cost of Living Adjustments~~

~~There shall be no Cost of Living Adjustments (COLAs) for the employees covered under this Compensation and Benefits Plan for the duration of this term.~~

C. Deferred Compensation

A contribution to the Department Head's Deferred Compensation Plan will be made in the amount of 4.5% of the Department Head's annual salary. City paid deferred compensation to a Department Head shall be paid to a 401 Plan.

**Section 4: Leave**

A. Vacation

Leave will be granted as provided for in the following chart. Leave may be used during the first six (6) months of service in accordance with the City's Vacation Leave Policy.

0-5 years	120 hours per year
6-10 years	160 hours per year
11-15 years	200 hours per year
16-20 years	220 hours per year
21 + years	240 hours per year

B. Management Leave

In recognition of the need to devote more than 40 hours per week to their duties, management leave in the amount of ~~104~~ **120** hours per calendar year shall be granted to Department Heads.

~~For Fiscal Year 2012-13 only, Department Heads will receive an additional 40 hours of management leave added to their account, for a total of 144 hours of management leave. This additional 40 hours of leave will be provided to Department Heads effective July 1, 2012.~~

C. Floating Holidays

Sixteen (16) hours of floating holiday leave per calendar year shall be granted to Department Heads.

D. Maximum Accumulation of Leave

The maximum accrual for Department Heads of vacation, management leave, and floating holidays shall be 750 hours.

E. Buy-Back of Accumulated Leave

Department Heads are allowed an optional buy-back of accumulated leave. They may, twice in a calendar year, buy back up to 50 percent of accumulated leave, but not more than the equivalent of one year's earning rate for vacation, management leave and floating holidays.

F. Sick Leave Accrual

All Department Heads shall be eligible to accrue sick leave at the rate of eight (8) hours for each month of service. Unlimited accrual of sick leave is allowed.

Eligible Department Heads shall be eligible to accrue sixteen (16) hours of sick leave for each month of service beginning the 21st year of employment and thereafter. This provision is only applicable to individuals first employed by the City of Tracy prior to January 1, 1987.

G. Conversion of Sick Leave Balance

1. Conversion of Sick Leave Balance Upon Retirement

Upon retirement, employees may convert all accrued sick leave at the time of retirement 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 Department Head's hourly rate of pay. The retired employee and his/her dependents shall be entitled to continue 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. At that time, the employee and his/her dependents may continue to participate in the City's group health plan provided the City receives the employee's payment for the premium(s) by the 10<sup>th</sup> of each month for the following month's coverage.

2. Conversion of Sick Leave Balance Upon Death/Termination

Upon death, the employee's estate shall receive straight-time pay for all accrued sick leave in excess of 960 hours.

If a Department Head 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 years of such termination.

H. Bereavement Leave

In the event of death in the immediate family of a Department Head, absence from duty may be allowed not to exceed five working days within two weeks of the date of death of the family member. Such absences shall not be charged to sick leave.

I. Family Leave

Department Heads may be granted leave with pay when absence from work is required because of illness or injury of a member of the immediate family. Immediate family is defined as child, parent or spouse. Each day utilized for this leave shall be subtracted from the sick leave accrual of the Department Head. Employees may utilize up to one-half (1/2) of their annual accrual of sick leave for the care of their immediate family.

## **Section 5: Benefits**

### A. Determined by City Manager

Department Heads shall receive benefits based on the maximum granted to represented and unrepresented employees, or other reasonable basis, as determined by the City Manager.

### B. CalPERS Retirement Formula (Amended by Resolution 2010-152)

#### 1. Miscellaneous (Non-Public Safety) Department Heads

Miscellaneous Department Heads hired on or after December 17, 2010 **and on or before December 31, 2012**, shall receive the average of three (3) consecutive highest years and 2% @ 55 benefit formula provided through the California Public Employees' Retirement System (CalPERS).

Miscellaneous Department Heads hired on or before December 16, 2010 shall receive the single highest year and 2.5% at 55 benefit formula provided through the California Public Employees' Retirement System (CalPERS).

**Miscellaneous employees hired on or after January 1, 2013 and who qualify as "new employees" under the Public Employees' Pension Reform Act ("PEPRA") shall receive average of three (3) consecutive highest years and 2% at 62 benefit formula provided through the California Public Employees' Retirement System (CalPERS).**

#### 2. Fire Chief: Public Safety Department Head

**Fire Chiefs hired on or before December 31, 2012 and/or meeting the CalPERS definition of a "Classic employee" shall receive single highest year and the three percent at 55 (3%@55) retirement formula provided through the California Public Employees' Retirement System (CalPERS).**

**Fire Chiefs hired on or after January 1, 2013 meeting the definition of "new member" under PEPRA shall be subject to all the provisions of that law, including, but not limited to the two point seven percent at 57 (2.7%@57) retirement formula with a three year final compensation period.**

C. CalPERS Retirement Benefit

The City agrees to continue to pay the employer contribution for the City's CalPERS retirement benefit.

**Effective as soon as administratively possible in accordance with the California Government Code section 20516 contract amendment process, each employee in this unit shall pay 3% towards the employers share of CalPERS pension regardless of what CalPERS pension formula is applicable to employee. In exchange, the City shall pay the corresponding salary increase that represents the 3% contribution, which will be cost neutral to the City. The parties agree that should the parties negotiate elimination of the 3% contribution towards the employers share or such contribution becomes contrary to any subsequent rules, regulations and/or law rendering the contribution null and void, or CalPERS find that the salary increase does not constitute pensionable compensation that the equivalent salary increase conferred in this section, and referred to in section 5.1, shall also cease and become null and void.**

~~For e~~**Employees** hired on or before December 16, 2010 and under the first-tier CalPERS retirement formula (2.5% at 55), ~~the City and employees shall share payment of~~ **shall pay** the 8% employee contribution **towards employee statutory share of CalPERS retirement** during the term of this **Agreement**. ~~Compensation and Benefits Plan as follows:~~

~~Fiscal Year 2012-2013~~ — Effective the pay period including July 1, 2012, each employee shall pay 2.66% of salary and the City shall pay 5.34% of salary to fund the employee contribution for the CalPERS retirement benefit.

~~Fiscal Year 2013-2014~~ — Effective the pay period including July 1, 2013, each employee shall pay 5.33% of salary and the City shall pay 2.67% of salary to fund the employee contribution for the CalPERS retirement benefit.

~~Fiscal Year 2014-2015~~ — Effective the pay period including July 1, 2014, each employee shall pay 8% of salary to fund the employee contribution for the CalPERS benefit.

~~For e~~**Employees** hired after December 16, 2010 **and on or before December 31, 2012,** ~~and~~ under the second-tier CalPERS retirement formula (2% at 55), ~~the City and employees shall share payment of~~ **shall pay** the 7% employee contribution **towards employee statutory share of CalPERS retirement** during the term of this **Agreement** ~~Compensation and Benefits Plan as follows:~~

~~Fiscal Year 2012-2013~~ — Effective the pay period including July 1, 2012, each employee shall pay 2.66% of salary and the City shall pay 4.34% of salary to fund the employee contribution for the CalPERS retirement benefit.

~~Fiscal Year 2013-2014 — Effective the pay period including July 1, 2013, each employee shall pay 5.33% of salary and the City shall pay 1.67% of salary to fund the employee contribution for the CalPERS retirement benefit.~~

~~Fiscal Year 2014-2015 — Effective the pay period including July 1, 2014, each employee shall pay 7% of salary to fund the employee contribution for the CalPERS benefit.~~

~~Fire Chief: The Fire Chief, who receives the CalPERS retirement formula of 3% at 55, shall share payment of the 9% of salary employee contribution during the term of this Compensation and Benefits Plan as follows:~~

~~Fiscal Year 2012-2013 — Effective the pay period including July 1, 2012, the Fire Chief shall pay 3% of salary and the City shall pay 6% of salary to fund the employee contribution for the CalPERS retirement benefit.~~

~~Fiscal Year 2013-2014 — Effective the pay period including July 1, 2013, the Fire Chief 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, the Fire Chief shall pay 9% of salary to fund the 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.

The parties may reopen negotiations to discuss the impact of any changes to the Public Employment Retirement Law which occur during the term of this Compensation and Benefits Plan.

1. Flexible Leave Hours

The City shall credit each employee with a block of paid leave hours each fiscal year of this Compensation and Benefits Plan. These hours shall be labeled Flexible Leave. Each employee may use these leave hours subject to the conditions for use of vacation or sell-back the flexible leave hours during the fiscal year. Each employee will receive the Flexible Leave hours for that fiscal year on July 1<sup>st</sup> 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 15<sup>th</sup> of each year and cannot be carried over to a new fiscal year. If an employee terminates before June 30<sup>th</sup> of any fiscal year, the employee is only eligible for a proration of hours for the period of July 1<sup>st</sup> to the date of termination and hours used in excess of the prorated amount will be deducted accordingly from the employee's final pay.

~~Amount: During fiscal year 2012-2013, each employee shall receive 44 hours of Flexible Leave during the pay period beginning July 1, 2012. During fiscal year 2013-2014, each employee shall receive 88 hours of Flexible Leave during the pay period beginning July 1, 2013. During fiscal year 2014-2015, each employee hired on or before December 16, 2010 and under the first tier CalPERS retirement formula (2.5% at 55) shall receive 132 hours of Flexible Leave. Each employee hired after December 16, 2010 and under the second tier CalPERS retirement formula (2% at 55) shall receive 122 hours of Flexible Leave.~~

~~The Fire Chief classification under the CalPERS retirement formula of 3% at 55 shall receive the following: During fiscal year 2012-2013, the Fire Chief shall receive 50 hours of Flexible Leave during the pay period beginning July 1, 2012. During fiscal year 2013-2014, the Fire Chief shall receive 100 hours of Flexible Leave during the pay period beginning July 1, 2013. During fiscal year 2014-2015, the Fire Chief shall receive 150 hours of Flexible Leave beginning on 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 Compensation and Benefits Plan and ends when this Compensation and Benefits Plan 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 30<sup>th</sup> and/or December 15<sup>th</sup> of each contract year. Flexible Leave sell back is independent of, and not subject to, the limitations described in Section 4.E.: 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 expiration of this Compensation and Benefits Plan.~~

D. Short Term Disability Insurance (STD)

Short Term Disability Insurance payments may be available to employees who cannot work because of sickness or non-work related injuries as determined by the STD insurance provider. STD payments shall be integrated with accumulated sick and vacation leave balances unless the employee elects in writing at the time of disability, to retain STD payments and receive no supplemental income (paid leave) from the City.

To the extent accumulated sick leave or vacation leave is available; the employee will continue to receive normal paychecks. Payments received from the insurance carrier shall be turned in to the City. When such checks are received by the City, a portion of

the employee's next paycheck, equal to the amount turned in, shall be recorded as nontaxable pay and sick leave shall be charged only for the amount of the City's share of the paycheck.

In no case may an employee receive more income than the amount of his/her normal pay. Employees must turn in checks received from the insurance carrier to the City, unless the employee elected in writing, at the time of the disability, of the employee's choice not to receive paid leave.

E. Long Term Disability Program (LTD)

City paid Long Term Disability insurance shall be provided to all Department Heads.

F. Annual Physical

An annual physical examination shall be provided by the City, if desired and requested by a Department Head.

G. Education Reimbursement

Educational expenses shall be reimbursed, up to \$2,500 per calendar year, but are limited to the cost of a State College or University's fees, books, and tuition. A grade of "C" or better is required for reimbursement. Approval by the City Manager is required prior to enrollment.

H. Travel

Administrative Procedure, Section T – Travel Expenses, shall be used to reimburse mileage expenses incurred when using a personal vehicle for City business. Department Heads shall not receive mileage reimbursement, in accordance with Administrative Procedure Section T – Travel Expense, unless the one-way mileage from the City of Tracy work site to the final destination exceeds 75 miles. In such circumstances, the Department Head may apply for reimbursement for mileage above the initial 75 miles.

I. City Vehicle/Allowance

Department Heads shall be provided with either a City vehicle or a car allowance of \$500 per month.

J. Insurance

1. Medical 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 discuss regarding such change. New employees

hired on or after December 1, 2007 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.

2. Dental

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

3. Vision

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

4. Life Insurance

The City shall purchase life insurance in the amount of \$150,000 for each Department Head.

5. Cafeteria Plan

a. City Contributions

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.

b. Cash Out Options

For employees hired before December 1, 2007, the maximum cash payment shall be set at \$996.00 per month for employees who do not elect a medical, dental, and/or vision plan. For employees hired on or after December 1, 2007, 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).

c. Future Contributions

If premiums increase in the plans to which City employees subscribe effective January 1, 2013, 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.

For employees who elect employee only or employee plus one coverage, any City increase to the employee's account shall be limited to the amount necessary to fully cover the plan selected or up to a maximum of the dollar amount increase 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.

d. 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, and/or 3) payment of premium charges for the vision insurance program in which the employee is enrolled. The City also independently funds life insurance premiums through each employee's account.

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 12 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.

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 next following the month in which advice from the employee is received by the Personnel Officer or Human Resources designate. No retroactive payments shall be allowed.

e. 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.

K. Management Benefit Plan

The Management Benefit of \$960 per calendar year will be utilized at the discretion of each individual Department Head for job related expenses or for professional development. The monies will be allocated per pay period and may be utilized for a wide variety of job related expenses, training, association memberships, computer hardware and software, conference registration and attendance, and other miscellaneous job expenses or professional development opportunities.

L. Uniform Allowance

The City shall provide the Fire Chief a uniform allowance in the amount of ~~\$1,000~~ \$1,100 per year.

**Section 6: Severance**

A. Determined by City Manager

The City Manager, at his or her discretion, is authorized to enter into severance agreements with Department Heads if they involuntarily resign or are terminated by the City, for up to six (6) months of severance pay.

B. Severance Pay

“Severance pay” shall include salary and health benefits. Severance pay shall be paid in a lump sum payment to the Department Head by the City within 15 working days after the effective date of the severance agreement, or as agreed to by the City and the Department Head. Severance pay shall not be included in final compensation for the purposes of CalPERS retirement nor shall any payments of the employee’s share of the CalPERS rates be deemed to extend the date of separation past termination or resignation of the employee.

C. Waiver and Release

All severance agreements must contain a release of liability for all claims connected with the employment relationship and must be in a form approved by the City Attorney.

**Exhibit A**  
**Department Head**  
**Salary Schedule**  
**Amended Per Council Resolution #2013-199**

Class Code	Position Title...		Semi-Mon Salary	Monthly Salary	Annual Salary	Hourly Rate
20101	City Manager <i>Reso 2011-101</i> <i>Eff: 10/18/11</i>	-	8,294.93	16,589.86	199,078.32	95.7107
20102	Assistant City Manager	<b>Min</b>	6,190.83	12,381.66	148,579.92	71.4327
		-				
		<b>Max</b>	7,525.14	15,050.28	180,603.36	86.8285
		-				
20106	City Attorney	-	8,854.36	17,708.72	212,504.64	102.1657
20111	Finance & Administrative Services Director	<b>Min</b>	6,190.83	12,381.66	148,579.92	71.4327
		-				
		<b>Max</b>	7,525.14	15,050.28	180,603.36	86.8285
		-				
20112	Public Works Director	<b>Min</b>	5,658.70	11,317.40	135,808.80	65.2927
		-				
		<b>Max</b>	6,872.65	13,745.30	164,943.60	79.2998
		-				
20113	Police Chief <i>Reso 2011-153</i> <i>Eff: 08/02/11</i>	-	7,604.17	15,208.34	182,500.08	87.7404

		-				
20114	Fire Chief	<b>Min</b>	6,065.05	12,130.10	145,561.20	69.9813
		-				
		<b>Max</b>	7,370.82	14,741.64	176,899.68	85.0479
		-				
20115	Development Services Director	<b>Min</b>	6,065.05	12,130.10	145,561.20	69.9813
		-				
		<b>Max</b>	7,370.82	14,741.64	176,899.68	85.0479
		-				
		-				
20116	Parks & Community Services Director	<b>Min</b>	5,658.70	11,317.40	135,808.80	65.2927
		-				
		<b>Max</b>	6,872.65	13,745.30	164,943.60	79.2998
		-				
		-				
20117	Economic Development Director	<b>Min</b>	5,372.60	10,745.20	128,942.40	61.9915
		-				
		<b>Max</b>	6,530.61	13,061.22	156,734.64	75.3532
		-				
		-				
20118	Human Resources Director	<b>Min</b>	5,372.60	10,745.20	128,942.40	61.9915
		-				
		<b>Max</b>	6,530.61	13,061.22	156,734.64	75.3532
		-				
		-				
20119	Administrative Services Director	<b>Min</b>	5,658.70	11,317.40	135,808.80	65.2927
		-				
		<b>Max</b>	6,872.65	13,745.30	164,943.60	79.2998
		-				
20120	Utilities Director	<b>Min</b>	6,065.05	12,130.10	145,561.20	69.9813
		-				
		<b>Max</b>	7,370.82	14,741.64	176,899.68	85.0479

Exhibit A  
Department Head  
Salary Schedule

DEPARTMENT HEADS						
SALARY SCHEDULES						
				8% COLA		
Class Code	Position Title...		Semi-Mon Salary	Monthly Salary	Annual Salary	Hourly Rate
20102	Assistant City Manager	Min	6,686.10	13,372.20	160,466.35	77.15
		Max	8,127.15	16,254.30	195,051.63	93.77
20112	Public Works Director	Min	6,111.40	12,222.80	146,673.56	70.52
		Max	7,422.46	14,844.92	178,139.06	85.64
20114	Fire Chief	Min	6,550.26	13,100.51	157,206.15	75.58
		Max	7,960.49	15,920.98	191,051.76	91.85
20115	Development & Engineering Services Director	Min	6,550.26	13,100.51	157,206.15	75.58
		Max	7,960.49	15,920.97	191,051.69	91.85
20116	Parks & Community Services Director	Min	6,111.40	12,222.80	146,673.56	70.52
		Max	7,422.46	14,844.92	178,139.06	85.64
20117	Economic Development Director	Min	5,802.41	11,604.82	139,257.84	66.95
		Max	7,053.06	14,106.12	169,273.45	81.38
20118	Human Resources Director	Min	5,802.41	11,604.82	139,257.84	66.95
		Max	7,053.06	14,106.12	169,273.45	81.38
20119	Administrative Services Director	Min	6,111.40	12,222.79	146,673.50	70.52
		Max	7,422.46	14,844.92	178,139.09	85.64
20120	Utilities Director	Min	6,550.25	13,100.51	157,206.10	75.58
		Max	7,960.49	15,920.97	191,051.65	91.85

RESOLUTION 2016 - \_\_\_\_\_

ADOPTING THE COMPENSATION AND BENEFITS PLAN FOR DEPARTMENT HEADS

WHEREAS, The Department Heads Compensation and Benefits Plan expired on June 30, 2015, and

WHEREAS, Representatives from the City and Department Heads met and consulted on the various elements of the Plan, and

WHEREAS, Agreement was reached on a new Department Heads Compensation and Benefits Plan covering the period of July 1, 2015 through September 30, 2018, and

WHEREAS, The Department Heads Compensation and Benefits Plan directly supports one of the four Council Strategic Priorities: the Governance Strategy, Goal 1: Further develop an organization to attract, motivate, develop, and retain a high-quality, engaged, high-performing, and informed workforce,

NOW, THEREFORE, BE IT RESOLVED, that the City Council adopt the Compensation and Benefit Plan for Department Heads.

\*\*\*\*\*

The foregoing Resolution 2016 - \_\_\_\_\_ was adopted by the Tracy City Council on the 19<sup>th</sup> day of July, 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

**AUTHORIZE AN AGREEMENT WITH JIM BRISCO ENTERPRISES, INC., FOR THE PURPOSES OF LOADING, HAULING AND DISPOSING OF WASTEWATER TREATMENT BIO SOLIDS AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT**

EXECUTIVE SUMMARY

The City of Tracy generates municipal biosolids, a nutrient rich organic material, at the Wastewater Treatment Plant as a by-product of its operation. The City engages the services of responsible haulers (vendors) to remove and dispose of this material out of San Joaquin County annually in accordance with all applicable Federal, State and local regulations. The work includes removing these biosolids from drying beds and stockpiles; loading, hauling, and disposing of the existing bio solids. This agenda item requests authorization to enter into an agreement with the lowest monetary proposal from Jim Brisco Enterprises, Inc. for providing such services.

DISCUSSION

The City engages the services of responsible haulers to remove approximately 1,900 tons of biosolids from the drying beds stockpiled at the Wastewater Treatment Plant at 3900 Holly Drive, load the materials, haul, and dispose of it. Such services are acquired every year from vendors to complete this work in a cost effective manner. The vendor is also required to provide certified mobile scales to weigh the trucks before leaving the plant site to determine the tonnage of bio solids hauled, or the vendor may have each truck weighed at a certified scale. The vendor shall conform to all applicable laws, rules, and regulations in performing this work.

The vendor is to complete the specified work within sixty days of the Notice to Proceed unless the vendor receives an extension in writing from the City.

On April 4, 2016, Requests for Proposals were sent to four vendors and posted on the City website. A total of five proposals were received and opened at 2:00 p.m. on May 5, 2016 as follows:

<u>Vendor Name</u>	<u>Price/Ton</u>	<u>Total Price</u>
Jim Brisco Enterprises, Inc	\$ 31.95	\$60,705.00
Denali Water Solutions	\$ 36.60	\$69,540.00
Synagro	\$ 37.50	\$71,250.00
Dillard Trucking dba Dillard Environmental Services	\$ 49.50	\$94,050.00
Holloway Environmental, LLC	\$ 53.50	101,650.00

Jim Brisco Enterprises, Inc. has submitted the lowest monetary proposal. Jim Brisco Enterprises has previously provided such services to the City in a satisfactory manner.

Jim Brisco Enterprises has supplied the required insurance for this work as part of the attached agreement.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no impact to the General Fund. Funding for the disposal of the Wastewater Treatment Bio Solids is available in the approved Utilities Wastewater budget for fiscal year 2016-17.

RECOMMENDATION

That the City Council, by resolution, authorize the award of a contract for bio solids loading, hauling, and disposal to Jim Brisco Enterprises, Inc. and authorize the Mayor to execute the agreement.

Prepared by: Dale Klever, Operations Superintendent Wastewater Treatment Plant

Reviewed by: Kuldeep Sharma, Utilities Director  
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A: General Service Agreement

**City of Tracy**  
**GENERAL SERVICES AGREEMENT**  
*Loading, Hauling and Disposing of Wastewater Treatment Plant Biosolids*

This General Services Agreement (Agreement) is entered into between the City of Tracy, a municipal corporation (City), and Jim Brisco Enterprises, Inc., a California corporation (Provider) for the purpose of loading, hauling and disposing of Wastewater Treatment Plant Biosolids.

**Recitals**

- A. In accordance with the Tracy Municipal Code, on April 4, 2016, the City issued a Request for Bids for the work defined in the agreement.
- B. In response to the invitation, the Provider submitted the bid, which is incorporated herein by reference, and was found by the City to be responsive.
- C. A total of five bids were received and after reviewing all bids submitted in response to the request for bid, the City found the Provider to have the lowest responsive bid, and the City Council awarded this Agreement to the Provider pursuant to Resolution No. \_\_\_\_\_.
- D. The Project is more specifically described in the Agreement Documents, but generally includes the loading, hauling and disposing of Wastewater Treatment Plant Biosolids in accordance with Federal, State and local ordinances.

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: George Morrow. 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 rates set forth in Exhibit B, attached and incorporated by reference. Provider's fee for this Agreement is Not to Exceed \$31.95 per ton at an estimated 1900 tons. 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. **Endorsements.** Provider shall obtain endorsements to the automobile and commercial general liability with the following provisions:
    - 5.5.1. The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
    - 5.5.2. 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.
  - 5.6. **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.

- 5.7. **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.
  - 5.8. **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.
  - 5.9. **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.
  - 5.10. **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. **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:  
Kuldeep Sharma  
Director of Utilities  
3900 Holly Drive  
Tracy, CA 95304

To Provider:  
George Morrow  
President  
Jim Brisco Enterprises, Inc.  
221 Airpark Road, Suite A  
Atwater, CA 95301

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. **Miscellaneous**

- 9.1. **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.
- 9.2. **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 9.3. **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 9.4. **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.
- 9.5. **Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 9.6. **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.
- 9.7. **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.
- 9.8. **Business License.** Before the City signs this Agreement, Provider shall obtain a City of Tracy Business License.
- 9.9. **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. **General Prevailing Wage Rate.** The work contemplated by this contract is a public work subject to prevailing wages under California Labor Code Sections 1720 et. seq. Under Labor Code Section 1781, Provider is obligated to cause the work to be performed as a public work.

Provider is notified that under Section 1770 et. seq. of the California Labor Code, the City Council has ascertained the general prevailing rate of per diem wages and the rates for legal and overtime work for the locality in which the work is to be performed, for each craft or type of workman or mechanic needed to execute the Agreement which will be awarded to the successful bidder.

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

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

**City of Tracy**

\_\_\_\_\_

By: Michael Maciel  
Title: Mayor

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_

Nora Pimentel, City Clerk

Approved as to form:

\_\_\_\_\_

Bill Sartor, City Attorney

Exhibits:

- A. Scope of Services
- B. Insurance Certificates
  - a. General Liability Endorsement
  - b. Automobile Liability Endorsement

**Provider**

George Morrow  
\_\_\_\_\_

By: George Morrow  
Title: President

Date: 9 Jun 2016

Federal Employer Tax ID No.:

91-2015259

[Signature]  
By: \_\_\_\_\_

Title: Treasurer

Date: 10 Jun 2016

**CITY OF TRACY**  
**EXHIBIT A**

**SPECIFICATIONS FOR THE PURPOSE OF LOADING, HAULING AND  
DISPOSING OF WASTEWATER TREATMENT PLANT BIOSOLIDS AT  
3900 HOLLY DRIVE, TRACY, CA 95304**

The Scope of Work:

The Scope of Work generally includes loading, hauling and disposing of Wastewater Treatment Plant Biosolids outside the San Joaquin County, in accordance with all applicable Federal, State and local regulations.

The Contractor shall provide certified mobile scales to weigh the truck before leaving the plant site to determine the tonnage of biosolids loaded for disposal. The Contractor may have each truck weighed at a certified scale to provide the proof.

Information To Report

The contractor is required to provide the following information to the City:

- A. Name and location of the site(s) for final disposal of the biosolids,
- B. Letter(s) of acceptance from the owner/manager of disposal site(s) that receive(s) the biosolids,
- C. WDR number(s) of the site(s) by Regional Water Quality Control Board, if applicable,
- D. Copies of weight tags by mobile scales or c from certified scales,
- E. Subsequent use(s) of the land,
- F. Solids application rate(s) in pounds/year (specify wet or dry)

\*NOTE: Items A through D must be submitted to begin the process of payment(s).

Time of completion:

All work shall be completed by the Contractor within 60 days of the Notice to Proceed unless the Contractor receives an extension from the City of Tracy. The Contractor can request an extension of the time of completion due to inclement weather.

Billing Rate

The payment for the scope of services completed shall be based upon \$31.95/ton of biosolids loaded, hauled and disposed of in accordance with the prevailing Federal, State and local laws.

RESOLUTION 2016- \_\_\_\_\_

AUTHORIZING A CONTRACT FOR BIO SOLIDS LOADING, HAULING, AND DISPOSAL WITH JIM BRISCO ENTERPRISES, INC. AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, Bio solids are processed sludge from the Wastewater Treatment Plant that is dried at the Wastewater Treatment Plant on solar drying beds, and

WHEREAS, The City engages the services of responsible haulers (vendors) annually to remove and dispose of this material out of the San Joaquin County in accordance with all applicable Federal, State and local regulators, and

WHEREAS, The work to be done consists of removing approximately 1,900 tons of bio solids from the drying beds, and

WHEREAS, A Request for Proposals (RFP) was sent to these potential vendors on April 4, 2016 and was posted on the City's website, and

WHEREAS, Bid packages were mailed to four bidders specializing in this work and five bids were received and are summarized as follows:

<u>Vendor Name</u>	<u>Price/Ton</u>	<u>Total Price</u>
Jim Brisco Enterprises, Inc	\$ 31.95	\$60,705.00
Denali Water Solutions	\$ 36.60	\$69,540.00
Synagro	\$ 37.50	\$71,250.00
Dillard Trucking dba Dillard		
Environmental Services	\$ 49.50	\$94,050.00
Holloway Environmental, LLC	\$ 53.50	101,650.00

WHEREAS, Jim Brisco Enterprises, Inc. submitted the lowest responsive monetary proposal, and

WHEREAS, Jim Brisco Enterprises, Inc. has completed this task for the City in a satisfactory manner in previous years, and

WHEREAS, Funding for this work is available in the approved Fiscal Year 2016 – 17 budget;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby authorizes the award of a contract for bio solids loading, hauling, and disposal to Jim Brisco Enterprises, Inc. and authorizes the Mayor to execute the agreement.

\* \* \* \* \*

The foregoing Resolution 2016- \_\_\_\_\_ was adopted by the Tracy City Council on the 19<sup>th</sup> day of July, 2016 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

July 19, 2016

AGENDA ITEM 1.G

REQUEST

**AUTHORIZE THE APPOINTMENT OF FIVE YOUTH COMMISSIONERS TO THE YOUTH ADVISORY COMMISSION**

EXECUTIVE SUMMARY

The bylaws of the Youth Advisory Commission set the minimum number of youth appointed Commissioners at eight, with a maximum limit at fourteen and a maximum of three adult Commissioners. A selection panel was established and made recommendations for five youth to be appointed for a two-year term to fill the existing youth vacancies on the Youth Advisory Commission.

DISCUSSION

The bylaws of the Youth Advisory Commission call for a minimum of eight youth and a maximum of fourteen youth Commissioners and a maximum of three adult Commissioners that may sit on the Commission. The bylaws are crafted to include two youth representatives from each of the four comprehensive high schools in the area (Kimball, Millennium, Tracy and West) and the four alternative education high schools (Delta Charter, Duncan-Russell Continuation, Excel High, and Stein Continuation.) The selection process for the Youth Advisory Commission is to have a diverse group of teens that reflect each of the Tracy area high schools, and who wish to have a voice in their community and be involved in the Commission. Adult Commissioners shall reside within the jurisdiction of any Tracy school district to include one member of the School District and two members of the community who desire to work with youth. Currently the Commission has five youth and one adult vacancies.

The City recruits new Commissioners on an ongoing basis to fill any vacancies created by outgoing Commissioners. The bylaws of the Youth Advisory Commission call for a selection panel to review new applications and make recommendations for appointment to the City Council. This year's panel consisted of Recreation Services Supervisor Jolene Jauregui, Recreation Coordinator Justin Geibig, and Parks Commissioner Leslie Douglas.

The interview panel conducted interviews on May 23, 2016. The selection panel recommends the following five youth to serve two-year terms, from August 1, 2016, to July 31, 2018: Maha Siddiqui from Millennium High School; and Nabeel Razi, Jasheep Dhillon, Ishan Gill and Meredith Hagler from Tracy High School, .

FISCAL IMPACT

There is no impact on the General Fund.

RECOMMENDATION

Staff recommends that the City Council approve, by resolution, the appointment of five youth Commissioners to the Youth Advisory Commission based upon the interview and selection panel recommendations.

Prepared by: Jolene Jauregui, Recreation Services Supervisor

Reviewed by: Kim Scarlata, Division Manager II  
André Pichly, Parks & Recreation Director  
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

RESOLUTION 2016-\_\_\_\_\_

AUTHORIZING THE APPOINTMENT OF FIVE YOUTH COMMISSIONERS TO THE YOUTH ADVISORY COMMISSION

WHEREAS, The bylaws of the Youth Advisory Commission (YAC) call for a minimum of eight Commissioners, and a maximum of fourteen youth Commissioners and a maximum of three adult Commissioners that may sit on the Commission, and

WHEREAS, The eligibility criteria and selection process of YAC Commissioners are established, and

WHEREAS, The City recruits new Commissioners on an ongoing basis to replace the outgoing Commissioners and existing vacancies, and has established a recommendation selection panel to recommend appointees to City Council, and

WHEREAS, The recommendation selection panel recommended the following five youth for a two-year term, from August 1, 2016, to July 31, 2018: Maha Siddiqui, Nabeel Razi, Ishan Gill, Jashdeep Dhillon, and Meredith Hagler.

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby approves the appointment of the five new Youth Commissioners recommended by the selection panel as identified above, and for the recommended term, to the Youth Advisory Commission.

\*\*\*\*\*

The foregoing Resolution 2016-\_\_\_\_\_ was passed and adopted by the Tracy City Council on the 19<sup>th</sup> day of July, 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

**ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR THE BUNGALOWS, TRACT 3351, CONSTRUCTED BY WOODSIDE 05N, LP, A CALIFORNIA LIMITED PARTNERSHIP**

EXECUTIVE SUMMARY

Woodside 05N, LP, a California limited partnership, (Subdivider) has completed Subdivision Improvements of The Bungalows, Tract 3351, containing 52 single family dwelling lots in accordance with the Subdivision Improvement Agreement, project plans, and specifications. Staff recommends City Council accept the improvements as complete to enable the City to release the developer's bond.

DISCUSSION

On May 20, 2014, City Council approved the Subdivision Improvement Agreement for The Bungalows, Tract 3351, and subdivision of 52 single family residential lots. This subdivision is generally located at the northwest corner of MacArthur Drive and Pescadero Avenue as shown on Attachment "A". The Subdivision is designated in the General Plan as Low Density Residential (LDR) for residential low development and is within the Infill area.

North Star Engineering Group of Modesto, California prepared the improvement plans titled "Improvement Plans for The Bungalows, Tract 3351".

Woodside 05N, LP, the developer of The Bungalows, Tract 3351, has completed all work required to be done in accordance with the Agreement, and has requested acceptance of the subdivision public improvements. The estimated cost of infrastructure improvements is as follows:

Cost Breakdown:

Road	\$ 795,240
Water	\$ 170,351
Storm Drainage	\$ 191,108
Sanitary Sewer	\$ 126,402
Street Lights	\$ 46,000
Striping	\$ 5,720
Miscellaneous & Contingency	<u>\$ 541,439</u>
Total	\$1,876,260

A total of 132,450 square feet (3.04 acres) has been dedicated as part of the public right-of-way. The project carries a one-year warranty bond for all public improvements. The Development Services Department will notify the Developer to prepare and record a

Notice of Completion with San Joaquin County. Lastly, the City Engineer will release all bonds in accordance with the terms of the Subdivision Improvement Agreement.

STRATEGIC PLAN

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

FISCAL IMPACT

There will be no fiscal impact to the General Fund.

RECOMMENDATION

That City Council, by resolution, accept the subdivision improvements for the Bungalows, Tract 3351, constructed by Woodside 05N, LP, including the project plans and specifications.

Prepared by: Paul Verma, Senior Civil Engineer

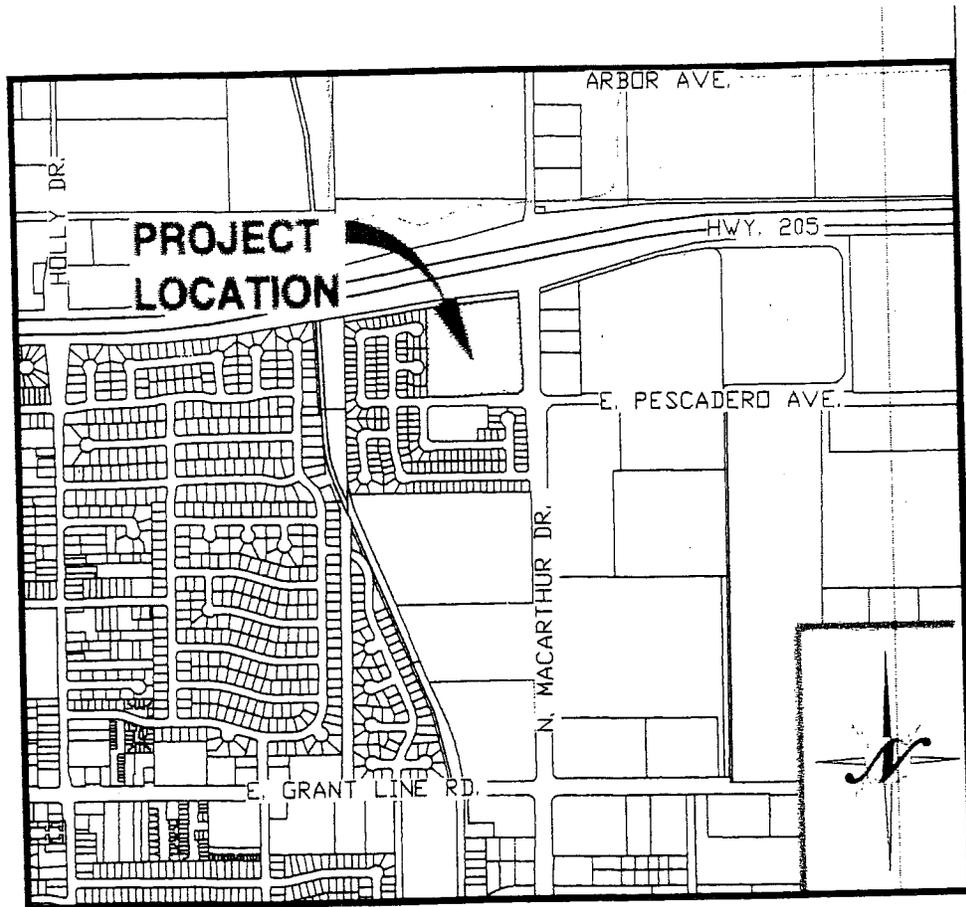
Reviewed by: Robert Armijo, City Engineer  
Andrew Malik, Development Services Director  
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENT

Attachment A - Vicinity Map

# ATTACHMENT A



**PROJECT  
LOCATION**

## VICINITY MAP

NOT TO SCALE

RESOLUTION 2016-\_\_\_\_\_

ACCEPTING THE SUBDIVISION IMPROVEMENTS FOR THE BUNGALOWS, TRACT 3351, CONSTRUCTED BY WOODSIDE 05N, LP, A CALIFORNIA LIMITED PARTNERSHIP

WHEREAS, On May 20, 2014, City Council approved the Subdivision Improvement Agreement for The Bungalows, Tract 3351, and the subdivision of 52 lots single family residential lots, and

WHEREAS, Woodside 05N, LP, a California limited partnership has completed the Subdivision Improvements of the Bungalows, Tract 3351, containing 52 single family dwelling lots in accordance with the Subdivision Improvement Agreement, project plans, and specifications, and

WHEREAS, The estimated cost of infrastructure improvements is as follows:

Cost Breakdown:

Road	\$ 795,240
Water	\$ 170,351
Storm Drainage	\$ 191,108
Sanitary Sewer	\$ 126,402
Street Lights	\$ 46,000
Striping	\$ 5,720
Miscellaneous & Contingency	<u>\$ 541,439</u>
Total	\$1,876,260

WHEREAS, A total of 132,450 square feet (3.04 acres) has been dedicated as part of the public right-of-way, and

WHEREAS, The Development Services Department will notify the Developer to prepare and record a Notice of Completion with San Joaquin County. Lastly, the City Engineer will release all bonds in accordance with the terms of the Subdivision Improvement Agreement;

NOW, THEREFORE, BE IT RESOLVED, That City Council accepts the subdivision improvements for The Bungalows, Tract 3351, completed by Woodside 05N, LP, a California Limited Partnership, including the project plans and specifications.

\* \* \* \* \*

The foregoing Resolution 2016-\_\_\_\_\_ was passed and adopted by the Tracy City Council on the 19<sup>th</sup> day of July 2016, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

AGENDA ITEM 1.I

REQUEST

**ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR LYON CROSSROADS UNIT 9, TRACT 3781, CONSTRUCTED BY LYON HOMES INC., A DELAWARE CORPORATION**

EXECUTIVE SUMMARY

Lyon Homes, Inc., a California corporation (Subdivider), has completed Subdivision Improvements of Lyon Crossroads Unit 9, Tract 3781, containing 59 single family dwelling lots in accordance with the Subdivision Improvement Agreement, project plans, and specifications. Staff recommends City Council accept the improvements as complete to enable the City to release the developer's bond.

DISCUSSION

On April 1, 2014, City Council approved the Subdivision Improvement Agreement for Lyon Crossroads Unit 9, Tract 3781, and the subdivision of 59 single family residential lots. This subdivision is generally located off Crossroads Drive on a ten-acre parcel which was previously a school site as shown on Attachment "A". The Subdivision is designated in the General Plan as Low Density Residential (LDR) for residential low development and is within the boundaries of the Plan "C" development area.

Carlson, Barbee & Gibson, Inc. Civil Engineers Inc., of San Ramon, California, prepared the improvement plans titled "Improvement Plans for Lyon Crossroads Unit 9, Tract 3781.

The Subdivider, developer of Lyon Crossroads Unit 9, Tract 3781, has completed all work required to be done in accordance with the Agreement, and has requested acceptance of the subdivision public improvements. The estimated cost of infrastructure improvements is as follows:

Cost Breakdown:

Road	\$ 451,150.00
Water	\$ 119,000.00
Storm Drainage	\$ 131,814.00
Sanitary Sewer	\$ 83,700.00
Street Lights	\$ 24,000.00
Landscape	\$ 277,500.00
Miscellaneous & Contingency	<u>\$ 173,121.40</u>
Total	\$1,260,285.40

A total of 2.317 acres (100,932 square feet) has been dedicated as part of the public right-of-way. The project carries a one-year warranty bond for all public improvements.

STRATEGIC PLAN

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

FISCAL IMPACT

There will be no fiscal impact to the General Fund.

RECOMMENDATION

That City Council, by resolution, accept the subdivision improvements as complete in accordance with the Subdivision Improvement Agreement for Lyon Crossroads Unit 9, Tract 3781, constructed by Lyon Homes, Inc. The Development Services Department will notify the Developer to prepare and record a Notice of Completion with San Joaquin County. Lastly, the City Engineer will release all bonds in accordance with the terms of the Subdivision Improvement Agreement.

Prepared by: Paul Verma, Senior Civil Engineer

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

Approved by: Troy Brown, City Manager

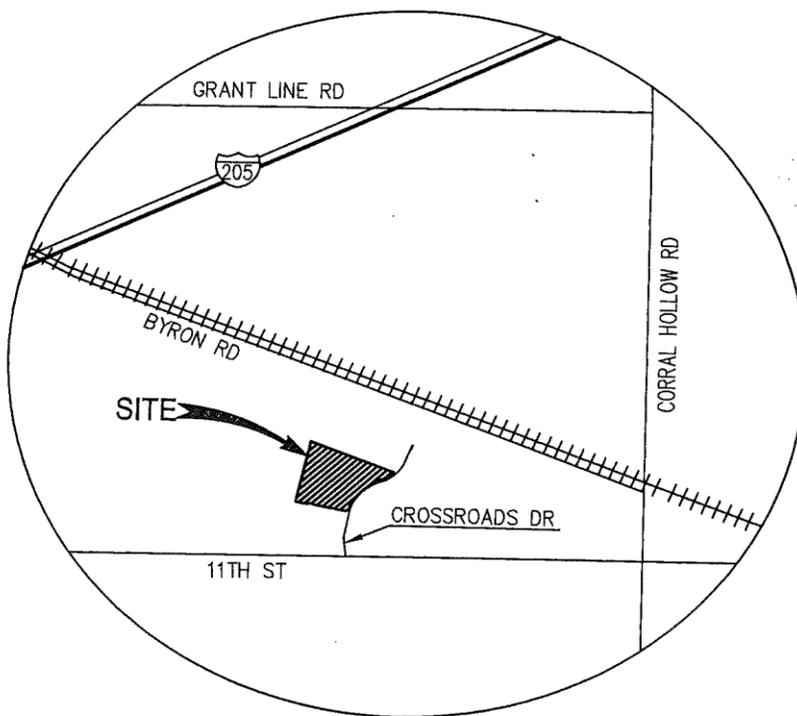
ATTACHMENT

A - Vicinity Map

# TRACT NO. 3781

SUBDIVISIONS OF SAN JOAQUIN COUNTY

## LYON CROSSROADS, UNIT NO. 9



### VICINITY MAP

NOT TO SCALE

RESOLUTION 2016-\_\_\_\_\_

ACCEPTING THE SUBDIVISION IMPROVEMENTS FOR LYON CROSSROADS UNIT 9, TRACT 3781, CONSTRUCTED BY LYON HOMES INCORPORATED, A DELAWARE CORPORATION

WHEREAS, On April 1, 2014, City Council approved the Subdivision Improvement Agreement for The Lyon Crossroads Unit 9, Tract 3781, and the subdivision of 59 single family residential lots, and

WHEREAS, Lyon Homes, Incorporated, a Delaware corporation (Subdivider), has completed the Subdivision Improvements of Lyon Crossroads Unit 9, Tract 3781, containing 59 single family dwelling lots in accordance with the Subdivision Improvement Agreement, project plans, and specifications, and

WHEREAS, The estimated cost of infrastructure improvements is as follows:

Cost Breakdown:

Road	\$ 451,150.00
Water	\$ 119,000.00
Storm Drainage	\$ 131,814.00
Sanitary Sewer	\$ 83,700.00
Street Lights	\$ 24,000.00
Landscape	\$ 277,500.00
Miscellaneous & Contingency	\$ 173,121.40
Total	\$1,260,285.40

WHEREAS, A total of 2.317 acres (100,932 square feet) has been dedicated as part of the public right-of-way, and

WHEREAS, The Development Services Department will notify the Developer to prepare and record a Notice of Completion with San Joaquin County. Lastly, the City Engineer will release all bonds in accordance with the terms of the Subdivision Improvement Agreement;

NOW, THEREFORE, BE IT RESOLVED, That City Council, accepts the subdivision improvements as complete for Lyon Crossroads Unit 9, Tract 3781, in accordance with the Subdivision Improvement Agreement including the project plans and specifications.

The foregoing Resolution 2016-\_\_\_\_\_ was passed and adopted by the Tracy City Council on the 19<sup>th</sup> day of July 2016, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

AGENDA ITEM 1.J

REQUEST

**APPROVAL OF FIVE MASTER PROFESSIONAL SERVICES AGREEMENTS WITH KIMLEY-HORN, FIRST CARBON SOLUTIONS, ASCENT ENVIRONMENTAL, DE NOVO PLANNING GROUP, AND LAND LOGISTICS FOR ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE FOR VARIOUS PROJECTS; AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENTS; AND AUTHORIZATION FOR THE DEVELOPMENT SERVICES DIRECTOR TO EXECUTE TASK ORDERS UNDER THE AGREEMENTS**

EXECUTIVE SUMMARY

This agenda item, with City Council approval, would authorize the City to contract with Kimley-Horn, First Carbon Solutions, Ascent, De Novo Planning Group, and Land Logistics for the completion of environmental analyses and planning assistance on a variety of upcoming development projects.

DISCUSSION

Development Services Department staff is working with various developers on a large number of entitlement applications, most of which include the need for environmental analyses, as well as project management and other planning assistance. Some examples include on-going development in Cordes Ranch, and several residential subdivision projects, many of which require General Plan and/or Zoning amendments. In consideration of the timing needs of the developers, staff is tasked with expediting the completion of the entitlements of these projects, including their necessary environmental studies.

In November 2015 the City published a Request for Proposals for assistance with environmental (CEQA) studies and documentation and other assistance to planning staff as required. On December 2, 2015, staff received six proposals and chose five consultants that best fit the City's needs. Proposals were received from the following groups:

- Kimley-Horn
- DeNovo
- Land Logistics
- First Carbon Solutions
- Ascent Environmental
- Analytical Environmental Services

After evaluating the proposals, staff recommends approving contract with all but Analytical Environmental Services, as we are already working regularly with the other five well-qualified consultants, and do not anticipate such a volume of applications to require additional consultants at this time. As projects are submitted for review, staff will select the most appropriate consultant for assistance with each project.

Overall, the total spent under these contracts will not exceed \$1 million per year, all to be funded by project applicants. Each of the five consultant agreements, however, shows an annual “not to exceed” amount of \$500,000, to allow for the flexibility to use consultants as appropriate for the needs of the developers to complete project analyses in a timely fashion. For example, some consultants may be needed for more and larger contracts, up to the \$500,000, where others may be used less frequently, or not at all, depending on the applications being processed at the time. Staff will manage all of the consultant contracts to ensure that the over \$1 million across all consultants is not exceeded.

### STRATEGIC PLAN

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

### FISCAL IMPACT

There will be no impact to the General Fund. The funding for these consultants will be through Cost Recovery Agreements executed with each developer to cover the costs of staff time and consultant work related to each project.

### RECOMMENDATION

Staff recommends that the City Council approve the Professional Services Agreements and Billing Rates with Kimley-Horn, First Carbon Solutions, Ascentia, De Novo Planning Group, and Land Logistics for environmental analyses and planning assistance for various projects; authorize the Development Services Director to execute task orders under the Agreements; and authorize the Mayor to execute the Agreements.

Prepared by: Victoria Lombardo, Senior Planner

Reviewed by: Bill Dean, Assistant DS Director  
Andrew Malik, Development Services Director  
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

### ATTACHMENTS

Attachment A — Professional Services Agreements with Kimley-Horn, First Carbon Solutions, Ascentia, De Novo Planning Group, and Land Logistics with billing included

**CITY OF TRACY  
MASTER PROFESSIONAL SERVICES AGREEMENT  
ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE**

This Master Professional Services Agreement (Agreement) is entered into between the City of Tracy, a municipal corporation (City), and Kimley-Horn and Associates, Inc., a North Carolina Corporation (Consultant).

**RECITALS**

A. CONSULTANT is qualified to perform environmental analyses (CEQA) services as well as a broad range of other planning assistance services. Such consultant services are needed related to the processing of various development applications.

B. In November 2015, the City issued a Request For Proposals for CEQA and planning assistance services (hereinafter "Project"). On December 2, 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.

C. On July 19, 2016, the City Council authorized the executions of this Agreement, pursuant to Resolution No. 2016-\_\_\_\_\_.

**Now therefore, the parties mutually agree as follows:**

**1. Scope of Services.** Consultant shall perform the services generally described in individual Task Orders subject to the written approval of the City and Consultant. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: **Laura Worthington-Forbes**.

**2. Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here 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 each individual Task Order. Any services for which times for performance are not specified in each individual Task Order 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 rate amounts set forth in Exhibit "B," attached and incorporated by reference. Consultant's fee for this Agreement is not to exceed \$500,000 per year. Consultant's billing rates, and Not to Exceed amount, 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 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 in connection therein) 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) 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") 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** 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 occurrence.

**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 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. 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 Attorney, 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, 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 all acts of its employees, agents, or subconsultants, 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 to Consultant.

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. City may terminate this Agreement if Consultant maintains or acquires such a 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 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 prior written consent of City.

**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:

Bill Dean  
Assistant DS Director  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

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

To Consultant:

Laura Worthington-Forbes  
Principal-in-Charge  
Kimley-Horn and Associates, Inc.  
100 West San Fernando St. Ste. 250  
San Jose, CA 95113

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 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 licensed 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 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, Mayor

Date: \_\_\_\_\_

Approved by City Council on July 19, 2016, by Resolution No. 2016-\_\_\_\_\_.

Attest:

By: Nora Pimentel, City Clerk

Approved As To Form:

By: Bill Sartor, City Attorney

Exhibits:

- A. Scope of Service
- B. Fee Schedule

**Consultant**



Kimley-Horn and Associates, Inc.

By: Laura Worthington-Forbes

Title: Regional Vice President

Date: 7-7-16

Federal Employer Tax ID No. 56-0885615



By: ~~Scott Colvin~~ **FREDERIK VENTER** PE# 64621

Title: Assistant Secretary

Date: 7-7-16

**EXHIBIT A**  
**SCOPE OF SERVICES**

Consultant will comprehensively manage development of all projects, from start to finish, acting as an extension of Department staff.

The City will have ongoing access to each project manager and key team members through regular face-to-face meetings, as well as through telephone and email contacts that are monitored constantly to provide quick response.

On a monthly basis, Consultant will provide progress reports that summarize all work progress and billings to date. Each report will address potential issues that may delay achieving the project milestones, and recommendations for how to keep the project on track.

Each deliverable to the City will meet the established project milestones, and comply with the standards and procedures established by the City. All draft and final documents will be checked, revised, and verified prior to submittal through a continuous process that includes scheduled in-house reviews by an identified Quality Control Manager.

As part of the CEQA review, Consultant will determine if the project is exempt from CEQA. If the project is exempt, Consultant will process the exemption to expedite the project schedule and reduce costs. If it is not exempt, Consultant will then proceed with identifying and preparing the appropriate CEQA document. Consultant will prepare additional technical reports and environmental analyses to create a thorough, complete administrative and technical record upon which new environmental conclusions will be based.

Consultant will inform the City of Tracy as soon as possible of any potential or proposed out-of-scope items that will affect the established budget. Strict adherence to the original scope of work and budget can be achieved through timely and continuous communications between Consultant and agency staff.

**EXHIBIT B**

**Fee Schedule**

*Kimley-Horn and Associates, Inc.*  
**HOURLY RATE SCHEDULE**  
Effective July 1, 2016 through June 30, 2017

TECHNICAL SUPPORT .....	\$ 110.00 - \$125.00
SENIOR TECHNICAL SUPPORT .....	\$130.00 - \$180.00
SUPPORT STAFF .....	\$ 85.00 - \$105.00
PROFESSIONAL .....	\$ 100.00 - \$165.00
SENIOR PROFESSIONAL .....	\$155.00 - \$310.00
PRINCIPAL .....	\$310.00 - \$310.00

**EXPENSES**

DIRECT EXPENSE MARK-UP .....	15.00%
SUBCONSULTANT MARK-UP .....	15.00%
OFFICE EXPENSES .....	5%

**CITY OF TRACY**  
**MASTER PROFESSIONAL SERVICES AGREEMENT**  
**ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE**

This Master Professional Services Agreement (Agreement) is entered into between the City of Tracy, a municipal corporation (City), and Land Logistics, Inc., a California Corporation (Consultant).

**RECITALS**

A. CONSULTANT is qualified to perform environmental analyses (CEQA) services as well as a broad range of other planning assistance services. Such consultant services are needed related to the processing of various development applications.

B. In November 2015, the City issued a Request For Proposals for CEQA and planning assistance services (hereinafter "Project"). On December 2, 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.

C. On July 19, 2016, the City Council authorized the executions of this Agreement, pursuant to Resolution No. 2016-\_\_\_\_\_.

**Now therefore, the parties mutually agree as follows:**

**1. Scope of Services.** Consultant shall perform the services generally described in Exhibit "A" attached and incorporated by reference. Consultant's specific scope of services shall be more particularly described in individual Task Orders subject to the written approval of the City and Consultant. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: **Brian Millar**. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use any subcontractor or subconsultant, without the 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 here 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 each individual Task Order. Any services for which times for performance are not specified in each individual Task Order 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 rate amounts set forth in Exhibit "B," and Not to Exceed \$500,000 per year. Consultant's billing rates, and Not to Exceed amount, 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 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 in connection therein) 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) 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") 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** 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 occurrence.

**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 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. 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 Attorney, 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, 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 all acts of its employees, agents, or subconsultants, 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 to Consultant.

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. City may terminate this Agreement if Consultant maintains or acquires such a 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 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 prior written consent of City.

**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:

Bill Dean  
Assistant DS Director  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:

Brian Millar  
Principal  
Land Logistics, Inc.  
216 F Street, Suite 38  
Davis, CA 95616

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 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 licensed 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 and their respective successors and assigns.

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

**City of Tracy**

**Consultant**

\_\_\_\_\_

Brian Millar  
Land Logistics, Inc.

By: Michael Maciel, Mayor

By: Brian Millar, AICP

Title: Principal

Date: \_\_\_\_\_

Date: 7-7-16

Approved by City Council on July 19, 2016, by Resolution No. 2016-\_\_\_\_.

Federal Employer Tax ID No. 20-2768148

Attest:

By: Nora Pimentel, City Clerk

Brian Millar -  
By: President  
Title:  
Date: 7-7-16

Approved As To Form:

By: Bill Sartor, City Attorney

Date: \_\_\_\_\_

Exhibit:

- A. Scope of Services
- B. Billing rates

## EXHIBIT A

### SCOPE OF SERVICES

Consultant will utilize Brian Millar, AICP, for this project management and planning assistance assignment.

Mr. Millar is a principal with Consultant, with more than 25 years of planning and development experience. He specializes in land use planning and project management and has performed tasks such as general plan updates and amendments, housing element updates, annexations, zoning ordinance and specific plan preparation, and project management of large commercial, industrial, residential, and mixed-use urban developments. He has served as interim planning director in such communities as Lincoln, Wasco, and Richmond and held positions as community development director for the Cities of Tracy and Winters, and most recently, as director of economic and community development for the City of Daly City.

Mr. Millar has been involved in the preparation of numerous CEQA documents and technical studies, mitigated negative declarations, environmental impact reports, and mitigation monitoring plans. He has also made numerous presentations to city councils, planning commissions, boards, and special interest groups, and has conducted numerous site feasibility and due diligence analyses for residential, commercial, and industrial projects for both public and private sector clients.

Continuing to assist and provide staffing and project management services will be Ignacio "Nash" Gonzalez, AICP. Mr. Gonzalez brings over 25 years of experience working in several public agencies as well as in the private sector. He has excellent Planning skills, and will continue to be able to meet all City objectives for CEQA analyses and general Planning assistance range of duties.

While Mr. Millar and Mr. Gonzalez would be the principal analysts and authors for CEQA documentation for the City, depending upon the specific CEQA analysis to be conducted, Consultant may also include use of sub-consultants for certain aspects of the work, such as traffic and air quality analyses. The firm(s) to be used would be tailored to the project, and full background information on the firms would be included with specific scope of work and budget submittals to the City.

The range of development projects identified in the City's RFP will require careful coordination and planning to ensure each development project is thoroughly analyzed pursuant to the provisions of CEQA and City environmental practices, and all key issues are addressed and resolved, doing so in a timely manner that is inclusive of City staff, applicant representatives, public agencies, and resident groups.

Elements of the project management methodology will include the following:

- General duties will include continued review and processing of development applications (including General Plan Amendments, Prezones/Rezoning, Tentative Maps, Development Agreements, Conditional Use Permits, and other development-related proposals), as assigned by the City. Project-specific actions will typically include:

- Work closely with other City departments and divisions, as well as with agency staff, related to key project issues, timelines, and related project matters.
- Provide regular communication with City staff and applicant teams as to status of the particular projects, next steps, and key issues.
- Prepare correspondence.
- Prepare draft and final staff reports, resolutions, and conditions of approval.
- Prepare corresponding project CEQA documentation (typically Initial Studies and Mitigated Negative Declarations). This would include preparation of detailed scopes of work, budgets and schedules for CEQA analysis, and identify preparation of any project-specific technical studies. Draft and Final Initial Studies would be provided for each project, along with Mitigation Monitoring Reporting Plans.
- Conduct meetings with applicants and agency personnel.
- Prepare notices for public meetings.
- Make presentations to commissions and the City Council.
- Provide follow-up actions, as necessary, to implement project approvals.
- Attend staff meetings, as directed by the City.
- Conduct other Planning duties and research, as may be assigned by the City.

## **EXHIBIT B**

### **Billing Rates**

Fees for this contract are proposed as follows:

- Mr. Millar's hourly rate ranges from \$155 to \$175.
- Mr. Gonzalez's hourly rate ranges from \$130 to \$160.
- Certain projects may allow for determination of a flat-rate fee or task order-based assignments to be performed on a not-to-exceed fee basis. This will be determined in discussions with City staff prior to commencing work on each project and will be finalized in project-specific task orders under the Master Professional Services Agreement.
- Direct costs (reproduction, mailing, and any similar project-related expenses) will be billed at cost plus 10 percent.

**CITY OF TRACY  
MASTER PROFESSIONAL SERVICES AGREEMENT  
ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE**

This Master Professional Services Agreement (Agreement) is entered into between the City of Tracy, a municipal corporation (City), and Ascent Environmental, Inc., a California Corporation (Consultant).

**RECITALS**

A. CONSULTANT is qualified to perform environmental analyses (CEQA) services as well as a broad range of other planning assistance services. Such consultant services are needed related to the processing of various development applications.

B. In November 2015, the City issued a Request For Proposals for CEQA and planning assistance services (hereinafter "Project"). On December 2, 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.

C. On July 19, 2016, the City Council authorized the executions of this Agreement, pursuant to Resolution No. 2016-\_\_\_\_\_.

**Now therefore, the parties mutually agree as follows:**

**1. Scope of Services.** Consultant shall perform the services generally described in Exhibit "A" attached and incorporated by reference. Consultant's specific scope of services shall be more particularly described in individual Task Orders subject to the written approval of the City and Consultant. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Amanda Olekszulin. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "B," nor shall Consultant use any subcontractor or subconsultant other than Fehr & Peers, without the 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 here 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 each individual Task Order. Any services for which times for performance are not specified in each individual Task Order 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 rate amounts set forth in Exhibit "B," and Not to exceed \$500,000 per year. Consultant's billing rates, and Not to

Exceed amount, 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 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 in connection therein) 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) 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.

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**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 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. Consultant shall immediately obtain a replacement policy.

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**6. Independent Contractor Status; Conflicts of Interest.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, 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 to Consultant.

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**8. Ownership of Work.** All original documents prepared by Consultant for this Agreement 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 prior written consent of City.

**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:

Bill Dean  
Assistant DS Director  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:

Amanda Olekszulín  
Principal  
Ascent Environmental, Inc.  
455 Capitol Mall, Suite 300  
Sacramento, CA 95814

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 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 licensed 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. 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 void.

**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 and their respective successors and assigns.

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

**City of Tracy**

**Consultant**

\_\_\_\_\_  
By: Michael Maciel, Mayor

\_\_\_\_\_  
Ascent Environmental, Inc.

Date: \_\_\_\_\_

for  
By: Amanda Olekszulyn / Gary Jakobs

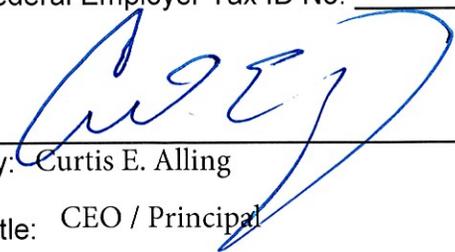
Attest:

Title: President

Date: 7-12-16

Federal Employer Tax ID No. 27-1537109

\_\_\_\_\_  
By: Nora Pimentel, City Clerk

\_\_\_\_\_  
By: 

Approved As To Form:

Title: CEO / Principal

\_\_\_\_\_  
By: Bill Sartor, City Attorney

Date: 7-12-16

Date: \_\_\_\_\_

Exhibit:

- A. Scope of Services
- B. Standard Fee Schedule

## EXHIBIT A

### SCOPE OF SERVICES

Consultant's objective is to prepare only the environmental documentation that is required for a given project, and no more. Each action that could trigger CEQA or NEPA compliance would undergo a stepwise evaluation to: 1) confirm whether or not these environmental regulations apply; 2) if CEQA or NEPA are applicable, determine what level of review is required and what document(s) should be prepared; and 3) identify and execute necessary technical studies to support completion of the CEQA/NEPA document(s).

Consultant can assist the City in evaluating proposals to determine whether they qualify as a "project" under CEQA or a "federal action" under NEPA, and therefore, whether or not CEQA or NEPA is applicable. Consultant can also assist in determining whether existing CEQA or NEPA documents may provide authorization for City activities (e.g., the activity is consistent with the City's Master EIR or a CWA authorization can fall under a Nationwide Permit (NWP) where NEPA has been completed for the NWP program and no further NEPA review is necessary).

If CEQA or NEPA are applicable to the project, the next step is to determine whether the project would qualify for a Categorical Exemption (CEQA) or Categorical Exclusion (NEPA). These are appropriate for projects that, by virtue of their nature and/or limited size or scale, are determined to have a less than significant effect on the environment. Categorical Exclusions under NEPA follow a similar process. Consultant can assist with the filing of Categorical Exemptions or Categorical Exclusions.

If the project is neither exempt nor excluded, we next consider IS/negative declarations (IS/ND), IS/MNDs (CEQA) and environmental assessment (EA)/ finding of no significant impacts (FONSIs), EA/Mitigated FONSIs (NEPA). These documents are appropriate for projects for which substantial evidence exists that impacts can be mitigated, and that mitigation is agreed to prior to public review.

For an IS/ND or IS/MND, Consultant would prepare a project description based in information provided by the City; address all issues in the IS checklist; determine for each issue area whether there is no impact, a less-than-significant impact, or a significant impact; if there are significant impacts, determine if they can be reduced to less-than-significant levels through mitigation; and substantiate each conclusion with evidence ranging from answers based on simple facts (e.g., the site is not located on agricultural land) to more detailed technical studies (e.g., traffic study determining level of service; air quality study determining emissions rates). If the IS checklist supports the conclusion that all impacts would be less than significant, an ND would be prepared, or if significant impacts would be mitigated to less-than-significant levels, an MND would be prepared. The ND or MND, along with the IS, would be circulated to agencies and the public for review.

Under NEPA, an EA would include a description of the project and alternatives, purpose and need, and the affected environment, and document environmental consequences of the project. The EA would address all potential environmental and human impacts, and recommend project changes (equivalent to mitigation under CEQA) to reduce adverse impacts. Assuming there are no significant adverse effects remaining after project modifications, the EA would be used to support a FONSI. A notice of the availability of the EA/FONSI would be published in the Federal Register (at a minimum) and the federal agency would consider public and agency comments and render a decision.

EIRs (CEQA) and EISs (NEPA) are appropriate for generally larger projects for which it is unknown whether feasible measures would adequately reduce significant environmental effects, and/or for which implementation would result in significant unavoidable effects. The first step in preparation of an EIR is often an IS, as described above, or if the determination is made to prepare a full scope EIR, preparation of the IS may be skipped. If an IS

is prepared, it can be used to determine the focus of the EIR and be attached to a Notice of Preparation (NOP). Ascent would prepare an NOP that describes the project and its potential impacts and solicits comment on the scope and content of the EIR from the public, agencies, and any other interested parties. A scoping meeting may be required.

After the scoping period, the Consultant would prepare an EIR focused on potentially significant environmental impacts; conducting technical analysis as needed as well as compiling appropriate documentation to support all conclusions in the topics requiring analysis. The EIR would clearly determine significance of impacts, propose feasible mitigation to substantially reduce significant impacts, and determine if any impacts are significant and unavoidable. Other elements of the EIR would include an evaluation of cumulative impacts, growth inducing impacts, and alternatives. Alternatives to the project would focus on actions that would reduce or avoid significant environmental impacts, and the alternatives analysis would be at a comparative level of detail.

Once a Draft EIR is complete and available for review, Ascent would prepare a Notice of Availability (NOA) that would be circulated to agencies, groups, and individuals and be published in the newspaper. The Draft EIR would circulate for 45 days. Consultant would then prepare responses to all comments raised that address significant environmental issues and incorporate these into a Final EIR for the decision-makers to consider for certification. If the City decides to approve the project, Ascent would prepare a decision package, including Findings of Fact, Statement of Overriding Considerations (if needed), and a Mitigation Monitoring Plan.

For large-scale, multi-phase developments or major planning documents, a Program EIR or Master EIR is appropriate. Program EIRs are prepared for a series of actions that together consist of one large project. CEQA streamlining is available for later projects that are found to be within the scope of the Program EIR. Master EIRs differ from regular Program EIRs most notably in that CEQA identifies very clear rules for subsequent projects to tier from the Master EIR. CEQA also requires Lead Agencies to re-evaluate the adequacy of the Master EIR every five years.

An EIS follows a similar process as an EIR. An EA may be prepared (as opposed to an IS), a Notice of Intent (rather than an NOP) is prepared and distributed, as well as published in the Federal Register. Scoping (often including a scoping meeting) is conducted. The EIS includes a description of project and alternatives, the purpose and need for the project, the affected environment, and environmental consequences. All potential environmental and human impacts are addressed and mitigation is recommended to reduce adverse impacts. In accordance with NEPA, alternatives are assessed at an equal level of detail. An EIS must also address requirements of Executive Orders and other federal requirements, including those pertaining to Fish and Wildlife Coordination Act, ESA (Section 7), NHPA Section 106, and others. Public review for a Draft EIS would be noticed in the Federal Register to commence the 60-day public and agency review period. The Consultant would prepare responses to all comments on the Draft EIS that address significant environmental issues and incorporate these into a Final EIS. After publication of the Final EIS, the federal agency may file a Record of Decision after all consultation (Section 106, Section 7, etc.) is completed.

The Consultant can prepare, or manage the preparation by others, all technical studies needed to support preparation of legally defensible CEQA and NEPA documents. These could include, but are not limited to, studies pertaining to biological resources, forestry resources, air quality, noise, cultural resources, transportation, and water quality.

## EXHIBIT B

### Standard Fee Schedule

Hourly rates for all of proposed staff are presented below. We have also provided a range of billing rates for other in-house technical and support staff that are available support the proposed project management team in executing a given task assignment (e.g., CEQA and/or NEPA documents, joint documents).

Proposed Key Staff	Billing Rate
Amanda Olekszulín Principal/Contract Manager	\$215
Suzanne Enslow Project Manager	\$140
Mike Parker, AICP Senior Project Manager	\$155
Elizabeth Boyd, AICP Project Manager	\$130
Erik de Kok, AICP Senior Project Manager	\$155
Honey Walters Air Quality, GHG, and Noise Lead	\$205
Linda Leeman, Natural Resources Lead	\$175
Mike Eng Regulatory Permitting Lead	\$165

General Labor Classifications	Billing Rate
Principal, Director	\$200 to \$240
Senior Project Manager, Senior Planner/Scientist/Biologist	\$150 to \$195
Project Manager, Project Planner/Scientist/Biologist	\$120 to \$165
Environmental Analyst, Staff Scientist/Staff Biologist	\$100 to \$145
Graphics/GIS	\$85 to \$115
Document Production/Word Processor/Administrative Assistant	\$85 to \$95
Project Assistant	\$45 to \$85

Direct Costs	Rates*
Reproduction: 8 ½" by 11" black & white	\$0.08/page
Reproduction: 8 ½" by 11" color	\$0.45/page
Reproduction: CDs	\$10/disc
Automobile mileage (IRS rate in effect)	\$0.575
Noise meter	½ day/\$100, Full day/\$150 (no overnight) Multiple day/\$200 (24-hour), Week/\$500
Per Diem	Standard Government Rates or as negotiated
Other direct costs, including subcontractors	As incurred

A general and administrative cost of 10 percent will be applied to all direct costs, including subcontractors.

# FEHR & PEERS

2015-2016

(July 2015 through June 2016)

## Hourly Billing Rates

### Classification Hourly Rate

Principal	\$195.00	-	\$325.00
Senior Associate	\$200.00	-	\$310.00
Associate	\$130.00	-	\$210.00
Senior Engineer/Planner	\$140.00	-	\$190.00
Engineer/Planner	\$110.00	-	\$145.00
Senior Technical Support	\$125.00	-	\$175.00
Senior Administrative Support	\$110.00	-	\$140.00
Administrative Support	\$100.00	-	\$125.00
Technician	\$105.00	-	\$135.00
Intern	\$80.00	-	\$95.00

- *Other Direct Costs / Reimbursable expenses are invoiced at cost plus 10% for handling.*
- *Personal auto mileage is reimbursed at the then current IRS approved rate (54 cents per mile as of Jan 2016).*
- *Voice & Data Communications (Telephone, fax, computer, e-mail, etc.) are invoiced at cost as a percentage of project labor.*

*Fehr & Peers reserves the right to change these rates at any time with or without advance notice.*

**CITY OF TRACY**  
**MASTER PROFESSIONAL SERVICES AGREEMENT**  
**ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE**

This Master Professional Services Agreement (Agreement) is entered into between the City of Tracy, a municipal corporation (City), and De Novo Planning Group, a California Corporation (Consultant).

**RECITALS**

A. CONSULTANT is qualified to perform environmental analyses (CEQA) services as well as a broad range of other planning assistance services. Such consultant services are needed related to the processing of various development applications.

B. In November 2015, the City issued a Request For Proposals for CEQA and planning assistance services (hereinafter "Project"). On December 2, 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.

C. On July 19, 2016, the City Council authorized the executions of this Agreement, pursuant to Resolution No. 2016-\_\_\_\_\_.

**Now therefore, the parties mutually agree as follows:**

1. **Scope of Services.** Consultant shall perform the services generally described in Exhibit "A" attached and incorporated by reference. Consultant's specific scope of services shall be more particularly described in individual Task Orders subject to the written approval of the City and Consultant. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: **Ben Ritchie**.

2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here 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 each individual Task Order. Any services for which times for performance are not specified in each individual Task Order 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 rate amounts set forth in Exhibit "B," and Not to Exceed \$500,000 per year. Consultant's billing rates, and Not to Exceed amount, 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 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 in connection therein) 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) 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") 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** 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 occurrence.

**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 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. 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 Attorney, 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, 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 all acts of its employees, agents, or subconsultants, 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 to Consultant.

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. City may terminate this Agreement if Consultant maintains or acquires such a 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 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 prior written consent of City.

**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:

Bill Dean  
Assistant DS Director  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:

Ben Ritchie  
Principal  
De Novo Planning Group  
1020 Suncastr Lane, Suite 106  
El Dorado Hills, CA 95762

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 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 licensed 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 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, Mayor

Date: \_\_\_\_\_

Attest:

By: Nora Pimentel, City Clerk

Approved As To Form:

By: Bill Sartor, City Attorney

Date: \_\_\_\_\_

**Consultant**



De Novo Planning Group

By: Ben Ritchie

Title: Principal

Date: 7-7-16

Federal Employer Tax ID No. 26-2962235

**Exhibits:**

- A. Scope of Work
- B. Billing rates

## **EXHIBIT A**

### **Scope of Services**

To provide environmental (CEQA) and planning assistance for a range of development projects that will be processed by the City over the next several years, CONSULTANT will provide the City with responsive, prompt, and legally-defensible CEQA and planning documents.

The CONSULTANT management and technical staff have a strong knowledge of the local and regional conditions. CONSULTANT has the local and regional experience to provide the City of Tracy with outstanding and legally-defensible CEQA documents for a wide range of project types. CONSULTANT members have served as contract staff to local agencies and are familiar with the planning process and future uses of the EIR, which allows us to craft mitigation language that will be effective and straightforward to implement. CONSULTANT has prepared numerous environmental documents throughout the central valley, and has worked extensively with the City of Tracy.

CONSULTANT will ensure a successful CEQA process with each project through extensive coordination and communication with City staff, as well as with responsible agencies and the general public. Given CONSULTANT'S experience in preparing project-level EIRs, CONSULTANT understand the strong need for early and on-going coordination with natural resource agencies as well as other agencies that regulate and/or permit activities within the City (e.g., SJCOG, Caltrans, California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, State Reclamation Board). CONSULTANT will consult all relevant resource and regulatory agencies as part of each project, as well as during the Notice of Preparation review and during the preparation of the Draft EIR. Multiple consultations assure that the agencies have considered the direction of the project and have provided input to the analysis and mitigation measures presented in the EIR.

CONSULTANT has proposed a project management team with exceptional CEQA knowledge and planning experience that is committed to continuous and comprehensive coordination throughout the CEQA process. Because CONSULTANT remains small CONSULTANT is able to offer clients with significantly lower rates, while still providing clients with Principal-level attention to each project. CONSULTANT prides themselves on their ability to deliver on their commitments, exceed expectations, and satisfy clients with quality work on schedule and on time.

EXHIBIT B  
FEE SCHEDULE

Project Manager: \$125/hour

Principal Planner \$110/hour

GIS/Graphics \$75/hour

*We do not charge for travel, mileage or meals, nor do we mark up our subconsultant costs. Direct costs are limited to charges for document printing and ship, and we do not mark these charges up.*

**CITY OF TRACY  
MASTER PROFESSIONAL SERVICES AGREEMENT  
ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE**

This Master Professional Services Agreement (Agreement) is entered into between the City of Tracy, a municipal corporation (City), and FirstCarbon Solutions, a California Corporation (Consultant).

**RECITALS**

- A. CONSULTANT is qualified to perform environmental analyses (CEQA) services as well as a broad range of other planning assistance services. Such consultant services are needed related to the processing of various development applications.
- B. In November 2015, the City issued a Request For Proposals for CEQA and planning assistance services (hereinafter "Project"). On December 2, 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.
- C. On July 19, 2016, the City Council authorized the executions of this Agreement, pursuant to Resolution No. 2016-\_\_\_\_\_.

**Now therefore, the parties mutually agree as follows:**

1. **Scope of Services.** Consultant shall perform the services generally described in Exhibit "A" attached and incorporated by reference. Consultant's specific scope of services shall be more particularly described in individual Task Orders subject to the written approval of the City and Consultant. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Mary Bean.
2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here 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 each individual Task Order. Any services for which times for performance are not specified in each individual Task Order 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.
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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 in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

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**5.7 Notice of Cancellation.** Consultant 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. Consultant shall immediately obtain a replacement policy.

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**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 Attorney, before the City signs this Agreement.

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**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:

Bill Dean  
Assistant DS Director  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:

Mary Bean  
Vice President  
FirstCarbon Solutions  
1350 Treat Boulevard, Suite 380  
Walnut Creek, CA 94597

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 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 licensed 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.

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**9.9 Business License.** Before the City signs this Agreement, Consultant shall obtain a City of Tracy Business License.

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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 and their respective successors and assigns.

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

**City of Tracy**

**Consultant**

\_\_\_\_\_

Mary Bean  
\_\_\_\_\_  
FirstCarbon Solutions

By: Michael Maciel, Mayor

By: Mary Bean  
Title: Vice President

Date: \_\_\_\_\_

Date: 7.7.16

Approved by City Council on July 19, 2016, by Resolution No. 2016-\_\_\_\_\_.

Federal Employer Tax ID No. 95-378 2289

Attest:

By: Nora Pimentel, City Clerk

Jason Drapman  
\_\_\_\_\_  
By: Jason Drapman  
Title: Vice President  
Date: 7/7/16

Approved As To Form:

By: Bill Sartor, City Attorney

Exhibits:

- A. Scope of Services
- B. Fee Schedule

## EXHIBIT A

### SCOPE OF SERVICES

To effectively manage the CEQA process, CONSULTANT will work with City staff in balancing the collection of detailed environmental data necessary to comply with CEQA while confirming the applicability and need for any additional state and federal regulatory permits and/or more focused site analysis (e.g., protocol-level surveys, jurisdictional wetland delineations). CONSULTANT'S approach facilitates the development of a comprehensive impact analysis while simultaneously identifying the need for any future permit-level analysis and specific mitigation requirements, which streamlines the environmental compliance process. As part of developing a project-specific work plan, CONSULTANT seeks to utilize existing technical studies wherever possible before identifying studies that are needed to characterize existing conditions, as required under CEQA. Such studies provide the foundation for evaluating the significance of project impacts and identifying suitable mitigation measures.

CONSULTANT encourages our clients to integrate environmental considerations early in the project planning process. The requirements of CEQA should be considered early enough for agencies to take into account environmental opportunities and constraints in the project design. CONSULTANT'S approach streamlines the environmental compliance process and facilitates the preparation of legally defensible documents that can withstand public scrutiny and potential legal challenge.

CONSULTANT will assist the City in defining the precise location and boundaries of all of the components, facilities, and associated infrastructure required to construct and operate a proposed project. We understand due to scheduling constraints sometimes consultants are required to move forward in the absence of such information. CONSULTANT will work with the City and its staff to define and document the project details as soon as possible and to identify when it might be appropriate to make certain assumptions to allow the project to remain on schedule.

After specific elements of the project description are clearly defined, CONSULTANT conducts a preliminary environmental compliance review to determine whether the project is subject to CEQA. Specifically, we conduct a preliminary screening to determine whether an activity is a "project" and/or "action" as defined by CEQA and NEPA, respectively, and to determine whether the project/action is exempt or excluded from environmental review from CEQA.

CONSULTANT may recommend to the City the approval and the preparation of an Initial Study (IS) to determine whether an EIR needs to be prepared or a Negative or Mitigated Negative Declaration and/or a Finding of No Significant Impact (FONSI) is the appropriate level of documentation. In certain instances, we know early on that a proposed activity will have the potential to significantly impact the environment and that preparation of an EIR will be required. In these cases, depending upon the project circumstances, CONSULTANT can either bypass the preparation of an IS and immediately proceed with preparing the EIR, or we can determine that is still beneficial to prepare an IS in order to focus an EIR on only those potentially significant effects.

When there is substantial evidence a proposed project or activity may have significant impacts on the environment, CONSULTANT provides the technical capabilities and expertise necessary to assist our clients in preparing an EIR, including but not limited to:

- Defining/confirming the project description
- Identifying project stakeholders and creating/maintaining a project mailing list
- Preparing the Notice of Preparation (NOP) and providing a 30-day public review
- Conducting public scoping
- Preparing supporting technical reports and an Administrative Draft EIR for internal Team Review
- Preparing and circulating the Public Draft EIR for a 45-day public review period
- Drafting responses to comments received in response to the Draft EIR for internal review
- Preparing a Final EIR, including responses to comments, a mitigation monitoring and reporting program, and an executive summary, and circulating the document for (typically) a ten-day review period; and
- Preparing of Findings and, if necessary, Overriding Considerations to support a lead agency's final decision on the project

Depending on the project, there may be a need to initiate technical studies to support the environmental analyses and/or engineering feasibility studies. CONSULTANT has extensive experience in reviewing development applications, interfacing with both project applicants and City planning staff to develop the appropriate CEQA document (usually a Mitigated Negative Declaration or Environmental Impact Report). CONSULTANT typically obtains an applicant's development proposal and uses this information to develop a detailed project description. Critical to our success in completing projects on time and on budget is making requests for development application early in the EIR process, quickly gathering and assimilating readily available information, but also having flexibility later in the process to respond to new or changed information about a particular project's development application.

**EXHIBIT B**  
**FirstCarbon Solutions**  
**2016 Fee Schedule**

FirstCarbon Solutions (FCS) provides consulting services in environmental and regulatory compliance, planning, air quality and greenhouse gases, biological and cultural resources management, noise, and restoration planning and monitoring. Compensation is based on the following fee schedule and charges.

**Hourly Labor Rates**

President/ Vice President	\$250 – 290 USD
Director	\$160 – 260 USD
Senior Project Manager/Senior Scientist/ Senior Regulatory Scientist	\$140 – 190 USD
Project Manager/Scientist/Regulatory Scientist	\$110 – 160 USD
Assistant Project Manager/Assistant Regulatory Scientist	\$85 – 135 USD
Technical Analyst (Air Quality, Biology, Noise, and Cultural Resources)	\$60 – 100 USD
Project Coordinator/Environmental Planner	\$75 – 100 USD
Environmental Analyst/Regulatory Analyst	\$65 – 75 USD
Research Analyst	\$60 – 65 USD
Publications Coordinator/Technical Editor	\$100 – 180 USD
GIS Analyst	\$70 – 125 USD
Graphics Designer/GIS Technician	\$65 – 90 USD
Word Processor	\$70 – 90 USD
Administrative Assistant/Accounting/Clerical	\$60 – 65 USD
Reprographics Assistant/Intern	\$55 – 75 USD

**Other Labor Rates**

Labor rates for expert testimony, litigation support, and depositions/court appearances will be billed at a minimum of two times the above rates. If additional services are authorized during the performance of a contract, compensation will be based on the fee schedule in effect at the time the services are authorized.

**Direct Expenses**

Direct expenses are billed at the amount charged, plus out-of-pocket expenses including, but not limited to, 15% administrative fee.

1. Out-of-pocket expenses including, but not limited to, travel, messenger service, reprographics, lodging, meals, blueprint, reproduction, and photographic services: Cost, as charged to FCS.
2. Subcontractors' fees: As quoted.
3. Passenger Cars: \$0.540 per mile.
4. Four-wheel drive vehicles: \$75.00 per day (\$0.540 per mile).
5. Reproduction and Color Copies: See Reprographics Fee Schedule (provided as necessary).
6. Records checks: Fees vary by facility and project.
7. Museum curation: Fees vary by city and project.
8. Cultural resources storage/curation of fossil and artifact collections: Cost, as charged to FCS.
9. Per Diem: \$64.00 per day. This is the USA Federal Rate. Lodging surcharge may apply in high rate areas.
10. USFWS/CDFW impacts or mitigation fees: Cost, as charged to FCS.

**Terms**

Compensation and direct expenses are invoiced monthly and payable upon receipt or as codified in project specific contract.

Rates effective January 1, 2016

RESOLUTION 2016-\_\_\_\_\_

APPROVING A MASTER PROFESSIONAL SERVICE AGREEMENT WITH LAND LOGISTICS, FOR ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE FOR VARIOUS PROJECTS; AUTHORIZING THE DEVELOPMENT SERVICES DIRECTOR TO EXECUTE TASK ORDERS UNDER THE AGREEMENT, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, Staff is processing various applications that require environmental analyses and the completion and review of the appropriate entitlement documents, and

WHEREAS, The project applicants expect timely completion of the required environmental documentation and entitlements, and

WHEREAS, In November 2015, the Development Services Department published a Request for Proposals for environmental documentation and planning assistance for the projects, and

WHEREAS, On December 2, 2015, Land Logistics, along with several other consulting firms submitted proposals to the City, and

WHEREAS, The proposal submitted by Land Logistics, best meet the City's needs by demonstrating the competence and professional qualifications necessary for the preparation of appropriate environmental analyses and to assist planning staff as otherwise necessary;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby approves the Master Professional Services Agreement and Billing Rates with Land Logistics; authorizes the Development Services Director to execute task orders under the Agreement; and authorizes the Mayor to execute the Agreement.

\*\*\*\*\*

The foregoing Resolution 2016-\_\_\_\_\_ was adopted by the City Council on the 19<sup>th</sup> day of July, 2016, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

RESOLUTION 2016-\_\_\_\_\_

APPROVING A MASTER PROFESSIONAL SERVICE AGREEMENT WITH KIMLEY-HORN FOR ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE FOR VARIOUS PROJECTS; AUTHORIZING THE DEVELOPMENT SERVICES DIRECTOR TO EXECUTE TASK ORDERS UNDER THE AGREEMENT, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, Staff is processing various applications that require environmental analyses and the completion and review of the appropriate entitlement documents, and

WHEREAS, The project applicants expect timely completion of the required environmental documentation and entitlements, and

WHEREAS, In November 2015, the Development Services Department published a Request for Proposals for environmental documentation and planning assistance for the projects, and

WHEREAS, On December 2, 2015, Kimley-Horn, along with several other consulting firms submitted proposals to the City, and

WHEREAS, The proposal submitted by Kimley-Horn best meet the City's needs by demonstrating the competence and professional qualifications necessary for the preparation of appropriate environmental analyses and to assist planning staff as otherwise necessary;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby approves the Master Professional Services Agreement and Billing Rates with Kimley-Horn; authorizes the Development Services Director to execute task orders under the Agreement; and authorizes the Mayor to execute the Agreement.

\*\*\*\*\*

The foregoing Resolution 2016-\_\_\_\_\_ was adopted by the City Council on the 19<sup>th</sup> day of July, 2016, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

RESOLUTION 2016-\_\_\_\_\_

APPROVING A MASTER PROFESSIONAL SERVICE AGREEMENT WITH FIRST CARBON SOLUTIONS FOR ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE FOR VARIOUS PROJECTS; AUTHORIZING THE DEVELOPMENT SERVICES DIRECTOR TO EXECUTE TASK ORDERS UNDER THE AGREEMENT, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, Staff is processing various applications that require environmental analyses and the completion and review of the appropriate entitlement documents, and

WHEREAS, The project applicants expect timely completion of the required environmental documentation and entitlements, and

WHEREAS, In November 2015, the Development Services Department published a Request for Proposals for environmental documentation and planning assistance for the projects, and

WHEREAS, On December 2, 2015, First Carbon Solutions, along with several other consulting firms submitted proposals to the City, and

WHEREAS, The proposal submitted by First Carbon Solutions best meet the City's needs by demonstrating the competence and professional qualifications necessary for the preparation of appropriate environmental analyses and to assist planning staff as otherwise necessary;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby approves the Master Professional Services Agreement and Billing Rates with First Carbon Solutions; authorizes the Development Services Director to execute task orders under the Agreement; and authorizes the Mayor to execute the Agreement.

\*\*\*\*\*

The foregoing Resolution 2016-\_\_\_\_\_ was adopted by the City Council on the 19<sup>th</sup> day of July, 2016, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

RESOLUTION 2016-\_\_\_\_\_

APPROVING A MASTER PROFESSIONAL SERVICE AGREEMENT WITH DE NOVO PLANNING GROUP, FOR ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE FOR VARIOUS PROJECTS; AUTHORIZING THE DEVELOPMENT SERVICES DIRECTOR TO EXECUTE TASK ORDERS UNDER THE AGREEMENT, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, Staff is processing various applications that require environmental analyses and the completion and review of the appropriate entitlement documents, and

WHEREAS, The project applicants expect timely completion of the required environmental documentation and entitlements, and

WHEREAS, In November 2015, the Development Services Department published a Request for Proposals for environmental documentation and planning assistance for the projects, and

WHEREAS, On December 2, 2015, De Novo Planning Group, along with several other consulting firms submitted proposals to the City, and

WHEREAS, The proposal submitted by De Novo Planning Group, best meet the City's needs by demonstrating the competence and professional qualifications necessary for the preparation of appropriate environmental analyses and to assist planning staff as otherwise necessary;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby approves the Master Professional Services Agreement and Billing Rates with De Novo Planning Group; authorizes the Development Services Director to execute task orders under the Agreement; and authorizes the Mayor to execute the Agreement.

\*\*\*\*\*

The foregoing Resolution 2016-\_\_\_\_\_ was adopted by the City Council on the 19<sup>th</sup> day of July, 2016, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

RESOLUTION 2016-\_\_\_\_\_

APPROVING A MASTER PROFESSIONAL SERVICE AGREEMENT WITH ASCENT ENVIRONMENTAL INC., FOR ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE FOR VARIOUS PROJECTS; AUTHORIZING THE DEVELOPMENT SERVICES DIRECTOR TO EXECUTE TASK ORDERS UNDER THE AGREEMENT, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, Staff is processing various applications that require environmental analyses and the completion and review of the appropriate entitlement documents, and

WHEREAS, The project applicants expect timely completion of the required environmental documentation and entitlements, and

WHEREAS, In November 2015, the Development Services Department published a Request for Proposals for environmental documentation and planning assistance for the projects, and

WHEREAS, On December 2, 2015, Ascent Environmental Inc., along with several other consulting firms submitted proposals to the City, and

WHEREAS, The proposal submitted by Ascent Environmental Inc., best meet the City's needs by demonstrating the competence and professional qualifications necessary for the preparation of appropriate environmental analyses and to assist planning staff as otherwise necessary;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby approves the Master Professional Services Agreement and Billing Rates with Ascent Environmental Inc.; authorizes the Development Services Director to execute task orders under the Agreement; and authorizes the Mayor to execute the Agreement.

\*\*\*\*\*

The foregoing Resolution 2016-\_\_\_\_\_ was adopted by the City Council on the 19<sup>th</sup> day of July, 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

**PUBLIC HEARING TO DECIDE WHETHER TO APPROVE AN APPLICATION TO AMEND DEVELOPMENT REVIEW APPLICATION NUMBER D14-0003 FOR THE SUTTER TRACY CARE CENTER'S SOUTH PARKING AREA APPROVED AT 418, 424, 432, AND 434 W. EATON AVENUE TO INCLUDE THE PROPERTY AT 430 W. EATON AVENUE. THE RESULTING PARKING AREA WILL TOTAL APPROXIMATELY 65,210 SQUARE FEET; APPLICANT IS DAVID O. ROMANO FOR SUTTER GOULD MEDICAL FOUNDATION AND PROPERTY OWNER IS TRACY HOSPITAL FOUNDATION - APPLICATION NUMBER D16-0014**

EXECUTIVE SUMMARY

This agenda item is an amendment to the previously approved Sutter Gould Medical Foundation's Development Review application D14-0003. The proposed amendment is to expand the parking area on the south side of Eaton Avenue.

DISCUSSION

Background

On April 7, 2015, the City Council approved Development Review application number D14-0003 for the Sutter Tracy Care Center, an approximately 45,500 square foot medical office building proposed at 445 W. Eaton Avenue with parking areas on site and on four parcels located on the south side of Eaton Avenue (Assessor's Parcel Numbers 233-084-03, 233-084-05, 233-084-06, & 233-084-12) (Attachment A: Sutter Tracy Care Center Site Plan). At the time of project approval, neither the Sutter Gould Medical Foundation nor the Sutter Hospital Foundation (Sutter) had ownership over the property at 430 W. Eaton Avenue (Assessor's Parcel Number 233-084-04). The south parking lot was proposed to be constructed around this property (Attachment A). Sutter has since acquired the property and is now proposing to reconfigure the south parking lot to include this property (Attachment B: Revised South Parking Area Plans). No changes to the north parking area or the medical office building are proposed.

Project Analysis

The south parking lot will total approximately 65,210 square feet and contain a total of 162 parking spaces to serve the Sutter Tracy Care Center medical office building, which is an increase of 33 stalls from the previously approved application. An access and parking easement required by the Tracy Municipal Code for off-site parking facilities has already been recorded across each parcel for the use and benefit of the 45,500 square foot medical office building. The parking area layout has been reconfigured for efficiency and improved circulation, but the driveways, stalls, and drive aisles are generally in a similar location as the previously approved application. The largest change is the reconfiguration of the large landscaping area and storm water filtration area to the front of the site along Eaton Avenue. This results in the parking area being partially screened

from public view in accordance with the City's Design Goals and Standards for landscape design.

The application was initially submitted for the parcel addressed 430 W. Eaton Avenue and the project had been reviewed by staff as a standalone development application and scheduled the project for a public hearing with the Development Services Director on May 4, 2016. Upon further review, staff determined that the proposal extends beyond this parcel and involves minor modifications to the larger parking area previously approved by the City Council under D14-0003. As a result, the Development Services Director made a determination on May 4, 2016 that in order for the project to move forward, the project requires City Council approval of an amendment to D14-0003 after recommendation from the Planning Commission.

#### Planning Commission Discussion

The Planning Commission evaluated the proposed application on March 25, 2016 and discussed the concept of a mid-block crosswalk on Eaton Avenue from the south parking area to the building on the northern lot. Staff explained that the initial Development Review application reviewed in 2014 proposed mid-block crosswalks on Eaton and Bessie Avenues; however, mid-block crosswalks were not recommended by staff since alternative marked pedestrian crossings are available at the four way stop controlled intersections of Bessie Avenue at Eaton Avenue and Beverly Place. These intersections are within the reasonable distance from those proposed mid-block crossing locations. The applicant removed the crosswalk proposal, and the project was approved without mid-block crosswalks on April 7, 2015. The Planning Commission expressed interest in re-evaluating the inclusion of a mid-block crosswalk on Eaton Avenue and voted in favor to recommend approval of the proposed application to the City Council with an additional condition of approval that a mid-block crossing on Eaton Avenue be re-evaluated and constructed if it is found acceptable by the City Engineer.

Since the Planning Commission meeting, City staff has re-evaluated the idea of a mid-block crossing on Eaton Avenue. Staff consulted with TJKM, the traffic consultants who prepared the traffic impact study for the project in 2014, and referred to the California Manual of Uniform Traffic Control Devices (CA MUTCD). The evaluation by TJKM is summarized in a technical memo, Attachment C to this staff report. The CA MUTCD recommends that crosswalk lines should not be used indiscriminately; mid-block pedestrian crossings are generally unexpected by the motorists and should be discouraged, unless, in the opinion of the engineer, there is strong justification in favor of such installation. It further recommends that an engineering study be performed before a marked crosswalk is installed at a location that is separate from a traffic control signal or an approach controlled by Stop or Yield Sign.

Based on the conclusions of the CA MUTCD and TJKM, staff recommends that a mid-block crosswalk not be installed on Eaton Avenue. However, if it is the Council's desire to have a mid-block crosswalk installed, staff recommends the following condition of approval to identify the manner in which the crosswalk would be designed and constructed.

#### *Possible Condition of Approval:*

*Before the final inspection for the south parking area, the developer shall fund an*

*engineering study to be performed by the City and/or its consultants to include recommendations related to the exact location, materials, and associated improvements for a mid-block crosswalk on Eaton Avenue. The developer shall construct the mid-block crosswalk in accordance with the recommendations of the engineering study and applicable City standards to the satisfaction of the City Engineer.*

#### Environmental Document

The project is exempt from CEQA pursuant to Guidelines Section 15332, pertaining to in-fill development projects. The project occurs within city limits, is consistent with the general plan and zoning, is no more than five acres in size substantially surrounded by urban uses, has no value as habitat for endangered, rare, or threatened species, and would not result in any significant effects relating to traffic, noise, air quality, or water quality beyond what was analyzed and mitigated in the General Plan environmental impact report. No further environmental assessment is required.

#### FISCAL IMPACT

There is no fiscal impact.

#### STRATEGIC PLAN

This agenda item is not related to one of the Council's Strategic Plans.

#### RECOMMENDATION

Staff and the Planning Commission recommend that the City Council approve Development Review application number D16-0014 for the amendment to the south parking area previously approved under Development Review application number D14-0003 to include the property at 430 W. Eaton Avenue, based on the findings contained in the City Council resolution dated July 19, 2016.

Prepared by: Kimberly Matlock, Associate Planner  
Ripon Bhatia, Senior Civil Engineer

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

Approved by: Troy Brown, City Manager

Agenda Item 3  
July 19, 2016  
Page 4

ATTACHMENTS

Attachment A – Sutter Tracy Care Center Site Plan\*  
Attachment B – Revised South Parking Area Plans\*  
Attachment C – TJKM Technical Memo dated June 5, 2016

\*Attachments are oversized and are available for viewing at the Development Services Department



June 5, 2016

Mr. Ripon Bhatia  
City of Tracy  
Tracy, CA

**Subject: Technical Memorandum for Evaluation of proposed Mid-Block Crosswalk on Eaton Avenue in the City of Tracy**

Dear Mr. Bhatia:

This technical memorandum summarizes the evaluation of the proposed Mid-Block Crosswalk on Eaton Avenue in the City of Tracy as part of the Sutter Medical Office Building Development. The proposed development proposes to provide mid-block crosswalk on Eaton Avenue, approximately 200 feet from the intersection of Eaton Avenue and Bessie Avenue. The proposed Sutter Medical Office Building Development proposes to provide enhanced pedestrian crossings at the intersection of Eaton Avenue and Bessie Avenue. This technical memorandum evaluates the feasibility of the proposed mid-block crosswalk.

Crossing in mid-block crosswalks creates a dangerous situation for both pedestrians and drivers. Pedestrians may put themselves in danger if they misjudge the speed of approaching vehicles and the time it takes to safely cross the street; drivers may be startled and confused by the pedestrian crossing the street, causing a driver to slam on the brakes. A study in the early 1990s involving several states showed that mid-block events were the second major grouping of pedestrian crash types and accounted for 26.5 percent of all pedestrian crashes (Transportation Research Board).

Based on the analysis conducted within the Traffic Impact Study for the project, the proposed enhanced pedestrian crossings at the intersection of Eaton Avenue and Bessie Avenue is projected to be adequate for the pedestrian and bicycle demands in the immediate vicinity of the proposed development. In addition, the proposed enhanced pedestrian crossings at the intersection are within walking distance (approximately 200 feet) of the proposed mid-block crosswalk along Eaton Avenue.

TJKM evaluated the feasibility of installation of mid-block crosswalk along Eaton Avenue, TJKM recommends not to install a mid-block crosswalk along Eaton Avenue for the following reasons:

1. Installation of mid-block crosswalk will result in creating unsafe situation for both pedestrians and vehicle drivers due to confusion and misjudgement between the pedestrian and vehicles.
2. The proposed mid-block crosswalk is within a distance of approximately 200 feet from the intersection of Eaton Avenue and Bessie Avenue. As a standard practice and acceptable standards adopted within the United States, mid-block crosswalks are not recommended to be implemented within 300 feet of an intersection. Cities of Sacramento and Stockton have adopted similar standards.



**TJKM**

VISION THAT MOVES YOUR COMMUNITY

Based on the evaluation and review of best practices it is recommended that a mid-block crosswalk shall not be installed along Eaton Avenue as it will create unsafe conditions for pedestrians and vehicular traffic.

Please feel free to let us know if you have any questions or concerns.

Thank You,

A handwritten signature in black ink that reads 'Nayan Amin'.

Nayan Amin  
Project Manager



RESOLUTION 2016-\_\_\_\_\_

APPROVING AN APPLICATION TO AMEND DEVELOPMENT REVIEW APPLICATION NUMBER D14-0003 FOR THE SUTTER TRACY CARE CENTER'S SOUTH PARKING AREA APPROVED AT 418, 424, 432, AND 434 W. EATON AVENUE TO INCLUDE THE PROPERTY AT 430 W. EATON AVENUE. THE RESULTING PARKING AREA WILL TOTAL APPROXIMATELY 65,210 SQUARE FEET. APPLICANT IS DAVID O. ROMANO FOR SUTTER GOULD MEDICAL FOUNDATION AND PROPERTY OWNER IS TRACY HOSPITAL FOUNDATION - APPLICATION NUMBER D16-0014

WHEREAS, On April 7, 2015, the City Council approved Development Review application number D14-0003 for an approximately 45,500 square foot medical office building proposed at 445 W. Eaton Avenue with parking areas onsite and on four parcels offsite located on the south side of Eaton Avenue (Assessor's Parcel Numbers 233-084-03, 233-084-05, 233-084-06, & 233-084-12), and

WHEREAS, The south parking area excluded the property at 430 W. Eaton Avenue (Assessor's Parcel Number 233-084-04) and proposed development of a parking area around this property, and

WHEREAS, On April 4, 2016, the applicant submitted a Development Review application (D16-0014) to modify the south parking area to include the property at 430 W. Eaton Avenue and reconfigure the south parking area for efficiency and improved circulation, and

WHEREAS, The project site is designated Office in the General Plan and zoned Medical Office (MO), in which parking areas to serve medical offices are a permitted use, and

WHEREAS, The project entails an amendment to approved Development Review application number D14-0003, requiring a recommendation from the Planning Commission and approval by the City Council, and

WHEREAS, The project is exempt from CEQA pursuant to Guidelines Section 15332, pertaining to in-fill development projects, and

WHEREAS, On March 25, 2016, the Planning Commission conducted a public hearing to review and consider Development Review application number D16-0014 and recommended approval of the project, and

WHEREAS, On July 19, 2016, the City Council reviewed and considered the Development Review application in a public hearing;

NOW, THEREFORE BE IT RESOLVED, That, subject to the conditions contained in Exhibit 1, the City Council hereby approves Development Review application number D16-0014 to amend Development Review application number D14-0003 for the Sutter Tracy Care Center's south parking area approved at 418, 424, 432, And 434 W. Eaton Avenue to include the property at 430 W. Eaton Avenue, based on the findings below. The south parking area would total approximately 65,210 square feet and be comprised of five parcels (Assessor's Parcel Numbers 233-084-03, 233-084-04, 233-084-05, 233-084-06, & 233-084-12).

1. The proposed project will conform to the requirements and the intent of the City of Tracy General Plan and Municipal Code, because the proposed medical office development

meets the requirements of the Medical Office Zone and the General Plan land use designation of Office in which the subject site is located. The proposed parking lot, as designed and conditioned, meets the off-street parking and landscaping requirements of the Off-Street Parking ordinance and the landscaping standards established in the Design Goals and Standards.

2. The proposed project, with conditions, will not be injurious or detrimental to the health, safety, or general welfare of persons or property in the vicinity of the proposed project or to the general welfare of the City, because all improvements will meet the applicable provisions of the Tracy Municipal Code, City Standard Plans, the California Building Code, the California Fire Code, the Multi-Agency Post-Construction Stormwater Standards, and the Department of Water Resources' Water Efficient Landscape Ordinance.
3. The proposed project, as conditioned and approved, will not adversely affect or impair the benefits of occupancy, most appropriate development, property value stability, or reduce the relationship between the taxable value of property and the cost of municipal services to such property or the desirability of property in the vicinity, because the project will meet the City's Design Goals and Standards for high quality landscape design through its use of various plant species, plant groupings, planting locations, and amount of canopy tree shading provided throughout the parking area. The parking area is de-emphasized from public view due to its location behind a large landscaped area.

\*\*\*\*\*

The foregoing Resolution 2016-\_\_\_\_\_ was adopted by the Tracy City Council on the 19<sup>th</sup> day of July, 2016, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

**City of Tracy  
Conditions of Approval**

Tracy Sutter Care Center Parking Area  
418, 424, 430, 432, and 434 W. Eaton Avenue  
Application Number D16-0014, amending the south parking lot approved under Application  
Number D14-0003  
July 19, 2016

**A. General Provisions and Definitions.**

A.1. General. These Conditions of Approval apply to:

The Project: An approximately 65,210 square foot parking area containing approximately 162 parking spaces to serve the approximately 45,500 square foot medical office building located across the street at 445 W. Eaton Avenue (Development Review Application Number D14-0003)

The Property: 418, 424, 430, 432, and 434 W. Eaton Avenue (APN 233-084-03, 233-084-04, 233-084-05, 233-084-06, 233-084-12)

A.2. Definitions.

- a. "Applicant" means any person, or other legal entity, defined as a "Developer."
- b. "City Engineer" means the City Engineer of the City of Tracy, or any other duly licensed Engineer designated by the City Manager, or the Development Services Director, or the City Engineer to perform the duties set forth herein.
- c. "City Regulations" means all written laws, rules, and policies established by the City, including those set forth in the City of Tracy General Plan, the Tracy Municipal Code ordinances, resolutions, policies, procedures and the City's Design Documents (including the Standard Plans, Standard Specifications, and relevant Public Facility Master Plans).
- d. "Development Services Director" means the Development Services Director of the City of Tracy, or any other person designated by the City Manager or the Development Services Director to perform the duties set forth herein.
- e. "Conditions of Approval" shall mean the conditions of approval applicable to the Project, Application Number D16-0014. The Conditions of Approval shall specifically include all conditions set forth herein.
- f. "Developer" means any person, or other legal entity, who applies to the City to divide or cause to be divided real property within the Project boundaries, or who applies to the City to develop or improve any portion of the real property within the Project boundaries. The term "Developer" shall include all successors in interest.

A.3. Compliance with submitted plans. Except as otherwise modified herein, the parking lot on the south side of Eaton Avenue shall be constructed in substantial compliance with

the site plan, civil plan, landscape plan, and details plans received by the Development Services Department on May 18, 2016, except as modified by the Conditions of Approval.

- A.4. Payment of applicable fees. The applicant shall pay all applicable fees for the project, including, but not limited to, development impact fees, building permit fees, plan check fees, grading permit fees, encroachment permit fees, inspection fees, school fees, or any other City or other agency fees or deposits that may be applicable to the project.
- A.5. Compliance with laws. The Developer shall comply with all laws (federal, state, and local) related to the development of real property within the Project, including, but not limited to:
- the Planning and Zoning Law (Government Code sections 65000, et seq.)
  - the California Environmental Quality Act (Public Resources Code sections 21000, et seq., "CEQA"), and
  - the Guidelines for California Environmental Quality Act (California Administrative Code, title 14, sections 1500, et seq., "CEQA Guidelines").
- A.6. Compliance with City regulations. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all City regulations, including, but not limited to, the Tracy Municipal Code (TMC), Standard Plans, and Design Goals and Standards.
- A.7. Protest of fees, dedications, reservations, or other exactions. Pursuant to Government Code section 66020, including section 66020(d)(1), the City HEREBY NOTIFIES the Developer that the 90-day approval period (in which the Developer may protest the imposition of any fees, dedications, reservations, or other exactions imposed on this Project by these Conditions of Approval) has begun on the date of the conditional approval of this Project. If the Developer fails to file a protest within this 90-day period, complying with all of the requirements of Government Code section 66020, the Developer will be legally barred from later challenging any such fees, dedications, reservations or other exactions.

## **B. Development Services, Planning Division Conditions**

Contact: Kimberly Matlock (209) 831-6430 [kimberly.matlock@ci.tracy.ca.us](mailto:kimberly.matlock@ci.tracy.ca.us)

- B.1. Landscaping. Before the approval of a building permit, the applicant shall provide detailed landscape and irrigation plans consistent with the following to the satisfaction of the Development Services Director:
- B.1.1. Said plans shall document compliance with the landscaping requirements set forth in the TMC Section 10.08.3560, Landscaping requirements for parking areas.
- B.1.2. Said plans shall include a planting legend indicating, at minimum, the quantity, planting size, and height and width at maturity. Trees shall be a minimum of 24" box size, shrubs shall be a minimum size of 5 gallon, and vines and groundcover shall be a minimum size of 1 gallon.
- B.1.3. Planters adjacent to non-handicap parking stalls shall be extended into the parking stall such that two feet of the minimum parking stall length overhangs

into the landscape planter. This parking stall overhang may not be double-counted toward other parking area minimum landscape requirements.

- B.1.4. Before the issuance of a building permit, the applicant shall execute an Agreement for Maintenance of Landscape and Irrigation Improvements and submit financial security to the Development Services Department. The Agreement shall ensure maintenance of the on-site landscape and irrigation improvements for a period of two years. Said security shall be equal to the actual material and labor costs for installation of the on-site landscape and irrigation improvements or \$2.50 per square foot of on-site landscape area.
- B.2. Parking.
  - B.2.1. Before the approval of a building permit, the applicant shall submit detailed plans that demonstrate compliance with TMC Title 10, Article 26, Off-Street Parking Requirements, and with City Standard Plan 154.
  - B.2.2. Before the approval of a building permit, the applicant shall submit plans and details that demonstrate 12-inch wide concrete curbs along the perimeter of landscape planters where such planters are parallel and adjacent to vehicular parking spaces to provide access to vehicles without stepping into the landscape planters.
- B.3. Screening utilities and equipment. Before final inspection or certificate of occupancy, all PG&E transformers, phone company boxes, Fire Department connections, backflow preventers, irrigation controllers, and other on-site utilities, shall be vaulted or screened from any public right-of-way behind structures or landscaping to the satisfaction of the Development Services Director.
- B.4. Walls and Fencing.
  - B.4.1. Before the approval of a building permit, the applicant shall submit detailed construction plans for the perimeter screen walls.
  - B.4.2. Before final approval or certificate of occupancy, the masonry walls on the perimeters of the parking areas shall be coated with an anti-graffiti coat.
  - B.4.3. No chain link, barbed wire or razor wire is permitted to be used anywhere on site.
- B.5. Lighting.
  - B.5.1 Before the approval of a building permit, the applicant shall submit detailed plans that demonstrate a minimum of one foot candle throughout the parking area.
  - B.5.2. Before the approval of a building permit, the applicant shall submit detailed plans that demonstrate lighting fixtures adjacent to residential zones shall be of bollard design or flat-mounted to the masonry screen wall such that no fixture is taller than 8 feet above the parking lot grade to the satisfaction of the Development Services Director.
  - B.5.3. Before final approval or certificate of occupancy, all exterior and parking area lighting shall be directed downward or shielded to prevent glare or spray of light onto any adjacent private property to the satisfaction of the Development Services Director.

**C. Development Services Department, Engineering Division Conditions**

Contact: Criseldo Mina, P.E. (209) 831-6425 [cris.mina@ci.tracy.ca.us](mailto:cris.mina@ci.tracy.ca.us)

**C.1. Grading Permit**

The City will not accept grading permit application for the Project as complete until the Developer has provided all relevant documents related to said grading permit required by the applicable City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to, the following:

- C.1.1. Grading and Drainage Plans prepared on a 24" x 36" size polyester film (mylar). Grading and Drainage Plans shall be prepared under the supervision of, and stamped and signed by a Registered Civil Engineer.
- C.1.2. Payment of the applicable Grading Permit fees which include grading plan checking and inspection fees, and other applicable fees as required by these Conditions of Approval.
- C.1.3. Three (3) sets of the Storm Water Pollution Prevention Plan (SWPPP) for the Project with a copy of the Notice of Intent (NOI) submitted to the State Water Quality Control Board (SWQCB) and any relevant documentation or written approvals from the SWQCB, including the Wastewater Discharge Identification Number (WDID#).
  - C.1.3.a. After the completion of the Project, the Developer is responsible for filing the Notice of Termination (NOT) required by SWQCB. The Developer shall provide the City with a copy of the completed Notice of Termination.
  - C.1.3.b. The cost of preparing the SWPPP, NOI and NOT, including the filing fee of the NOI and NOT, shall be paid by the Developer.
  - C.1.3.c. The Developer shall comply with all the requirements of the SWPPP and applicable Best Management Practices (BMPs) and the applicable provisions of the City's Storm Water Management Program.
- C.1.4 Three (3) sets of the Storm Water Quality Control Plan and Low Impact Development (LID) for the Project as required in Condition C.3.1.b (i) below.
- C.1.5 Two (2) sets of the Project's Geotechnical Report signed and stamped by a licensed Geotechnical Engineer licensed to practice in the State of California, as required in Condition C.3.1.a (i) below. The technical report must include relevant information related to soil types and characteristics, soil bearing capacity, percolation rate, and elevation of the highest observed groundwater level.
- C.1.6 A copy of the approved Fugitive Dust and Emissions Control Plan that meets the requirements of the San Joaquin Valley Air Pollution Control District (SJVAPCD), if applicable.
- C.1.7 Two (2) sets of Hydrologic and Storm Drainage Calculations for the design of the on-site storm drainage system and for determining the size of the

Project's storm drainage connection, as required in Conditions C.3.1.b, below.

C.2. Encroachment Permit

No application for encroachment permit will be accepted by the City as complete until the Developer provides all relevant documents related to said encroachment permit required by the applicable City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to, the following:

- C.2.1. Improvement Plans prepared on a 24" x 36" size 4-mil thick polyester film (Mylar) and these Conditions of Approval. Improvement Plans shall be prepared under the supervision of, and stamped and signed by a Registered Civil, Traffic, Electrical, Mechanical, Structural Engineers, and Registered Landscape Architect for the relevant work.
- C.2.2 Two (2) sets of structural calculations signed and stamped by a Structural Engineer licensed in the State of California, as required in Condition C.3.1.a (ii), below.
- C.2.3. Signed and stamped Engineer's Estimate that summarizes the cost of constructing all the public improvements shown on the Improvement Plans.
- C.2.4. Check payment for the applicable of engineering review fees which include plan checking, permit and agreement processing, testing, construction inspection, and other applicable fees as required by these Conditions of Approval. The engineering review fees will be calculated based on the fee rate adopted by the City Council on May 19, 2015, per Resolution 2015-075, that became effective July 20, 2015.
- C.2.5. Traffic Control Plan signed and stamped by a Registered Traffic Engineer and Tracy's Fire Marshall's signature on the Utility Improvement Plans indicating their approval for the Project's fire service connection and fire and emergency vehicle access. The written approval from the Fire Department required in this section shall be obtained by the Developer, prior to City Engineer's signature on the improvement plans.

C.3. Improvement Plans

Improvement Plans shall contain the design, construction details and specifications of public improvements that is/are necessary to serve the Project. The Improvement Plans shall be drawn on a 24" x 36" size 4-mil thick polyester film (Mylar) and shall be prepared under the supervision of, and stamped and signed by a Registered Civil, Traffic, Electrical, Mechanical Engineer, and Registered Landscape Architect for the relevant work. The Improvement Plans shall be completed to comply with City Regulations, these Conditions of Approval, and the following requirements:

C.3.1. Grading and Storm Drainage Plans

C.3.1.a. Site Grading

- (i) Include all proposed erosion control methods and construction details to be employed and specify materials to be used. All grading work shall be performed and completed in accordance with the recommendation(s) of the Project's Geotechnical

Engineer. A copy of the Project's Geotechnical Report must be submitted with the Grading and Storm Drainage Plans.

- (ii) When the grade differential between the Project Site and adjacent property(s) exceeds 12 inches, a reinforced or masonry block, or engineered retaining wall is required for retaining soil. The Grading Plan shall show construction detail(s) of the retaining wall or masonry wall. The entire retaining wall and footing shall be constructed within the Project Site. A structural calculation shall be submitted with the Grading and Storm Drainage Plans.
- (iii) An engineered fill may be accepted as a substitute of a retaining wall, if the grade differential is less than 2 feet and subject to approval by the City Engineer. The Grading and Storm Drainage Plans must show the extent of the slope easement(s). The Developer shall be responsible for obtaining permission from owner(s) of the adjacent and affected property(s). The slope easement must be recorded, prior to the issuance of the final building certificate of occupancy.
- (iv) Site grading shall be designed such that the Project's storm water can surface drain directly to a public street that has a functional storm drainage system with adequate capacity to drain storm water from the Project Site, in the event that the on-site storm drainage system fails or it is clogged. The storm drainage release point is recommended to be at least 0.70 feet lower than the building finish floor elevation and shall be improved to the satisfaction of the City Engineer.

#### C.3.1.b. Storm Drainage

- (i) The design and construction details of the Project's storm drainage connection shall meet City Regulations and shall comply with the applicable requirements of the City's Storm Water Quality Control Standards and Storm Water Regulations and any subsequent amendments.
- (ii) The Developer shall design and install the Project's permanent drainage connection(s) to the City's existing storm drainage facilities located on Eaton Avenue per City Regulations and as approved by the City Engineer. Storm drainage calculations for the sizing of the on-site storm drainage system must be submitted with the Improvement Plans.

#### C.3.2. Improvement Plans

- C.3.2.a All costs associated with the installation of the Project's water service and storm drainage connection(s) including the cost of removing and replacing asphalt concrete pavement, concrete curb, gutter, sidewalk, pavement marking and striping, and relocating existing utilities that may be in conflict with the water service and/ or

storm drainage connection(s), and other improvements shall be paid by the Developer.

- C.3.2.b If water main shut down is necessary, the City will allow a maximum of 4 hours water supply shutdown. The Developer shall be responsible for notifying residents or business owner(s), regarding the water main shutdown. The written notice, as approved by the City Engineer, shall be delivered to the affected residents or business owner(s) at least 72 hours before the water main shutdown. Prior to starting the work described in this section, the Developer shall submit a Water Shutdown Plan and Traffic Control Plan to be used during the installation for approval by the City.
- C.3.2.c. Irrigation Water Services: The Developer shall design and install irrigation water service connection, including a remote-read water meter (the water meter to be located within City's right-of-way) and a Reduced Pressure Type back-flow protection device in accordance with City Regulations. The irrigation water service connection(s) must be completed before the final inspection of the Project. The City shall maintain water lines from the water meter to the point of connection with the water distribution main (inclusive) only. Repair and maintenance of all on-site water lines, laterals, sub-meters, valves, fittings, fire hydrant and appurtenances shall be the responsibility of the Developer.
- C.3.2.d. Fire Service Line: The Developer shall design and install fire hydrants at the locations approved by the City's Fire Safety Officer and Chief Building Official. Prior to the approval of the Improvement Plans, the Developer shall obtain written approval from the City's Fire Safety Officer and Chief Building Official, for the design, location and construction details of the fire service connection to the Project, and for the location and spacing of fire hydrants that are to be installed to serve the Project.

### C.3.3. Street Improvements

- C.3.3.a Improvements on Eaton Avenue: The Developer shall design and install improvements on Eaton Avenue which shall include replacement of damaged or disturbed curb, gutter and sidewalk, installation of driveways, storm drains, manholes and other improvements as determined by the City Engineer. In addition, the Developer shall overlay street pavement for all utility trench cuts as required in Condition C.3.5 below. All cost of constructing the improvements described under this sub-section shall be borne by the Developer.
- C.3.3.b All roadway improvements described in these Conditions of Approval must be designed and constructed by the Developer to meet the applicable requirements of the latest edition of the California Department of Transportation Highway Design Manual (HDM) and the California Manual of Uniform Traffic Control

Devices (MUTCD), all applicable City Regulations, and these Conditions of Approval, prior to final inspection of the Project.

- C.3.3.e As part of the street improvements on Eaton Avenue, the Developer shall replace concrete sidewalk, curb, gutter and asphalt concrete pavement at the location(s) where driveway is removed. As part of abandoning existing water service(s), the Developer shall remove water meter box (enclosure, if applicable) and the pipeline from the water main up to the building, and replace disturbed improvements to the satisfaction of the City Engineer. Curb, gutter, sidewalk, and asphalt concrete pavement replacement shall be completed in accordance with City Regulations. Cost of complying with the requirements under this sub-section shall be the paid by and sole responsibility of the Developer.

C.3.4. Traffic Control Plan

The Developer shall submit a Traffic Control Plan, to show the method and type of construction signs to be used for regulating traffic at the work areas along Eaton Avenue. The Traffic Control Plan shall be prepared by a Civil Engineer or Traffic Engineer licensed to practice in the State of California.

C.3.5. Joint Utility Trench Plans

Developer shall prepare joint trench plans in compliance with utility companies' requirements and City regulations, and obtain approval of the plans. All private utility services to serve Project such as electric, telephone and cable TV to the building must be installed underground, and to be installed at the location approved by the respective owner(s) of the utilities.

Pavement cuts or utility trench(s) on existing street(s) for the installation of water distribution main, storm drain, sewer line, electric, gas, cable TV, and telephone will require the application of 2" asphalt concrete overlay and replacement of pavement striping and marking that are disturbed during construction. The limits of asphalt concrete overlay shall be 25 feet from both sides of the trench, and shall extend over the entire width of the adjacent travel lane(s) if pavement excavation encroaches to the adjacent travel lane or up to the street centerline or the median curb. If the utility trench extends beyond the street centerline, the asphalt concrete overlay shall be applied over the entire width of the street (to the lip of gutter or edge of pavement, whichever applies).

C.4. Building Permit

No building permit will be issued until the Developer demonstrates, to the satisfaction of the City Engineer, compliance with all required Conditions of Approval, including, but not limited to, the following:

- C.4.1 The Developer has satisfied all the requirements set forth in Conditions C.1, C.2, and C.3, above.
- C.4.2 Payment of the Master Plan Fees for Citywide Roadway and Traffic, Water, Recycled Water, Wastewater, Storm Drainage, Public Safety, Public

Facilities, and Park adopted by the City Council on January 7, 2014, per Resolution 2014-010, applicable to the Project and as required by these Conditions of Approval.

The Developer shall be entitled to receive development impact fee credits in accordance with the Tracy Municipal Code.

- C.4.3 Payment of the San Joaquin County Facilities Fees as required in Chapter 13.24 of the TMC, and these Conditions of Approval.
- C.4.4 Payment of the Agricultural Conversion or Mitigation Fee as required in Chapter 13.28 of the TMC, and these Conditions of Approval.
- C.4.5 Payment of the Regional Transportation Impact Fees (RTIF) as required in Chapter 13.32 of the TMC, and these Conditions of Approval.

C.5. Final Building Inspection

No final building inspection will be conducted by the City until the Developer demonstrates, to the satisfaction of the City Engineer, compliance with all required Conditions of Approval, including, but not limited to, the following:

- C.5.1 The Developer has satisfied all the requirements set forth in Condition C.5, above.
- C.5.2 The Developer has completed construction of all required public facilities required to serve the Project and all improvements required in these Conditions of Approval. Unless specifically provided in these Conditions of Approval, or some other applicable City Regulations, the Developer shall use diligent and good faith efforts in taking all actions necessary to construct all public facilities required to serve the Project, and the Developer shall bear all costs related to construction of the public facilities (including all costs of design, construction, construction management, plan check, inspection, land acquisition, program implementation, and contingency).
- C.5.3 Correction of all items listed in the deficiency report prepared by the assigned Engineering Inspector relating to public improvements covered by the Encroachment Permit.
- C.5.4 Certified "As-Built" Improvement Plans (or Record Drawings). Upon completion of the construction by the Developer, the City shall temporarily release the originals of the Improvement Plans to the Developer so that the Developer will be able to document revisions to show the "As Built" configuration of all improvements.

C.6. Special Conditions

- C.6.1. All streets and utilities improvements within City's right-of-way shall be designed and constructed in accordance with City Regulations, and City's Design documents including the City's Facilities Master Plan for storm drainage, roadway, wastewater and water adopted by the City, or as otherwise specifically approved by the City.

- C.6.2 All existing on-site wells, if any, shall be abandoned or removed in accordance with the City and San Joaquin County requirements. The Developer shall be responsible for all costs associated with the abandonment or removal of the existing well(s) including the cost of permit(s) and inspection. The Developer shall submit a copy of written approval(s) or permit(s) obtained from San Joaquin County regarding the removal and abandonment of any existing well(s), prior to the issuance of the Grading Permit.
- C.6.3 Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Tracy, or other public agency having jurisdiction. This Condition of Approval does not preclude the City from requiring pertinent revisions and additional requirements to the Grading Permit, Encroachment Permit, and Improvement Plans, if the City Engineer finds it necessary due to public health and safety reasons and it is in the best interest of the City. The Developer shall bear all the cost for the design, and implementations of such additions and requirements, without reimbursement or any payment from the City.

**D. Development Services Department, Building and Fire Safety Division Conditions**

Contact: Kevin Jorgensen (209) 831-6415 [kevin.jorgensen@ci.tracy.ca.us](mailto:kevin.jorgensen@ci.tracy.ca.us)

**D.1. Accessibility.**

- D.1.1. Prior to issuance of a building permit, the applicant shall provide detailed plans that demonstrate that the curb ramp shall have truncated domes sans the grooved border per the 2013 California Building Code.
- D.1.2. Prior to issuance of a building permit, the applicant shall provide detailed plans that demonstrate that with the addition of new parking stalls, that the ratio of accessible stalls to the complete number of parking stalls has been met per the 2013 California Building Code. This may entail demonstrating that the medical offices do or do not include rehabilitation services, outpatient physical therapy services, hospital outpatient services or outpatient clinical services.

**E. Utilities Department, Water Resources Division Conditions**

Contact: Stephanie Hiestand (209) 831-4333 [stephanie.hiestand@ci.tracy.ca.us](mailto:stephanie.hiestand@ci.tracy.ca.us)

- E.1. Stormwater Quality. Before final approval or certificate of occupancy, the applicant shall submit a Maintenance Agreement in accordance with the Multi-Agency Post-Construction Stormwater Standards to the satisfaction of the Utilities Director.
- E.2. Water Efficient Landscape. Before final approval or certificate of occupancy, the applicant shall submit a Soil Analysis, Irrigation Schedule, Audit and Certificate of Completion in accordance with the Department of Water Resources' Water Efficient Landscape Ordinance to the satisfaction of the Utilities Director.

**F. Public Works Department, Parks, Sports Fields & Trees Division Conditions**

Contact: Don Scholl (209) 831-6360 [don.scholl@ci.tracy.ca.us](mailto:don.scholl@ci.tracy.ca.us)

- F.1. Street Trees. Before the approval of an improvement plan, the applicant shall submit detailed plans for the proposed street tree planting and species in accordance with City Standards to the satisfaction of the Public Works Director.

AGENDA ITEM 4

REQUEST

**DISCUSS AND DECIDE WHETHER TO APPROVE ACTIONS RELATED TO THE PLACEMENT OF A TRANSACTIONS AND USE (SALES) TAX MEASURE OF UP TO ONE CENT ON THE NOVEMBER 8, 2016 BALLOT, INCLUDING**

- (1) CALLING FOR A MUNICIPAL ELECTION TO SUBMIT TO THE VOTERS A LOCAL BALLOT MEASURE TRANSACTIONS AND USE (SALES) TAX OF UP TO ONE CENT, TO PROVIDE FUNDING FOR LOCAL CITY SERVICES; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURE; AND SETTING THE DATES FOR ARGUMENTS ON THE MEASURE**
- (2) INTRODUCTION OF AN ORDINANCE ENACTING A TRANSACTIONS AND USE (SALES) TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION UPON APPROVAL BY THE VOTERS AT THE NOVEMBER 8, 2016 ELECTION**

EXECUTIVE SUMMARY

At the June 27, 2016, City Council special meeting, City Council requested information on revenue enhancements. The Lew Edwards Group presented Council with information related to best practices and potential revenue enhancement options available to City Council. The presentation included area trends related to enhancing revenues to provide funding for infrastructure and quality of life service needs. They also presented the results of an April 2015 Godbe Research Survey, which focused on topics related to infrastructure sustainability and community service priorities.

The survey results indicated strong community support (sixty-eight percent) for re-establishing a half-cent sales tax measure, expiring in thirty years with resident oversight and annual independent audits, to help prevent additional budget cuts and maintain City services with all funds used for local City services only.

Council advised staff to proceed with an updated community survey conducted by Godbe Research to gather the public's opinion on providing local funding for services identified through more recent engagement and input activities over the past year, which engaged more than 2,000 residents. If a ballot measure is to be considered, and because time is of the essence should the City choose this route, Council requested that staff return on the July 19, 2016 regular City Council meeting with survey results and documentation for potential placement of a local, voter-approved revenue measure on the November 8, 2016 ballot. The San Joaquin County deadline for placing a measure on the ballot is Friday, July 22, 2016.

DISCUSSION

The City has made significant progress to reduce expenditures and enhance revenues since the great recession, housing crash, and state budget crisis. However, without

additional revenue the City does not have the resources to address local infrastructure and quality of life service needs, which is necessary to maintain the local quality of life that residents expect and enjoy. Due to the recent expiration of a voter-approved local funding measure, the City's long-range financial plan indicates an ongoing structural deficit into the future.

In February 2015, the City began preparing the City's 2015-2016 fiscal budget, which included only partial funding from voter-approved local funding. To gain a better understanding of community priorities, the City solicited community feedback on local infrastructure and service issues by commissioning Godbe Research, an independent marketing research firm, to conduct a community survey on important issues and service needs facing our City.

In March 2015, the City engaged the services of Management Partners to assist in reviewing and updating a comprehensive list of potential budget solution strategies in an effort to proactively address future budget deficits caused primarily by the expiration of a voter-approved revenue measure that was set to expire in March 2016.

On September 1, 2015, during a special meeting of City Council, staff presented options for enhancing revenue, such as service fee increases and the formation of Community Facilities Districts (property assessments for facilities and services). Council discussed budget solution recommendations provided by Management Partners, and based on the findings, Council directed staff to focus on revenue enhancement strategies rather than implement further budget cuts that would negatively impact City service levels.

In October 2015, City Council directed staff to solicit feedback, via survey, from the community to gauge whether or not there would be community support to help fund construction and operation of amenities and facilities. Polling results from the market research showed an extraordinarily high satisfaction with Tracy's quality of life and a desire that quality services be fully maintained or enhanced. Additionally, more than two-thirds of respondents conveyed potential interest for a local revenue measure to support local services, including public safety, street maintenance, and local business and revitalization efforts, among others.

Subsequent to the 2015 Godbe Research study, City staff engaged the public directly to identify their quality of life service priorities, making more than 10 community presentations and receiving more than 1,200 completed community surveys. Overall, the results showed respondents viewed public safety, economic development, maintenance of streets and roads, parks, and youth/teen recreation program activities as priorities.

A summary of final results (Attachment A) showed eighty percent of respondents indicated maintaining city streets, roads, and potholes were a priority. Results also showed respondents prioritize maintaining City parks and playgrounds (seventy-one percent), maintaining 9-1-1 emergency and medical response times (sixty-seven percent), and attracting, training, and retaining qualified firefighters and police officers (fifty-three percent). Maintaining youth after school programs and facilities for children and teens, as well as maintaining Tracy's senior center and senior support services

were also prioritized, garnering a response rate of fifty-two percent and forty-two percent respectively.

### Fiscal Considerations

The City of Tracy is currently operating within a structural deficit. Although the City currently has an adequate level of reserves, it is fiscally responsible to evaluate and plan to meet the community's quality of life needs and future budget deficits now in a strategic and measured way. The projected FY 2016-2017 budget requires the use of approximately \$3.7M in unallocated fund balance reserves and the projected FY 2017-2018 budget uses \$0.2M in unallocated fund balance reserves. Should the Council approve a General Fund budget of roughly \$51M over the next five fiscal years, reserves will draw down to the 20% reserve fund threshold by FY 2021-2022.

Previous voter-approved local funding initiated in 2011 financially sustained the City during the economic recession. Upon expiration of the measure in March 2016, the City realized a decrease of approximately \$7M in general fund revenue.

Staff has presented Council with revenue enhancement options such as service fee increases and the formation of Community Facilities Districts (property assessments for facilities and services). However, these funding mechanisms alone will not resolve the City's structural deficit. Therefore, a sales tax measure is proposed as a preferred revenue enhancement option.

Currently, Tracy's sales tax rate is lower than neighboring cities such as Manteca, Livermore, Lathrop, Dublin and Stockton:

<b>City</b>	<b>Sales Tax Rate</b>
Tracy	8.0%
Manteca	8.5%
Livermore	9.5%
Lathrop	9.0%
Dublin	9.5%
Stockton	9.0%

A one-cent sales tax increase is estimated to generate approximately \$14 million in revenue annually. Funding acquired through a general sales tax measure is required, by law, to be spent locally on City of Tracy needs only and cannot be taken by the state.

Through the budget process, this funding may be earmarked for specific operational or capital needs, such as roadway improvements, public safety services and facilities, and the maintenance and operations of recreation facilities.

If placed on the ballot and approved by voters, potential measure spending priorities include:

- Maintaining 9-1-1 emergency and medical response times, neighborhood police patrols, crime prevention and investigation programs, youth crime prevention and intervention programs, and fire protection services

- Maintaining and repairing city streets / roads
- Maintaining neighborhood services, including blight and graffiti removal, and vandalism prevention
- Maintaining parks and recreation programs, Tracy senior center programs, and restoring youth and teen services
- Supporting the local economy, including increasing local jobs

Should no action be taken to undergo proactive steps to address the City's community service needs and structural deficit, and if revenues remain status quo, the Council may need to take action to prevent depletion of General Fund reserves within the next five years, which would likely include service reductions.

City staff is responsible for presenting and maintaining a balanced budget. When the estimated annual operating budget exceeds the estimated revenue, the result is an estimated deficit. In Fiscal Year 2014-2015, as presented in the Comprehensive Annual Financial Report (CAFR), Council approved \$11.5M in transfers-out of the general fund reserves to help finance capital projects and for debt service payments.

#### Godbe Survey Results – June 2016

Godbe Research has conducted a community tracking survey. Results of the survey will be presented to Council at the July 19, 2016 City Council meeting.

Given the results of community feedback and identification of a local revenue measure as the best revenue option available to the City to provide funding for City services and maintain fiscal stability, staff recommends that Council, by resolution, place a one cent transactions and use (sales) tax measure on the November 8, 2016 ballot. Revenue from this type of measure assists the City in achieving the objective of maintaining current levels of service, such as maintaining firefighters, police officers, 9-1-1 emergency response services, neighborhood police patrols and fire protection, and other essential City services, including economic/business revitalization, repair of street/road infrastructure and support for recreation and parks programs.

If the Council decides to place a measure on the ballot, the deadline to do so is July 22, 2016. Since time is of the essence on this matter and to preserve the ability of the City to place a measure on the ballot, there is one resolution and one proposed ordinance for Council consideration. The first resolution submits to the voters a measure to approve a one cent transactions and use (sales) tax measure to fund Tracy city services on the November 8, 2016 ballot, directs the City Attorney to prepare an impartial analysis, and sets a submission date of August 2, 2016 for arguments in favor or against the measure. Under California Elections Code section 9287, if more than one argument for and/or against the measure is submitted, the city elections official shall give preference and priority, in the following order: first to the City Council or members of the City Council authorized by the City Council; second to bona fide associations of citizens; and third to individual voters eligible to vote on the measure.

If approved by voters, the proposed ordinance imposes a transactions and use tax to be administered by the State Board of Equalization. This ordinance makes all the

necessary adjustments to the Municipal Code to clarify how the tax would be imposed, collection procedures, and use of tax proceeds. The ordinance also clarifies that the authority to levy the tax expires thirty years from the date the tax starts being collected. Additionally, the ordinance specifies that the Residents' Oversight Committee will be established no later than March 1, 2017, so that it may review the expenditures of the revenue from the proposed transactions and use (sales) tax. Staff from the California State Board of Equalization have reviewed and approved the form of the proposed ordinance.

#### STRATEGIC PLAN

This item is in accordance with Goal 2, Objective 2c of City Council's Governance Strategy:

- Goal 2: Ensure continued fiscal sustainability through budgetary and financial stewardship.
- Objective 2c: Identify new revenue opportunities.

#### FISCAL IMPACT

Funds to cover the cost of the City's General Municipal Election have been allocated in the budget for FY 2016-2017. Should a one-cent General Purpose transactions and use (sales) tax be approved by the electorate, the City could realize \$14M in revenue annually.

#### RECOMMENDATION

Staff recommends that City Council:

- (1) Adopt a resolution calling for a municipal election to submit to the voters a local ballot measure adopting up to a one cent transactions and use (sales) tax, to provide funding for local City services; directing the City Attorney to prepare an impartial analysis of the measure; and setting the dates for arguments on the measure
- (2) Introduce an ordinance enacting a transactions and use (sales) tax to be administered by the State Board of Equalization upon approval by the voters at the November 8, 2016 election

Prepared by: Barbara Harb, Economic Development Management Analyst  
Vanessa Carrera, Public Information Officer

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

Approved by: Troy Brown, City Manager

#### ATTACHMENTS

Attachment A: Resident Survey Summary Results



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## Results

### Survey 942569

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Number of records in this query:	1279
Total records in survey:	1279
Percentage of total:	100.00%



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## Field summary for A1

Please check what items are important to you:

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Answer	Count	Percentage
Maintaining city streets, roads and repairing potholes (SQ001)	724	80.71%
Programs that help attract and retain local businesses (SQ002)	584	65.11%
Maintaining 9-1-1 emergency and medical response times (SQ003)	603	67.22%
Maintaining Tracy's senior center facility and senior support services (SQ004)	380	42.36%
Maintaining neighborhood police patrols and crime prevention and investigation programs (SQ005)	719	80.16%
Maintaining city parks and playgrounds (SQ006)	641	71.46%
Maintaining youth after-school programs and facilities for children and teens (SQ007)	468	52.17%
Maintaining anti-drug and gang prevention programs (SQ008)	580	64.66%
Programs that support the local economy and increase local jobs (SQ009)	551	61.43%
Maintaining fire protection services (SQ010)	521	58.08%
Maintaining city transit services and facilities (bus, airport, etc.) (SQ011)	309	34.45%
Attracting, training and retaining qualified firefighters and police officers (SQ012)	480	53.51%
Maintaining neighborhood blight, graffiti removal and vandalism prevention (SQ013)	626	69.79%

RESOLUTION 2016-\_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TRACY CALLING FOR A MUNICIPAL ELECTION TO SUBMIT TO THE VOTERS A LOCAL BALLOT MEASURE ADOPTING A ONE CENT TRANSACTIONS AND USE (SALES) TAX TO PROVIDE FUNDING FOR LOCAL CITY SERVICES; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURE; AND SETTING DATES FOR ARGUMENTS ON THE MEASURE

WHEREAS, Pursuant to Resolution No. 2016-104, the City Council ordered a Municipal Election to be held on Tuesday, November 8, 2016 for the election of certain officers as required by State law relating to general law cities, and

WHEREAS, Without additional revenue, unallocated fund reserves are necessary to balance its fiscal budget this year and each subsequent year, quickly depleting reserves, significantly affecting its ability to provide the level of services residents desire and limits its ability to respond to resident needs, and

WHEREAS, Polling results show that a majority of Tracy residents have identified maintaining city streets, parks, 9-1-1 emergency and medical response times, attracting, training, and retaining qualified firefighters and police officers, maintaining youth after school programs and facilities for children and teens, as well as maintaining Tracy's senior center and senior support services as top priorities, and

WHEREAS, Money from this measure is legally required to be spent locally on City of Tracy needs only and cannot be taken by the State, and

WHEREAS, A thirty-year, temporary revenue measure would assist the City in maintaining current levels of services, and

WHEREAS, The measure includes the establishment of a Resident Oversight Committee by no later than March 1, 2017, and

WHEREAS, the City Council deems it advisable to submit to the voters a ballot measure to approve a one cent transactions and use (sales) tax to fund all Tracy city services, including police; fire and emergency services; roadway, parks and sports field maintenance; youth, teen and senior services; infrastructure, support services; other general services, and

WHEREAS, On June 7, 2016, and pursuant to California Election Code sections 10400 *et seq.*, City Council passed Resolution 2016-105, requesting the Board of Supervisors of the County of San Joaquin, State of California, order the consolidation of the election in the City of Tracy with the statewide general election to be held on November 8, 2016, and

WHEREAS, Section 9282 of the Elections Code of the State of California authorizes the City Council by majority vote to adopt provisions to provide for the filing of arguments for city measures submitted at municipal elections;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TRACY:

1. Call for Election. The City Council hereby calls a municipal election on

Tuesday, November 8, 2016 for the purpose of submitting to the voters a ballot measure to approve a one cent transactions and use (sales) tax to fund all Tracy city services, including police; fire and emergency services; roadways, parks, and sports field maintenance; youth, teen and senior services; support services; art programs and other general services. A majority vote is required for the passage of the ballot measure.

2. Form of Measure. The full text of the proposed ordinance / measure to be submitted to the voters is attached as Exhibit “A” to this resolution. The exact form of the ballot label to be voted on is as follows:

To provide funding for City services/facilities, including: police (patrol, 911, command, gang/narcotics enforcement, crime investigations, other police services); fire protection, emergency, and other fire services; support services; street, median, and park repair/maintenance; senior/youth services; planning and business retention/attraction; building facilities (such as parks/sports fields); other general services; shall the <u>City of Tracy</u> enact a 1¢ sales tax for 30 years, providing <u>\$14 million dollars</u> annually, with citizens' oversight, and all funds spent locally?	YES
	NO

The measure shall be designated on the ballot by a letter printed on the left margin of the square containing the description of the measure, as provided in California Election Code section 13116.

3. Transmission to the City Attorney. The City Clerk is directed, pursuant to Elections Code section 9280, to transmit a copy of the measure to the City Attorney for the purpose of preparing an impartial analysis of the measure.

4. Full Text of the Measure. The full text of the “Ordinance of the City of Tracy Imposing a Transactions and Use Tax to be Administered by the State Board of Equalization,” which would replace Chapter 6.28 to Title 6 of the Tracy Municipal Code with a new Chapter 6.28 enacting a one cent Transactions and Use (Sales) Tax for thirty years to provide funding for local city services is available at no cost from the City Clerk’s Office at 333 Civic Center Plaza, Tracy, California or on the City’s website: [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us). A statement about how to obtain the full text of the Ordinance will be included in the Voter Information Pamphlet below the Impartial Analysis.

5. Deadline for Submittal of Arguments. Pursuant to Section 9282 of the Elections Code of the State of California the deadline for submitting arguments not to exceed 300 words for and against the measure to the City Clerk for transmittal to the Registrar of Voters is hereby set for August 2, 2016 at 5:00 pm. The provisions of this Section shall apply only to the election to be held on November 8, 2016 and shall then be repealed.

6. Conduct of the Election. The consolidated election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots counted and returned, returns canvassed, results declared, certificates of election issued, and all other proceedings incidental to and connected with the

election shall be regulated and done by the County Clerk in accordance with the provisions of law regulating a regularly scheduled election. The Board of Supervisors is hereby requested to issue all officers of the County charged with duties pertaining to the November 8, 2016 election instructions to take any and all steps necessary for the holding of such consolidated election. (California Elections Code 10418.)

7. Costs. The City will reimburse the County for the actual cost incurred in conducting the City's municipal election upon receipt of a bill stating the amount due as determined by the Election Official as indicated in Tracy City Council Resolution 2016-105.

8. Filing with County. The City Clerk is directed to file with the Board of Supervisors and the County Clerk of San Joaquin County certified copies of this resolution.

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The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the 19<sup>th</sup> day of July, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

## ORDINANCE NO.

### AN ORDINANCE OF THE CITY OF TRACY IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

WHEREAS, Ordinance 1151 adding Chapter 6.28 to Title 6 of the Tracy Municipal Code was introduced at a regular city council meeting on August 3, 2010, adopted by the Tracy City Council on August 17, 2010, and expired on March 31, 2016, and

WHEREAS, Tracy Municipal Code Chapter 6.28 has expired, and

WHEREAS, this action intends to replace Chapter 6.28 to Title 6 of the Tracy Municipal Code with a new Chapter 6.28.

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

SECTION 1. REPLACEMENT TO THE MUNICIPAL CODE. Former Chapter 6.28 which has expired is hereby replaced with a new Chapter 6.28 (Businesses, Professions and Trades) of the Tracy Municipal Code to read as follows:

"Section 6.28.010.. TITLE. This ordinance shall be known as the Tracy Transactions and Use Tax Ordinance. The city of Tracy hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

Section 6.28.020. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

Section 6.28.030. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions

and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

Section 6.28.040. CONTRACT WITH STATE. Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

Section 6.28.050. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of 1 % of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

Section 6.28.060. PLACE OF SALE. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

Section 6.28.070. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of 1 % of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

Section 6.28.080. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

Section 6.28.090. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of

Equalization, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

Section 6.28.100. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

Section 6.28.110. EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the

Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any

representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

Section 6.28.120. AMENDMENTS. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

Section 6.28.130. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

Section 6.28.140. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 6.28.150. USE OF TAX PROCEEDS. All proceeds of the tax levied and imposed under this chapter shall be paid into the General Fund for use by the City of Tracy.

Section 6.28.160. ANNUAL AUDIT. By no later than December 31<sup>st</sup> of each year, the City's independent auditors shall complete a financial audit report to include the revenue raised and expended by this tax.

Section 6.28.170. RESIDENTS' OVERSIGHT COMMITTEE. Although not otherwise required by law, the City Council shall, no later than March 1, 2017, establish a Residents' Oversight Committee to review the expenditure of the revenue from this transactions and use tax. The Committee shall consist of five members to be appointed by the Mayor and approved by the City Council. The terms of the Committee members and their specific duties shall be established by resolution of the City Council."

SECTION 2 EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall not take effect until approved by the majority of the voters voting at the general municipal election to be held on November 8, 2016.

SECTION 3. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall expire thirty (30) years from the date the tax starts being collected.

SECTION 4. CERTIFICATION; PUBLICATION. Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this ordinance and shall cause it to be published according to law and transmitted to the Board of Equalization.

\* \* \* \* \*

The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the 19<sup>th</sup> day of July, 2016, and finally adopted 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 5

REQUEST

**APPROVAL OF ACTIONS NECESSARY TO FORM COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS), IMPROVEMENT AREA NO. 1 AND A FUTURE ANNEXATION AREA: CONDUCT PUBLIC HEARINGS TO CONSIDER: QUESTIONS OF (1) ESTABLISHING THE CFD, IMPROVEMENT AREA NO. 1 AND THE FUTURE ANNEXATION AREA, AND (2) THE PROPOSED DEBT ISSUE; APPROVE THE FORM OF ACQUISITION AGREEMENTS AND AUTHORIZE THE CITY MANAGER TO ENTER INTO SUCH AGREEMENTS; ACCEPT THE COMMUNITY FACILITIES DISTRICT REPORT; CONDUCT PROPERTY OWNER ELECTION; INTRODUCE ORDINANCE ORDERING THE LEVY OF SPECIAL TAXES; AUTHORIZE THE ISSUANCE AND SALE OF SPECIAL TAX BONDS AND APPROVE RELATED ACTIONS**

EXECUTIVE SUMMARY

On June 7, 2016, pursuant to the Mello-Roos Act Community Facilities Act of 1982 Council approved certain actions necessary to initiate proceedings to form Community Facilities District (CFD) No. 2016-1, Improvement Area No. 1 and Future Annexation Area in order to secure bond financing for infrastructure per the Council-approved Development Agreement<sup>1</sup> for the Tracy Hills Project (Project) and to incur bonded indebtedness for the CFD and Improvement Area No. 1.

Tonight's continuation of the formation process will include (1) public hearings on establishing the CFD, levying special taxes in Improvement Area No. 1 and issuing indebtedness for the CFD, (2) approval of Acquisition Agreements and acceptance of Community Facilities District Report, (3) a landowner election and related actions, (4) introduction of the "Ordinance Ordering the Levy of Special Taxes" and (5) approval of the issuance of bonds for Improvement Area No. 1.

On August 16<sup>th</sup>, Council will be asked to adopt the Ordinance.

DISCUSSION

**CFD FORMATION PROCESS**

On June 7, 2016, pursuant to City Council's prior approval of the Tracy Hills Development Agreement (DA) whereby Council agreed that it "*shall cooperate with Developer and use reasonable efforts to (i) form one or more Community Facilities District(s) ("CFD"),* and pursuant to the Mello-Roos Act 1982, Council approved the following actions:

1. Authorized and directed the City Manager, or his representative, to enter into Joint Community Facilities Agreement with any entity that will own or operate any of the

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<sup>1</sup> Development Agreement, Section 3.6 Community Facilities District, approved April 5, 2016.

Facilities, to the extent necessary<sup>2</sup>;

2. Declared the intent of the City to enter into agreements with property owners in the City pursuant to which the property owners will construct the public infrastructure and the City will use CFD proceeds to acquire the infrastructure;
3. Declared the intent to establish CFD No. 2016-1, Improvement Area No. 1 and the Future Annexation Area;
4. Declared the intent to incur bonded and other debt for Improvement Area No. 1, in an amount not to exceed \$70,000,000, and for the CFD in an amount not to exceed a total of \$285,000,000;
5. Set a Public Hearing date of July 19, 2016 to consider questions of establishing the CFD and Improvement Area No. 1, levying the special tax and issuing bonded indebtedness and other debt;
6. Directed the preparation of a CFD Report.

Per the Council-approved Development Agreement and Resolution No. 2016-111<sup>3</sup>, tonight Council will be asked to do the following:

1. **Public Hearings.** Conduct public hearings to consider questions of: (1) establishing the CFD, Improvement Area No. 1 and the Future Annexation Area and levying the special tax in Improvement Area No. 1, and (2) whether the public interest, convenience and necessity require the issuance of bonds and other debt of the of the City on behalf of Improvement Area No. 1 and the Future Improvement Areas.
2. **CFD Report.** Accept the CFD Report (**Attachment “C”**) which contains a brief description of the public facilities and services by type which will be "required to adequately meet the needs of the district" and the estimated cost (including estimated bonding and administrative costs) of constructing, acquiring, and providing those facilities and services.
3. **Resolution of Formation; Resolution Determining Necessity to Incur Debt.** Following the public hearings, the City Council will be asked to consider and adopt:
  - a. **Resolution of Formation.** Pursuant to this Resolution, the City Council will be asked to establish the CFD, Improvement Area No. 1 and the Future Annexation Area; approve the Facilities and Services that may be financed by the CFD and Improvement Area No. 1; approve the rate and method of special tax in Improvement Area No. 1 and approve an appropriations limit for Improvement Area No. 1, subject to an approving (2/3) vote by the qualified

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<sup>2</sup> The South County Fire Authority will be providing fire protection services from the two fire stations within the project.

<sup>3</sup> Resolution No. 2016-111: Approval of Actions Necessary to Initiate Proceedings to form CFD No. 2016-1 (Tracy Hills), Improvement Area No. 1 and a Future Annexation Area; Authorized Related Indebtedness...”



*or at any time in the future, **have any impact on or require any contribution from the General Fund of the City.** To facilitate such intent, the City shall cooperate with Developer and use reasonable efforts to (i) form one or more Community Facilities District(s) ("CFD")...and (v) **authorize the special taxes and the bond proceeds from the CFD and all improvement areas thereof (collectively, the "CFD Proceeds") to be used to finance such facilities, services, and fees required to be constructed, provided, or paid under this Agreement...**"*

The purpose of forming the CFD with an Improvement Area No. 1 (which will consist of Phase 1 of the Tracy Hills Project) and a Future Annexation Area (which will include all of the future phases of the Tracy Hills Project) is to give the City and the developer of those future phases the flexibility to establish a different special tax formula that reflects then-current market conditions when future phases are ready to develop. As described in the Resolution of Formation, properties may annex into the CFD from the Future Annexation Area without further Council approval by signing a unanimous approval in favor of annexation, the levy of special taxes and issuance of related bonded and other indebtedness.

On June 7, 2016 in accordance with the DA, Council declared the intent of the City to enter into acquisition agreements with property owners, declared the City's intent to establish the CFD, Improvement Area No. 1 and the Future Annexation Area, declared the City's intent to incur bonded and other debt for the CFD; set a public hearing date of July 19, 2016; and directed the preparation of a CFD Report.

On June 21, 2016 Council ratified its June 7<sup>th</sup> actions declaring the City's intent to incur bonded and other debt for the CFD.

### **ACQUISITION AGREEMENTS**

***What are the Acquisition Agreements?*** The Acquisition Agreements identify the terms that govern the purchasing process of public improvements by the City from the Developer (in lieu of the City constructing public improvements and financing the construction with the CFD bond proceeds (in which case the CFD is sometimes referred to as a "construction district"), the developer will construct the improvements and the City will then purchase the constructed public improvements with the Bond proceeds (in this case, the CFD is sometimes referred to as an "acquisition district").

For Tracy Hills, there will be two Agreements--an Agreement for Improvement Area No. 1 and a Master Acquisition Agreement to govern the acquisition processes that occur in the Future Annexation Areas.

The Agreements identify, amongst other things, the process for depositing, holding, and disbursing bond proceeds, the uses and priorities of bond proceeds, duties and obligations of the developer pertaining to the construction of public facilities on behalf and under the supervision of the City; the process for acquisition payments to the developer by the City, limitations of payments, conditions of transfer and ownership of the improvements; the financing of authorized fees to the developer and fees that the Mello-Roos Act allows to be financed).

**Remainder Taxes.** A component of the Acquisition Agreements is the use of “Remainder Taxes” which are the special taxes that remain after improvements have been constructed, debt service and administrative costs have been paid, and the reserve fund has been replenished.

Through the 20th fiscal year in which the special tax is first levied in the Improvement Area, the Facilities Special Tax will be levied on Developed Property in the amount of the Maximum Facilities Special Tax and any Remainder Taxes will be used on a pay-go basis in the following order of priority:

1. For the first 20 fiscal years of collections of Remainder Taxes, to pay the acquisition costs of the public facilities, and the water, sewer or other capacity or connection fees related to public facilities that are authorized to be financed by the Improvement Area.

2. Commencing in the 21<sup>st</sup> fiscal year of collections of Remainder Taxes and until such time as the Deferred Reclaimed Water costs are paid in full, to pay the Deferred Reclaimed Water Fees for the property in the Improvement Area.

Once all of the Facilities and water, sewer or other capacity or connection fees or Authorized Fees for the CFD are paid for, the City may direct the use of the Remainder Taxes.

**Public Facilities to be Acquired by the City with CFD Proceeds**

(SITE DEVELOPMENT)

ON-SITE SPINE ROAD

(Corral Hollow to Second Roundabout)

Storm Drainage	\$ 583,139
F/R/P (Fine Grading/Rock/Pavement) and concrete	\$ 3,102,373
Landscaping	\$ 2,425,248
Signage and Striping	\$ 94,118

(Second Roundabout to end)

Storm Drainage	\$ 313,998
F/R/P (Fine Grading/Rock/Pavement) and concrete	\$ 1,670,508
EVA (Emergency Vehicle Access) Road and Backbone Utility Access Rd	\$ 490,000
Landscaping	\$ 1,305,903
Signage and Striping	\$ 50,679

SIGNALS

Corral Hollow/Spine Road Signal - COA 2.7.3 and COA	\$ 500,000
Corral Hollow/School Road – COA 2.7.8.h - Underground Only	\$ 125,000
Corral Hollow/School Road – COA 2.7.8.h - Completion	\$ 375,000

CORRAL HOLLOW

(Roadway Improvements)

Additional R/W (Right of Way) acquisitions	\$ 500,000
Street Improvement (COA 2.7.8b)	\$ 1,625,000

Storm Drain	\$	35,000
ON-SITE SEWER		
Pump Station	\$	1,477,749
Pumps	\$	1,008,750
SSFM (Sanitary Sewer Force Main)	\$	681,250
Backbone	\$	806,250
Sewer Line in Spine CH to Second RAB (Corral Hollow Road to Roundabout)	\$	422,500
Sewer Line in Spine Second RAB (Roundabout) to End	\$	227,500
OFF-SITE SEWER		
CA HDD (California Aqueduct Horizontal Directional Drilling)	\$	1,062,500
DMC HDD (Delta Mendota Canal Horizontal Directional Drilling)	\$	1,062,500
Junction Structures	\$	481,250
CA to DMC (California Aqueduct to Delta Mendota Canal)	\$	980,666
Road Repairs CA to DMC (California Aqueduct to Delta Mendota Canal)	\$	700,524
Traffic Control CA to DMC (California Aqueduct to Delta Mendota Canal)	\$	225,469
Signage and Striping CA to DMC (California Aqueduct to Delta Mendota Canal)	\$	106,250
DMC to R/R (Delta Mendota Canal to Union Pacific Railroad)	\$	401,776
R/R (Union Pacific Railroad) to Parkside 1,147,933	\$	1,205,330
R/R (Union Pacific Railroad) Jack and Bore 300,000	\$	315,000
Road Repairs DMC (Delta Mendota Canal) to Parkside	\$	746,766
Traffic Control DMC (Delta Mendota Canal) to Parkside	\$	157,500
Signage and Striping DMC (Delta Mendota Canal) to Parkside	\$	168,750
ON-SITE WATER		
CH to Second RAB (Corral Hollow Road to Roundabout)	\$	1,061,494
Second RAB (Roundabout) to End	\$	571,574
PHASE 1 AT GRADE WATER TANK		
Storage Tank	\$	7,687,500
Pumps	\$	937,500
Pump Station	\$	1,562,501
Site Work	\$	937,500
OFF-SITE WATER		
WTP to DMC (Water Treatment Plant to Delta Mendota Canal)	\$	728,506
DMC (Delta Mendota Canal) Bridge Crossing	\$	506,250
DMC to CH (Delta Mendota Canal to Corral Hollow Road)	\$	242,835
CH to CA (Corral Hollow Road to California Aqueduct)	\$	708,801
Road Repairs - Corral Hollow Road to California Aqueduct	\$	187,500
Traffic Control - Corral Hollow Road to California Aqueduct	\$	43,750
Signage and Striping - Corral Hollow Road to California Aqueduct	\$	31,250
CA (California Aqueduct) Bridge Crossing	\$	506,250
CA (California Aqueduct) to Spine Road	\$	410,670
Road Repairs - CA (California Aqueduct) to Spine Road	\$	43,750
Traffic Control - CA (California Aqueduct) to Spine Road	\$	18,750
Signage and Striping - CA (California Aqueduct) to Spine Road	\$	12,500

<b>ON-SITE RECLAIMED WATER</b>	
CH to Second RAB (Corral Hollow Road to Roundabout)	\$ 327,379
Second RAB (Roundabout) to End	\$ 176,739
<b>ON-SITE DRAINAGE (Storm Drain)</b>	
RCP (Reinforced Concrete Pipe)/Deep Structures	\$ 2,742,880
Earth Channel	\$ 99,704
Basin Road	\$ 224,054
Landscaping	\$ 326,889
Fencing (Retention Basin - Chain Link with black slats)	\$ 100,000
SWPPP (Storm Water Pollution Prevention Plan)	\$ 625,000
<b>TRAFFIC TRIGGERS</b>	
I-580/CH Stop Signs (COA 2.7.8 a)	\$ 66,250
CH/Linne Signal (COA 2.7.8.c)	\$ 1,846,250
Tracy Blvd/Linne Intersection Improvements (COA 2.7.8.d) TBD - Overlay CHR from I580 to Linne (COA 2.7.8.e)	\$ 1,373,438
<b>FIRE STATION (DA Obligation)</b>	
Land Acquisition	\$ 450,000
Design (Architectural Plans)	\$ 500,000
Design (Architectural Program Management)	\$ 250,000
Construction	\$ 4,300,000
<b>PARKS</b>	
Park #1 [1]	\$ 2,755,000
Park #2 [1]	\$ 2,610,000
Park #3 [1]	\$ 2,827,500
<b>TOTAL</b>	<b><u>\$ 63,234,205</u></b>

**CFD REPORT SUMMARY (Attachment "C")**

***Facilities Costs***

The Facilities noted above are authorized to be financed by the CFD and its Improvement Areas and may be constructed and acquired through the CFD or through the payments of fees. The Facility costs include all hard and soft costs associated with the Facilities, including the costs of the acquisition of land and rights-of-way, the costs of design, engineering and planning, the costs of any environmental or traffic studies, surveys or other reports, costs related to landscaping and irrigation, soils testing, permits, plan check, and inspection fees, insurance, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing as further defined in the Acquisition Agreements.

**Service Costs**

Special taxes collected in the CFD (and each Improvement Area) may finance, in whole or in part, **the annual maintenance and operation costs of the Facilities<sup>4</sup> which are estimated to be \$721,000<sup>5</sup>.**

**Incidental Costs**

**Bond related expenses**, including underwriters discount, reserve fund, capitalized interest, letter of credit fees and expenses, bond and disclosure counsel fees and expenses, and bond remarketing costs. In addition to incidental costs, these costs are based upon percentages of the principal amount of each series of bond issue (e.g., ranging from 1/8%-2% for Bond Counsel and \$1 per \$1,000 bond for Underwriter).

**Administrative fees** of the City and the bond trustee or fiscal agent related to the CFD and the Bonds. These annual costs are estimated to be:

	Annual
CFD Administrator/Tax Consultant	\$ 16,000
Fiscal Agent	\$ 5,000
Project Management (Harris and Associates)	\$ 50,833
City Engineering	\$ 14,333
City Administration (FIN)	\$ 6,752
San Joaquin County Tax Assessor	<u>\$ 3,500</u>
Total	\$ 96,419

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<sup>4</sup> This use of the Special Taxes will only go into effect after Bonds are paid off, facilities are constructed, and administrative costs are paid.

<sup>5</sup> This amount is based on Fiscal Year 2015-2016 estimate. They are expected to increase over time and as a result the special services tax will escalate 2% on an annual basis.

***Rate and Method of Apportionment***

The Rate and Method of Apportionment of Special Tax for Improvement Area No. 1 (“RMA”) was prepared by Goodwin Consulting Group.<sup>6</sup> The following two tables summarize the maximum special taxes to be levied in Improvement Area No. 1 to finance aforementioned facilities and service costs.

TABLE 1<sup>7</sup>

<b>Land Use</b>	<b>Maximum Facilities Special Tax Prior to Trigger Event Fiscal Year 2015-16*</b>	<b>Maximum Facilities Special Tax After Trigger Event</b>
<b><u>Single Family Residential Property</u></b>		
Village 1	\$2,514 per Residential Unit	\$0 per Residential Unit
Village 2	\$2,839 per Residential Unit	\$0 per Residential Unit
Village 3	\$2,837 per Residential Unit	\$0 per Residential Unit
Village 4	\$2,638 per Residential Unit	\$0 per Residential Unit
Village 5	\$3,487 per Residential Unit	\$0 per Residential Unit
Village 6	\$3,828 per Residential Unit	\$0 per Residential Unit
Village 7	\$2,270 per Residential Unit	\$0 per Residential Unit
Village 8	\$3,658 per Residential Unit	\$0 per Residential Unit
<b>Business Park Property/ Undeveloped Business Park Property</b>	<b>\$2,500 per Acre</b>	<b>\$0 per Acre</b>
<b>Other Property</b>	<b>\$30,000 per Acre</b>	<b>\$0 per Acre</b>
<b>Taxable Public Property and Taxable HOA Property</b>	<b>\$30,000 per Acre</b>	<b>\$0 per Acre</b>
<b>Undeveloped Property</b>	<b>\$30,000 per Acre</b>	<b>\$0 per Acre</b>

<sup>6</sup> See Exhibit B to Agenda Item’s Resolution of Formation of CFD No. 2016-1

<sup>7</sup> On July 1, 2016, and each July 1 thereafter, the Estimated Facilities Special Tax per Unit and the Expected Maximum Facilities Special Tax Revenues shall be increased by two percent (2%) of the amount in effect in the prior fiscal year

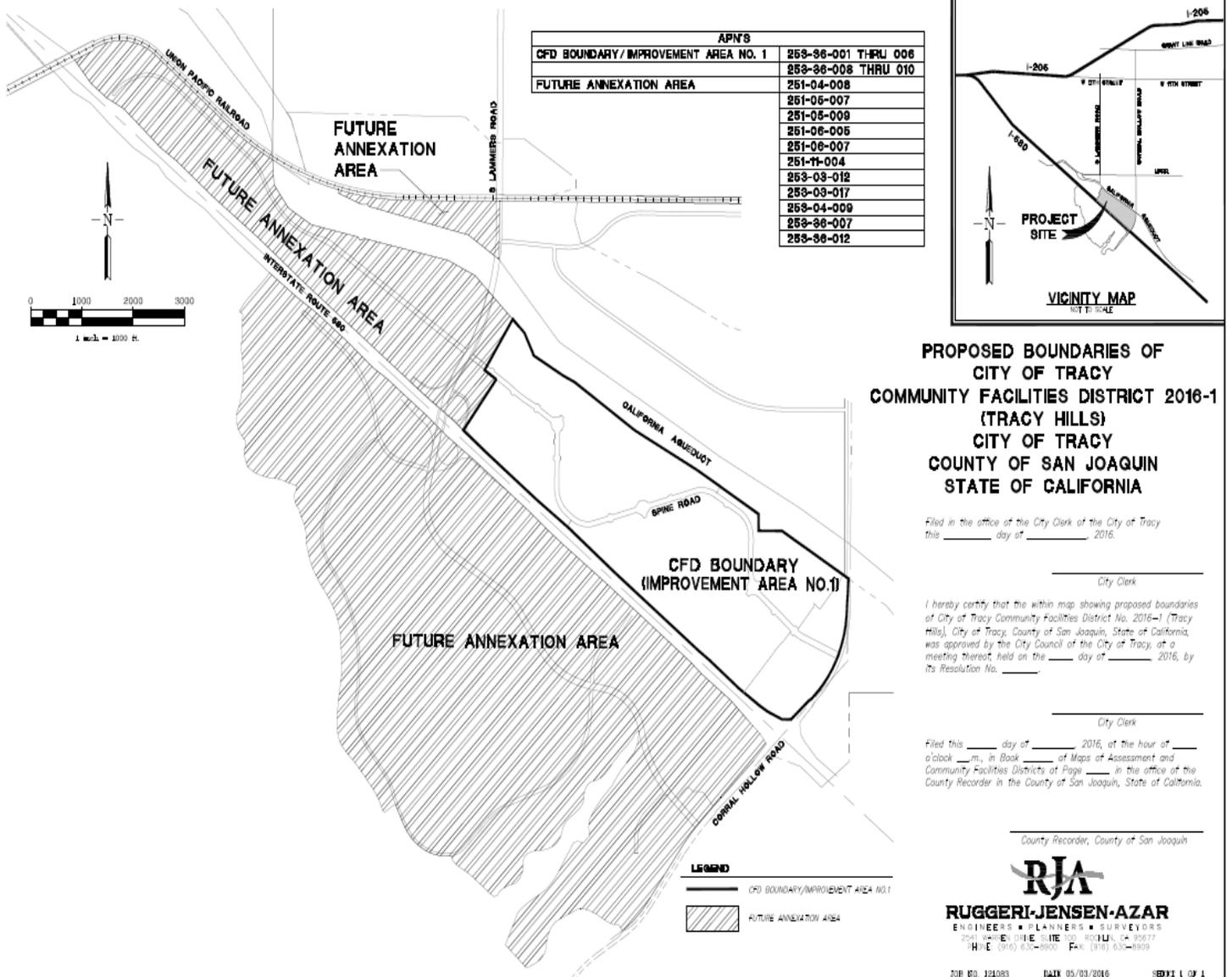
Table 2 identifies the Maximum Services Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 1. A Trigger Event means that time when the Tax Administrator makes a finding that (1) all the Bonds secured by the Levy of Facilities Special Taxes in the CFD have been fully repaid, (2) all Administrative Expenses from prior Fiscal Years have been paid or reimbursed to the City, (3) the Recycled Water Facilities Costs have been fully funded, and (4) there are no other Authorized Facilities that the City intends to fund with Facilities Special Taxes. In the first Fiscal Year in which the Administrator determines that the Trigger Event occurred in the prior Fiscal Year, and in each Fiscal Year thereafter, the Facilities Special Tax shall cease to be levied, and the Maximum Services Special Tax for each Parcel shall be adjusted pursuant to Table 2 below.

TABLE 2

Type of Property	Maximum Services Special Tax Prior to Trigger Event	Maximum Services Special Tax After Trigger Event Fiscal Year 2015-16*
<u>Single Family Residential Property</u> Village 1 Village 2 Village 3 Village 4 Village 5 Village 6 Village 7 Village 8	\$0 per Residential Unit \$0 per Residential Unit	\$503 per Residential Unit \$568 per Residential Unit \$567 per Residential Unit \$528 per Residential Unit \$697 per Residential Unit \$766 per Residential Unit \$454 per Residential Unit \$732 per Residential Unit
Business Park Property/ Undeveloped Business Park Property	\$0 per Acre	\$500 per Acre
Taxable Public Property and Taxable HOA Property	\$0 per Acre	\$1,000 per Acre
Undeveloped Property	\$0 per Acre	\$1,000 per Acre

**Proposed Boundaries of the CFD**

The Tracy Hills Specific Plan area is located in the vicinity of the existing Corral Hollow Road interchange and the proposed Lammers Road interchange along Interstate 580.



## **PUBLIC HEARINGS**

The Mello Roos Community Facilities Act calls for public hearings to be conducted to consider: (1) questions of establishing the CFD, Improvement Area No. 1 and the Future Annexation Area and the levy of special taxes in Improvement Area No. 1, and (2) on the proposed debt issue to consider and determine whether the public interest, convenience and necessity require the issuance of bonds and other debt of the of the City on behalf of Improvement Area No. 1 and the Future Improvement Areas.

Protests against the establishment of the CFD or Improvement Area No. 1, the extent of the CFD or the proposed facilities or services may be made orally or in writing by any interested persons or taxpayers. If 50 percent or more of the registered voters residing in Improvement Area No. 1, or 6 registered voters residing in Improvement Area No. 1, whichever is greater, or the owners of 50% or more of the non-exempt land in Improvement Area No. 1, file written protests against establishment of the CFD and Improvement Area No. 1, the proceedings must stop for at least one year. ***There are no registered voters residing in the boundaries of the proposed CFD or Improvement Area No. 1.***

With respect to the Future Annexation Area, protests may be made orally by any interested person. Protests regarding the regularity or sufficiency of the proceedings must be in writing and filed with the Clerk prior to the time of the hearing. The annexation must stop for one year as a result of written protests by (A) 50 percent or more of the registered voters residing in the CFD or 6 registered voters residing in the CFD, whichever is greater, (B) 50 percent or more of the registered voters residing in the Future Annexation Area or 6 registered voters residing in the Future Annexation Area, whichever is greater, (C) the owners of 50 percent or more of the area of land in the CFD, or (D) the owners of 50 percent or more of the area of land in the Future Annexation Area. ***There are no registered voters residing in the boundaries of the proposed CFD.***

After completion of the public hearings, the City Council will be asked to consider and adopt the following resolutions:

- a. ***Resolution of Formation of the CFD, Improvement Area No. 1 and the Future Annexation Area.*** Adoption of this resolution forms the CFD, Improvement Area No. 1 and the Future Annexation Area, establishes the scope of the facilities to be built, the scope of the services to be financed and adopts the special tax formula for Improvement Area No. 1, subject to a favorable vote by the qualified electors in Improvement Area No. 1.
- b. ***Resolution of Necessity to Incur Bonded Indebtedness.*** This resolution establishes the maximum bonded debt for the CFD, subject to a favorable vote by the qualified electors in Improvement Area No. 1.
- c. ***Resolution Calling Special Election.*** This resolution calls for the required vote by the qualified electors in Improvement Area No. 1 (not the Future Annexation Area) on (i) the levy of the special taxes in Improvement Area No. 1, (ii) issuance of a not-to-exceed bonded indebtedness for Improvement Area No. 1 and (iii) an appropriations limit for Improvement Area No. 1.

### **ELECTION AND RELATED ACTIONS**

1. Following the City Council's adoption of the "Resolution Calling Special Election", the Mayor will ask the City Clerk to open the ballot(s) and announce the results of the election.
2. ***Resolution Confirming Results of Election and Directing Recording of Notice of Special Tax Lien.*** Following the election, the City Council will be asked to adopt this resolution, if applicable which documents the outcome of the election and provides for the required recording of the special tax lien notice on property in Improvement Area No. 1. Recordation of the notice of special tax lien (which is not recorded against property in the Future Annexation Area) gives constructive notice of the existence of the ability of the City Council to levy special taxes pursuant to the RMA for Improvement Area No. 1 to support the bonded and other debt and to pay for the services.
3. ***Introduction of Ordinance Ordering the Levy of Special Taxes.*** This ordinance orders the levy of the special taxes to support the bonds and other debt and the services. The levy conforms to the special tax formula approved after the hearing and provides for the taxes to be collected each year on the general tax rolls of the County.

### **APPROVAL OF IMPROVEMENT AREA NO. 1 BONDS**

***Resolution Authorizing The Issuance And Sale Of Special Tax Bonds, And Approving And Authorizing Related Documents And Actions.*** After the introduction of the Ordinance, Council can consider the issuance of bonds for Improvement Area No. 1 by authorizing this resolution. Staff will return to Council with final bond documentation before bonds are issued. The adoption of this resolution will initiate a 60-day challenge period under California law.

If Council approves the aforementioned actions, Adoption of the Ordinance (2<sup>nd</sup> Reading) will occur on August 16<sup>th</sup>.

### **STRATEGIC PLAN**

The actions to form CFD No. 2016-1, Improvement Area No. 1 and a Future Annexation Area to finance infrastructure for Tracy Hills relates to the Council's Governance Strategic Plan, Goal 2 "Ensure continued fiscal sustainability through financial and budgetary stewardship", Objective No. 3 "Identify new revenue opportunities".

By approving CFD No. 2016-1, the City will be able to better maintain and operate those project-related infrastructure improvements (such as for street, sewer, and water renovation and repair) in the future when sources of revenue have historically been deficient.

### **FISCAL IMPACT**

There is no cost to the General Fund associated with this request. Bond Counsel/Disclosure Counsel, Underwriter, Tax Consultant/CFD Administrator, and

Project Manager expenses are either contingent upon the successful sale and closure of the bonds and paid from bond proceeds and/or are paid through an existing Cost Recovery Agreement with the developer.

Bonded and other indebtedness for Tracy Hills Improvement Area No. 1 will not exceed \$70,000,000. Debt payment will be from the special taxes levied on parcels within Improvement Area No. 1.

Once all of the Facilities and water, sewer or other capacity or connection fees or Authorized Fees for the CFD are paid for, in year 21, the City may direct the use of the Remainder Taxes.

In the first Fiscal Year in which the Administrator determines that the Trigger Event occurred in the prior Fiscal Year, and in each Fiscal Year thereafter, the Facilities Special Tax shall cease to be levied, and the Maximum Services Special Tax for each Parcel shall be adjusted pursuant to Table 2 (see "Rate and Method of Apportionment" section of this report).

## RECOMMENDATION

That Council:

1. At the close of the Public Hearings, consider and adopt the:
  - a. **"Resolution of Formation of Community Facilities District,"** which will establish the District, Improvement Area No. 1 and the Future Annexation Area;
  - b. **"Resolution Determining Necessity to Incur Bonded Indebtedness and Other Debt,"** which will determine the need to issue bonds to finance the proposed public facilities; and the
  - c. **"Resolution Calling Special Landowner Election for Community Facilities District,"** which will call for the property owner vote to approve the special tax, the proposed bonded indebtedness and other debt and the appropriations limit for Improvement Area No. 1."
2. Upon the City Clerk and Mayor's announcement of the election results, perform the following actions:
  - a. Consider and adopt **"Resolution Declaring Results of Special Election and Directing Recording of Notice of Special Tax Lien."**
  - b. Consider and introduce Ordinance entitled **"An Ordinance of the City Council of the City of Tracy Levying Special Taxes Within City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)."**

- c. Consider and adopt “**Resolution Authorizing the Issuance and Sale of Special Tax Bonds, and Approving and Authorizing Related Documents and Actions.**”

Prepared by: Anne Bell, Mgt. Analyst II, ASD, Finance Division  
Christopher Lynch, Jones Hall  
Susan Goodwin, Goodwin Consulting Group

Reviewed by: Martha Garcia, Interim Administrative Services Director  
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

#### ATTACHMENTS

- A: Acquisition Agreement
- B: Master Acquisition Agreement
- C: Community Facilities District No. 2016-1, Community Facilities District Report

# ATTACHMENT "A"

## ACQUISITION AGREEMENT

Relating to:

**City of Tracy  
Community Facilities District No. 2016-1  
(Tracy Hills)  
Improvement Area No. 1**

THIS ACQUISITION AGREEMENT (this "Agreement"), dated as of July 19, 2016, is by and between the City of Tracy, a municipal corporation and general law city (the "City"), for itself and on behalf of City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (the "CFD"), and Tracy Phase I, LLC, a Delaware limited liability company (the "Developer").

### RECITALS

A. The City Council of the City has established the CFD under the Mello-Roos Community Facilities Act of 1982, as amended, Part 1 (commencing with Section 53311) of Division 2 of Title 5 of the California Government Code (the "Act") for the financing of the public facilities described in the City's Resolution No. \_\_\_\_\_ (the "Resolution of Formation") adopted by the City Council on July 19, 2016, certain capital facility fees, and certain public services described in the Resolution of Formation.

B. The CFD was created to assist in financing facilities and capital facility fees required to be constructed or paid as a condition of developing the Tracy Hills project (the "Project"). The Developer is the developer of Phase 1A of the Project, and this Agreement applies solely to the facilities as described in Exhibit A.1 attached hereto (the "Facilities") and the capital facilities fees necessary to develop Phase 1A of the Project as described in Exhibit A.2 attached hereto (the "Authorized Fees"). The Facilities and Authorized Fees are authorized to be financed by the CFD under the Resolution of Formation.

C. Phase 1A of the Project is located in Improvement Area No. 1 of the CFD (herein, the "Improvement Area"). The Rate and Method for the Improvement Area (the "Rate and Method") provides for a facilities special tax (the "Facilities Special Tax") and a services special tax (the "Services Special Tax"). Upon the occurrence of a Trigger Event (as defined and set forth in the Rate and Method), a portion of the Facilities Special Tax will be converted to a Services Special Tax.

D. The Facilities are necessary to mitigate impacts arising from development occurring from the Project, and the City will benefit from a coordinated plan of design, engineering and construction of the Facilities and the development of Phase 1A of the Project.

E. The City has determined that it will obtain no advantage from undertaking the construction of the Facilities and that the Facilities may be constructed by the Developer as if they had been constructed under the direction and supervision, or under the authority of, the City (as such direction, supervision, and authority is set forth in this Agreement).

F. The City is proceeding with the authorization and issuance of bonds and other debt (as defined in the Act) for and on behalf of the Improvement Area of the CFD (collectively, the “Bonds”) under the Act.

## DEFINITIONS

Capitalized terms used in this Agreement, in addition to those defined in the Recitals to this Agreement, shall have the following meanings:

“Accept,” “Accepted,” and “Acceptance” mean, with respect to a Facility or Land Interest, acceptance by resolution of the City Council of the City of Tracy of the proffered Facility or Land Interest.

“Act” is defined in Recital A.

“Actual Cost” means, with respect to a Facility, an amount equal to the sum of (a) the Developer’s actual, reasonable cost of constructing such Facility, including labor, material and equipment costs, (b) the Developer’s actual, reasonable cost of preparing the Plans for such Facility, (c) the Developer’s actual, reasonable cost of environmental evaluations required in the City’s reasonable determination specifically for such Facility, (d) the amount of the fees actually paid by the Developer to governmental agencies in order to obtain permits, licenses or other necessary governmental approvals for such Facility, (e) the Developer’s actual, reasonable cost for professional services directly related to the construction of such Facility, including engineering, inspection, construction staking, materials testing and similar professional services, (f) the costs incurred by the Developer for construction management and supervision, which cost shall not exceed 5% of the cost of constructing such Facility, as determined pursuant to clause (a) of this definition, (g) the Developer’s actual, reasonable cost of any title insurance required hereby for such Facility, (h) the Developer’s actual cost of any payment and performance bonds required to construct the Facility, (i) any construction management and program management fees charged by the City for the construction of a Facility, (j) any administration and oversight charges paid to the City for the implementation of this Agreement, and (k) the Developer’s actual, reasonable cost of any real property or interest therein acquired from a party other than the Developer, which real property or interest therein is either necessary for the construction of such Facility (e.g., temporary construction easements, haul roads, etc.) or is required to be conveyed with such Facility in order to convey title thereto to the City; *provided, however*, that no item of cost relating to a Facility shall be included in more than one category of cost under this definition; and *provided further, however*, that each item of cost shall be chargeable to the capital account for the Facility under generally accepted accounting principles.

“Agreed-Upon Allocation” has the meaning given such term in Section 5(f) herein.

“Authorize” or “Authorization” means either of the following, as the context requires: (i) where payment of a requisition is to be made from Sources held and maintained by the Fiscal Agent, the terms mean that the City provides whatever documentation and written authorization under the Fiscal Agent Agreement as necessary for the Fiscal Agent to make payment on the requisition from the applicable Sources; and (ii) where payment of a requisition is to be made from Sources held and maintained by the City, the terms mean that the City authorizes and pays the applicable amount to the Developer pursuant to the requisition.

"Authorized Fees" means the water, sewer, or other capacity or connection fees related to Facilities that are authorized to be financed by the Improvement Area, as further described in Exhibit A.2 attached hereto.

"CFD Goals" means the City of Tracy Local Goals and Policies for Community Facilities Districts adopted by the City Council of the City of Tracy on February 4, 2014 by Resolution No. 2014-19.

"City Engineer" means the City Engineer of the City or such other official of the City acting in such capacity, or the designee of such official.

"City Facilities" means the Facilities (and Discrete Components thereof) that are to be acquired by the City.

"Conditions of Approval" means any and all conditions of approvals and mitigation measures imposed in connection with the granting of the land use entitlements, permits and approvals for the development of Phase 1A of the Project, including but not limited to any subdivision improvement agreement, owner participation agreement, development agreement (including the Development Agreement), or other agreement with the City relating to the development of Phase 1A of the Project or the installation of the Facilities.

"Deferred Reclaimed Water Fee" means that portion of the Reclaimed Water Fee imposed by the City upon the property in the Improvement Area that the City and the Developer agreed would be deferred until paid from Remainder Taxes.

"Deposit" has the meaning given such term in Section 8(f) herein.

"Development Agreement" means the Development Agreement, with an effective date of May 19, 2016, by and among The Tracy Hills Project Owner, LLC, the Developer, and the City, including Exhibit 2 attached thereto.

"Developer Allocation" has the meaning given such term in Section 5(f) herein.

"Discrete Components" means the components of each Facility, as described in Exhibit A.3 attached hereto. Discrete Components may, as provided herein, be the subject of a payment request under Section 5.b of this Agreement. Discrete Components do not have to be Accepted by the City as a condition precedent to the payment of the Purchase Price therefor, but any such payment shall not be made until the Discrete Component has been constructed in accordance with the Plans therefor, as determined by the City Engineer, and Developer shall provide for maintenance of each Discrete Component, in a manner acceptable to the City, until each Discrete Component has been Accepted by the City. Exhibit A may be modified at any time by the Developer for the purpose of identifying Discrete Components of a Facility, subject to the written approval of the City Engineer, without City Council approval.

"Facilities" means, collectively, each and every Facility.

"Facility" means (A) for a City Facility, an infrastructure facility (i) that is the subject of a subdivision improvement agreement or an offsite improvement agreement with the City and (ii) that is described in Exhibit A.1 hereto, and (B) for other than a City Facility, an infrastructure facility that is described in Exhibit A.1 hereto.

"Fiscal Agent" means the fiscal agent, trustee, or other paying agent under the Fiscal Agent Agreement.

"Fiscal Agent Agreement" means the indenture, fiscal agent agreement, resolution or other agreement under which the Bonds are issued, as such Fiscal Agent Agreement may be supplemented from time to time to accommodate additional bond issuances or as it may be amended from time to time.

"Improvement Area" means Improvement Area No. 1 of the CFD, as described in Section 53350 of the Act.

"Improvement Fund" has the meaning given such term in Section 3(b) herein.

"Land Interest" has the meaning given such term in Section 6(a) herein.

"Plans" means the plans, specifications, schedules and related construction contracts for the Facilities and/or any Discrete Components thereof approved by, and pursuant to the applicable standards of, the City or other entity that will own, operate or maintain the Facilities when completed and acquired.

"Prepayment Fund" has the meaning given such term in Section 3(a) herein.

"Principal Payment Date" shall mean, with respect to Bonds issued with respect to the Improvement Area, the semi-annual payment date on which principal or sinking fund payments on such Bonds are, in any year, payable. For example, if the principal amount of Bonds are payable on September 1, the Principal Payment Date shall be September 1, regardless of whether principal payments are actually due in any particular year.

"Purchase Price" means the amount paid by the City for a Facility and/or any Discrete Components thereof determined in accordance with this Agreement.

"Rate and Method" means the rate and method of apportionment of the special tax for Improvement Area No. 1 of the CFD.

"Remainder Taxes" shall mean, for the Improvement Area, the special taxes collected during the Remainder Taxes Period for the Improvement Area, calculated and payable as follows: (i) if Bonds have been issued for the Improvement Area, then in each year as of the day following the Principal Payment Date, any special taxes collected from property within the Improvement Area in excess of: (a) debt service on such outstanding Bonds for the Improvement Area due in the current calendar year, if any; (b) reasonable administrative costs for the Improvement Area (including any priority administrative costs); and (c) amounts required to replenish the reserve fund as of the previous Principal Payment Date; and (ii) if Bonds have not been issued on behalf of the Improvement Area, then as of May 1 and November 1 of each year, any special taxes collected from property within the Improvement Area during the prior six month period in excess of any reasonable administrative costs for the Improvement Area payable in the preceding six month period. Remainder Taxes shall no longer be collected for an Improvement Area once the Trigger Event occurs.

"Remainder Taxes Fund" has the meaning given such term in Section 3(c)(iii) herein.

“Remainder Taxes Period” means a period of years, commencing from the fiscal year in which the first levy of special taxes in the Improvement Area occurs, in which Remainder Taxes are collected and applied as further described in Section 3.c. herein.

“Retainage Escrow” has the meaning given such term in Section 5(e)(iii) herein.

“Sources” shall mean, collectively, (i) the proceeds of Bonds for the Improvement Area, (ii) Remainder Taxes for the Improvement Area, (iii) prepayments of special taxes under the Rate and Method prior to the issuance of the first series of Bonds for the Improvement Area, and (iv) prepayments of special taxes under the Rate and Method after the issuance of the first series of Bonds in the Improvement Area to the extent that such prepayments are allocated to the costs of Facilities and Authorized Fees pursuant to the Rate and Method, all as further described in Section 3 herein.

## **AGREEMENTS**

In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Developer agree as follows:

1. Recitals; Applicability.

a. Recitals. The City and the Developer represent and warrant, each to the other, that the above recitals, as applicable to each, are true and correct.

b. Applicability. This Agreement is applicable to the acquisition of the Facilities and the funding of the Authorized Fees from the Sources generated from the Improvement Area.

2. Sale of Bonds.

a. City Proceedings. The City intends to issue one or more series of Bonds with respect to the Improvement Area to carry out the purposes of the Development Agreement. Developer may submit written requests that City issue Bonds, specifying requested issuance dates, amounts, and main financing terms. Following Developer’s request, Developer and City will meet with City’s public financing consultants to determine reasonable and appropriate issuance dates, amounts, and main financing terms that are consistent with the Development Agreement and the CFD Goals. Nothing herein shall be construed as requiring the City to issue Bonds for the Improvement Area or as requiring the Developer to construct the Facilities, except as specifically provided in this Agreement and the Development Agreement.

3. Sources of Funds.

a. Prepayments. To the extent authorized under the Rate and Method, any prepayments of special tax obligations with respect to the Improvement Area before the issuance of the first series of Bonds for the Improvement Area shall be placed in a special fund to be held by the City (the “Prepayment Fund”), separate and apart from the proceeds of the Bonds and Remainder Taxes. After the issuance of the first series of Bonds for the Improvement Area, prepayments of special tax obligations with respect to the Improvement Area shall be deposited in the Prepayment Fund only to the extent that portions of such prepayments are required by the Rate and Method to be allocated to the costs of Facilities and Authorized Fees. Moneys in the Prepayment Fund shall be a source for the payment of the

costs of the acquisition of the Facilities and the Discrete Components thereof and the payment of Authorized Fees, and shall be applied in the same manner as the proceeds of Bonds and Remainder Taxes.

b. Bond Proceeds.

(i) The proceeds of each series of Bonds shall be deposited, held, invested, reinvested and disbursed as provided in the Fiscal Agent Agreement. The net proceeds of the Bonds shall be set aside under the Fiscal Agent Agreement in a separate improvement fund (the "Improvement Fund"). Moneys in the Improvement Fund shall be withdrawn therefrom, in accordance with the provisions of the Fiscal Agent Agreement, for payment of all or a portion of the costs of acquisition of the Facilities and the payment for Discrete Components thereof and the payment of Authorized Fees, all as herein provided.

(ii) The Developer agrees that the City shall direct the investment of the funds on deposit in the funds and accounts established by or pursuant to the Fiscal Agent Agreement, including the Improvement Fund, and that the Developer has no right whatsoever to direct investments under the Fiscal Agent Agreement.

(iii) The City shall have no responsibility whatsoever to the Developer with respect to any investment of funds under the Fiscal Agent Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment. Any such loss may diminish the amounts available in the Improvement Fund to pay the Purchase Price of Facilities and Discrete Components hereunder and to pay Authorized Fees. The Developer further acknowledges that the obligation of any owner of real property in the Improvement Area, including the Developer to the extent it owns any real property in the Improvement Area, to pay special taxes levied in the Improvement Area is not in any way dependent on (i) the availability of amounts in the Improvement Fund to pay for all or any portion of the Facilities or Discrete Components thereof hereunder or to pay any Authorized Fees, or (ii) the alleged or actual misconduct of the City in the performance of its obligations under this Agreement, the Fiscal Agent Agreement, any subdivision agreement or amendment thereto or any other agreement to which the Developer and the City are signatories.

(iv) Under the Rate and Method, in the Improvement Area, the Facilities Special Tax will be used, among other things, to pay the debt service on any Bonds issued in the Improvement Area. Upon the occurrence of the Trigger Event, a portion of the Facilities Special Tax will be converted into a Services Special Tax. The City and the Developer understand and agree that, within the Improvement Area, Bonds shall be issued in one or more series over time as necessary to finance the acquisition of the Facilities and the payment of the Authorized Fees, and that the Trigger Event cannot occur until all series of Bonds within the Improvement Area have been issued and fully repaid.

c. Remainder Taxes.

(i) As set forth in the Rate and Method, for the Improvement Area, through the 20th fiscal year in which the special tax is first levied in the Improvement Area, the Facilities Special Tax will be levied on Developed Property (as defined in the Rate and Method) in the amount of the Maximum Facilities Special Tax (as defined in the Rate

and Method), and any Remainder Taxes will be used on a pay-go basis in the following order of priority:

1. For the first 20 fiscal years of collections of Remainder Taxes, to pay the acquisition costs of the Facilities, Discrete Components, and the Authorized Fees, at the direction of the Developer.

2. Commencing in the 21<sup>st</sup> fiscal year of collections of Remainder Taxes and until such time as the Deferred Reclaimed Water Fees are paid in full, to pay the Deferred Reclaimed Water Fees for the property in the Improvement Area.

(ii) Once all of the Facilities, Discrete Components, and Authorized Fees for the CFD are paid for, the City may direct the use of the Remainder Taxes.

(iii) All Remainder Taxes shall be placed in a special fund to be held by the City (the "Remainder Taxes Fund"), separate and apart from the proceeds of the Bonds and prepayments of special taxes. Moneys in the Remainder Taxes Fund shall be a source for the payment of the costs of the acquisition of the Facilities and the Discrete Components thereof and the payment of the Authorized Fees and shall be applied in the same manner as the proceeds of Bonds and prepayments of special taxes.

d. Limitation. The City shall not be obligated to pay the Purchase Price of the Facilities or any Discrete Components thereof or the Authorized Fees except from amounts on deposit in the Prepayment Fund, the Improvement Fund, and the Remainder Taxes Fund (however such funds are denominated). The City makes no warranty, express or implied, that amounts on deposit in the Prepayment Fund, the Improvement Fund, and the Remainder Taxes Fund will be sufficient for payment of the Purchase Price of the Facilities or any Discrete Components thereof or the Authorized Fees. The Developer acknowledges that any lack of availability of amounts in the Prepayment Fund, the Improvement Fund, and the Remainder Taxes Fund to pay the Purchase Price of Facilities or any Discrete Components thereof and the Authorized Fees shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for public facilities or the payment of fees required by the Conditions of Approval to the extent that the Developer is so obligated.

4. Construction of the Facilities. Except as provided in the next sentence, the provisions of this Section 4 apply to both the City Facilities and the Facilities to be acquired by a utility or other local agency (other than the City). The provisions of subsections (c), (e), (f), (g), and (h) apply only to the City Facilities.

a. Plans and Specifications. The Developer represents that it has obtained or will obtain approval of the Plans from all appropriate departments of the City and from any other public entity or public utility from which such approval must be obtained. The Developer further represents that the Facilities have been or will be constructed in full compliance with such Plans and any change orders thereto, as approved in the same manner. Copies of all Plans for City Facilities shall be provided by the Developer to the City Engineer.

b. Duty of Developer to Construct. All Facilities to be acquired hereunder shall be constructed by or at the direction of the Developer in accordance with the approved Plans and the Conditions of Approval. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of the Facilities in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care

normally employed by duly qualified persons utilizing their best efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Facilities to be acquired by the City from the Developer hereunder.

The Developer shall be obligated: (i) to construct and cause conveyance to the City all City Facilities (including Discrete Components thereof) in accordance with the Conditions of Approval and the Developer's timing of development of the Project, and subject to acquisition by the City and other local agencies pursuant to this Agreement, (ii) to use its own funds to pay all costs associated with such construction and conveyance(s), except as may be otherwise expressly provided in the Conditions of Approval, and (iii) to assign to the City all warranties and guarantees provided to Developer in connection with the construction of such Facilities (including Discrete Components thereof).

The Developer shall not be relieved of its obligation to construct each City Facility (including Discrete Components thereof) and convey each such Facility to the City in accordance with the Conditions of Approval, even if the total Sources available over time is insufficient to pay the Purchase Price thereof. This Agreement shall not affect any obligation of any owner of land in the Project relating to the public improvements required in connection with the development of land within the Project, whether such obligation is imposed as a Condition of Approval or arises under any other law, regulation, government approval, or for any other reason.

c. Bid Procedures. The following bid procedures shall apply to all work to be performed by Developer under this Agreement, except for the design and construction work described in that certain plan set entitled "At Grade Water Tank and Pump Station – Zone 3, Tracy Hills Phase 1A/B," reviewed and approved by the City on June \_\_, 2016, which shall be deemed to satisfy this Section 4(c).

(i) Developer shall prepare a bid package and the form of the required notices for review and comment by the City Engineer. The City Engineer shall respond with any comments within ten (10) calendar days. The failure to respond shall be deemed approval.

(ii) Developer shall mail notices inviting formal bids. The notices shall be distributed (by mail or electronic mail) no more than thirty (30) calendar days before the opening date of the bids. The notices shall distinctly describe the project and state the time and place for submission of bids and disclose the Developer's right to elect to perform the work under Section 53329.5 of the Act.

(iii) Bids shall be submitted to the Developer either via hard copy or email. The bids shall be received and opened by the Developer and there shall be no requirement for a public bid opening. After the bids are received and opened by the Developer, the Developer may contact one or more of the bidders and request clarification of any bid or adjustments to the bid to comply with the specifications of the proposed project so that all bids may be evaluated on a comparable basis.

(iv) Developer shall submit to the City written evidence of compliance with the competitive bidding procedures set forth herein, including evidence of the required noticing, a listing of all responsive bids and their amounts (as adjusted pursuant to subsection (iii), if

applicable), and the name or names of the contractor or contractors to whom Developer proposed to award the contracts for such construction.

(v) The contract for the construction of a Facility shall be awarded to the responsible bidder submitting the lowest responsive bid (as adjusted pursuant to subsection (iii), if applicable) for the construction of such Facility or, if the Developer elects to perform the work pursuant to Section 53329.5 of the Act, the Developer shall perform the work at the prices specified in the bid of the lowest responsible bidder.

d. Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Facilities, it will assure complete compliance with any applicable law or regulation for the payment of prevailing wages for such construction.

e. Relationship to Public Works. This Agreement is for the acquisition of the Facilities or Discrete Components thereof by the City from the Developer and is not intended to be a public works contract. The City and the Developer agree that the provisions of the California Public Contracts Code do not apply to the construction of the Facilities. The City and the Developer agree that this Agreement is necessary to assure the timely and satisfactory completion of the Facilities and establishes the terms under which the Facilities shall be constructed as if they were constructed under the direction and supervision, or under the authority of, the City, as required by the Act.

f. Contracts and Change Orders. The Developer shall be responsible for entering into all contracts and any change orders required for the construction of the Facilities. Except as provided in the next sentence, all such contracts and change orders shall be submitted to the City Engineer for review and approval. Change orders shall not be required to be submitted to the City Engineer for review or approval provided both of the following are satisfied: (i) the amount of such change order is the lesser of 10% of the contract price or \$100,000, and (ii) the cumulative dollar amount of change orders for the applicable Discrete Component or Facility implemented without the review and approval of the City Engineer does not exceed the lesser of 10% of the total contract value for the Discrete Component or Facility or \$250,000.

g. Independent Contractor. In performing this Agreement, the Developer is an independent contractor and not the agent or employee of the City or the CFD. Neither the City nor the CFD shall be responsible for making any payments to any contractor, subcontractor, agent, employee or supplier of the Developer.

h. Periodic Meetings. From time to time at the request of the City Engineer, representatives of the Developer shall meet and confer with City staff, consultants and contractors regarding matters arising hereunder with respect to the Facilities and the progress in constructing and acquiring the same, and as to any other matter related to the Facilities or this Agreement. The Developer shall advise the City Engineer in advance of any coordination and scheduling meetings to be held with contractors relating to the Facilities, in the ordinary course of performance of an individual contract. The City Engineer or its designated representative shall have the right to be present at such meetings, and to meet and confer with individual contractors if deemed advisable by the City Engineer to resolve disputes and/or ensure the proper completion of the Facilities.

i. Non-City Facilities. Any Facilities (and any Discrete Components thereof) to be owned by a utility or a local agency other than the City shall be bid and constructed in accordance with an agreement between the Developer and the utility or agency.

j. Reimbursement for Costs of Facilities on Property Not Owned by Developer. In some cases, with respect to Facilities that may be located outside of the CFD, the Developer may purchase land through an affiliated entity and use that affiliated entity to construct Facilities on such land. For purposes of this Agreement, Facilities constructed by Developer's affiliate on the affiliate's property are referred to as "Affiliate Facilities." The City agrees that so long as the Affiliate Facilities are constructed in accordance with the provisions of this Agreement, the Affiliate Facilities may be financed by available Sources notwithstanding that the land and Affiliate Facilities being acquired hereunder will be purchased from an affiliated entity and that the affiliated entity bid and entered into, and paid the costs under, the contracts for the constructed Affiliate Facilities. Developer agrees that, notwithstanding its use of an affiliate for the described purposes, Developer shall remain liable to the City for all aspects of the Affiliate Facilities' compliance with the terms of this Agreement, in the same manner and to the same extent as if the Affiliate Facilities were constructed on Developer's property.

5. Payment for the Facilities. The Developer hereby agrees to sell the City Facilities to the City, and the City hereby agrees to use the Sources to pay the Purchase Price thereof to the Developer, subject to the terms and conditions hereof.

a. Inspection. No payment hereunder shall be made by the City to the Developer for a Facility or Discrete Component thereof until the Facility or Discrete Component thereof has been inspected by the City or other applicable public entity or utility and found to be constructed in accordance with the Plans approved by the City or other applicable public entity or utility. For Facilities to be acquired by the City, the Developer shall request inspection using applicable City procedures. For Facilities to be acquired by other public entities or utilities, the Developer shall be responsible for obtaining such inspections and providing written evidence thereof, to the reasonable satisfaction of the City Engineer. The Developer agrees to pay all inspection, permit and other fees of the City applicable to construction of the Facilities, which fees may be subject to reimbursement under this Agreement as part of the Actual Cost of the Facilities.

b. Request for Payment. Any request for payment hereunder by the Developer shall be in a form acceptable to the City and shall include such supporting documentation to substantiate such request as the City may require. For any request for payment, the following shall apply:

(i) Substantiation of Costs. The Developer shall provide any documentation substantiating the Actual Cost of the Facilities reasonably requested by the City Engineer. There shall be a presumption of reasonableness as to the Actual Costs incurred under a construction contract (or change order) entered into as a result of a call for bids by the Developer in accordance with this Agreement (or similar procedure approved by the City Engineer), provided that no extraordinary limitations or requirements (such as a short time frame) are imposed by the Developer on the performance of such contracts. For any Facility to be acquired by a public entity or utility other than the City, the Developer shall, at the City's request, provide written evidence, to the reasonable satisfaction of the City Engineer, of the approval of such Actual Cost substantiation and approval of such Facility from such entity or utility when requesting payment.

(ii) Payment Request and Supporting Materials. In order to receive the Purchase Price for a completed Facility or Discrete Component, inspection thereof under Section 5(a) shall have been made and the Developer shall deliver to the City Engineer:

(i) a payment request for such Facility or Discrete Component, together with all supporting documentation required by this Agreement to be included therewith, and (ii) if payment is requested for a completed Facility, (a) if the property on which the Facility is located is not owned by the City (or other applicable public agency that will own the Facility) at the time of the request, a copy of the recorded documents conveying to the City (or other applicable public agency that will own the Facility) title to the real property on, in or over which such Facility is located, as described in Section 6 hereof, (b) a copy of the recorded notice of completion of such Facility (for a Facility or the final Discrete Component only, if applicable), (c) to the extent paid for with the proceeds of the Bonds, an assignment to the City of any reimbursements that may be payable with respect to the Facility, such as public or private utility reimbursements, and (d) an assignment of the warranties and guaranties for such Facility, as described in Section 6 hereof, in a form acceptable to the City.

c. Conditions for Payment. The City shall not be obligated to pay the Purchase Price of any Facility or Discrete Component until the Facility or Discrete Component is constructed and the processing requirements of this Section 5 for such Facility or Discrete Component have occurred. The Developer acknowledges that the Discrete Components have been identified for payment purposes only, and that the City shall not Accept a Facility of which a Discrete Component is a part until the Facility has been completed. The City acknowledges that the Discrete Components (or the Facility of which the Discrete Component is a part) do not have to be Accepted by the City as a condition precedent to the payment of the Purchase Price for such Discrete Component, but any such payment shall not be made until the Discrete Component has been constructed in accordance with the Plans therefor, as determined by the City Engineer or other agency or utility, and, for City Facilities, the Developer shall provide for maintenance of the Discrete Component, in a manner acceptable to the City, until the Discrete Component is Accepted by the City. In any event, the City shall not be obligated to pay the Purchase Price for any Facility or Discrete Component except from the Sources.

d. Purchase Price. The Purchase Price shall be determined by the City Engineer as described in paragraph (e)(ii) below and the criteria of Section 5(a)-(c) above. The Purchase Price paid hereunder for any Facility or Discrete Component thereof may be paid in any number of installments as Sources become available.

e. Payments to the Developer. The Developer may request in writing a payment of the Purchase Price of any Facility or Discrete Component thereof as described in Exhibits A.1 and A.3 hereto subject to the following:

(i) Compliance with Conditions. The Developer shall first comply with Subsections 5 (a) through (c) above and shall have demonstrated the ability to comply with Section 6 below, all to the satisfaction of the City Engineer.

(ii) Amounts of Payments. The Purchase Price shall be determined to fairly reflect the Actual Cost of the Facility or Discrete Component thereof to be acquired, and specified in a cost certificate therefor prepared by the City Engineer. The Purchase Price shall in no event exceed Actual Costs of the Facility or Discrete Component thereof.

(iii) Retainage. Retainage will not be taken from any payment made from the Improvement Fund, the Prepayment Fund, or the Remainder Taxes Fund for the cost of any Facility or Discrete Component thereof being acquired by the City. However, the

City and the Developer acknowledge and agree that for any City Facility that is the subject of a contract with a contractor, for each payment requested by the contractor, a 5% retainage shall be withheld by the Developer, and the Developer will deposit all such retainage amounts into an escrow fund in which funds may be released only upon the joint written instructions of the City and the Developer (the "Retainage Escrow"). Funds in the Retainage Escrow will remain therein pending final completion, inspection, and Acceptance of the Facility. No Retainage shall be released for completion of a Discrete Component of a Facility unless and until the entire Facility has been Accepted by the City. When the Developer presents evidence substantiating payment to contractors for purposes of payment hereunder, the City shall consider the payment of the retained amounts to the Retainage Escrow as the payment for the Facility or Discrete Component for which payment is sought hereunder. The City and Developer also acknowledge and agree that no retainage needs to be deposited to the Retainage Escrow for (1) design costs or (2) construction contracts for Facilities or Discrete Components thereof to be acquired by other public entities or utilities.

(iv) City Response to Requests for Payment. Any request for payment by the Developer shall be made to the City Engineer in a form acceptable to the City and include the supporting documentation herein specified. Within fourteen (14) calendar days of receipt of any request, or such longer period to which the City and the Developer may agree, the City Engineer shall review such request to: (i) determine that it is complete; or (ii) determine that the request is incomplete and to request in writing additional information and documentation reasonably necessary for the City Engineer to complete the review. If the City Engineer notifies Developer that the request is incomplete, the time period for the City Engineer to determine whether or not the request is complete shall be extended until fourteen (14) calendar days following the date that Developer provides the additional information and documentation requested by the City. If the City Engineer fails to notify Developer within the applicable 14-day review period that a request is incomplete, the request will be deemed complete. Within eighteen (18) calendar days after the date a request is determined or deemed to be complete, the City Engineer will review the request to confirm that all conditions in this Agreement have been satisfied, to the extent applicable, and provide notice to Developer either that: (i) the request is approved (which will be confirmed by counter-signing the request); or (ii) the request is disapproved in whole or in part, specifying in the notice the portion of the request that is disapproved and the reason(s) for disapproval. If the request is disapproved in part, the City Engineer will process the portion of the request that was not disapproved for partial payment under subsection (e)(v) below. Developer may resubmit any request disapproved in whole or in part with additional supporting documentation, which resubmission shall be processed by the City in the same manner as an original request for payment under this Section 5.e.(iv). If, at the end of the 18-day review period, the City Engineer fails to approve or disapprove a request for payment, the Developer may send a written notice to the City Engineer notifying the City Engineer of such failure and informing the City Engineer that it has ten (10) calendar days to approve or disapprove the request for payment or the request shall be deemed approved. The foregoing request shall not be deemed a default notice under Section 11(c) herein. The process for review of all payment requests made pursuant to this Section 5 are subject to subsection (e)(vi) below.

(v) Payment by the City from the Sources. Within seven (7) calendar days after approving a request (in whole or in part) or after the deemed approval of a request, the City shall Authorize payment to be made to the Developer exclusively from one or

more of the Sources pursuant to the applicable provisions of the Fiscal Agent Agreement or otherwise. The City may Authorize any payment jointly to the Developer and any mortgagee or trust deed beneficiary, contractor or supplier of materials, as their interests may appear, or solely to any such third party, if the Developer so requests the same in writing or as the City otherwise determines such joint or third party payment is necessary to obtain lien releases. If there are insufficient Sources to pay the full amount of a payment request, then the City shall Authorize payment of as much of the amount on the payment request as there are Sources available, and the payment of the balance of the payment request shall be deferred until there are sufficient Sources available to pay the remaining balance of the payment request. Promptly following the availability of Sources, the City shall, from time to time and in as many installments as necessary, Authorize payment of the remaining balance of the payment request. Any provision in this Agreement to the contrary notwithstanding, in response to any request for payment under this Section 5, the City shall not be required to make any payments from Sources held and maintained by the City unless, at the time payment is required under this Agreement, (i) there are insufficient funds available in the Sources held and maintained by the Fiscal Agent to fully satisfy the request or (ii) the Sources held and maintained by the Fiscal Agent may not be applied to pay for the Facilities that is the subject of the payment request under federal tax law or otherwise. Payment requests may be paid (i) in any number of installments as Sources become available and (ii) irrespective of the length of time of such deferral of payment. In no event shall the City be required to Authorize or make payments for Facilities or Discrete Components from any funding sources other than the Sources.

(vi) General Cooperation. In connection with processing any payment request under this Agreement, the City and the City Engineer will use good faith efforts to request any additional information required to process the request as soon as practicable following the submission of the original materials, and to make each additional information request comprehensive and thorough to minimize the number of requests delivered, and Developer will use its good faith efforts to provide a thorough, organized, and complete response to each request. Developer is authorized to communicate directly with the City, the City Engineer, and their designees, agents, and contractors to facilitate any additional information request, to facilitate the prompt resolution of any technical issues, and to minimize the amount of time it takes to resolve outstanding issues. In addition to the foregoing, and except as otherwise is provided for herein, the City agrees that if a payment request includes more than one Discrete Component or Facility, it will not withhold payment Authorization on any Discrete Component or Facility that has been approved and will withhold payment Authorization only on such Discrete Components and Facilities that have not been approved.

f. Allocation of Costs. If Developer incurs costs that (1) apply to more than one Facility or Discrete Component (e.g., soft costs (which shall not exceed forty percent (40%) of the construction costs of the Facility or Discrete Component)) or (2) apply to both Facilities or Discrete Components and improvements other than the Facilities or Discrete Components (e.g., grading), Developer shall allocate, or cause the contractor to reasonably allocate, such costs between the Facilities or Discrete Components (in the case of clause (1)) or between the Facilities or Discrete Components and the improvements other than the Facilities or Discrete Components (in the case of clause (2)) (the "Developer Allocation"). The Developer Allocation shall be presumed to be reasonable and shall be accepted for all purposes of this Agreement unless the City notifies Developer of its good-faith reasonable disapproval of the allocation as part of the City's written response to the applicable payment request under Section 5.e.(iv)

above. If the City has properly disapproved the Developer Allocation, then the City and Developer shall promptly allocate such costs, on a reasonable basis, between the Facilities or Discrete Components (in the case of clause (1)) or between the Facilities or Discrete Components and the improvements other than the Facilities or Discrete Components (in the case of clause (2)) (the "Agreed-Upon Allocation"). Based on the Developer Allocation or the Agreed-Upon Allocation, as applicable, the City shall include the costs allocated to a specific Facility or Discrete Component as part of the Actual Costs of such Facility or Discrete Component when such Facility or Discrete Component is subject to a payment request.

g. Expectations of the Parties. The City understands and agrees that (i) Developer will be constructing Facilities or Discrete Components prior to the availability of Sources that will be used to pay for such Facilities or Discrete Components, (ii) the City or the other public agencies that will own and operate such Facilities or Discrete Components may be inspecting such Facilities or Discrete Components and processing and completing payment requests for the payment on such Facilities or Discrete Components with knowledge that there may be insufficient Sources available at such time, (iii) the Facilities or Discrete Components may be conveyed to and Accepted by the City or other local agency that will own and operate such Facilities or Discrete Components when there are insufficient Sources to pay the Purchase Prices of such Facilities or Discrete Components, and (iv) in any such case, the payment of any approved payment requests for the Purchase Prices of such Facilities or Discrete Components will be deferred until there are sufficient Sources available to pay the Purchase Prices of such Facilities or Discrete Components, at which time the City will make such payments in accordance with this Agreement. At all times, Developer will be constructing such Facilities or Discrete Components with the expectation that the Purchase Prices for such Facilities or Discrete Components will be paid solely from the Sources. The conveyance of Facilities or Discrete Components to the City or a local agency that will own and operate such Facilities or Discrete Components prior to receipt of the Purchase Prices for such Facilities or Discrete Components shall not be construed as a dedication or gift, or a waiver of the payment of the Purchase Prices, or any part thereof, for such Facilities or Discrete Components.

6. Ownership and Transfer of the Facilities; Maintenance; Warranties. Any of the Facilities to be owned by public entities or utilities other than the City shall be conveyed in accordance with the entity's or utility's policies and procedures. For the Facilities to be owned by the City, the following applies:

a. Land. For purposes of this Agreement, the term "Land Interest" includes fee simple title or such lesser interests (including easement and/or rights of way) as are required and approved by the City and are included in the description of the Facilities to be acquired. The Developer agrees to cause the owners of real property required for the operation and maintenance of the Facilities to execute and deliver to the City such documents as are required to complete the transfer, free and clear of all liens, taxes, assessments, easements, leases, or other encumbrances (whether recorded or not), except for those which the City Engineer determines in writing will not interfere with the intended use of the land or related Facilities, of all Land Interests necessary for the operation and maintenance of the Facilities. If any real property required for the operation and maintenance of the Facilities is within the boundaries of any existing community facilities district (including the CFD), an assessment district, or other financing district, then the lien of the special taxes or assessments shall be a permitted exception to the Land Interests conveyed to the City or other public agency, so long as the City or other public agency is exempt from the special tax or assessments to be levied by the community facilities district, assessment district, or other financing district. Completion of the transfer of the Land Interests required under this Agreement shall be evidenced by recordation

of the Acceptance thereof by the City Council or the legislative body of the other public agency (as applicable), or the designee thereof.

b. Facilities Constructed on Private Lands. If any Facility to be acquired is located on privately-owned land, the owner thereof shall retain title to the land and the completed Facility until Acceptance of the Facility and all associated Land Interests under Subsection 6(a) above. Pending the completion of such transfer, the Developer shall be responsible for maintaining the land and any Facilities in good and safe condition.

c. Facilities Constructed on City Land. If the Facilities to be acquired are on land owned by the City, the City hereby grants to the Developer a license to enter upon such land for purposes related to the construction (and maintenance pending acquisition) of the Facilities. The provisions for inspection and Acceptance of such Facilities otherwise provided herein shall apply.

d. Warranties; Maintenance. The Developer shall maintain each Discrete Component in good and safe condition until the date of Acceptance of the Facility of which such Discrete Component is a part. Prior to the Acceptance date, the Developer shall be responsible for performing any required maintenance on any completed Discrete Component or Facility.

On or before the Acceptance date, the Developer shall assign to the City all of the Developer's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such Facility. The Developer shall maintain or cause to be maintained each Facility to be owned by the City (including the repair or replacement thereof) for a period of one year from the Acceptance date thereof, or, alternatively, shall provide a bond reasonably acceptable in form and substance to the City Engineer for such period and for such purpose, to insure that defects, which appear within said period will be repaired, replaced, or corrected by the Developer, at its own cost and expense, to the satisfaction of the City Engineer. During any such one-year period, the Developer shall commence to repair, replace or correct any such defects within 10 days after written notice thereof by the City to the Developer, or at such later time as the City and Developer mutually agree, and shall complete such repairs, replacement or correction as soon as practicable. After such one-year period, the City shall be responsible for maintaining such Facility. Any warranties, guarantees or other evidences of contingent obligations of third persons with respect to the Facilities to be acquired by the City shall be delivered to the City Engineer as part of the transfer of the Facility and associated Land Interests.

For purposes of this Section 6, after the City has Accepted a Facility, the terms "maintain" and "maintenance" mean the repair, replacement, or correction of any defects in the Facility or Discrete Component, and shall not mean the day-to-day upkeep or correction of normal wear and tear of the Facility or Discrete Component (such as watering or weeding for landscape improvements, painting, graffiti removal, etc.).

7. Limitation of Liability. The Developer agrees that any and all obligations of the City arising out of or related to this Agreement are special and limited obligations of the City and the City's obligations to make any payments hereunder are restricted entirely to the Sources and from no other source. The Developer agrees to pay all costs of the Facilities in excess of the Sources available therefor from time to time. No City Council member, City staff member, employee or agent shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

If the construction and acquisition of all the Facilities have been completed and the Purchase Price with respect thereto has been paid, and all Authorized Fees have been paid, and funds remain on deposit in the Improvement Fund or become available through the issuance of additional Bonds, the City and the Developer may designate in a supplement hereto, Facilities (and/or Discrete Components thereof) to be constructed and acquired with such remaining or additional funds to be selected from the list of Facilities authorized by the CFD; provided, however, the City shall determine the use of such funds consistent with the terms of the CFD Goals and the Fiscal Agent Agreement.

8. Payment of Authorized Fees.

a. Authorization. The Act allows for the financing of Authorized Fees without an acquisition agreement or joint community facilities agreement. Accordingly, the Sources may be used to pay for the Authorized Fees at any time.

b. Request for Payment of Authorized Fees. The Developer may request payment of Authorized Fees from the Sources by executing and submitting to the City Engineer a request for payment in a form acceptable to the City and shall include such supporting documentation to substantiate such request as the City may require. Upon receipt of such payment request, the City shall pay, or cause to be paid, the Authorized Fees requested in such payment request in accordance with this Agreement and to the extent of such Sources.

c. City Response to Request for Payment of Authorized Fees. Any request for payment by the Developer for Authorized Fees shall be made to the City Engineer in a form acceptable to the City and include the supporting documentation herein specified. Within fourteen (14) calendar days of receipt of any request, or such longer period to which the City and the Developer may agree, the City Engineer shall review such request to: (i) determine that it is complete; or (ii) determine that the request is incomplete and to request in writing additional information and documentation reasonably necessary for the City Engineer to complete the review. If the City Engineer notifies Developer that the request is incomplete, the time period for the City Engineer to determine whether or not the request is complete shall be extended until fourteen (14) calendar days following the date that Developer provides the additional information and documentation requested by the City. If the City Engineer fails to notify Developer within the applicable 14-calendar day review period that a request is incomplete, the request will be deemed complete. Within eighteen (18) calendar days after the date a request is determined or deemed to be complete, the City Engineer will review the request to confirm that all conditions in this Agreement for the payment of Authorized Fees have been satisfied, to the extent applicable, and provide notice to Developer either that: (i) the request is approved (which will be confirmed by counter-signing the request); or (ii) the request is disapproved in whole or in part, specifying in the notice the portion of the request that is disapproved and the reason(s) for disapproval. If the request is disapproved in part, the City Engineer will process the request for partial payment under subsection (d) below. Developer may resubmit any request disapproved in whole or in part with additional supporting documentation, which resubmission shall be processed by the City in the same manner as an original request for payment under this Section 8.c. If, at the end of the 18-day review period, the City Engineer fails to approve or disapprove a request for payment, the Developer may send a written notice to the City Engineer notifying the City Engineer of such failure and informing the City Engineer that it has ten (10) calendar days to approve or disapprove the request for payment or the request shall be deemed approved. The foregoing request shall not be deemed a default notice under Section 11(c) herein. The process for review of all payment requests made pursuant to this Section 8 are subject to subsection (e) below.

d. Payment of Authorized Fees. Within seven (7) calendar days after approving a request for Authorized Fees (in whole or in part) or after the deemed approval of a request for the payment of Authorized Fees, the City shall Authorize payment of such Authorized Fees to be made exclusively from one or more of the Sources pursuant to the applicable provisions of the Fiscal Agent Agreement or otherwise. If there are insufficient Sources to pay the full amount of a payment request, then the City shall Authorize payment of as much of the amount on the payment request for Authorized Fees as there are Sources available, and the payment of the balance of the payment request for such Authorized Fees shall be deferred until there are sufficient Sources available to pay the remaining balance of the payment request. Promptly following the availability of Sources, the City shall, from time to time and in as many installments as necessary, Authorize payment of the remaining balance of the payment request for Authorized Fees. Any provision in this Agreement to the contrary notwithstanding, in response to any request for payment under this Section 5, the City shall not be required to make any payments from Sources held and maintained by the City unless, at the time payment is required under this Agreement, (i) there are insufficient funds available in the Sources held and maintained by the Fiscal Agent to fully satisfy the request or (ii) the Sources held and maintained by the Fiscal Agent may not be applied to pay for the Authorized Fees that is the subject of the payment request under federal tax law or otherwise. Payment requests may be paid (i) in any number of installments as Sources become available and (ii) irrespective of the length of time of such deferral of payment. In no event shall the City be required to Authorize or make payments for Authorized Fees from any funding sources other than the Sources.

e. General Cooperation. In connection with processing any payment request for Authorized Fees under this Agreement, the City and the City Engineer will use good faith efforts to request any additional information required to process the request as soon as practicable following the submission of the original materials, and to make each additional information request comprehensive and thorough to minimize the number of requests delivered, and Developer will use its good faith efforts to provide a thorough, organized, and complete response to each request. Developer is authorized to communicate directly with the City, the City Engineer, and their designees, agents, and contractors to facilitate any additional information request, to facilitate the prompt resolution of any technical issues, and to minimize the amount of time it takes to resolve outstanding issues. In addition to the foregoing, and except as otherwise is provided for herein, the City agrees that if a payment request includes more than one Authorized Fee, it will not withhold payment Authorization on any Authorized Fee that has been approved and will withhold payment Authorization only on such Authorized Fee that has not been approved.

f. Payment of Authorized Fees in Advance of Availability of Sources. The Developer or a merchant builder may be required pursuant to the Conditions of Approval or the fee ordinance to pay the Authorized Fees prior to the availability of the Sources to pay such Authorized Fees. In the event such Authorized Fees are paid prior to the availability of the Sources, the amounts paid to the City shall be deemed to be deposits (each a "Deposit") subject to refund by the City to Developer (and the Developer only, regardless of the entity that paid the Deposits) in the manner set forth in subsection (g) of this Section 8. Any Deposits made to the City shall be deposited in the appropriate capital facilities account and may be expended by the City in the ordinary course of business. The Developer acknowledges that the City may finance Authorized Fees with proceeds of tax-exempt bonds only if the City can meet certain requirements of federal tax law.

g. Return of Deposits. If the Developer or a merchant builder has made any Deposits, then following deposit of Sources with the City for the corresponding Authorized Fees, the City shall return to the Developer (and the Developer only, regardless of the entity that paid the Deposit) from the capital account in which the Deposits were deposited an amount equal to the Deposits paid by the Developer or merchant builder, without interest or other earnings thereon. The City shall be so obligated to return an amount equal to such Deposits to the Developer only to the extent that an amount equivalent to the amount of the Deposits made by the Developer or merchant builder is deposited with the City from the Sources. An amount equal to such Deposits may be returned to the Developer from time to time as additional Sources become available.

h. Deposits Allocated First. Sources used to pay Authorized Fees shall be allocated first for return of all Deposits prior to being allocated to the payment of Authorized Fees not previously deposited by the Developer or a merchant builder. For example, if the Developer has paid \$10,000 in Deposits, and Sources become available in the amount of \$15,000, the City shall apply the first \$10,000 of the Sources to the payment of the Authorized Fees that were paid by the Deposits (and, thereafter, return the Deposits to the Developer) and use the remaining \$5,000 of the Sources to the payment of Authorized Fees not previously paid by the Deposits and identified in the payment request.

i. Application of Deposits. Any Deposits that have not been returned to the Developer at the time it is determined that there will be no further Sources available (now or in the future) shall be retained by the City and may be used (to the extent it has not already been so used) for the purposes for which the Authorized Fee was required, and the unrefunded Deposits shall constitute full and final payment for such Authorized Fees, without any increase of any kind.

j. Expectations. The Developer or merchant builder may pay Authorized Fees (as Deposits) prior to the availability of Sources to pay such Authorized Fees. Any Authorized Fees paid (as Deposits) by the Developer or a merchant builder shall be made with the understanding that such Deposits will be returned from the Sources if, and when, such Sources become available. The payment of Deposits prior to the availability of the Sources shall not be construed as a dedication or gift of the Authorized Fees, or a waiver of the return of the Deposits, it being the intention that the Authorized Fees be paid by the Sources to the extent of the Sources.

9. Indemnification and Hold Harmless. The Developer shall take and assume all responsibility for the work performed as part of the Facilities constructed pursuant to this Agreement until the Acceptance by the City of the respective Facilities occurs.

The Developer shall, to the fullest extent permitted by law, assume the defense of and indemnify and save harmless the City, the CFD and the City's consultants, Councilmembers, officers, employees and agents (the "Indemnified Parties"), from and against (i) any claims by a third party against an Indemnified Party regarding the preparation, adoption, execution and performance of this Agreement, and (ii) any and all claims, losses, damage, expenses and liability of every kind, nature, and description, arising or resulting from the nature and performance of the work covered by this Agreement, from the Developer's or any other entity's negligent design, engineering and/or construction of any of the Facilities acquired from the Developer hereunder, the Developer's non-payment under contracts between the Developer and its consultants, engineer's, advisors, contractors, subcontractors and suppliers in the provision of the Facilities, or any claims of persons employed by the Developer or its agents to

construct the Facilities. In accordance with Civil Code section 2782, nothing in this Section shall require defense or indemnification for death, bodily injury, injury to property, or any other loss, damage or expense arising from the active or sole negligence or willful misconduct of any Indemnified Parties, or for defects in design, engineering, and/or construction furnished by any Indemnified Party, or for a default hereunder by the City or the CFD. Moreover, nothing in this Section shall apply to impose on the Developer, or to relieve the City from, liability for active negligence of the Indemnified Parties as delineated in Civil Code Section 2782. Any relief for determining the City's sole or active negligence shall be determined by a court of law.

The City does not, and shall not, waive any rights against the Developer which it may have by reason of the aforesaid hold harmless agreements because of the acceptance by the City, or deposit with the City by the Developer of any insurance policies required by the City. The hold harmless agreement by the Developer set forth in this Section 9 shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered by reasons of any of the aforesaid operations of the Developer, or any subcontractor, regardless of whether or not such insurance policies are determined to be applicable to any of such damages or claims for damages.

No act by the City, or its representatives in processing or accepting any plans, in releasing any bond, in inspecting or accepting any work, or of any other nature, shall in any respect relieve the Developer or anyone else from any legal responsibility, obligation or liability it might otherwise have.

#### 10. Representations and Covenants of the Developer.

a. Representations of the Developer. The Developer represents and warrants for the benefit of the City and the CFD as follows:

(i) Organization. The Developer is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is in compliance with all applicable laws of the State of California, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(ii) Authority. The Developer has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the Developer.

(iii) Binding Obligation. This Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to bankruptcy and other equitable principles.

(iv) Requests for Payment. The Developer represents and warrants that: (i) it will not request payment from the City for the acquisition of any improvements that are not part of the Facilities; and (ii) it will diligently follow all procedures set forth in this Agreement with respect to the payment requests. In addition, the Developer shall not request payment for any portion of the cost of a Facility that may be reimbursed to the Developer pursuant to a utility agreement, an oversizing agreement, or any other method of reimbursement that would result in Developer being reimbursed more than once for the same Facility or portion of a Facility.

(v) Plans. The Developer represents that it has obtained or will obtain approval of the Plans for the City Facilities to be acquired from the Developer hereunder from all appropriate departments of the City. The Developer further agrees that the City Facilities to be acquired from the Developer hereunder have been or will be constructed in full compliance with such approved plans and specifications and any supplemental agreements (change orders) thereto, as approved in the same manner.

b. Covenants of the Developer. The Developer covenants for the benefit of the City and the CFD as follows:

(i) Financial Records. Until all Bonds issued to finance the Facilities have been fully redeemed, the Developer covenants to maintain proper books of record and account for the construction of the Facilities and all costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the City or its agent at any reasonable time during regular business hours on reasonable notice.

(ii) Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Facilities (including Discrete Components) to be acquired from the Developer hereunder, it will assure complete compliance with any applicable law or regulation for the payment of prevailing wages under the California Labor Code.

(iii) Compliance with Laws. The Developer shall not with knowledge commit, suffer or permit any act to be done in, upon or to the lands of the Developer in the Improvement Area or the Facilities in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the lands in the Improvement Area or the Facilities.

(iv) Land Owners. The Developer agrees that in the event that it sells any land owned by it within the boundaries of the Improvement Area (other than to homeowners), the Developer will (i) notify the City within 30 days of the sale, in writing, identifying the legal name of and mailing address for the purchaser, the applicable County Assessor's parcel number or numbers for the land sold and the acreage of the land sold, (ii) notify the purchaser in writing prior to the closing of any such sale of the existence of this Agreement and, in general, the Developer's rights and obligations hereunder with respect to the construction of and payment for the Facilities, and (iii) notify the purchaser in writing of the existence of the CFD and the special tax lien in connection therewith, and otherwise comply with any applicable provision of Section 53341.5 of the Act.

(v) Initial Disclosure; Continuing Disclosure. The Developer agrees to provide such information about its development and its financing plan as may reasonably be requested by the City, the City's bond counsel or disclosure counsel or a bond underwriter. The Developer agrees to comply with all of its obligations, if any, under any continuing disclosure agreement or certificate executed by it in connection with the offering and sale of any of the Bonds.

(vi) Compliance With Applicable Law. The Developer accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the Facilities and the contract or

contracts pertaining thereto, including but not limited to such applicable laws as may be contained in the California Labor Code, the California Public Contract Code, and the California Government Code. The Developer will neither seek to hold or hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Developer to correctly determine the applicability of any such requirements to any contract it enters into. This paragraph shall apply with respect to any enforcement action, whether public or private, and whether brought by a public enforcement agency or by private civil litigation, against the Developer, the City or the CFD, or any of them, with respect to the matters addressed by this paragraph.

#### 11. Events of Default.

a. Grounds for Termination. Subject to the notice and opportunity to cure as set forth in subsection (b), the following events shall constitute grounds for the City, at its option, to terminate this Agreement, without the consent of Developer:

(i) Developer voluntarily files for reorganization or other relief under any Federal or State bankruptcy or insolvency law.

(ii) Developer has any involuntary bankruptcy or insolvency action filed against it, or suffers a trustee in bankruptcy or insolvency or receiver to take possession of the assets of Developer, or suffers an attachment or levy of execution made against the property it owns within the CFD unless, in any of such cases, such circumstance shall have been terminated or released within ninety (90) days thereafter.

(iii) Developer at any time challenges the validity of the CFD established in accordance with, or any Bonds issued in the Improvement Area, or the levy of special taxes within the Improvement Area, other than on the grounds that (A) such special tax levy was not made in accordance with the terms of the Rate and Method, or (B) the special taxes were not applied pursuant to the Rate and Method, this Agreement, or any other agreement between the Developer and the City or another public agency relating to the CFD, or any agreement relating to the CFD for which the Developer is a third party beneficiary.

(iv) Breach by the Developer of any obligations under this Agreement.

b. Notice and Opportunity to Cure. If any such event described in Section 11(a) occurs, the City shall give notice of its knowledge thereof to Developer, and Developer shall agree to meet and confer with the City Engineer and other appropriate City staff and consultants as to options available to assure timely completion of the Facilities not yet constructed. Such options may include, but not be limited to the termination of this Agreement by the City. If the City elects to terminate this Agreement, the City shall first notify Developer (and any mortgagee or trust deed beneficiary specified in writing by Developer to the City to receive such notice) of the grounds for such termination and allow Developer thirty (30) days to eliminate or mitigate to the satisfaction of the City Engineer the grounds for such termination. Such period may be extended, at the sole discretion of the City, if Developer, to the satisfaction of the City, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined reasonably by the City, Developer has not eliminated or completely mitigated such grounds, to the reasonable satisfaction of the City, the City may then terminate this Agreement.

c. Breach by the City. In the event that the City breaches its obligations under this Agreement, Developer shall give notice of its knowledge thereof to the City. For defaults other than the failure to Authorize payment of a requisition, the City shall have, from the date of Developer's notice, the greater of (i) the same number of days for which the City has an obligation to complete the defaulted obligation under this Agreement or (ii) thirty (30) calendar days, to eliminate or mitigate the breach to the satisfaction of Developer. For a default for the failure to Authorize payment of a requisition, the City shall have, from the date of Developer's notice, the greater of (i) the same number of days for which the City has an obligation to complete the defaulted obligation under this Agreement or (ii) ten (10) calendar days, to eliminate or mitigate the breach to the satisfaction of Developer. Such period may be extended, at the sole discretion of Developer, if the City, to the satisfaction of Developer, is proceeding with diligence to eliminate or mitigate such breach. If at the end of such period (and any extension thereof), as determined reasonably by Developer, the City has not eliminated or completely mitigated such breach, to the reasonable satisfaction of Developer, Developer may exercise its remedies under law.

d. Unapproved Payment Requests. Notwithstanding the foregoing, so long as any event listed in Section 11(a) has occurred, notice of which has been given by the City to Developer, and such event has not been cured or otherwise eliminated by Developer, the City may in its discretion cease approval of any previously submitted but unapproved payment requests; provided that Developer shall receive payment of the Purchase Price of any Facility or Discrete Component or the payment of Authorized Fees that the City previously determined was completed at the time of the occurrence of an event listed in Section 11(a) upon submission of the documents and compliance with the other applicable requirements of this Agreement and that all such payment requests shall continue to be paid in the manner set forth in this Agreement.

e. Force Majeure. No Party shall be deemed to be in default where failure or delay in the performance of any of its obligations under this Agreement is caused by floods, earthquakes, other acts of God, fires, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond a Party's control, shortage of materials (exclusive of prefab/modular building products), prohibitory court actions (such as restraining orders or injunctions) or other causes beyond a Party's control. If any such events shall occur, the time for performance by any Party of its obligations hereunder shall be extended for the period of time that such events prevented such performance.

12. Audit. The City Engineer and the City's chief financial officer shall have the right, during normal business hours and upon the giving of ten days written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer in constructing any of the Facilities and any bids taken or received for the construction thereof or materials therefor.

13. Attorney's Fees. In the event of the bringing of any action or suit by either party against the other arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees.

14. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or one week following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

Developer: Tracy Phase 1, LLC  
888 San Clemente, Suite 100  
Newport Beach, California 92660  
Attention: Tracy Hills Project Manager

City or CFD: City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376  
Attn: Administrative Services Director

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

15. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement may be assigned in whole or in part by the Developer, subject to the prior written consent of the City.

17. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

18. Merger. No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Agreement shall be binding.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

20. Amendments. Amendments to this Agreement shall be made only by written instrument executed by each of the parties hereto.

21. Governing Law. The provisions of this Agreement shall be governed by the laws of the State of California applicable to contracts made and performed in the State of California.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first-above written.

CITY OF TRACY, for itself and on behalf of  
CITY OF TRACY COMMUNITY  
FACILITIES DISTRICT NO. 2016-1 (Tracy  
Hills)

By: \_\_\_\_\_  
City Manager

TRACY PHASE I, LLC,  
A Delaware limited liability company

By:  \_\_\_\_\_  
Name: John Starek

Title: Authorized Representative

## **EXHIBIT A.1**

### **FACILITIES**

Attached is a list of the Facilities that may be financed by the Improvement Area under this Agreement:

EXHIBIT A.1 (Phase 1A Acquisition Agreement)

Tracy Hills Specific Plan (Developer Phases)

List of Facilities\_Phase 1A

**(SITE DEVELOPMENT)**

**ON-SITE SPINE ROAD**

**(Corral Hollow to Second Roundabout)**

	<b>Base Costs</b>
Storm Drainage	\$ 466,511
F/R/P (Fine Grading/Rock/Pavement) and concrete	2,481,898
Landscaping	1,940,198
Signage and Striping	75,294
<b>Subtotal Corral Hollow to Second Roundabout</b>	<b>\$ 4,963,901</b>

**(Second Roundabout to end)**

Storm Drainage	\$ 251,198
F/R/P (Fine Grading/Rock/Pavement) and concrete	1,336,406
EVA (Emergency Vehicle Access) Road and Backbone Utility Access Road	392,000
Landscaping	1,044,722
Signage and Striping	40,543
<b>Subtotal Second Roundabout to end</b>	<b>\$ 3,064,869</b>
<b>TOTAL ON-SITE SPINE ROAD</b>	<b>\$ 8,028,770</b>

**SIGNALS**

Corral Hollow/Spine Road Signal - COA 2.7.3 and COA 2.7.8.b	\$ 400,000
Spine Road/School Road – COA 2.7.8.h - Underground Only	\$ 100,000
Spine Road/School Road – COA 2.7.8.h - Completion	300,000
<b>TOTAL SIGNALS</b>	<b>\$ 800,000</b>

**CORRAL HOLLOW**

**(Roadway Improvements)**

Additional R/W (Right of Way) acquisitions	\$ 400,000
Street Improvement (COA 2.7.8b)	1,300,000
Storm Drainage	28,000
<b>TOTAL CORRAL HOLLOW</b>	<b>\$ 1,728,000</b>

**ON-SITE SEWER**

Pump Station	\$ 1,182,199
Pumps	807,000
SSFM (Sanitary Sewer Force Main)	545,000
Backbone	645,000
Sewer Line in Spine CH to Second RAB (Corral Hollow Road to Roundabout)	338,000
Sewer Line in Spine Second RAB (Roundabout) to End	182,000
<b>TOTAL ON-SITE SEWER</b>	<b>\$ 3,699,199</b>

EXHIBIT A.1 (Phase 1A Acquisition Agreement)

Tracy Hills Specific Plan (Developer Phases)

List of Facilities\_Phase 1A

	<b>Base Costs</b>
<b>OFF-SITE SEWER</b>	
CA HDD (California Aqueduct Horizontal Directional Drilling)	\$ 850,000
DMC HDD (Delta Mendota Canal Horizontal Directional Drilling)	850,000
Junction Structures	385,000
CA to DMC (California Aqueduct to Delta Mendota Canal)	784,533
Road Repairs CA to DMC (California Aqueduct to Delta Mendota Canal)	560,419
Traffic Control CA to DMC (California Aqueduct to Delta Mendota Canal)	180,375
Signage and Striping CA to DMC (California Aqueduct to Delta Mendota Canal)	85,000
DMC to R/R (Delta Mendota Canal to Union Pacific Railroad)	382,644
R/R (Union Pacific Railroad) to Parkside	1,147,933
R/R (Union Pacific Railroad) Jack and Bore	300,000
Road Repairs DMC (Delta Mendota Canal) to Parkside	711,206
Traffic Control DMC (Delta Mendota Canal) to Parkside	150,000
Signage and Striping DMC (Delta Mendota Canal) to Parkside	135,000
<b>TOTAL OFF-SITE SEWER</b>	<b>\$ 6,522,110</b>
<b>ON-SITE WATER</b>	
Corral Hollow Road to Second Roundabout)	\$ 849,195
Second Roundabout to End	457,259
<b>Total On-Site Water</b>	<b>\$ 1,306,454</b>
<b>PHASE 1 AT GRADE WATER TANK</b>	
Storage Tank	\$ 6,150,000
Pumps	750,000
Pump Station	1,250,001
Site Work	750,000
<b>Total Phase 1 at Grade Water Tank</b>	<b>\$ 8,900,001</b>
<b>TOTAL ON-SITE WATER</b>	<b>\$ 10,206,455</b>
<b>OFF-SITE WATER</b>	
WTP to DMC (Water Treatment Plant to Delta Mendota Canal)	\$ 582,805
DMC (Delta Mendota Canal) Bridge Crossing	405,000
DMC to CH (Delta Mendota Canal to Corral Hollow Road)	194,268
CH to CA (Corral Hollow Road to California Aqueduct)	567,041
Road Repairs - Corral Hollow Road to California Aqueduct	150,000
Traffic Control - Corral Hollow Road to California Aqueduct	35,000
Signage and Striping - Corral Hollow Road to California Aqueduct	25,000
CA (California Aqueduct) Bridge Crossing	405,000
CA (California Aqueduct) to Spine Road	328,536
Road Repairs - CA (California Aqueduct) to Spine Road	35,000
Traffic Control - CA (California Aqueduct) to Spine Road	15,000
Signage and Striping - CA (California Aqueduct) to Spine Road	10,000
<b>TOTAL OFF-SITE WATER</b>	<b>\$ 2,752,650</b>
<b>ON-SITE RECLAIMED WATER</b>	
Corral Hollow Road to Second Roundabout)	\$ 261,903
Second Roundabout to End	141,391
<b>TOTAL RECLAIMED WATER</b>	<b>\$ 403,294</b>

EXHIBIT A.1 (Phase 1A Acquisition Agreement)

Tracy Hills Specific Plan (Developer Phases)

List of Facilities\_Phase 1A

	<b>Base Costs</b>
<b>ON-SITE DRAINAGE (Storm Drain)</b>	
RCP (Reinforced Concrete Pipe)/Deep Structures	\$ 2,194,304
Earth Channel	79,763
Basin Road	179,243
Landscaping	261,511
Fencing (Retention Basin)	80,000
SWPPP (Stormwater Pollution Prevention Plan)	500,000
<b>TOTAL ON-SITE DRAINAGE (STORM DRAIN)</b>	<b>\$ 3,294,821</b>
<b>TRAFFIC TRIGGERS</b>	
I-580/CH Stop Signs (COA 2.7.8 a)	\$ 53,000
CH/Linne Signal (COA 2.7.8.c)	1,477,000
Tracy Blvd/Linne Intersection Improvements (COA 2.7.8.d)_TBD	-
Overlay CHR from I580 to Linne (COA 2.7.8.e)	1,098,750
<b>Total Traffic Triggers</b>	<b>\$ 2,628,750</b>
<b>FIRE STATION</b>	
Land Acquisition	\$ 450,000
Design (Architectural Plans)	500,000
Design (Architectural Program Management)	250,000
Construction	4,300,000
<b>Total Fire Station</b>	<b>\$ 5,500,000</b>
<b>PARKS</b>	
Park #1 [1]	\$ 2,204,000
Park #2 [1]	2,088,000
Park #3 [1]	2,262,000
<b>Total Parks</b>	<b>\$ 6,554,000</b>
<b>SUBTOTAL FACILITIES</b>	<b>\$ 52,118,049</b>
<b>TOTAL FACILITIES (with 6% Soft Costs and 10% Contingency)</b>	<b>\$ 60,769,645</b>

Source: Integral/RJA

Footnotes:

[1] Assumes \$580k per acre

## **EXHIBIT A.2**

### **AUTHORIZED FEES**

Attached is a description of the water, sewer, or other capacity or connection fees authorized to be financed by the Improvement Area under this Agreement:

EXHIBIT A.2

Tracy Hills Specific Plan (Developer Phases)  
List of Authorized Fees\_Phase 1A

<b>Total Estimate</b>
-----------------------

**(FEES/DA OBLIGATIONS/PAYMENTS) [1]**

<b>Sewer Payment Fee</b>	\$ 2,000,880
<b>WTP Pump Station Payment</b>	4,750,000
<b>Police costs (DA Obligation)</b>	
Fee #1	150,000
Fee #2	180,000
Fee #3	30,000
<b>Public Benefit (DA Obligation)</b>	
Installment #1	1,250,000
Installment #2	3,750,000
<b>Lammers/Old Shulte Payment (COA 2.7.8.g)_TBD</b>	-
<b>TOTAL FEES/DA OBLIGATION</b>	<b>\$ 12,110,880</b>

**(DESIGN COSTS) [2]**

RJA - Water Tank and Pump Station	\$ 480,000
West Yost- Peer Review of Water Tank and Pump Station	178,000
RJA - Spine Road and Backbone Utilities	318,000
Forma - Landscape & Irrigation for Spine Road & Corral Hollow Road	350,000
Forma - Neighborhood Park Design - 3 Parks	255,000
RJA - Corral Hollow Frontage Improvement Plans	40,000
RJA - Precise Plan Line CH Road	167,000
Carollo - Clearwell 3	346,000
RJA- Cathodic Protection	32,000
TJKM - CHR/Spine Rd Signal	39,000
CH2MHill - CHR Sewr & Water Utility Plans & Tracy Hills Pump Station	2,469,900
W. Yost - JJWTP Pump Station	282,000
<b>TOTAL DESIGN COSTS</b>	<b>\$ 4,956,900</b>

<b>TOTAL FEES/DA/PAYMENTS/DESIGN COSTS</b>	<b>\$ 17,067,780</b>
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Source: Integral/RJA

Footnotes:

[1] City to process request for payment of authorized fees as outlined in Section 8.C of the Acquisition Agreement dated \_\_\_\_, 2016.

[2] Constitutes 10% design/planning. Design costs needed to develop the plans

## **EXHIBIT A.3**

### **DISCRETE COMPONENTS**

Attached is a list of the components of Facilities that are deemed to be Discrete Components under this Agreement:

Tracy Hills Specific Plan (Developer Phases)  
List of Discrete Components\_Phase 1A

	DISCRETE COMPONENTS					Total Costs
	Base Costs	Other Costs				
		10% Construction Management	15% Contingency	5% City Program Markup	Other Costs Total	
<b>(SITE DEVELOPMENT)</b>						
<b>ON-SITE SPINE ROAD</b>						
<b>(Corral Hollow to Second Roundabout)</b>						
Storm Drainage	\$ 466,511	\$ 46,651	\$ 69,977	\$ -	\$ 116,628	\$ 583,139
F/R/P (Fine Grading/Rock/Pavement) and concrete	2,481,898	248,190	372,285	-	620,475	3,102,373
Landscaping	1,940,198	194,020	291,030	-	485,050	2,425,248
Signage and Striping	75,294	7,529	11,294	-	18,824	94,118
<b>(Second Roundabout to end)</b>						
Storm Drainage	\$ 251,198	\$ 25,120	\$ 37,680	\$ -	\$ 62,800	\$ 313,998
F/R/P (Fine Grading/Rock/Pavement) and concrete	1,336,406	133,641	200,461	-	334,102	1,670,508
EVA (Emergency Vehicle Access) Road and Backbone Utility Access Road	392,000	39,200	58,800	-	98,000	490,000
Landscaping	1,044,722	104,472	156,708	-	261,181	1,305,903
Signage and Striping	40,543	4,054	6,081	-	10,136	50,679
<b>SIGNALS</b>						
Corral Hollow/Spine Road Signal - COA 2.7.3 and COA 2.7.8.b	\$ 400,000	\$ 40,000	\$ 60,000	\$ -	\$ 100,000	\$ 500,000
Spine Road/School Road – COA 2.7.8.h - Underground Only	100,000	10,000	15,000	-	25,000	125,000
Spine Road/School Road – COA 2.7.8.h - Completion	300,000	30,000	45,000	-	75,000	375,000
<b>CORRAL HOLLOW</b>						
<b>(Roadway Improvements)</b>						
Additional R/W (Right of Way) acquisitions	\$ 400,000	\$ 40,000	\$ 60,000	\$ -	\$ 100,000	\$ 500,000
Street Improvement (COA 2.7.8b)	1,300,000	130,000	195,000	-	325,000	1,625,000
Storm Drain	28,000	2,800	4,200	-	7,000	35,000
<b>ON-SITE SEWER</b>						
Pump Station	\$ 1,182,199	\$ 118,220	\$ 177,330	\$ -	\$ 295,550	\$ 1,477,749
Pumps	807,000	80,700	121,050	-	201,750	1,008,750
SSFM (Sanitary Sewer Force Main)	545,000	54,500	81,750	-	136,250	681,250
Backbone	645,000	64,500	96,750	-	161,250	806,250
Sewer Line in Spine CH to Second RAB (Corral Hollow Road to Roundabout)	338,000	33,800	50,700	-	84,500	422,500
Sewer Line in Spine Second RAB (Roundabout) to End	182,000	18,200	27,300	-	45,500	227,500
<b>OFF-SITE SEWER</b>						
CA HDD (California Aqueduct Horizontal Directional Drilling)	\$ 850,000	\$ 85,000	\$ 127,500	\$ -	\$ 212,500	\$ 1,062,500
DMC HDD (Delta Mendota Canal Horizontal Directional Drilling)	850,000	85,000	127,500	-	212,500	1,062,500
Junction Structures	385,000	38,500	57,750	-	96,250	481,250
CA to DMC (California Aqueduct to Delta Mendota Canal)	784,533	78,453	117,680	-	196,133	980,666
Road Repairs CA to DMC (California Aqueduct to Delta Mendota Canal)	560,419	56,042	84,063	-	140,105	700,524
Traffic Control CA to DMC (California Aqueduct to Delta Mendota Canal)	180,375	18,038	27,056	-	45,094	225,469
Signage and Striping CA to DMC (California Aqueduct to Delta Mendota Canal)	85,000	8,500	12,750	-	21,250	106,250
DMC to R/R (Delta Mendota Canal to Union Pacific Railroad)	382,644	-	-	19,132	19,132	401,776
R/R (Union Pacific Railroad) to Parkside	1,147,933	-	-	57,397	57,397	1,205,330
R/R (Union Pacific Railroad) Jack and Bore	300,000	-	-	15,000	15,000	315,000
Road Repairs DMC (Delta Mendota Canal) to Parkside	711,206	-	-	35,560	35,560	746,766
Traffic Control DMC (Delta Mendota Canal) to Parkside	150,000	-	-	7,500	7,500	157,500
Signage and Striping DMC (Delta Mendota Canal) to Parkside	135,000	13,500	20,250	-	33,750	168,750

EXHIBIT A.3 (Phase 1A Acquisition Agreement)

Tracy Hills Specific Plan (Developer Phases)  
List of Discrete Components\_Phase 1A

	DISCRETE COMPONENTS					
	Base Costs	Other Costs				Total Costs
		10% Construction Management	15% Contingency	5% City Program Markup	Other Costs Total	
<b>ON-SITE WATER</b>						
CH to Second RAB (Corral Hollow Road to Roundabout)	\$ 849,195	\$ 84,920	\$ 127,379	\$ -	\$ 212,299	\$ 1,061,494
Second RAB (Roundabout) to End	457,259	45,726	68,589	-	114,315	571,574
<b>PHASE 1 AT GRADE WATER TANK</b>						
Storage Tank	\$ 6,150,000	\$ 615,000	\$ 922,500	\$ -	\$ 1,537,500	\$ 7,687,500
Pumps	750,000	75,000	112,500	-	187,500	937,500
Pump Station	1,250,001	125,000	187,500	-	312,500	1,562,501
Site Work	750,000	75,000	112,500	-	187,500	937,500
<b>OFF-SITE WATER</b>						
WTP to DMC (Water Treatment Plant to Delta Mendota Canal)	\$ 582,805	\$ 58,281	\$ 87,421	\$ -	\$ 145,701	\$ 728,506
DMC (Delta Mendota Canal) Bridge Crossing	405,000	40,500	60,750	-	101,250	506,250
DMC to CH (Delta Mendota Canal to Corral Hollow Road)	194,268	19,427	29,140	-	48,567	242,835
CH to CA (Corral Hollow Road to California Aqueduct)	567,041	56,704	85,056	-	141,760	708,801
Road Repairs - Corral Hollow Road to California Aqueduct	150,000	15,000	22,500	-	37,500	187,500
Traffic Control - Corral Hollow Road to California Aqueduct	35,000	3,500	5,250	-	8,750	43,750
Signage and Striping - Corral Hollow Road to California Aqueduct	25,000	2,500	3,750	-	6,250	31,250
CA (California Aqueduct) Bridge Crossing	405,000	40,500	60,750	-	101,250	506,250
CA (California Aqueduct) to Spine Road	328,536	32,854	49,280	-	82,134	410,670
Road Repairs - CA (California Aqueduct) to Spine Road	35,000	3,500	5,250	-	8,750	43,750
Traffic Control - CA (California Aqueduct) to Spine Road	15,000	1,500	2,250	-	3,750	18,750
Signage and Striping - CA (California Aqueduct) to Spine Road	10,000	1,000	1,500	-	2,500	12,500
<b>ON-SITE RECLAIMED WATER</b>						
CH to Second RAB (Corral Hollow Road to Roundabout)	\$ 261,903	\$ 26,190	\$ 39,285	\$ -	\$ 65,476	\$ 327,379
Second RAB (Roundabout) to End	141,391	14,139	21,209	-	35,348	176,739
<b>ON-SITE DRAINAGE (Storm Drain)</b>						
RCP (Reinforced Concrete Pipe)/Deep Structures	\$ 2,194,304	\$ 219,430	\$ 329,146	\$ -	\$ 548,576	\$ 2,742,880
Earth Channel	79,763	7,976	11,964	-	19,941	99,704
Basin Road	179,243	17,924	26,886	-	44,811	224,054
Landscaping	261,511	26,151	39,227	-	65,378	326,889
Fencing (Retention Basin - Chain Link with black slats)	80,000	8,000	12,000	-	20,000	100,000
SWPPP (Stormwater Pollution Prevention Plan)	500,000	50,000	75,000	-	125,000	625,000
<b>TRAFFIC TRIGGERS</b>						
I-580/CH Stop Signs (COA 2.7.8.a)	\$ 53,000	\$ 5,300	\$ 7,950	\$ -	\$ 13,250	\$ 66,250
CH/Linne Signal (COA 2.7.8.c)	1,477,000	147,700	221,550	-	369,250	1,846,250
Tracy Blvd/Linne Intersection Improvements (COA 2.7.8.d)_TBD	-	-	-	-	-	-
Overlay CHR from I580 to Linne (COA 2.7.8.e)	1,098,750	109,875	164,813	-	274,688	1,373,438
<b>FIRE STATION (DA Obligation)</b>						
Land Acquisition	\$ 450,000	\$ -	\$ -	\$ -	\$ -	\$ 450,000
Design (Architectural Plans)	500,000	-	-	-	-	500,000
Design (Architectural Program Management)	250,000	-	-	-	-	250,000
Construction	4,300,000	-	-	-	-	4,300,000
<b>PARKS</b>						
Park #1 [1]	\$ 2,204,000	\$ 220,400	\$ 330,600	\$ -	\$ 551,000	\$ 2,755,000
Park #2 [1]	2,088,000	208,800	313,200	-	522,000	2,610,000
Park #3 [1]	2,262,000	226,200	339,300	-	565,500	2,827,500
<b>TOTAL DISCRETE COMPONENTS</b>	<b>\$ 52,118,049</b>	<b>\$ 4,392,627</b>	<b>\$ 6,588,940</b>	<b>\$ 134,589</b>	<b>\$ 11,116,156</b>	<b>\$ 63,234,205</b>

Source: Integral/RJA

Footnotes:

[1] Assumes \$580k per acre

# ATTACHMENT "B"

## MASTER ACQUISITION AGREEMENT

Relating to:

**City of Tracy  
Community Facilities District No. 2016-1  
(Tracy Hills)**

THIS MASTER ACQUISITION AGREEMENT (this "Agreement"), dated as of July 19, 2016, is by and between the City of Tracy, a municipal corporation and general law city (the "City"), for itself and on behalf of City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (the "CFD"), and The Tracy Hills Project Owner, LLC, a Delaware limited liability company (the "Developer").

### RECITALS

A. The City Council of the City has established the CFD under the Mello-Roos Community Facilities Act of 1982, as amended, Part 1 (commencing with Section 53311) of Division 2 of Title 5 of the California Government Code (the "Act") for the financing of the public facilities described in the City's Resolution No. \_\_\_\_\_ (the "Resolution of Formation") adopted by the City Council on July 19, 2016, certain capital facility fees, and certain public services described in the Resolution of Formation. A portion of the facilities authorized by the Resolution of Formation are listed on Exhibit A.1 attached hereto (the "Facilities"), as such Exhibit A may be modified from time to time by the Developer with prior written notice to the City (which shall include a replacement Exhibit A.1 and the date of such modification), so long as the list of Facilities is consistent with the Resolution of Formation. Certain water, sewer or other capacity or connection fees are authorized to be financed by the City under the Resolution of Formation ("Authorized Fees") and are listed in Exhibit A.2, as such Exhibit A may be modified from time to time by the Developer with prior written notice to the City (which shall include a replacement Exhibit A.2 and the date of such modification), so long as the list of Facilities is consistent with the Resolution of Formation. The Authorized Fees will be used by the City to finance one or more facilities.

B. The CFD was created to assist in financing Facilities and Authorized Fees required to be constructed or paid as a condition of developing the Tracy Hills project (the "Project").

C. The CFD initially consists of Improvement Area No. 1 only (consisting of Phase 1A of the Project), but the remainder of the Project was identified as Future Annexation Area (herein, "Future Annexation Area"). The Developer is the owner of the property comprising the Future Annexation Area. This Agreement applies to the Future Annexation Area only. A separate agreement for Phase 1A of the Project was entered into with Tracy Phase I, LLC, the owner of the property in Phase 1A.

D. The Developer intends to develop, or cause to be developed, the future phases of the Project by selling the property in phases to builders (herein, a “Builder”) who shall construct the necessary infrastructure (including some or all of the Facilities), pay the required fees (including some or all of the Authorized Fees), and construct homes on the property. In connection with the subsequent phases, the Developer will assign this Agreement to a Builder, but only with respect to the portion of the Project and the Facilities and Authorized Fees identified in the Assignment and Assumption Agreement.

E. As future phases are developed, the Developer (or the subsequent Builder of such future phases) may annex the property into the CFD to a then-existing Improvement Area or to a new Improvement Area. The Rate and Method for each Improvement Area will provide for a facilities special tax (the “Facilities Special Tax”) and a services special tax (the “Services Special Tax”). Upon the occurrence of a Trigger Event (as defined and set forth in the Rate and Method), a portion of the Facilities Special Tax will be converted to a services special tax (the “Services Special Tax”).

F. The Facilities are necessary to mitigate impacts arising from development occurring from the Project, and the City will benefit from a coordinated plan of design, engineering and construction of the Facilities and the development of the Project.

G. The City has determined that it will obtain no advantage from undertaking the construction of the Facilities and that the Facilities may be constructed by the Developer as if they had been constructed under the direction and supervision, or under the authority of, the City (as such direction, supervision, and authority is set forth in this Agreement).

H. The City is proceeding with the authorization and issuance of bonds and other debt (as defined in the Act) for and on behalf of the CFD, as the CFD exists at formation and as it expands with the annexation of property from the Future Annexation Area (collectively, the “Bonds”) under the Act.

## DEFINITIONS

Capitalized terms used in this Agreement, in addition to those defined in the Recitals to this Agreement, shall have the following meanings:

“Accept,” “Accepted,” and “Acceptance” mean, with respect to a Facility or Land Interest, acceptance by resolution of the City Council of the City of Tracy of the proffered Facility or Land Interest.

“Act” is defined in Recital A.

“Actual Cost” means, with respect to a Facility, an amount equal to the sum of (a) the Developer’s actual, reasonable cost of constructing such Facility, including labor, material and equipment costs, (b) the Developer’s actual, reasonable cost of preparing the Plans for such Facility, (c) the Developer’s actual, reasonable cost of environmental evaluations required in the City’s reasonable determination specifically for such Facility, (d) the amount of the fees actually paid by the Developer to governmental agencies in order to obtain permits, licenses or other necessary governmental approvals for such Facility, (e) the Developer’s actual, reasonable cost for professional services directly related to the construction of such Facility, including engineering, inspection, construction staking, materials testing and similar professional services,

(f) the costs incurred by the Developer for construction management and supervision, which cost shall not exceed 5% of the cost of constructing such Facility, as determined pursuant to clause (a) of this definition, (g) the Developer's actual, reasonable cost of any title insurance required hereby for such Facility, (h) the Developer's actual cost of any payment and performance bonds required to construct the Facility, (i) any construction management and program management fees charged by the City for the construction of a Facility, (j) any administration and oversight charges paid to the City for the implementation of this Agreement, and (k) the Developer's actual, reasonable cost of any real property or interest therein acquired from a party other than the Developer, which real property or interest therein is either necessary for the construction of such Facility (e.g., temporary construction easements, haul roads, etc.) or is required to be conveyed with such Facility in order to convey title thereto to the City; *provided, however*, that no item of cost relating to a Facility shall be included in more than one category of cost under this definition; and *provided further, however*, that each item of cost shall be chargeable to the capital account for the Facility under generally accepted accounting principles.

"Agreed-Upon Allocation" has the meaning given such term in Section 5(f) herein.

"Authorize" or "Authorization" means either of the following, as the context requires: (i) where payment of a requisition is to be made from Sources held and maintained by the Fiscal Agent, the terms mean that the City provides whatever documentation and written authorization under the Fiscal Agent Agreement as necessary for the Fiscal Agent to make payment on the requisition from the applicable Sources; and (ii) where payment of a requisition is to be made from Sources held and maintained by the City, the terms mean that the City authorizes and pays the applicable amount to the Developer pursuant to the requisition.

"Approved Assignment" means an assignment and assumption of this Agreement pursuant to an Assignment and Assumption Agreement with either (i) an affiliate of the Developer or (ii) an entity affiliated with a publicly-traded company.

"Assignment and Assumption Agreement" means an agreement by which a full or partial assignment of the Developer's rights and obligations under this Agreement may be made by the Developer, and an assumption of all or a portion of the Developer's rights and obligations under this Agreement may be made by the Builder, in the form attached hereto as Exhibit B.

"Authorized Fees" means the water, sewer, or other capacity or connection fees related to Facilities that are authorized to be financed by the CFD, as further described in Exhibit A.2 attached hereto.

"Builder" means an entity to whom the Developer conveys a portion of the Project, which may be an affiliated or unaffiliated entity of the Developer.

"CFD Goals" means the City of Tracy Local Goals and Policies for Community Facilities Districts adopted by the City Council of the City of Tracy on February 4, 2014 by Resolution No. 2014-19.

"City Engineer" means the City Engineer of the City or such other official of the City acting in such capacity, or the designee of such official.

"City Facilities" means the Facilities (and Discrete Components thereof) that are to be acquired by the City.

“Conditions of Approval” means any and all conditions of approvals and mitigation measures imposed in connection with the granting of the land use entitlements, permits and approvals for the development of the Project, including but not limited to any subdivision improvement agreement, owner participation agreement, development agreement (including the Development Agreement), or other agreement with the City relating to the development of the Project or the installation of the Facilities.

“Deposit” has the meaning given such term in Section 8(f) herein.

“Development Agreement” means the Development Agreement, with an effective date of May 19, 2016, by and among the Developer, Tracy Phase I, LLC, and the City, including Exhibit 2 attached thereto.

“Developer Allocation” has the meaning given such term in Section 5(f) herein.

“Discrete Components” means the components of each Facility, as described in Exhibit A.3 attached hereto. Discrete Components may, as provided herein, be the subject of a payment request under Section 5.b of this Agreement. Discrete Components do not have to be Accepted by the City as a condition precedent to the payment of the Purchase Price therefor, but any such payment shall not be made until the Discrete Component has been constructed in accordance with the Plans therefor, as determined by the City Engineer, and Developer shall provide for maintenance of each Discrete Component, in a manner acceptable to the City, until each Discrete Component has been Accepted by the City. Exhibit A may be modified at any time by the Developer for the purpose of identifying Discrete Components of a Facility, subject to the written approval of the City Engineer, without City Council approval.

“Facilities” means, collectively, each and every Facility.

“Facility” means (A) for a City Facility, an infrastructure facility (i) that is the subject of a subdivision improvement agreement or an offsite improvement agreement with the City and (ii) that is described in Exhibit A.1 hereto, and (B) for other than a City Facility, an infrastructure facility that is described in Exhibit A.1 hereto.

“Fiscal Agent” means the fiscal agent, trustee, or other paying agent under a Fiscal Agent Agreement.

“Fiscal Agent Agreement” means an indenture, fiscal agent agreement, resolution or other agreement under which the Bonds are issued, as such Fiscal Agent Agreement may be supplemented from time to time to accommodate additional bond issuances or as it may be amended from time to time.

“Improvement Area” means any current or future improvement area of the CFD, as described in Section 53350 of the Act,

“Improvement Fund” has the meaning given such term in Section 3(b) herein.

“Land Interest” has the meaning given such term in Section 6(a) herein.

“Plans” means the plans, specifications, schedules and related construction contracts for the Facilities and/or any Discrete Components thereof approved by, and pursuant to the

applicable standards of, the City or other entity that will own, operate or maintain the Facilities when completed and acquired.

“Prepayment Fund” has the meaning given such term in Section 3(a) herein.

“Principal Payment Date” shall mean, with respect to Bonds issued with respect to an Improvement Area, the semi-annual payment date on which principal or sinking fund payments on such Bonds are, in any year, payable. For example, if the principal amount of Bonds are payable on September 1, the Principal Payment Date shall be September 1, regardless of whether principal payments are actually due in any particular year.

“Purchase Price” means the amount paid by the City for a Facility and/or any Discrete Components thereof determined in accordance with this Agreement.

“Rate and Method” means the rate and method of apportionment of the special tax for an Improvement Area.

“Remainder Taxes” shall mean, for each Improvement Area, the special taxes collected during the Remainder Taxes Period for such Improvement Area, calculated and payable as follows: (i) if Bonds have been issued for such Improvement Area, then in each year as of the day following the Principal Payment Date, any special taxes collected from property within such Improvement Area in excess of: (a) debt service on such outstanding Bonds for such Improvement Area due in the current calendar year, if any; (b) reasonable administrative costs for such Improvement Area (including any priority administrative costs); and (c) amounts required to replenish the reserve fund as of the previous Principal Payment Date; and (ii) if Bonds have not been issued on behalf of such Improvement Area, then as of May 1 and November 1 of each year, any special taxes collected from property within such Improvement Area during the prior six month period in excess of any reasonable administrative costs for such Improvement Area payable in the preceding six month period. Remainder Taxes shall no longer be collected for an Improvement Area once the Trigger Event occurs.

“Remainder Taxes Fund” has the meaning given such term in Section 3(c)(iii) herein.

“Remainder Taxes Period” means, calculated separately for each Improvement Area, a period of years, commencing from the fiscal year in which the first levy of special taxes in such Improvement Area occurs, in which Remainder Taxes are collected and applied as further described in Section 3.c. herein.

“Retainage Escrow” has the meaning given such term in Section 5(e)(iii) herein.

“Sources” shall mean, collectively, with respect to each Improvement Area (i) the proceeds of Bonds for such Improvement Area, (ii) Remainder Taxes for such Improvement Area, (iii) prepayments of special taxes under the Rate and Method prior to the issuance of the first series of Bonds for such Improvement Area, and (iv) prepayments of special taxes under the Rate and Method after the issuance of the first series of Bonds in such Improvement Area to the extent that such prepayments are allocated to the costs of Facilities and Authorized Fees necessary for the development of such Improvement Area pursuant to the applicable Rate and Method, all as further described in Section 3 herein.

## AGREEMENTS

In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Developer agree as follows:

1. Recitals; Applicability; Assignment to Builders.

a. Recitals. The City and the Developer represent and warrant, each to the other, that the above recitals, as applicable to each, are true and correct.

b. Applicability. This Agreement is applicable to the acquisition of the Facilities and the funding of the Authorized Fees from the Sources generated from the CFD and each Improvement Area that currently exists or that may be designated in the future from the Future Annexation Area. This Agreement does not apply to Phase 1A of the Project.

c. Assignment to Builders. The Developer intends to, over time, convey portions of the Project to one or more Builders. Under an Assignment and Assumption Agreement, a Builder will be responsible for the development of the property conveyed to it and will be entitled to the benefits of this Agreement with respect to the Facilities and Authorized Fees that the Builder will be required to build or pay for the conveyed portion of the Project. The Assignment and Assumption Agreement will identify specific Facilities and Authorized Fees for which the Builder will be responsible. Exhibit A to this Agreement may not identify Discrete Components of the Facilities for future phases upon execution of this Agreement, but it is anticipated that the Assignment and Assumption Agreement will designate Discrete Components of the Facilities identified in the Assignment and Assumption Agreement, subject to the prior written approval of the City if required below. The Assignment and Assumption Agreement will also identify the portion of the Project which is to be developed by the Builder. Upon execution of the Assignment and Assumption Agreement, subject to the prior written consent of the City if required below, all of the obligations of the Developer under this Agreement with respect to the identified portion of the Project and with respect to the Facilities and Authorized Fees identified in the Assignment and Assumption Agreement shall become the obligations of the Builder (including any indemnity provisions regarding the construction of the identified Facilities). Likewise, all of the benefits of this Agreement that allow the Developer to finance Facilities and Authorized Fees from the Sources will belong to the Builder with respect to the identified Facilities and Authorized Fees, and with respect to the portion of the Project identified in the Assignment and Assumption Agreement. The provisions of this Agreement that relate to the issuance of Bonds for an Improvement Area will apply to the Improvement Area in which the portion of the Project conveyed to the Builder is located. All references to Facilities (and Discrete Components thereof) and Authorized Fees in this Agreement will mean the Facilities (and Discrete Components thereof) and Authorized Fees identified in the Assignment and Assumption Agreement. As set forth in Section 16, the execution of the Assignment and Assumption Agreement, subject to the prior written consent of the City if required below, will relieve the Developer of any further obligations under this Agreement with respect to the Facilities and Authorized Fees identified in the Assignment and Assumption Agreement. Notwithstanding the foregoing or anything else in this Agreement to the contrary, the Developer and the Builder may in the Assignment and Assumption Agreement identify Facilities and Authorized Fees that were paid for by the Developer but that benefit the property of the Builder and set forth that the Developer shall be paid for those Facilities and Authorized Fees by the applicable Sources, in the amounts and in the priority set forth in the Assignment and Assumption Agreement.

Other than with respect to an Approved Assignment, the City must consent to any assignment to be effected by an Assignment and Assumption Agreement. The City may withhold its consent to any proposed assignment that is not an Approved Assignment if the City reasonably determines, based upon information requested by the City and provided by the Developer, that the proposed assignee has not provided evidence that it has the experience and the financial capacity to satisfy the obligations to be assigned to it and assumed by it under the Assignment and Assumption Agreement. The City will provide or withhold its consent pursuant to this paragraph within five (5) business days after submission of the information requested by the City.

Any assignment or assumption of this Agreement that is not an Approved Assignment must be consented to by the City or the proposed assignment or assumption shall be null, void and without effect.

2. Sale of Bonds.

a. City Proceedings. The City intends to issue one or more series of Bonds with respect to each Improvement Area to carry out the purposes of the Development Agreement. Developer may submit written requests that City issue Bonds, specifying requested issuance dates, amounts, and main financing terms. Following Developer's request, Developer and City will meet with City's public financing consultants to determine reasonable and appropriate issuance dates, amounts, and main financing terms that are consistent with the Development Agreement and the CFD Goals. Nothing herein shall be construed as requiring the City to issue Bonds for an Improvement Area or as requiring the Developer to construct the Facilities, except as specifically provided in this Agreement and the Development Agreement.

3. Sources of Funds.

a. Prepayments. To the extent authorized under the applicable Rate and Method, any prepayments of special tax obligations with respect to an Improvement Area before the issuance of the first series of Bonds for such Improvement Area shall be placed in a special fund to be held by the City (the "Prepayment Fund"), separate and apart from the proceeds of the Bonds and Remainder Taxes. A separate Prepayment Fund will be created and maintained for each Improvement Area. In addition, after the issuance of the first series of Bonds for an Improvement Area, but only to the extent that a portion of such prepayments are required by the applicable Rate and Method to be allocated to the costs of Facilities and Authorized Fees, such portion of the prepayments of special tax obligations with respect to an Improvement Area shall be deposited in the Prepayment Fund for the applicable Improvement Area. Moneys in the Prepayment Fund for an Improvement Area shall be a source for the payment of the costs of the acquisition of the Facilities and the Discrete Components thereof and the payment of Authorized Fees necessary for the development of such Improvement Area and shall be applied in the same manner as the proceeds of Bonds and Remainder Taxes.

b. Bond Proceeds.

(i) The proceeds of each series of Bonds for an Improvement Area shall be deposited, held, invested, reinvested and disbursed as provided in the Fiscal Agent Agreement. The net proceeds of the Bonds shall be set aside under the Fiscal Agent Agreement in a separate improvement fund (the "Improvement Fund"). A separate Improvement Fund will be created and maintained for each Improvement Area. Moneys

in the Improvement Fund for an Improvement Area shall be withdrawn therefrom, in accordance with the provisions of a Fiscal Agent Agreement, for payment of all or a portion of the costs of acquisition of the Facilities and the payment for Discrete Components thereof and the payment of Authorized Fees necessary for the development of such Improvement Area, all as herein provided.

(ii) The Developer agrees that the City shall direct the investment of the funds on deposit in the funds and accounts established by or pursuant to a Fiscal Agent Agreement, including the Improvement Fund, and that the Developer has no right whatsoever to direct investments under a Fiscal Agent Agreement.

(iii) The City shall have no responsibility whatsoever to the Developer with respect to any investment of funds under a Fiscal Agent Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment. Any such loss may diminish the amounts available in an Improvement Fund for an Improvement Area to pay the Purchase Price of Facilities and Discrete Components hereunder and to pay Authorized Fees necessary for the development of such Improvement Area. The Developer further acknowledges that the obligation of any owner of real property in the CFD, including the Developer to the extent it owns any real property in the CFD, to pay special taxes levied in the CFD is not in any way dependent on (i) the availability of amounts in any Improvement Fund to pay for all or any portion of the Facilities or Discrete Components thereof hereunder or to pay any Authorized Fees, or (ii) the alleged or actual misconduct of the City in the performance of its obligations under this Agreement, the Fiscal Agent Agreement, any subdivision agreement or amendment thereto or any other agreement to which the Developer and the City are signatories.

(iv) Under the Rate and Method, in an Improvement Area, the Facilities Special Tax will be used, among other things, to pay the debt service on any Bonds issued in such Improvement Area. Upon the occurrence of the Trigger Event, a portion of the Facilities Special Tax will be converted into a Services Special Tax. The City and the Developer understand and agree that, within an Improvement Area, Bonds shall be issued in one or more series over time as necessary to finance the acquisition of the Facilities and the payment of the Authorized Fees, and that the Trigger Event cannot occur until all series of Bonds within an Improvement Area have been issued and fully repaid.

c. Remainder Taxes.

(i) As set forth in the Rate and Method, for each Improvement Area, through the 20th fiscal year in which the special tax is first levied in such Improvement Area, the Facilities Special Tax will be levied on Developed Property (as defined in the Rate and Method) in the amount of the Maximum Facilities Special Tax (as defined in the Rate and Method), and any Remainder Taxes will be used on a pay-go basis in the following order of priority: For the first 20 fiscal years of collections of Remainder Taxes, to pay the acquisition costs of the Facilities, Discrete Components, and the Authorized Fees, at the direction of the Developer.

(ii) Once all of the Facilities, Discrete Components, and Authorized Fees for the CFD are paid for, the City may direct the use of the Remainder Taxes.

(iii) All Remainder Taxes generated in an Improvement Area shall be placed in a special fund to be held by the City (the "Remainder Taxes Fund") for such Improvement Area, separate and apart from the proceeds of the Bonds and prepayments of special taxes. A separate Remainder Taxes Fund will be created and maintained for each Improvement Area. Moneys in the Remainder Taxes Fund for an Improvement Area shall be a source for the payment of the costs of the acquisition of the Facilities and the Discrete Components thereof and the payment of the Authorized Fees necessary for the development of such Improvement Area and shall be applied in the same manner as the proceeds of Bonds and prepayments of special taxes for such Improvement Area.

d. Limitation. The City shall not be obligated to pay the Purchase Price of the Facilities or any Discrete Components thereof or the Authorized Fees necessary for the development of an Improvement Area except from amounts on deposit in the Prepayment Fund, the Improvement Fund, and the Remainder Taxes Fund (however such funds are denominated) for such Improvement Area. The City makes no warranty, express or implied, that amounts on deposit in the Prepayment Fund, the Improvement Fund, and the Remainder Taxes Fund for an Improvement Area will be sufficient for payment of the Purchase Price of the Facilities or any Discrete Components thereof or the Authorized Fees necessary for the development of such Improvement Area. The Developer acknowledges that any lack of availability of amounts in the Prepayment Fund, the Improvement Fund, and the Remainder Taxes Fund for an Improvement Area to pay the Purchase Price of Facilities or any Discrete Components thereof and the Authorized Fees necessary for the development of such Improvement Area shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for public facilities or the payment of fees required for such Improvement Area by the Conditions of Approval to the extent that the Developer is so obligated.

4. Construction of the Facilities. Except as provided in the next sentence, the provisions of this Section 4 apply to both the City Facilities and the Facilities to be acquired by a utility or other local agency (other than the City). The provisions of subsections (c), (e), (f), (g), and (h) apply only to the City Facilities.

a. Plans and Specifications. The Developer represents that it has obtained or will obtain approval of the Plans from all appropriate departments of the City and from any other public entity or public utility from which such approval must be obtained. The Developer further represents that the Facilities have been or will be constructed in full compliance with such Plans and any change orders thereto, as approved in the same manner. Copies of all Plans for City Facilities shall be provided by the Developer to the City Engineer.

b. Duty of Developer to Construct. All Facilities to be acquired hereunder shall be constructed by or at the direction of the Developer in accordance with the approved Plans and the Conditions of Approval. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of the Facilities in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their best efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Facilities to be acquired by the City from the Developer hereunder.

The Developer shall be obligated: (i) to construct, or cause to be constructed, and cause conveyance to the City all City Facilities (including Discrete Components thereof) in accordance with the Conditions of Approval and the Developer's timing of development of the Project, and subject to acquisition by the City and other local agencies pursuant to this Agreement, (ii) to use its own funds to pay all costs associated with such construction and conveyance(s), except as may be otherwise expressly provided in the Conditions of Approval, and (iii) to assign to the City all warranties and guarantees provided to Developer in connection with the construction of such Facilities (including Discrete Components thereof).

The Developer shall not be relieved of its obligation to construct each City Facility (including Discrete Components thereof) and convey each such Facility to the City in accordance with the Conditions of Approval, even if the total Sources available over time is insufficient to pay the Purchase Price thereof. This Agreement shall not affect any obligation of any owner of land in the Project relating to the public improvements required in connection with the development of land within the Project, whether such obligation is imposed as a Condition of Approval or arises under any other law, regulation, government approval, or for any other reason.

c. Bid Procedures. The following bid procedures shall apply to all work to be performed by Developer under this Agreement:

(i) Developer shall prepare a bid package and the form of the required notices for review and comment by the City Engineer. The City Engineer shall respond with any comments within ten (10) calendar days. The failure to respond shall be deemed approval.

(ii) Developer shall mail notices inviting formal bids. The notices shall be distributed (by mail or electronic mail) no more than thirty (30) calendar days before the opening date of the bids. The notices shall distinctly describe the project and state the time and place for submission of bids and disclose the Developer's right to elect to perform the work under Section 53329.5 of the Act.

(iii) Bids shall be submitted to the Developer either via hard copy or email. The bids shall be received and opened by the Developer and there shall be no requirement for a public bid opening. After the bids are received and opened by the Developer, the Developer may contact one or more of the bidders and request clarification of any bid or adjustments to the bid to comply with the specifications of the proposed project so that all bids may be evaluated on a comparable basis.

(iv) Developer shall submit to the City written evidence of compliance with the competitive bidding procedures set forth herein, including evidence of the required noticing, a listing of all responsive bids and their amounts (as adjusted pursuant to subsection (iii), if applicable), and the name or names of the contractor or contractors to whom Developer proposed to award the contracts for such construction.

(v) The contract for the construction of a Facility shall be awarded to the responsible bidder submitting the lowest responsive bid (as adjusted pursuant to subsection (iii), if applicable) for the construction of such Facility or, if the Developer elects to perform the work pursuant to Section 53329.5 of the Act, the Developer shall perform the work at the prices specified in the bid of the lowest responsible bidder.

d. Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Facilities, it will assure complete compliance with any applicable law or regulation for the payment of prevailing wages for such construction.

e. Relationship to Public Works. This Agreement is for the acquisition of the Facilities or Discrete Components thereof by the City from the Developer and is not intended to be a public works contract. The City and the Developer agree that the provisions of the California Public Contracts Code do not apply to the construction of the Facilities. The City and the Developer agree that this Agreement is necessary to assure the timely and satisfactory completion of the Facilities and establishes the terms under which the Facilities shall be constructed as if they were constructed under the direction and supervision, or under the authority of, the City, as required by the Act.

f. Contracts and Change Orders. The Developer shall be responsible for entering into all contracts and any change orders required for the construction of the Facilities. Except as provided in the next sentence, all such contracts and change orders shall be submitted to the City Engineer for review and approval. Change orders shall not be required to be submitted to the City Engineer for review or approval provided both of the following are satisfied: (i) the amount of such change order is the lesser of 10% of the contract price or \$100,000, and (ii) the cumulative dollar amount of change orders for the applicable Discrete Component or Facility implemented without the review and approval of the City Engineer does not exceed the lesser of 10% of the total contract value for the Discrete Component or Facility or \$250,000.

g. Independent Contractor. In performing this Agreement, the Developer is an independent contractor and not the agent or employee of the City or the CFD. Neither the City nor the CFD shall be responsible for making any payments to any contractor, subcontractor, agent, employee or supplier of the Developer.

h. Periodic Meetings. From time to time at the request of the City Engineer, representatives of the Developer shall meet and confer with City staff, consultants and contractors regarding matters arising hereunder with respect to the Facilities and the progress in constructing and acquiring the same, and as to any other matter related to the Facilities or this Agreement. The Developer shall advise the City Engineer in advance of any coordination and scheduling meetings to be held with contractors relating to the Facilities, in the ordinary course of performance of an individual contract. The City Engineer or its designated representative shall have the right to be present at such meetings, and to meet and confer with individual contractors if deemed advisable by the City Engineer to resolve disputes and/or ensure the proper completion of the Facilities.

i. Non-City Facilities. Any Facilities (and any Discrete Components thereof) to be owned by a utility or a local agency other than the City shall be bid and constructed in accordance with an agreement between the Developer and the utility or agency.

j. Reimbursement for Costs of Facilities on Property Not Owned by Developer. In some cases, with respect to Facilities that may be located outside of the CFD, the Developer may purchase land through an affiliated entity and use that affiliated entity to construct Facilities on such land. For purposes of this Agreement, Facilities constructed by Developer's affiliate on the affiliate's property are referred to as "Affiliate Facilities." The City agrees that so long as the Affiliate Facilities are constructed in accordance with the provisions of this Agreement, the Affiliate Facilities may be financed by available Sources notwithstanding that the land and Affiliate Facilities being acquired hereunder will be purchased from an affiliated entity and that

the affiliated entity bid and entered into, and paid the costs under, the contracts for the constructed Affiliate Facilities. Developer agrees that, notwithstanding its use of an affiliate for the described purposes, Developer shall remain liable to the City for all aspects of the Affiliate Facilities' compliance with the terms of this Agreement, in the same manner and to the same extent as if the Affiliate Facilities were constructed on Developer's property.

5. Payment for the Facilities. The Developer hereby agrees to sell the City Facilities to the City, and the City hereby agrees to use the Sources to pay the Purchase Price thereof to the Developer, subject to the terms and conditions hereof.

a. Inspection. No payment hereunder shall be made by the City to the Developer for a Facility or Discrete Component thereof until the Facility or Discrete Component thereof has been inspected by the City or other applicable public entity or utility and found to be constructed in accordance with the Plans approved by the City or other applicable public entity or utility. For Facilities to be acquired by the City, the Developer shall request inspection using applicable City procedures. For Facilities to be acquired by other public entities or utilities, the Developer shall be responsible for obtaining such inspections and providing written evidence thereof, to the reasonable satisfaction of the City Engineer. The Developer agrees to pay all inspection, permit and other fees of the City applicable to construction of the Facilities, which fees may be subject to reimbursement under this Agreement as part of the Actual Cost of the Facilities.

b. Request for Payment. Any request for payment hereunder by the Developer shall be in a form acceptable to the City and shall include such supporting documentation to substantiate such request as the City may require. For any request for payment, the following shall apply:

(i) Substantiation of Costs. The Developer shall provide any documentation substantiating the Actual Cost of the Facilities reasonably requested by the City Engineer. There shall be a presumption of reasonableness as to the Actual Costs incurred under a construction contract (or change order) entered into as a result of a call for bids by the Developer in accordance with this Agreement (or similar procedure approved by the City Engineer), provided that no extraordinary limitations or requirements (such as a short time frame) are imposed by the Developer on the performance of such contracts. For any Facility to be acquired by a public entity or utility other than the City, the Developer shall, at the City's request, provide written evidence, to the reasonable satisfaction of the City Engineer, of the approval of such Actual Cost substantiation and approval of such Facility from such entity or utility when requesting payment.

(ii) Payment Request and Supporting Materials. In order to receive the Purchase Price for a completed Facility or Discrete Component, inspection thereof under Section 5(a) shall have been made and the Developer shall deliver to the City Engineer: (i) a payment request for such Facility or Discrete Component, together with all supporting documentation required by this Agreement to be included therewith, and (ii) if payment is requested for a completed Facility, (a) if the property on which the Facility is located is not owned by the City (or other applicable public agency that will own the Facility) at the time of the request, a copy of the recorded documents conveying to the City (or other applicable public agency that will own the Facility) title to the real property on, in or over which such Facility is located, as described in Section 6 hereof, (b) a copy of the recorded notice of completion of such Facility (for a Facility or the final Discrete Component only, if applicable), (c) to the extent paid for with the proceeds of the Bonds,

an assignment to the City of any reimbursements that may be payable with respect to the Facility, such as public or private utility reimbursements, and (d) an assignment of the warranties and guaranties for such Facility, as described in Section 6 hereof, in a form acceptable to the City.

c. Conditions for Payment. The City shall not be obligated to pay the Purchase Price of any Facility or Discrete Component until the Facility or Discrete Component is constructed and the processing requirements of this Section 5 for such Facility or Discrete Component have occurred. The Developer acknowledges that the Discrete Components have been identified for payment purposes only, and that the City shall not Accept a Facility of which a Discrete Component is a part until the Facility has been completed. The City acknowledges that the Discrete Components (or the Facility of which the Discrete Component is a part) do not have to be Accepted by the City as a condition precedent to the payment of the Purchase Price for such Discrete Component, but any such payment shall not be made until the Discrete Component has been constructed in accordance with the Plans therefor, as determined by the City Engineer or other agency or utility, and, for City Facilities, the Developer shall provide for maintenance of the Discrete Component, in a manner acceptable to the City, until the Discrete Component is Accepted by the City. In any event, the City shall not be obligated to pay the Purchase Price for any Facility or Discrete Component except from the Sources.

d. Purchase Price. The Purchase Price shall be determined by the City Engineer as described in paragraph (e)(ii) below and the criteria of Section 5(a)-(c) above. The Purchase Price paid hereunder for any Facility or Discrete Component thereof may be paid in any number of installments as Sources become available.

e. Payments to the Developer. The Developer may request in writing a payment of the Purchase Price of any Facility or Discrete Component thereof as described in Exhibits A.1 and A.3 hereto subject to the following:

(i) Compliance with Conditions. The Developer shall first comply with Subsections 5 (a) through (c) above and shall have demonstrated the ability to comply with Section 6 below, all to the satisfaction of the City Engineer.

(ii) Amounts of Payments. The Purchase Price shall be determined to fairly reflect the Actual Cost of the Facility or Discrete Component thereof to be acquired, and specified in a cost certificate therefor prepared by the City Engineer. The Purchase Price shall in no event exceed Actual Costs of the Facility or Discrete Component thereof.

(iii) Retainage. Retainage will not be taken from any payment made from the Improvement Fund, the Prepayment Fund, or the Remainder Taxes Fund for the cost of any Facility or Discrete Component thereof being acquired by the City. However, the City and the Developer acknowledge and agree that for any City Facility that is the subject of a contract with a contractor, for each payment requested by the contractor, a 5% retainage shall be withheld by the Developer, and the Developer will deposit all such retainage amounts into an escrow fund in which funds may be released only upon the joint written instructions of the City and the Developer (the "Retainage Escrow"). Funds in the Retainage Escrow will remain therein pending final completion, inspection, and Acceptance of the Facility. No Retainage shall be released for completion of a Discrete Component of a Facility unless and until the entire Facility has been Accepted by the City. When the Developer presents evidence substantiating payment to contractors for

purposes of payment hereunder, the City shall consider the payment of the retained amounts to the Retainage Escrow as the payment for the Facility or Discrete Component for which payment is sought hereunder. The City and Developer also acknowledge and agree that no retainage needs to be deposited to the Retainage Escrow for (1) design costs or (2) construction contracts for Facilities or Discrete Components thereof to be acquired by other public entities or utilities.

(iv) City Response to Requests for Payment. Any request for payment by the Developer shall be made to the City Engineer in a form acceptable to the City and include the supporting documentation herein specified. Within fourteen (14) calendar days of receipt of any request, or such longer period to which the City and the Developer may agree, the City Engineer shall review such request to: (i) determine that it is complete; or (ii) determine that the request is incomplete and to request in writing additional information and documentation reasonably necessary for the City Engineer to complete the review. If the City Engineer notifies Developer that the request is incomplete, the time period for the City Engineer to determine whether or not the request is complete shall be extended until fourteen (14) calendar days following the date that Developer provides the additional information and documentation requested by the City. If the City Engineer fails to notify Developer within the applicable 14-day review period that a request is incomplete, the request will be deemed complete. Within eighteen (18) calendar days after the date a request is determined or deemed to be complete, the City Engineer will review the request to confirm that all conditions in this Agreement have been satisfied, to the extent applicable, and provide notice to Developer either that: (i) the request is approved (which will be confirmed by counter-signing the request); or (ii) the request is disapproved in whole or in part, specifying in the notice the portion of the request that is disapproved and the reason(s) for disapproval. If the request is disapproved in part, the City Engineer will process the portion of the request that was not disapproved for partial payment under subsection (e)(v) below. Developer may resubmit any request disapproved in whole or in part with additional supporting documentation, which resubmission shall be processed by the City in the same manner as an original request for payment under this Section 5.e.(iv). If, at the end of the 18-day review period, the City Engineer fails to approve or disapprove a request for payment, the Developer may send a written notice to the City Engineer notifying the City Engineer of such failure and informing the City Engineer that it has ten (10) calendar days to approve or disapprove the request for payment or the request shall be deemed approved. The foregoing request shall not be deemed a default notice under Section 11(c) herein. The process for review of all payment requests made pursuant to this Section 5 are subject to subsection (e)(vi) below.

(v) Payment by the City from the Sources. Within seven (7) calendar days after approving a request (in whole or in part) or after the deemed approval of a request, the City shall Authorize payment to be made to the Developer exclusively from one or more of the Sources pursuant to the applicable provisions of the Fiscal Agent Agreement or otherwise. The City may Authorize any payment jointly to the Developer and any mortgagee or trust deed beneficiary, contractor or supplier of materials, as their interests may appear, or solely to any such third party, if the Developer so requests the same in writing or as the City otherwise determines such joint or third party payment is necessary to obtain lien releases. If there are insufficient Sources to pay the full amount of a payment request, then the City shall Authorize payment of as much of the amount on the payment request as there are Sources available, and the payment of the balance of the payment request shall be deferred until there are sufficient Sources available to pay the

remaining balance of the payment request. Promptly following the availability of Sources, the City shall, from time to time and in as many installments as necessary, Authorize payment of the remaining balance of the payment request. Any provision in this Agreement to the contrary notwithstanding, in response to any request for payment under this Section 5, the City shall not be required to make any payments from Sources held and maintained by the City unless, at the time payment is required under this Agreement, (i) there are insufficient funds available in the Sources held and maintained by the Fiscal Agent to fully satisfy the request or (ii) the Sources held and maintained by the Fiscal Agent may not be applied to pay for the Facilities that is the subject of the payment request under federal tax law or otherwise. Payment requests may be paid (i) in any number of installments as Sources become available and (ii) irrespective of the length of time of such deferral of payment. In no event shall the City be required to Authorize or make payments for Facilities or Discrete Components from any funding sources other than the Sources.

(vi) General Cooperation. In connection with processing any payment request under this Agreement, the City and the City Engineer will use good faith efforts to request any additional information required to process the request as soon as practicable following the submission of the original materials, and to make each additional information request comprehensive and thorough to minimize the number of requests delivered, and Developer will use its good faith efforts to provide a thorough, organized, and complete response to each request. Developer is authorized to communicate directly with the City, the City Engineer, and their designees, agents, and contractors to facilitate any additional information request, to facilitate the prompt resolution of any technical issues, and to minimize the amount of time it takes to resolve outstanding issues. In addition to the foregoing, and except as otherwise is provided for herein, the City agrees that if a payment request includes more than one Discrete Component or Facility, it will not withhold payment Authorization on any Discrete Component or Facility that has been approved and will withhold payment Authorization only on such Discrete Components and Facilities that have not been approved.

f. Allocation of Costs. If Developer incurs costs that (1) apply to more than one Facility or Discrete Component (e.g., soft costs (which shall not exceed forty percent (40%) of the construction costs of the Facility or Discrete Component)) or (2) apply to both Facilities or Discrete Components and improvements other than the Facilities or Discrete Components (e.g., grading), Developer shall allocate, or cause the contractor to reasonably allocate, such costs between the Facilities or Discrete Components (in the case of clause (1)) or between the Facilities or Discrete Components and the improvements other than the Facilities or Discrete Components (in the case of clause (2)) (the "Developer Allocation"). The Developer Allocation shall be presumed to be reasonable and shall be accepted for all purposes of this Agreement unless the City notifies Developer of its good-faith reasonable disapproval of the allocation as part of the City's written response to the applicable payment request under Section 5.e.(iv) above. If the City has properly disapproved the Developer Allocation, then the City and Developer shall promptly allocate such costs, on a reasonable basis, between the Facilities or Discrete Components (in the case of clause (1)) or between the Facilities or Discrete Components and the improvements other than the Facilities or Discrete Components (in the case of clause (2)) (the "Agreed-Upon Allocation"). Based on the Developer Allocation or the Agreed-Upon Allocation, as applicable, the City shall include the costs allocated to a specific Facility or Discrete Component as part of the Actual Costs of such Facility or Discrete Component when such Facility or Discrete Component is subject to a payment request.

g. Expectations of the Parties. The City understands and agrees that (i) Developer will be constructing Facilities or Discrete Components prior to the availability of Sources that will be used to pay for such Facilities or Discrete Components, (ii) the City or the other public agencies that will own and operate such Facilities or Discrete Components may be inspecting such Facilities or Discrete Components and processing and completing payment requests for the payment on such Facilities or Discrete Components with knowledge that there may be insufficient Sources available at such time, (iii) the Facilities or Discrete Components may be conveyed to and Accepted by the City or other local agency that will own and operate such Facilities or Discrete Components when there are insufficient Sources to pay the Purchase Prices of such Facilities or Discrete Components, and (iv) in any such case, the payment of any approved payment requests for the Purchase Prices of such Facilities or Discrete Components will be deferred until there are sufficient Sources available to pay the Purchase Prices of such Facilities or Discrete Components, at which time the City will make such payments in accordance with this Agreement. At all times, Developer will be constructing such Facilities or Discrete Components with the expectation that the Purchase Prices for such Facilities or Discrete Components will be paid solely from the Sources. The conveyance of Facilities or Discrete Components to the City or a local agency that will own and operate such Facilities or Discrete Components prior to receipt of the Purchase Prices for such Facilities or Discrete Components shall not be construed as a dedication or gift, or a waiver of the payment of the Purchase Prices, or any part thereof, for such Facilities or Discrete Components.

6. Ownership and Transfer of the Facilities; Maintenance; Warranties. Any of the Facilities to be owned by public entities or utilities other than the City shall be conveyed in accordance with the entity's or utility's policies and procedures. For the Facilities to be owned by the City, the following applies:

a. Land. For purposes of this Agreement, the term "Land Interest" includes fee simple title or such lesser interests (including easement and/or rights of way) as are required and approved by the City and are included in the description of the Facilities to be acquired. The Developer agrees to cause the owners of real property required for the operation and maintenance of the Facilities to execute and deliver to the City such documents as are required to complete the transfer, free and clear of all liens, taxes, assessments, easements, leases, or other encumbrances (whether recorded or not), except for those which the City Engineer determines in writing will not interfere with the intended use of the land or related Facilities, of all Land Interests necessary for the operation and maintenance of the Facilities. If any real property required for the operation and maintenance of the Facilities is within the boundaries of any existing community facilities district (including the CFD), an assessment district, or other financing district, then the lien of the special taxes or assessments shall be a permitted exception to the Land Interests conveyed to the City or other public agency, so long as the City or other public agency is exempt from the special tax or assessments to be levied by the community facilities district, assessment district, or other financing district. Completion of the transfer of the Land Interests required under this Agreement shall be evidenced by recordation of the Acceptance thereof by the City Council or the legislative body of the other public agency (as applicable), or the designee thereof.

b. Facilities Constructed on Private Lands. If any Facility to be acquired is located on privately-owned land, the owner thereof shall retain title to the land and the completed Facility until Acceptance of the Facility and all associated Land Interests under Subsection 6(a) above. Pending the completion of such transfer, the Developer shall be responsible for maintaining the land and any Facilities in good and safe condition.

c. Facilities Constructed on City Land. If the Facilities to be acquired are on land owned by the City, the City hereby grants to the Developer a license to enter upon such land for purposes related to the construction (and maintenance pending acquisition) of the Facilities. The provisions for inspection and Acceptance of such Facilities otherwise provided herein shall apply.

d. Warranties; Maintenance. The Developer shall maintain each Discrete Component in good and safe condition until the date of Acceptance of the Facility of which such Discrete Component is a part. Prior to the Acceptance date, the Developer shall be responsible for performing any required maintenance on any completed Discrete Component or Facility.

On or before the Acceptance date, the Developer shall assign to the City all of the Developer's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such Facility. The Developer shall maintain or cause to be maintained each Facility to be owned by the City (including the repair or replacement thereof) for a period of one year from the Acceptance date thereof, or, alternatively, shall provide a bond reasonably acceptable in form and substance to the City Engineer for such period and for such purpose, to insure that defects, which appear within said period will be repaired, replaced, or corrected by the Developer, at its own cost and expense, to the satisfaction of the City Engineer. During any such one-year period, the Developer shall commence to repair, replace or correct any such defects within 10 days after written notice thereof by the City to the Developer, or at such later time as the City and Developer mutually agree, and shall complete such repairs, replacement or correction as soon as practicable. After such one-year period, the City shall be responsible for maintaining such Facility. Any warranties, guarantees or other evidences of contingent obligations of third persons with respect to the Facilities to be acquired by the City shall be delivered to the City Engineer as part of the transfer of the Facility and associated Land Interests.

For purposes of this Section 6, after the City has Accepted a Facility, the terms "maintain" and "maintenance" mean the repair, replacement, or correction of any defects in the Facility or Discrete Component, and shall not mean the day-to-day upkeep or correction of normal wear and tear of the Facility or Discrete Component (such as watering or weeding for landscape improvements, painting, graffiti removal, etc.).

7. Limitation of Liability. The Developer agrees that any and all obligations of the City arising out of or related to this Agreement are special and limited obligations of the City and the City's obligations to make any payments hereunder are restricted entirely to the Sources and from no other source. The Developer agrees to pay all costs of the Facilities in excess of the Sources available therefor from time to time. No City Council member, City staff member, employee or agent shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

If the construction and acquisition of all the Facilities have been completed and the Purchase Price with respect thereto has been paid, and all Authorized Fees have been paid, and funds remain on deposit in the Improvement Fund or become available through the issuance of additional Bonds in the Improvement Area, the City and the Developer may designate in a supplement hereto, Facilities (and/or Discrete Components thereof) to be constructed and acquired with such remaining or additional funds to be selected from the list of Facilities authorized by the CFD; provided, however, the City shall determine the use of such funds consistent with the terms of the CFD Goals and the Fiscal Agent Agreement.

## **8. Payment of Authorized Fees.**

a. Authorization. The Act allows for the financing of Authorized Fees without an acquisition agreement or joint community facilities agreement. Accordingly, the Sources may be used to pay for the Authorized Fees at any time.

b. Request for Payment of Authorized Fees. The Developer may request payment of Authorized Fees from the Sources by executing and submitting to the City Engineer a request for payment in a form acceptable to the City and shall include such supporting documentation to substantiate such request as the City may require. Upon receipt of such payment request, the City shall pay, or cause to be paid, the Authorized Fees requested in such payment request in accordance with this Agreement and to the extent of such Sources.

c. City Response to Request for Payment of Authorized Fees. Any request for payment by the Developer for Authorized Fees shall be made to the City Engineer in a form acceptable to the City and include the supporting documentation herein specified. Within fourteen (14) calendar days of receipt of any request, or such longer period to which the City and the Developer may agree, the City Engineer shall review such request to: (i) determine that it is complete; or (ii) determine that the request is incomplete and to request in writing additional information and documentation reasonably necessary for the City Engineer to complete the review. If the City Engineer notifies Developer that the request is incomplete, the time period for the City Engineer to determine whether or not the request is complete shall be extended until fourteen (14) calendar days following the date that Developer provides the additional information and documentation requested by the City. If the City Engineer fails to notify Developer within the applicable 14-calendar day review period that a request is incomplete, the request will be deemed complete. Within eighteen (18) calendar days after the date a request is determined or deemed to be complete, the City Engineer will review the request to confirm that all conditions in this Agreement for the payment of Authorized Fees have been satisfied, to the extent applicable, and provide notice to Developer either that: (i) the request is approved (which will be confirmed by counter-signing the request); or (ii) the request is disapproved in whole or in part, specifying in the notice the portion of the request that is disapproved and the reason(s) for disapproval. If the request is disapproved in part, the City Engineer will process the request for partial payment under subsection (d) below. Developer may resubmit any request disapproved in whole or in part with additional supporting documentation, which resubmission shall be processed by the City in the same manner as an original request for payment under this Section 8.c. If, at the end of the 18-day review period, the City Engineer fails to approve or disapprove a request for payment, the Developer may send a written notice to the City Engineer notifying the City Engineer of such failure and informing the City Engineer that it has ten (10) calendar days to approve or disapprove the request for payment or the request shall be deemed approved. The foregoing request shall not be deemed a default notice under Section 11(c) herein. The process for review of all payment requests made pursuant to this Section 8 are subject to subsection (e) below.

d. Payment of Authorized Fees. Within seven (7) calendar days after approving a request for Authorized Fees (in whole or in part) or after the deemed approval of a request for the payment of Authorized Fees, the City shall Authorize payment of such Authorized Fees to be made exclusively from one or more of the Sources pursuant to the applicable provisions of the Fiscal Agent Agreement or otherwise. If there are insufficient Sources to pay the full amount of a payment request, then the City shall Authorize payment of as much of the amount on the payment request for Authorized Fees as there are Sources available, and the payment of the balance of the payment request for such Authorized Fees shall be deferred until there are

sufficient Sources available to pay the remaining balance of the payment request. Promptly following the availability of Sources, the City shall, from time to time and in as many installments as necessary, Authorize payment of the remaining balance of the payment request for Authorized Fees. Any provision in this Agreement to the contrary notwithstanding, in response to any request for payment under this Section 5, the City shall not be required to make any payments from Sources held and maintained by the City unless, at the time payment is required under this Agreement, (i) there are insufficient funds available in the Sources held and maintained by the Fiscal Agent to fully satisfy the request or (ii) the Sources held and maintained by the Fiscal Agent may not be applied to pay for the Authorized Fees that is the subject of the payment request under federal tax law or otherwise. Payment requests may be paid (i) in any number of installments as Sources become available and (ii) irrespective of the length of time of such deferral of payment. In no event shall the City be required to Authorize or make payments for Authorized Fees from any funding sources other than the Sources.

e. General Cooperation. In connection with processing any payment request for Authorized Fees under this Agreement, the City and the City Engineer will use good faith efforts to request any additional information required to process the request as soon as practicable following the submission of the original materials, and to make each additional information request comprehensive and thorough to minimize the number of requests delivered, and Developer will use its good faith efforts to provide a thorough, organized, and complete response to each request. Developer is authorized to communicate directly with the City, the City Engineer, and their designees, agents, and contractors to facilitate any additional information request, to facilitate the prompt resolution of any technical issues, and to minimize the amount of time it takes to resolve outstanding issues. In addition to the foregoing, and except as otherwise is provided for herein, the City agrees that if a payment request includes more than one Authorized Fee, it will not withhold payment Authorization on any Authorized Fee that has been approved and will withhold payment Authorization only on such Authorized Fee that has not been approved.

f. Payment of Authorized Fees in Advance of Availability of Sources. The Developer or a merchant builder may be required pursuant to the Conditions of Approval or the fee ordinance to pay the Authorized Fees for an Improvement Area prior to the availability of the Sources for such Improvement Area to pay such Authorized Fees. In the event such Authorized Fees are paid prior to the availability of such Sources, the amounts paid to the City shall be deemed to be deposits (each a "Deposit") that are subject to refund by the City to Developer (and the Developer only, regardless of the entity that paid the Deposits) in the manner set forth in subsection (g) of this Section 8. Any Deposits made to the City shall be deposited in a separate capital facilities account(s) created for each Improvement Area and may be expended by the City in the ordinary course of business. The Developer acknowledges that the City may finance Authorized Fees with proceeds of tax-exempt bonds only if the City can meet certain requirements of federal tax law.

g. Return of Deposits. If the Developer or a merchant builder has made any Deposits, then following deposit of Sources with the City for the corresponding Authorized Fees, the City shall return to the Developer (and the Developer only, regardless of the entity that paid the Deposit) from the capital account in which the Deposits were deposited an amount equal to the Deposits paid by the Developer or merchant builder, without interest or other earnings thereon. The City shall be so obligated to return an amount equal to such Deposits to the Developer only to the extent that an amount equivalent to the amount of the Deposits made by the Developer or merchant builder is deposited with the City from the Sources. An amount equal to such Deposits may be returned to the Developer from time to time as additional Sources

become available. Sources applicable to an Improvement Area may only be used for Authorized Fees (and Deposits) payable with respect to property in such Improvement Area.

h. Deposits Allocated First. Sources used to pay Authorized Fees shall be allocated first for return of all Deposits prior to being allocated to the payment of Authorized Fees not previously deposited by the Developer or a merchant builder. For example, if the Developer has paid \$10,000 in Deposits, and Sources become available in the amount of \$15,000, the City shall apply the first \$10,000 of the Sources to the payment of the Authorized Fees that were paid by the Deposits (and, thereafter, return the Deposits to the Developer) and use the remaining \$5,000 of the Sources to the payment of Authorized Fees not previously paid by the Deposits and identified in the payment request.

i. Application of Deposits. Any Deposits that have not been returned to the Developer at the time it is determined that there will be no further Sources available (now or in the future) shall be retained by the City and may be used (to the extent it has not already been so used) for the purposes for which the Authorized Fee was required, and the unrefunded Deposits shall constitute full and final payment for such Authorized Fees, without any increase of any kind.

j. Expectations. The Developer or merchant builder may pay Authorized Fees (as Deposits) prior to the availability of Sources to pay such Authorized Fees. Any Authorized Fees paid (as Deposits) by the Developer or a merchant builder for an Improvement Area shall be made with the understanding that such Deposits will be returned from the Sources for such Improvement Area if, and when, such Sources become available. The payment of Deposits prior to the availability of the Sources shall not be construed as a dedication or gift of the Authorized Fees, or a waiver of the return of the Deposits, it being the intention that the Authorized Fees be paid by the Sources to the extent of the Sources.

9. Indemnification and Hold Harmless. The Developer shall take and assume all responsibility for the work performed as part of the Facilities constructed pursuant to this Agreement for an Improvement Area until the Acceptance by the City of the respective Facilities occurs.

The Developer shall, to the fullest extent permitted by law, assume the defense of and indemnify and save harmless the City, the CFD and the City's consultants, Councilmembers, officers, employees and agents (the "Indemnified Parties"), from and against (i) any claims by a third party against an Indemnified Party regarding the preparation, adoption, execution and performance of this Agreement, and (ii) any and all claims, losses, damage, expenses and liability of every kind, nature, and description, arising or resulting from the nature and performance of the work covered by this Agreement, from the Developer's or any other entity's negligent design, engineering and/or construction of any of the Facilities for an Improvement Area acquired from the Developer hereunder, the Developer's non-payment under contracts between the Developer and its consultants, engineer's, advisors, contractors, subcontractors and suppliers in the provision of the Facilities for an Improvement Area, or any claims of persons employed by the Developer or its agents to construct the Facilities for an Improvement Area. In accordance with Civil Code section 2782, nothing in this Section shall require defense or indemnification for death, bodily injury, injury to property, or any other loss, damage or expense arising from the active or sole negligence or willful misconduct of any Indemnified Parties, or for defects in design, engineering, and/or construction furnished by any Indemnified Party, or for a default hereunder by the City or the CFD. Moreover, nothing in this Section shall apply to impose on the Developer, or to relieve the City from, liability for active negligence of the

Indemnified Parties as delineated in Civil Code Section 2782. Any relief for determining the City's sole or active negligence shall be determined by a court of law.

The City does not, and shall not, waive any rights against the Developer which it may have by reason of the aforesaid hold harmless agreements because of the acceptance by the City, or deposit with the City by the Developer of any insurance policies required by the City. The hold harmless agreement by the Developer set forth in this Section 9 shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered by reasons of any of the aforesaid operations of the Developer, or any subcontractor, regardless of whether or not such insurance policies are determined to be applicable to any of such damages or claims for damages.

No act by the City, or its representatives in processing or accepting any plans, in releasing any bond, in inspecting or accepting any work, or of any other nature, shall in any respect relieve the Developer or anyone else from any legal responsibility, obligation or liability it might otherwise have.

The obligations of the Developer in this Section 9 with respect to the Facilities that are the subject of an executed Assignment and Assumption Agreement shall terminate, subject to the prior written consent of the City if required by Section 1, upon the execution of the Assignment and Assumption Agreement (wherein a Builder has assumed the obligations of this Section 9 with respect to the Facilities identified in the Assignment and Assumption Agreement).

#### 10. Representations and Covenants of the Developer.

a. Representations of the Developer. The Developer represents and warrants for the benefit of the City and the CFD as follows:

(i) Organization. The Developer is a limited liability company duly organized and validly existing under the laws of its state of organization, is in compliance with all applicable laws of the State of California, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(ii) Authority. The Developer has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the Developer.

(iii) Binding Obligation. This Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to bankruptcy and other equitable principles.

(iv) Requests for Payment. The Developer represents and warrants that (i) it will not request payment from the City for the acquisition of any improvements that are not part of the Facilities; and (ii) it will diligently follow all procedures set forth in this Agreement with respect to the payment requests. In addition, the Developer shall not request payment for any portion of the cost of a Facility that may be reimbursed to the Developer pursuant to a utility agreement, an oversizing agreement, or any other method of reimbursement that would result in Developer being reimbursed more than once for the same Facility or portion of a Facility.

(v) Plans. The Developer represents that it has obtained or will obtain approval of the Plans for the City Facilities to be acquired from the Developer hereunder from all appropriate departments of the City. The Developer further agrees that the City Facilities to be acquired from the Developer hereunder have been or will be constructed in full compliance with such approved plans and specifications and any supplemental agreements (change orders) thereto, as approved in the same manner.

b. Covenants of the Developer. The Developer covenants for the benefit of the City and the CFD as follows:

(i) Financial Records. Until all Bonds issued to finance the Facilities have been fully redeemed, the Developer covenants to maintain proper books of record and account for the construction of the Facilities and all costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the City or its agent at any reasonable time during regular business hours on reasonable notice.

(ii) Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Facilities (including Discrete Components) to be acquired from the Developer hereunder, it will assure complete compliance with any applicable law or regulation for the payment of prevailing wages under the California Labor Code.

(iii) Compliance with Laws. The Developer shall not with knowledge commit, suffer or permit any act to be done in, upon or to the lands of the Developer in the CFD or the Facilities in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the lands in the CFD or the Facilities.

(iv) Land Owners. The Developer agrees that in the event that it sells any land owned by it within the boundaries of the Project (other than to homeowners), the Developer will (i) notify the City within 30 days of the sale, in writing, identifying the legal name of and mailing address for the purchaser, the applicable County Assessor's parcel number or numbers for the land sold and the acreage of the land sold, (ii) notify the purchaser in writing prior to the closing of any such sale of the existence of this Agreement and, in general, the Developer's rights and obligations hereunder with respect to the construction of and payment for the Facilities, and (iii) notify the purchaser in writing of the existence of the CFD and the special tax lien in connection therewith, and otherwise comply with any applicable provision of Section 53341.5 of the Act.

(v) Initial Disclosure; Continuing Disclosure. The Developer agrees to provide such information about its development and its financing plan as may reasonably be requested by the City, the City's bond counsel or disclosure counsel or a bond underwriter. The Developer agrees to comply with all of its obligations, if any, under any continuing disclosure agreement or certificate executed by it in connection with the offering and sale of any of the Bonds.

(vi) Compliance With Applicable Law. The Developer accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the Facilities and the contract or

contracts pertaining thereto, including but not limited to such applicable laws as may be contained in the California Labor Code, the California Public Contract Code, and the California Government Code. The Developer will neither seek to hold or hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Developer to correctly determine the applicability of any such requirements to any contract it enters into. This paragraph shall apply with respect to any enforcement action, whether public or private, and whether brought by a public enforcement agency or by private civil litigation, against the Developer, the City or the CFD, or any of them, with respect to the matters addressed by this paragraph.

#### 11. Events of Default.

a. Grounds for Termination. Subject to the notice and opportunity to cure as set forth in subsection (b), the following events shall constitute grounds for the City, at its option, to terminate this Agreement, without the consent of Developer:

(i) Developer voluntarily files for reorganization or other relief under any Federal or State bankruptcy or insolvency law.

(ii) Developer has any involuntary bankruptcy or insolvency action filed against it, or suffers a trustee in bankruptcy or insolvency or receiver to take possession of the assets of Developer, or suffers an attachment or levy of execution made against the property it owns within the CFD unless, in any of such cases, such circumstance shall have been terminated or released within ninety (90) days thereafter.

(iii) Developer at any time challenges the validity of the CFD established in accordance with, or any Bonds issued in the CFD, or the levy of special taxes within the CFD, other than on the grounds that (A) such special tax levy was not made in accordance with the terms of the applicable Rate and Method, or (B) the special taxes were not applied pursuant to the applicable Rate and Method, this Agreement, or any other agreement between the Developer and the City or another public agency relating to the CFD, or any agreement relating to the CFD for which the Developer is a third party beneficiary.

(iv) Breach by the Developer of any obligations under this Agreement.

b. Notice and Opportunity to Cure. If any such event described in Section 11(a) occurs, the City shall give notice of its knowledge thereof to Developer, and Developer shall agree to meet and confer with the City Engineer and other appropriate City staff and consultants as to options available to assure timely completion of the Facilities not yet constructed. Such options may include, but not be limited to the termination of this Agreement by the City. If the City elects to terminate this Agreement, the City shall first notify Developer (and any mortgagee or trust deed beneficiary specified in writing by Developer to the City to receive such notice) of the grounds for such termination and allow Developer thirty (30) days to eliminate or mitigate to the satisfaction of the City Engineer the grounds for such termination. Such period may be extended, at the sole discretion of the City, if Developer, to the satisfaction of the City, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined reasonably by the City, Developer has not eliminated or completely mitigated such grounds, to the reasonable satisfaction of the City, the City may then terminate this Agreement.

c. Breach by the City. In the event that the City breaches its obligations under this Agreement, Developer shall give notice of its knowledge thereof to the City. For defaults other than the failure to Authorize payment of a requisition, the City shall have, from the date of Developer's notice, the greater of (i) the same number of days for which the City has an obligation to complete the defaulted obligation under this Agreement or (ii) thirty (30) calendar days, to eliminate or mitigate the breach to the satisfaction of Developer. For a default for the failure to Authorize payment of a requisition, the City shall have, from the date of Developer's notice, the greater of (i) the same number of days for which the City has an obligation to complete the defaulted obligation under this Agreement or (ii) ten (10) calendar days, to eliminate or mitigate the breach to the satisfaction of Developer. Such period may be extended, at the sole discretion of Developer, if the City, to the satisfaction of Developer, is proceeding with diligence to eliminate or mitigate such breach. If at the end of such period (and any extension thereof), as determined reasonably by Developer, the City has not eliminated or completely mitigated such breach, to the reasonable satisfaction of Developer, Developer may exercise its remedies under law.

d. Unapproved Payment Requests. Notwithstanding the foregoing, so long as any event listed in Section 11(a) has occurred, notice of which has been given by the City to Developer, and such event has not been cured or otherwise eliminated by Developer, the City may in its discretion cease approval of any previously submitted but unapproved payment requests; provided that Developer shall receive payment of the Purchase Price of any Facility or Discrete Component or the payment of Authorized Fees that the City previously determined was completed at the time of the occurrence of an event listed in Section 11(a) upon submission of the documents and compliance with the other applicable requirements of this Agreement and that all such payment requests shall continue to be paid in the manner set forth in this Agreement.

e. Force Majeure. No Party shall be deemed to be in default where failure or delay in the performance of any of its obligations under this Agreement is caused by floods, earthquakes, other acts of God, fires, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond a Party's control, shortage of materials (exclusive of prefab/modular building products), prohibitory court actions (such as restraining orders or injunctions) or other causes beyond a Party's control. If any such events shall occur, the time for performance by any Party of its obligations hereunder shall be extended for the period of time that such events prevented such performance.

f. Assignment. To the extent that an Assignment and Assumption Agreement is executed and effective as set forth in Section 1, the provisions of this Section 11 shall apply separately to each Builder (with respect to the Assignment and Assumption Agreement) and the Developer (with respect to the remainder of this Agreement). A default by a Builder under the terms of this Agreement assigned to such Builder by the Assignment and Assumption Agreement shall not be a default of the Developer under this Agreement or be a cause for termination of this Agreement with respect to the Developer. Likewise, a default by the Developer under this Agreement shall not be a default by a Builder under any Assignment and Assumption Agreement or be a cause for termination of this Agreement assigned to such Builder under the Assignment and Assumption Agreement.

12. Audit. The City Engineer and the City's chief financial officer shall have the right, during normal business hours and upon the giving of ten days written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer in constructing any of the Facilities and any bids taken or received for the construction thereof or materials therefor.

13. Attorney's Fees. In the event of the bringing of any action or suit by either party against the other arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees. This provision shall apply separately to the Developer and to each Builder that assumes obligations hereunder by an executed and effective Assignment and Assumption Agreement. A Builder shall not be liable for attorney's fees resulting from an action or suit for which the Builder was not a party. Likewise, the Developer shall not be liable for attorney's fees resulting from an action or suit for which the Developer was not a party.

14. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or one week following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

Developer:           The Tracy Hills Project Owner, LLC  
                          888 San Clemente, Suite 100  
                          Newport Beach, California 92660  
                          Attention: Tracy Hills Project Manager

City or CFD:         City of Tracy  
                          333 Civic Center Plaza  
                          Tracy, CA 95376  
                          Attn: Administrative Services Director

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

15. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement may be assigned in whole or in part by the Developer, subject to the prior written consent of the City if required by Section 1. Any assignment of this Agreement shall be made pursuant to the form of the Assignment and Assumption Agreement attached hereto as Exhibit B. Any Assignment and Assumption Agreement executed shall be delivered to the City. This Agreement remains binding upon and inures to the benefit of the Developer with respect to all of the Future Annexation Area and the Facilities and Authorized Fees that are not subject to an executed Assignment and Assumption Agreement. The Developer shall be relieved of any obligation and benefit of this Agreement with respect to the Facilities and Authorized Fees indicated in an executed Assignment and Assumption Agreement.

17. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

18. Merger. No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Agreement shall be binding.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

20. Amendments. Amendments to this Agreement shall be made only by written instrument executed by each of the parties hereto.

21. Governing Law. The provisions of this Agreement shall be governed by the laws of the State of California applicable to contracts made and performed in the State of California.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first-above written.

CITY OF TRACY, for itself and on behalf of  
CITY OF TRACY COMMUNITY  
FACILITIES DISTRICT NO. 2016-1 (Tracy  
Hills)

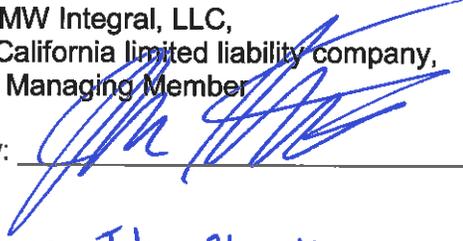
By: \_\_\_\_\_  
City Manager

**THE TRACY HILLS PROJECT OWNER, LLC,**  
a Delaware limited liability company

By: Tracy Hills Operator, LLC,  
a Delaware limited liability company,  
its Managing Member

By: Tracy Hills Communities Manager, LLC,  
a California limited liability company,  
its Manager

By: KPMW Integral, LLC,  
a California limited liability company,  
its Managing Member

By:  \_\_\_\_\_

Name: John Stanek

Title: Authorized Representative

## EXHIBIT A.1

### FACILITIES

Set forth below is a list of the Facilities that may be financed by the CFD (and any applicable Improvement Area therein) under this Agreement:

The CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) shall be authorized to finance all or a portion of the costs of the acquisition, construction and improvement of facilities permitted under the Mello-Roos Act and that are required as conditions of development of the property within the CFD and the Future Annexation Area, including, but not limited to, the following:

- Roadway Improvements (and all curb and gutter, sidewalks, lighting, signalization, landscaping, monumentation, and dry and wet utilities) - including, but not limited to:
  - Spine Road north of I-580.
  - Spine Road south of I-580.
  - Signals.
  - Emergency Vehicle Access roads.
  - Corral Hollow Road.
  - Lammers Road.
  - Linne Road.
  - Tracy Boulevard.
  - Traffic Triggers.
  - In-tract streets and roads.
  - All streets within the City of Tract impacted by the development of the Project Property.
  - I-580/Corral Hollow Road Interchange
  - I-580/Lammers Road Interchange
- Wastewater Treatment Facilities - including, but not limited to, a wastewater treatment facility and/or expansion, pump stations, force main and gravity lines.
- Water Facilities - including, but not limited to, a water treatment facility, pump stations, new water transmission lines, additional storage reservoirs or tanks with booster pumps, production wells, backup generators at existing wells, and pressure reducing valves.
- Reclaimed Water Facilities - including, but not limited to, reclaimed water treatment facilities, pump stations, new reclaimed water transmission lines, and additional storage reservoirs or tanks with booster bumps.
- Drainage Improvements - including, but not limited to, pipes, culverts, retention basins, drop inlets, and filtration areas.
- Landscaping - including, but not limited to, entryways, streets, buffers, and slopes.
- Open Space Improvements

- Parks and Park Equipment - including, but not limited to, construction of parks, park equipment and structures.
- Public Safety Improvements - including, but not limited to:
  - Constructing and equipping two firehouses.
  - Police facilities and equipment.
- Soundwalls - including, but not limited to, the soundwall along I-580.

The facilities constructed or acquired may be located within or outside the CFD.

The facilities to be financed shall include all hard and soft costs associated with the facilities, including the costs of the acquisition of land and rights-of-way, the costs of design, engineering and planning, the costs of any environmental or traffic studies, surveys or other reports, costs related to landscaping and irrigation, soils testing, permits, plan check, and inspection fees, insurance, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing as further defined in one or more acquisition agreements with the developer of the Property in the CFD.

#### OTHER

The CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) may also finance any of the following:

1. Bond related expenses, including underwriters discount, reserve fund, capitalized interest, letter of credit fees and expenses, bond and disclosure counsel fees and expenses, bond remarketing costs, and all other incidental expenses.
2. Administrative fees of the City and the bond trustee or fiscal agent related to the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) and the Bonds.
3. Reimbursement of costs related to the formation of the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) advanced by the City, the landowner(s) in the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area), or any party related to any of the foregoing, as well as reimbursement of any costs advanced by the City, the landowner(s) in the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) or any party related to any of the foregoing, for facilities, fees or other purposes or costs of the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area).

## EXHIBIT A.2

### AUTHORIZED FEES

Set forth below is a description of the water, sewer, or other capacity or connection fees authorized to be financed by the CFD (and any applicable Improvement Area therein) under this Agreement:

The CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) shall be authorized to finance all or a portion of the costs of the eligible fees permitted under the Mello-Roos Act and that are required as conditions of development of the property within the CFD and the Future Annexation Area, including, but not limited to, the following:

- Improvements Financed by City Master Plan and Public Benefit Payments - including, but not limited to:
  - Public Benefit payments.
  - Transportation Master Plan Fee.
  - Wastewater Mater Plan Fee.
  - Wastewater Conveyance Master Plan Fee.
  - Water Treatment Master Plan Fee.
  - Water Conveyance Mater Plan Fee.
  - Water Treatment Master Plan Fee.
  - Recycled Water Master Plan Fee.
  - Public Safety Master Plan Fee.
  - Public Facilities Master Plan Fee.
  - Parks Master Plan Fee.

Any facility authorized to be financed by the CFD and its Improvement Areas may be financed through the payment of fees for such facility.

The facilities financed through the payment of fees for such facility may be located within or outside the CFD.

### **EXHIBIT A.3**

#### **DISCRETE COMPONENTS**

Set forth below is a list of the components of Facilities that are deemed to be Discrete Components under this Agreement:

[The list of Discrete Components may be completed after execution of the Agreement.]

## EXHIBIT B

**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

## ASSIGNMENT AND ASSUMPTION AGREEMENT

**Relating to:**

**City of Tracy  
Community Facilities District No. 2016-1  
(Tracy Hills)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment"), dated as of \_\_\_\_\_ 1, \_\_\_\_\_, is by and between The Tracy Hills Project Owner, LLC, a Delaware limited liability company (the "Developer") and \_\_\_\_\_, a \_\_\_\_\_ (the "Builder") with respect only to (i) the property identified in Appendix A attached hereto (the "Property") and (ii) the Facilities and Authorized Fees identified in Appendix B attached hereto.

**RECITALS**

A. The City Council of the City of Tracy (the "City") has established the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (the "CFD") under the Mello-Roos Community Facilities Act of 1982, as amended, Part 1 (commencing with Section 53311) of Division 2 of Title 5 of the California Government Code (the "Act") for the financing of the public facilities (the "Facilities"), water, sewer or other capacity or connection fees ("Authorized Fees"), and public services described in the City's Resolution No. \_\_\_\_\_ (the "Resolution of Formation") adopted by the City Council on July 19, 2016.

B. The CFD was created to assist in financing the Facilities and the Authorized Fees described in the Resolution of Formation required to be constructed or paid as a condition of developing the Tracy Hills project (the "Project").

C. The Developer conveyed the Property to the Builder. The Builder intends to develop the Property, including the construction of a portion of the Facilities that are described in Exhibit B (the "Builder Facilities") and the payment of a portion of the Authorized Fees that are identified in Exhibit B (the "Builder Authorized Fees").

D. The Builder Facilities and the Builder Authorized Fees are authorized to be financed by the CFD by the Resolution of Formation.

E. To assist in the financing of the Builder Facilities and the Builder Authorized Fees, the Property has been annexed into the CFD as Improvement Area No. \_\_\_\_ (the "Improvement Area"). The CFD is authorized to levy special taxes upon the Property pursuant to the Rate and Method of Apportionment of Special Tax (the "RMA") attached to the Notice of Special Tax Lien

recorded in the Official Records of San Joaquin County on \_\_\_\_\_, \_\_\_\_ as instrument number \_\_\_\_\_ (the "Notice of Special Tax Lien").

F. The Developer previously entered into the Master Acquisition Agreement dated as of July 15, 2016, by and between the City, on behalf of itself and the CFD, and the Developer (the "Master Acquisition Agreement"). The Master Acquisition Agreement sets forth the conditions for the financing of authorized facilities and capital facility fees from the Sources (as defined in the Mitigation Agreement). The Master Acquisition Agreement may be assigned to a builder of a future phase of the Project.

G. The Developer desires to assign the Master Acquisition Agreement to the Builder, but only with respect to the construction and acquisition of the Builder Facilities and the financing of the Builder Authorized Fees, and only from the Sources derived from the Improvement Area.

H. The Builder desires to assume all of the obligations and receive all of the benefits of the Master Acquisition Agreement, but only with respect to the Builder Facilities and the Builder Authorized Fees and from the Sources derived from the Improvement Area.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

## **AGREEMENTS**

### Section 1: Assignment.

The Developer hereby assigns to Builder all of the rights, duties, and obligations of, and all of the benefits accruing to, the Developer in an under the Master Acquisition Agreement arising or accruing solely from (i) the construction, and acquisition by the CFD, of the Builder Facilities and (ii) the payment and reimbursement from the CFD, or the return of applicable Deposits by the City, of the Builder Authorized Fees. The parties understand and agree that the Developer is assigning the Master Acquisition Agreement only to the extent that the Master Acquisition Agreement pertains to the construction and acquisition of the Builder Facilities and the payment and reimbursement of the Builder Authorized Fees, and this Assignment does not apply to any other Facilities or Authorized Fees that may be constructed or paid in connection with the development of any other property in the Project.

Section 2: Assumption. The Builder fully accepts and assumes from the Developer all of the rights, duties, and obligations of, and all of the benefits accruing to, the Developer in and under the Master Acquisition Agreement arising or accruing solely from (i) the construction, and acquisition by the CFD, of the Builder Facilities and (ii) the payment and reimbursement from the CFD, or the return of applicable Deposits by the City, of the Builder Authorized Fees. The parties understand and agree that the Builder is assuming the Master Acquisition Agreement only to the extent that the Master Acquisition Agreement pertains to the construction and acquisition of the Builder Facilities and the payment and reimbursement of the Builder Authorized Fees, and this Assignment does not apply to any other Facilities or Authorized Fees that may be constructed or paid in connection with the development of any other property in the Project.

Section 3: Sources. The Builder acknowledges and agrees that (i) the Sources identified in the Master Acquisition Agreement for the financing of the Builder Facilities and the

Builder Authorized Fees are limited to the Sources derived from the Improvement Area, (ii) Sources derived from any other improvement area in the CFD (whether in existence today or as created in the future) or derived from any property identified as Future Annexation Area of the CFD (other than the Improvement Area) are not available to finance the Builder Facilities and the Builder Authorized Fees, and (iii) the Builder must comply with the provisions of the Master Acquisition Agreement in order for the Builder Facilities and the Builder Authorized Fees to be eligible for financing from the Sources derived from the Improvement Area. [IF REQUIRED: As identified in Exhibit B, a portion of the Builder Facilities and the Builder Authorized Fees were paid for by the Seller, and the first available Sources will be used to pay the Developer for such Builder Facilities and Builder Authorized Fees.]

Section 4: Specific Provisions.

The Builder shall be bound in every way by all of the duties and obligations of the Developer in the Master Acquisition Agreement with respect to the Builder Facilities and Builder Authorized Fees, including, but not limited to, the following:

- (i) The Builder shall be responsible to indemnify and hold harmless the City with respect to the Builder Facilities and the Builder Authorized Fees as set forth in Section 9 of the Master Acquisition Agreement, and the Developer shall have no liability whatsoever under Section 9 of the Master Acquisition Agreement with respect to the Builder Facilities and Builder Authorized Fees.
- (ii) The Builder shall be responsible to pay attorney's fees to the extent the Builder is named in any action or suit, as set forth in Section 13 of the Master Acquisition Agreement.
- (iii) The Builder shall be responsible to provide notices pursuant to Section 53341.5 of the Act with respect to the sale of any of the Property.

Section 5: Release of the Developer.

The Developer is released from any of the duties and obligations under the Master Acquisition Agreement with respect to the Builder Facilities and the Builder Authorized Fees, including, but not limited to, the indemnity provisions of Section 9 of the Master Acquisition Agreement.

Section 6: Remaining Obligations.

To the extent not assigned and assumed by this Assignment (and any previous assignments), the Developer shall remain obligated under, and entitled to the benefits of, the Master Acquisition Agreement with respect to the remaining Facilities and Authorized Fees.

Section 7: Notices.

Any notice, payment or instrument required or permitted by this Assignment or by the Master Acquisition Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or one week following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

Developer: The Tracy Hills Project Owner, LLC  
888 San Clemente, Suite 100  
Newport Beach, California 92660  
Attention: Tracy Hills Project Manager

Builder: [insert contact information]

City or CFD: City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376  
Attn: Administrative Services Director

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

Section 8: Severability.

If any part of this Assignment is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Assignment shall be given effect to the fullest extent reasonably possible.

Section 9: Successors and Assigns.

This Assignment shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Any assignment of this Assignment shall be delivered to the City.

Section 10: Waiver.

Failure by a party to insist upon the strict performance of any of the provisions of this Assignment by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Assignment thereafter.

Section 11: Merger.

No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Assignment shall be binding.

Section 12: Counterparts.

This Assignment may be executed in counterparts, each of which shall be deemed an original.

Section 13: Amendments.

Amendments to this Assignment shall be made only by written instrument executed by each of the parties hereto.

Section 14: Governing Law.

The provisions of this Assignment shall be governed by the laws of the State of California applicable to contracts made and performed in the State of California.

**IN WITNESS WHEREOF**, the parties have executed this Assignment as of the day and year first-above written.

[ADD SIGNATURE BLOCK FOR BUILDER]

THE TRACY HILLS PROJECT OWNER, LLC,  
a Delaware limited liability company

By: Tracy Hills Operator, LLC,  
a Delaware limited liability company,  
its Managing Member

By: Tracy Hills Communities Manager, LLC,  
a California limited liability company,  
its Manager

By: KPMW Integral, LLC,  
a California limited liability company,  
its Managing Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGED AND CONSENTED TO:  
CITY OF TRACY

By: \_\_\_\_\_  
Authorized Representative

APPENDIX A

DESCRIPTION OF PROPERTY

APPENDIX B

BUILDER FACILITIES AND BUILDER AUTHORIZED FEES

# ATTACHMENT "C"

## CITY OF TRACY Community Facilities District No. 2016-1 (Tracy Hills)

### COMMUNITY FACILITIES DISTRICT REPORT

#### CONTENTS

Introduction

- A. Description of Facilities and Services
- B. Proposed Boundaries of the Community Facilities District
- C. Cost Estimate

\*\*\*\*\*

EXHIBIT A - Description of the Proposed Facilities and the Proposed Services

EXHIBIT B - Cost Estimate

**CITY OF TRACY**  
**Community Facilities District No. 2016-1**  
**(Tracy Hills)**

**INTRODUCTION**

The City Council (the "City Council") of the City of Tracy (the "City") did, pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"), on June 7, 2016, adopt a resolution entitled "Resolution of Intention to Establish Community Facilities District" (the "Resolution of Intention"). In the Resolution of Intention, the City Council expressly ordered the preparation of a written Community Facilities District Report (the "Report"), for the proposed (i) "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "CFD"), (ii) "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 1") and (iii) a future annexation area for the CFD (the "Future Annexation Area").

The Resolution of Intention ordering the Report directed that the Report generally contain the following:

(a) A description of the facilities and facilities constructed from the payment of capital fees (collectively, the "Facilities") by type which will be required to adequately meet the needs of the CFD, Improvement Area No. 1, and every future improvement area created out of the Future Annexation Area (herein, Improvement Area No. 1 and each future improvement area to be created out of the Future Annexation Area shall be referred to as an "Improvement Area").

(b) An estimate of the fair and reasonable cost of the Facilities including the cost of acquisition of lands, rights-of-way and easements, any physical facilities required in conjunction therewith and incidental expenses in connection therewith, including the costs of the proposed bond financing and all other related costs as provided in Section 53345.3 of the Act.

(c) An estimate of the fair and reasonable cost of the services that will be required to adequately meet the needs of the CFD (the "Services") and incidental expenses in connection therewith, and all other related costs.

For particulars, reference is made to the Resolution of Intention for the CFD, as previously approved and adopted by the City Council.

**NOW, THEREFORE, I, the City's City Engineer, do hereby submit the following data:**

A. **DESCRIPTION OF FACILITIES AND SERVICES.** A general description of the proposed Facilities and the proposed Services is as shown in Exhibit "A" attached hereto and hereby made a part hereof.

**Facilities.** The CFD and each Improvement Area are or will be authorized to finance the Facilities without limitation.

The rate and method of apportionment of special tax for each Improvement Area (each, an "RMA") shall authorize the financing of Facilities through the direct levy of special taxes. The

use of those special taxes will be limited as set forth in the applicable Acquisition Agreement between the City and property owners in the CFD.

Each Improvement Area will be authorized to finance two tranches of bonds. The proceeds of the first tranche of bonds, which include refunding bonds that can provide additional proceeds for Facilities (collectively, the "First Tranche Bonds"), will be used to finance the Facilities authorized by the applicable Acquisition Agreement for the benefit of the developers that are the signatories to the applicable Acquisition Agreement. The proceeds of the second tranche bonds (the "Second Tranche Bonds") will be used to finance Facilities identified by the City. Determined separately for each Improvement Area, the City shall be obligated to issue First Tranche Bonds only until the date that is 15 years after the Facilities Special Taxes are first levied in such Improvement Area (the "15 Year Date"). The City may issue Second Tranche Bonds for an Improvement Area at any time following the 15 Year Date for such Improvement Area.

**Services.** The CFD and each Improvement Area are or will be authorized to finance the Services without limitation.

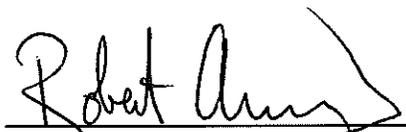
**B. PROPOSED BOUNDARIES OF THE COMMUNITY FACILITIES DISTRICT.**

The proposed boundaries of the CFD and Improvement Area No. 1 are those properties and parcels in which special taxes may be levied to pay for the costs and expenses of the Facilities. The proposed boundaries of the CFD and Improvement Area No. 1 are described on the map of the CFD on file with the City Council, to which reference is hereby made.

Parcels within the Future Annexation Area shall be annexed to the CFD only with the unanimous approval of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed. The proposed boundaries of the Future Annexation Area are also described on the map of the CFD on file with the City Council, to which reference is hereby made.

**C. COST ESTIMATE.** The cost estimate for the Facilities and the Services for the CFD is set forth in Exhibit "B" attached hereto and hereby made a part hereof.

Dated as of July 1, 2016

By:  \_\_\_\_\_  
City Engineer

## EXHIBIT A

### **City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)**

#### Proposed Description of Facilities and Services to Be Financed by the CFD and Each Improvement Area Therein

#### FACILITIES

The CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) shall be authorized to finance all or a portion of the costs of the acquisition, construction and improvement of facilities permitted under the Mello-Roos Act and that are required as conditions of development of the property within the CFD and the Future Annexation Area, including, but not limited to, the following:

- Roadway Improvements (and all curb and gutter, sidewalks, lighting, signalization, landscaping, monumentation, and dry and wet utilities) - including, but not limited to:
  - Spine Road north of I-580.
  - Spine Road south of I-580.
  - Emergency Vehicle Access roads.
  - Corral Hollow Road.
  - Lammers Road.
  - Linne Road.
  - Tracy Boulevard.
  - In-tract streets and roads.
  - All streets within the City of Tract impacted by the development of the Project Property.
  - I-580/Corral Hollow Road Interchange
  - I-580/Lammers Road Interchange
- Wastewater Treatment Facilities - including, but not limited to, a wastewater treatment facility and/or expansion, pump stations, force main and gravity lines.
- Water Facilities - including, but not limited to, a water treatment facility, pump stations, new water transmission lines, additional storage reservoirs or tanks with booster pumps, production wells, backup generators at existing wells, and pressure reducing valves.
- Reclaimed Water Facilities - including, but not limited to, reclaimed water treatment facilities, pump stations, new reclaimed water transmission lines, and additional storage reservoirs or tanks with booster bumps.
- Drainage Improvements - including, but not limited to, pipes, culverts, retention basins, drop inlets, and filtration areas.
- Landscaping - including, but not limited to, entryways, streets, buffers, and slopes.

- Open Space Improvements
- Parks and Park Equipment - including, but not limited to, construction of parks, park equipment and structures.
- Public Safety Improvements - including, but not limited to:
  - Constructing and equipping two firehouses.
  - Police facilities and equipment.
- Soundwalls - including, but not limited to, the soundwall along I-580.
- Improvements Financed by City Master Plan and Public Benefit Payments - including, but not limited to:
  - Public Benefit payments.
  - Transportation Master Plan Fee.
  - Wastewater Mater Plan Fee.
  - Wastewater Conveyance Master Plan Fee.
  - Water Treatment Master Plan Fee.
  - Water Conveyance Mater Plan Fee.
  - Water Treatment Master Plan Fee.
  - Recycled Water Master Plan Fee.
  - Public Safety Master Plan Fee.
  - Public Facilities Master Plan Fee.
  - Parks Master Plan Fee.

Any facility authorized to be financed by the CFD and its Improvement Areas may be financed through the construction and acquisition of the facility or through the payment of fees for such facility.

The facilities constructed or acquired may be located within or outside the CFD.

The facilities to be financed shall include all hard and soft costs associated with the facilities, including the costs of the acquisition of land and rights-of-way, the costs of design, engineering and planning, the costs of any environmental or traffic studies, surveys or other reports, costs related to landscaping and irrigation, soils testing, permits, plan check, and inspection fees, insurance, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing as further defined in one or more acquisition agreements with the developer of the Property in the CFD.

### SERVICES

Special taxes collected in the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) may finance, in whole or in part, the following services ("services" shall have the meaning given that term in the Mello-Roos Community Facilities Act of 1982):

- Maintenance and operation of the Facilities

## OTHER

The CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) may also finance any of the following:

1. Bond related expenses, including underwriters discount, reserve fund, capitalized interest, letter of credit fees and expenses, bond and disclosure counsel fees and expenses, bond remarketing costs, and all other incidental expenses.
2. Administrative fees of the City and the bond trustee or fiscal agent related to the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) and the Bonds.
3. Reimbursement of costs related to the formation of the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) advanced by the City, the landowner(s) in the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area), or any party related to any of the foregoing, as well as reimbursement of any costs advanced by the City, the landowner(s) in the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) or any party related to any of the foregoing, for facilities, fees or other purposes or costs of the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area).

## EXHIBIT B

### **CITY OF TRACY Community Facilities District No. 2016-1 (Tracy Hills)**

#### Facilities

The following is a summary of the estimated costs of acquisition and construction of the Facilities. In addition to the acquisition and construction costs of the Facilities, the City will finance bond issuance costs, capitalized interest, a debt service reserve fund and other costs associated with the sale of bonds and other debt and annual administration of the CFD.

<u>Facility</u>	<u>Estimated Cost</u>
(SITE DEVELOPMENT)	
ON-SITE SPINE ROAD (Corral Hollow to Second Roundabout)	
Storm Drainage	\$ 583,139
F/R/P (Fine Grading/Rock/Pavement) and concrete	\$ 3,102,373
Landscaping	\$ 2,425,248
Signage and Striping	\$ 94,118
(Second Roundabout to end) Storm Drainage	\$ 313,998
F/R/P (Fine Grading/Rock/Pavement) and concrete	\$ 1,670,508
EVA (Emergency Vehicle Access) Road and Backbone Utility Access Rd	\$ 490,000
Landscaping	\$ 1,305,903
Signage and Striping	\$ 50,679
SIGNALS	
Corral Hollow/Spine Road Signal - COA 2.7.3 and COA	\$ 500,000
Corral Hollow/School Road – COA 2.7.8.h - Underground Only	\$ 125,000
Corral Hollow/School Road – COA 2.7.8.h - Completion	\$ 375,000
CORRAL HOLLOW (Roadway Improvements)	
Additional R/W (Right of Way) acquisitions	\$ 500,000
Street Improvement (COA 2.7.8b)	\$ 1,625,000
Storm Drain	\$ 35,000
ON-SITE SEWER	
Pump Station	\$ 1,477,749
Pumps	\$ 1,008,750
SSFM (Sanitary Sewer Force Main)	\$ 681,250
Backbone	\$ 806,250
Sewer Line in Spine CH to Second RAB (Corral Hollow Road to Roundabout)	\$ 422,500
Sewer Line in Spine Second RAB (Roundabout) to End	\$ 227,500
OFF-SITE SEWER	

CA HDD (California Aqueduct Horizontal Directional Drilling)	\$	1,062,500	
DMC HDD (Delta Mendota Canal Horizontal Directional Drilling)	\$	1,062,500	
Junction Structures	\$	481,250	
CA to DMC (California Aqueduct to Delta Mendota Canal)	\$	980,666	
Road Repairs CA to DMC (California Aqueduct to Delta Mendota Canal)	\$	700,524	
Traffic Control CA to DMC (California Aqueduct to Delta Mendota Canal)	\$	225,469	
Signage and Striping CA to DMC (California Aqueduct to Delta Mendota Canal)	\$	106,250	
DMC to R/R (Delta Mendota Canal to Union Pacific Railroad)	\$	401,776	
R/R (Union Pacific Railroad) to Parkside 1,147,933	\$	1,205,330	
R/R (Union Pacific Railroad) Jack and Bore 300,000	\$	315,000	
Road Repairs DMC (Delta Mendota Canal) to Parkside	\$	746,766	
Traffic Control DMC (Delta Mendota Canal) to Parkside	\$	157,500	
Signage and Striping DMC (Delta Mendota Canal) to Parkside	\$	168,750	
 ON-SITE WATER			
CH to Second RAB (Corral Hollow Road to Roundabout)	\$	1,061,494	Second
RAB (Roundabout) to End	\$	571,574	
 PHASE 1 AT GRADE WATER TANK			
Storage Tank	\$	7,687,500	
Pumps	\$	937,500	
Pump Station	\$	1,562,501	
Site Work	\$	937,500	
 OFF-SITE WATER			
WTP to DMC (Water Treatment Plant to Delta Mendota Canal)	\$	728,506	
DMC (Delta Mendota Canal) Bridge Crossing	\$	506,250	
DMC to CH (Delta Mendota Canal to Corral Hollow Road)	\$	242,835	
CH to CA (Corral Hollow Road to California Aqueduct)	\$	708,801	
Road Repairs - Corral Hollow Road to California Aqueduct	\$	187,500	
Traffic Control - Corral Hollow Road to California Aqueduct	\$	43,750	
Signage and Striping - Corral Hollow Road to California Aqueduct	\$	31,250	
CA (California Aqueduct) Bridge Crossing	\$	506,250	
CA (California Aqueduct) to Spine Road	\$	410,670	
Road Repairs - CA (California Aqueduct) to Spine Road	\$	43,750	
Traffic Control - CA (California Aqueduct) to Spine Road	\$	18,750	
Signage and Striping - CA (California Aqueduct) to Spine Road	\$	12,500	
 ON-SITE RECLAIMED WATER			
CH to Second RAB (Corral Hollow Road to Roundabout)	\$	327,379	
Second RAB (Roundabout) to End	\$	176,739	
 ON-SITE DRAINAGE (Storm Drain)			
RCP (Reinforced Concrete Pipe)/Deep Structures	\$	2,742,880	
Earth Channel	\$	99,704	
Basin Road	\$	224,054	
Landscaping	\$	326,889	
Fencing (Retention Basin - Chain Link with black slats)	\$	100,000	

SWPPP (Storm Water Pollution Prevention Plan)	\$ 625,000
<b>TRAFFIC TRIGGERS</b>	
I-580/CH Stop Signs (COA 2.7.8 a)	\$ 66,250
CH/Linne Signal (COA 2.7.8.c)	\$ 1,846,250
Tracy Blvd/Linne Intersection Improvements (COA 2.7.8.d)_TBD - Overlay CHR from I580 to Linne (COA 2.7.8.e)	\$ 1,373,438
<b>FIRE STATION (DA Obligation)</b>	
Land Acquisition	\$ 450,000
Design (Architectural Plans)	\$ 500,000
Design (Architectural Program Management)	\$ 250,000
Construction	\$ 4,300,000
<b>PARKS</b>	
Park #1 [1]	\$ 2,755,000
Park #2 [1]	\$ 2,610,000
Park #3 [1]	\$ 2,827,500
<b>Total</b>	\$ <u>63,234,205</u>

Services

It is estimated that the cost of providing the Services to the territory in the CFD will be the following, with the cost escalating annually thereafter.

- Operations and maintenance cost estimate after payoff of debt service, administrative costs, recycled water improvement costs, and other facility costs: \$721,000

Other

The City estimates the costs of incidental expenses to be paid by the CFD include the following:

- Administrative fees of the City and the bond trustee or fiscal agent related to the CFD and the Bonds. These annual costs are estimated to be:

	Annual
CFD Administrator/Tax Consultant	\$ 16,000
Fiscal Agent	\$ 5,000
Project Management (Harris and Associates)	\$ 50,833
City Engineering	\$ 14,333
City Administration (FIN)	\$ 6,752
San Joaquin County Tax Assessor	<u>\$ 3,500</u>
Total	\$ 96,419

- Bond related expenses, including underwriters discount, reserve fund, capitalized interest, letter of credit fees and expenses, bond and disclosure counsel fees and expenses, and bond remarketing costs.

In addition to incidental costs, these costs are based upon percentages of the principal amount of each series of bond issue (e.g., ranging from 1/8%-2% for Bond Counsel and \$1 per \$1,000 bond for Underwriter).

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF FORMATION OF COMMUNITY FACILITIES DISTRICT

CITY OF TRACY  
Community Facilities District No. 2016-1  
(Tracy Hills)

RESOLVED by the City Council (the "City Council") of the City of Tracy (the "City"), County of San Joaquin, State of California, that:

WHEREAS, on June 7, 2016, pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act"), this City Council adopted a resolution entitled "Resolution of Intention to Establish Community Facilities District" (the "Resolution of Intention"), stating its intention to form (i) "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "CFD"), (ii) "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 1"), and (iii) "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (Future Annexation Area)" (the "Future Annexation Area");

WHEREAS, the Resolution of Intention, incorporating a map of the proposed boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area and stating the facilities and the services to be provided (as set forth in the list attached hereto as Exhibit A), the cost of providing such facilities and the services, and the rate and method of apportionment of the special tax to be levied within the CFD and Improvement Area No. 1 to pay the principal and interest on bonds proposed to be issued with respect to the CFD and Improvement Area No. 1, the cost of the facilities and the cost of the services, is on file with the City Clerk and the provisions thereof are incorporated herein by this reference as if fully set forth herein;

WHEREAS, on this date, this City Council held a noticed public hearing as required by the Act and the Resolution of Intention relative to the proposed formation of the CFD, Improvement Area No. 1 and the Future Annexation Area;

WHEREAS, at the hearing all interested persons desiring to be heard on all matters pertaining to the formation of the CFD, Improvement Area No. 1 and the Future Annexation Area, the facilities to be provided therein, the services to be provided therein and the levy of said special tax were heard and a full and fair hearing was held;

WHEREAS, at the hearing evidence was presented to this City Council on said matters before it, including a report caused to be prepared by the City Engineer (the "Report") as to the facilities and the services to be provided through the CFD and Improvement Area No. 1 and the costs thereof, a copy of which is on file with the City Clerk, and this City Council at the conclusion of said hearing is fully advised in the premises;

WHEREAS, written protests with respect to the formation of the CFD and Improvement Area No. 1, the furnishing of specified types of facilities and services and the rate and method of apportionment of the special taxes have not been filed with the City Clerk by fifty percent (50%) or more of the registered voters residing within the territory of the CFD and Improvement Area

No. 1 or property owners of one-half (1/2) or more of the area of land within the CFD and Improvement Area No. 1 and not exempt from the proposed special tax;

WHEREAS, the special tax proposed to be levied in Improvement Area No. 1 to pay for the proposed facilities and services to be provided therein, as set forth in Exhibit B hereto, has not been eliminated by protest by fifty percent (50%) or more of the registered voters residing within the territory of Improvement Area No. 1 or the owners of one-half (1/2) or more of the area of land within Improvement Area No. 1 and not exempt from the special tax; and

WHEREAS, prior to the time fixed for the hearing, written protests had not been filed with the City Clerk against the proposed annexation of the Future Annexation Area to the CFD by (i) 50% or more of the registered voters, or six registered voters, whichever is more, residing in the proposed boundaries of the CFD, or (ii) 50% or more of the registered voters, or six registered voters, whichever is more, residing in the Future Annexation Area, (iii) owners of one-half or more of the area of land in the proposed CFD or (iv) owners of one-half or more of the area of land in the Future Annexation Area.

NOW THEREFORE BE IT RESOLVED as follows:

1. Recitals Correct. The foregoing recitals are true and correct.
2. No Majority Protest. The proposed special tax to be levied within the CFD has not been precluded by majority protest pursuant to section 53324 of the Act.
3. Prior Proceedings Valid. All prior proceedings taken by this City Council in connection with the establishment of the CFD, Improvement Area No. 1 and the Future Annexation Area and the levy of the special tax have been duly considered and are hereby found and determined to be valid and in conformity with the Act.
4. Name of CFD. The community facilities district designated "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" is hereby established pursuant to the Act.

The improvement area designated "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" is hereby established pursuant to the Act.

The future annexation area designated "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (Future Annexation Area)" is hereby established pursuant to the Act.

5. Boundaries of CFD. The boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area, as set forth in the map of the CFD heretofore recorded in the San Joaquin County Recorder's Office on June 15, 2016, at 10:00 a.m. in Book 6 of Maps of Assessment and Community Facilities Districts at Page 84, as Document No. 2016-069400 , are hereby approved, are incorporated herein by reference and shall be the boundaries of the CFD, Improvement Area No. 1 and the Future Annexation Area.

Parcels within the Future Annexation Area shall be annexed to the CFD only with the unanimous approval (each, a "Unanimous Approval") of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, without any requirement for further public hearings or additional proceedings. The City Council hereby determines that any property for which the owner or owners execute a Unanimous Approval shall be added to the CFD and

the City Clerk shall record an amendment to the notice of special tax lien for the CFD pursuant to Section 3117.5 of the Streets & Highways Code.

6. Description of Facilities and Services. The type of public facilities proposed to be financed by the CFD, Improvement Area No. 1 and, when it has been annexed to the CFD, the Future Annexation Area, pursuant to the Act shall consist of those items listed as facilities in Exhibit A hereto and by this reference incorporated herein (the "Facilities").

The type of public services proposed to be financed by the CFD, Improvement Area No. 1 and, when it has been annexed to the CFD, the Future Annexation Area, pursuant to the Act shall consist of those items shown in Exhibit A hereto and by this reference incorporated herein (the "Services"). The City intends to provide the Services on an equal basis in the original territory of the CFD and Improvement Area No. 1 and, when it has been annexed to the CFD, the Future Annexation Area.

7. Special Tax.

a. Except to the extent that funds are otherwise available to Improvement Area No. 1 to pay for the Facilities, the Services and/or the principal and interest as it becomes due on bonds of Improvement Area No. 1 issued to finance the Facilities, a special tax (the "Improvement Area No. 1 Special Tax") sufficient to pay the costs thereof, secured by the recordation of a continuing lien against all non-exempt real property in Improvement Area No. 1, is intended to be levied annually within Improvement Area No. 1, and collected in the same manner as ordinary *ad valorem* property taxes or in such other manner as may be prescribed by this City Council.

b. The proposed rate and method of apportionment of the Special Tax among the parcels of real property within Improvement Area No. 1 (the "Rate and Method"), in sufficient detail to allow each landowner within the proposed Improvement Area No. 1 to estimate the maximum amount such owner will have to pay, are shown in Exhibit B attached hereto and hereby incorporated herein.

The Improvement Area No. 1 Special Tax to finance the Facilities shall not be levied in Improvement Area No. 1 after the fiscal year specified in the Rate and Method, except that an Improvement Area No. 1 Special Tax that was lawfully levied in or before the final tax year and that remains delinquent may be collected in subsequent years. Under no circumstances shall the Improvement Area No. 1 Special Tax levied against any parcel in Improvement Area No. 1 used for private residential purposes be increased as a consequence of delinquency or default by the owner of any other parcel or parcels within Improvement Area No. 1 by more than 10 percent.

A special tax to finance the Facilities shall not be levied in one or more future improvement areas formed to include territory that annexes into the CFD from the Future Annexation Area (each, a "Future Improvement Area") after the fiscal year identified in the rate and method for the Future Improvement Area, except that a special tax that was lawfully levied in or before the final tax year and that remains delinquent may be collected in subsequent years. Under no circumstances shall the special tax levied against any parcel in the Future Improvement Area for private residential purposes be increased as a consequence of delinquency or default by the owner of any other parcel or parcels within the Future Improvement Area by more than 10 percent.

The Rate and Method for each of the Improvement Areas will be altered as described in supplements to such Rate and Method unanimously approved by the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed into such Improvement Areas.

For Future Improvement Areas, a different rate and method may be adopted if the annexed territory is designated as a separate improvement area.

No supplements to the Rate and Method for any of the Improvement Areas and no new rate and method will cause the maximum tax rate in the then-existing territory of the CFD (including the Improvement Areas) to increase.

The designation as an improvement area of any territory annexing to the CFD, the maximum amount of bonded indebtedness and other debt for such improvement area, the rate and method of apportionment of special tax for such improvement area and the appropriations limit for such improvement area shall be identified and approved in the Unanimous Approval executed by property owners in connection with their annexation to the CFD. The annexation and related matters described in the Unanimous Approval shall be implemented and completed without the need for Council approval as long as the following conditions are met:

(i) The rate and method of apportionment of special tax for the new improvement area is prepared by a special tax consultant retained by the City and paid for by the developer of the improvement area or the applicable property owners submitting the Unanimous Approval.

(ii) The rate and method of apportionment of special tax for the new improvement area complies with the City's Goals and Policies (as defined in the Development Agreement for the Tracy Hills Project).

(iii) The rate and method of apportionment of special tax for the new improvement area does not establish a maximum special tax amount for the initial fiscal year in which the special tax may be levied for any category of special tax that is greater than 120% of the maximum amount of the same category of special tax for the same fiscal year calculated pursuant to the Rate and Method for Improvement Area No. 1.

(iv) The rate and method of apportionment of special tax for the new improvement area does not introduce a special tax that was not included in the Rate and Method for Improvement Area No. 1 (e.g., a special tax that is levied and must be paid in a single fiscal year or over a shorter time period than 30 years).

(v) The rate and method of apportionment of special tax for the new improvement area gives the City the discretion to convert Facilities Special Taxes to Services Special Taxes subject to a similar "Trigger Event" as the Rate and Method for Improvement Area No. 1 (modified, as applicable, to represent the timing of the new rate and method of apportionment of special tax for the new improvement area).

(vi) The rate and method of apportionment of special tax for the new improvement area is not inconsistent with the terms of the Development Agreement, as amended, whether or not it is still operative.

(vii) The rate and method of apportionment of special tax for the new improvement area includes a mechanism that protects against revenue loss as a result of land use changes.

c. Territory in the Future Annexation Area will be annexed into the CFD and a special tax will be levied on such territory only with the Unanimous Approval of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed into the CFD. Except to the extent that funds are otherwise available to the CFD to pay for the Facilities, the Services and/or the principal and interest as it becomes due on bonds of the CFD issued to finance the Facilities, a Special Tax sufficient to pay the costs thereof, secured by the recordation of a continuing lien against all non-exempt real property in the Future Annexation Area, is intended to be levied annually within the Future Annexation Area, and collected in the same manner as ordinary *ad valorem* property taxes or in such other manner as may be prescribed by this City Council. As required by Section 53339.3(d) of the Act, the City Council hereby determines that the Special Tax proposed to pay for one or more Facilities to be supplied within the Future Annexation Area will be equal to the Special Taxes levied to pay for the same Facilities in previously-existing areas of the CFD, except that (i) a higher Special Tax may be levied within the Future Annexation Area to pay for the same Facilities to compensate for the interest and principal previously paid from Special Taxes in the original area of the CFD, less any depreciation allocable to the financed Facilities and (ii) a higher Special Tax may be levied in the Future Annexation Area to pay for new or additional Facilities, with or without bond financing. As required by Section 53339.3(d) of the Act, the Council hereby further determines that the Special Tax proposed to pay for Services to be supplied within the Future Annexation Area shall be equal to any Special Tax levied to pay for the same Services in the existing CFD, except that a higher or lower tax may be levied within the Future Annexation Area to the extent that the actual cost of providing the Services in the Future Annexation Area is higher or lower than the cost of providing those Services in the existing CFD. In so finding, the Council does not intend to limit its ability to levy a Special Tax within the Future Annexation Area to provide new or additional services beyond those supplied within the existing CFD.

8. Increased Demands. It is hereby found and determined that the Facilities and the Services are necessary to meet increased demands placed upon local agencies as the result of development occurring in the CFD, Improvement Area No. 1 and the Future Annexation Area.

9. Responsible Official. The Administrative Services Director of the City of Tracy, 333 Civic Center Plaza, Tracy, California 95376, (209) 831-6800, is the officer of the City who will be responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel number and who will be responsible for estimating future special tax levies pursuant to the Act.

10. Tax Lien. Upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the Streets and Highways Code of California, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the respective Improvement Area and this lien shall continue in force and effect until the special tax obligation is prepaid and

permanently satisfied and the lien canceled in accordance with law or until collection of the tax by the City ceases.

11. Appropriations Limit. In accordance with the Act, the annual appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of Improvement Area No. 1 is hereby preliminarily established at \$70,000,000, and said appropriations limit shall be submitted to the voters of Improvement Area No. 1 as hereafter provided. The proposition establishing said annual appropriations limit shall become effective if approved by the qualified electors voting thereon and shall be adjusted in accordance with the applicable provisions of the Act.

The designation as an improvement area of any territory annexing to the CFD, the maximum amount of bonded indebtedness and other debt for such improvement area, the rate and method of apportionment of special tax for such improvement area and the appropriations limit for such improvement area shall be identified and approved in the Unanimous Approval executed by property owners in connection with their annexation to the CFD.

12. Election. Pursuant to the provisions of the Act, the proposition of the levy of the Improvement Area No. 1 Special Tax and the proposition of the establishment of the appropriations limit specified above shall be submitted to the qualified electors of Improvement Area No. 1 at an election. The time, place and conditions of the election shall be as specified by a separate resolution of the City Council.

13. Acquisition Agreement. Section 53314.9 of the Act provides that, either before or after formation of the CFD, the City may accept work in-kind from any source, including, but not limited to, private persons or private entities, may provide, by resolution, for the use of that work in-kind for any authorized purpose and the City Council may enter into an agreement (an "Acquisition Agreement"), by resolution, with the person or entity advancing the work in-kind, to reimburse the person or entity for the value, or cost, whichever is less, of the work in-kind, as determined by the City Council, with or without interest, under the conditions specified in the Act. Any work in-kind must be performed or constructed as if the work had been performed or constructed under the direction and supervision, or under the authority of, the City. The City and The Tracy Hills Project Owner, LLC (the "Master Developer"), on the one hand, and the City and Tracy Phase I, LLC (the "Phase 1 Property Owner"), on the other hand, intend to enter into separate Acquisition Agreements.

There is on file with the City Clerk the following agreements:

(i) The form of Acquisition Agreement (the "Phase 1 Acquisition Agreement") between the City and the Phase 1 Property Owner. The City Council hereby proposes to repay the Phase 1 Property Owner solely from the Sources (as defined in the Phase 1 Acquisition Agreement) to acquire Facilities constructed by the Phase 1 Property Owner in compliance with the Act and the Phase 1 Acquisition Agreement, approves the Phase 1 Acquisition Agreement in substantially the form on file with the City Clerk, and authorizes an Authorized Representative to execute the Phase 1 Acquisition Agreement in substantially the form on file with the City Clerk (with such additions and changes approved by the Authorized Representative). The Phase 1 Acquisition Agreement also provides for the financing of water, sewer, or other capacity or connection fees related to Facilities that are authorized to be financed by Improvement Area No. 1.

(ii) The form of Acquisition Agreement (the "Master Acquisition Agreement") between the City and the Master Developer. The City Council hereby proposes to repay the Master Developer (or its assignee) solely from the Sources (as defined in the Master Acquisition Agreement) to acquire Facilities constructed by the Master Developer (or its assignee) in compliance with the Act and the Master Acquisition Agreement, approves the Master Acquisition Agreement in substantially the form on file with the City Clerk, and authorizes an Authorized Representative to execute the Master Acquisition Agreement in substantially the form on file with the City Clerk (with such additions and changes approved by the Authorized Representative). The Master Acquisition Agreement also provides for the financing of water, sewer, or other capacity or connection fees related to Facilities that are authorized to be financed by the CFD.

14. Effective Date. This resolution shall take effect upon its adoption.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council the 19th day of July, 2016, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

## EXHIBIT A

### CITY OF TRACY Community Facilities District No. 2016-1 (Tracy Hills)

#### DESCRIPTION OF FACILITIES AND SERVICES TO BE FINANCED BY THE CFD AND EACH IMPROVEMENT AREA THEREIN

##### FACILITIES

The CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) shall be authorized to finance all or a portion of the costs of the acquisition, construction and improvement of facilities permitted under the Mello-Roos Act and that are required as conditions of development of the property within the CFD and the Future Annexation Area, including, but not limited to, the following:

- Roadway Improvements (and all curb and gutter, sidewalks, lighting, signalization, landscaping, monumentation, and dry and wet utilities) - including, but not limited to:
  - Spine Road north of I-580.
  - Spine Road south of I-580.
  - Emergency Vehicle Access roads.
  - Corral Hollow Road.
  - Lammers Road.
  - Linne Road.
  - Tracy Boulevard.
  - In-tract streets and roads.
  - All streets within the City of Tract impacted by the development of the Project Property.
  - I-580/Corral Hollow Road Interchange
  - I-580/Lammers Road Interchange
- Wastewater Treatment Facilities - including, but not limited to, a wastewater treatment facility and/or expansion, pump stations, force main and gravity lines.
- Water Facilities - including, but not limited to, a water treatment facility, pump stations, new water transmission lines, additional storage reservoirs or tanks with booster pumps, production wells, backup generators at existing wells, and pressure reducing valves.
- Reclaimed Water Facilities - including, but not limited to, reclaimed water treatment facilities, pump stations, new reclaimed water transmission lines, and additional storage reservoirs or tanks with booster bumps.
- Drainage Improvements - including, but not limited to, pipes, culverts, retention basins, drop inlets, and filtration areas.
- Landscaping - including, but not limited to, entryways, streets, buffers, and slopes.

- Open Space Improvements
- Parks and Park Equipment - including, but not limited to, construction of parks, park equipment and structures.
- Public Safety Improvements - including, but not limited to:
  - Constructing and equipping two firehouses.
  - Police facilities and equipment.
- Sound walls - including, but not limited to, the soundwall along I-580.
- Improvements Financed by City Master Plan and Public Benefit Payments - including, but not limited to:
  - Public Benefit payments.
  - Transportation Master Plan Fee.
  - Wastewater Mater Plan Fee.
  - Wastewater Conveyance Master Plan Fee.
  - Water Treatment Master Plan Fee.
  - Water Conveyance Mater Plan Fee.
  - Water Treatment Master Plan Fee.
  - Recycled Water Master Plan Fee.
  - Public Safety Master Plan Fee.
  - Public Facilities Master Plan Fee.
  - Parks Master Plan Fee.

Any facility authorized to be financed by the CFD and its Improvement Areas may be financed through the construction and acquisition of the facility or through the payment of fees for such facility.

The facilities constructed or acquired may be located within or outside the CFD.

The facilities to be financed shall include all hard and soft costs associated with the facilities, including the costs of the acquisition of land and rights-of-way, the costs of design, engineering and planning, the costs of any environmental or traffic studies, surveys or other reports, costs related to landscaping and irrigation, soils testing, permits, plan check, and inspection fees, insurance, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing as further defined in one or more acquisition agreements with the developer of the Property in the CFD.

### SERVICES

Special taxes collected in the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) may finance, in whole or in part, the following services (“services” shall have the meaning given that term in the Mello-Roos Community Facilities Act of 1982):

- Maintenance and operation of the Facilities

## OTHER

The CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) may also finance any of the following:

1. Bond related expenses, including underwriters discount, reserve fund, capitalized interest, letter of credit fees and expenses, bond and disclosure counsel fees and expenses, bond remarketing costs, and all other incidental expenses.
2. Administrative fees of the City and the bond trustee or fiscal agent related to the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) and the Bonds.
3. Reimbursement of costs related to the formation of the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) advanced by the City, the landowner(s) in the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area), or any party related to any of the foregoing, as well as reimbursement of any costs advanced by the City, the landowner(s) in the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) or any party related to any of the foregoing, for facilities, fees or other purposes or costs of the CFD (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area).

EXHIBIT B

CITY OF TRACY  
Community Facilities District No. 2016-1  
(Tracy Hills)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX FOR  
IMPROVEMENT AREA NO. 1

**IMPROVEMENT AREA NO. 1 OF THE  
CITY OF TRACY  
COMMUNITY FACILITIES DISTRICT NO. 2016-1  
(TRACY HILLS)**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES**

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Special Taxes applicable to each Assessor's Parcel in Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) shall be levied and collected according to the tax liability determined by the City through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in Improvement Area No. 1, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided.

**A. DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**“Accessory Unit”** means a second residential unit of limited size (e.g., granny cottage, second unit) that shares a Parcel with a single-family detached unit.

**“Acre”** or **“Acreage”** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other parcel map recorded at the County Recorder's Office.

**“Act”** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the Government Code of the State of California.

**“Administrative Expenses”** means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City in carrying out its duties with respect to the CFD and the Bonds, including, but not limited to, the levy and collection of Special Taxes, the fees and expenses of its legal counsel, charges levied by the County in connection with the levy and collection of Special Taxes, costs related to property owner inquiries regarding the Special Taxes, costs associated with appeals or requests for interpretation associated with the Special Taxes and this RMA, costs of the dissemination agent, whether for the City or another party that has undertaken to provide continuing disclosure, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements with respect to the Bonds and the Special Taxes, costs associated with foreclosure and collection of delinquent Special Taxes and all other costs and expenses of the City and County in any way related to the establishment or administration of the CFD.

**“Administrator”** means the person or firm designated by the City to administer the Special Taxes according to this RMA.

**“Assessor’s Parcel”** or **“Parcel”** means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s parcel number.

**“Assessor’s Parcel Map”** means an official map of the County Assessor designating Parcels by Assessor’s Parcel number.

**“Authorized Facilities”** means the public facilities authorized to be financed, in whole or in part, by the CFD.

**“Authorized Services”** means the public services authorized to be funded, in whole or in part, by the CFD.

**“Bonds”** means bonds or other debt (as defined in the Act), whether in one or more series, issued or assumed by Improvement Area No. 1 to fund Authorized Facilities.

**“Building Permit”** means a single permit or set of permits required to construct a residential or non-residential structure. If a permit is issued for a foundation, parking, landscaping or other related facility or amenity, but a building permit has not yet been issued for the structure served by these facilities or amenities, such permit shall not be considered a “Building Permit” for purposes of application of the Special Taxes herein.

**“Business Park Property”** all Parcels of Developed Property within the specific geographic area in Improvement Area No. 1 that (i) was expected at the time of CFD Formation to be developed for business park uses, (ii) is identified as BP1 and BP2 on the Tentative Map and Attachment 2 of this RMA, (iii) is assigned Expected Maximum Facilities Special Tax Revenues in Attachment 1 based on the expectation of business park uses on the property. Notwithstanding the foregoing, if in any Fiscal Year, property that had been designated as Business Park Property is proposed for a use other than industrial or business park, the Administrator shall: (i) determine whether the property is expected to be Single Family Residential Property or Other Property, (ii) update Attachment 2 to reflect the new Expected Land Uses and Expected Maximum Facilities Special Tax Revenues for the property, and (iii) in the next Fiscal Year and all following Fiscal Years, levy Special Taxes on the property based on the new land use.

**“Capitalized Interest”** means funds in any capitalized interest account available to pay interest on Bonds.

**“CFD”** means the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

**“CFD Formation”** means the date on which the Resolution of Formation to form the CFD was adopted by the City Council.

**“City”** means the City of Tracy.

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

**“City Services CFD”** means a community facilities district formed under the Act (separate from the CFD) over the property that is also included in the CFD that authorizes the levy of a special tax, all or a component of which is an amount up to \$325 per Residential Unit in Fiscal Year 2016-17 dollars that will be levied to mitigate fiscal deficits by funding police protection, fire protection, and/or public works maintenance services.

**“County”** means the County of San Joaquin.

**“Development Class”** means, individually, Developed Property and Undeveloped Property.

**“Developed Property”** means, in any Fiscal Year, all Parcels of Taxable Property for which a Building Permit was issued prior to June 30 of the preceding Fiscal Year.

**“Expected Land Uses”** means the number of Residential Units and acres of Business Park Property expected within Improvement Area No. 1 as of CFD Formation, as identified in Attachment 1 and as amended from time to time as set forth in this RMA.

**“Expected Maximum Facilities Special Tax Revenues”** means the amount of annual revenue that would be available in Improvement Area No. 1 if the Maximum Facilities Special Tax was levied on the Expected Land Uses. The Expected Maximum Facilities Special Tax Revenues are shown in Attachment 1 of this RMA and may be reduced due to prepayments in future Fiscal Years and/or pursuant to Section D below.

**“Facilities Special Tax”** means a special tax levied in any Fiscal Year to pay the Facilities Special Tax Requirement.

**“Facilities Special Tax Requirement”** means the amount necessary in any Fiscal Year (i) to pay principal and interest on Bonds which are due in the calendar year which begins in such Fiscal Year, (ii) to create or replenish reserve funds to the extent such replenishment has not been included in a computation of Special Tax Requirement in a previous Fiscal Year, (iii) to cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year, (iv) to pay Administrative Expenses, and (v) to pay the costs of Authorized Facilities to be funded directly from Facilities Special Tax proceeds to the extent that paying directly for such costs does not increase the Special Taxes levied on Undeveloped Property. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by (i) interest earnings on or surplus balances in funds and accounts for Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to the Indenture, (ii) proceeds from the collection of penalties associated with delinquent Facilities Special Taxes, and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

**“Final Bond Sale”** means, at any point in time, the last series of Bonds issued for Improvement Area No. 1, which issuance uses up virtually all of the remaining capacity available from the Maximum Facilities Special Tax revenues that can be generated within Improvement Area No. 1, as determined by the City. If additional Bonds are expected to be issued after outstanding Bonds

retire, the “Final Bond Sale” may not be the last series of Bonds ever issued for Improvement Area No. 1, but instead the last sale of Bonds that can be issued before some or all of the outstanding Bonds retire.

“**Final Map**” means a final map, or portion thereof, recorded by the County pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots that do not need to be further subdivided prior to issuance of a Building Permit for a residential structure. The term “Final Map” shall not include any Assessor’s Parcel map or subdivision map, or portion thereof, that does not create lots that are in their final configuration, including Assessor’s Parcels that are designated as remainder parcels.

“**Fiscal Year**” means the period starting July 1 and ending on the following June 30.

“**Homeowners Association**” or “**HOA**” means the homeowners association that provides services to, and collects dues, fees, or charges from, property within Improvement Area No. 1.

“**HOA Property**” means any property within the boundaries of Improvement Area No. 1 that is owned in fee or by easement by the Homeowners Association, not including any such property that is located directly under a residential structure.

“**Improvement Area No. 1**” means Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills).

“**Improvement Fund**” means the account (regardless of its name) identified in the Indenture to hold funds which are available to acquire or construct Authorized Facilities.

“**Indenture**” means the bond indenture, fiscal agent agreement, trust agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

“**Land Use Change**” means a proposed or approved change to the Expected Land Uses within Improvement Area No. 1 after CFD Formation.

“**Maximum Facilities Special Tax**” means the greatest amount of Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year as determined in accordance with Sections C and D below.

“**Maximum Services Special Tax**” means the greatest amount of Services Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year as determined in accordance with Section C.2 below.

“**Maximum Special Taxes**” means, collectively, the Maximum Facilities Special Tax and Maximum Services Special Tax.

“**Other Property**” means, in any Fiscal Year, all Parcels of Developed Property within Improvement Area No. 1 that are not Single Family Residential Property, Business Park Property, Taxable HOA Property, or Taxable Public Property.

**“Proportionately”** means, for Developed Property that is not Taxable HOA Property or Taxable Public Property, that the ratio of the actual Special Taxes levied in any Fiscal Year to the Maximum Special Taxes authorized to be levied in that Fiscal Year is equal for all Parcels of Developed Property that are not Taxable HOA Property or Taxable Public Property. For Undeveloped Property, “Proportionately” means that the ratio of the actual Special Taxes levied to the Maximum Special Taxes is equal for all Parcels of Undeveloped Property. For Taxable Public Property, “Proportionately” means that the ratio of the actual Special Taxes levied to the Maximum Special Taxes is equal for all Parcels of Taxable Public Property. For Taxable HOA Property, “Proportionately” means that the ratio of the actual Special Taxes levied to the Maximum Special Taxes is equal for all Parcels of Taxable HOA Property.

**“Public Property”** means any property within the boundaries of Improvement Area No. 1 that is owned by the federal government, State of California or other local governments or public agencies.

**“Recycled Water Facilities Cost”** means the total cost, as determined by the City, of funding the design, engineering, construction, and/or acquisition of recycled water facilities that will serve development within the CFD. If, in the future, the City determines that there is a preferred alternative to the recycled water facilities that were expected at the time of CFD Formation, the cost of such facilities shall qualify as Recycled Water Facilities Costs for purposes of this RMA.

**“Remainder Taxes”** means, after September 1<sup>st</sup> and before December 31<sup>st</sup> of any Fiscal Year, any Facilities Special Tax revenues that were levied and collected in the prior Fiscal Year and were not needed to (i) pay debt service on the Bonds that was due in the calendar year in which the Remainder Taxes are being calculated, (ii) replenish Bond reserves, or (iii) pay Administrative Expenses that have been incurred, or are expected to be incurred, by the City prior to the receipt of additional Facilities Special Tax proceeds.

**“Required Coverage”** means the amount by which the Maximum Facilities Special Tax Revenues must exceed the Bond debt service and required Administrative Expenses, as set forth in the Indenture, Certificate of Special Tax Consultant, or other formation or bond document that sets forth the minimum required debt service coverage.

**“Residential Unit”** means an individual single-family unit that does not share a common wall with another residential unit, or an individual residential unit within a duplex, halfplex, triplex, fourplex, townhome, live/work or condominium structure. An Accessory Unit shall not be considered a Residential Unit for purposes of this RMA.

**“RMA”** means this Rate and Method of Apportionment of Special Tax.

**“Services Special Tax”** means a special tax levied in any Fiscal Year to pay the Services Special Tax Requirement.

**“Services Special Tax Requirement”** means the amount of revenue needed in any Fiscal Year after the Trigger Event to pay for: (i) Authorized Services, (ii) Administrative Expenses, and (iii) amounts needed to cure any delinquencies in the payment of Services Special Taxes which

have occurred in the prior Fiscal Year. In any Fiscal Year, the Services Special Tax Requirement shall be reduced by surplus amounts available (as determined by the City) from the levy of the Services Special Tax in prior Fiscal Years, including revenues from the collection of delinquent Services Special Taxes and associated penalties and interest.

**“Single Family Residential Property”** means, in any Fiscal Year, all Parcels of Developed Property for which a Building Permit was issued for construction of one or more Residential Units.

**“Special Taxes”** means, collectively, the Facilities Special Tax and the Services Special Tax.

**“Taxable HOA Property”** means, in any Fiscal Year, all Parcels of HOA Property that are not exempt pursuant to Section G below.

**“Taxable Property”** means all Parcels within the boundaries of Improvement Area No. 1 which are not exempt from the Special Tax pursuant to law or Section G below.

**“Taxable Public Property”** means, in any Fiscal Year after the first series of Bonds is issued, any Parcel of Public Property that satisfies all three of the following conditions: (i) the Parcel had not been Public Property on the date of issuance of the first series of Bonds, (ii) based on reference to Attachments 1 and 2 (as may be updated pursuant to Section D.1 below), the Parcel was not anticipated to be Public Property based on the Expected Land Uses, as determined by the Administrator, and (iii) if the Parcel were to be exempt from the Facilities Special Tax because it has become Public Property, the Expected Maximum Facilities Special Tax Revenues would be reduced to a point at which Required Coverage could not be maintained.

**“Tentative Map”** means Vesting Tentative Tract Map–Tract 3788 for Tracy Hills Phase 1A, as approved by the City Council on April 5, 2016 and as shown in Attachment 2 of this RMA.

**“Trigger Event”** means, in any Fiscal Year, that, on or before June 30 of the prior Fiscal Year, the Administrator made a finding that (i) all Bonds secured by the levy and collection of Facilities Special Taxes in the CFD have been fully repaid, (ii) all Administrative Expenses from prior Fiscal Years have been paid or reimbursed to the City, (iii) the Recycled Water Facilities Costs have been fully funded, and (iv) there are no other Authorized Facilities that the City intends to fund with Facilities Special Taxes. In the first Fiscal Year in which the Administrator determines that the Trigger Event occurred in the prior Fiscal Year, and in each Fiscal Year thereafter, the Facilities Special Tax shall cease to be levied, and the Maximum Services Special Tax for each Parcel shall be adjusted pursuant to Section C.2 below.

**“Undeveloped Business Park Property”** means, in any Fiscal Year, all Parcels that otherwise meet the definition of Business Park Property but are not yet Developed Property.

**“Undeveloped Property”** means, in any Fiscal Year, all Parcels of Taxable Property that are not Developed Property or Undeveloped Business Park Property.

**“Village”** means a specific geographic area within Improvement Area No. 1 that (i) is identified by an assigned number on the Tentative Map, (ii) is expected to have single family lots that are

all of a similar size, and (iii) is assigned Expected Maximum Facilities Special Tax Revenues in Attachment 1 based on the Expected Land Uses for that Village.

**B. DATA FOR ADMINISTRATION OF SPECIAL TAX**

Each Fiscal Year, the Administrator shall (i) categorize each Parcel of Taxable Property as Developed Property, Undeveloped Business Park Property, Undeveloped Property, Taxable Public Property, or Taxable HOA Property, (ii) for Single Family Residential Property, determine within which Village each Parcel of Developed Property is located and the number of Residential Units on the Parcel, and (iii) determine the Facilities Special Tax Requirement and Services Special Tax Requirement for the Fiscal Year. In addition, the Administrator shall, *on an ongoing basis*, monitor Final Maps and condominium plans to determine if there are any proposed changes to the Expected Land Uses that would reduce the Expected Maximum Facilities Special Tax Revenues for a Village. If the Expected Maximum Facilities Special Tax Revenues will be reduced pursuant to a proposed Land Use Change, the Administrator shall apply the steps set forth in Section D.1 below.

In any Fiscal Year, if it is determined that: (i) a parcel map for property in Improvement Area No. 1 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the parcel map, and (iii) one or more of the newly-created Parcels is in a different Development Class than other Parcels created by the subdivision, the Administrator shall calculate the Special Taxes for the property affected by recordation of the parcel map by determining the Special Taxes that apply separately to the property within each Development Class, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the parcel map.

**C. MAXIMUM SPECIAL TAX**

*1. Facilities Special Tax*

Table 1 below identifies the Maximum Facilities Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 1, subject to potential adjustments that may occur pursuant to Section D below.

**TABLE 1  
IMPROVEMENT AREA NO. 1  
MAXIMUM FACILITIES SPECIAL TAX**

<b>Land Use</b>	<b>Maximum Facilities Special Tax Prior to Trigger Event Fiscal Year 2015-16*</b>	<b>Maximum Facilities Special Tax After Trigger Event</b>
<u>Single Family Residential Property</u>		
Village 1	\$2,514 per Residential Unit	\$0 per Residential Unit
Village 2	\$2,839 per Residential Unit	\$0 per Residential Unit
Village 3	\$2,837 per Residential Unit	\$0 per Residential Unit
Village 4	\$2,638 per Residential Unit	\$0 per Residential Unit
Village 5	\$3,487 per Residential Unit	\$0 per Residential Unit
Village 6	\$3,828 per Residential Unit	\$0 per Residential Unit
Village 7	\$2,270 per Residential Unit	\$0 per Residential Unit
Village 8	\$3,658 per Residential Unit	\$0 per Residential Unit
Business Park Property/ Undeveloped Business Park Property	\$2,500 per Acre	\$0 per Acre
Other Property	\$30,000 per Acre	\$0 per Acre
Taxable Public Property and Taxable HOA Property	\$30,000 per Acre	\$0 per Acre
Undeveloped Property	\$30,000 per Acre	\$0 per Acre

**\* On July 1, 2016 and on each July 1 thereafter, all figures shown in Table 1 above shall be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year.**

2. *Services Special Tax*

Table 2 below identifies the Maximum Services Special Tax, before and after the Trigger Event, for Taxable Property in Improvement Area No. 1.

**TABLE 2  
IMPROVEMENT AREA NO. 1  
MAXIMUM SERVICES SPECIAL TAX**

<b>Type of Property</b>	<b>Maximum Services Special Tax Prior to Trigger Event</b>	<b>Maximum Services Special Tax After Trigger Event Fiscal Year 2015-16*</b>
<u>Single Family Residential Property</u> Village 1 Village 2 Village 3 Village 4 Village 5 Village 6 Village 7 Village 8	\$0 per Residential Unit \$0 per Residential Unit	\$503 per Residential Unit \$568 per Residential Unit \$567 per Residential Unit \$528 per Residential Unit \$697 per Residential Unit \$766 per Residential Unit \$454 per Residential Unit \$732 per Residential Unit
Business Park Property/ Undeveloped Business Park Property	\$0 per Acre	\$500 per Acre
Taxable Public Property and Taxable HOA Property	\$0 per Acre	\$1,000 per Acre
Undeveloped Property	\$0 per Acre	\$1,000 per Acre

**\* On July 1, 2016 and on each July 1 thereafter, all figures shown in Table 2 above shall be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year.**

Once Special Taxes have been levied on a Parcel of Developed Property, the Maximum Special Taxes applicable to that Parcel shall not be reduced in future Fiscal Years regardless of changes in land use on the Parcel, except (i) in the event of a partial prepayment pursuant to Section H, and (ii) pursuant to Section D. Notwithstanding the foregoing: (i) if Bonds have yet to be issued for Improvement Area No. 1, the Parcels can be assigned to the appropriate Special Tax category based on the Land Use Change, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding change in revenues, and (ii) the actual Special Taxes levied on a Parcel of Developed Property in any Fiscal Year may be less than the Maximum Special Taxes if lower Special Taxes are calculated pursuant to Step 1 in Sections E.1 and E.2 below.

**D. CHANGES TO MAXIMUM SPECIAL TAXES**

The Expected Maximum Facilities Special Tax Revenues were calculated based on the Expected Land Uses at CFD Formation. The Administrator shall review Final Maps, Tentative Map revisions, and other changes to land uses proposed within Improvement Area No. 1 and compare the revised land uses to the Expected Land Uses to evaluate the impact on the Expected Maximum Facilities Special Tax Revenues.

1. *Changes in Expected Land Uses*

If, prior to the issuance of the first series of Bonds, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D.1. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues.

If, prior to the Final Bond Sale, a Land Use Change is proposed that will result in a reduction in the Expected Maximum Facilities Special Tax Revenues, no action will be needed pursuant to this Section D.1 as long as the reduction does not reduce debt service coverage on outstanding Bonds below the Required Coverage. Upon approval of the Land Use Change, the Administrator shall update Attachment 1 to show the reduced Expected Maximum Facilities Special Tax Revenues, which amount shall be used to size the Final Bond Sale.

If a Land Use Change is proposed after the Final Bond Sale, the following steps shall be applied:

- Step 1:** By reference to Attachment 1 (which will be updated by the Administrator each time a Land Use Change has been processed according to this Section D.1 and or pursuant to Section D.2), the Administrator shall identify the Expected Maximum Facilities Special Tax Revenues for Improvement Area No. 1.
- Step 2:** The Administrator shall calculate the Maximum Facilities Special Tax Revenues that could be collected from property in Improvement Area No. 1 if the Land Use Change is approved.
- Step 3:** If the amount calculated in Step 2 is higher than that determined in Step 1, no further action is needed. If the revenues calculated in Step 2 are less than those calculated in Step 1, and if the landowner requesting the Land Use Change does not prepay the portion of the Expected Maximum Facilities Special Tax Revenues in an amount that corresponds to the lost revenue, then the Maximum Facilities Special Tax for each Parcel of Taxable Property in the area affected by the Land Use Change shall be increased proportionately until the aggregate Maximum Facilities Special Tax Revenues that can be generated from the area affected by the Land Use Change is the same as it was prior to the Land Use Change.

If multiple Land Use Changes are proposed simultaneously by a single land owner (which may include approval of multiple Final Maps at one time), the Administrator may consider the combined effect of all the Land Use Changes to determine if there is a reduction in Expected Maximum Facilities Special Tax Revenues. If there is a reduction, the Administrator shall increase the Maximum Facilities Special Tax proportionately in all of the Final Maps being proposed by the landowner until the aggregate amount that can be levied within the Final Maps is equal to the amount that could have been levied prior to the proposed Land Use Changes. If Land Use Changes are proposed simultaneously by multiple landowners, the Administrator shall consider the proposed Land Use Changes individually.

2. *Formation of City Services CFD*

If a City Services CFD is formed and Bonds have not yet been sold for Improvement Area No. 1, the Maximum Facilities Special Taxes set forth in Table 1 for Single Family Property in Fiscal Year 2015-16 shall be reduced by \$325 per Residential Unit (or such lower amount that is adopted as the maximum special tax or component thereof that will be used to mitigate fiscal impacts on the City by paying for fire protection, police protection, and/or public works maintenance services), and the Maximum Facilities Special Taxes, as reduced by this Section D.2, shall, on July 1, 2016 and on each July 1 thereafter, be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year. In addition, upon formation of the City Services CFD, the Maximum Services Special Taxes after the Trigger Event set forth in Table 2 for Fiscal Year 2015-16 shall be reduced to twenty percent (20%) of the reduced Maximum Facilities Special Taxes calculated pursuant to the sentence above. Such reduced Maximum Services Special Taxes shall, on July 1, 2016 and on each July 1 thereafter, be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year, as set forth in Section C. The Administrator shall record an Amended Notice of Special Tax Lien to reflect the reduced Maximum Facilities Special Taxes and Maximum Services Special Taxes.

3. *Transfer of Expected Maximum Facilities Special Tax Revenues from One Village to Another*

The Expected Maximum Facilities Special Tax Revenues were determined for each Village based on the Expected Land Uses within that Village. If the expected number of Residential Units is transferred from one Village to another, the City may, in its sole discretion, allow for a corresponding transfer of Expected Maximum Facilities Special Tax Revenues between the Villages. Such a transfer shall only be allowed if (i) all adjustments are agreed to in writing by the affected property owners and the City, and (ii) there is no reduction in the total Expected Maximum Facilities Special Tax Revenues as a result of the transfer.

4. *Conversion of a Parcel of Public Property to Private Use*

If, in any Fiscal Year, a Parcel of Public Property is converted to private use, such Parcel shall be subject to the levy of Special Taxes. The Maximum Special Taxes for each such Parcel shall be determined based on the average Maximum Special Taxes for Parcels with similar land use designations, as determined by the Administrator.

**E. METHOD OF LEVY OF THE SPECIAL TAXES**

1. *Facilities Special Tax*

Each Fiscal Year, the Administrator shall determine the Facilities Special Tax Requirement and levy the Facilities Special Tax on all Parcels of Taxable Property as follows:

**Step 1:** In the first twenty (20) Fiscal Years in which a Facilities Special Tax is levied within Improvement Area No. 1, the Maximum Facilities Special Tax shall be

levied on all Parcels of Developed Property. Any Facilities Special Tax proceeds collected that are determined by the Administrator to be Remainder Taxes shall be deposited into the Improvement Fund to pay any costs associated with the acquisition of Authorized Facilities that were not paid with Bond proceeds or Facilities Special Taxes levied in prior Fiscal Years.

Beginning in the twenty-first (21<sup>st</sup>) Fiscal Year in which a Facilities Special Tax is levied within Improvement Area No. 1 and continuing until the Trigger Event, the Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Developed Property until the amount levied is equal to the Facilities Special Tax Requirement, the calculation of which will include funding for Recycled Water Facilities Costs and/or other Authorized Facilities designated for funding, as determined in the sole discretion of the City.

After the Trigger Event, the Facilities Special Tax shall no longer be levied.

- Step 2:** If additional revenue is needed after Step 1 and after applying Capitalized Interest to the Special Tax Requirement, the Facilities Special Tax shall be levied Proportionately on (i) each Parcel of Undeveloped Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Undeveloped Property, and (ii) each Parcel of Undeveloped Business Park Property up to 100% of the Maximum Facilities Special Tax for each Parcel of Undeveloped Business Park Property.
- Step 3:** If additional revenue is needed after Step 2, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable HOA Property.
- Step 4:** If additional revenue is needed after Step 3, the Facilities Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Taxable Public Property.

## 2. *Services Special Tax*

Each Fiscal Year after the Trigger Event, the Administrator shall determine the Services Special Tax Requirement and levy the Services Special Tax on all Parcels of Taxable Property as follows:

- Step 1:** The Services Special Tax shall be levied Proportionately on each Parcel of Developed Property up to 100% of the Maximum Services Special Tax for each Parcel of Developed Property until the amount levied is equal to the Services Special Tax Requirement.

- Step 2:** If additional revenue is needed after Step 1, the Services Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property, up to 100% of the Maximum Services Special Tax for each Parcel of Undeveloped Property and Undeveloped Business Park Property.
- Step 3:** If additional revenue is needed after Step 2, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable HOA Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable HOA Property.
- Step 4:** If additional revenue is needed after Step 3, the Services Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property, up to 100% of the Maximum Services Special Tax for each Parcel of Taxable Public Property.

**F. MANNER OF COLLECTION OF SPECIAL TAXES**

The Special Taxes for Improvement Area No. 1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that partial prepayments are permitted as set forth in Section H below and provided further that the City may directly bill the Special Taxes, may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods.

The Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring Authorized Facilities from Facilities Special Tax proceeds have been paid, and all Administrative Expenses have been paid or reimbursed. However, in no event shall Facilities Special Taxes be levied for more than eighty (80) Fiscal Years. Under no circumstances may the Facilities Special Tax on a Parcel in residential use be increased in any Fiscal Year as a consequence of delinquency or default in payment of the Facilities Special Tax levied on another Parcel or Parcels by more than ten percent (10%) above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults. After the Trigger Event, the Services Special Tax may be levied and collected in perpetuity.

**G. EXEMPTIONS**

Any Parcel that becomes Public Property prior to the first series of Bonds being issued for Improvement Area No. 1 shall be exempt from both the Services Special Tax and the Facilities Special Tax; the Administrator shall reduce the Expected Maximum Facilities Special Tax Revenues to reflect any such exemption, and the first series of Bonds shall be sized based on the reduced Expected Maximum Facilities Special Tax Revenues. Any Parcel that becomes Public Property after the first series of Bonds are issued for Improvement Area No. 1 shall be exempt from both the Services Special Tax and the Facilities Special Tax provided such Parcel is not Taxable Public Property.

In addition, no Special Taxes shall be levied on (i) up to 61.45 Acres of HOA Property, with tax-exempt status assigned in chronological order based on the date on which Parcels were transferred to the Homeowners Association, (ii) Parcels that are designated as permanent open space or common space on which no structure is permitted to be constructed, (iii) Parcels owned by a public utility for an unmanned facility, and (iv) Parcels subject to an easement that precludes any use on the Parcel other than that permitted by the easement. Notwithstanding the foregoing, if a Facilities Special Tax has been levied on a Parcel in any Fiscal Year, and the entire Parcel subsequently meets the criteria in (ii), (iii) or (iv) above, the Parcel shall remain subject to the Facilities Special Tax levy, unless the first series of Bonds have yet to be issued for Improvement Area No. 1, in which case such property shall be categorized as Public Property, and the Administrator shall recalculate the Expected Maximum Facilities Special Tax Revenues based on the corresponding loss in revenues.

#### **H. PARTIAL PREPAYMENT OF FACILITIES SPECIAL TAX**

The following definitions apply to this Section H:

**“Outstanding Bonds”** means all Previously Issued Bonds which remain outstanding, with the following exception: if a Facilities Special Tax has been levied against, or already paid by, an Assessor’s Parcel making a prepayment, and a portion of the Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

**“Previously Issued Bonds”** means all Bonds that have been issued prior to the date of prepayment.

**“Public Facilities Requirements”** means: (i) \$47,500,000 in fiscal year 2015-16 dollars, which amount shall, on July 1, 2016 and on each July 1 thereafter, be increased by an amount equal to 2.0% of the amount in effect for the prior Fiscal Year, or (ii) such other number as shall be determined by the City to be an appropriate estimate of the net construction proceeds that will be generated from all Bonds that have been or are expected to be issued on behalf of Improvement Area No. 1.

**“Remaining Facilities Costs”** means the Public Facilities Requirements (as defined above), minus public facility costs funded by Previously Issued Bonds (as defined above), Remainder Taxes, or prepayments.

A property owner may prepay up to 80% of the Facilities Special Tax obligation applicable to a Parcel in Improvement Area No. 1, thereby reducing the Maximum Facilities Special Tax applicable to the Parcel, provided that a prepayment may be made only if there are no delinquent Special Taxes with respect to such Parcel at the time of prepayment. An owner of a Parcel intending to prepay a portion of the Facilities Special Tax obligation shall provide the City with

written notice of intent to prepay, which shall identify the percentage of the Maximum Facilities Special Tax that is to be prepaid. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for such Parcel. Prepayment must be made not less than 50 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Facilities Special Taxes.

The Prepayment Amount shall be calculated as follows (capitalized terms as defined below):

	Bond Redemption Amount
plus	Remaining Facilities Amount
plus	Redemption Premium
plus	Defeasance Requirement
plus	Administrative Fees and Expenses
less	<u>Reserve Fund Credit</u>
equals	Prepayment Amount

As of the proposed date of prepayment, the Prepayment Amount for a Parcel shall be determined by application of the following steps:

- Step 1.** Determine the Maximum Facilities Special Tax that could be levied on the Parcel based on the Expected Land Uses for the Parcel at the time the prepayment is calculated.
- Step 2.** Divide the Maximum Facilities Special Tax computed pursuant to Step 1 by the Expected Maximum Facilities Special Tax Revenues in that Fiscal Year.
- Step 3.** Multiply the quotient computed in Step 2 by the percentage of the Maximum Facilities Special Tax that the property owner wants to prepay, which percentage shall not exceed 80%.
- Step 4.** Multiply the quotient computed pursuant to Step 3 by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (*the “Bond Redemption Amount”*).
- Step 5.** Compute the current Remaining Facilities Costs (if any).
- Step 6.** Multiply the quotient computed pursuant to Step 3 by the amount determined pursuant to Step 5 to compute the amount of Remaining Facilities Costs to be prepaid (*the “Remaining Facilities Amount”*).
- Step 7.** Multiply the Bond Redemption Amount computed pursuant to Step 4 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (*the “Redemption Premium”*).
- Step 8.** Compute the amount needed to pay interest on the Bond Redemption Amount starting with the last Bond interest payment date on which

interest has been or will be paid by Facilities Special Taxes already levied until the earliest redemption date for the Outstanding Bonds.

- Step 9:** Compute the amount of interest the City reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after which the prepayment has been received until the redemption date for the Outstanding Bonds.
- Step 10:** Take the amount computed pursuant to Step 8 and subtract the amount computed pursuant to Step 9 (the “*Defeasance Requirement*”).
- Step 11.** Determine the costs of computing the prepayment amount, redeeming Bonds, and recording any notices to evidence the prepayment and redemption (the “*Administrative Fees and Expenses*”).
- Step 12.** If and to the extent so provided in the Indenture, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the “*Reserve Fund Credit*”).
- Step 13.** The Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 4, 6, 7, 10, and 11, less the amount computed pursuant to Step 12 (the “*Prepayment Amount*”).
- Step 14.** From the Prepayment Amount, the amounts computed pursuant to Steps 4, 7, and 10 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Step 6 shall be deposited into the Improvement Fund. The amount computed pursuant to Step 11 shall be retained in the account or fund that is established to pay Administrative Expenses.

Once a partial prepayment of a Facilities Special Tax has been received, an Amendment to Special Tax Lien shall be recorded against the Parcel to reflect the reduced Facilities Special Tax lien for the Parcel, which shall be equal to the portion of the Maximum Facilities Special Tax that was not prepaid. However, an Amendment to Special Tax Lien shall not be recorded until all Facilities Special Taxes levied on the Parcel in the current or prior Fiscal Years have been collected. The prepayment of a portion of the Facilities Special Tax shall not affect the perpetual obligation to pay the Services Special Tax.

## **I. INTERPRETATION OF SPECIAL TAX FORMULA**

The City may interpret, clarify, and revise this RMA to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, that does not create a material adverse effect on the levy and collection of the Special Taxes and any security for any Bonds.

**ATTACHMENT 1**

**Improvement Area No. 1 of the  
City of Tracy  
Community Facilities District No. 2016-1  
(Tracy Hills)**

**Expected Land Uses and Expected Maximum Facilities Special Tax Revenues**

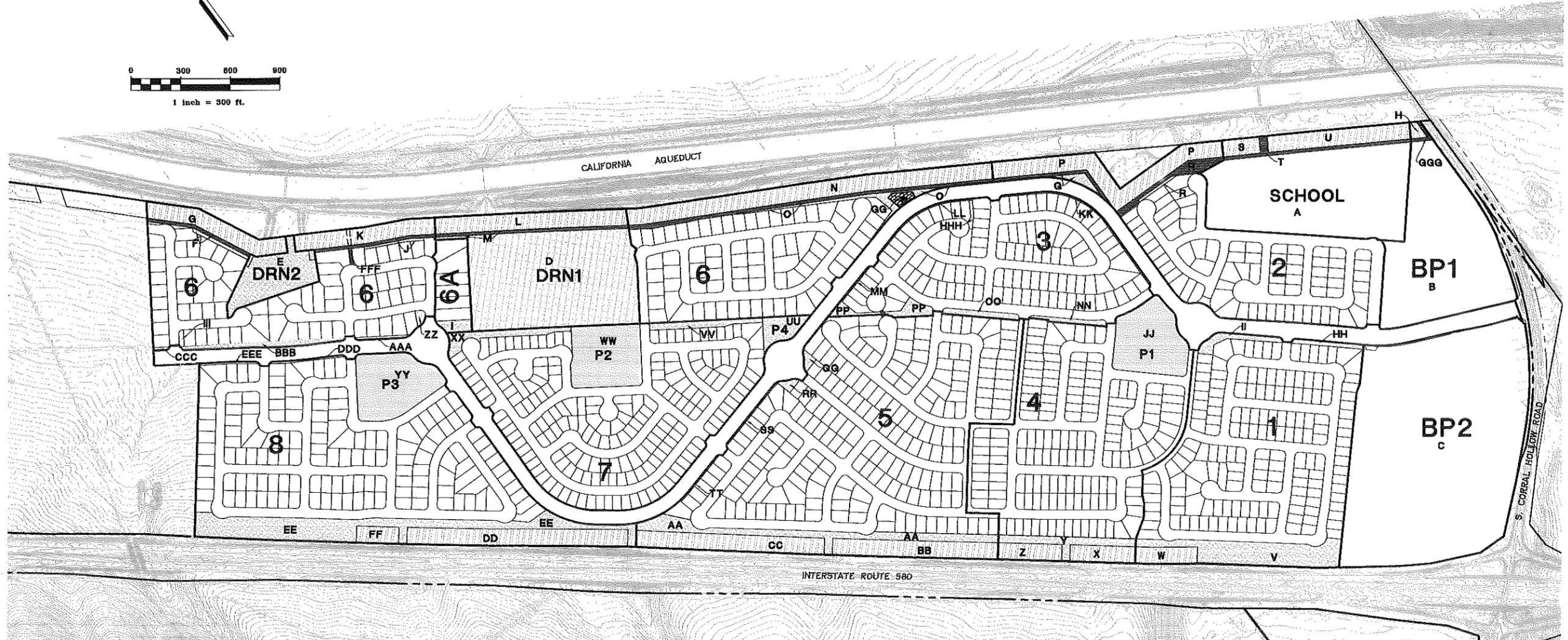
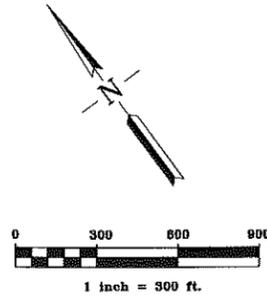
<b>Village</b>	<b>Expected Land Uses</b>	<b>Estimated Facilities Special Tax per Unit FY 2015-16 /1</b>	<b>Expected Maximum Facilities Special Tax Revenues FY 2015-16 /1</b>
Village 1	160 Residential Units	\$2,514 per Residential Unit	\$402,240
Village 2	74 Residential Units	\$2,839 per Residential Unit	\$210,086
Village 3	105 Residential Units	\$2,837 per Residential Unit	\$297,885
Village 4	150 Residential Units	\$2,638 per Residential Unit	\$395,700
Village 5	198 Residential Units	\$3,487 per Residential Unit	\$690,426
Village 6	146 Residential Units /2	\$3,828 per Residential Unit	\$558,888
Village 7	182 Residential Units	\$2,270 per Residential Unit	\$413,140
Village 8	139 Residential Units	\$3,658 per Residential Unit	\$508,462
N/A	50.8 Acres of Business Park Property	\$2,500 per Acre	\$127,000
<b>Total</b>	<b>1,160 Residential Units and 50.8 Acres of Business Park Property</b>	<b>N/A</b>	<b>\$3,476,827</b>

1. On July 1, 2016 and each July 1 thereafter, the Estimated Facilities Special Tax per Unit and the Expected Maximum Facilities Special Tax Revenues shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.
2. Does not include 6 units in Village 6A, the timing of development of which is uncertain.

**ATTACHMENT 2**

**Improvement Area No. 1 of the  
City of Tracy  
Community Facilities District No. 2016-1  
(Tracy Hills)**

**Vesting Tentative Tract Map—Tract 3788**



PARCEL SUMMARY		
PARCEL	OWNER	ACRES
A	SCHOOL	14.0
B	DEVELOPER	16.4
C	DEVELOPER	33.6
D	CITY	16.7
E	HOA	2.4
F	HOA	0.5
G	HOA	2.1
H	HOA/DEVELOPER	0.2
I	HOA	0.3
J	HOA	0.5
K	HOA	1.9
L	HOA	2.7
M	HOA	0.6
N	HOA	5.1
O	HOA	0.4
P	HOA	3.7
Q	HOA	0.6
R	HOA	0.8
S	HOA	0.5
T	HOA	0.6
U	HOA	2.0
V	HOA	2.8
W	HOA	0.9
X	HOA	0.9
Y	HOA	1.4
Z	HOA	0.9
AA	HOA	2.5
BB	HOA	2.3
CC	HOA	2.6
DD	HOA	3.2

EE	HOA	5.2
FF	HOA	0.6
GG	CITY	0.2
HH	HOA	0.3
II	HOA	0.5
JJ	CITY	3.8
KK	HOA	0.2
LL	HOA	0.2
MM	HOA	0.1
NN	HOA	0.3
OO	HOA	0.4
PP	HOA	0.7
QQ	HOA	0.1
RR	HOA	0.1
SS	HOA	0.1
TT	HOA	0.1
UU	HOA	0.8
VV	HOA	0.6
WW	CITY	3.6
XX	HOA	0.9
YY	CITY	3.9
ZZ	HOA	0.1
AAA	HOA	0.1
BBB	HOA	0.6
CCC	HOA	0.1
DDD	HOA	0.1
EEE	HOA	0.1
FFF	HOA	0.1
GGG	HOA/DEVELOPER	0.1
HHH	HOA	0.7
III	HOA	0.7
DRN1	CITY	13.9
DRN2	HOA	3.0

LOT SUMMARY			
NEIGHBORHOOD	ACRES	LOT COUNT	TYPICAL LOT SIZE
1	35.9	160	55'x90'
2	19.0	74	55'x100'
3	25.3	105	55'x100'
4	35.1	150	50'x100'
5	51.8	198	60'x100'
6	54.7	146	70'x100'
6A	2.7	6	70'x100'
7	36.3	182	50'x80'
8	48.0	139	65'x100'
TOTAL	317.1	1,160	-

PARK SUMMARY		
PARK	ACRES	OWNER
P1	3.8	CITY
P2	3.6	CITY
P3	3.9	CITY
P4	0.8	HOA
TOTAL	12.1	-

OTHER LAND USES	
USE	ACRES
SPINE ROAD	23.2
CORRAL HOLLOW RD. ULT. R/W	1.3
SCHOOL	14.0
BP1 (NET)	13.2
BP2 (NET)	31.9
DRN1-FOR DRAINAGE	13.9
DRN2-FOR DRAINAGE	3.0
TOTAL	100.5

**LEGEND:**

- PUBLIC PARK (CITY OWNED & MAINTAINED)
- PUMP STATION (CITY OWNED & MAINTAINED)
- PROPOSED 20' UTILITY AND ACCESS EASEMENT (HOA OWNED & MAINTAINED PARCELS, CITY MAINTAINED UTILITIES)
- EXISTING CONSERVATION EASEMENT (HOA OWNED & MAINTAINED)
- IN TRACT OPEN SPACE (HOA OWNED & MAINTAINED)
- RETENTION BASIN (CITY OWNED & MAINTAINED)

NOTES  
 (1) ACCESS SHALL BE RELINQUISHED ALONG THE FOLLOWING PARCELS.  
 A) BP1 & BP2 ALONG CORRAL HOLLOW ROAD  
 B) INDIVIDUAL RESIDENTIAL LOTS THAT BACK TO THE SPINE ROAD  
 C) INDIVIDUAL RESIDENTIAL LOTS ALONG SIDE YARD/PUBLIC ROADWAY

**VESTING TENTATIVE MAP - TRACT 3788**  
**TRACY HILLS OWNERSHIP EXHIBIT**  
 CITY OF TRACY, SAN JOAQUIN COUNTY, CALIFORNIA  
 FOR: INTEGRAL COMMUNITIES

**RJA**  
**RUGGERI-JENSEN-AZAR**  
 ENGINEERS • PLANNERS • SURVEYORS  
 2541 WARREN DRIVE, SUITE 100 ROCKLIN, CA 95677  
 PHONE: (916) 630-8900 FAX: (916) 630-8909

G:\A06202\121083\TRM-446\SMALL LOT TRM - 121083.DWG 2/17/2016 4:58:04 PM MARK FALCOUT

RESOLUTION NO. \_\_\_\_\_

RESOLUTION DETERMINING NECESSITY TO INCUR BONDED INDEBTEDNESS  
AND OTHER DEBT

CITY OF TRACY  
Community Facilities District No. 2016-1  
(Tracy Hills)

RESOLVED, by the City Council (the "City Council") of the City of Tracy (the "City"), State of California, that:

WHEREAS, on June 7, 2016, pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act"), this City Council adopted a resolution entitled "Resolution of Intention to Establish a Community Facilities District" (the "Resolution of Intention") stating its intention to form (i) "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "CFD"), (ii) "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 1"), and (iii) a future annexation area for the CFD (the "Future Annexation Area");

WHEREAS, also in the Resolution of Intention, this City Council determined that it may be necessary to designate additional improvement areas in the CFD as a result of the annexation of territory from the Future Annexation Area (each, a "Future Improvement Area"); and

WHEREAS, on June 7, 2016, this City Council also adopted a resolution entitled "Resolution of Intention to Incur Bonded Indebtedness and Other Debt" (the "Resolution of Intention to Incur Indebtedness") stating its intention to incur bonded indebtedness and other debt (as defined in the Act) within the boundaries of the CFD and Improvement Area No. 1 for the purpose of financing the costs of certain facilities specified in the Resolution of Intention;

WHEREAS, this City Council has held a noticed public hearing as required by the Act about the determination to proceed with the formation of the CFD, Improvement Area No. 1 and the Future Annexation Area, the provision of certain public facilities and public services by the CFD and the rate and method of apportionment of the special tax to be levied within Improvement Area No. 1 to pay the cost of the facilities and the services, the principal and interest on the proposed bonded indebtedness in Improvement Area No. 1 and the administrative costs of the City relative to the CFD;

WHEREAS, subsequent to the public hearing, this City Council adopted a resolution entitled "Resolution of Formation of Community Facilities District" (the "Resolution of Formation");

WHEREAS, this City Council has also held a noticed public hearing as required by the Act relative to the matters material to the questions set forth in the Resolution of Intention to Incur Indebtedness; and

WHEREAS, no written protests with respect to the matters material to the questions set forth in the Resolution of Intention to Incur Indebtedness have been filed with the City Clerk.

NOW THEREFORE BE IT RESOLVED as follows:

1. Recitals. The foregoing recitals are true and correct.

2. Necessity. In order to finance the costs of the Facilities, including, but not limited to, the costs of issuing and selling bonds and incurring other debt to finance all or a portion of the Facilities and the costs of the City in establishing and administering the CFD, it is necessary for the City to incur bonded indebtedness and other debt in one or more series on behalf of Improvement Area No. 1 in an aggregate amount not to exceed \$70,000,000 (the "Improvement Area No. 1 Indebtedness Limit").

In order to finance the costs of the Facilities, including, but not limited to, the costs of issuing and selling bonds and incurring other debt to finance all or a portion of the Facilities and the costs of the City in establishing and administering the CFD, it is necessary for the City to incur bonded indebtedness and other debt in one or more series on behalf of the CFD with respect to those portions of the CFD that are not included in Improvement Area No. 1 in an aggregate amount not to exceed \$215,000,000 (the "Non-Improvement Area No. 1 Indebtedness Limit"). The designation as an improvement area of any territory annexing to the CFD, the maximum amount of bonded indebtedness and other debt for such improvement area, the rate and method of apportionment of special tax for such improvement area and the appropriations limit for such improvement area shall be identified and approved in the unanimous approval executed by property owners in connection with their annexation to the CFD, subject to the conditions set forth in the Resolution of Formation. In the event all or a portion of the Future Annexation Area is annexed as one or more Future Improvement Areas, the maximum indebtedness of each such Future Improvement Area shall be identified in the unanimous approval of the property owners of the property to be annexed at the time of the annexation, as set forth in the Resolution of Formation, and the amount of the maximum indebtedness for the Future Improvement Area shall be subtracted from the Non-Improvement Area No. 1 Indebtedness Limit.

3. Improvement Areas Liable. The whole of Improvement Area No. 1 shall pay for the bonded indebtedness and other debt issued by the City for Improvement Area No. 1 through the levy of the special tax. The tax shall be apportioned in accordance with the formula set forth in Exhibit "B" to the Resolution of Formation.

4. Bonds and Other Debt. Subject to Section 2 above, bonds and other debt (as defined in the Act) in the aggregate maximum amount of \$70,000,000 are hereby authorized for Improvement Area No. 1 subject to voter approval. The bonds and other debt may be issued in one or more series and mature and bear interest at such rate or rates, payable semiannually or in such other manner, all as this City Council or its designee shall determine, at the time or times of sale of such bonds and other debt; provided, however, that the interest rate or rates shall not to exceed the maximum interest rate permitted by applicable law at the time of sale of the bonds and other debt and the bonds and other debt or any series thereof shall have a maximum term of not to exceed 40 years.

5. Election. The proposition of the City incurring the bonded indebtedness and other debt for Improvement Area No. 1 herein authorized shall be submitted to the qualified electors of Improvement Area No. 1 and shall be consolidated with elections on the proposition of levying special taxes within Improvement Area No. 1 and the establishment of an appropriations limit for Improvement Area No. 1 pursuant to Section 53353.5 of the Act. The

time, place and further particulars and conditions of such election shall be as specified by separate resolution of this City Council.

6. Effective Date. This Resolution shall take effect upon its adoption.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council the 19th day of July, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

RESOLUTION NO. \_\_\_\_\_

RESOLUTION CALLING SPECIAL ELECTION

CITY OF TRACY  
Community Facilities District No. 2016-1  
(Tracy Hills)

WHEREAS, pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act"), this City Council has adopted a resolution entitled "Resolution of Formation of Community Facilities District" (the "Resolution of Formation"), ordering the formation of (i) "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "CFD"), (ii) "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 1"), and (iii) a future annexation area for the CFD (the "Future Annexation Area"), authorizing the levy of a special tax on property within Improvement Area No. 1 and preliminarily establishing an appropriations limit for Improvement Area No. 1; and

WHEREAS, this City Council has also adopted a resolution entitled "Resolution Determining the Necessity to Incur Bonded Indebtedness and Other Debt" (the "Resolution Determining Necessity"), determining the necessity to incur bonded indebtedness in the maximum aggregate principal amount of \$70,000,000 for Improvement Area No. 1 upon the security of the special tax to be levied within Improvement Area No. 1 pursuant to the Act; and

WHEREAS, pursuant to the provisions of the Resolution of Formation and the Resolution Determining Necessity, the propositions of the levy of the special tax, the establishment of the appropriations limit and the incurring of the bonded indebtedness and other debt shall be submitted to the qualified electors of Improvement Area No. 1 as required by the provisions of the Act;

NOW THEREFORE BE IT RESOLVED, as follows:

1. Issues Submitted. Pursuant to Sections 53326, 53351 and 53325.7 of the Act, the issues of the levy of the special tax, the incurring of bonded indebtedness and other debt and the establishment of the appropriations limit shall be submitted to the qualified electors (as defined below) of Improvement Area No. 1 at an election called therefor as provided below.

2. Qualified Electors. This Council hereby finds that fewer than 12 persons have been registered to vote within the territory of Improvement Area No. 1 for each of the 90 days preceding the close of the public hearings heretofore conducted and concluded by this Council for the purposes of these proceedings. Accordingly, and pursuant to Section 53326 of the Act, this Council finds that, for these proceedings, the qualified electors are the landowners within Improvement Area No. 1 and that the vote shall be by such landowners or their authorized representatives, each having one vote for each acre or portion thereof such landowner owns in Improvement Area No. 1 not exempt from the special tax as of the close of the public hearings.

3. Conduct of Election. This Council hereby calls a special election in Improvement Area No. 1 to consider the measures described in section 1 above, which election shall be held on July 19, 2016, and the results thereof canvassed at the meeting of this Council on July 19, 2016. The City Clerk is hereby designated as the official to conduct the election and to receive

all ballots until 7:00 p.m. on the election date. It is hereby acknowledged that the City Clerk has on file the Resolution of Formation, a certified map of the boundaries of the CFD and Improvement Area No. 1, and a sufficient description to allow the City Clerk to determine the electors of Improvement Area No. 1. Pursuant to Section 53327 of the Act, the election shall be conducted by messenger or mail-delivered ballot pursuant to Section 4000 of the California Elections Code, except that Sections 53326 and 53327 of the Act shall govern for purposes of determining the date of election.

4. Ballot. As authorized by Section 53353.5 of the Act, the three propositions described in section 1 above shall be combined into a single ballot measure for Improvement Area No. 1, the form of which is attached hereto as Exhibit "A" and by this reference incorporated herein and the form of ballot is hereby approved. The City Clerk is hereby authorized and directed to cause a ballot, in substantially the form of Exhibit "A," to be delivered to each of the qualified electors of Improvement Area No. 1. Each ballot shall indicate the number of votes to be voted by the respective landowner to which the ballot pertains. Each ballot shall be accompanied by all supplies and written instructions necessary for the use and return of the ballot. The envelope to be used to return the ballot was enclosed with the ballot, had the return postage prepaid, and contained the following: (a) the name and address of the landowner, (b) a declaration, under penalty of perjury, stating that the voter is the owner of record or authorized representative of the landowner entitled to vote and is the person whose name appears on the envelope, (c) the printed name, signature and address of the voter, (d) the date of signing and place of execution of the declaration pursuant to clause (b) above, and (e) a notice that the envelope contains an official ballot and is to be opened only by the canvassing board of the election.

5. Waivers. This Council hereby further finds that the provisions of Section 53326 of the Act requiring a minimum of 90 days following the adoption of the Resolution of Formation to elapse before the special election are for the protection of the qualified electors of Improvement Area No. 1. There is on file with the City Clerk a written waiver executed by all of the qualified electors of Improvement Area No. 1 allowing for a shortening of the time for the special election to expedite the process of formation of Improvement Area No. 1 and waiving any requirement for notice, analysis and arguments in connection with the election. Accordingly, this Council finds and determines that the qualified electors have been fully apprised of and have agreed to the shortened time for the election and waiver of analysis and arguments, and have thereby been fully protected in these proceedings. This Council also finds and determines that the City Clerk has concurred in the shortened time for the election. Analysis and arguments with respect to the ballot measures are hereby waived, as provided in Section 53327 of the Act.

6. Local Bond Measure; Accountability. The City Council hereby finds that the proposed issuance of bonds and other debt for Improvement Area No. 1 constitutes a "local bond measure" within the meaning of Sections 53410, et seq. of the California Government Code. As a result, the bond measure shall include the propositions set forth above and the following: (a) the specific purpose of the bonds and other debt shall be as set forth in the propositions; (b) any proceeds received from the sale of any bonds and other debt shall be applied only to the purposes set forth in the propositions; (c) the proceeds of any bonds and other debt shall be deposited into special accounts to be created therefor as part of the issuance of the bonds and other debt; and (d) the City shall cause a report to be prepared annually under Section 53411 of the Government Code.

Under Section 50075.1 of the Government Code, the following accountability provisions shall apply to the special taxes: (a) the provision and/or acquisition of the Facilities and the Services, the payment of debt service on the bonds and other debt and the incidental costs thereof, all as defined in the Resolution of Formation, shall constitute the specific single purpose; (b) the proceeds shall be applied only to the specific purposes identified in (a) above; (c) there shall be created special account(s) or funds(s) into which the proceeds shall be deposited; and (d) there shall be caused to be prepared an annual audit and report of the CFD.

7. Effective Date. This Resolution shall take effect upon its adoption.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council the 19th day of July, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

EXHIBIT A

CITY OF TRACY  
Community Facilities District No. 2016-1  
(Tracy Hills)

OFFICIAL BALLOT  
SPECIAL TAX ELECTION

Improvement Area No. 1

This ballot is for a special, landowner election. You must return this ballot in the enclosed postage paid envelope to the office of the City Clerk of the City of Tracy no later than the hour of 7:00 p.m. on July 19, 2016, either by mail or in person. The City Clerk's office is located at 333 Civic Center Plaza, Tracy, California 95376.

To vote, mark a cross (X) on the voting line after the word "YES" or after the word "NO". All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void.

If you wrongly mark, tear, or deface this ballot, return it to the City Clerk of the City of Tracy and obtain another.

Shall the City of Tracy (the "City") levy a special tax solely on lands within Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) ("Improvement Area") in accordance with the rate and method contained in the Resolution of Formation of Community Facilities District related to the Improvement Area ("Formation Resolution"), commencing in the City's fiscal year 2016-17, to pay for the public facilities and the public services specified in the Formation Resolution and to pay the costs of the City in administering the Improvement Area; shall the annual appropriations limit of the Improvement Area be established in the amount of \$70,000,000; and shall the City issue bonds and incur other debt ("bonds") for the Improvement Area in the maximum aggregate principal amount of \$70,000,000 with interest at a rate or rates not to exceed the maximum interest rate permitted by law at the time of sale of such bonds on behalf of the Improvement Area, the proceeds of which bonds will be used to acquire and/or construct certain facilities and pay for the costs of issuing the bonds and related expenses?

YES: \_\_\_\_\_

NO: \_\_\_\_\_

By execution in the space provided below, you also indicate your waiver of (i) the time limit pertaining to the conduct of the election, (ii) any requirement for analysis and arguments with respect to the ballot measure, and (iii) any irregularity in the proceedings that may be claimed as a result of the application of such waivers.

Number of Votes: 418

Property Owner:

TRACY PHASE I, LLC,  
A Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION DECLARING RESULTS OF SPECIAL ELECTION AND DIRECTING  
RECORDING OF NOTICE OF SPECIAL TAX LIEN

CITY OF TRACY  
Community Facilities District No. 2016-1  
(Tracy Hills)

RESOLVED, by the City Council (the "Council") of the City of Tracy (the "City"), County of San Joaquin, State of California, that:

WHEREAS, pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act"), this City Council has adopted a resolution entitled "Resolution of Formation of Community Facilities District" (the "Resolution of Formation"), ordering (i) the formation of (A) "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "CFD") and (B) "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 1"); and (ii) authorizing the levy of a special tax on property within Improvement Area No. 1 and preliminarily establishing an appropriations limit for Improvement Area No. 1; and

WHEREAS, this City Council has also adopted a resolution entitled "Resolution Determining the Necessity to Incur Bonded Indebtedness and Other Debt" (the "Resolution of Necessity"), determining the necessity to incur bonded indebtedness in the maximum aggregate principal amount of \$70,000,000 for Improvement Area No. 1 upon the security of the special tax to be levied within Improvement Area No. 1 pursuant to the Act; and

WHEREAS, under the provisions of the Resolution of Formation and the Resolution Necessity and pursuant to a "Resolution Calling Special Election" (the "Election Resolution") adopted by this City Council, the propositions of the levy of the special tax, the establishment of the appropriations limit and the incurring of the bonded indebtedness were submitted to the qualified electors of Improvement Area No. 1 as required by the provisions of the Act.

WHEREAS, pursuant to the terms of the Election Resolution, which are by this reference incorporated herein, the special election has been held in Improvement Area No. 1 and the City Clerk has on file a Canvass and Statement of Results of Election, (the "Canvass") a copy of which is attached hereto as Exhibit A; and

WHEREAS, this City Council has reviewed the Canvass, finds it appropriate and wishes to complete its proceedings for Improvement Area No. 1.

NOW THEREFORE BE IT RESOLVED, as follows:

1. Recitals. The foregoing recitals are all true and correct.
2. Issues Presented. The issues presented at the special election were the levy of a special tax within Improvement Area No. 1, the incurring of a bonded indebtedness for Improvement Area No. 1, and the approval of an annual appropriations limit for Improvement Area No. 1, all pursuant to the Resolution of Formation and the Resolution of Necessity.

3. Canvass and Issues Approved. The Council hereby approves the Canvass and finds that it shall be a permanent part of the record of its proceedings for Improvement Area No. 1. Pursuant to the Canvass, the issues presented at the special election were approved by the qualified electors of Improvement Area No. 1 by more than two-thirds (2/3) of the votes cast at the special election.

4. Proceedings Approved. Pursuant to the voter approval, Improvement Area No. 1 is hereby declared to be fully formed with the authority to levy the special taxes, to incur the approved bonded indebtedness and to have the established appropriations limit, all as heretofore provided in these proceedings and in the Act. It is hereby found that all prior proceedings and actions taken by this City Council with respect to the CFD, Improvement Area No. 1 and the Future Annexation Area were valid and in conformity with the Act.

5. Notice of Tax Lien. The City Clerk is hereby directed to complete, execute and cause to be recorded in the office of the County Recorder of the County of San Joaquin a notice of special tax lien for Improvement Area No. 1 in the form required by the Act, such recording to occur no later than fifteen (15) days following adoption by the Council of this resolution.

6. Effective Date. This Resolution shall take effect upon its adoption.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council the 19th day of July, 2016, by the following vote:

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

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

CANVASS AND STATEMENT OF RESULT OF ELECTION

CITY OF Tracy  
 Community Facilities District No. 2016-1  
 (Tracy Hills)

Improvement Area No. 1

I hereby certify that on July 19, 2016 I canvassed the returns of the election held on July 19, 2016 in Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) and the total number of ballots cast in said District and the total number of votes cast for and against the measure are as follows and the totals as shown for and against the measure are full, true and correct:

	Qualified Landowner <u>Votes</u>	Votes <u>Cast</u>	<u>YES</u>	<u>NO</u>
Improvement Area No. 1 City of Tracy Community Facilities District No. 2016-1 (Tracy Hills), Special Tax Election, July 19, 2016	418	_____	_____	_____

Shall the City of Tracy (the "City") levy a special tax solely on lands within Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) ("Improvement Area") in accordance with the rate and method contained in the Resolution of Formation of Community Facilities District related to the Improvement Area ("Formation Resolution"), commencing in the City's fiscal year 2016-17, to pay for the public facilities and the public services specified in the Formation Resolution and to pay the costs of the City in administering the Improvement Area; shall the annual appropriations limit of the Improvement Area be established in the amount of \$70,000,000; and shall the City issue bonds and incur other debt ("bonds") for the Improvement Area in the maximum aggregate principal amount of \$70,000,000 with interest at a rate or rates not to exceed the maximum interest rate permitted by law at the time of sale of such bonds on behalf of the Improvement Area, the proceeds of which bonds will be used to acquire and/or construct certain facilities and pay for the costs of issuing the bonds and related expenses?

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND this 19th day of July, 2016.

By: \_\_\_\_\_  
 City Clerk

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TRACY LEVYING SPECIAL TAXES WITHIN CITY OF TRACY COMMUNITY FACILITIES DISTRICT NO. 2016-1 (TRACY HILLS)**

**WHEREAS**, pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, sections 53311, *et. seq.*, of the California Government Code (the "Act"), on June 7, 2016, this City Council (the "City Council") of the City of Tracy (the "City"), adopted its Resolution No. \_\_\_\_\_ entitled "Resolution of Intention to Establish Community Facilities District" (the "Resolution to Establish") stating its intention to establish (i) "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "CFD"), (ii) "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 1"), and (iii) "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (Future Annexation Area)" (the "Future Annexation Area"), to finance the acquisition and construction of certain public facilities and public services;

**WHEREAS**, in the Resolution of Intention to Establish, this City Council determined that it may be necessary to designate additional improvement areas when territory in the Future Annexation Area annexes into the CFD (each, a "Future Improvement Area"); and

**WHEREAS**, notice was published as required by the Act relative to the intention of this City Council to form the CFD, Improvement Area No. 1 and the Future Annexation Area, to provide for certain public facilities and public services and to incur bonded indebtedness for Improvement Area No. 1;

**WHEREAS**, this City Council has held noticed public hearings as required by the Act relative to (i) the determination to proceed with the formation of the CFD and Improvement Area No. 1 and the rate and method of apportionment of the special tax to be levied within Improvement Area No. 1 to finance a portion of the costs of the public facilities and public services and (ii) the issuance of bonded indebtedness and other debt for Improvement Area No. 1;

**WHEREAS**, at said hearing all persons desiring to be heard on all matters pertaining to the formation of the CFD and Improvement Area No. 1 and the levy of said special taxes were heard, substantial evidence was presented and considered by this City Council and a full and fair hearing was held;

**WHEREAS**, subsequent to the hearing, this City Council adopted its Resolution No. \_\_\_\_\_ entitled "Resolution of Formation of Community Facilities District" (the "Resolution of Formation"), its Resolution No. \_\_\_\_\_ entitled "Resolution Determining the Necessity to Incur Bonded Indebtedness" (the "Resolution of Necessity") and its Resolution No. \_\_\_\_\_ entitled "Resolution Calling Special Election", which resolutions defined the public facilities to be financed by the CFD (the "Facilities") and the public services to be financed by the CFD (the "Services"), established the CFD, Improvement Area No. 1 and the Future Annexation Area, authorized the levy of a special tax within Improvement Area No. 1, determined the necessity to incur bonded indebtedness in Improvement Area No. 1 and called an election within Improvement Area No. 1 on the propositions of incurring indebtedness, levying a special tax, and establishing an appropriations limit within Improvement Area No. 1, respectively; and

**WHEREAS**, on July 19, 2016 a special election was held within Improvement Area No. 1 at which the eligible landowner-electors approved such propositions by the two-thirds vote required by the Act.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TRACY DOES ORDAIN**, as follows:

**Section 1.** By the passage of this Ordinance this City Council hereby authorizes and levies special taxes within Improvement Area No. 1 and on any parcels in the Future Annexation Area that are annexed into Improvement Area No. 1 or a Future Improvement Area pursuant to the Act. With respect to Improvement Area No.1, the City shall levy the special taxes at the rate and in accordance with the formula (the "Improvement Area No. 1 Rate and Method") set forth in the Resolution of Formation, which Resolution of Formation is by this reference incorporated herein. With respect to Future Improvement Areas, the City shall levy the special taxes at the rate and in accordance with the formula approved by the qualified electors in the Future Improvement Areas in the manner required by the Act (each, a "Future Rate and Method"; together with the Improvement Area No. 1 Rate and Method, the "Rate and Methods"). The special taxes are hereby levied commencing in fiscal year 2016-17 and in each fiscal year thereafter for the period provided in applicable Rate and Methods, as contemplated by the Resolution of Formation and the Resolution of Necessity, and all costs of administering the CFD.

**Section 2.** The Administrative Services Director of the City is hereby authorized and directed each fiscal year to determine the specific special tax rate and amount to be levied for the next ensuing fiscal year for each parcel of real property within Improvement Area No. 1 and each Future Improvement Area, in the manner and as provided in the Resolution of Formation.

**Section 3.** Except as provided in the Rate and Methods, properties or entities of the State, federal or local governments shall be exempt from any levy of the special taxes. In no event shall the special taxes be levied on any parcel within Improvement Area No. 1 or a Future Improvement Area (including any parcels in the Future Annexation Area that are annexed into the CFD) in excess of the maximum tax specified in the Resolution of Formation.

**Section 4.** All of the collections of the special tax shall be used as provided for in the Act and in the Resolution of Formation including, but not limited to, the payment of principal and interest on bonds and other debt (as defined in the Act) issued by the City for Improvement Area No. 1 or a Future Improvement Area (the "Bonds"), the replenishment of the reserve fund for the Bonds, the payment of the costs of the Facilities and the Services, the payment of the costs of the City in administering the CFD, and the costs of collecting and administering the special tax.

**Section 5.** The special taxes shall be collected in the same manner as ordinary ad valorem taxes are collected and shall have the same lien priority, and be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for ad valorem taxes; provided, however, that this City Council may provide for other appropriate methods of collection by resolutions of this City Council. In addition, the provisions of Section 53356.1 of the Act shall apply to delinquent special tax payments. The Administrative Services Director of the City is hereby authorized and directed to provide all necessary information to the auditor/tax collector of the County of San Joaquin in order to effect proper billing and collection of the special tax, so that the special tax shall be included on the secured property tax roll of the

County of San Joaquin for fiscal year 2016-17 and for each fiscal year thereafter until the Bonds are paid in full or such longer period of time provided in the Rate and Methods.

**Section 6.** If for any reason any portion of this Ordinance is found to be invalid, or if the special tax is found inapplicable to any particular parcel within an Improvement Area or a Future Improvement Area, by a court of competent jurisdiction, the balance of this Ordinance and the application of the special tax to the remaining parcels within Improvement Area No. 1 or a Future Improvement Area (including any parcels in the Future Annexation Area that are annexed into the CFD) shall not be affected.

**Section 7.** The Mayor shall sign this Ordinance and the City Clerk shall cause the same to be published within fifteen (15) days after its passage at least once in a newspaper of general circulation.

**Section 8.** This Ordinance shall take effect 30 days from the date of final passage.

\* \* \* \* \*

The foregoing Ordinance was adopted this \_\_\_\_ day of \_\_\_\_\_, 2016 by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF SPECIAL TAX BONDS, AND  
APPROVING AND AUTHORIZING  
RELATED DOCUMENTS AND ACTIONS**

**Improvement Area No. 1 of the  
City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)**

RESOLVED by the City Council (the "City Council") of the City of Tracy (the "City"), County of San Joaquin, State of California, that:

WHEREAS, the City Council has conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the "Act"), to form (i) "City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "CFD") and (ii) "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" ("Improvement Area No. 1"), to authorize the levy of special taxes upon the land within Improvement Area No. 1, and to issue bonds and other debt (as defined in the Act) secured by said special taxes for the purpose of financing certain public improvements (the "Facilities"), all as described in those proceedings; and

WHEREAS, on February 4, 2014, by Resolution No. 2014-019, the Council adopted a Resolution adopting local goals and policies for community facilities districts (the "Goals and Policies"); and

WHEREAS, the Council now wishes to provide for the issuance of special tax bonds for the CFD with respect to Improvement Area No. 1 to finance a portion of the Facilities and related costs and expenses, and wishes to direct staff to prepare and return to this Council for approval of certain documents providing for the issuance of the special tax bonds; and

NOW, THEREFORE, IT IS ORDERED as follows:

Section 1. Bonds Authorized. Pursuant to the Act and this Resolution, special tax bonds designated the "Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Special Tax Bonds, Series 2016" (the "Bonds") are hereby authorized to be issued in one or more series in an aggregate principal amount not to exceed \$70,000,000.

The Bonds shall be secured by and payable from special taxes levied and collected in Improvement Area No. 1.

Section 2. Authorities Granted. City staff is hereby directed to work with the City's consultants to prepare the documentation required for the issuance of the Bonds and to return to this Council for its approval of such documentation.

Section 3. Actions Authorized. All actions heretofore taken by the officers and agents of the City with respect to the establishment of the CFD and the sale and issuance of the Bonds

RESOLUTION NO. \_\_\_\_\_

are hereby approved, confirmed and ratified, and the appropriate officers of the City are hereby authorized and directed to do any and all things and take any and all actions and execute any and all certificates, agreements and other documents, which they, or any of them, may deem necessary or advisable in order to accomplish the purposes of this Resolution.

Section 4. Effectiveness. This Resolution shall take effect from and after its adoption. The provisions of any previous resolutions in any way inconsistent with the provisions hereof in and for the issuance of the Bonds as herein described are hereby repealed.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council the 19th day of July, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

AGENDA ITEM 6

REQUEST

**PUBLIC HEARING TO DECLARE THE EXISTENCE OF WEEDS, RUBBISH, REFUSE AND FLAMMABLE MATERIAL ON EACH OF THE PARCELS LISTED IN EXHIBIT "A" TO THIS AGENDA ITEM A NUISANCE; CONSIDER OBJECTIONS TO ABATEMENT OF SAID NUISANCES, AND ADOPT A RESOLUTION AUTHORIZING FIRE DEPARTMENT STAFF TO ORDER CONTRACTOR TO ABATE SAID NUISANCES**

EXECUTIVE SUMMARY

The Fire Department performs regular inspections throughout the City in addition to inspections initiated from complaints received from citizens regarding the existence of weeds, rubbish, refuse and flammable material on residential and commercial parcels. Abatement notices are sent to parcel owners within the City deemed by Fire Department staff to be a public nuisance and dangerous to the public health and safety.

The notice states the time and date of the Public Hearing to be conducted by the City Council. Council may then address any and all objections to the proposed abatement and, as necessary, authorize Fire Department staff to direct the City's contractor to abate parcels Council finds to be a nuisance.

DISCUSSION

Pursuant to Tracy Municipal Code, a Public Hearing is required prior to the abatement of any parcels. Sections 4.12.250 through 4.12.340 of the Tracy Municipal Code set forth the procedure for the City to abate weeds, rubbish, refuse and flammable material on private property.

On June 27, 2016, pursuant to Tracy Municipal Code, Section 4.12.280, the Fire Department sent a notice to the property owner(s) listed in Exhibit "A" to this staff report. That notice required the said property owner(s) to abate weeds, rubbish, refuse and flammable material on his/her parcel within twenty days, and informed the property owner(s) that a Public Hearing would be conducted on July 19, 2016, where any protests regarding the notice to abate would be heard. The Tracy Municipal Code provides that upon failure of the owner, or authorized agent, to abate within 20 days from the date of notice, the City will perform the necessary work by private contractor and the cost of such work will be made a personal obligation of the owner, or become a tax lien against the property.

Under the provisions of Tracy Municipal Code, Section 4.12.290, the Fire Department will proceed at Council's direction with instructing the City's contractor to perform weed, rubbish, refuse and flammable material abatement on the parcels listed in Exhibit "A". Per the Tracy Municipal Code, property owners are liable for the cost of abatement and will be billed for the actual cost of the City contractor's services, plus a twenty-five percent administrative charge. All unpaid assessments will be filed with the San Joaquin County Auditor Controller's office to establish a lien on the property.

STRATEGIC PLAN

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

FISCAL IMPACT

This item is budgeted for FY 16-17 for \$10,000 and is within the budgeted amount.

RECOMMENDATION

That City Council conduct a Public Hearing to hear and consider any and all objections to the proposed abatement, and by resolution, declare the weeds, rubbish, refuse, and flammable material located at the parcels listed within Exhibit "A" to be a nuisance, and authorize the Fire Department to direct the City's contractor to abate such nuisance.

Prepared by: Gina Rodriguez, Administrative Assistant II

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

Approved by: Troy Brown, City Manager

Attachment: Exhibit A - 2016 Weed Abatement Parcel List

**TRACY FIRE DEPARTMENT WEED ABATEMENT LIST - 7/19/2016**

<b>APN</b>	<b>SITUS ADDRESS</b>	<b>NAME/BUSINESS</b>	<b>MAILING ADDRESS</b>	<b>CITY</b>	<b>STATE</b>	<b>ZIP</b>
235-100-74	85 MOUNT OSO AVENUE	TINIDAD DUNN	75 B STREET	TRACY	CA	95376
234-290-69	1450 PECAN LANE	DONALD GRANT	1450 PECAN LANE	TRACY	CA	95376
238-080-03	12920 W. BYRON ROAD - ANNEX CITY	SHAWN STEELE ETAL	2850 W. BYRON ROAD #1	TRACY	CA	95376
238-080-04	2850 W. BYRON ROAD	SHAWN STEELE ETAL	2850 W. BYRON ROAD #1	TRACY	CA	95376
233-152-18	1500 N HOLLY DRIVE	TRACY UNIFIED SCHOOL DISTRICT	1875 W. LOWELL AVENUE	TRACY	CA	95376
214-180-21	3379 N. TRACY BLVD- OLD LONG JOHN SILVERS LOT	LJ REMAINDER LLC ETAL	9505 WILLIAMSBURG PLAZA #300	LOUISVILLE	KY	40222
244-290-81	684 TWIN OAKS DRIVE	DEEPAK & SHUSHULA SHAKYA	684 TWIN OAKS DRIVE	TRACY	CA	95377
233-369-17	15 E. ELEVENTH STREET	LOUIS LEVAND A TR ETAL	123 E. EATON AVENUE	TRACY	CA	95376
233-369-18	3 E. ELEVENTH STREET	LOUIS LEVAND A TR ETAL	123 E. EATON AVENUE	TRACY	CA	95376
209-270-34	VACANT LOT ON GRANT LINE ROAD	SR 95 GRANT LINE LLC ETAL co/GARABALDI COMPANY	3525 W. BENJAMIN HOLT DRIVE	STOCKTON	CA	95219
209-270-35	VACANT LOT ON GRANT LINE ROAD	SR 95 GRANT LINE LLC ETAL co/GARABALDI COMPANY	3525 W. BENJAMIN HOLT DRIVE	STOCKTON	CA	95219
244-040-02	1504 VALPICO ROAD	CALVIN & LAURITA FONG	33768 TAILSIDE WAY	UNION CITY	CA	94587
232-030-58	2331 LINCOLN BLVD	MICHAEL TRUONG	2066 22ND AVENUE	SAN FRANCISCO	CA	94116

RESOLUTION \_\_\_\_\_

DECLARING THE EXISTENCE OF WEEDS, RUBBISH, REFUSE AND FLAMMABLE MATERIAL ON THE PARCELS LISTED IN EXHIBIT "A" A NUISANCE AND AUTHORIZING FIRE DEPARTMENT STAFF TO ORDER CONTRACTOR TO ABATE

WHEREAS, On June 27, 2016, pursuant to Tracy Municipal Code, Section 4.12.280, Fire Department staff mailed, via certified mail, a notice to the owners of record listed within Exhibit "A", that the existence of weeds, rubbish, refuse and flammable material on said parcel in the City of Tracy constitutes a nuisance and is dangerous to public health and safety of the inhabitants of the City pursuant to Section 4.12.260 of the Tracy Municipal Code, and

WHEREAS, The notices included an order to abate said nuisance within 20 days and informed the property owner(s) of their opportunity to appear and object to the abatement of such nuisance at a public hearing before the City Council on July 19, 2016, and

WHEREAS, The County Assessor's Office shows the mailing address for the owner(s) of record of the subject parcels as listed within Exhibit "A", and a notice to abate and the notice of the public hearing was sent in a timely manner to that address by certified mail, and

WHEREAS, Objections, if any, to said abatement have been heard and considered, and

WHEREAS, The Fire Department has budgeted \$10,000 in FY 2016-2017 for weed, rubbish, refuse and flammable material abatement;

NOW, THEREFORE, BE IT RESOLVED, That the City Council declares the weeds, rubbish, refuse and flammable material on the parcels listed within Exhibit "A" to be a nuisance and further authorizes Fire Department staff to order the City's contractor to abate the accumulation of weeds, rubbish, refuse and flammable materials on the listed parcels.

\*\*\*\*\*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the Tracy City Council on the 19th day of July, 2016 by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

AGENDA ITEM 7

REQUEST

**DISCUSSION OF AND DIRECTION ON “LIVE WHERE YOU WORK” INCENTIVE PROGRAMS**

EXECUTIVE SUMMARY

On December 15, 2015, Council directed staff to research incentive programs to encourage employees to live within City limits. This report outlines various “Live Where You Work” incentive programs which could be adopted by the City.

DISCUSSION

As of June 13, 2016, the City of Tracy employed 406 active full time employees. Of the 406 active full time employees, 153 reported a City of Tracy mailing address.

History

Some public entities offer incentives to employees to help them buy homes within their geographic area limits. These entities acknowledge the following benefits: (1) help employees secure housing; (2) find and keep qualified workers; (3) improve community relations; and (4) improve the local economy.

Baltimore, MD. In the City of Baltimore, the Department of Housing and Community Development offers a program designed to assist employees to become homeowners within the city limits. Employees meeting certain criteria receive a \$3,000 down payment and closing assistance. The loan is forgivable after 5 years, reducing 20% for each year of occupancy and service.

Criteria used to determine eligibility includes:

- Employee must be actively working for a minimum of 6 months.
- Mortgage loan may not exceed \$417,000.
- Buyer must contribute at least \$1,000 towards the purchase and must use the property as the principal residence.
- Only one City employee per household is eligible.

San Marcos, TX. The City of San Marcos offers an incentive program to encourage employees to live where they work. The incentive provides a one-time \$5,000 loan to help pay closing and down payment costs in the form of a five year, zero-interest forgivable loan.

Criteria used to determine eligibility includes:

- The primary applicant must be a full-time City employee. Only one household member is eligible.
- One time only.
- The employee must be in good standing with the City.
- Applications are accepted until funds are exhausted.
- The Applicant must not owe any outstanding taxes or debts.

District of Columbia. The District of Columbia provides down payment and closing costs assistance to use towards the purchase of primary residence in the District of Columbia. The assistance ranges from \$3,000 to \$26,500 and is provided in the form of a grant that is forgiven after ten years as long as the employee meets the terms of the grant agreement.

Palo Alto, CA. The City of Palo Alto offers its City Manager and Managers housing assistance in various forms including:

- Up to \$25,000 in reimbursable relocation expenses.
- Up to \$5,000 per month in reimbursable rental housing assistance.
- Home purchase assistance. The City provides a loan secured by a note and first deed of trust on Manager's tenancy in common interest, in an amount not to exceed \$500,000 amortized over term. Interest is adjusted annually. The City may contribute an additional amount not to exceed amount of \$1,500,000 toward the purchase of the property. If the City participates in the purchase of the home, the proportional ownership of the home is shown on the deed as the ratio of funds provided by the Manager and city toward the purchase.

#### Potential Programs for Tracy

Based on the above examples, subject to further fiscal and legal review, the City could engage in any combination of the following programs:

- Assistance programs to help with down payments or closing costs using low interest loans that could be forgivable.
- Grants or loans to help with relocation to addresses within the City of Tracy.
- Asking the real estate community to join us in a partnership where they would contribute up to 1% of their commission for use towards closing costs or down payment assistance. For a \$500,000 home, this could mean up to \$5,000 in assistance.
- Rebates of City share of property tax. If the City share of property tax is between 5% and 10% of the 1% property tax of a \$500,000 home, a full rebate could equal between \$250 and \$500 per year. All employees currently living within the City of Tracy would be eligible for this rebate. Since we have 153 employees currently living within the City limits, this could mean a loss in revenue of between \$40,000 and \$80,000 per year and might not achieve the goal of bringing new employees into the City to the extent of counter-acting this fiscal impact. This would have to be negotiated through our bargaining units as it affects terms and conditions (salary and benefits) of employment.

#### STRATEGIC PLAN

This agenda item addresses Goal 1 of the Governance Strategy to further develop an organization that attracts, motivates, develops and retains a high quality, engaged, informed and high performing workforce.

FISCAL IMPACT

There is no fiscal impact associated with the acceptance of this report.

RECOMMENDATION

Discuss "Live Where You Work" Incentive Programs and provide staff direction as to whether further review of financial and legal impacts is desired.

Prepared by: Martha Garcia, Acting Administrative Services Director

Reviewed by: Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

AGENDA ITEM 8

REQUEST

**RECEIVE UPDATE AND PROVIDE DIRECTION ON CITY COUNCIL STRATEGIC PRIORITY WORK PLANS FOR FISCAL YEARS 2015/16 and 2016/17**

EXECUTIVE SUMMARY

The purpose of this staff report is to provide an update to Council on the City's Strategic Priority work plans for Fiscal Years 2015-17. The four strategy areas adopted by the City Council on February 2, 2016 include: (1) Public Safety, (2) Quality of Life, (3) Governance, and (4) Economic Development. Attached are the detailed work plans for each of the four strategic areas with specific objectives, action items, and timelines.

DISCUSSION

On February 2, 2016, Council adopted the City's Strategic Priority Work Plans for Fiscal Years 2015-17 which included the following priority areas: (1) Public Safety, (2) Quality of Life, (3) Governance, and (4) Economic Development.

The purpose of this staff report is to:

- Provide Council with an update regarding the action items and timelines outlined in the Public Safety, Quality of Life, Economic Development, and Governance Strategic Plans (detailed in Attachments A - D);
- Allow for Council discussion to verify Council priorities and/or provide staff with direction regarding any re-prioritization Council deems necessary.

1. Public Safety Strategy:

The purpose of the Public Safety Strategy is to enhance community safety by promoting a responsive public safety system that includes civic engagement and partnerships; community involvement; public education; and offering prevention, intervention and suppression services that meet the needs of Tracy residents.

Goals:

The four goals identified in the Public Safety Strategy include: (1) Partner with and engage the community to address public safety concerns, (2) Promote public health, safety, & community welfare throughout the community, (3) Enhance citywide disaster preparedness, and (4) Promote traffic safety.

Objectives:

For Goal 1, ***Partner with and Engage the Community to Address Public Safety Concerns***, four (4) objectives and eleven (11) action/tasks were identified:

Objective 1: Increase communication with residents regarding crime information and prevention.

Objective 2: Establish partnerships with business owners to address and educate on current trends in crime prevention.

Objective 3: Identify and engage commercial property owners regarding crime prevention and safety.

Objective 4: Enhance community engagement through volunteer opportunities.

For Goal 2, ***Promote Public Health, Safety, and Community Welfare Throughout the Community***, three (3) objectives and eight (8) action/tasks were identified:

Objective 1: Reduce the number of blighted property conditions.

Objective 2: Address community concerns regarding homelessness.

Objective 3: Promote awareness of fire safety, crime prevention, and unsafe building conditions.

For Goal 3 ***Enhance Citywide Disaster Preparedness***, two (2) objectives and five (5) action/tasks were identified:

Objective 1: Develop and implement community education programs to prepare and respond to man-made and natural disasters.

Objective 2: Update existing City-wide emergency safety and evacuation plan and related infrastructure.

For Goal 4, ***Promote Traffic Safety***, two (2) objectives and seven (7) action/tasks were identified:

Objective 1: Increase public awareness of traffic safety issues specific to Tracy.

Objective 2: Implement a data-driven traffic enforcement campaign.

## 2. Quality of Life Strategy:

The purpose of the Quality of Life Strategy is to provide an outstanding quality of life by enhancing the City's amenities, business mix and services and cultivating connections to promote positive change and progress in our community.

### Goals:

The four goals identified in the Quality of Life Strategy include the following: (1) Address City amenities and facility usage with an emphasis on accessibility, streamlined services and cost recovery, (2) Improve current recreational, cultural arts and entertainment programming and services to reflect community interests and demands, (3) Cultivate Community Engagement through digital and traditional communication means, and (4) Engage in efforts to review and align design and development standards with the community.

### Objectives:

For Goal 1, ***Address City Amenities and Facility Usage with an Emphasis on Accessibility, Streamlined Services and Cost Recovery***, three (3) objectives and ten (10) action/tasks were identified:

Objective 1: Update facility use and special event Memorandum of Understanding (MOU) policies.

Objective 2: Explore cost recovery opportunities to protect and preserve current amenities.

Objective 3: Continue exploration of initiatives geared towards a multi-use recreation facility with a focus on youth and teen services.

For Goal 2, ***Improve Current Recreational, Cultural Arts and Entertainment Programming and Services to Reflect Community Interests and Demands***, three (3) objectives and twelve (12) action/tasks were identified:

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

Objective 2: Utilize new facility, recreation and volunteer management software to enhance programming and service capabilities.

Objective 3: Promote and market recreation, cultural arts and special event programs using digital and traditional means.

For Goal 3, ***Cultivate Community Engagement through Digital and Traditional Communication Means***, two (2) objectives and eight (8) action/tasks were identified:

Objective 1: Develop a value-based marketing and communications plan that bridges the gap between residents, businesses and the city.

Objective 2: Enhance methods of informing and engaging the community on City related projects, programs and policies.

For Goal 4, ***Engage in Efforts to Review and Align Design and Development Standards with the Community***, three (3) objectives and eight (8) action/tasks were identified:

Objective 1: Develop design goals and development standards, specifically for buildings and landscape for the I-205 corridor, Northeast Industrial and Industrial Specific Plan areas.

Objective 2: Develop improvement plan for City Landscape Maintenance Districts.

Objective 3: Partner with local service organizations, community volunteers and residents to enhance the community's urban forest, parks and landscape areas.

### 3. Governance Strategy:

The purpose of the Governance Strategy is to retain and attract new talent, enhance fiscal stability, improve the use of technology, and enhance transparency for the betterment of the Tracy community.

#### Goals:

The three goals identified in the Governance Strategy include the following: (1) Further develop an organization that attracts, motivates, develops and retains a high quality, engaged, informed and high performing workforce, (2) Ensure continued fiscal sustainability through financial and budgetary stewardship, (3) Identify technological resources to promote communication, enhance city services, and promote organizational productivity.

#### Objectives:

For Goal 1, ***Further Develop an Organization that Attracts, Motivates, Develops and Retains a High Quality, Engaged, Informed and High Performing Workforce***, two (2) objectives thirteen (13) action/tasks were identified:

Objective 1: Gather data on and develop solutions for issues facing the organization.

Objective 2: Develop an organizational succession plan.

For Goal 2, ***Ensure Continued Fiscal Sustainability through Financial and Budgetary Stewardship***; three (3) objectives and twelve (12) action/tasks were identified:

Objective 1: Initiate City Council review of financial policies.

Objective 2: Present quarterly fiscal updates to City Council.

Objective 3: Identify new revenue opportunities.

For Goal 3, ***Identify Technological Resources to Promote Communication, Enhance City Services, and Promote Organizational Productivity***, three (3) objectives and twenty-two (22) action/tasks were identified:

Objective 1: Identify technological deficiencies in all City departments.

Objective 2: Develop IT policy and guidelines for the implementation and use of new software and hardware.

Objective 3: Implement additional Enterprise Resource Planning software modules.

#### 4. Economic Development Strategy:

The purpose of the Economic Development Strategy is to enhance the competitiveness of the City while further developing a strong and diverse economic base.

##### Goals:

The four goals identified in the Economic Development Strategy include the following: (1) Attract head-of-household jobs reflective of the City's target industries and those that best match the skill sets of the local labor force, (2) Attract retail, hotel, entertainment and recreational uses that offer residents of all ages quality dining, shopping and entertainment experiences, (3) Support higher education and vocational training in the City of Tracy, and (4) Position Tracy as the preferred location for start-up companies and entrepreneurial investment.

##### Objectives:

For Goal 1, ***Attract Head-Of-Household Jobs Reflective of the City's Target Industries and those that Best Match the Skill Sets of the Local Labor Force***, three (3) objectives and eleven (11) action/tasks were identified:

Objective 1: Focus business recruitment efforts on identified target industries.

Objective 2: Foster relationships with the existing business community to support the overall upgrade and expansion of employment opportunities.

Objective 3: Establish a predictable development process.

For Goal 2, ***Attract Retail, Hotel, Entertainment and Recreational Uses that Offer Residents of all Ages Quality Dining, Shopping and Entertainment Experiences***, three (3) objectives and nine (9) action/tasks were identified:

Objective 1: Focus retail recruitment efforts on quality retailers, hotels and restaurants that meet the desires of the community.

Objective 2: Increase the entertainment and recreational opportunities and events that draw people into Tracy.

Objective 3: Collaborate with and support the Tracy City Center Association (TCCA) in an effort to increase the drawing power of the downtown.

For Goal 3, ***Support Higher Education and Vocational Training in the City of Tracy***, three (3) objectives and four (4) action/tasks were identified:

Objective 1: Continue supporting Notre Dame de Namur's academic programming in Tracy.

Objective 2: Continue partnership and offer support to the Tracy Consortium for Higher Education.

Objective 3: Identify and support agencies with vocational training programs such as San Joaquin Delta College, Tracy Unified School District, San Joaquin County Office of Education and Manex.

For Goal 4, ***Position Tracy as the Preferred Location for Start-Up Companies and Entrepreneurial Investment***, one (1) objective and four (4) action/tasks were identified:

Objective 1: Attract start-up companies and entrepreneurs from the Greater Bay Area to San Joaquin Valley region.

#### FISCAL IMPACT

There is no fiscal impact with the adoption of this agenda item.

#### RECOMMENDATION

That the City Council receive an update on the City Council Strategic Priority work plans for FY 2015/16 and 2016/17.

Prepared by: Vanessa Carrera, Public Information Officer  
Andrew Malik, Development Services Director  
Don Scholl, Public Works Director  
Alex Neicu, Police Lieutenant  
Ed Lovell, Management Analyst II

Reviewed by: Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

#### ATTACHMENTS

Attachment "A": Public Safety Strategic Work Plan for FY 15-17  
Attachment "B": Quality of Life Strategic Work Plan for FY 15-17  
Attachment "C": Governance Strategic Work Plan for FY 15-17  
Attachment "D": Economic Development Strategic Work Plan for FY 15-17



**PUBLIC SAFETY STRATEGY**  
**FY 15/17 BUSINESS PLAN**

**Purpose: To enhance community safety by promoting a responsive public safety system that includes civic engagement and partnerships, community involvement, public education and offering prevention, intervention and suppression services that meet the needs of Tracy residents.**

Goal	Objective	Action/Tasks	Lead Staff	Due Date	Status	Comments	
<b>1. Partner with and engage the community to address public safety concerns.</b>	<b>1a.</b> Increase communication with residents regarding crime prevention and fire safety.	<b>1.a.1</b> Implement enforcement actions to address results from the 2015 Public Safety Survey.	A. Kellogg A. Neicu	Ongoing	On Track		
		<b>1.a.2</b> Develop current educational campaign to be distributed on Facebook, Nixle, City website, and traditional media.	Crime Prevention Specialist T. Zuniga D. Bramell	Ongoing	On Track		
	<b>1b.</b> Establish partnership with business owners to address and educate on current trends in public safety.	<b>1.b.1</b> Continue to develop the Business Watch Program.	Crime Prevention Specialist		Ongoing	On Track	
		<b>1.b.2</b> Continue to attend meetings and communicate with members of TCCA.	A. Kellogg NRO's		Ongoing	On Track	
	<b>1c.</b> Identify and engage commercial property owners regarding crime prevention and fire safety.	<b>1.c.1</b> Educate property owners on best signage practices and regulations. Communicate through newsletters and onsite visits.	A. Contreras Crime Prevention Specialist		December 2016	Behind Schedule	
		<b>1.c.2</b> Implement CPTED principles and practices.	Crime Prevention Specialist NRO's		Completed	On Track	
		<b>1.c.3</b> Implement Fire Inspection Program.	A. Kellogg		December 2017	Behind Schedule	
	<b>1d.</b> Engagement through volunteer opportunities.	<b>1.d.1</b> Continue to develop the VIPS Program and Explorer Programs.	A. Kellogg NRO's		Ongoing	On Track	
		<b>1.d.2</b> Host quarterly Neighborhood Watch Block Captain meetings.	NRO's		Ongoing	On Track	
		<b>1.d.3</b> Continue academy programs such as the Citizens Academy and Youth Academy.	K. Ysit		Ongoing	On Track	
		<b>1.d.4</b> Reinstate the Community Emergency Response Team (C.E.R.T.) Program.	A. Kellogg		January 2017	Behind Schedule	

Behind schedule or exceeding Budget  
 Stopped - No Progress

ATTACHMENT A

Goal	Objective	Action/Tasks	Lead Staff	Due Date	Status	Comments
<b>2. Promote public health, safety, and welfare throughout the community.</b>	<b>2a.</b> Reduce the number of blighted property conditions.	<b>2.a.1</b> Schedule monthly inspections of recidivist violators.	A. Contreras	Ongoing	On schedule and within Budget	
		<b>2.a.2</b> Proactively inspect vacant, boarded buildings to ensure compliance with city codes.	A. Contreras	Ongoing	On schedule and within Budget	
		<b>2.a.3</b> Deliver general code enforcement education communitywide.	A. Contreras	Ongoing	On schedule and within Budget	
		<b>2.a.4</b> Increase Code Enforcement staff by one FTE.	A. Contreras	July 2016	Behind schedule or exceeding Budget	Approved for FY 16-17
	<b>2b.</b> Address community concerns regarding homelessness.	<b>2.b.1</b> Continue collaboration with service providers to efficiently deliver services to the homeless population through Operation	S. Muir B. Wilmshurst A. Contreras	Ongoing	On schedule and within Budget	
		<b>2.b.2</b> Implement enforcement measures regarding criminal activity surrounding homelessness and train TPD personnel on new regulations.	S. Muir B. Wilmshurst A. Contreras	Ongoing	On schedule and within Budget	
		<b>2.b.3</b> Develop educational tools to educate the public and better assist the homeless.	S. Muir B. Wilmshurst A. Contreras	August 2016	Behind schedule or exceeding Budget	
	<b>2c.</b> Promote awareness of fire safety, crime prevention, and unsafe building conditions.	<b>2.c.1</b> Develop an educational campaign through Channel 26 and public speaking engagements.	A. Contreras A. Kellogg NRO's	Ongoing	On schedule and within Budget	

- On schedule and within Budget
- Behind schedule or exceeding Budget
- Stopped - No Progress

ATTACHMENT A

Goal	Objective	Action/Tasks	Lead Staff	Due Date	Status	Comments
<b>3. Enhance citywide disaster preparedness.</b>	<b>3a.</b> Update the citywide emergency safety and evacuation plan, and related infrastructure.	<b>3.a.1</b> Update and modernize the EOC.	A. Kellogg	January 2017		
		<b>3.a.2</b> Establish a round-table exercise to include surrounding agencies relative to Citywide Emergency Preparedness procedures.	A. Kellogg L. Mejia	6/1/17		
	<b>3b.</b> Develop and implement a community education program to prepare and respond to man-made and natural disasters.	<b>3.b.1</b> Integrate emergency response plans with Tracy Unified and Jefferson School Districts.	A. Kellogg L. Mejia	6/1/17		
		<b>3.b.2</b> Identify and partner with community and business stakeholders.	A. Kellogg	6/1/2017		
		<b>3.b.3</b> Identify disaster preparedness point of contacts.	A. Kellogg L. Mejia	January 2017		

- On schedule and within Budget
- Behind schedule or exceeding Budget
- Stopped - No Progress

ATTACHMENT A

Goal	Objective	Action/Tasks	Lead Staff	Due Date	Status	Comments
<b>4. Promote traffic safety.</b>	<b>4a.</b> Increase public awareness of traffic safety issues specific to Tracy.	<b>4.a.1</b> Implement student traffic safety awareness.	D. Allen L. Infante M. Roehlk T. Silcox	August 2016	Yellow	
		<b>4.a.2</b> Continue traffic education campaign through social media and other communications.	L. Infante M. Roehlk	Ongoing	Green	
		<b>4.a.3</b> Distribute traffic safety awareness literature at city sponsored public events.	L. Infante O. Lopez	Completed	Green	
		<b>4.a.4</b> Expand CARES Program to include police.	A. Kellogg O. Lopez	Ongoing	Yellow	
	<b>4b.</b> Implement a data driven traffic enforcement campaign.	<b>4.b.1</b> Seek and obtain grant from Office of Traffic Safety (OTS) to provide funding for staff and equipment costs.	C. Kootstra M. Roehlk	Completed	Green	
		<b>4.b.2</b> Identify locations of most frequent and serious collisions, and deploy resources for enforcement at targeted locations.	C. Kootstra O. Lopez	Completed	Green	
		<b>4.b.3</b> Continue to consult with Traffic Engineering in order to obtain traffic data and review/assess roadway engineering.	O. Lopez R. Bhatia	Completed	Green	

-  On schedule and within Budget
-  Behind schedule or exceeding Budget
-  Stopped - No Progress



## QUALITY OF LIFE STRATEGY

## FY 15/17 BUSINESS PLAN

**Purpose:** The purpose of the Quality of Life Strategy is to provide an outstanding quality of life by enhancing the City's amenities, business mix and services and cultivating connections to promote positive change and progress in our community.

Goal	Objective	Action/Tasks	Lead Staff	Due Date	Status	Comments
<b>1.Address City amenities and facility usage with an emphasis on accessibility, streamlined services and cost recovery.</b>	<b>1a.</b> Update Facility Use and Special Event Memorandum of Understanding (MOU) policies.	<b>1.a.1</b> Research comparable city policies related to Facility and Special Event MOUs for service and process improvements.	C. Mabry	1/1/16		Completed.
		<b>1.a.2</b> Plan and facilitate user group meetings to discuss existing MOU policies, resource allocation demands, and areas for process improvements.	C. Mabry	10/1/16		
		<b>1.a.3</b> Recommend Facility and Special Event MOU policy amendments via the Parks Commission and City Council.	C. Mabry	5/1/17		
	<b>1b.</b> Explore costs recovery opportunities to protect and preserve current amenities.	<b>1.b.1</b> Perform cost recovery study on facility usage and special event fees.	C. Mabry	1/1/17		
		<b>1.b.2</b> Outreach to stakeholder groups on outcome of cost recovery survey and gather feedback.	C. Mabry	3/1/17		
		<b>1.b.3</b> Present findings of cost recovery study and fee recommendations to City Council.	C. Mabry	5/1/17		

- On schedule and within Budget
- Behind schedule or exceeding Budget
- Stopped - No Progress

ATTACHMENT "B"

Goal	Objective	Action/Tasks	Lead Staff	Due Date	Status	Comments
	<b>1c.</b> Continue exploration of initiatives geared towards a multi-use recreation facility with a focus on youth and teen services.	<b>1.c.1</b> Inventory current facility usage needs and demands based on trends, facilities masterplan, programming and surveys.	J. Correll/ C. Mabry	12/1/16		
		<b>1.c.2</b> Research funding opportunities for new recreational or multi-use facilities.	A. Pichly	6/1/17		
		<b>1.c.3</b> Explore partnerships for future phases of Legacy Fields.	B. MacDonald	6/1/17		
		<b>1.c.4</b> Finalize Legacy Fields Use Agreements with Sports Leagues and complete Phase I construction.	B. MacDonald	11/1/16		
<b>2. Improve current recreational, cultural arts and entertainment programming and services to reflect community interests and demands.</b>	<b>2a.</b> Develop recreational, cultural arts and entertainment programs and services that reflect community demographics, evaluation feedback and trends.	<b>2.a.1</b> Use evaluation and public feedback to adjust recreation and cultural arts programs, classes and special events.	J. Correll	6/1/17		
		<b>2.a.2</b> Solicit recruitment for contract instructors to match programming demands.	J. Correll	6/1/17		
		<b>2.a.3.</b> Explore public-private partnerships that will drive creative placemaking opportunities to enhance the physical and social characteristics of the community through culture and the arts.	W. Wilson	6/1/17		(examples: civic art, streetscape improvements, events that promote cultural diversity)
		<b>2.a.4</b> Engage in conversations to brand Downtown Tracy as an arts district with the Tracy City Center Association and Economic Development Team.	W. Wilson/ K. Scarlata	1/1/16		Completed. Current project is Aspire Apartments.
		<b>2.a.5</b> Continue community dialog regarding Aquatics Center.	E. Lovell/ R. Armijo	6/1/17		

-  On schedule and within Budget
-  Behind schedule or exceeding Budget
-  Stopped - No Progress

ATTACHMENT "B"

Goal	Objective	Action/Tasks	Lead Staff	Due Date	Status	Comments
	<b>2b.</b> Utilize new facility, recreation and volunteer management software to enhance programming and service capabilities.	<b>2.b.1</b> Develop standard operating procedures for navigating ActiveNet.	C. Mabry/J. Correll	12/1/16		
		<b>2.b.2</b> Facilitate ActiveNet software training for new or untrained employees.	C. Mabry/J. Correll	9/1/16		
		<b>2.b.3</b> Explore ways to maximize ActiveNet software capabilities for external web users.	C. Mabry	1/1/17		
		<b>2.b.4</b> Develop internal system for scheduling volunteers and docents using the volunteer management software.	J. Correll	1/1/17		
	<b>2c.</b> Promote and market recreation, cultural arts and special event programs.	<b>2.c.1</b> Identify employee representatives responsible for marketing and outreach and provide training.	K. Scarlata/ A. Pichly	12/1/16		
		<b>2.c.2</b> Schedule opportunities to promote programs and special events through digital and print media.	J. Correll/V. Carrera	7/1/16		In progress.
		<b>2.c.3</b> Collaborate with Channel 26 to produce brief videos to promote City special events for use on TV, social media and YouTube.	J. Correll/ V. Carrera	1/1/17		Ongoing.

-  On schedule and within Budget
-  Behind schedule or exceeding Budget
-  Stopped - No Progress

ATTACHMENT "B"

Goal	Objective	Action/Tasks	Lead Staff	Due Date	Status	Comments
<b>3.Cultivate community engagement through digital and traditional communication means.</b>	<b>3a.</b> Develop a value based marketing and communications plan that bridges the gap between residents, businesses and the city.	<b>3.a.1</b> Develop internal Marketing and Outreach Team consisting of cross-departmental staff.	V. Carrera	9/1/16		
		<b>3.a.2</b> Research and evaluate comparable City Communication Plans.	V. Carrera	10/1/16		
		<b>3.a.3</b> Gather content recommendations from Marketing and Outreach Team members.	V. Carrera	11/1/16		
		<b>3.a.4</b> Draft City Communications Plan and initiate review/ approval process.	V. Carrera	1/1/17		
	<b>3b.</b> Enhance methods of informing and engaging the community on City related projects, programs and policies.	<b>3.b.1</b> Collaborate with Development Services staff to develop strategies to alert and inform the community of construction projects and new developments.	V. Carrera/ P. Verma	12/1/16		
		<b>3.b.2</b> Engage residents on the City's annual budget preparation process.	T. Brown/ R. McQuiston	2/1/16		Completed.
		<b>3.b.3</b> Adjust website format and content to highlight public contract/bid opportunities, special events, and other areas of community interest.	V. Carrera/ M. Engen	12/1/16		
		<b>3.b.4</b> Utilize Channel 26 to develop five Public Service Announcements to educate the community on City services, policies, and/or programs.	V. Carrera	9/1/16		Completed.

-  On schedule and within Budget
-  Behind schedule or exceeding Budget
-  Stopped - No Progress

ATTACHMENT "B"

Goal	Objective	Action/Tasks	Lead Staff	Due Date	Status	Comments
4. Engage in efforts to review and align design and development standards with the community.	4a. Develop design goals and development standards, specifically for buildings and landscape, for the I-205, Northeast Industrial and Industrial Specific Plan areas.	4.a.1 Draft revisions to the Planned Unit Development (PUD) ordinance and revisions to the Development Review ordinance regarding both threshold standards and review processes, and a review of the revised City-Wide Design Goals and Standards. These changes would affect development City-Wide, including along the I-205 Corridor.	V. Lombardo	12/1/16		In progress.
	4b. Develop improvement plan for City Landscape Maintenance Districts.	4.b.1 Create list of planned improvements for LMD parks, funding options and sources.	D.Scholl/B. MacDonald	9/1/16		
4.b.2 Create list of planned improvements for LMD landscapes.		D.Scholl/B. MacDonald	5/1/17			
4.b.3 Create list of planned improvements for LMD street trees.		D.Scholl/B. MacDonald	4/1/17			
4c. Partner with local service organizations, community volunteers and residents to enhance the community's urban forest, parks and landscape areas.	4.c.1 Establish partnership with the new Tracy Tree Foundation.	D.Scholl/B. MacDonald	12/1/16			
	4.c.2 Apply for Cal Fire tree planting grant.	D.Scholl/B. MacDonald	1/1/16			
	4.c.3 Coordinate City-sponsored Arbor Day celebration.	D.Scholl/B. MacDonald	1/1/16			
	4.c.4 Achieve Tree City USA status for Tracy.	D.Scholl/B. MacDonald	1/1/16			

-  On schedule and within Budget
-  Behind schedule or exceeding Budget
-  Stopped - No Progress



**GOVERNANCE STRATEGY  
FY 15/17 BUSINESS PLAN**

**Purpose: To retain and attract new talent, enhance fiscal stability, improve the use of technology, and enhance transparency for the betterment of the community of Tracy.**

Goal	Objective	Action/Tasks	Lead Staff	Due Date	Status	Comments
<b>1. Further develop an organization that attracts, motivates, develops and retains a high quality, engaged, informed and high performing workforce.</b>	<b>1a.</b> Gather data on and develop solutions for issues facing the organization.	<b>1.a.1</b> Create focus teams to address key areas of the organization: Mission/Vision, Employee and Civic Engagement, Accountability, and Professional Development.	Tracy 20/20 Steering Committee	11/1/2016		<b>COMPLETE</b>
		<b>1.a.2</b> Focus teams to develop work plans to conduct organizational outreach.	Focus Area Teams	12/1/2016		<b>COMPLETE</b>
		<b>1.a.3</b> Conduct organizational outreach.	Focus Area Teams	3/1/2016		<b>COMPLETE</b>
		<b>1.a.4</b> Gather and evaluate information from organizational outreach.	Focus Area Teams	4/1/2016		<b>COMPLETE</b>
		<b>1.a.5</b> Develop recommendations based on outreach results.	Focus Area Teams	4/30/2016		
		<b>1.a.6</b> Recommendations shared with Tracy 20/20 Steering Committee and Department Heads.	Focus Area Teams	5/31/2016		
		<b>1.a.7</b> Comprehensive report on Tracy 20/20 effort finalized and shared with the organization.	Focus Area Teams	6/30/2016		

- On schedule and within Budget
- Behind schedule or exceeding Budget
- Stopped - No Progress

ATTACHMENT "C"

Goal	Objective	Action/Tasks	Lead Staff	Due Date	Status	Comments
	<b>1b.</b> Develop an organizational succession plan.	<b>1.b.1</b> Use Tracy 20/20 team to create a framework for the succession plan outcomes.	Tracy 20/20 Team	12/31/2016		
		<b>1.b.2</b> Hire a consultant to create a comprehensive organizational succession plan based on the framework in 1.b.1.	Tracy 20/20 Team	2/28/2017		
		<b>1.b.3</b> Provide draft succession plan to Tracy 20/20 team and Department Heads.	Tracy 20/20 Team	6/30/2017		
		<b>1.b.4</b> Recommendations shared with the organization.	Tracy 20/20 Team	7/31/2017		
		<b>1.b.5</b> Comprehensive organizational succession plan finalized and shared with the organization.	Tracy 20/20 Team	9/30/2017		
<b>2. Ensure continued fiscal sustainability through financial and budgetary stewardship.</b>	<b>2a.</b> Initiate City Council review of financial policies.	<b>2.a.1</b> Hold a workshop with City Council on City financial policies.	Martha Garcia	5/31/2016		<b>COMPLETE</b>
		<b>2.a.2</b> Develop revised policies based on Council feedback.	Martha Garcia	7/31/2016		<b>COMPLETE</b>
		<b>2.a.3</b> Present revised financial policies for Council approval.	Martha Garcia	9/30/2016		<b>COMPLETE</b>
	<b>2b.</b> Present quarterly fiscal updates to City Council.	<b>2.b.1</b> Present General Fund expense and revenue updates to City Council.	Martha Garcia	Quarterly Feb, May, Sep, Nov		
		<b>2.b.2</b> Hire sales tax company to monitor trends in sales tax.	Martha Garcia	3/30/2016		<b>COMPLETE</b>
		<b>2.b.3</b> Present sales tax information as part of 2.b.1 updates to Council.	Martha Garcia	Quarterly Feb, May, Sep, Nov		

-  On schedule and within Budget
-  Behind schedule or exceeding Budget
-  Stopped - No Progress

ATTACHMENT "C"

Goal	Objective	Action/Tasks	Lead Staff	Due Date	Status	Comments
	2c. Identify new revenue opportunities.	2.c.1 Evaluate the benefits of having a grant writing position in the City.	Martha Garcia	12/31/2016		
		2.c.2 Explore new grant opportunities.	All Departments	Ongoing		
		2.c.3 Explore options for developers to pay their own way using CFDs or other financing mechanisms.	Anne Bell	6/30/2017		
		2.c.4 Evaluate property tax share agreement with San Joaquin County.	Troy Brown	9/30/2016		

-  On schedule and within Budget
-  Behind schedule or exceeding Budget
-  Stopped - No Progress

ATTACHMENT "C"

Goal	Objective	Action/Tasks	Lead Staff	Due Date	Status	Comments
<b>3. Identify technological resources to promote communication, enhance city services, and promote organizational productivity.</b>	<b>3a.</b> Identify technology deficiencies in all departments.	<b>3.a.1</b> Update the list of Technology Liaisons for each department.	Carlo Fanto	6/30/2016		
		<b>3.a.2</b> Use Technology Liaisons to gather data on technology needs within each department along with justification.	Carlo Fanto	10/31/2016		
		<b>3.a.3</b> Each Department to prioritize their technology needs list, identifying costs and potential vendors.	Carlo Fanto	12/31/2016		
		<b>3.a.4</b> Evaluate the implementation of department technology needs as part of the annual budget process.	Carlo Fanto	Ongoing		
		<b>3.a.5</b> Establish Sharepoint as the standard document sharing repository Citywide.	Carlo Fanto	6/30/2016		
		<b>3.a.5.1</b> Establish a Sharepoint Liaison for each department.	Carlo Fanto	7/31/2016		
		<b>3.a.5.2</b> Create a Sharepoint Implementation Plan and distribute to all Sharepoint Liaisons.	Carlo Fanto	8/30/2016		
		<b>3.a.5.3</b> Phase out all Microsoft Exchange public folders.	Carlo Fanto	6/30/2017		
		<b>3.a.5.4</b> Migrate shared documents from internal common drives to Sharepoint.	Carlo Fanto	6/30/2017		

-  On schedule and within Budget
-  Behind schedule or exceeding Budget
-  Stopped - No Progress

ATTACHMENT "C"

Goal	Objective	Action/Tasks	Lead Staff	Due Date	Status	Comments
	<b>3b.</b> Develop IT policy guidelines to coordinate and streamline the implementation of new software/hardware.	<b>3.b.1</b> Survey other cities for IT purchasing and implementation policies.	Courtney Bell/ Carlo Fanto	12/31/2015		<b>COMPLETE</b>
		<b>3.b.2</b> Develop a draft policy based on Tracy's needs.	Carlo Fanto	12/31/2016		
		<b>3.b.3</b> Establish system purchasing controls.	Carlo Fanto	8/30/2016		
		<b>3.b.4</b> Distribute draft policy for department review.	Carlo Fanto	1/31/2017		
		<b>3.b.5</b> IT policy distributed to all departments.	Courtney Bell/ Carlo Fanto	4/30/2017		
	<b>3c.</b> Implement additional Enterprise Resource Planning software modules.	<b>3.c.1</b> Implement Payroll/HR and Employee Self Service Module.	Robert Harmon	1/31/2017		
		<b>3.c.2</b> Implement Community Development Module.	Robert Harmon	3/31/2017		
		<b>3.c.3</b> Implement Citizen Self Service and Vendor Self Service Module.	Robert Harmon	3/31/2017		
		<b>3.c.4</b> Implement Tyler MUNIS Transparency Module.	Robert Harmon	6/30/2017		
		<b>3.c.5</b> Review Incident Management Module and assess ability to replace Government Outreach.	Robert Harmon	6/30/2017		
		<b>3.c.6</b> Implement Utility Billing Module.	Robert Harmon	6/30/2017		
		<b>3.c.7</b> Implement Work Order Module.	Robert Harmon	6/30/2017		
		<b>3.c.8</b> Implement Incident Management Module if deemed able to replace Government Outreach.	Robert Harmon	6/30/2017		

-  On schedule and within Budget
-  Behind schedule or exceeding Budget
-  Stopped - No Progress



ECONOMIC DEVELOPMENT STRATEGY

FY 15/17 WORK PLAN

Purpose: Enhance the competitiveness of the City while further developing a strong and diverse economic base.

Goal	Objective	Proposed Actions/Tasks	Lead Staff	Due Date	Status	Comments
1. Attract head-of-household jobs reflective of the City's target industries and those that best match the skill sets of the local labor force.	1.a. Focus business recruitment efforts on our identified Target Industries, including: <i>Medical Equipment &amp; Supplies, Food Processing, Renewable Resources &amp; Technology, Manufacturing, Backroom Office &amp; Information Technology</i>	1.a.1 Develop a short list of companies within target industries to focus business attraction efforts.	S. Burcham Consultant	12/2015	On schedule and within Budget	Target Industries List Completed.
		1.a.2 Develop and implement a marketing and outreach plan to include quarterly newsletters, broker tours, co-op advertising, site visits, etc.	S. Burcham	3/2016	On schedule and within Budget	Plan Completed.
		1.a.3 Attend 4 tradeshow annually focused on outreach and recruitment of businesses within target industries.	A. Malik S. Burcham	6/2017	On schedule and within Budget	
		1.a.4 Work with the San Joaquin Partnership to leverage regional economic development efforts (i.e. tradeshow, CCC meetings, recruitment efforts, etc.).	S. Burcham	6/2017	On schedule and within Budget	
	1.b. Foster relationships with the existing business community to support the overall upgrade and expansion of employment opportunities.	1.b.1 Develop a Business System to formally recognize companies in Tracy (i.e. top employers, top sales tax, expansions, etc.).	J. Ewen	10/2016	On schedule and within Budget	
		1.b.2 Develop the Executive Pulse business retention and expansion database and use the information to collaborate with the Tracy Chamber of Commerce in communicating and marketing available city resources, such as the Grow Tracy Fund and Tracy Incentive Programs, to the business community.	B. Harb	6/2016	On schedule and within Budget	
		1.b.3 Coordinate with the Tracy Chamber of Commerce to host a series of workshops and events aimed at educating small business owners in areas such as leadership, marketing, financial management, social media, etc.	B. Harb	12/2015	On schedule and within Budget	
	1.c. Establish a predictable development process.	1.c.1 Update Development Infrastructure Master Plans related to residential and non-residential growth to ensure adequate infrastructure is available to facilitate development.	R. Armijo	7/2017	On schedule and within Budget	
		1.c.2 Expand the bi-monthly Development Service's Development Review Team (DRT) meetings to include representatives from Economic Development, Planning, Building and Engineering Divisions, as well as the Police, Fire, Administrative Services, and Public Works Departments to prepare the organization for the increase in development activity.	V. Lombardo	12/2015	On schedule and within Budget	
		1.c.3 Create and distribute monthly list of development activity and retool the development review routing form to further improve communication interdepartmentally.	B. Dean	12/2016	On schedule and within Budget	
		1.c.4 Survey building/development review applicants for feedback to ensure continuous improvement on the development and permitting processes.	B. Dean K. Jorgensen	12/2015	On schedule and within Budget	Target 90% Approval

■ On schedule and within Budget  
■ Behind schedule or exceeding Budget  
■ Stopped - No Progress

ATTACHMENT "D"

Goal	Objective	Proposed Actions/Tasks	Lead Staff	Due Date	Status	Comments
<b>2. Attract retail, hotel, and entertainment uses that offer residents quality dining, shopping, and entertainment experiences.</b>	<b>2.a.</b> Focus retail recruitment efforts on quality retailers, hotels, and restaurants that meet the desires of the community.	<b>2.a.1</b> Coordinate with IS to develop an online survey instrument in an effort to understand the community's desires related to dining, shopping, and entertainment experiences.	B. Harb	3/2017		
		<b>2.a.2</b> Monitor current retail vacancies and proposed new retail areas quarterly and develop a tenant mix for both long and short-term positioning, including a list of "Tier 1 - Stretch Retailers" and "Tier 2 Retailers" based upon the City's community/demographic profile, space available, desired tenants (those identified in 2.a.1.), and competitive supply.	B. Harb Consultant	6/2017		
		<b>2.a.3</b> Utilize the retail positioning information identified in 2.a.2. and work directly with property owners and managers, real estate brokers, and retailers to recruit them to specific projects through letter writing campaigns, emails, and direct meetings.	B. Harb Consultant	6/2017		
		<b>2.a.4</b> Re-evaluate the existing Retail Incentive Program to determine if the program is sufficient to attract the types of retailers and entertainment uses identified in 2.a.1. and amend if necessary.	B. Harb Consultant	6/2017		
	<b>2.b.</b> Increase the entertainment, recreational opportunities and events that draw people into Tracy.	<b>2.b.1</b> Develop and implement marketing and outreach campaign to attract the development of a regional sports and entertainment facility for the purpose of expanding programming.	A. Pichley	6/2016		
		<b>2.b.2</b> Develop marketing strategy to attract new hotel developers/operators to Tracy that provide new amenities not currently offered by existing Tracy hotels.	B. Harb Consultant	12/2015		
	<b>2.c.</b> Collaborate with and support the Tracy City Center Association (TCCA) in an effort to increase the drawing power of the downtown.	<b>2.c.1</b> Secure and administer CDBG funding from FY15-16 and FY16-17 to fund a Downtown Façade Improvement Program. Target marketing efforts to property owners, business owners, and brokers.	J. Ewen	6/2017		
		<b>2.c.2</b> Partner with the Tracy Chamber of Commerce and TCCA to launch a Shop Local Campaign for the holiday season(s).	J. Ewen	11/2016		
		<b>2.c.3</b> Secure successful development partner/tenant(s) for the Westside Market building.	S. Claar	10/2016		

- On schedule and within Budget
- Behind schedule or exceeding Budget
- Stopped - No Progress

ATTACHMENT "D"

Goal	Objective	Proposed Actions/Tasks	Lead Staff	Due Date	Status	Comments
<b>3. Support higher education and vocational training in the City of Tracy.</b>	<b>3.a.</b> Continue supporting NDNU's academic programming.	<b>3.a.1</b> Continue to work with the business community to market program opportunities available in Tracy.	S. Burcham	6/2017		
	<b>3.b.</b> Continue partnership and offer support to the Tracy Consortium for Higher Education (TCHE).	<b>3.b.1</b> Provide support to TCHE by providing data and other resources that ensure a short and long term presence of higher education in Tracy.	S. Burcham	6/2017		
		<b>3.b.2</b> Support efforts to develop and implement a communication and outreach strategy to promote the importance and benefits associated with higher education in the community.	S. Burcham	10/2016		
	<b>3.c.</b> Identify and support agencies with vocational training programs such as San Joaquin Delta College, Tracy Unified School District, San Joaquin County Office of Education and Manex.	<b>3.c.1</b> Participate as an Economic Development representative on the Workforce Development Board to connect businesses with education, training resources and vocational programs.	S. Burcham	6/2016		
<b>4. Position Tracy as the preferred location for start-up companies and entrepreneurial investment.</b>	<b>4.a.</b> Attract start-up companies and entrepreneurs to the San Joaquin Valley region.	<b>4.a.1</b> Participate in local entrepreneurship activities (TiE, Tech Sprout, SJ Angels, etc.) to better understand the needs of local entrepreneurs.	S. Burcham	6/2017		
		<b>4.a.2</b> Participate in local entrepreneur activities and collaborate with partner agencies (TiE, Tech Sprout, SJ Angels, etc.) to identify, direct and coordinate resources to meet the needs of local entrepreneurs.	S. Burcham	6/2017		
		<b>4.a.3</b> Continue to market Tracy's High-Tech Incentive Program that encourages high-technology companies to locate in Tracy.	S. Burcham Consultant	6/2017		
		<b>4.a.4</b> Attend two (2) industry trade shows focused on outreach and recruitment of entrepreneurs and start-up companies.	S. Burcham	6/2017		

- On schedule and within Budget
- Behind schedule or exceeding Budget
- Stopped - No Progress

AGENDA ITEM 10.A

REQUEST

**COUNCIL DESIGNATION OF VOTING DELEGATE AND UP TO TWO VOTING ALTERNATES FOR THE LEAGUE OF CALIFORNIA CITIES 2016 ANNUAL CONFERENCE BUSINESS MEETING**

EXECUTIVE SUMMARY

Staff requests that Council designate a voting delegate and up to two voting alternates for the upcoming League of California Cities Annual Conference Business Meeting.

DISCUSSION

The League of California Cities Annual Conference is scheduled for Wednesday, October 5, through Friday, October 7, 2016, in Long Beach, California.

An important part of the Annual Conference is the League of California Cities' Annual Business Meeting, held on Friday, October 7, 2016. At this meeting, the League membership considers and takes action on resolutions that establish League policy. In order to expedite the conduct of business at this policy-making meeting, each City Council should designate a voting delegate and up to two alternates who will be registered at the conference and present at the Annual Business Meeting. A voting card will be given to the City official designated on the Voting Delegate Form.

The League of California Cities has requested the names of the designated delegates be forwarded to them no later than Friday, September 23, 2016.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact associated with this discussion item.

RECOMMENDATION

That Council designate a voting delegate and up to two voting alternates for the League of California Cities 2016 Annual Conference Business Meeting.

Prepared by: Nora Pimentel, City Clerk

Reviewed by: Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

A Correspondence from the League of California Cities dated June 10, 2016

1400 K STREET  
 SACRAMENTO, CA 95814  
 PH: (916) 658-8200  
 FX: (916) 658-8240



WWW.CACITIES.ORG

**Council Action Advised by July 31, 2016**

June 10, 2016

**TO: Mayors, City Managers and City Clerks**

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES  
 League of California Cities Annual Conference – October 5 – 7, Long Beach**

The League's 2016 Annual Conference is scheduled for October 5 – 7 in Long Beach. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly), scheduled for noon on Friday, October 7, at the Long Beach Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

**Please complete the attached Voting Delegate form and return it to the League's office no later than Friday, September 23, 2016. This will allow us time to establish voting delegate/alternate records prior to the conference.**

Please note the following procedures that are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: [www.cacities.org](http://www.cacities.org). In order to cast a vote, at least one voter must be present at the

Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Long Beach Convention Center, will be open at the following times: Wednesday, October 5, 8:00 a.m. – 6:00 p.m.; Thursday, October 6, 7:00 a.m. – 4:00 p.m.; and Friday, October 7, 7:30–10:00 a.m. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League office by Friday, September 23. If you have questions, please call Kayla Gibson at (916) 658-8247.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form



**CITY:** \_\_\_\_\_

**2016 ANNUAL CONFERENCE  
VOTING DELEGATE/ALTERNATE FORM**

**Please complete this form and return it to the League office by Friday, September 23, 2016. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.**

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

**Please note:** Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

**1. VOTING DELEGATE**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**2. VOTING DELEGATE - ALTERNATE**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**3. VOTING DELEGATE - ALTERNATE**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.**

**OR**

**ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).**

Name: \_\_\_\_\_ E-mail \_\_\_\_\_

Mayor or City Clerk \_\_\_\_\_ Phone: \_\_\_\_\_  
(circle one) (signature)

Date: \_\_\_\_\_

**Please complete and return by Friday, September 23, 2016**

League of California Cities  
ATTN: Kayla Gibson  
1400 K Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814

**FAX: (916) 658-8240**  
E-mail: kgibson@cacities.org  
(916) 658-8247

RESOLUTION 2016-

DESIGNATING A VOTING DELEGATE AND UP TO TWO VOTING ALTERNATES  
FOR THE LEAGUE OF CALIFORNIA CITIES 2016 ANNUAL  
CONFERENCE BUSINESS MEETING

WHEREAS, The League of California Cities Annual Conference is scheduled for October 5, through October 7, 2016, in Long Beach, California, and

WHEREAS, An important part of the Annual Conference is the Annual Business Meeting held on October 7, 2016, at which, the League membership takes action on resolutions that establish League policy, and

WHEREAS, In order to expedite the conduct of business at this policy-making meeting, each City Council designates a voting delegate and up to two alternates who will be registered at the conference and present at the Annual Business Meeting;

NOW, THEREFORE, BE IT RESOLVED, That City Council hereby designates \_\_\_\_\_ as the voting delegate and \_\_\_\_\_ as the alternate voting delegate for the League of California Cities 2016 Annual Conference Business Meeting

\* \* \* \* \*

The foregoing Resolution 2016- was passed and adopted by the Tracy City Council on the 19<sup>th</sup> day of July, 2016, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK