

Tuesday, November 1, 2016, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

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

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

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

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

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

CALL TO ORDER
PLEDGE OF ALLEGIANCE
INVOCATION
ROLL CALL
PRESENTATIONS -

1. Employee of the Month
2. D.A.R.E. Presentation
3. World Pancreatic Cancer Day
4. National Homeless Youth Awareness Month

1. CONSENT CALENDAR

- A. Adopt Council Minutes – Closed Session Minutes for October 24, 2016 and October 18, 2016.
- B. Award a Construction Contract to the Lowest Responsive and Responsible Bidder for the Support Services Building ADA Modifications, CIP 71076, and Authorize the Mayor to Execute the Contract
- C. Approve an Off-Site Improvement Agreement for Roadway, Sewer, and Storm Drainage Improvements for the DCT Industrial Building on Arbor Avenue, and Authorize the Mayor to Execute the Agreement
- D. Approve an Off-Site Improvement Agreement for Water Line Improvements on Arbor Avenue and MacArthur Drive for the DCT Industrial Distribution Facility, and Authorize the Mayor to Execute the Agreement
- E. Approval of Professional Services Agreement with NBS Government Group to Perform Analyses of Finance Division Processes, Authorization for the Mayor to Execute the Agreement, and Appropriation of \$64,388
- F. Approve the Memorandum of Understanding Between the City of Tracy and Tracy Friends for Parks, Recreation and Community Services Foundation
- G. Nullify the October 4, 2016 Second Reading and Adoption of Ordinance 1225 Authorizing the Amendment to the California Public Employees' Retirement System Plan to Provide Section 20516 (Employees Sharing Additional Cost) of 3% for All Local Police Members in the Tracy Police Officers Association Due to an Administrative Error and to Comply with Government Code Section 20471
- H. Waive Second Reading and Adopt an Ordinance of the City Council of the City of Tracy Authorizing an Amendment to the Contract Between the City Council of the City of Tracy and the Board of Administration of the California Public Employees' Retirement System

2. ITEMS FROM THE AUDIENCE

3. RECEIVE AND DISCUSS THE GRAND THEATRE CENTER FOR THE ARTS ANNUAL REPORT, ACCEPT THE GRAND FOUNDATION'S FISCAL YEAR 2016-2017 ANNUAL UNDERWRITING SUPPORT IN THE AMOUNT OF \$20,000 AND APPROVE A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$20,000 FOR PROGRAMMING AND TECHNICAL SUPPORT AT THE GRAND THEATRE CENTER FOR THE ARTS
4. ACCEPT REPORT REGARDING PUBLIC SAFETY EFFORTS IN ADDRESSING ILLEGAL FIREWORKS ON THE 4TH OF JULY OF 2016
5. PUBLIC HEARING TO APPROVE AN AMENDMENT TO THE SAN JOAQUIN COUNTY MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN (SJMSCP) DEVELOPMENT FEE, RESULTING IN AN INCREASE IN FEES FOR 2017
6. ITEMS FROM THE AUDIENCE
7. COUNCIL ITEMS
8. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

October 18, 2016, 6:15 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Maciel called the meeting to order at 6:15 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel present.
3. ITEMS FROM THE AUDIENCE –There were no speakers.
4. CLOSED SESSION

Pending Litigation (Gov. Code, § 54956.9(d)(4))

Based on existing facts and circumstances, the City Council of the City of Tracy has decided to initiate or is deciding whether to initiate litigation. One matter.

Pending Litigation (Gov. Code, § 54956.9(d)(1))

Successor Agency v. California Department of Finance
(Court of Appeal Case No. C077440)
(San Joaquin Superior Court Case No. 34-2013-80001570)

5. MOTION TO RECESS TO CLOSED SESSION – Mayor Pro Tem Rickman motioned to recess the meeting to closed session at 6:15 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 7:12 p.m.
7. REPORT OF FINAL ACTION – There was no report of action.
8. ADJOURNMENT – Council Member Young motioned to adjourn the meeting; Mayor Pro Tem Rickman seconded the motion. Voice vote found all in favor; passed and so ordered. Time 7:12 p.m.

The agenda was posted at City Hall on October 11, 2016. The above are action minutes.

Mayor

ATTEST:

City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

October 24, 2016, 5:00 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Maciel called the meeting to order at 5:00 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Mitracos, Young, Mayor Pro Tem Rickman and Mayor Maciel present. Council Member Vargas arrived at 5:06 p.m.
3. ITEMS FROM THE AUDIENCE –There were no speakers.
4. CLOSED SESSION

Personnel Matter (Gov. Code, § 54957)

Public Employee Appointment, Employment, Evaluation of Performance, Discipline, or Dismissal

Position Title: City Manager

5. MOTION TO RECESS TO CLOSED SESSION – Council Member Young motioned to recess the meeting to closed session at 5:00 p.m. Mayor Pro Tem Rickman seconded the motion. Voice vote found Council Members Mitracos, Young, Mayor Pro Tem Rickman and Mayor Maciel in favor; Council Member Vargas was absent; passed and so ordered.
6. RECONVENE TO OPEN SESSION – Mayor Maciel reconvened the meeting into open session at 5:42 p.m.
7. REPORT OF FINAL ACTION – There was no report of action.
8. ADJOURNMENT – Council Member Mitracos motioned to adjourn the meeting; Council Member Vargas seconded the motion. Voice vote found all in favor; passed and so ordered. Time 5:42 p.m.

The agenda was posted at City Hall on October 21, 2016. The above are action minutes.

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.B

REQUEST

AWARD A CONSTRUCTION CONTRACT TO THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER FOR THE SUPPORT SERVICES BUILDING ADA MODIFICATIONS, CIP 71076, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT

EXECUTIVE SUMMARY

City staff requests that City Council award a construction contract for the Support Services Building ADA Modifications.

DISCUSSION

City Council previously allocated Community Development Block Grant (CDBG) funds for improvement projects at City facilities that remove barriers to accessibility for the general public. The City recently completed a CDBG funded project to improve access to the Civic Center and staff is now recommending to proceed using CDBG funds for the Support Services Building ADA Modifications.

The project consists of modifying doors, handrails, signs and other work in the Support Services Building to comply with American Disabilities Act (ADA) requirements.

Engineering staff prepared the plans and specifications and advertised the project for competitive bids on August 25, and September 1, 2016.

One bid was received and publicly opened at 2:00 p.m. on Thursday, September 22, 2016, with the following results:

<u>Contractor</u>	<u>Base Bid</u>
D.M. Alegre Construction, Tracy	\$58,620

Bid analysis indicates that the bid is responsive and the bidder, D.M. Alegre Construction, of Tracy, California, is responsible. The bidder has the appropriate active California contractor's license, and has completed similar projects for the City.

The total estimated cost of this project, if awarded to the bidder, is as follows:

Construction Contract	\$58,620
Contingency 10%	\$6,000
Total Construction Cost	\$64,620
Total Design and Construction Management Cost	\$10,000
<hr/> Total Project Cost	<hr/> \$74,620

Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by Council. City staff

recommends the contingency amount for this project to be \$6,000, which is 10% of the construction cost.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no impact to the General Fund. The project will be funded by existing appropriations from the Community Development Block Grant (CDBG) program.

RECOMMENDATION

That City Council, by resolution, award a construction contract to D.M. Alegre Construction Company, of Tracy, California, for the Support Services Building ADA Modifications CIP 71076 in the amount of \$58,620, authorize the Development Services Director to approve change orders up to the specified project contingency amount of \$6,000, if needed, and authorize the Mayor to execute the construction contract.

Prepared by: Binh Nguyen, Senior Civil Engineer

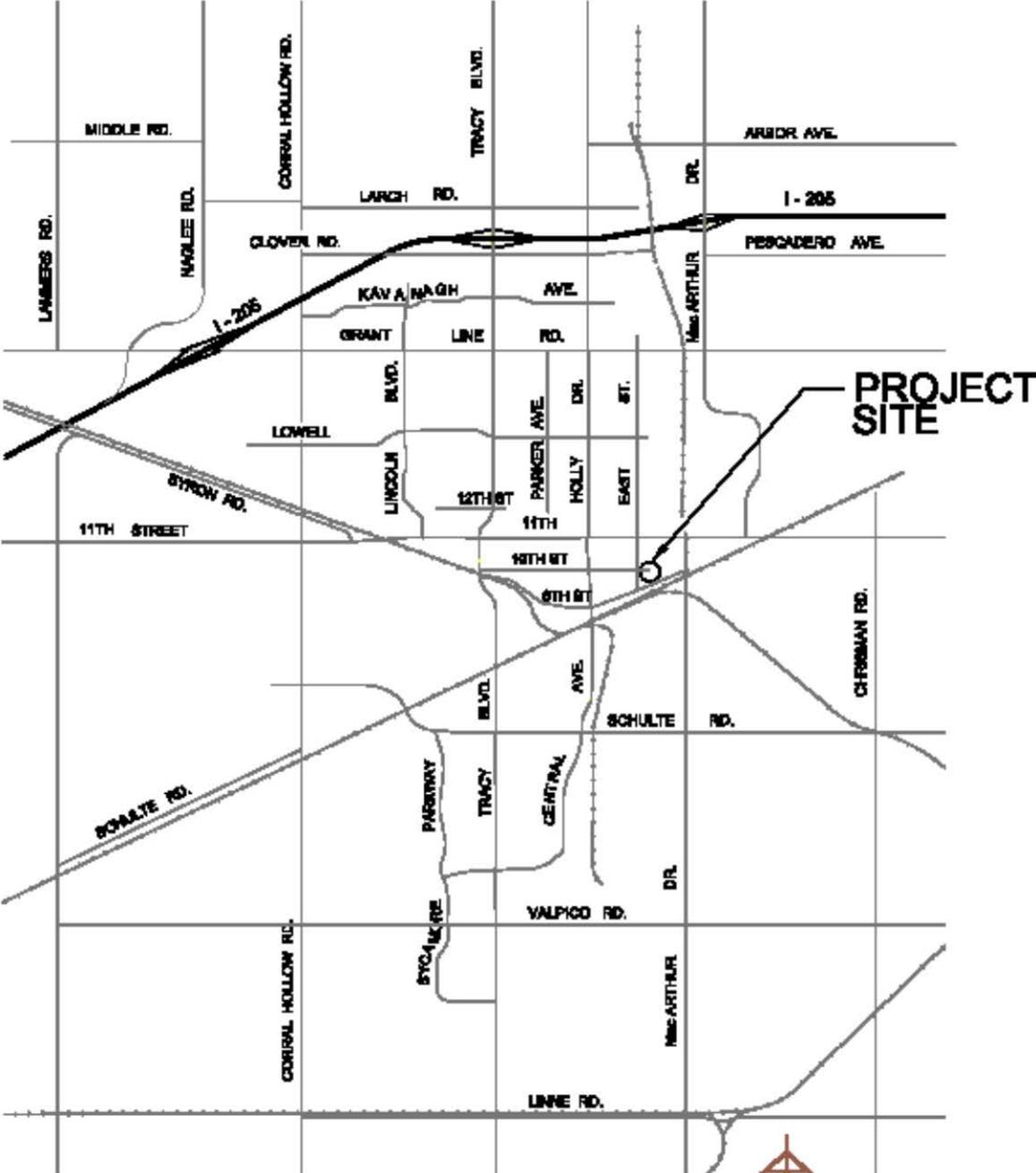
Reviewed by: Robert Armijo, City Engineer
Andrew Malik, Development Services Director
Martha Garcia, Interim Administrative Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A – Location Map

Attachment A



TRACY VICINITY MAP



N.T.S.

RESOLUTION 2016-_____

AWARDING A CONSTRUCTION CONTRACT TO D.M. ALEGRE CONSTRUCTION COMPANY, OF TRACY, CALIFORNIA, FOR THE SUPPORT SERVICES BUILDING ADA MODIFICATIONS CIP 71076, AUTHORIZING A CONTINGENCY AMOUNT OF \$6,000 AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

WHEREAS, The Support Services Building does not comply with American Disabilities Act (ADA) requirements, and

WHEREAS, The project includes modifications of doors, handrails and signs to comply with ADA requirements, and

WHEREAS, The project was advertised for competitive bids on August 25, and September 1, 2016, and one bid was received and publicly opened on September 22, 2016, and

WHEREAS, D.M. Alegre Construction Company was the only bidder, bid analysis indicates their bid is responsive and the bidder is responsible, and

WHEREAS, Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council, and

WHEREAS, The recommended contingency amount for this project is \$6,000, and

WHEREAS, This is an approved Capital Improvement Project. There is no impact to the General Fund;

NOW, THEREFORE BE IT RESOLVED, That City Council awards a construction contract to D. M. Alegre Construction of Tracy, California, for the Support Services Building ADA Modifications CIP 71076, in the amount of \$58,620, authorizes a contingency amount of \$6,000, authorizes the Development Services Director to approve change orders up to the specified project contingency amount of \$6,000, if needed, and authorizes the Mayor to execute the construction contract.

* * * * *

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

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.C

REQUEST

APPROVE AN OFF-SITE IMPROVEMENT AGREEMENT FOR ROADWAY, SEWER, AND STORM DRAINAGE IMPROVEMENTS FOR THE DCT INDUSTRIAL BUILDING ON ARBOR AVENUE, AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

Approval of the Off-Site Improvement Agreement (OIA) will allow the Developer to proceed with construction of off-site infrastructure improvements that are necessary to serve and operate business at the DCT Industrial Building.

DISCUSSION

On November 17, 2015, the City Council approved the Preliminary and Final Development Plan for the DCT Industrial Distribution Facility submitted by Arbor Avenue LLC (Developer), for the construction of a 795,732 square foot industrial distribution building which includes parking, private landscaping, and associated improvements. DCT industrial building will be located on the south side of Arbor Avenue east of MacArthur Drive.

Approval of the DCT Industrial Distribution Facility required the Developer to complete, among other things, the construction of frontage roadway improvements on Arbor Avenue, sewer line on Arbor Avenue and MacArthur Drive, and a permanent storm drainage detention facility with a pump station road and force main on Arbor Avenue, prior to occupancy of the building.

The frontage roadway improvements include concrete curb, gutter, asphalt concrete pavement, parkway landscaping, driveway, street light, domestic and irrigation water services, sewer lateral, storm drain line and inlets, fire hydrant, pavement marking and striping, signing and striping, and other improvements. These frontage roadway improvements described above are considered non-program roadway improvements and are not subject to development impact fee credits.

The off-site sewer line is an oversized improvement and will have capacity to serve properties along Arbor Avenue and MacArthur Drive. As part of installing the sewer line and storm drainage force main, certain portions of the existing asphalt concrete pavement on Arbor Avenue and MacArthur Drive will be replaced by the Developer. The Developer has completed the design of the frontage roadway improvements, sewer line, and storm drainage improvements and has submitted the Improvement Plans, Specifications and Cost Estimates (PSE). City staff has reviewed the PSE and found them to be complete.

To guarantee completion of the work by the Developer in an orderly manner under the City's inspections and directions, the Developer was required to execute an Off-Site Improvement Agreement and post insurance and surety bonds. The Developer has executed the Off-Site Improvement Agreement and submitted the required security to guarantee completion of the frontage roadway improvements on Arbor Avenue, the sewer line on Arbor Avenue and MacArthur Drive, and the storm drainage on Arbor

Avenue. The Off-Site Improvement Agreement and Improvement Plans are on file with the City Engineer and are available for review upon request.

If the Developer completes the construction of the sewer line and storm drainage improvements, the Developer is entitled to receive reimbursement in accordance with the OIA and Title 13 of the Tracy Municipal Code.

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

FISCAL IMPACT

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

STRATEGIC PLAN

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

RECOMMENDATION

That City Council, by resolution, approve the Off-Site Improvement Agreement for the construction of roadway frontage improvements on Arbor Avenue, sewer line on Arbor Avenue and MacArthur Drive, and the storm drainage improvements on Arbor Avenue to serve the DCT Industrial Distribution Facility, and authorize the Mayor to execute the Off-Site Improvement Agreement.

Prepared by: Criseldo Mina, Senior Civil Engineer

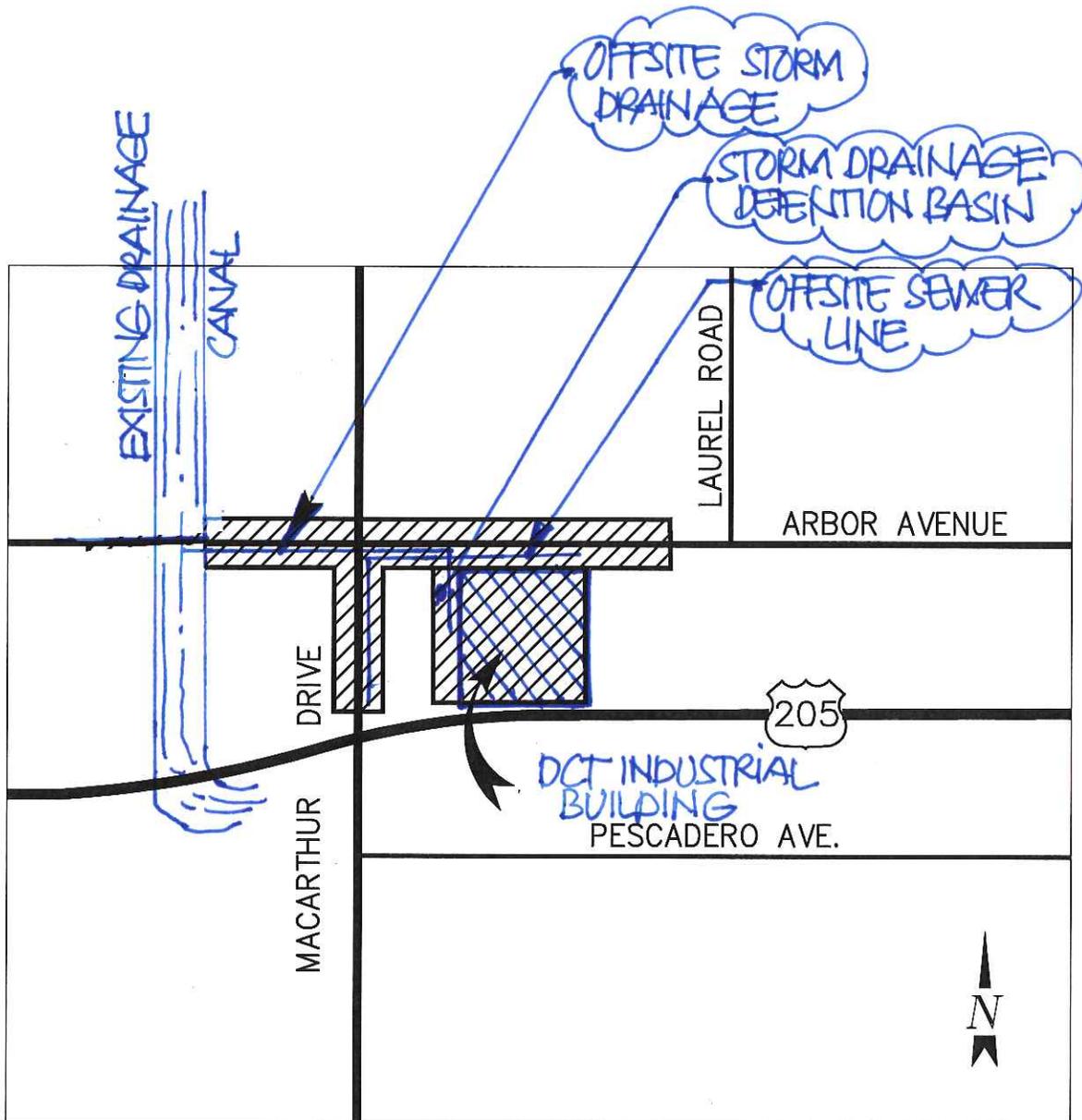
Reviewed by: Robert Armijo, City Engineer
Andrew Malik, Development Services Director
Martha Garcia, Interim Administrative Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A – Location Map

Attachment B – Off-Site Improvement Agreement for roadway, sewer, and storm drainage improvements for DCT Industrial Distribution Facility



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

VICINITY MAP
ARBOR AVENUE

TRACY, CALIFORNIA

DATE	SEPTEMBER 2016
SCALE	NTS
BY	KRR
JOB NO.	A13669-2
SHEET	1 OF 1

**CITY OF TRACY
OFFSITE IMPROVEMENT AGREEMENT
DCT INDUSTRIAL DISTRIBUTION FACILITY – OFFSITE ROADWAY, SEWER, AND
STORM DRAINAGE IMPROVEMENTS**

This **OFFSITE IMPROVEMENT AGREEMENT FOR DCT INDUSTRIAL DISTRIBUTION FACILITY – OFFSITE ROADWAY, SEWER, AND STORM DRAINAGE IMPROVEMENTS** (hereinafter "**Agreement**") is made and entered into by and between the **CITY OF TRACY**, a municipal corporation (hereinafter "**City**"), and **DCT ARBOR AVENUE LLC**, a Delaware Limited Liability Company (referred to as "**Developer**").

RECITALS

- A.** Developer is currently the owner of the real property with a site address of 8450 Arbor Avenue, generally located on the south side of Arbor Avenue and east of MacArthur Drive (hereinafter "**Property**"), and more particularly described in Exhibit "A", attached and incorporated herein by its reference.
- B.** The Preliminary and Final Development Plan Application (D15-0014) for the construction of a warehouse/distribution center with associated parking and landscaping improvements, was approved by the City Council on November 17, 2015 (hereinafter "**Project**"), is on file with the Office of the City Engineer, and is incorporated herein by reference.
- C.** The approval of the Project was subject to specified Conditions of Approval ("**Conditions**"). The Conditions are attached hereto as Exhibit "B," and incorporated herein by reference.
- D.** The Conditions require Developer to construct certain improvements relating to the construction and installation of streets and utilities improvements on Arbor Avenue including but not limited to improvements to curb, gutter, sidewalk, street lights, domestic and irrigation water service, fire water service, fire hydrant, sanitary sewer main, storm drain main, catch basins, driveway, asphalt concrete pavement with transition paving, signing, striping and other associated improvements along the entire frontage of the Property on Arbor Avenue, and installation of a sewer main within the MacArthur Drive right of way ("**Offsite Improvements**" or "**Work**"). Developer has accordingly caused to be prepared, and the City Engineer has approved, certain Improvement Plans and Specifications relating to the construction and installation of the Offsite Improvements, which Developer intends to construct in accordance with the Improvement Plans and Specifications.
- E.** As a component of the required Offsite Improvements, the Conditions require Developer to fund (via the City's Storm Drainage Fees) or construct certain public improvements, including the initial phase of Detention Basin 13, a storm drain pump station, a 10-inch storm drain force main and 30-inch storm drain pipe

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discharging to Eastside Channel (the “Storm Drainage Improvements”). Developer initially elected to pay, and actually paid, all required Storm Drainage Fees, but has now elected to construct the Storm Drainage Improvements and is therefore entitled to a refund of its Storm Drainage Fees following execution of this Agreement and posting of security for the Offsite Improvements as provided herein.

- F. The Improvement Plans and Specifications, as approved by the City Engineer, are on file with the City Engineer, and are incorporated herein by reference. The term “**Improvement Plans and Specifications**” shall include: forty-nine (49) sheets of street improvement plans entitled “Improvement Plan - Arbor Avenue” prepared by Kier & Wright, Civil Engineers & Surveyors, Inc. of Livermore, California, as approved by the City Engineer.
- G. The Conditions require Developer to enter into an Improvement Agreement for the Work prior to the issuance of the Project’s encroachment permit and therefore Developer has requested that the City execute this Agreement.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** Developer shall perform, or cause to be performed, the Work to the satisfaction of the City Engineer. The Work shall be performed, and all materials and labor shall be provided, at Developer’s expense, in the manner described in the Improvement Plans and Specifications subject to credit and reimbursement as set forth in the Conditions. No change shall be made to the scope of Work unless authorized in writing by the City Engineer. Developer may submit a written request to the City Engineer for a change in the scope of Work, as required by Tracy Municipal Code Section 12.36.060(f). Any portion(s) of the Work that are within City’s right(s)-of-way and/or easement(s) are to be performed by the Developer in accordance with the requirements of the State prevailing wage laws, in the event and to the extent applicable.

1.1. **Storm Drainage Fee Refund.** Upon execution of this Agreement and posting of all required improvement security for the completion of the Offsite Improvements, the City shall refund Developer its Storm Drainage Fees in accordance with this Agreement, the Conditions, the Finance Plan, and Title 13 of the Tracy Municipal Code. The amount of the refund (“Storm Drainage Fee Refund”) shall be One Million Seven Hundred Seventy Eight Thousand Nine Hundred and One Dollars (\$1,778,901.00). Such Storm Drainage Fee Refund shall not impair Developer’s eligibility to any other credits or reimbursements for infrastructure improvements as set forth in the Conditions and applicable provisions of the City’s Municipal Code.

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- 2. DEVELOPER'S AUTHORIZED REPRESENTATIVE.** At all times during the progress of the Work, Developer shall have a competent foreman or superintendent ("**Authorized Representative**") on site with authority to act on behalf of Developer. Developer shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. Developer may designate an employee of its general contractor or development manager as the Authorized Representative. Developer shall, at all times, keep the City Engineer informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work. Exhibit "C" attached hereto includes the initial contact information for the Authorized Representative.

- 3. LOCATION OF PERFORMANCE.** Developer shall perform the Work at the locations and grades shown on the Improvement Plans and Specifications or as otherwise approved by the City Engineer. Developer shall use commercially reasonable efforts to acquire all easements and/or rights-of-way necessary for the performance of the Work, at Developer's expense, except as otherwise specified in the Conditions.

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

 - 4.1. Faithful Performance** security in the amount of **\$2,031,327.80**, to secure faithful performance of this Agreement (until the date on which the City Council accepts the Work as complete) pursuant to Government Code Sections 66499, 66499.1, 66499.3, and 66499.4.

 - 4.2. Labor and Material** security in the amount of **\$2,031,327.80**, to secure payment by Developer to laborers and materialmen (until the date on which claims are required to be made by laborers and materialmen) pursuant to Government Code Sections 66499, 66499.2, 66499.3, and 66499.4.

 - 4.3. Warranty** security in the amount of **\$203,132.78**, to secure faithful performance of this Agreement (from the date on which the City Council accepts the Work as complete until one year thereafter) pursuant to Government Code Sections 66499 and 66499.4.

- 5. INSURANCE.** Concurrently with the execution of this Agreement by Developer, and prior to the commencement of any Work, Developer shall furnish evidence to the City that all of the following insurance requirements have been satisfied.

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- 5.1. **General.** Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
- 5.2. **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$3,000,000 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. **Endorsements.** Developer shall obtain endorsements to the automobile and commercial general liability policies with the following provisions:
 - 5.5.1. The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
 - 5.5.2. For any claims related to this Agreement, Developer’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of Developer’s insurance and shall not contribute with it.
- 5.6. **Notice of Cancellation.** Developer shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the City should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 5.7. **Authorized Insurers.** All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 5.8. **Insurance Certificate.** Developer shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney.

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- 5.9. Substitute Certificates.** No later than thirty (30) calendar days prior to the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.
- 5.10. Developer's Obligation.** Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any responsibility whatsoever (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary.
- 6. PERMITS, LICENSES, AND COMPLIANCE WITH LAW.** Developer shall, at Developer's expense, obtain and maintain all necessary permits and licenses for the performance of the Work, subject to City's reasonable cooperation. Prior to the commencement of the Work, Developer shall obtain a City of Tracy Business License. In its performance of the Work, Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
- 7. TIME OF PERFORMANCE.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
- 7.1. Commencement of Work.** No later than fifteen (15) days prior to the commencement of Work, Developer shall provide written notice to the City Engineer of the date on which Developer shall commence Work. Developer shall not commence Work until after the notice required by this section is properly provided, and Developer shall not commence Work prior to the date specified in the written notice.
- 7.2. Schedule of Work.** Concurrently with the written notice of commencement of Work, Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect Developer's prosecution of the Work.
- 7.3. Completion of Work.** Developer shall complete all Work prior to the issuance of final certificate of occupancy on any of the buildings within the Project.
- 8. INSPECTION BY THE CITY.** In order to permit the City to inspect the Work, Developer shall, at all reasonable times, provide to the City reasonable and safe access to the Project site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

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

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

In the event that the City requires an independent inspection, the City may retain an independent inspector and Developer shall pay all costs associated with the independent inspection, and the independent inspector shall provide a report directly to the City.

Fifteen percent (15%) of the estimated construction cost of the Work shall be allocated by Developer, for cost of materials and labor for public improvements not explicitly described on the Improvement Plans and Specifications, but intended to be part of the Work or portion of the Work that are determined by the City Engineer to be designed and constructed by Developer, in order to complete the Work to the satisfaction of the City.

9. DEFAULT

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

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

9.2.1. Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.

9.2.2. Developer abandons the Project site.

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9.2.3. Developer fails to perform one or more requirements of this Agreement or fails to cure any such non-performance pursuant to section 9.3 below.

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

9.2.5. Developer violates any legal requirement related to the Work.

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

9.3.1. Cure the default and charge Developer for the costs therefore, including administrative costs and interest in an amount equal to seven percent (7%) per annum from date of the default.

9.3.2. Demand that Developer complete performance of the Work.

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

9.3.4. Commence a legal action to enforce the terms of this Agreement.

10. **REPAIR OF ANY DAMAGE.** In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other property owners, then Developer shall commence, within five (5) calendar days of becoming aware of such damage, and diligently continue to completion, the repair or replacement (as necessary) of the damaged property; provided that, Developer may defer such repairs or replacement of the damaged property pursuant to the written agreement of the property owner.

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

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and charges have been paid, and the City Council has accepted the Work as complete.

12. **WARRANTY PERIOD.** Developer shall warrant the quality of the Work, in accordance with the terms of the Plans and Specifications, for a period of one (1) year after acceptance of the Work by the City Council. In the event that (during said one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this Agreement, Developer shall be in default and shall cure such default as required hereunder.
13. **INDEPENDENT CONTRACTOR STATUS.** Developer is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.
14. **OWNERSHIP OF WORK.** All original documents prepared by Developer for this Agreement shall be given to City upon City's acceptance of the Work; provided, however, ownership of said documents shall be determined in accordance with applicable laws. Prior to acceptance of the Work, Developer shall submit the as-built drawings in AutoCAD format Release-14 or higher.
15. **ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
16. **INDEMNIFICATION.** Developer shall indemnify, defend, and hold harmless the City (including its elected officials, officers, agents, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) arising or resulting, directly or indirectly, from the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees except to the extent arising from the City's sole or active negligence or willful misconduct or defects in design provided by the City.
17. **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and

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of no force and effect. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.

18. PREVAILING WAGES. For all work located within the public Right-of-Way, Developer shall comply with regulations and pay prevailing wages

19. NOTICES.

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

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

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

Developer: DCT Arbor Avenue LLC
Attn: Rachel Hickenbottom
12 Corporate Plaza, Suite #150
Newport Beach, CA 92660
Tel: (949) 720-8000
Fax: (415) 733-2171

Copy to: DCT Arbor Avenue LLC
Attn: Legal Department
518 17th Street, Suite 800
Denver, CO 80207
Tel: (303) 597-2400
Fax: (303) 228-2201

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

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

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21. **WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
22. **SEVERABILITY.** In the event any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.
23. **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.
24. **ENTIRE AGREEMENT.** This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the Work. This Agreement supersedes all prior negotiations, representations, or agreements.

**CITY OF TRACY – OFFSITE IMPROVEMENT AGREEMENT
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25. 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 Developer and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

CITY OF TRACY,
a municipal corporation:

DEVELOPER:
DCT Arbor Avenue LLC,
a Delaware limited liability company

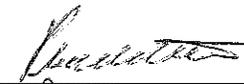
By: Michael Maciel
Title: CITY MAYOR
Date: _____

By: DCT Industrial Operating
Partnership LP,
a Delaware limited partnership,
its Sole Member

Attest:

By: DCT Industrial Trust Inc.,
a Maryland corporation,
its General Partner

By: Nora Pimentel
Title: CITY CLERK
Date: _____

By: 
Name: Rachel Hickenbottom
Title: VP, Construction
Date: 10/7/16

Approved As To Form:

By: Bill Sartor
Title: CITY ATTORNEY
Date: _____

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

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

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

SS:

On October ^{7th} 8, 2016 before me, JUDI LOWENTHAL
Notary Public (insert name and title of the officer),

personally appeared RACHEL HICKERBOTTOM, 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: Judi Lowenthal

[Seal]

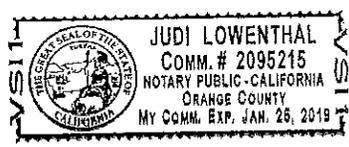


Exhibit A

The Property

ORIGINAL

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CITY OF TRACY
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DCT INDUSTRIAL DISTRIBUTION FACILITY – OFFSITE ROADWAY, SEWER,
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REAL PROPERTY IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS TWENTY-FOUR (24), AND THIRTY-SEVEN (37), AS SHOWN UPON MAP OF UNIT NO. 1, PESCADERO COLONY, FILED NOVEMBER 10, 1921 IN VOLUME 10 OF MAPS AND PLATS, PAGE 44, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM A ONE-HALF (1/2) INTEREST IN AND TO ALL MINERAL, OIL, GAS OR OTHER HYDROCARBON SUBSTANCES NOW EXISTING OR HEREAFTER DISCOVERED ON SAID LOTS; TOGETHER WITH THE RIGHT OF INGRESS OR EGRESS FOR THE PURPOSE OF PROSPECTING, DISCOVERING, DRILLING, MINING AND REMOVING THE SAME, AS RESERVED IN DEED RECORDED DECEMBER 5, 1951 IN BOOK 1132, PAGE 448, OFFICIAL RECORDS, WHICH RIGHTS WERE CONVEYED BY INDIVIDUAL QUITCLAIM DEED FROM WARREN DEBENHAM, JR., ET AL, TO GLORIA BACCHETTI, TRUSTEE OF THE BERT A. BACCHETTI AND GLORIA BACCHETTI REVOCABLE TRUST DATED JUNE 21, 1995, AS AMENDED, RECORDED ON JUNE 13, 2001 AS INSTRUMENT NUMBER 01090987, OFFICIAL RECORDS, BETWEEN THE SURFACE AND A DEPTH OF 500 FEET BELOW THE SURFACE, INCLUDING THE RIGHT OF ENTRY ON THE SURFACE, AND THE RIGHT TO SLANT DRILL OR OTHERWISE DRILL WITHIN SAID 500 FEET OF THE ABOVE DESCRIBED PROPERTY.

EXCEPTING UNTO THE GRANTOR AN UNDIVIDED ONE-HALF (1/2) INTEREST IN AND TO ALL MINERAL, OIL OR GAS NOW EXISTING OR HEREAFTER DISCOVERED ON SAID LOTS, SITUATED OR LOCATED IN ALL OR ANY PART OR PORTION OF THE LANDS HEREIN DESCRIBED LYING MORE THAN FIVE HUNDRED FEET (500') BELOW THE SURFACE THEREOF; TOGETHER WITH THE RIGHT TO GRANT LEASES FOR ALL OR ANY OF SAID PURPOSES; BUT WITHOUT ANY RIGHT WHATSOEVER TO ENTER UPON THE SURFACE OF SAID LANDS WITHIN FIVE HUNDRED FEET (500') VERTICAL DISTANCE BELOW THE SURFACE THEREOF.

APN: 213-060-030-000

Exhibit B

Conditions of Approval

ORIGINAL

RESOLUTION 2015-189

APPROVING THE PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR A 795,732
SQUARE FOOT INDUSTRIAL DISTRIBUTION FACILITY
LOCATED ON A 39.58-ACRE SITE, LOCATED AT 8450 ARBOR AVENUE -
ASSESSOR'S PARCEL NUMBER 213-060-03
APPLICATION NUMBER D15-0014

WHEREAS, The subject property was annexed to the City of Tracy in 1990, received a zoning designation of Planned Unit Development, is designated Light Industrial in the I-205 Corridor Specific Plan, and is consistent with the General Plan designation of Industrial, and

WHEREAS, DCT Industrial Operating LLC, submitted an application for a Planned Unit Development Preliminary and Final Development Plan review (Application Number D15-0014) for a 795,732 square foot industrial building on July 17, 2015, and revised the application on October 7, 2015, and

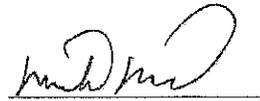
WHEREAS, The subject property is located within the I-205 Corridor Specific Plan area, with a land use designation of Light Industrial, within which industrial land uses are permitted, and

WHEREAS, The Planning Commission conducted a public hearing to review and consider the application on October 28, 2015 and has determined that the application conforms to and is consistent with the General Plan and the I-205 Corridor Specific Plan (which also serves as the concept development plan for the subject property) and recommended City Council approval of the project;

NOW, THEREFORE BE IT RESOLVED, That the Tracy City Council does hereby approve the PUD Preliminary and Final Development Plan for a 795,732 square foot industrial building, Application No. D15-0014, subject to the conditions contained in Exhibit 1 to this Resolution, and with the additional condition that the project install landscaping along the I-205 frontage to create a soft transition to the development through plantings that graduate in height and density from east to west.

The foregoing Resolution 2015-189 was adopted by the Tracy City Council on the 17th day of November, 2015, by the following vote:

AYES: COUNCIL MEMBERS: MITRACOS, VARGAS, YOUNG, MACIEL
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE
ABSTAIN: COUNCIL MEMBERS: RICKMAN


MAYOR

ATTEST

CITY CLERK

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Exhibit "1"

Development Services Department, Conditions of Approval

**Conditions of Approval for DCT Industrial
795,732 Square Foot Industrial Distribution Building
8450 Arbor Avenue
Application Number D15-0014
November 17, 2015**

- A.1. These Conditions of Approval shall apply to the real property described as DCT Industrial, a 795,732 square foot industrial distribution building located at 8450 Arbor Avenue, Application Number D15-0014 (hereinafter "Project"), located on a 39.58-acre site, Assessor's Parcel Number 213-060-03.
- A.2. The following definitions shall apply to these Conditions of Approval:
- 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, I-205 Specific Plan, ordinances, resolutions, policies, procedures, and the City's Design Documents (including the Standard Plans, Standard Specifications, Design Standards, 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 DCT Industrial, a 795,732 square foot industrial distribution facility located at 8450 Arbor Avenue, Application Number D15-0014. The Conditions of Approval shall specifically include all Development Services Department, including Planning Division and Engineering Division, conditions set forth herein.
 - f) "Project" means the real property consisting of approximately 39.58 acres located at 8450 Arbor Avenue, Assessor's Parcel Number 213-060-03.
- A.3. 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 Subdivision Map Act (Government Code sections 66410, et seq.), the California Environmental Quality Act (Public Resources Code sections 21000, et seq.,

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DCT Industrial
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"CEQA"), and the Guidelines for California Environmental Quality Act (California Administrative Code, title 14, sections 1500, et seq., "CEQA Guidelines").

- B.1. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all City Regulations.
- B.2. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all mitigation measures identified in the General Plan Environmental Impact Report, dated February 1, 2011.
- B.3. 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.4. Except as otherwise modified herein, all construction shall be consistent with the site plan and architectural renderings received by the Development Services Department on October 7, 2015.
- B.5. Prior to the issuance of a building permit, the applicant shall provide a detailed landscape and irrigation plan consistent with City landscape and irrigation standards, including, but not limited to Tracy Municipal Code Section 10.08.3560 I-205 Specific Plan, and Water Efficient Landscape Guidelines on private property, and the Parks and Parkways Design Manual for public property, to the satisfaction of the Development Services Director. Said landscape plans shall include documentation which demonstrates that there is no less than 10 percent of the parking area in landscaping, and 40 percent canopy tree coverage at tree maturity.
- B.6. Where landscape planters are parallel and adjacent to vehicular parking spaces, the planter areas shall incorporate a 12-inch wide concrete curb along their perimeter that is adjacent to the parking space in order to allow access to vehicles without stepping into landscape planters.
- B.7. Prior to the issuance of a building permit, an Agreement for Maintenance of Landscape and Irrigation Improvements shall be executed and financial security submitted 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.8. No roof mounted equipment, including, but not limited to, HVAC units, vents, fans, antennas, sky lights and dishes whether proposed as part of this application, potential future equipment, or any portion thereof, shall be visible from Arbor Avenue, Mac

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Arthur Drive, I-205, or any other public right-of-way. All roof-mounted equipment shall be screened from view from the public right-of-way with a continuous parapet wall at least equal in height to the height of any equipment installed, to the satisfaction of the Development Services Director.

- B.9. All vents, gutters, downspouts, flashing, electrical conduit, and other wall-mounted or building-attached utilities shall be painted to match the color of the adjacent surface or otherwise designed in harmony with the building exterior to the satisfaction of the Development Services Director.
- B.10. Prior to final inspection or certificate of occupancy, on-site circulation signs shall be installed to the satisfaction of the Development Services Director.
- B.11. Prior to final inspection or certificate of occupancy, all exterior and parking area lighting shall be directed downward or shielded, to prevent glare or spray of light into the public rights-of-way, to the satisfaction of the Development Services Director.
- B.12. Prior to the issuance of a building permit, bicycle parking spaces shall be provided in accordance with Tracy Municipal Code Section 10.08.3510 to the satisfaction of the Development Services Director.
- B.13. 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 view from any public right-of-way, behind structures or landscaping, to the satisfaction of the Development Services Director.
- B.14. 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.
- B.15. All improvements shall be consistent with the Tracy Municipal Code, Standard Plans, and other applicable City Regulations.
- B.16. No signs are approved as a part of this development application. Prior to the installation of any signs, the applicant shall submit a sign permit application and receive approval from the Development Services Director, and all signs shall be designed in compliance with the I-205 Specific Plan and Tracy Municipal Code Chapter 10.08, Article 35, Signs.
- B.17. Prior to the issuance of a building permit, a detailed plan of the trash enclosures, at least eight feet in height, shall be submitted, showing solid metal doors, a solid roof, an interior concrete curb, and exterior materials and colors compatible with the adjacent building exterior.
- B.18. Prior to the issuance of a building permit, a detailed plan of the screen walls shall be submitted, showing colors and details such as score lines, compatible with the adjacent building exterior.

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- B.19. The architectural elevations for all of the area contained within the PDP/FDP shall be consistent with the elevations received by the Development Services Department on October 7, 2015.

Engineering Division Conditions of Approval

C.1. General Conditions

C.1.1 Developer shall comply with the applicable recommendations of the technical analyses/ reports prepared for the Project listed as follows:

- a) *DCT Industrial Project Traffic Impact Study in the City of Tracy*, prepared by TJKM Transportation Consultants, dated May 20, 2014 ("*Traffic Analysis*").
- b) *Wastewater System Analysis for Properties at Arbor Road and MacArthur Drive*, prepared by Ch2M-Hill, dated May 2014 ("*Wastewater Analysis*").
- c) *Hydraulic Evaluation of I-205 Parcels M1 and M2 and Infill Parcels 7 and 13*, prepared by West Yost Associates, dated July 7, 2014 ("*Water Analysis*").
- d) *M2 Parcel Storm Drainage and Flood Protection Evaluation*, prepared by Storm Water Consulting Inc., dated March 20, 2014 ("*Storm Drainage Analysis*"), and as updated per the Memorandum dated April 19, 2015.

C.1.2 Developer shall comply with the requirements of the Finance Plan for M2 Parcel (39.58 Gross Acres), I-205 Industrial, approved by City Council.

C.1.3 Developer shall comply with the applicable requirements of Annexation and Development Agreement ("Development Agreement") dated October 29, 1990, recorded in the office of the San Joaquin County Recorder on November 5, 1990, Official Recorder No. 90109507

C.2. 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.2.1. 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.

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- C.2.2. 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.2.3. 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#).
 - 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.
 - 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) 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.2.4. Two (2) sets of the Project's Geotechnical Report signed and stamped by a licensed Geo-technical Engineer licensed to practice in the State of California. 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.2.5. A copy of the Approved Fugitive Dust and Emissions Control Plan that meets San Joaquin Valley Air Pollution Control District (SJVAPCD).
- C.2.6. Documentation of any necessary authorizations from Regional Water Quality Control Board (RWQCB) such as NOI and WDID and documents such as SWPPP.
- C.2.7. 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 Condition C.4.2.3(b) below.
- C.2.8. Executed hold-harmless agreement relieving the City of liability associated with flooding of portions of the parking areas as required in Condition C.11.3 below.
- C.3. Encroachment Permit - No applications 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:

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- C.3.1. Improvement Plans prepared on a 24" x 36" size 4-mil thick polyester film (mylar) that incorporate all the requirements described in these Conditions of Approval. Improvement Plans 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.
- C.3.2. Two (2) sets of structural calculations, as applicable, signed and stamped by a Structural Engineer licensed in the State of California, as required in Condition C.4.1.(b), below.
- C.3.3. Signed and stamped Engineer's Estimate that summarizes the cost of constructing all the public improvements shown on the Improvement Plans.
- C.3.4. Signed and notarized Offsite Improvement Agreement (OIA) and Improvement Security, to guarantee completion of the identified public improvements that are necessary to serve the Project as required by these Conditions of Approval. The form and amount of Improvement Security shall be in accordance with Section 12.36.080 of the Tracy Municipal Code (TMC), and the OIA. The Developer's obligations in the OIA shall be deemed to be satisfied upon City Council's acceptance of the public improvements and release of the Improvement Security.
- C.3.5. Signed and notarized Deferred Improvement Agreement (DIA) and Improvement Security, to allow deferral of completion of improvements as required by these Conditions of Approval. The form and amount of Improvement Security shall be in accordance with the DIA and Section 12.36.080 of the TMC, or pursuant to the terms of the Development Agreement, as appropriate. The Developer's obligations in the DIA shall be deemed to be satisfied upon the release of the Improvement Security.
- C.3.6. Check payment for the applicable 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 April 15, 2014, per Resolution 2014-059.
- C.4. Traffic Control Plan signed and stamped by a Registered Civil Engineer or Traffic Engineer licensed in the State of California.
- C.5. Improvement Plans - Improvement Plans shall contain the design, construction details and specifications of public improvements that 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.5.1. Site Grading

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- a) 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.
- b) When the grade of the Project Site is higher than the adjacent property(s) by more than 12 inches, a reinforced concrete 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.
- c) An engineered fill may be accepted as a substitute of a retaining wall, 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.
- d) Grading for the site shall be designed such that the Project's storm water can overland release 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 foot lower than the building finish floor elevation and shall be improved to the satisfaction of the City Engineer.

C.5.2. Storm Drainage

C.4.2.1 Permanent Drainage System

- a) The development shall construct an initial phase of DET 13 to include 4.7 AF of storage within the Project boundaries, a pump station having a capacity of 1 cfs, and a force main outfall along Arbor Avenue to discharge to the Eastside Channel. DET 13 shall be a fully functioning initial phase of completion with the only retrofit needed being its expansion in area and volume in conjunction with adjacent new development in the future.

The Developer shall design and install Detention Basin DET13 in accordance with the Citywide Storm Drainage Master Plan ("Storm Drainage Master Plan"), Storm Drainage Analysis, and the City of Tracy's Engineering Design & Construction Standards. The Developer shall submit Improvement plans and obtain approval of the plans by the City Engineer prior to beginning work. The improvement plans for DET13 shall include concept level

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plans for the ultimate configuration (build-out condition) of DET13. The developer shall receive fee credits for the dedication of land, installation of pump station, and all costs associated with constructing DET13 as outlined in the Finance Plan.

In order for the above storage volumes requirements to be valid, it will be necessary to construct a 24" storm drain force main extending west in Arbor Avenue from DET13 to the City's existing Eastside Channel west of MacArthur Drive outfall to the Eastside Channel. The Developer shall be eligible to receive fee credits and/or reimbursements for the cost of this force main per the Finance Plan.

- b) Fee Credits and/or reimbursements for design and construction of DET13 and Downstream Improvements shall be as determined by the Finance Plan, and included in the OIA.
- c) The DET13 improvements will be accepted by the City upon completion of construction of the storm drainage facilities from DET13 to Eastside Channel.
- d) All Layout and design of Access Easements and maintenance access roads required to access DET13 and all off-site storm drains and structures to be dedicated to the City shall be per the requirements of Public Works Department and City Regulations.
- e) Parcel maps, Grant Deed documents or other instruments for dedication of the storm drainage basin parcel to the City shall be prepared and executed by the Developer. Acceptance of the basin parcel by the City will be upon completion of the downstream facilities as listed in Condition 4.2.1 (a) above, and upon the determination by the City Engineer that the basin is constructed and operational per the Master Plan and City Standards.
- f) The public street system serving the project site will need to include storm water quality treatment provisions that conform to the City's Manual of Stormwater Quality Control ("SWQC") Standards for New Development and Redevelopment. Design of DET13 shall include measures to provide measures for storm water quality treatment for the public streets.

C.4.2.2 Temporary Retention ("Interim Drainage")

If Developer does not construct DET13 and Down Stream Improvements as listed in Condition C.4.2.1 (a) then, the Developer may construct as Interim Drainage as follows:

- a) Per requirements cited in the Storm Drainage Analysis, DET13 may need to function as a Temporary Retention Basin ("Interim Drainage") serving this development until such time as the

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components of the Eastside Channel System that will ultimately discharge storm runoff from the Project to the Eastside Channel ("Downstream Improvements") are completed and operational. For the Interim Drainage, at a minimum, the basin shall be designed to retain storm water run-off from the Project resulting from 200% of the 10-year, 48-hour storm event in compliance with Sections 5.06 and 5.07 of City of Tracy Design Standards.

- b) The Developer shall provide a geotechnical investigation with respect to the Temporary Retention Basin that validates that percolation rates for the subsurface soils that exist at and below the bottom of the basin are acceptable.
- c) Developer shall be responsible for conceptual design of the modifications needed to bring the configuration and design of the basin to the ultimate configuration per the Master Plan. Developer shall be eligible for reimbursements for basin improvements that comply with the ultimate configuration per the Master Plan. Reimbursement of costs shall be in accordance with Chapter 13.08 of Tracy Municipal Code.
- d) Developer shall be responsible for maintenance of DET13 as a Retention Basin until the downstream drainage facilities are installed and accepted by the City. The Developer shall sign an improvement agreement (Deferred Improvement Agreement), to assure completion of the Developer's obligation to repair and maintain said basin(s) while the storm drainage retention basin is in service and then to modify storm drainage retention basin to conform to Master Plan requirements at such time they are no longer needed due to the construction of the above-referenced permanent facilities.
- e) The Developer shall record a temporary storm drainage easement to grant rights to the City to access the temporary storm drainage retention basin(s) for any necessary emergency repair or maintenance work the City may have to perform within the basin site. Said temporary access easement shall include a sunset clause that such easement will automatically be terminated at such time as the above-referenced permanent storm drainage improvements are completed.

C.4.2.3 Onsite Drainage

- a) The design and construction details of the Project's storm drainage system and treatment facilities shall meet City Regulations in affect at the time of this approval and shall comply with the applicable requirements of the City's Storm Water Quality Control Standards and storm water regulations that were adopted by the City Council in 2008 and any subsequent amendments.

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- Catch basin Filter inserts shall be permitted as an acceptable method of storm water quality due to the high groundwater present at the site.
- b) Calculations related to the design and sizing of on-site storm water treatment facilities must be submitted with the Grading and Storm Drainage Plans, and approved by City's Stormwater Coordinator prior to issuance of the Grading Permit for the Project.
 - c) Prior to the final inspection of the building the Developer shall submit a signed and notarized Stormwater Treatment Facilities Maintenance Agreement (STFMA) as a guarantee for the performance of Developer's responsibility towards the repair and maintenance of on-site storm water treatment facilities.
- C.5.3. The Developer shall arrange for a site sub-surface investigation for determining the presence of irrigation and drainage tile drains within and around the Project Site, if any, and submit a report prepared and signed by a Geotechnical Engineer. In the event that tile drains exist within and around the Project Site, the Developer has the option to either relocate or abandon the on-site tile drains as required for the proposed development. All existing tile drains and proposed improvements for the relocation or removal of tile drains must be shown on the Grading and Storm Drainage Plans. Any tile drains under the proposed buildings shall be abandoned or relocated as may be required, to the satisfaction of the City. The Developer or the property owner(s) will be responsible for maintenance of tile drains to remain or the relocated tile drains and associated improvements. Additionally, the Developer will be responsible for monitoring the groundwater levels, and for the mitigations, if any, that may be required, by any applicable laws and regulations.
- C.5.4. Sanitary Sewer Improvement Plans
- a) As recommended in the Wastewater Analysis, the Developer shall design and install an 8-inch sewer line from the Project in Arbor Avenue to MacArthur Drive, a 10" line in MacArthur Drive to a new manhole on MacArthur Drive west of the existing MacArthur pump station, and a small section of 21-inch sewer line between the new manhole and existing manhole.
 - b) Since the proposed 8-inch and 10-inch diameter sewer lines are not part of the City's Wastewater Master Plan, these improvements are considered part of the Project's off-site sewer improvements and no fee credits will be issued. However, these lines do serve adjacent parcels and the developer will be eligible for reimbursement per the Finance Plan from the M1 Parcel as well as Infill Parcel Numbers 7 and 13 when these parcels develop.

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- c) All new sewer lines and associated appurtenances shall meet the City of Tracy Design Standards including minimum flow velocity requirement.
- d) The Developer is responsible for the cost of installing the Project's permanent sewer connection(s) including but not limited to, replacing asphalt concrete pavement, application of 2" thick asphalt concrete overlay (25 feet on both sides of the utility trench) where required, restoring pavement marking and striping, and other improvements that are disturbed as a result of installing the Project's sewer connection. This pavement repair requirement is applicable when connections are perpendicular to the street direction, when the new sewer line is placed in the street parallel to the street direction; the width of overlay to be the width of the affected lane.
- e) The Developer is hereby notified that the City has limited wastewater treatment capacity in the City's Wastewater Treatment Plant until current and future expansion capital improvement projects are completed and operational. As of January 2015, the City had an unused capacity of approximately 4200 EDU's within its wastewater treatment plant available to new development within the City on a first come-first served basis. These EDU's are currently available to serve the proposed project, but as other development projects within the City come forward and building permits are issued, this remaining capacity will be reduced.

C.5.5. Water Distribution System

- a) Off-site Water Line Improvements: The developer shall design and install a 12-inch line in MacArthur Drive from the terminus of the existing 12-inch water line just north of I-205 to Arbor Ave, and 12-inch water line in Arbor Avenue from MacArthur Drive to the eastern property boundary of the Project. The developer is also responsible for constructing a 16-inch water line from the existing water line in Pescadero Avenue north, crossing under the freeway and continuing along the eastern edge of the Project and connecting to the new 12-inch line on Arbor Avenue. Alternatively, the 16" line may cross under the freeway on the western side of the Project and continue along the western edge of the Project. The actual location of the new line may be a variation of these, or any other location as approved by the City. The improvements are required to be complete, in place and operational, prior to the issuance of the final certificate of occupancy for the Project.
- b) Since the proposed water lines are not considered master plan improvements, no fee credits will be issued. However, the developer will be eligible from reimbursement per the finance plan from the M1 parcel, Infill Parcel Numbers 7 and 13, the Eastside Industrial development, the Chrisman Road property and all NEI Phase 3 properties at such time as these properties develop.

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- c) During the construction phase of the Project, the Developer is responsible for providing water infrastructure (temporary or permanent) capable of delivering adequate fire flows and pressure appropriate to the various stages of construction and as required by the City of Tracy Fire Code Official.
- d) Prior to issuance of building permit, the Developer shall submit calculations and plans as required by the Fire Department and obtain approvals for the proposed fire system.
- e) In order to guarantee completion of the Offsite Water Line Improvements, the Developer shall enter into an improvement agreement (Offsite Improvement Agreement or OIA) and post an improvement security in the amounts and form in accordance with section 12.36.080 of the TMC, and as required by these Conditions of Approval. The Developer shall submit the signed and notarized OIA with the necessary improvement security, prior to the issuance of the Grading Permit.
- f) All public improvements to be installed within the jurisdiction of the Caltrans and San Joaquin County (County) will require encroachment permit and a maintenance agreement with the respective agencies.
The Developer is required to coordinate with Caltrans and obtain approval of the design of the water line crossing under the I-205 freeway. The Developer shall comply with all the applicable requirements of Caltrans and County in connection therewith, obtain any necessary encroachment permit(s), and pay applicable permit processing, plan checking and inspection fees, prior to starting work.
- g) All costs associated with the installation of the Project's permanent water connection(s) as identified in the Water Analysis including acquisition of right-of-way and/or easements, the cost of removing and replacing asphalt concrete pavement, pavement marking and striping such as crosswalk lines and lane line markings, replacing traffic detecting loops, conduits, and wires, relocating existing utilities that may be in conflict with the water connection(s), and other improvements shall be paid by the Developer subject to terms of the Finance Plan.
- h) The portion of the new City water lines that run through existing agricultural properties may be run beneath existing dirt access roads. The City shall be granted a 15' easement for these pipelines even though the access roads may be as narrow as 10' to accommodate those existing agricultural activities. The access roads to have an all-weather surface.
- i) City will use its power of eminent domain, if necessary, to secure an easement for the City water line described herein across the small parcel situated between the Project and the Caltrans freeway property, or between Caltrans and the parcels immediately to the east or west of

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the Project. All costs of the eminent domain procedures shall be paid for by the Developer. However, the developer will be eligible from reimbursement per the Finance Plan from the M1 parcel, Infill Parcel Numbers 7 and 13, the Eastside Industrial development, the Chrisman Road property and all NEI Phase 3 properties at such time as these properties develop.

- j) Interruption to the water supply to the existing businesses and other users shall be kept to a minimum to facilitate construction of off-site improvements related to the Project. Prior to starting the work described in this section, the Developer shall submit a Work Plan acceptable to the City that demonstrates no interruptions to the water supply, and Traffic Control Plan to be used during the installation of the offsite water mains and connections. The Developer shall be responsible for notifying business owner(s) and users, regarding construction work. 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 start of work.
- k) Domestic and Irrigation Water Services – The Developer shall design and install domestic and irrigation water service connection, including a remote-read master 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 domestic and irrigation water service connection(s) must be completed before the final inspection of the building. Sub-metering will be allowed within private property. The City will not perform water consumption reading on sub-meters. The Developer will be responsible for relocating or reinstalling water sub-meters. The City shall maintain water lines from the master 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.
- l) 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.4.6. Street Improvements:

- a) Prior to issuance of the final certificate of occupancy, the Developer shall complete construction of improvements identified in the Traffic Analysis, and satisfy all applicable requirements specified in these Conditions of Approval, I-205 Specific Plan and City Regulations.

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- b) The Developer shall be responsible for design and construction of Frontage Improvements on the south side of Arbor Avenue for the full length of frontage of the Project. If any of the Frontage Improvements are not constructed prior to approval of the temporary certificate of occupancy, the Developer shall enter into a DIA with security to guarantee completion of such improvements. Scope of work and timing of completion of Frontage Improvements shall be subject to the approval of the City Engineer.
- c) The Developer shall design and install improvements to widen Arbor Avenue for the full frontage of the Project. The ultimate roadway section per the Roadway Master Plan will include one eastbound and one westbound travel lanes with a 16-foot wide raised median and a 10' wide Class 1 bicycle path on the north side of Arbor Avenue.

The roadway improvements to be constructed with this Project shall include, but are not limited to, concrete curb, gutter and sidewalk, accessible ramps, asphalt concrete pavement, signing and striping, storm drains, catch basins, fire hydrants, LED street lights, street trees with automatic irrigation system, barricade and guardrail, and other improvements as determined by the City Engineer that are necessary for a safe transition from a newly improved street to existing street sections on the east and west ends. The Project obligation will be to build the southern side of Arbor Avenue, a striped 11' median and one westbound lane to edge of pavement condition. The Arbor Avenue lane transitions to the west and east of the Project will be paved to an edge of pavement condition with appropriate striping. Other improvements will be provided by the appropriate land owner on which those improvements front.
- d) The Developer shall submit geotechnical recommendations and pavement design calculations to the City to demonstrate adequacy and integrity of the existing structural street section on Arbor Avenue, and construct improvements as required to support STAA truck traffic. At a minimum, in addition to the widening, the Developer shall complete grinding and overlay of existing Arbor Street pavement with a 2" asphalt concrete overlay for the entire street width for the project frontage.
- e) Prior to approval of Grading or Encroachment Permits, the Developer shall submit improvement plans for Arbor Avenue with the locations of all utilities including water, recycled water, sanitary sewer, storm drainage lines that will be installed within the right-of-way.
- f) All underground facilities within the southerly half street section proposed to be built with the Project shall be completed prior to issuance final certificate of occupancy.
- g) For Arbor Avenue and the intersection improvements at Arbor Avenue/MacArthur Drive improvements, structural section of the roadway, turning radius and travel lane storage requirements for STAA

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Trucks are to be considered in the design of these roadway improvements. Adequate Acceleration and deceleration lanes shall be provided where required.

- h) Intersection improvements at MacArthur Drive and Arbor Avenue shall include the installation of four-way stop signs, stop bars, and legend, pavement transition, lane line marking(s), pavement markings, traffic sign(s) and other improvements are necessary for the safe operation of a four-way stop intersection as recommended in the traffic study prepared by TJKM Transportation Consultants, dated May 20, 2014.
- i) Right-of-Way on Arbor Avenue: The Developer shall dedicate 7-foot wide right-of-way along the entire frontage of the Property on Arbor Avenue to conform to the street sections shown on the *City of Tracy Citywide Roadway and Transportation Master Plan* prepared by RBF Consulting, November 2012 ("TMP"). Per the TMP, Arbor Avenue is designated as two-lane Arterial with Two-Way Left-Turn Lanes (TWLTL), (Figure 4.15(c) of TMP), and Right-of-way width of 84 feet. Additional right-of-way dedication may be required for turn lanes as identified in the Traffic Analysis and TMP and as shown on the Revised Preliminary Site Plan prepared by Kier & Wright Engineers, titled DCT Industrial Warehouse for DCT Industrial, dated April, 2014, "Interim & Ultimate Striping Plan of Arbor Ave", prepared by Kier & Wright, dated March 24, 2015, "N. MacArthur Drive at Arbor Ave Right Lane STAA turning Exhibit", prepared by Kier & Wright, dated February 11, 2015, "Potable Water Line Exhibit", prepared by Kier & Wright, dated March 24, 2015. Design of the improvements on Arbor Avenue shall be approved by the City Engineer.
- j) Right-of-Way at Arbor Avenue and N. MacArthur Drive Intersection: As recommended in the Traffic Analysis, the Developer shall acquire and dedicate required right-of-way at the intersection of Arbor Avenue and N. MacArthur Drive to accommodate STAA trucks. Final configuration of the right-of-way dedication shall be as approved by the City Engineer.
- k) The Developer shall execute a Grant Deed to convey the land in fee title and submit legal description and plat map that describes the area to be dedicated, prior to City Council's acceptance of the public improvements. The cost of right-of-way dedication including the cost of preparing the legal description and plat map will be paid by the Developer. The City will use its right of eminent domain, if necessary, to obtain the right of way dedications along Arbor Avenue and MacArthur Drive that are required to satisfy the interim and ultimate build-out of those streets to serve this Project as anticipated by the I-205 Specific Plan and the City's Master Plan. All costs of the eminent domain procedures shall be paid for by the Developer. However the developer will be eligible for reimbursement pursuant to the Finance Plan.

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- l) The roadway improvements described in this sub-section (Offsite Roadway Improvements) 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), the applicable City Regulations, and these Conditions of Approval. Design and construction details of the Offsite Roadway Improvements must be shown on the Improvement Plans.
 - m) In order to guarantee completion of the Offsite Roadway Improvements, the Developer is required to enter into an Offsite Improvement Agreement (OIA) with the City and post improvement security in the amounts approved by the City Engineer, prior to the Encroachment Permit. The OIA requires authorization from the City Council. The Developer shall pay applicable engineering review fees such as plan checking, agreement and permit processing, testing, and construction inspection fees based on current charge rate and as required by these Conditions of Approval and shall be reimbursed in accordance with the Finance Plan.
 - n) The City will assume responsibility to maintain the public improvements and accept the offer of dedication for right-of-way on Arbor Avenue after the City Council accepts the public improvements.
 - o) Arbor Avenue is not an I-205 Specific Plan program-funded street. Hence, all improvements required for the Project as identified in the Traffic Analysis and these Conditions of Approval shall be completed by the Developer, and no fee credits shall be given. Per the Finance Plan, the developer shall be eligible for reimbursements from Parcel M1 and Infill Parcel Numbers 7 and 13 at the time these parcels develop for improvements constructed at the intersection of Arbor Avenue and N. MacArthur Drive.
- C.4.7. Project Driveways: Developer shall construct driveways to comply with the recommendations of the Traffic Analysis and City Regulations. Project driveways shall be designed for STAA truck access and provide adequate deceleration lanes on Arbor Avenue and safe site distances.
- C.4.8 Joint Utility Trench Plans – All future utilities along the frontage of the Project on Arbor Avenue shall be placed in an underground facility. If required, the Developer shall relocate existing utility poles after obtaining approval of affected utility companies and the City. No fee credits or reimbursements shall be applicable for utility pole relocations.
- a) City may form a Utility Underground District and complete the undergrounding of overhead utilities within Arbor Avenue right-of-way in the future in accordance with the applicable section(s) of Tracy Municipal Code.

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- b) 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.
 - c) The Developer shall submit Joint Utility Trench Plans for the installation of electric, gas, telephone and TV cable main and service lines that are necessary to be installed to serve the Project. These utilities shall be installed within the 10-foot wide Public Utility Easement (PUE) that will be offered for dedication to the City. The Developer shall coordinate, as feasible, with the respective owner(s) of the utilities for the design of these underground utilities to ensure they can be installed within the 10-foot wide PUE to the extent feasible (and except in the event, that additional space beyond the 10-foot PUE is required, as determined by the utilities owner(s)).
- C.4.9 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). This pavement repair requirement is applicable when cuts or trenches are perpendicular to the street direction; when the new joint trench is placed in the street parallel to the street direction; the width of overlay is to be the width of the affected lane.
- C.6. Building Permit - No building permit will be approved 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.6.1. Check payment of the applicable development impact fees including City Wide Roadway and Traffic, Water, Recycled Water, Wastewater, Storm Drainage, Public Safety, Public Facilities, and Park Development Impact Fees per the Finance Plan.
 - C.6.2. Check payment of any applicable Regional Transportation Impact Fees (RTIF)
 - C.6.3. Check payment of any applicable Agricultural Conversion or Mitigation Fee as required in Chapter 13.28 of the Tracy Municipal Code.
 - C.6.4. Approval of the Finance Plan by the City Council.

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DCT INDUSTRIAL DISTRIBUTION FACILITY – OFFSITE ROADWAY, SEWER, AND
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- C.7. Acceptance of Public Improvements - Public improvements will not be accepted by the City Council until after the Developer completes construction of the relevant public improvements, and also demonstrates to the City Engineer satisfactory completion of the following:
- C.7.1. Correction of all items listed in the deficiency report prepared by the assigned Engineering Inspector relating to public improvements subject to City Council's acceptance.
 - C.7.2. 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.7.3. Signed and notarized Grant Deeds and /or Grant of Easement(s) including legal description and plat map(s), relating to the offer of dedication for the storm drainage detention basin, Arbor Avenue right-of-way, and utility easements, as required in these Conditions of Approval.
 - C.7.4. Reasonable written permission from irrigation district or affected owner(s), if applicable. The cost of relocating and/or removing irrigation facilities and/or tile drains is the sole responsibility of the Developer.
- C.8. Temporary or Final Building Certificate of Occupancy - No Final Building Certificate of Occupancy will be issued by the City until after the Developer provides reasonable documentation which demonstrates, to the satisfaction of the City Engineer, that:
- C.8.1. The Developer has satisfied all the requirements set forth in Conditions C.5 and C.6 above.
 - C.8.2. The Developer has completed construction of all required public facilities for the building for which a certificate of occupancy is requested and all the 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.9. Improvement Security - The Developer shall provide improvement security for all public facilities, as required by the OIA, DIA, and these Conditions of Approval. The form of the improvement security may be a surety bond, letter of credit or other form in accordance with section 12.36.080 of the TMC and the Development Agreement. The amount of improvement security shall be as follows:

**CITY OF TRACY – OFFSITE IMPROVEMENT AGREEMENT
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- C.9.1. Faithful Performance (100% of the estimated cost of constructing the public facilities)
- C.9.2. Labor & Materials (100% of the estimated cost of constructing the public facilities), and
- C.9.3. Warranty (10% of the estimated cost of constructing the public facilities)
- C.10. Release of Improvement Security - Improvement Security(s) described herein shall be released to the Developer after City Council's acceptance of public improvements, and after the Developer demonstrates, to the satisfaction of the City Engineer, compliance of these Conditions of Approval, and completion of the following:
 - C.10.1. Improvement Security for Faithful Performance, Labor & Materials, and Warranty shall be released to the Developer in accordance with Section 12.36.080 of the TMC.
 - C.10.2. Written request from the Developer and a copy of the recorded Notice of Completion.
- C.11. Benefit District – The Developer may make a written request to the City for the formation of a Benefit District, prior to the approval of improvement plans for the public facility(s) considered to be oversized that benefits other property(s) or development(s). Reimbursement request(s) will be processed in accordance with Chapter 12.60 of the TMC.
- C.12. Special Conditions
 - C.12.1. 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.12.2. When street cuts are made for installation of utilities, the Developer is required to install 2 inches thick asphalt concrete overlay with reinforcing fabric at least 25 feet from all sides and for the entire length of the utility trench. A 2 inches deep grind on the existing asphalt concrete pavement will be required where the asphalt concrete overlay will be applied and shall be uniform thickness in order to maintain current pavement grades, cross and longitudinal slopes. If the utility trench extends beyond the median island, the limit of asphalt concrete overlay shall be up to the lip of existing gutter located along that side of the street. This pavement repair requirement is when cuts/trenches are perpendicular to the street direction; when the street cut is parallel to the street direction, the width of overlay to be the width of the affected lane.

**CITY OF TRACY – OFFSITE IMPROVEMENT AGREEMENT
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Page 20

- C.12.3. The Developer shall execute a hold-harmless agreement with the City relieving the City of any liability associated with flooding of portions of the parking areas and other site improvements contiguous to the proposed building that will be constructed below the base flood elevation of 22 feet for Old River depicted on the existing FEMA Flood Insurance Rate Map covering this area.
- C.12.4. 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.12.5. The Developer shall abandon or remove all existing irrigation structures, channels and pipes, if any, as directed by the City after coordination with the irrigation district, if the facilities are no longer required for irrigation purposes. If irrigation facilities including tile drains, if any, are required to remain to serve existing adjacent agricultural uses, the Developer will design, coordinate and construct required modifications to the facilities to the satisfaction of the affected agency and the City. Written permission from irrigation district or affected owner(s) will be required to be submitted to the City prior to the issuance of the Grading Permit. The cost of relocating and/or removing irrigation facilities and/or tile drains is the sole responsibility of the Developer.
- C.12.6. All improvement plans shall contain a note stating that the Developer (or Contractor) will be responsible to preserve and protect all existing survey monuments and other survey markers. Any damaged, displaced, obliterated or lost monuments or survey markers shall be re-established or replaced by a licensed Land Surveyor at the Developer's (or Contractor's) sole expense. A corner record must be filed in accordance with the State law for any reset monuments (California Business and Professions Code Section 8871).
- C.12.7. 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, Building Permit, Improvement Plans, OIA, and DIA, 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 inclusion, design, and implementations of such additions and requirements, without reimbursement or any payment from the City.

Exhibit C

Initial Contact Information for the Authorized Representative

**CITY OF TRACY
OFFSITE IMPROVEMENT AGREEMENT
DCT INDUSTRIAL DISTRIBUTION FACILITY – OFFSITE ROADWAY, SEWER,
AND STORM DRAINAGE IMPROVEMENTS**

EXHIBIT "C"
PAGE 1 OF 1

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Newport Beach, CA 92660

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rhickenbottom@dctindustrial.com

01-100616cm

RESOLUTION 2016-_____

APPROVING AN OFF-SITE IMPROVEMENT AGREEMENT FOR ROADWAY, SEWER,
AND STORM DRAINAGE IMPROVEMENTS FOR THE DCT INDUSTRIAL DISTRIBUTION
FACILITY ON ARBOR AVENUE, AND AUTHORIZING THE MAYOR TO EXECUTE THE
AGREEMENT

WHEREAS, On November 17, 2015, the City Council approved the Preliminary and Final Development Plan for the DCT Industrial Distribution Facility submitted by Arbor Avenue LLC (Developer), for the construction of a 795,732 square foot industrial distribution building which includes parking, private landscaping, and associated improvements, and

WHEREAS, Approval of the DCT Industrial Distribution Facility required the Developer to complete, among other things, the construction of frontage roadway improvements on Arbor Avenue, sewer line on Arbor Avenue and MacArthur Drive, and a permanent storm drainage detention facility with a pump station Road and force main on Arbor Avenue, prior to occupancy of the building, and

WHEREAS, As part of its approval of the DCT Industrial Distribution Facility, the City Council found that the project, including all associated improvements, was consistent with the development analyzed in the City's General Plan EIR pursuant to Section 15183 of Title 14, Chapter 3 of the California Code of Regulations ("CEQA Guidelines"), and

WHEREAS, There will be no on- or off-site environmental impacts associated with the roadway, sewer, and storm drainage improvements that were not already analyzed in the General Plan EIR, and

WHEREAS, The Developer has completed the design of the frontage roadway improvements, sewer line, and storm drainage improvements and has submitted the Improvement Plans, Specifications and Cost Estimates (PSE), and

WHEREAS, The Developer has executed the Off-Site Improvement Agreement and submitted the required security to guarantee completion of the frontage roadway improvements on Arbor Avenue, the sewer line on Arbor Avenue and MacArthur Drive, and the storm drainage improvements on Arbor Avenue, and

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

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

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the Off-Site Improvement Agreement for the Roadway, Sewer, and Storm Drainage Improvements for the DCT Industrial Distribution Facility, and authorizes the Mayor to execute the Off-Site Improvement Agreement.

* * * * *

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

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

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.D

REQUEST

APPROVE AN OFF-SITE IMPROVEMENT AGREEMENT FOR WATER LINE IMPROVEMENTS ON ARBOR AVENUE AND MACARTHUR DRIVE FOR THE DCT INDUSTRIAL DISTRIBUTION FACILITY, AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

Approval of the Off-Site Improvement Agreement (OIA) will allow the Developer to proceed with the installation of the water line improvements on Arbor Avenue and MacArthur Drive which are necessary to be completed prior to occupancy of the DCT Industrial Building.

DISCUSSION

On November 17, 2015, the City Council approved the Preliminary and Final Development Plan for the DCT Industrial Distribution Facility submitted by Arbor Avenue LLC (Developer), for the construction of a 795,732 square foot industrial distribution building which includes parking, private landscaping, and associated improvements. DCT industrial building will be located on the south side of Arbor Avenue, east of MacArthur Drive.

Approval of the DCT Industrial Distribution Facility required the Developer to complete, among other things, the installation of a water distribution line on Arbor Avenue from Holly Drive to the project site and on MacArthur Drive from north of Highway 205 to Arbor Avenue, prior to occupancy of the building. This water distribution line will provide the necessary fire protection water main looping for this industrial project and also has capacity to provide potable water to undeveloped properties along Arbor Avenue between Holly Drive and MacArthur Drive and on MacArthur Drive between Highway 205 and Arbor Avenue.

The Developer has completed the design of the water distribution line on Arbor Avenue and has submitted the Improvement Plans, Specifications and Cost Estimates (PSE). City staff has reviewed the PSE and found them to be complete.

To guarantee completion of the work by the Developer in an orderly manner under the City's inspections and directions, the Developer was required to execute an Off-Site Improvement Agreement and post insurance and surety bonds. The Developer has executed the Off-Site Improvement Agreement and submitted the required security to guarantee completion of the water distribution line on Arbor Avenue and MacArthur Drive. The Off-Site Improvement Agreement and Improvement Plans are on file with the City Engineer and are available for review upon request.

If the Developer completes the installation of the water distribution line on Arbor Avenue and MacArthur Drive, the Developer can recover cost of the water distribution line beyond the Developer's responsibility through a benefit district. Upon completion and City's acceptance of the water distribution line, the City will form the benefit district to determine cost responsibility of each benefitting property and will collect proportional share of benefitting properties prior to connection.

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

FISCAL IMPACT

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

STRATEGIC PLAN

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

RECOMMENDATION

That City Council, by resolution, approves the Off-Site Improvement Agreement for the water distribution line on Arbor Avenue to serve the DCT Industrial Distribution Facility, and authorize the Mayor to execute the Off-Site Improvement Agreement.

Prepared by: Criseldo Mina, Senior Civil Engineer

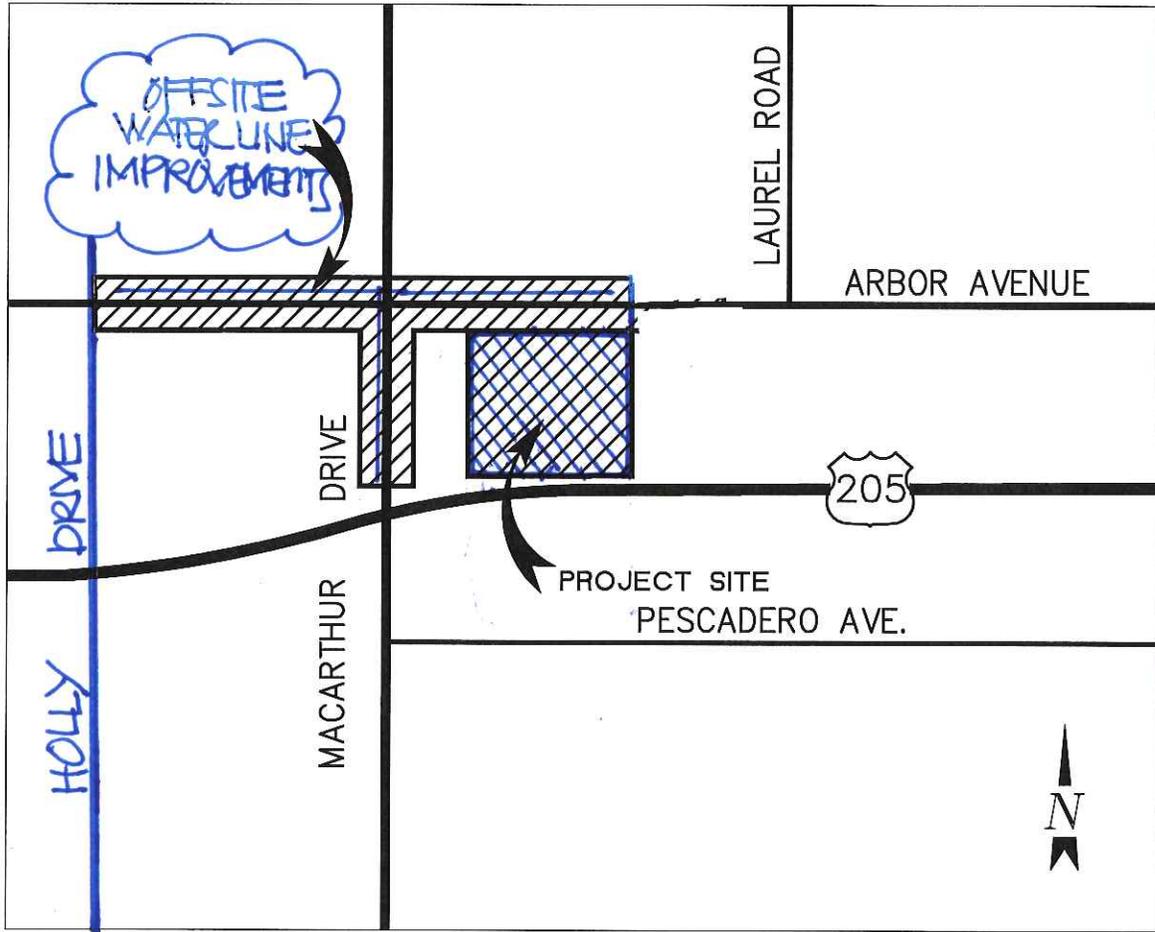
Reviewed by: Robert Armijo, City Engineer
Andrew Malik, Development Services Director
Martha Garcia, Interim Administrative Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A – Location Map

Attachment B – Off-Site Improvement Agreement for the Water Distribution Line on Arbor Avenue for the DCT Industrial Distribution Facility



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

VICINITY MAP
ARBOR AVENUE

TRACY, CALIFORNIA

DATE	SEPTEMBER 2016
SCALE	NTS
BY	KRR
JOB NO.	A13669-2
SHEET	1 OF 1

**CITY OF TRACY
OFFSITE IMPROVEMENT AGREEMENT
DCT INDUSTRIAL DISTRIBUTION FACILITY – OFFSITE WATERLINE
IMPROVEMENTS ON ARBOR AVENUE AND MACARTHUR DRIVE**

This **OFFSITE IMPROVEMENT AGREEMENT FOR DCT INDUSTRIAL DISTRIBUTION FACILITY – OFFSITE WATERLINE IMPROVEMENTS ON ARBOR AVENUE AND MACARTHUR DRIVE** (“**Agreement**”) is made and entered into by and between the **CITY OF TRACY**, a municipal corporation (hereinafter “**City**”) and **DCT ARBOR AVENUE LLC**, a Delaware Limited Liability Company (hereinafter “**Developer**”).

RECITALS

- A. The Developer is currently the owner of the real property with a site address of 8450 Arbor Avenue, generally located on the south side of Arbor Avenue east of MacArthur Drive (hereinafter “**Property**”), and more particularly described in Exhibit “A”, attached and incorporated herein by its reference.
- B. The Preliminary and Final Development Plan (Application Number D15-0014) for the construction of a warehouse/distribution center with associated parking and landscaping improvements, as approved by the City Council on November 17, 2015 (hereinafter “**Project**”), is on file with the Office of the City Engineer, and is incorporated herein by reference.
- C. The approval of the Project was subject to specified Conditions of Approval (“**Conditions**”). The Conditions are attached hereto as Exhibit “B,” and incorporated herein by reference.
- D. As required in the Conditions, City’s Consultant, West Yost Associates, prepared a water analysis report titled, Hydraulic Evaluation of I-205 Parcels M1 and M2 and Infill Parcels 7 and 13, dated July 7, 2014 and the water distribution analysis titled “Water Distribution Analysis of DCT Industrial Parcel”, dated August 22, 2016 (together the “**Water System Evaluation Report**”).
- E. In accordance with the Conditions, and the Citywide Water System Master Plan (“**Master Plan**”) and Water System Evaluation Report, Developer has caused to be prepared, and the City Engineer has approved, certain Improvement Plans and Specifications relating to the construction and installation of offsite water lines on Arbor Avenue and MacArthur Drive, and associated improvements (collectively, “**Offsite Waterline Improvements**” or “**Work**”), which Developer intends to construct and install in accordance with the Improvement Plans and Specifications. The Work is described more fully in the forty nine (49) sheets of improvement plans entitled “Improvement Plan - Arbor Avenue” prepared by Kier & Wright Engineers of Livermore, California (“**Improvement Plans and Specifications**”). The Improvement Plans and Specifications are on file with the City Engineer, and are incorporated herein by reference.

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
DCT INDUSTRIAL DISTRIBUTION FACILITY - OFFSITE WATERLINE IMPROVEMENTS
ON ARBOR ROAD AND MACARTHUR DRIVE
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- F. The Conditions require Developer to enter into an Offsite Improvement Agreement prior to the issuance of the Project's encroachment permit and therefore Developer has requested that the City execute this Agreement.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The Developer shall perform, or cause to be performed, the Work to the satisfaction of the City Engineer. The Work shall be performed, and all materials and labor shall be provided, at Developer's expense, in the manner described in the Improvement Plans and Specifications subject to credit and reimbursement as set forth in the Conditions. No change shall be made to the scope of Work unless authorized in writing by the City Engineer. Developer may submit a written request to the City Engineer for a change in the scope of Work, as required by Tracy Municipal Code Section 12.36.060(f). Any portion(s) of the Work that are within City's right(s)-of-way and/or easement(s) are to be performed by the Developer in accordance with the requirements of the State prevailing wage laws, in the event and to the extent applicable.
2. **DEVELOPER'S AUTHORIZED REPRESENTATIVE.** At all times during the progress of the Work, Developer shall have a competent foreman or superintendent ("***Authorized Representative***") on site with authority to act on Developer's behalf. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the name and telephone number of the Authorized Representative. The Authorized Representative shall be on site approximately 60% of the time the Work is occurring. The Developer may designate an employee of its general contractor or development manager as the Authorized Representative. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work. Exhibit C attached hereto includes the initial contact information for the Authorized Representative.
3. **LOCATION OF PERFORMANCE.** Developer shall perform the Work at the locations and grades shown on the Improvement Plans and Specifications or as otherwise approved by the City Engineer. In the event and to the extent required for the Work, Developer shall use commercially reasonable efforts to acquire all easements and/or rights-of-way necessary for the performance of the Work, at Developer's expense, except as otherwise specified in the Conditions. Developer shall notify the City Engineer if such easements and/or rights-of-way cannot be acquired so that the Improvement Plans and Specifications may be modified, subject to the City Engineer's approval.
4. **IMPROVEMENT SECURITY.** Concurrently with the execution of this Agreement, and prior to the commencement of any Work, Developer shall furnish contract security, in a form of a bond or other form authorized by the Subdivision Map Act

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
DCT INDUSTRIAL DISTRIBUTION FACILITY - OFFSITE WATERLINE IMPROVEMENTS
ON ARBOR ROAD AND MACARTHUR DRIVE
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(including Government Code Sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:

- 4.1 **Faithful Performance** security in the amount of **\$965,540**, to secure faithful performance of this Agreement (until the date when the City Council accepts the Work as complete) pursuant to Government Code Sections 66499, 66499.1, 66499.3, and 66499.4.
 - 4.2 **Labor and Material** security in the amount of **\$965,540**, to secure payment by Developer to laborers and materialmen (until the date when any and all claims in connection with the Work are required to be made by laborers and materialmen in accordance with applicable laws) pursuant to Government Code Sections 66499, 66499.2, 66499.3, and 66499.4.
 - 4.3 **Warranty security** in the amount of **\$96,554**, to secure faithful performance of this Agreement (from the date when the City Council accepts the Work as complete until one (1) year thereafter) pursuant to Government Code Sections 66499, and 66499.4.
5. **INSURANCE**. Concurrently with the execution of this Agreement, and prior to the commencement of any Work, Developer shall furnish evidence to City that all of the following insurance requirements have been satisfied by the Developer or its general contractor responsible for the Work.
- 5.1. **General**. Developer shall, throughout the duration of this Agreement, maintain or cause to be maintained insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services for the Work covered by this Agreement at the minimum levels set forth herein.
 - 5.2. **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than Three Million Dollars (\$3,000,000) general aggregate and One Million Dollars (\$1,000,000) per occurrence for general liability, bodily injury, personal injury, and property damage.
 - 5.3. **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage shall be maintained in an amount not less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
 - 5.4. **Workers' Compensation** coverage shall be maintained as required by the State of California.

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
DCT INDUSTRIAL DISTRIBUTION FACILITY - OFFSITE WATERLINE IMPROVEMENTS
ON ARBOR ROAD AND MACARTHUR DRIVE
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- 5.5. Endorsements.** Developer shall ensure the automobile and commercial general liability provide the following provisions:
- 5.5.1.** City (including its elected and appointed officials, officers, employees, and agents) shall be named as an additional "insured."
- 5.5.2.** For any claims related to this Agreement, Developer's coverage shall be primary insurance with respect to City. Any insurance maintained by City shall be excess of Developer's insurance and shall not contribute with it.
- 5.6. Notice of Cancellation.** Developer shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days' prior written notice to City should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 5.7. Authorized Insurers.** All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 5.8. Insurance Certificate.** Developer shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form reasonably satisfactory to the City Attorney.
- 5.9. Substitute Certificates.** No later than thirty (30) calendar days prior to the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.
- 5.10. Developer's Obligation.** Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any of its obligations hereunder (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary or desirable.
- 6. PERMITS, LICENSES AND COMPLIANCE WITH LAW.** Developer shall, at its expense, obtain and maintain all necessary permits, approvals and licenses for performance of the Work, subject to City's reasonable cooperation. Prior to the commencement of the Work, the Developer shall obtain a City of Tracy Business License. In its performance of the Work, Developer shall comply with all applicable local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
DCT INDUSTRIAL DISTRIBUTION FACILITY - OFFSITE WATERLINE IMPROVEMENTS
ON ARBOR ROAD AND MACARTHUR DRIVE
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7. **TIME OF PERFORMANCE.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. The Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
- 7.1. **Commencement of Work.** No later than fifteen (15) days prior to the commencement of Work, the Developer shall provide written notice to the City Engineer of the date on which the Developer shall commence Work. The Developer shall not commence Work until after the notice required by this section is properly provided, and the Developer shall not commence Work prior to the date specified in the written notice.
- 7.2. **Schedule of Work.** Concurrently with the written notice of commencement of Work, the Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect the Developer's prosecution of the Work.
- 7.3. **Completion of Work.** The Developer shall complete all Work prior to the issuance of final certificate of occupancy on any of the buildings within the Project.
8. **INSPECTION BY CITY.** In order to permit City to inspect the Work, Developer shall, at all reasonable times, provide to City reasonable and safe access to the Work site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.
- 8.1. **INSPECTION FEES.** Concurrently with the execution of this Agreement by the Developer, and prior to the commencement of any Work, the Developer shall pay the City Inspection Fees in the amount of three and one-half percent (3-1/2 %) of the estimated Project costs (as approved by the City Engineer). In the event that the City determines that the City's actual costs of inspecting the Work (including all costs and expenses of inspection, reviewing maps and plans, field checking, testing, and administrative and overhead costs of fifteen percent (15%) exceeds the amount of Inspection Fees paid by the Developer, the Developer shall pay the City the actual costs of inspecting the Work less Inspection Fees previously paid.
- In the event that the City requires an independent inspection, the City may retain an independent inspector and the Developer shall pay all costs associated with the independent inspection, and the independent inspector shall provide a report directly to the City.
- In the event that the City determines that the City's actual costs of inspecting the Work (including all costs and expenses of inspection,

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reviewing maps and plans, field checking, testing and administrative and overhead costs of fifteen (15%) is less than the amount of Inspection Fees paid by the Developer, the City shall reimburse the Developer the cost difference between the Inspection Fees previously paid and the actual costs of inspecting the Work.

Fifteen percent (15%) of the estimated construction cost of the Work shall be allocated by the Developer, for cost of materials and labor for public improvements not explicitly described on the Improvement Plans and Specifications, but intended to be part of the Work or portion of the Work that are determined by the City Engineer to be designed and constructed by the Developer, in order to complete the Work to the satisfaction of the City.

9. DEFAULT.

9.1. Notice of Default. In the event that Developer is in default of this Agreement, as defined in this Section 9, the City Engineer shall provide written notice to Developer and Developer's surety (if any) in which the default is described.

9.2. Developer shall be in default of this Agreement if the City Engineer determines that anyone of the following conditions exist:

9.2.1. The Developer is insolvent, bankrupt, or makes a general assignment of the benefit of its creditors.

9.2.2. The Developer abandons the Project Site.

9.2.3. The Developer fails to perform one or more requirements of this Agreement, or fails to cure any such non-performance pursuant to section 9.3 below.

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

9.2.5. The Developer violates any legal requirements related to the Work.

9.3. Cure of Default. In the event that Developer fails, within thirty (30) calendar days after receipt of written notice, to either cure the default or provide adequate written assurance to the reasonable satisfaction of the City Engineer that the cure will be promptly commenced and diligently

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prosecuted to its completion, the City may, in its discretion, take any or all of the following actions:

- 9.3.1. Cure the default and charge the Developer for the costs therefore, including administrative costs and interest in an amount equal to seven percent (7%) per annum from date of the default.
- 9.3.2. Demand that Developer complete performance of the Work.
- 9.3.3. Demand that Developer's surety (if any) complete performance of the Work.

- 10. **REPAIR OF ANY DAMAGE.** In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other property owners, then Developer shall commence, within five (5) calendar days of becoming aware of such damage, and diligently continue to completion, the repair or replacement (as necessary) of the damaged property; provided that, Developer may defer such repairs or replacement of the damaged property pursuant to the written agreement of the property owner.
- 11. **ACCEPTANCE OF WORK.** Prior to acceptance of the Work by the City Council, the Developer shall be solely responsible for maintaining the quality of the Work, and maintaining safety at the Project site. The Developer's obligation to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.
- 12. **WARRANTY PERIOD.** Developer shall warrant the quality of the Work, in accordance with the terms of the Plans and Specifications, for a period of one (1) year after acceptance of the Work by the City Council. In the event that (during said one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this Agreement, Developer shall be in default and shall cure such default as required hereunder.
- 13. **INDEPENDENT CONTRACTOR STATUS.** Developer is an independent contractor, and the parties agree that City shall have no responsibility for any acts of Developer's employees, agents, representatives, contractors or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of City as an agent, or to bind City to any obligation whatsoever, unless City provides prior written authorization to Developer.

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
DCT INDUSTRIAL DISTRIBUTION FACILITY - OFFSITE WATERLINE IMPROVEMENTS
ON ARBOR ROAD AND MACARTHUR DRIVE
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14. **OWNERSHIP OF WORK.** All original documents prepared by Developer for this Agreement shall be given to City upon City's acceptance of the Work; provided, however, ownership of said documents shall be determined in accordance with applicable laws. Prior to acceptance of the Work, the Developer shall submit the as-built drawings in AutoCAD format Release-14 or higher.
15. **ATTORNEY'S FEES.** In the event any legal action or proceeding is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
16. **INDEMNIFICATION.** Consistent with the security provisions contained herein, Developer shall indemnify, defend, and hold harmless the City (including its elected officials, officers, agents, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) arising or resulting, directly or indirectly, from the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees except to the extent arising from the City's sole or active negligence or willful misconduct or defects in design provided by the City.
17. **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the written consent of City, which shall not be unreasonably withheld, delayed or denied. Any attempt to assign or delegate this Agreement without City's written consent shall be void and of no force and effect. Consent by City to one assignment shall not be deemed to be consent to any subsequent assignment.
18. **PREVAILING WAGES.** For all work located within the public Right-of-Way, the Developer shall comply with regulations and pay prevailing wages.
19. **NOTICES.**
- 19.1. **Notice in Writing.** All notices, demands, or other communications that this Agreement contemplates, authorizes or requires shall be in writing and shall be personally delivered or mailed to the respective party as follows:

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

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

Developer: DCT Arbor Avenue LLC
Attn: Rachel Hickenbottom
12 Corporate Plaza, Suite #150
Newport Beach, CA 92660
Tel: (949) 720-8000
Fax: (415) 733-2171

Copy to: DCT Arbor Avenue LLC
Attn: Legal Department
518 17th Street, Suite 800
Denver, CO 80207
Tel: (303) 597-2400
Fax: (303) 228-2201

- 19.2.** Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated above, or (2) two (2) business days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.
- 20. MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 21. WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 22. SEVERABILITY.** In the event a court of competent jurisdiction holds any term of this Agreement invalid, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.
- 23. 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.
- 24. ENTIRE AGREEMENT.** This Agreement, including all documents incorporated

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
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by reference, comprises the entire integrated understanding between the parties concerning the Work. This Agreement supersedes all prior negotiations, representations or agreements as such may relate to performance of the Work.

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

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

CITY OF TRACY,
a municipal corporation

By: Michael Maciel
Title: CITY MAYOR
Date: _____

Attest:

By: Nora Pimentel
Title: CITY CLERK
Date: _____

Approved As To Form:

By: Bill Sartor
Title: CITY ATTORNEY
Date: _____

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Developer:

DCT Arbor Avenue LLC,
a Delaware limited liability company

By: DCT Industrial Operating Partnership LP,
a Delaware limited partnership,
its Sole Member

By: DCT Industrial Trust Inc.,
a Maryland corporation,
its General Partner

By: 
Name: Rachel Hickenbottom
Title: VP, Construction

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

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) SS:

On October 7, 2016 before me, JUDI LOWENTHAL
Notary Public (insert name and title of the officer),

personally appeared RACHEL HICKERBOTTOM, 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: Judi Lowenthal

[Seal]

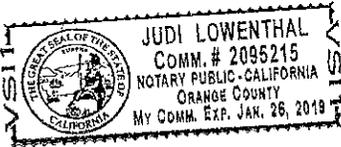


Exhibit A

The Property

ORIGINAL

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CITY OF TRACY
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DCT INDUSTRIAL DISTRIBUTION FACILITY – OFFSITE WATERLINE
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REAL PROPERTY IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS TWENTY-FOUR (24), AND THIRTY-SEVEN (37), AS SHOWN UPON MAP OF UNIT NO. 1, PESCADERO COLONY, FILED NOVEMBER 10, 1921 IN VOLUME 10 OF MAPS AND PLATS, PAGE 44, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM A ONE-HALF (1/2) INTEREST IN AND TO ALL MINERAL, OIL, GAS OR OTHER HYDROCARBON SUBSTANCES NOW EXISTING OR HEREAFTER DISCOVERED ON SAID LOTS; TOGETHER WITH THE RIGHT OF INGRESS OR EGRESS FOR THE PURPOSE OF PROSPECTING, DISCOVERING, DRILLING, MINING AND REMOVING THE SAME, AS RESERVED IN DEED RECORDED DECEMBER 5, 1951 IN BOOK 1132, PAGE 448, OFFICIAL RECORDS, WHICH RIGHTS WERE CONVEYED BY INDIVIDUAL QUITCLAIM DEED FROM WARREN DEBENHAM, JR., ET AL, TO GLORIA BACCHETTI, TRUSTEE OF THE BERT A. BACCHETTI AND GLORIA BACCHETTI REVOCABLE TRUST DATED JUNE 21, 1995, AS AMENDED, RECORDED ON JUNE 13, 2001 AS INSTRUMENT NUMBER 01090987, OFFICIAL RECORDS, BETWEEN THE SURFACE AND A DEPTH OF 500 FEET BELOW THE SURFACE, INCLUDING THE RIGHT OF ENTRY ON THE SURFACE, AND THE RIGHT TO SLANT DRILL OR OTHERWISE DRILL WITHIN SAID 500 FEET OF THE ABOVE DESCRIBED PROPERTY.

EXCEPTING UNTO THE GRANTOR AN UNDIVIDED ONE-HALF (1/2) INTEREST IN AND TO ALL MINERAL, OIL OR GAS NOW EXISTING OR HEREAFTER DISCOVERED ON SAID LOTS, SITUATED OR LOCATED IN ALL OR ANY PART OR PORTION OF THE LANDS HEREIN DESCRIBED LYING MORE THAN FIVE HUNDRED FEET (500') BELOW THE SURFACE THEREOF; TOGETHER WITH THE RIGHT TO GRANT LEASES FOR ALL OR ANY OF SAID PURPOSES; BUT WITHOUT ANY RIGHT WHATSOEVER TO ENTER UPON THE SURFACE OF SAID LANDS WITHIN FIVE HUNDRED FEET (500') VERTICAL DISTANCE BELOW THE SURFACE THEREOF.

APN: 213-060-030-000

Exhibit B

Conditions of Approval

ORIGINAL

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RESOLUTION 2015-189

APPROVING THE PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR A 795,732
SQUARE FOOT INDUSTRIAL DISTRIBUTION FACILITY
LOCATED ON A 39.58-ACRE SITE, LOCATED AT 8450 ARBOR AVENUE -
ASSESSOR'S PARCEL NUMBER 213-060-03
APPLICATION NUMBER D15-0014

WHEREAS, The subject property was annexed to the City of Tracy in 1990, received a zoning designation of Planned Unit Development, is designated Light Industrial in the I-205 Corridor Specific Plan, and is consistent with the General Plan designation of Industrial, and

WHEREAS, DCT Industrial Operating LLC, submitted an application for a Planned Unit Development Preliminary and Final Development Plan review (Application Number D15-0014) for a 795,732 square foot industrial building on July 17, 2015, and revised the application on October 7, 2015, and

WHEREAS, The subject property is located within the I-205 Corridor Specific Plan area, with a land use designation of Light Industrial, within which industrial land uses are permitted, and

WHEREAS, The Planning Commission conducted a public hearing to review and consider the application on October 28, 2015 and has determined that the application conforms to and is consistent with the General Plan and the I-205 Corridor Specific Plan (which also serves as the concept development plan for the subject property) and recommended City Council approval of the project;

NOW, THEREFORE BE IT RESOLVED, That the Tracy City Council does hereby approve the PUD Preliminary and Final Development Plan for a 795,732 square foot industrial building, Application No. D15-0014, subject to the conditions contained in Exhibit 1 to this Resolution, and with the additional condition that the project install landscaping along the I-205 frontage to create a soft transition to the development through plantings that graduate in height and density from east to west.

The foregoing Resolution 2015-189 was adopted by the Tracy City Council on the 17th day of November, 2015, by the following vote:

AYES: COUNCIL MEMBERS: MITRACOS, VARGAS, YOUNG, MACIEL
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE
ABSTAIN: COUNCIL MEMBERS: RICKMAN


MAYOR

ATTEST

CITY CLERK.

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
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Exhibit "1"

Development Services Department, Conditions of Approval

**Conditions of Approval for DCT Industrial
795,732 Square Foot Industrial Distribution Building
8450 Arbor Avenue
Application Number D15-0014
November 17, 2015**

- A.1. These Conditions of Approval shall apply to the real property described as DCT Industrial, a 795,732 square foot industrial distribution building located at 8450 Arbor Avenue, Application Number D15-0014 (hereinafter "Project"), located on a 39.58-acre site, Assessor's Parcel Number 213-060-03.
- A.2. The following definitions shall apply to these Conditions of Approval:
- 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, I-205 Specific Plan, ordinances, resolutions, policies, procedures, and the City's Design Documents (including the Standard Plans, Standard Specifications, Design Standards, 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 DCT Industrial, a 795,732 square foot industrial distribution facility located at 8450 Arbor Avenue, Application Number D15-0014. The Conditions of Approval shall specifically include all Development Services Department, including Planning Division and Engineering Division, conditions set forth herein.
 - f) "Project" means the real property consisting of approximately 39.58 acres located at 8450 Arbor Avenue, Assessor's Parcel Number 213-060-03.
- A.3. 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 Subdivision Map Act (Government Code sections 66410, et seq.), the California Environmental Quality Act (Public Resources Code sections 21000, et seq.,

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Page 2

"CEQA"), and the Guidelines for California Environmental Quality Act (California Administrative Code, title 14, sections 1500, et seq., "CEQA Guidelines").

- B.1. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all City Regulations.
- B.2. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all mitigation measures identified in the General Plan Environmental Impact Report, dated February 1, 2011.
- B.3. 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.4. Except as otherwise modified herein, all construction shall be consistent with the site plan and architectural renderings received by the Development Services Department on October 7, 2015.
- B.5. Prior to the issuance of a building permit, the applicant shall provide a detailed landscape and irrigation plan consistent with City landscape and irrigation standards, including, but not limited to Tracy Municipal Code Section 10.08.3560 I-205 Specific Plan, and Water Efficient Landscape Guidelines on private property, and the Parks and Parkways Design Manual for public property, to the satisfaction of the Development Services Director. Said landscape plans shall include documentation which demonstrates that there is no less than 10 percent of the parking area in landscaping, and 40 percent canopy tree coverage at tree maturity.
- B.6. Where landscape planters are parallel and adjacent to vehicular parking spaces, the planter areas shall incorporate a 12-inch wide concrete curb along their perimeter that is adjacent to the parking space in order to allow access to vehicles without stepping into landscape planters.
- B.7. Prior to the issuance of a building permit, an Agreement for Maintenance of Landscape and Irrigation Improvements shall be executed and financial security submitted 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.8. No roof mounted equipment, including, but not limited to, HVAC units, vents, fans, antennas, sky lights and dishes whether proposed as part of this application, potential future equipment, or any portion thereof, shall be visible from Arbor Avenue, Mac

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- Arthur Drive, I-205, or any other public right-of-way. All roof-mounted equipment shall be screened from view from the public right-of-way with a continuous parapet wall at least equal in height to the height of any equipment installed, to the satisfaction of the Development Services Director.
- B.9. All vents, gutters, downspouts, flashing, electrical conduit, and other wall-mounted or building-attached utilities shall be painted to match the color of the adjacent surface or otherwise designed in harmony with the building exterior to the satisfaction of the Development Services Director.
- B.10. Prior to final inspection or certificate of occupancy, on-site circulation signs shall be installed to the satisfaction of the Development Services Director.
- B.11. Prior to final inspection or certificate of occupancy, all exterior and parking area lighting shall be directed downward or shielded, to prevent glare or spray of light into the public rights-of-way, to the satisfaction of the Development Services Director.
- B.12. Prior to the issuance of a building permit, bicycle parking spaces shall be provided in accordance with Tracy Municipal Code Section 10.08.3510 to the satisfaction of the Development Services Director.
- B.13. 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 view from any public right-of-way, behind structures or landscaping, to the satisfaction of the Development Services Director.
- B.14. 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.
- B.15. All improvements shall be consistent with the Tracy Municipal Code, Standard Plans, and other applicable City Regulations.
- B.16. No signs are approved as a part of this development application. Prior to the installation of any signs, the applicant shall submit a sign permit application and receive approval from the Development Services Director, and all signs shall be designed in compliance with the I-205 Specific Plan and Tracy Municipal Code Chapter 10.08, Article 35, Signs.
- B.17. Prior to the issuance of a building permit, a detailed plan of the trash enclosures, at least eight feet in height, shall be submitted, showing solid metal doors, a solid roof, an interior concrete curb, and exterior materials and colors compatible with the adjacent building exterior.
- B.18. Prior to the issuance of a building permit, a detailed plan of the screen walls shall be submitted, showing colors and details such as score lines, compatible with the adjacent building exterior.

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- B.19. The architectural elevations for all of the area contained within the PDP/FDP shall be consistent with the elevations received by the Development Services Department on October 7, 2015.

Engineering Division Conditions of Approval

C.1. General Conditions

C.1.1 Developer shall comply with the applicable recommendations of the technical analyses/ reports prepared for the Project listed as follows:

- a) *DCT Industrial Project Traffic Impact Study in the City of Tracy*, prepared by TJKM Transportation Consultants, dated May 20, 2014 ("Traffic Analysis").
- b) *Wastewater System Analysis for Properties at Arbor Road and MacArthur Drive*, prepared by Ch2MHill, dated May 2014 ("Wastewater Analysis").
- c) *Hydraulic Evaluation of I-205 Parcels M1 and M2 and Infill Parcels 7 and 13*, prepared by West Yost Associates, dated July 7, 2014 ("Water Analysis").
- d) *M2 Parcel Storm Drainage and Flood Protection Evaluation*, prepared by Storm Water Consulting Inc., dated March 20, 2014 ("Storm Drainage Analysis"), and as updated per the Memorandum dated April 19, 2015.

C.1.2 Developer shall comply with the requirements of the Finance Plan for M2 Parcel (39.58 Gross Acres), I-205 Industrial, approved by City Council.

C.1.3 Developer shall comply with the applicable requirements of Annexation and Development Agreement ("Development Agreement") dated October 29, 1990, recorded in the office of the San Joaquin County Recorder on November 5, 1990, Official Recorder No. 90109507

C.2. 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.2.1. 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.

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- C.2.2. 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.2.3. 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#).
 - 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.
 - 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) 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.2.4. Two (2) sets of the Project's Geotechnical Report signed and stamped by a licensed Geo-technical Engineer licensed to practice in the State of California. 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.2.5. A copy of the Approved Fugitive Dust and Emissions Control Plan that meets San Joaquin Valley Air Pollution Control District (SJVAPCD).
- C.2.6. Documentation of any necessary authorizations from Regional Water Quality Control Board (RWQCB) such as NOI and WDID and documents such as SWPPP.
- C.2.7. 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 Condition C.4.2.3(b) below.
- C.2.8. Executed hold-harmless agreement relieving the City of liability associated with flooding of portions of the parking areas as required in Condition C.11.3 below.
- C.3. Encroachment Permit - No applications 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:

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- C.3.1. Improvement Plans prepared on a 24" x 36" size 4-mil thick polyester film (mylar) that incorporate all the requirements described in these Conditions of Approval. Improvement Plans 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.
- C.3.2. Two (2) sets of structural calculations, as applicable, signed and stamped by a Structural Engineer licensed in the State of California, as required in Condition C.4.1.(b), below.
- C.3.3. Signed and stamped Engineer's Estimate that summarizes the cost of constructing all the public improvements shown on the Improvement Plans.
- C.3.4. Signed and notarized Offsite Improvement Agreement (OIA) and Improvement Security, to guarantee completion of the identified public improvements that are necessary to serve the Project as required by these Conditions of Approval. The form and amount of Improvement Security shall be in accordance with Section 12.36.080 of the Tracy Municipal Code (TMC), and the OIA. The Developer's obligations in the OIA shall be deemed to be satisfied upon City Council's acceptance of the public improvements and release of the Improvement Security.
- C.3.5. Signed and notarized Deferred Improvement Agreement (DIA) and Improvement Security, to allow deferment of completion of improvements as required by these Conditions of Approval. The form and amount of Improvement Security shall be in accordance with the DIA and Section 12.36.080 of the TMC, or pursuant to the terms of the Development Agreement, as appropriate. The Developer's obligations in the DIA shall be deemed to be satisfied upon the release of the Improvement Security.
- C.3.6. Check payment for the applicable 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 April 15, 2014, per Resolution 2014-059.
- C.4. Traffic Control Plan signed and stamped by a Registered Civil Engineer or Traffic Engineer licensed in the State of California.
- C.5. Improvement Plans - Improvement Plans shall contain the design, construction details and specifications of public improvements that 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.5.1. Site Grading

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- a) 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.
- b) When the grade of the Project Site is higher than the adjacent property(s) by more than 12 inches, a reinforced concrete 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.
- c) An engineered fill may be accepted as a substitute of a retaining wall, 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.
- d) Grading for the site shall be designed such that the Project's storm water can overland release 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 foot lower than the building finish floor elevation and shall be improved to the satisfaction of the City Engineer.

C.5.2. Storm Drainage

C.4.2.1 Permanent Drainage System

- a) The development shall construct an initial phase of DET 13 to include 4.7 AF of storage within the Project boundaries, a pump station having a capacity of 1 cfs, and a force main outfall along Arbor Avenue to discharge to the Eastside Channel. DET 13 shall be a fully functioning initial phase of completion with the only retrofit needed being its expansion in area and volume in conjunction with adjacent new development in the future.

The Developer shall design and install Detention Basin DET13 in accordance with the Citywide Storm Drainage Master Plan ("Storm Drainage Master Plan"), Storm Drainage Analysis, and the City of Tracy's Engineering Design & Construction Standards. The Developer shall submit improvement plans and obtain approval of the plans by the City Engineer prior to beginning work. The improvement plans for DET13 shall include concept level

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plans for the ultimate configuration (build-out condition) of DET13. The developer shall receive fee credits for the dedication of land, installation of pump station, and all costs associated with constructing DET13 as outlined in the Finance Plan.

In order for the above storage volumes requirements to be valid, it will be necessary to construct a 24" storm drain force main extending west in Arbor Avenue from DET13 to the City's existing Eastside Channel west of MacArthur Drive outfall to the Eastside Channel. The Developer shall be eligible to receive fee credits and/or reimbursements for the cost of this force main per the Finance Plan.

- b) Fee Credits and/or reimbursements for design and construction of DET13 and Downstream Improvements shall be as determined by the Finance Plan, and included in the OIA.
- c) The DET13 improvements will be accepted by the City upon completion of construction of the storm drainage facilities from DET13 to Eastside Channel.
- d) All Layout and design of Access Easements and maintenance access roads required to access DET13 and all off-site storm drains and structures to be dedicated to the City shall be per the requirements of Public Works Department and City Regulations.
- e) Parcel maps, Grant Deed documents or other instruments for dedication of the storm drainage basin parcel to the City shall be prepared and executed by the Developer. Acceptance of the basin parcel by the City will be upon completion of the downstream facilities as listed in Condition 4.2.1 (a) above, and upon the determination by the City Engineer that the basin is constructed and operational per the Master Plan and City Standards.
- f) The public street system serving the project site will need to include storm water quality treatment provisions that conform to the City's Manual of Stormwater Quality Control ("SWQC") Standards for New Development and Redevelopment. Design of DET13 shall include measures to provide measures for storm water quality treatment for the public streets.

C.4.2.2 Temporary Retention ("Interim Drainage")

If Developer does not construct DET13 and Down Stream improvements as listed in Condition C.4.2.1 (a) then, the Developer may construct as Interim Drainage as follows:

- a) Per requirements cited in the Storm Drainage Analysis, DET13 may need to function as a Temporary Retention Basin ("Interim Drainage") serving this development until such time as the

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components of the Eastside Channel System that will ultimately discharge storm runoff from the Project to the Eastside Channel ("Downstream Improvements") are completed and operational. For the Interim Drainage, at a minimum, the basin shall be designed to retain storm water run-off from the Project resulting from 200% of the 10-year, 48-hour storm event in compliance with Sections 5.06 and 5.07 of City of Tracy Design Standards.

- b) The Developer shall provide a geotechnical investigation with respect to the Temporary Retention Basin that validates that percolation rates for the subsurface soils that exist at and below the bottom of the basin are acceptable.
- c) Developer shall be responsible for conceptual design of the modifications needed to bring the configuration and design of the basin to the ultimate configuration per the Master Plan. Developer shall be eligible for reimbursements for basin improvements that comply with the ultimate configuration per the Master Plan. Reimbursement of costs shall be in accordance with Chapter 13.08 of Tracy Municipal Code.
- d) Developer shall be responsible for maintenance of DET13 as a Retention Basin until the downstream drainage facilities are installed and accepted by the City. The Developer shall sign an improvement agreement (Deferred Improvement Agreement), to assure completion of the Developer's obligation to repair and maintain said basin(s) while the storm drainage retention basin is in service and then to modify storm drainage retention basin to conform to Master Plan requirements at such time they are no longer needed due to the construction of the above-referenced permanent facilities.
- e) The Developer shall record a temporary storm drainage easement to grant rights to the City to access the temporary storm drainage retention basin(s) for any necessary emergency repair or maintenance work the City may have to perform within the basin site. Said temporary access easement shall include a sunset clause that such easement will automatically be terminated at such time as the above-referenced permanent storm drainage improvements are completed.

C.4.2.3 Onsite Drainage

- a) The design and construction details of the Project's storm drainage system and treatment facilities shall meet City Regulations in affect at the time of this approval and shall comply with the applicable requirements of the City's Storm Water Quality Control Standards and storm water regulations that were adopted by the City Council in 2008 and any subsequent amendments.

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Catch basin Filter inserts shall be permitted as an acceptable method of storm water quality due to the high groundwater present at the site.

- b) Calculations related to the design and sizing of on-site storm water treatment facilities must be submitted with the Grading and Storm Drainage Plans, and approved by City's Stormwater Coordinator prior to issuance of the Grading Permit for the Project.
- c) Prior to the final inspection of the building the Developer shall submit a signed and notarized Stormwater Treatment Facilities Maintenance Agreement (STFMA) as a guarantee for the performance of Developer's responsibility towards the repair and maintenance of on-site storm water treatment facilities.

C.5.3. The Developer shall arrange for a site sub-surface investigation for determining the presence of irrigation and drainage tile drains within and around the Project Site, if any, and submit a report prepared and signed by a Geotechnical Engineer. In the event that tile drains exist within and around the Project Site, the Developer has the option to either relocate or abandon the on-site tile drains as required for the proposed development. All existing tile drains and proposed improvements for the relocation or removal of tile drains must be shown on the Grading and Storm Drainage Plans. Any tile drains under the proposed buildings shall be abandoned or relocated as may be required, to the satisfaction of the City. The Developer or the property owner(s) will be responsible for maintenance of tile drains to remain or the relocated tile drains and associated improvements. Additionally, the Developer will be responsible for monitoring the groundwater levels, and for the mitigations, if any, that may be required, by any applicable laws and regulations.

C.5.4. Sanitary Sewer Improvement Plans

- a) As recommended in the Wastewater Analysis, the Developer shall design and install an 8-inch sewer line from the Project in Arbor Avenue to MacArthur Drive, a 10" line in MacArthur Drive to a new manhole on MacArthur Drive west of the existing MacArthur pump station, and a small section of 21-inch sewer line between the new manhole and existing manhole.
- b) Since the proposed 8-inch and 10-inch diameter sewer lines are not part of the City's Wastewater Master Plan, these improvements are considered part of the Project's off-site sewer improvements and no fee credits will be issued. However, these lines do serve adjacent parcels and the developer will be eligible for reimbursement per the Finance Plan from the M1 Parcel as well as Infill Parcel Numbers 7 and 13 when these parcels develop.

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- c) All new sewer lines and associated appurtenances shall meet the City of Tracy Design Standards including minimum flow velocity requirement.
- d) The Developer is responsible for the cost of installing the Project's permanent sewer connection(s) including but not limited to, replacing asphalt concrete pavement, application of 2" thick asphalt concrete overlay (25 feet on both sides of the utility trench) where required, restoring pavement marking and striping, and other improvements that are disturbed as a result of installing the Project's sewer connection. This pavement repair requirement is applicable when connections are perpendicular to the street direction, when the new sewer line is placed in the street parallel to the street direction; the width of overlay to be the width of the affected lane.
- e) The Developer is hereby notified that the City has limited wastewater treatment capacity in the City's Wastewater Treatment Plant until current and future expansion capital improvement projects are completed and operational. As of January 2015, the City had an unused capacity of approximately 4200 EDU's within its wastewater treatment plant available to new development within the City on a first come-first served basis. These EDU's are currently available to serve the proposed project, but as other development projects within the City come forward and building permits are issued, this remaining capacity will be reduced.

C.5.5. Water Distribution System

- a) Off-site Water Line Improvements: The developer shall design and install a 12-inch line in MacArthur Drive from the terminus of the existing 12-inch water line just north of I-205 to Arbor Ave, and 12-inch water line in Arbor Avenue from MacArthur Drive to the eastern property boundary of the Project. The developer is also responsible for constructing a 16-inch water line from the existing water line in Pescadero Avenue north, crossing under the freeway and continuing along the eastern edge of the Project and connecting to the new 12-inch line on Arbor Avenue. Alternatively, the 16" line may cross under the freeway on the western side of the Project and continue along the western edge of the Project. The actual location of the new line may be a variation of these, or any other location as approved by the City. The improvements are required to be complete, in place and operational, prior to the issuance of the final certificate of occupancy for the Project.
- b) Since the proposed water lines are not considered master plan improvements, no fee credits will be issued. However, the developer will be eligible from reimbursement per the finance plan from the M1 parcel, Infill Parcel Numbers 7 and 13, the Eastside Industrial development, the Chrisman Road property and all NEI Phase 3 properties at such time as these properties develop.

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- c) During the construction phase of the Project, the Developer is responsible for providing water infrastructure (temporary or permanent) capable of delivering adequate fire flows and pressure appropriate to the various stages of construction and as required by the City of Tracy Fire Code Official.
- d) Prior to issuance of building permit, the Developer shall submit calculations and plans as required by the Fire Department and obtain approvals for the proposed fire system.
- e) In order to guarantee completion of the Offsite Water Line Improvements, the Developer shall enter into an improvement agreement (Offsite Improvement Agreement or OIA) and post an improvement security in the amounts and form in accordance with section 12.36.080 of the TMC, and as required by these Conditions of Approval. The Developer shall submit the signed and notarized OIA with the necessary improvement security, prior to the issuance of the Grading Permit.
- f) All public improvements to be installed within the jurisdiction of the Caltrans and San Joaquin County (County) will require encroachment permit and a maintenance agreement with the respective agencies.

The Developer is required to coordinate with Caltrans and obtain approval of the design of the water line crossing under the I-205 freeway. The Developer shall comply with all the applicable requirements of Caltrans and County in connection therewith, obtain any necessary encroachment permit(s), and pay applicable permit processing, plan checking and inspection fees, prior to starting work.
- g) All costs associated with the installation of the Project's permanent water connection(s) as identified in the Water Analysis including acquisition of right-of-way and/or easements, the cost of removing and replacing asphalt concrete pavement, pavement marking and striping such as crosswalk lines and lane line markings, replacing traffic detecting loops, conduits, and wires, relocating existing utilities that may be in conflict with the water connection(s), and other improvements shall be paid by the Developer subject to terms of the Finance Plan.
- h) The portion of the new City water lines that run through existing agricultural properties may be run beneath existing dirt access roads. The City shall be granted a 15' easement for these pipelines even though the access roads may be as narrow as 10' to accommodate those existing agricultural activities. The access roads to have an all-weather surface.
- i) City will use its power of eminent domain, if necessary, to secure an easement for the City water line described herein across the small parcel situated between the Project and the Caltrans freeway property, or between Caltrans and the parcels immediately to the east or west of

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the Project. All costs of the eminent domain procedures shall be paid for by the Developer. However, the developer will be eligible from reimbursement per the Finance Plan from the M1 parcel, Infill Parcel Numbers 7 and 13, the Eastside Industrial development, the Chrisman Road property and all NEI Phase 3 properties at such time as these properties develop.

- j) Interruption to the water supply to the existing businesses and other users shall be kept to a minimum to facilitate construction of off-site improvements related to the Project. Prior to starting the work described in this section, the Developer shall submit a Work Plan acceptable to the City that demonstrates no interruptions to the water supply, and Traffic Control Plan to be used during the installation of the offsite water mains and connections. The Developer shall be responsible for notifying business owner(s) and users, regarding construction work. 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 start of work.
- k) Domestic and Irrigation Water Services – The Developer shall design and install domestic and irrigation water service connection, including a remote-read master 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 domestic and irrigation water service connection(s) must be completed before the final inspection of the building. Sub-metering will be allowed within private property. The City will not perform water consumption reading on sub-meters. The Developer will be responsible for relocating or reinstalling water sub-meters. The City shall maintain water lines from the master 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.
- l) 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.4.6. Street Improvements:

- a) Prior to issuance of the final certificate of occupancy, the Developer shall complete construction of improvements identified in the Traffic Analysis, and satisfy all applicable requirements specified in these Conditions of Approval, I-205 Specific Plan and City Regulations.

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- b) The Developer shall be responsible for design and construction of Frontage Improvements on the south side of Arbor Avenue for the full length of frontage of the Project. If any of the Frontage Improvements are not constructed prior to approval of the temporary certificate of occupancy, the Developer shall enter into a DIA with security to guarantee completion of such improvements. Scope of work and timing of completion of Frontage Improvements shall be subject to the approval of the City Engineer.
- c) The Developer shall design and install improvements to widen Arbor Avenue for the full frontage of the Project. The ultimate roadway section per the Roadway Master Plan will include one eastbound and one westbound travel lanes with a 16-foot wide raised median and a 10' wide Class 1 bicycle path on the north side of Arbor Avenue.

The roadway improvements to be constructed with this Project shall include, but are not limited to, concrete curb, gutter and sidewalk, accessible ramps, asphalt concrete pavement, signing and striping, storm drains, catch basins, fire hydrants, LED street lights, street trees with automatic irrigation system, barricade and guardrail, and other improvements as determined by the City Engineer that are necessary for a safe transition from a newly improved street to existing street sections on the east and west ends. The Project obligation will be to build the southern side of Arbor Avenue, a striped 11' median and one westbound lane to edge of pavement condition. The Arbor Avenue lane transitions to the west and east of the Project will be paved to an edge of pavement condition with appropriate striping. Other improvements will be provided by the appropriate land owner on which those improvements front.
- d) The Developer shall submit geotechnical recommendations and pavement design calculations to the City to demonstrate adequacy and integrity of the existing structural street section on Arbor Avenue, and construct improvements as required to support STAA truck traffic. At a minimum, in addition to the widening, the Developer shall complete grinding and overlay of existing Arbor Street pavement with a 2" asphalt concrete overlay for the entire street width for the project frontage.
- e) Prior to approval of Grading or Encroachment Permits, the Developer shall submit improvement plans for Arbor Avenue with the locations of all utilities including water, recycled water, sanitary sewer, storm drainage lines that will be installed within the right-of-way.
- f) All underground facilities within the southerly half street section proposed to be built with the Project shall be completed prior to issuance final certificate of occupancy.
- g) For Arbor Avenue and the intersection improvements at Arbor Avenue/MacArthur Drive improvements, structural section of the roadway, turning radius and travel lane storage requirements for STAA

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Trucks are to be considered in the design of these roadway improvements. Adequate Acceleration and deceleration lanes shall be provided where required.

- h) Intersection improvements at MacArthur Drive and Arbor Avenue shall include the installation of four-way stop signs, stop bars, and legend, pavement transition, lane line marking(s), pavement markings, traffic sign(s) and other improvements are necessary for the safe operation of a four-way stop intersection as recommended in the traffic study prepared by TJKM Transportation Consultants, dated May 20, 2014.
- i) Right-of-Way on Arbor Avenue: The Developer shall dedicate 7-foot wide right-of-way along the entire frontage of the Property on Arbor Avenue to conform to the street sections shown on the *City of Tracy Citywide Roadway and Transportation Master Plan* prepared by RBF Consulting, November 2012 ("TMP"). Per the TMP, Arbor Avenue is designated as two-lane Arterial with Two-Way Left-Turn Lanes (TWLTL), (Figure 4.15(c) of TMP), and Right-of-way width of 84 feet. Additional right-of-way dedication may be required for turn lanes as identified in the Traffic Analysis and TMP and as shown on the Revised Preliminary Site Plan prepared by Kier & Wright Engineers, titled *DCT Industrial Warehouse for DCT Industrial*, dated April, 2014, "Interim & Ultimate Striping Plan of Arbor Ave", prepared by Kier & Wright, dated March 24, 2015, "N. MacArthur Drive at Arbor Ave Right Lane STAA turning Exhibit", prepared by Kier & Wright, dated February 11, 2015, "Potable Water Line Exhibit", prepared by Kier & Wright, dated March 24, 2015. Design of the improvements on Arbor Avenue shall be approved by the City Engineer.
- j) Right-of-Way at Arbor Avenue and N. MacArthur Drive Intersection: As recommended in the Traffic Analysis, the Developer shall acquire and dedicate required right-of-way at the intersection of Arbor Avenue and N. MacArthur Drive to accommodate STAA trucks. Final configuration of the right-of-way dedication shall be as approved by the City Engineer.
- k) The Developer shall execute a Grant Deed to convey the land in fee title and submit legal description and plat map that describes the area to be dedicated, prior to City Council's acceptance of the public improvements. The cost of right-of-way dedication including the cost of preparing the legal description and plat map will be paid by the Developer. The City will use its right of eminent domain, if necessary, to obtain the right of way dedications along Arbor Avenue and MacArthur Drive that are required to satisfy the interim and ultimate build-out of those streets to serve this Project as anticipated by the I-205 Specific Plan and the City's Master Plan. All costs of the eminent domain procedures shall be paid for by the Developer. However the developer will be eligible for reimbursement pursuant to the Finance Plan.

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- l) The roadway improvements described in this sub-section (Offsite Roadway Improvements) 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), the applicable City Regulations, and these Conditions of Approval. Design and construction details of the Offsite Roadway Improvements must be shown on the Improvement Plans.
 - m) In order to guarantee completion of the Offsite Roadway Improvements, the Developer is required to enter into an Offsite Improvement Agreement (OIA) with the City and post improvement security in the amounts approved by the City Engineer, prior to the Encroachment Permit. The OIA requires authorization from the City Council. The Developer shall pay applicable engineering review fees such as plan checking, agreement and permit processing, testing, and construction inspection fees based on current charge rate and as required by these Conditions of Approval and shall be reimbursed in accordance with the Finance Plan.
 - n) The City will assume responsibility to maintain the public improvements and accept the offer of dedication for right-of-way on Arbor Avenue after the City Council accepts the public improvements.
 - o) Arbor Avenue is not an I-205 Specific Plan program-funded street. Hence, all improvements required for the Project as identified in the Traffic Analysis and these Conditions of Approval shall be completed by the Developer, and no fee credits shall be given. Per the Finance Plan, the developer shall be eligible for reimbursements from Parcel M1 and Infill Parcel Numbers 7 and 13 at the time these parcels develop for improvements constructed at the intersection of Arbor Avenue and N. MacArthur Drive.
- C.4.7. Project Driveways: Developer shall construct driveways to comply with the recommendations of the Traffic Analysis and City Regulations. Project driveways shall be designed for STAA truck access and provide adequate deceleration lanes on Arbor Avenue and safe site distances.
- C.4.8. Joint Utility Trench Plans – All future utilities along the frontage of the Project on Arbor Avenue shall be placed in an underground facility. If required, the Developer shall relocate existing utility poles after obtaining approval of affected utility companies and the City. No fee credits or reimbursements shall be applicable for utility pole relocations.
- a) City may form a Utility Underground District and complete the undergrounding of overhead utilities within Arbor Avenue right-of-way in the future in accordance with the applicable section(s) of Tracy Municipal Code.

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- b) 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.
 - c) The Developer shall submit Joint Utility Trench Plans for the installation of electric, gas, telephone and TV cable main and service lines that are necessary to be installed to serve the Project. These utilities shall be installed within the 10-foot wide Public Utility Easement (PUE) that will be offered for dedication to the City. The Developer shall coordinate, as feasible, with the respective owner(s) of the utilities for the design of these underground utilities to ensure they can be installed within the 10-foot wide PUE to the extent feasible (and except in the event, that additional space beyond the 10-foot PUE is required, as determined by the utilities owner(s)).
- C.4.9 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). This pavement repair requirement is applicable when cuts or trenches are perpendicular to the street direction; when the new joint trench is placed in the street parallel to the street direction; the width of overlay is to be the width of the affected lane.
- C.6. Building Permit - No building permit will be approved 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.6.1. Check payment of the applicable development impact fees including City Wide Roadway and Traffic, Water, Recycled Water, Wastewater, Storm Drainage, Public Safety, Public Facilities, and Park Development Impact Fees per the Finance Plan.
 - C.6.2. Check payment of any applicable Regional Transportation Impact Fees (RTIF)
 - C.6.3. Check payment of any applicable Agricultural Conversion or Mitigation Fee as required in Chapter 13.28 of the Tracy Municipal Code.
 - C.6.4. Approval of the Finance Plan by the City Council.

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- C.7. Acceptance of Public Improvements - Public improvements will not be accepted by the City Council until after the Developer completes construction of the relevant public improvements, and also demonstrates to the City Engineer satisfactory completion of the following:
- C.7.1. Correction of all items listed in the deficiency report prepared by the assigned Engineering Inspector relating to public improvements subject to City Council's acceptance.
 - C.7.2. 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.7.3. Signed and notarized Grant Deeds and /or Grant of Easement(s) including legal description and plat map(s), relating to the offer of dedication for the storm drainage detention basin, Arbor Avenue right-of-way, and utility easements, as required in these Conditions of Approval.
 - C.7.4. Reasonable written permission from irrigation district or affected owner(s), if applicable. The cost of relocating and/or removing irrigation facilities and/or tile drains is the sole responsibility of the Developer.
- C.8. Temporary or Final Building Certificate of Occupancy - No Final Building Certificate of Occupancy will be issued by the City until after the Developer provides reasonable documentation which demonstrates, to the satisfaction of the City Engineer, that:
- C.8.1. The Developer has satisfied all the requirements set forth in Conditions C.5 and C.6 above.
 - C.8.2. The Developer has completed construction of all required public facilities for the building for which a certificate of occupancy is requested and all the 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.9. Improvement Security - The Developer shall provide improvement security for all public facilities, as required by the OIA, DIA, and these Conditions of Approval. The form of the improvement security may be a surety bond, letter of credit or other form in accordance with section 12.36.080 of the TMC and the Development Agreement. The amount of improvement security shall be as follows:

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- C.9.1. Faithful Performance (100% of the estimated cost of constructing the public facilities)
- C.9.2. Labor & Materials (100% of the estimated cost of constructing the public facilities), and
- C.9.3. Warranty (10% of the estimated cost of constructing the public facilities)
- C.10. Release of Improvement Security - Improvement Security(s) described herein shall be released to the Developer after City Council's acceptance of public improvements, and after the Developer demonstrates, to the satisfaction of the City Engineer, compliance of these Conditions of Approval, and completion of the following:
 - C.10.1. Improvement Security for Faithful Performance, Labor & Materials, and Warranty shall be released to the Developer in accordance with Section 12.36.080 of the TMC.
 - C.10.2. Written request from the Developer and a copy of the recorded Notice of Completion.
- C.11. Benefit District - The Developer may make a written request to the City for the formation of a Benefit District, prior to the approval of improvement plans for the public facility(s) considered to be oversized that benefits other property(s) or development(s). Reimbursement request(s) will be processed in accordance with Chapter 12.60 of the TMC.
- C.12. Special Conditions
 - C.12.1. 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.12.2. When street cuts are made for installation of utilities, the Developer is required to install 2 inches thick asphalt concrete overlay with reinforcing fabric at least 25 feet from all sides and for the entire length of the utility trench. A 2 inches deep grind on the existing asphalt concrete pavement will be required where the asphalt concrete overlay will be applied and shall be uniform thickness in order to maintain current pavement grades, cross and longitudinal slopes. If the utility trench extends beyond the median island, the limit of asphalt concrete overlay shall be up to the lip of existing gutter located along that side of the street. This pavement repair requirement is when cuts/trenches are perpendicular to the street direction; when the street cut is parallel to the street direction, the width of overlay to be the width of the affected lane.

**CITY OF TRACY - OFFSITE IMPROVEMENT AGREEMENT
DCT INDUSTRIAL DISTRIBUTION FACILITY - OFFSITE WATERLINE IMPROVEMENTS
ON ARBOR ROAD AND MACARTHUR DRIVE
PAGE 36 of 38**

EXHIBIT " B "
Page 21 of 21

Conditions of Approval
DCT Industrial
Application No. D15-0014
November 17, 2015

Exhibit "1"
Page 20

- C.12.3. The Developer shall execute a hold-harmless agreement with the City relieving the City of any liability associated with flooding of portions of the parking areas and other site improvements contiguous to the proposed building that will be constructed below the base flood elevation of 22 feet for Old River depicted on the existing FEMA Flood Insurance Rate Map covering this area.
- C.12.4. 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.12.5. The Developer shall abandon or remove all existing irrigation structures, channels and pipes, if any, as directed by the City after coordination with the irrigation district, if the facilities are no longer required for irrigation purposes. If irrigation facilities including tile drains, if any, are required to remain to serve existing adjacent agricultural uses, the Developer will design, coordinate and construct required modifications to the facilities to the satisfaction of the affected agency and the City. Written permission from irrigation district or affected owner(s) will be required to be submitted to the City prior to the issuance of the Grading Permit. The cost of relocating and/or removing irrigation facilities and/or tile drains is the sole responsibility of the Developer.
- C.12.6. All improvement plans shall contain a note stating that the Developer (or Contractor) will be responsible to preserve and protect all existing survey monuments and other survey markers. Any damaged, displaced, obliterated or lost monuments or survey markers shall be re-established or replaced by a licensed Land Surveyor at the Developer's (or Contractor's) sole expense. A corner record must be filed in accordance with the State law for any reset monuments (California Business and Professions Code Section 8871).
- C.12.7. 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, Building Permit, Improvement Plans, OIA, and DIA, 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 inclusion, design, and implementations of such additions and requirements, without reimbursement or any payment from the City.

Exhibit C

Initial contact information for the Authorized Representative

**CITY OF TRACY
OFFSITE IMPROVEMENT AGREEMENT
DCT INDUSTRIAL DISTRIBUTION FACILITY – OFFSITE WATERLINE
IMPROVEMENTS ON ARBOR AVENUE AND MACARTHUR DRIVE**

EXHIBIT "C"
PAGE 1 OF 1

Jeremy Kearns | Superintendent
United Construction Company
O: 775.858.8090 |
M: 775.848.1546 | jkearns@unitedconstruction.com <<mailto:email@unitedconstruction.com>>
Licenses: NV #0015417 AZ: #163263 CA: #553339 NM: #85070 OR: #203096 UT: #95-311769-5501

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Rachel Hickenbottom
Vice President, Construction



12 Corporate Plaza, Suite 150
Newport Beach, CA 92660

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Mobile: 949-433-3892
rhickenbottom@dctindustrial.com

02-100616cm

RESOLUTION 2016-_____

APPROVING AN OFF-SITE IMPROVEMENT AGREEMENT FOR WATER DISTRIBUTION LINE ON ARBOR AVENUE AND MACARTHUR DRIVE FOR THE DCT INDUSTRIAL DISTRIBUTION FACILITY ON ARBOR AVENUE, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, On November 17, 2015, the City Council approved the Preliminary and Final Development Plan for the DCT Industrial Distribution Facility submitted by Arbor Avenue LLC (Developer), for the construction of a 795,732 square foot industrial distribution building which includes parking, private landscaping, and associated improvements, and

WHEREAS, Approval of the DCT Industrial Distribution Facility required the Developer to complete, among other things, the installation of a water distribution line on Arbor Avenue from Holly Drive to the project site and on MacArthur Drive from north of Highway 205 to Arbor Avenue, prior to occupancy of the building, and

WHEREAS, As part of its approval of the DCT Industrial Distribution Facility, the City Council found that the project, including all associated improvements, was consistent with the development analyzed in the City's General Plan EIR pursuant to Section 15183 of Title 14, Chapter 3 of the California Code of Regulations ("CEQA Guidelines"), and

WHEREAS, There will be no on- or off-site environmental impacts associated with the water distribution line that were not already analyzed in the General Plan EIR, and

WHEREAS, This water distribution line will provide the necessary fire protection water main looping for this industrial project and also has capacity to provide potable water to undeveloped properties along Arbor Avenue between Holly Drive and MacArthur Drive and on MacArthur Drive between Highway 205 and Arbor Avenue, and

WHEREAS, The Developer has completed the design of the water distribution line on Arbor Avenue and has submitted the Improvement Plans, Specifications and Cost Estimates (PSE), and

WHEREAS, The Developer has executed the Off-Site Improvement Agreement and submitted the required security to guarantee completion of the water distribution line on Arbor Avenue and MacArthur Drive, and

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

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

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the Off-Site Improvement Agreement for the Water Distribution Line on Arbor Avenue and MacArthur Drive for the DCT Industrial Distribution Facility, and authorizes the Mayor to execute the Off-Site Improvement Agreement.

* * * * *

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

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

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.E

REQUEST

APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH NBS GOVERNMENT GROUP TO PERFORM ANALYSES OF FINANCE DIVISION PROCESSES, AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT, AND APPROPRIATION OF \$64,388

EXECUTIVE SUMMARY

Periodically, the City of Tracy, in accordance with best management practices, reviews its financial processes to assure that methodologies are efficient, relevant, and equitable in serving the City's external and internal customers. To enhance the quality and transparency of our fee programs, analyses are being proposed to be performed by NBS Government Group (NBS) to review the City's:

1. Internal Service Charges and Vehicle Replacement Program;
2. Indirect Costs;
3. Cost Allocation Plan for the Transportation Division;
4. Development and Capital Improvement Project Cost Overhead;
5. Cost of Services for City-wide Fees

It is estimated that the analyses may take 6-10 months. An appropriation amount of \$64,388 is being requested to augment the already-budgeted \$45,000.¹ The total not to exceed amount includes 15% contingency for additional analyses or meetings and workshops as requested by the City.

DISCUSSION

It is important to routinely review various components of an organization's operational fees and methodologies to ensure that the organization is effectively providing municipal services at a fair cost to its internal and external customers. This review is being performed to ensure that the City is serving its business and residential community in the most transparent and cost-effective way.

In determining what is an appropriate cost, methodologies must be sound and be based upon current policies, best management practices, and accepted financial practices. The various costs must be reviewed not only individually but as a whole due to their interrelatedness of the overall cost of services. For instance, overhead calculations must consider internal service charges and indirect costs (central services costs) to fully capture the actual cost of a service being offered. Before one can adequately calculate the cost for facilities rentals or overhead for Capital Improvement Projects (CIPS), it is imperative to know all the costs that are involved in operations beyond the direct costs and appropriately apply them.

¹ \$45,000 was based upon the original limited scope of reviewing the costs of services for recreation and development services only as they pertain to the City-wide Master Fee Schedule. The scope of services has broadened significantly since that time.

The following represent the Work Plans (analyses) that will be performed:

Work Plan 1: Internal Service Charges (ISC) Analyses

The formulas used to calculate ISC have not been reviewed in almost 20 years (with the exception of Building Maintenance which was performed in 2012). NBS will review the method of calculation and appropriation of existing ISC against best management practices practiced in other jurisdictions, as well as the NBS consulting team's 20+ years in cost allocation and cost accounting experience.

The City Finance Division has requested NBS's assistance in performing a more extensive review of its fleet management system to identify charges that will fully fund the City's fleet replacement program. NBS will assist the City in improving near-and long-term revenue (funding) requirements for the program.

Work Plan 2: Indirect Costs (Central Services) Analyses

NBS will determine the amount of indirect costs associated with City programs, fees, and grants through the development of a Cost Allocation Plan which includes more inclusive costs in the basis of overhead allocations. This part of the Plan is typically targeted for use in an agency's annual budget, reimbursement from enterprise and special revenue funds, and for inclusion in calculation of the full cost of providing user fee services.

Work Plan 3: Cost Allocation Plan for Transportation

The City is the recipient of various transportation grants from the San Joaquin Council of Government and Federal Government. NBS will make recommendations for a Cost Allocation Plan that will optimize the City's chances of receiving full grant reimbursement by justifying indirect cost rates as required.

Work Plan 4: Development and Capital Improvement Project Overhead Analysis

Questions have arisen over the years regarding cost allocation methodology for development reviews and Capital Improvement Projects. NBS will review methodology and make recommendations as to how to calculate and apply overhead in a manner that is reasonable, understandable, and is consistent with municipal best practices and City policy.

Work Plan 5: Cost of Services for City-wide Fees

A review of the fee-related services is important in order to confirm whether the City is charging an adequate amount in fees for services, that the fees charged are commensurate with the service being provided, that the fees are in line with other similar communities' fees, and that the fees also represent a balance between what is affordable to Tracy's community and that which will assure fiscal sustainability of the City's General Fund. NBS will provide an initial review of equipment rental and facility rental fees within a comparative survey, time and service analysis, and time valuation tasks.

The Consultant

Of nine consultants that received the City's request for qualifications and proposals, the

City received statements of qualifications and proposals from two firms. San Francisco and Temecula-based NBS was deemed to be the best suited firm for the City based on its qualifications, its understanding of the scope of services, its approach to the analyses, its state-wide reputation, and its interview.

STRATEGIC PLAN

This item is in accordance with Council Governance Strategy, Goal 2: Ensure continued fiscal sustainability through budgetary and financial stewardship.

FISCAL IMPACT

\$45,000 was previously budgeted to perform the Cost of Service Analyses for two departments. Due to scope expansion an additional \$64,388 appropriation will be required for a total Not-To-Exceed amount of \$109,388, of which 15% (\$14,268) represents contingency for additional meetings or services if warranted. Appropriations of \$11,080 will be from the Transportation Vehicle Replacement Fund 606; and \$53,308 from General Fund 125.

RECOMMENDATION

Approve the Professional Services Agreement with NBS Government Group to perform analyses of finance division processes, authorize the Mayor to execute the agreement, and appropriate \$64,388.

Prepared by: Anne H. Bell, Mgt. Analyst II, ASD, Finance Division

Reviewed by: Martha Garcia, Interim Administrative Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment "A" – Professional Services Agreement for NBS Government Group

ATTACHMENT "A"

City of Tracy PROFESSIONAL SERVICES AGREEMENT FOR ANALYSES OF FINANCE DIVISION PROCESSES

This Professional Services Agreement (Agreement) is entered into between the City of Tracy, a municipal corporation (City), and NBS Government Group, a California corporation (Consultant).

Recitals

A. On May 16, 2016, the city issued a Request for Qualifications and Proposals for various financial process analyses including but not limited to cost allocation, cost of service, and vehicle replacement analyses.

B. On June 30, 2016, Consultant submitted its statement of qualifications and proposal to the City. After negotiations between the City and Consultant, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

Now therefore, the parties mutually agree as follows:

1. **Scope of Services.** Consultant shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Nicole Kissam. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use any subcontractors or subconsultants, without City's prior written consent.

2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

3. **Compensation.**

3.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis at the billing rates set forth in Exhibit "B," except for Work Plans 1, 2, and 5 which shall be at a fixed price as set forth in Exhibit "B," which is attached and incorporated by reference. Consultant's fee for this Agreement is Not to Exceed \$109,388. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without the City's prior written approval.

3.2 **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.

3.3 Payment. Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.

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

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

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

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

5. Insurance.

5.1 General. Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.

5.2 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

5.3 Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

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

5.5 Professional Liability "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.

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

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

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

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

- 5.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 5.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.
- 5.10 Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 5.11 Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.

6. Independent Contractor Status; Conflicts of Interest. Consultant is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Consultant is free to work for other entities while under contract with the City. Consultant, and its agents or employees, are not entitled to City benefits.

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

7. Termination. The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

8. Ownership of Work. All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

9. Miscellaneous.

9.1 Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

To City:
Anne H. Bell, Mgt. Analyst II
Finance Division
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:
Tim Seufert, Client Services Director
NBS Government Group
870 Market Street
Suite 1223
San Francisco, CA 94102

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

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

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

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

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

9.5 Assignment and Delegation. Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

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

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

9.8 Business Entity Status. Contractor is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Contractor. City may void this Agreement if Contractor is a suspended corporation, limited liability company or limited partnership at the time it enters into this Contract, City may take steps to have this Agreement declared voidable.

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

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

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

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

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

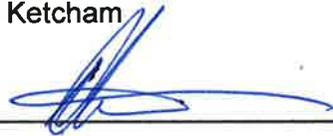
City of Tracy

NBS Government Group, a California
S Corporation

Michael Maciel

Dave Ketcham

By: _____

By:  _____

Title: Mayor

Title: Vice President

Date: _____

Date: 10/18/16 _____

Approved by City Council on _____
by Resolution No. _____

Federal Employer Tax ID
No. 33-0712512

Attest:

By: Nora Pimentel, City Clerk

Mike Rentner
By:  _____

Approved As To Form:

Title: Secretary

By: Bill Sartor, City Attorney

Date: 10/18/16 _____

Exhibits:

- A Scope of Services, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)

Exhibit “A”

Scope of Services and Performance Schedule

Detailed Work Plans

The following provides a detailed proposed Work Plan for completion of (1) Internal Service Charges Analysis, (2) Indirect Cost Analysis, (3) Cost Allocation Plan for Transportation Division, (4) Development and Capital Improvement Project Overhead Analysis, and (5) Cost of Service Analysis.

All Work Plans: Project Commencement Activities

NBS will acquire published or accessible data from the client website, including: adopted budgets, recent financial performance (revenues and expenditures), current labor cost detail and classifications, organizational structures, existing relevant policies, and other items of a more global nature. NBS will then issue a consolidated “Preliminary Data Request” for the balance of information required to initiate the project.

NBS will conduct a project commencement discussion with individuals who will manage the progress, completion, and implementation of the Study’s findings. This meeting will review the Preliminary Data Request, and discuss project management items such as an overview of the Study’s process, coordination for on-site and remote interaction with personnel, desired project completion dates, and client questions or concerns about the Study’s process or outcomes.

During the first round of on-site project interview tasks for the project, NBS will conduct a PowerPoint presentation to a gathering of executives, managers, and staff who will be involved with the project. The presentation will cover the Study’s goals and objectives, methodology, timeline, expectations for data submittals and meeting attendance. NBS will remain available after the presentation to answer questions and discuss ideas as needed.

Deliverables: List of basic data requirements for the Study, Initial discussion with executive / project management staff to review goals, objectives, and project management plans, Kick-off presentation to appropriate staff,

Work Plan 1: Internal Service Charges Analysis

Task 1: Review City’s Existing Internal Service Fund Charges Methodology

Interview key Division personnel that administer existing Internal Service Fund charges. This will involve staff that calculate and implement the charges as part of the budgeting and accounting process, as well as any appropriate operating department representatives providing Internal Services Fund services. Review the method of calculation and appropriation of existing Internal Service Fund charges against Best Management Practices seen in other jurisdictions, as well as the NBS consulting team’s 20+ years in cost allocation and cost accounting experience.

Deliverables: One on-site meeting to interview City staff. Review of existing documentation and City analyses which calculate existing Charges.

Task 2: Calculate Internal Service Fund Charges

Calculate updated Internal Service Charges, either by developing a new spreadsheet for the City's future use in the Microsoft Excel environment, or through incorporating Internal Service Charges into the model developed for Work Plan 2: Indirect Cost Analysis. NBS will facilitate a data collection process for all statistical allocation information required to complete calculations.

Deliverables: Updated draft Internal Service Charges for one specified Fiscal Year. Delivery of Excel based Internal Service Charge spreadsheet, if applicable.

Task 3: Review Updated Calculations and Final Approval

Conduct up to two (2) rounds of iterative review and adjustment to the Internal Service Fund calculations. Obtain final approval from City project management. Once approval is received, issue documentation (approximately 10 pages), describing the purpose of Internal Service Fund charges, the method for calculating and administering charges, and basic guidelines and instructions to assist the City in updating charges on a routine basis. Include one round of review and revision to documentation with City staff.

Deliverables: Final Updated Internal Service Charges for the City's use. Documentation to assist the City in implementing and updating charges.

Optional Task: Fleet Program Analysis

NBS can provide a more extensive review resulting in charges to fully fund the City's Fleet program. Under this approach, NBS will assist the City in developing the near- and long-term revenue (funding) requirements for the fund. To complete this Task, NBS will complete the following steps:

1. Build a financial model with capability for forecasting at least ten years, and prepare a forecast of recurring operating expenditures, periodic operating and/or capital expenditures, and planned capital investments, as appropriate. A forecast of cash flow will show for the fund, as will recommended reserve targets for the fund.
2. Revise cash flow forecasts as necessary to meet fiscal policy. Model the forecasted annual revenue requirement for the fund. Incorporate any non-ISF rate funding sources to be planned, and identify the net rate revenue requirement for each year of the financial analysis.
3. Conduct one review meeting with the department responsible for the Fleet program and appropriate representative from Finance to review preliminary revenue requirements. Assume one analytical iteration after City review.
4. Assign and/or allocate the annual revenue requirement of the ISF to the fund's functional services, as applicable. Utilize readily-accessible staffing, historical experience, and/or volumetric data to assist in allocations. Presume one iteration of City management review. Conduct a review meeting to discuss outcomes and include one subsequent iteration of the draft.
5. Add to the financial model one of two possible charging methods:
 - a. The derivation of unit costs and subsequent rates for each core service in the ISF, to be applied based on real-time demand statistics from internal clients. Establish the structure of rates to be applied to users of each measurable service in the fund. Acquire, validate, and apply recent data sets to estimate demand volumes for each service. Calculate the corresponding rate in line with demand and the revenue requirement as established.

- b. The allocation of annual costs from each core service to internal clients, to be applied as an annual (or regular) charge to internal clients. Establish the department-/fund-specific charges to be applied to each user/beneficiary of ISF services. Acquire and apply acceptable data sets to be used for apportionment of service costs. Calculate the corresponding annual charge for each client totaling to the revenue requirement for the fund.
6. Conduct one review meeting to review preliminary rate outcomes. Assume one analytical iteration after City review.
7. Finalize analytical outcomes for the ISF from all preceding tasks. Prepare the narrative description of the ISF rate structure/charge derivation and compile relevant technical exhibits. Issue the draft report to City staff for review and comment; assume one iteration of changes to narrative text (no numerical changes included). Upon City review and acceptance, issue the final report and deliver the final technical model to the City for its future use and update.

Work Plan 2: Indirect Cost (Central Services) Analysis

NBS will determine the amount of indirect costs associated with City programs, fees, and grants through development of a Cost Allocation Plan. The following detailed work plan for the Cost Allocation Plan includes two deliverable versions of the Plan:

- 1) A Full Cost Allocation Plan which includes more inclusive costs in the basis of overhead allocations. This version of the Plan is typically targeted for use in an agency's annual budget, reimbursement from enterprise and special revenue funds, and for inclusion in calculation of the full cost of providing user fee services.
- 2) A version of the Cost Allocation Plan which complies with the requirements and guidelines of *Title 2, Code of Federal Regulations, Part 225, Cost Principles for State, Local, and Indian Tribal Governments* (formerly known as OMB A-87). This version of the Plan is more restrictive in the types of costs included in the basis of overhead allocations.

Task 1: Review City's Existing Indirect Cost Analysis

Per the City RFP's request, NBS will first perform a review and evaluation of the City's current methodology for determining Indirect Costs for all City departments and divisions, and conduct a discussion of strengths and opportunities for improvement.

Deliverables: Review of City's existing methodology and documentation. One review discussion / meeting to identify strengths and opportunities for improvement.

Task 2: Develop Cost Allocation Plan Structure

Identify an initial list of indirect cost centers and recipients, which typically include, but is not limited to the following City Departments: City Council, City Manager, City Clerk, City Attorney, Finance, Human Resources, Administrative Services, and Building or Facilities maintenance. Confirm this list as accurate and comprehensive with City project managers.

In one series of on-site meetings, conduct individual meetings with each indirect cost center to examine further the City's current organizational and financial structure, and identify functional service levels in which to summarize indirect costs. Also discuss with City staff the recommended cost allocation detail and corresponding bases for apportioning costs City-wide.

With City staff buy-in and cooperation, embark on data collection to develop sets of information to be used as factors for cost allocation. (The study will seek to primarily use data sets already maintained for other purposes in order to minimize ongoing labor burdens in maintaining future cost allocations; however, new data sets may be developed where warranted.)

Deliverables: Review and analyze the City's accounting and organizational structure to prepare the Plan model. Participate in on-site staff interviews to initiate discussion and data collection efforts. Data collection efforts for the structure, functions, costs, and allocation basis needed to complete the first draft of the Plan

Task 3: Full Cost Allocation Model Development

Customize NBS' proprietary Cost Allocation Plan model in the Microsoft Excel spreadsheet environment to reflect the City's organizational and financial structure. Perform the necessary computations to perform at least two levels and layers ("step-downs") of cost allocations City-wide, and summary reports identifying total annual costs allocated.

Compile cost data received, and make any necessary adjustments to costs to ensure capture only of relevant support services costs. Input allocation factor data into the NBS Cost Allocation Plan model, and complete the functionality of the plan. Generate a draft in PDF format of annual allocated costs by budget unit and fund. Conduct one review session during this process to review interim analysis/progress. Collect input and up to two (2) rounds of revisions to the draft plan results.

Deliverables: Customization of NBS Cost Allocation Plan model with data received. Comprehensive Draft Full Cost Allocation Plan (numerical results) in PDF format. One review session of initial results and up to two (2) rounds of revisions to finalize the Cost Allocation Plan.

Task 4: Full Cost Allocation Plan Documentation

Prepare a draft report documenting the Full Cost Allocation Plan. The report includes an Executive Summary, citation of data sources and key analytical assumptions, illustration of analytical methods; presentation of findings; narrative descriptions complying with the standards of OMB A-87; and, technical appendix showing the analysis and any relevant data sources. Participate in the presentation of the draft plan to the City's management group, collect input, and make one round of revisions to the draft report. Provide the City with PDF copies of the final report.

Deliverables: Draft Final Report that explains the analysis completed. One presentation of Draft Final Report to City's management group to include one (1) round of revisions to the report. Discussion and basic advice on implementation and uses of the Final Cost Allocation Plan.

Task 5: OMB A-87 Compliant Cost Allocation Plan

Prepare an OMB A-87 Compliant Cost Allocation Plan and Indirect Cost Rate (s). Make any necessary adjustments to the final version of the Full Cost Allocation Plan's structure, expenditure data, or allocation factor data to ensure compliance with OMB A-87 (now Title 2 CFR) guidelines. Provide a draft of the Plan in PDF format and review Plan results with City staff. Collect input and one round of revisions to the draft plan and rate results. Prepare a draft report documenting the OMB A-87 Cost Allocation Plan. Review with the City's project management group, collect input, and make one round of revisions to the draft report. Provide the City with PDF copies of the Final Report. Note this task assumes no change in fiscal year expenditure data from the Full Cost Allocation Plan.

Deliverables: Adaptation of NBS Cost Allocation Plan model for OMB A-87 compliance. One presentation of Draft Final Report to City's project management group to include one (1) round of revisions to the report. Discussion and basic advice on implementation and uses of the OMB version of the Cost Allocation Plan.

Work Plan 3: Cost Allocation Plan for Transportation Division Objectives

After discussion with the City regarding this project, NBS believes the OMB A-87 Compliant Cost Allocation Plan within Work Plan 2, above, will meet the needs of the Transportation Division. NBS has included additional **Optional** consulting hours to assist the Division in calculating Indirect Cost Rates, or special rates as needed for grant reimbursement purposes.

Work Plan 4: Development and Capital Improvement Project Overhead Analysis

After discussion with the City regarding this project, NBS believes the steps identified for the Master Fee Study in Work Plan 5, below, will meet the needs. Through Work Plan 5, NBS will calculate fully-burdened hourly rates to be used by engineers and planners to charge to individual capital improvement projects. Please reference Work Plan 5, Task 3, for a description of the approach to rate calculation. NBS has included additional **Optional** consulting hours to assist the City in any additional analysis associated with revising or implementing rates and reimbursements from capital project funds.

Work Plan 5: Cost of Service Analysis

In general, the scope of services for each department studied includes all fees for service that can be analyzed on a time estimate per activity basis. Taxes, penalties, fines, and fees regulated or set by the State, as well as development impact fees and utility rates will be excluded from this analysis.

In addition to user and regulatory fees, the City requested an evaluation of equipment rental and facility rental fees. Under the guidelines of Proposition 26, these types of fees are classified as charges for the entrance to or use of government property. Per the League of California Cities' Proposition 26 Implementation Guide, charter cities do not require a cost of service analysis as the basis for setting these types of fees, but general law cities do. NBS notes that an in depth analysis of the cost of providing equipment rental or facility rental services may require an alternate method for review than what is proposed for Work Plan 5. NBS will provide an initial review of equipment rental and facility rental fees within the Comparative Survey, Time and Service Analysis, and Time Valuation tasks. Depending on available data, this approach will inform the City regarding available market options for consumers of City equipment and facility rentals, as well as basic levels of cost recovery with respect to staff time and effort required to facilitate rentals. Should the City request further analysis of equipment or facility rates to capture additional types of costs or assumptions, NBS and the City would need to negotiate a separate Scope of Work for that purpose.

The City's RFP suggests a potential need to "phase" completion of department analyses according to funding available. If so, NBS will suggest including Development Services and Police in one phase, and all other departments and activities in another phase. This recommendation will best capture the amount of support costs provided between departments in the development review fee processes, as well as survey all facility rental fees in the other departments listed at once.

Task 1: Fee Structure Design and Organizational Analysis

Conduct one round of onsite project commencement events with individual divisions initially known to provide the fee-related services under review in this study. The chief purpose of these meetings is to acquire a broad understanding of each division's organization, performance of core services, functions of service, staffing structure/lines of command, current fee structures and systems, known issues/deficiencies in current fees, known areas for new fees, and availability of existing time-tracking and volumetric data. Applying industry expertise, NBS consultants will recommend and develop fee structures (as opposed to amounts) for each area under review. Fee structures include flat fees, variable fees based on measurable service characteristics (e.g., project types, size, etc.), and variable fees based on staff time (e.g., hourly rates with deposits), etc. Fee structure can also mean rewriting fee categorical descriptions to retain flat fees for administrative ease but introducing variation in the

applicable fee for an applicant or user. Issue updated fee schedules in PDF or as Excel worksheets for City staff review and comment. Incorporate one (1) round of changes for each department studied.

Deliverables: On-site meetings with departments under review. Review and one round of revision to updated fee schedule recommendations

Task 2: Time and Service Analysis

Determine and communicate the subsequent steps to acquire and/or develop organizational, performance, and time information necessary for establishing costs of service for justifying fees. Consultants will also preliminarily identify any other divisions outside those immediately identified that are involved in the direct provision of the services under review and will schedule comparable commencement events with those areas. Develop an approach and tools for acquiring and/or developing the organizational, performance, and time information necessary for justifying fees. For areas where simple remote questionnaires may suffice, develop and route the forms to key personnel within each division. For areas where onsite interviews will be necessary, coordinate scheduling and develop interview tools. Conduct one round of onsite events with individual divisions – and potentially small groups within each division – to generate organizational, performance, and time information necessary for justifying fees.

After acquiring historically-tracked and/or currently-available time and volumetric data, as well as information developed through questionnaires and/or interviews, determine any necessary secondary resource of action to continue and/or refine organizational, performance, and time data. Up to two iterations of the time and service analysis for each department are included to ensure that the cost of service analysis is defensible and reasonable. Iterative efforts will be manageable through the use of highly-concentrated/targeted remote follow-up email communication, questionnaires, and or phone conferences with appropriate personnel.

Deliverables: Development of data collection materials and scheduling and attendance of subsequent on-site events. Up to two (2) iterations of data modifications needed to produce the first draft of numerical results. Incorporation of City data into NBS' Proprietary User Fee model to reflect the complete organizational, performance, and time estimate data submittals received for the services under review in this study.

Task 3: Time Valuation

Determine the full cost of service on an annual basis for each department or division, as well as for various functions of service provided. Compute fully burdened hourly rates “blended” for the entire division, for core functions within a division, and as warranted, by classification of personnel. Consider the applicability of productive hours or direct-billed hours as the basis for the rate calculation. Integrate City financial/budget data, payroll/labor data, and established overhead charges or cost allocations, as follows:

- Define the **direct costs** of service for each division involved in each service under review in this study. Direct costs reflect those specifically related to the provision of service embodied by the activities reflected in the fee schedule, as well as any potential additions to that list.
- Define the **indirect costs** of service for each division involved in each service under review in this study. Indirect costs are those incurred to support the provision of direct service, and may be reflected in many functional forms, depending on the division and/or direct services in questions. Examples of indirect functions include administrative support, customer service/public information, code/policy/standards maintenance, training, and management. Outside of discrete functions, indirect costs may also include tangible items, such as materials and supplies.

- Determine applicable **City-wide indirect costs**, such as those defined by the Cost Allocation Plan to determine appropriate shares of administrative, support services, and/or governance costs. (Work Plan 2).

Deliverables: Development of fully burdened hourly rate calculations for each department studied

Task 4: Cost of Service Analysis

The full cost of service defined by NBS serves as the analytically-justified maximum amount that may be recovered through a user/regulatory fee adopted solely by the City Council. Determine the full cost of service at an activity level for each individual service currently associated with a fee or selected as a candidate for a new fee. Integrate applicable information developed in previous tasks to develop activity costs of service. Apply performance/time estimates at identified activity levels to the fully-burdened hourly rates developed in the Time Valuation tasks to determine the full cost of service for each fee-related service. Add any discrete materials/services costs not reflected in the time valuation for specific activities, such as substantial equipment and incremental contract services. The outcome of this task will provide the following information in a draft of results for review:

- Total estimated cost of providing each fee for service included in the study. Once finalized, these amounts will represent the legal maximum the City could charge for each service.
- Comparison of the total estimated cost of each fee for service to the current fee charged by the City. Display of the current cost recovery percentage for each fee item.
- Projection of the annual current fee revenue collected for each department and comparison of that amount to the annual estimated total costs of providing fee related services. Display of the annual amount of potential additional revenue available, or current surplus collected in fee revenue.
- Placeholder tables for the recommended fee analysis, which will allow City staff and policy makers to suggest fee amounts at or below the maximum allowable fee level, and project the total annual revenue impacts of their recommendations.

Deliverables: PDF Drafts of analytical results for departmental review

Task 5: Conduct Comparative Survey

Policy makers often desire a comparison of current, full cost recovery, and recommended fee amounts to neighboring jurisdictions. Although an “apples to apples” comparison of cost recovery policy and fee structures between agencies is challenging, presence of a comparison will ensure a smoother implementation process and a sense of the “market” rate for various services.

NBS will utilize their industry expertise compare similar user and regulatory fees in up to five (5) neighboring and comparable communities. A list of communities will be selected and approved by City staff. In general, NBS will download the respective fee schedules from the Internet. If schedules are not available on the Internet, NBS will make a reasonable attempt contact the agency to obtain a copy of their current fee schedules. NBS will then compile a comparison of fee categories and amounts, for the most readily comparable fee items that match the City’s existing fee structure, and make a reasonable attempt to contact each agency for clarification regarding fee categories and amounts. The City may also provide contact information to individuals known in each agency that may be available to assist NBS in confirming information regarding fee schedules and amounts.

Deliverables: Comparative Survey

Task 6: Draft Review and Revision

Conduct review events with each individual department or division to review the draft results of the Study. Determine any necessary refinements to core assumptions and discuss applicability in current and/or alternative fee structures. Based on review with City staff, revise core analytical modules and finalize the activity costs of service. Calculate the final unit costs of service that will serve as the foundation for any revised fee amounts and/or fee structure. This task represents one planned iteration of the analytical work products.

Discuss pricing objectives from the divisional perspective, i.e., the division's comfort with full cost recovery or some alternative level of cost recovery. Consultants will facilitate this conversation by discussing public/private benefits or causation of each activity, potential market sensitivity, interaction with established City goals or policies, behavior modification influence, and other considerations. Collect one round of input regarding City staff's recommended fee amounts and model the revenue impacts on an individual and annual basis for each fee category.

Deliverables: Review of Draft Fee Analyses with individual departments. Incorporation of one (1) round of City comments and revisions to achieve final results. Collection of recommended fee amounts, either at or below the full cost of providing services.

Task 7: Documentation

Prepare a written draft report describing the complete work and findings of the project. Include an Executive Summary, as well as narrative sections detailing the Fee Structure Design, Organizational Analysis, Time Valuation, and Cost of Service Analysis. Issue the draft report in electronic form (portable document format) to City staff and management for review. Include one round of changes to the narrative draft final report, to reflect City management group input (includes narrative changes, no numerical/analytical revisions included).

Deliverables: Issuance of Draft report for City staff review and comment. Incorporation of one round of changes to the draft narrative report.

All Tasks: Presentations and Meetings

Regarding both on-site and remote meetings proposed to complete the work plans provided herein, NBS has specifically identified when tasks are suggested to be performed "on-site" versus as a "review session" or "discussion".

Regarding presentations, NBS will prepare for and attend up to two (2) public meetings to advise on project outcomes or cost recovery policy as needed, and respond to questions on behalf of or in support of City staff.

Note additional presentations and on-site meetings, if requested, are available as an **Optional** per meeting charge in the Performance and Cost Schedules section of this document.

Project Staff:

Nicole Kissam, Project Director

Stacey Shell, Project Manager/Lead Consultant

Greta Davis, Associate Director

Kevin Gardner, Financial Analyst (and other NBS Financial Analysts as needed)

Tim Seufert, Client Services Director

Performance Schedule

Estimated Performance Schedule

A Study of this nature requires approximately six months to complete all work plans as requested. This estimated timeline is not inclusive of required public meetings and adoption hearings. This is a reasonable timeline allowing for quality data submittals to be accomplished by City staff amongst competing priorities.

NBS will be available to begin this project in mid November or December of 2016. The following provides an estimated timeline for the City's review:

<i>Weeks from Start =></i>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	
ALL TASKS: PROJECT COMMENCEMENT ACTIVITIES																											
All proposed project commencement activities																											
WORK PLAN 1. INTERNAL SERVICE CHARGES ANALYSIS																											
Task 1. Review City's Existing Internal Service Fund Charges Methodology																											
Task 2. Calculate Internal Service Fund Charges																											
Task 3. Review Updated Calculations and Final Approval																											
WORK PLAN 2. INDIRECT COST (CENTRAL SERVICES) ANALYSIS																											
Task 1. Review City's Existing Indirect Cost Analysis																											
Task 2. Develop Cost Allocation Plan Structure																											
Task 3. Full Cost Allocation Model Development																											
Task 4. Full Cost Allocation Plan Documentation																											
Task 5.OMB A-87 Compliant Cost Allocation Plan																											
WORK PLAN 5. MASTER FEE STUDY																											
Task 1. Fee Structure Design and Organizational Analysis																											
Task 2. Time and Service Analysis																											
Task 3. Time Valuation																											
Task 4. Cost of Service Analysis																											
Task 5. Conduct Comparative Survey																											
Task 6. Draft Review and Revision																											
Task 7. Documentation																											
ALL TASKS: PROJECT COMMENCEMENT ACTIVITIES																											
Presentations																											
Meetings																											

TBD by City =>

ATTACHMENT "A"

Upon project commencement, the timing requirements for each proposed work plan will be discussed and further defined. A more detailed schedule and task plan will then be developed for mutual acceptance by the City and consultants. It is important that the consultants and City project management work closely together to determine a reasonable schedule that balances the preferred date for project completion with City staff's existing workload and priorities. During the data collection tasks of each proposed work plan, NBS will proactively remind of agreed upon submittal dates, and strive to process submittals quickly to keep the project moving forward.

Exhibit “B” Fee Schedule

Professional fees are based on understanding of the City’s needs and the effort NBS believes is necessary to complete the scope of services/task plan described. NBS express this honestly and transparently through price proposal.

The following hourly rates derive the overall not-to-exceed pricing for the requested scope of services. NBS’ rates are inclusive of all costs associated with professional time, such as travel, document production, and incidentals. The rates will apply for the duration of contract:

Title	Hourly Rate
Director	\$205
Associate Director	190
Manager	160
Consultant	140
Analyst	120

NBS invoices on a monthly basis, paralleling completion of the work. At no time will NBS invoice for charges in excess of the fee to which the City and NBS mutually agree. Should the City specifically request additional services beyond those described in this document, NBS will discuss those requests and associated costs at that later time and only invoice for additional fees upon separate written authorization from the City.

WORK PLANS 1, 2, AND 5:

NBS will complete the scope of services as described in this proposal, for a **fixed price contract amount** for services shown on the following page:

PROJECT COST DETAIL CITY OF TRACY Task Plan	NBS Consultant Labor (Hours)				Grand Totals	
	Kissam	Davis	Shell	Wahidi	Consultant Labor (Hours)	Consultant Costs (\$)
	Director	PM / Lead Consultant	PM / Lead Consultant	Analyst		
<i>Hourly Rate</i>	\$205	\$190	\$160	\$120		
ALL TASKS: PROJECT COMMENCEMENT ACTIVITIES						
All proposed project commencement activities	2.0	-	12.0	2.0	16.0	2,570
Subtotal	2.0	-	12.0	2.0	16.0	\$ 2,570
WORK PLAN 1. INTERNAL SERVICE CHARGES ANALYSIS						
Task 1. Review City's Existing Internal Service Fund Charges Methodology	2.0	-	8.0	-	10.0	1,690
Task 2. Calculate Internal Service Fund Charges	2.0	-	20.0	16.0	38.0	5,530
Task 3. Review Updated Calculations and Final Approval	4.0	-	20.0	8.0	32.0	4,980
Subtotal	8.0	-	48.0	24.0	80.0	\$ 12,200
WORK PLAN 2. INDIRECT COST (CENTRAL SERVICES) ANALYSIS						
Task 1. Review City's Existing Indirect Cost Analysis	4.0	-	4.0	-	8.0	1,460
Task 2. Develop Cost Allocation Plan Structure	2.0	-	24.0	8.0	34.0	5,210
Task 3. Full Cost Allocation Model Development	1.0	-	6.0	16.0	23.0	3,085
Task 4. Full Cost Allocation Plan Documentation	2.0	-	8.0	12.0	22.0	3,130
Task 5.OMB A-87 Compliant Cost Allocation Plan	1.0	4.0	8.0	2.0	15.0	2,485
Subtotal	10.0	4.0	50.0	38.0	102.0	\$ 15,370
WORK PLAN 5. MASTER FEE STUDY						
Task 1. Fee Structure Design and Organizational Analysis	1.0	-	56.0	12.0	69.0	10,605
Task 2. Time and Service Analysis	1.0	-	52.0	16.0	69.0	10,445
Task 3. Time Valuation	1.0	-	40.0	16.0	57.0	8,525
Task 4. Cost of Service Analysis	2.0	-	32.0	16.0	50.0	7,450
Task 5. Conduct Comparative Survey	4.0	-	20.0	20.0	44.0	6,420
Task 6. Draft Review and Revision	1.0	-	24.0	12.0	37.0	5,485
Task 7. Documentation	1.0	-	12.0	4.0	17.0	2,605
Subtotal	11.0	-	236.0	96.0	343.0	\$ 51,535

PROJECT COST DETAIL CITY OF TRACY Task Plan	NBS Consultant Labor (Hours)				Grand Totals	
	Kissam	Davis	Shell	Wahidi	Consultant Labor (Hours)	Consultant Costs (\$)
	Director	PM / Lead Consultant	PM / Lead Consultant	Analyst		
<i>Hourly Rate</i>	\$205	\$190	\$160	\$120		
ALL TASKS: PROJECT COMMENCEMENT ACTIVITIES						
Presentations	1.0	-	12.0	2.0	15.0	2,365
Meetings	<i>Included above</i>				-	-
Subtotal	1.0	-	12.0	2.0	15.0	\$ 2,365
TOTAL ALL PROJECTS	32.0	4.0	358.0	162.0	556.0	\$ 84,040
WORK PLAN 1. OPTIONAL FLEET PROGRAM ANALYSIS						
All tasks	40.0	-	-	24.0	64.0	11,080
Subtotal	40.0	-	-	24.0	64.0	\$ 11,080

OPTIONAL WORK PLANS:

1. **Work Plan 1: Fleet Program Analysis.** NBS will complete these services as described for a fixed price of \$11,080.
2. **Work Plan 3 and Work Plan 4:** Additional consulting hours as required to provide technical assistance with the Transportation Division overhead rate calculations, grant specific questions, etc., as well as hours as required to provide additional analysis for the City's Development and CIP billing rates. NBS will complete these services as described on a time and materials basis. NBS recommends an initial contingency budget of approximately **\$3,000**, to be used only upon request or approval by City staff.
3. **Additional presentations and/or public hearings:** The proposed work plan for this engagement includes up to two (2) meetings and/or public hearings for presentations across all work plans. NBS finds that nearing the end of a project, clients require flexibility in choosing the number of meetings required for project implementation. NBS will attend any community stakeholder or public meeting for an additional fee of approximately **\$1,000 per meeting**. NBS recommends the City place the appropriate expected budget for additional presentations or meetings in a separate project "contingency" budget, to be used by NBS only upon authorization/request from the City. Please note that if presentations or additional outreach is combined with site-visits for regular Work Plan tasks, NBS will charge only the incremental time required to prepare for and conduct each presentation above and beyond the primary site visit's work task.

RESOLUTION _____

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH NBS
GOVERNMENT GROUP TO PERFORM ANALYSES OF FINANCE DIVISION
PROCESSES AND APPROPRIATING \$64,388

WHEREAS, on May 16, 2016 the City of Tracy posted a Request for Qualifications and Proposals to have various financial operations analyses performed, and

WHEREAS, the City received two responses, and NBS Government Group (NBS) was deemed the most qualified responder, and

WHEREAS, the City wishes to enter into a Professional Services Agreement with NBS to perform analyses pertaining to the City's Finance Division processes per the attached Exhibit "A" Scope of Services and Performance Schedule; and for the amounts per the attached Exhibit "B", Fee Schedule and in an amount not to exceed \$109,388, and

WHEREAS, an appropriation of \$64,388 is necessary;

NOW, THEREFORE, BE IT RESOLVED, That City Council does hereby (1) approve a Professional Services Agreement with NBS Government Group, (2) authorize the Mayor to execute the Agreement, and (3) appropriate \$64,388 (\$11,080 from Transportation Vehicle Replacement Fund 606 and \$53,308 from Central Administration General Fund 125).

* * * * *

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

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

Exhibit “A” Scope of Services and Performance Schedule

Detailed Work Plans

The following provides a detailed proposed Work Plan for completion of (1) Internal Service Charges Analysis, (2) Indirect Cost Analysis, (3) Cost Allocation Plan for Transportation Division, (4) Development and Capital Improvement Project Overhead Analysis, and (5) Cost of Service Analysis.

All Work Plans: Project Commencement Activities

NBS will acquire published or accessible data from the client website, including: adopted budgets, recent financial performance (revenues and expenditures), current labor cost detail and classifications, organizational structures, existing relevant policies, and other items of a more global nature. NBS will then issue a consolidated “Preliminary Data Request” for the balance of information required to initiate the project.

NBS will conduct a project commencement discussion with individuals who will manage the progress, completion, and implementation of the Study’s findings. This meeting will review the Preliminary Data Request, and discuss project management items such as an overview of the Study’s process, coordination for on-site and remote interaction with personnel, desired project completion dates, and client questions or concerns about the Study’s process or outcomes.

During the first round of on-site project interview tasks for the project, NBS will conduct a PowerPoint presentation to a gathering of executives, managers, and staff who will be involved with the project. The presentation will cover the Study’s goals and objectives, methodology, timeline, expectations for data submittals and meeting attendance. NBS will remain available after the presentation to answer questions and discuss ideas as needed.

Deliverables: List of basic data requirements for the Study, Initial discussion with executive / project management staff to review goals, objectives, and project management plans, Kick-off presentation to appropriate staff,

Work Plan 1: Internal Service Charges Analysis

Task 1: Review City’s Existing Internal Service Fund Charges Methodology

Interview key Division personnel that administer existing Internal Service Fund charges. This will involve staff that calculate and implement the charges as part of the budgeting and accounting process, as well as any appropriate operating department representatives providing Internal Services Fund services. Review the method of calculation and appropriation of existing Internal Service Fund charges against Best Management Practices seen in other jurisdictions, as well as the NBS consulting team’s 20+ years in cost allocation and cost accounting experience.

Deliverables: One on-site meeting to interview City staff. Review of existing documentation and City analyses which calculate existing Charges.

Task 2: Calculate Internal Service Fund Charges

Calculate updated Internal Service Charges, either by developing a new spreadsheet for the City's future use in the Microsoft Excel environment, or through incorporating Internal Service Charges into the model developed for Work Plan 2: Indirect Cost Analysis. NBS will facilitate a data collection process for all statistical allocation information required to complete calculations.

Deliverables: Updated draft Internal Service Charges for one specified Fiscal Year. Delivery of Excel based Internal Service Charge spreadsheet, if applicable.

Task 3: Review Updated Calculations and Final Approval

Conduct up to two (2) rounds of iterative review and adjustment to the Internal Service Fund calculations. Obtain final approval from City project management. Once approval is received, issue documentation (approximately 10 pages), describing the purpose of Internal Service Fund charges, the method for calculating and administering charges, and basic guidelines and instructions to assist the City in updating charges on a routine basis. Include one round of review and revision to documentation with City staff.

Deliverables: Final Updated Internal Service Charges for the City's use. Documentation to assist the City in implementing and updating charges.

Optional Task: Fleet Program Analysis

NBS can provide a more extensive review resulting in charges to fully fund the City's Fleet program. Under this approach, NBS will assist the City in developing the near- and long-term revenue (funding) requirements for the fund. To complete this Task, NBS will complete the following steps:

1. Build a financial model with capability for forecasting at least ten years, and prepare a forecast of recurring operating expenditures, periodic operating and/or capital expenditures, and planned capital investments, as appropriate. A forecast of cash flow will show for the fund, as will recommended reserve targets for the fund.
2. Revise cash flow forecasts as necessary to meet fiscal policy. Model the forecasted annual revenue requirement for the fund. Incorporate any non-ISF rate funding sources to be planned, and identify the net rate revenue requirement for each year of the financial analysis.
3. Conduct one review meeting with the department responsible for the Fleet program and appropriate representative from Finance to review preliminary revenue requirements. Assume one analytical iteration after City review.
4. Assign and/or allocate the annual revenue requirement of the ISF to the fund's functional services, as applicable. Utilize readily-accessible staffing, historical experience, and/or volumetric data to assist in allocations. Presume one iteration of City management review. Conduct a review meeting to discuss outcomes and include one subsequent iteration of the draft.
5. Add to the financial model one of two possible charging methods:
 - a. The derivation of unit costs and subsequent rates for each core service in the ISF, to be applied based on real-time demand statistics from internal clients. Establish the structure of rates to be applied to users of each measurable service in the fund. Acquire, validate, and apply recent data sets to estimate demand volumes for each service. Calculate the corresponding rate in line with demand and the revenue requirement as established.

- b. The allocation of annual costs from each core service to internal clients, to be applied as an annual (or regular) charge to internal clients. Establish the department-/fund-specific charges to be applied to each user/beneficiary of ISF services. Acquire and apply acceptable data sets to be used for apportionment of service costs. Calculate the corresponding annual charge for each client totaling to the revenue requirement for the fund.
6. Conduct one review meeting to review preliminary rate outcomes. Assume one analytical iteration after City review.
7. Finalize analytical outcomes for the ISF from all preceding tasks. Prepare the narrative description of the ISF rate structure/charge derivation and compile relevant technical exhibits. Issue the draft report to City staff for review and comment; assume one iteration of changes to narrative text (no numerical changes included). Upon City review and acceptance, issue the final report and deliver the final technical model to the City for its future use and update.

Work Plan 2: Indirect Cost (Central Services) Analysis

NBS will determine the amount of indirect costs associated with City programs, fees, and grants through development of a Cost Allocation Plan. The following detailed work plan for the Cost Allocation Plan includes two deliverable versions of the Plan:

- 1) A Full Cost Allocation Plan which includes more inclusive costs in the basis of overhead allocations. This version of the Plan is typically targeted for use in an agency's annual budget, reimbursement from enterprise and special revenue funds, and for inclusion in calculation of the full cost of providing user fee services.
- 2) A version of the Cost Allocation Plan which complies with the requirements and guidelines of *Title 2, Code of Federal Regulations, Part 225, Cost Principles for State, Local, and Indian Tribal Governments* (formerly known as OMB A-87). This version of the Plan is more restrictive in the types of costs included in the basis of overhead allocations.

Task 1: Review City's Existing Indirect Cost Analysis

Per the City RFP's request, NBS will first perform a review and evaluation of the City's current methodology for determining Indirect Costs for all City departments and divisions, and conduct a discussion of strengths and opportunities for improvement.

Deliverables: Review of City's existing methodology and documentation. One review discussion / meeting to identify strengths and opportunities for improvement.

Task 2: Develop Cost Allocation Plan Structure

Identify an initial list of indirect cost centers and recipients, which typically include, but is not limited to the following City Departments: City Council, City Manager, City Clerk, City Attorney, Finance, Human Resources, Administrative Services, and Building or Facilities maintenance. Confirm this list as accurate and comprehensive with City project managers.

In one series of on-site meetings, conduct individual meetings with each indirect cost center to examine further the City's current organizational and financial structure, and identify functional service levels in which to summarize indirect costs. Also discuss with City staff the recommended cost allocation detail and corresponding bases for apportioning costs City-wide.

With City staff buy-in and cooperation, embark on data collection to develop sets of information to be used as factors for cost allocation. (The study will seek to primarily use data sets already maintained for other purposes in order to minimize ongoing labor burdens in maintaining future cost allocations; however, new data sets may be developed where warranted.)

Deliverables: Review and analyze the City's accounting and organizational structure to prepare the Plan model. Participate in on-site staff interviews to initiate discussion and data collection efforts. Data collection efforts for the structure, functions, costs, and allocation basis needed to complete the first draft of the Plan

Task 3: Full Cost Allocation Model Development

Customize NBS' proprietary Cost Allocation Plan model in the Microsoft Excel spreadsheet environment to reflect the City's organizational and financial structure. Perform the necessary computations to perform at least two levels and layers ("step-downs") of cost allocations City-wide, and summary reports identifying total annual costs allocated.

Compile cost data received, and make any necessary adjustments to costs to ensure capture only of relevant support services costs. Input allocation factor data into the NBS Cost Allocation Plan model, and complete the functionality of the plan. Generate a draft in PDF format of annual allocated costs by budget unit and fund. Conduct one review session during this process to review interim analysis/progress. Collect input and up to two (2) rounds of revisions to the draft plan results.

Deliverables: Customization of NBS Cost Allocation Plan model with data received. Comprehensive Draft Full Cost Allocation Plan (numerical results) in PDF format. One review session of initial results and up to two (2) rounds of revisions to finalize the Cost Allocation Plan.

Task 4: Full Cost Allocation Plan Documentation

Prepare a draft report documenting the Full Cost Allocation Plan. The report includes an Executive Summary, citation of data sources and key analytical assumptions, illustration of analytical methods; presentation of findings; narrative descriptions complying with the standards of OMB A-87; and, technical appendix showing the analysis and any relevant data sources. Participate in the presentation of the draft plan to the City's management group, collect input, and make one round of revisions to the draft report. Provide the City with PDF copies of the final report.

Deliverables: Draft Final Report that explains the analysis completed. One presentation of Draft Final Report to City's management group to include one (1) round of revisions to the report. Discussion and basic advice on implementation and uses of the Final Cost Allocation Plan.

Task 5: OMB A-87 Compliant Cost Allocation Plan

Prepare an OMB A-87 Compliant Cost Allocation Plan and Indirect Cost Rate (s). Make any necessary adjustments to the final version of the Full Cost Allocation Plan's structure, expenditure data, or allocation factor data to ensure compliance with OMB A-87 (now Title 2 CFR) guidelines. Provide a draft of the Plan in PDF format and review Plan results with City staff. Collect input and one round of revisions to the draft plan and rate results. Prepare a draft report documenting the OMB A-87 Cost Allocation Plan. Review with the City's project management group, collect input, and make one round of revisions to the draft report. Provide the City with PDF copies of the Final Report. Note this task assumes no change in fiscal year expenditure data from the Full Cost Allocation Plan.

Deliverables: Adaptation of NBS Cost Allocation Plan model for OMB A-87 compliance. One presentation of Draft Final Report to City's project management group to include one (1) round of revisions to the report. Discussion and basic advice on implementation and uses of the OMB version of the Cost Allocation Plan.

Work Plan 3: Cost Allocation Plan for Transportation Division Objectives

After discussion with the City regarding this project, NBS believes the OMB A-87 Compliant Cost Allocation Plan within Work Plan 2, above, will meet the needs of the Transportation Division. NBS has included additional **Optional** consulting hours to assist the Division in calculating Indirect Cost Rates, or special rates as needed for grant reimbursement purposes.

Work Plan 4: Development and Capital Improvement Project Overhead Analysis

After discussion with the City regarding this project, NBS believes the steps identified for the Master Fee Study in Work Plan 5, below, will meet the needs. Through Work Plan 5, NBS will calculate fully-burdened hourly rates to be used by engineers and planners to charge to individual capital improvement projects. Please reference Work Plan 5, Task 3, for a description of the approach to rate calculation. NBS has included additional **Optional** consulting hours to assist the City in any additional analysis associated with revising or implementing rates and reimbursements from capital project funds.

Work Plan 5: Cost of Service Analysis

In general, the scope of services for each department studied includes all fees for service that can be analyzed on a time estimate per activity basis. Taxes, penalties, fines, and fees regulated or set by the State, as well as development impact fees and utility rates will be excluded from this analysis.

In addition to user and regulatory fees, the City requested an evaluation of equipment rental and facility rental fees. Under the guidelines of Proposition 26, these types of fees are classified as charges for the entrance to or use of government property. Per the League of California Cities' Proposition 26 Implementation Guide, charter cities do not require a cost of service analysis as the basis for setting these types of fees, but general law cities do. NBS notes that an in depth analysis of the cost of providing equipment rental or facility rental services may require an alternate method for review than what is proposed for Work Plan 5. NBS will provide an initial review of equipment rental and facility rental fees within the Comparative Survey, Time and Service Analysis, and Time Valuation tasks. Depending on available data, this approach will inform the City regarding available market options for consumers of City equipment and facility rentals, as well as basic levels of cost recovery with respect to staff time and effort required to facilitate rentals. Should the City request further analysis of equipment or facility rates to capture additional types of costs or assumptions, NBS and the City would need to negotiate a separate Scope of Work for that purpose.

The City's RFP suggests a potential need to "phase" completion of department analyses according to funding available. If so, NBS will suggest including Development Services and Police in one phase, and all other departments and activities in another phase. This recommendation will best capture the amount of support costs provided between departments in the development review fee processes, as well as survey all facility rental fees in the other departments listed at once.

Task 1: Fee Structure Design and Organizational Analysis

Conduct one round of onsite project commencement events with individual divisions initially known to provide the fee-related services under review in this study. The chief purpose of these meetings is to acquire a broad understanding of each division's organization, performance of core services, functions of service, staffing structure/lines of command, current fee structures and systems, known issues/deficiencies in current fees, known areas for new fees, and availability of existing time-tracking and volumetric data. Applying industry expertise, NBS consultants will recommend and develop fee structures (as opposed to amounts) for each area under review. Fee structures include flat fees, variable fees based on measurable service characteristics (e.g., project types, size, etc.), and variable fees based on staff time (e.g., hourly rates with deposits), etc. Fee structure can also mean rewriting fee categorical descriptions to retain flat fees for administrative ease but introducing variation in the

applicable fee for an applicant or user. Issue updated fee schedules in PDF or as Excel worksheets for City staff review and comment. Incorporate one (1) round of changes for each department studied.

Deliverables: On-site meetings with departments under review. Review and one round of revision to updated fee schedule recommendations

Task 2: Time and Service Analysis

Determine and communicate the subsequent steps to acquire and/or develop organizational, performance, and time information necessary for establishing costs of service for justifying fees. Consultants will also preliminarily identify any other divisions outside those immediately identified that are involved in the direct provision of the services under review and will schedule comparable commencement events with those areas. Develop an approach and tools for acquiring and/or developing the organizational, performance, and time information necessary for justifying fees. For areas where simple remote questionnaires may suffice, develop and route the forms to key personnel within each division. For areas where onsite interviews will be necessary, coordinate scheduling and develop interview tools. Conduct one round of onsite events with individual divisions – and potentially small groups within each division – to generate organizational, performance, and time information necessary for justifying fees.

After acquiring historically-tracked and/or currently-available time and volumetric data, as well as information developed through questionnaires and/or interviews, determine any necessary secondary resource of action to continue and/or refine organizational, performance, and time data. Up to two iterations of the time and service analysis for each department are included to ensure that the cost of service analysis is defensible and reasonable. Iterative efforts will be manageable through the use of highly-concentrated/targeted remote follow-up email communication, questionnaires, and or phone conferences with appropriate personnel.

Deliverables: Development of data collection materials and scheduling and attendance of subsequent on-site events. Up to two (2) iterations of data modifications needed to produce the first draft of numerical results. Incorporation of City data into NBS' Proprietary User Fee model to reflect the complete organizational, performance, and time estimate data submittals received for the services under review in this study.

Task 3: Time Valuation

Determine the full cost of service on an annual basis for each department or division, as well as for various functions of service provided. Compute fully burdened hourly rates “blended” for the entire division, for core functions within a division, and as warranted, by classification of personnel. Consider the applicability of productive hours or direct-billed hours as the basis for the rate calculation. Integrate City financial/budget data, payroll/labor data, and established overhead charges or cost allocations, as follows:

- Define the **direct costs** of service for each division involved in each service under review in this study. Direct costs reflect those specifically related to the provision of service embodied by the activities reflected in the fee schedule, as well as any potential additions to that list.
- Define the **indirect costs** of service for each division involved in each service under review in this study. Indirect costs are those incurred to support the provision of direct service, and may be reflected in many functional forms, depending on the division and/or direct services in questions. Examples of indirect functions include administrative support, customer service/public information, code/policy/standards maintenance, training, and management. Outside of discrete functions, indirect costs may also include tangible items, such as materials and supplies.

- Determine applicable **City-wide indirect costs**, such as those defined by the Cost Allocation Plan to determine appropriate shares of administrative, support services, and/or governance costs. (Work Plan 2).

Deliverables: Development of fully burdened hourly rate calculations for each department studied

Task 4: Cost of Service Analysis

The full cost of service defined by NBS serves as the analytically-justified maximum amount that may be recovered through a user/regulatory fee adopted solely by the City Council. Determine the full cost of service at an activity level for each individual service currently associated with a fee or selected as a candidate for a new fee. Integrate applicable information developed in previous tasks to develop activity costs of service. Apply performance/time estimates at identified activity levels to the fully-burdened hourly rates developed in the Time Valuation tasks to determine the full cost of service for each fee-related service. Add any discrete materials/services costs not reflected in the time valuation for specific activities, such as substantial equipment and incremental contract services. The outcome of this task will provide the following information in a draft of results for review:

- Total estimated cost of providing each fee for service included in the study. Once finalized, these amounts will represent the legal maximum the City could charge for each service.
- Comparison of the total estimated cost of each fee for service to the current fee charged by the City. Display of the current cost recovery percentage for each fee item.
- Projection of the annual current fee revenue collected for each department and comparison of that amount to the annual estimated total costs of providing fee related services. Display of the annual amount of potential additional revenue available, or current surplus collected in fee revenue.
- Placeholder tables for the recommended fee analysis, which will allow City staff and policy makers to suggest fee amounts at or below the maximum allowable fee level, and project the total annual revenue impacts of their recommendations.

Deliverables: PDF Drafts of analytical results for departmental review

Task 5: Conduct Comparative Survey

Policy makers often desire a comparison of current, full cost recovery, and recommended fee amounts to neighboring jurisdictions. Although an “apples to apples” comparison of cost recovery policy and fee structures between agencies is challenging, presence of a comparison will ensure a smoother implementation process and a sense of the “market” rate for various services.

NBS will utilize their industry expertise compare similar user and regulatory fees in up to five (5) neighboring and comparable communities. A list of communities will be selected and approved by City staff. In general, NBS will download the respective fee schedules from the Internet. If schedules are not available on the Internet, NBS will make a reasonable attempt contact the agency to obtain a copy of their current fee schedules. NBS will then compile a comparison of fee categories and amounts, for the most readily comparable fee items that match the City’s existing fee structure, and make a reasonable attempt to contact each agency for clarification regarding fee categories and amounts. The City may also provide contact information to individuals known in each agency that may be available to assist NBS in confirming information regarding fee schedules and amounts.

Deliverables: Comparative Survey

Task 6: Draft Review and Revision

Conduct review events with each individual department or division to review the draft results of the Study. Determine any necessary refinements to core assumptions and discuss applicability in current and/or alternative fee structures. Based on review with City staff, revise core analytical modules and finalize the activity costs of service. Calculate the final unit costs of service that will serve as the foundation for any revised fee amounts and/or fee structure. This task represents one planned iteration of the analytical work products.

Discuss pricing objectives from the divisional perspective, i.e., the division's comfort with full cost recovery or some alternative level of cost recovery. Consultants will facilitate this conversation by discussing public/private benefits or causation of each activity, potential market sensitivity, interaction with established City goals or policies, behavior modification influence, and other considerations. Collect one round of input regarding City staff's recommended fee amounts and model the revenue impacts on an individual and annual basis for each fee category.

Deliverables: Review of Draft Fee Analyses with individual departments. Incorporation of one (1) round of City comments and revisions to achieve final results. Collection of recommended fee amounts, either at or below the full cost of providing services.

Task 7: Documentation

Prepare a written draft report describing the complete work and findings of the project. Include an Executive Summary, as well as narrative sections detailing the Fee Structure Design, Organizational Analysis, Time Valuation, and Cost of Service Analysis. Issue the draft report in electronic form (portable document format) to City staff and management for review. Include one round of changes to the narrative draft final report, to reflect City management group input (includes narrative changes, no numerical/analytical revisions included).

Deliverables: Issuance of Draft report for City staff review and comment. Incorporation of one round of changes to the draft narrative report.

All Tasks: Presentations and Meetings

Regarding both on-site and remote meetings proposed to complete the work plans provided herein, NBS has specifically identified when tasks are suggested to be performed "on-site" versus as a "review session" or "discussion".

Regarding presentations, NBS will prepare for and attend up to two (2) public meetings to advise on project outcomes or cost recovery policy as needed, and respond to questions on behalf of or in support of City staff.

Note additional presentations and on-site meetings, if requested, are available as an **Optional** per meeting charge in the Performance and Cost Schedules section of this document.

Project Staff:

Nicole Kissam, Project Director
Stacey Shell, Project Manager/Lead Consultant
Greta Davis, Associate Director
Khalid Wahidi, Financial Analyst
Tim Seufert, Client Services Director

Performance Schedule

Estimated Performance Schedule

A Study of this nature requires approximately six months to complete all work plans as requested. This estimated timeline is not inclusive of required public meetings and adoption hearings. This is a reasonable timeline allowing for quality data submittals to be accomplished by City staff amongst competing priorities.

NBS will be available to begin this project in mid November or December of 2016. The following provides an estimated timeline for the City's review:

<i>Weeks from Start =></i>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	
ALL TASKS: PROJECT COMMENCEMENT ACTIVITIES																											
All proposed project commencement activities																											
WORK PLAN 1. INTERNAL SERVICE CHARGES ANALYSIS																											
Task 1. Review City's Existing Internal Service Fund Charges Methodology																											
Task 2. Calculate Internal Service Fund Charges																											
Task 3. Review Updated Calculations and Final Approval																											
WORK PLAN 2. INDIRECT COST (CENTRAL SERVICES) ANALYSIS																											
Task 1. Review City's Existing Indirect Cost Analysis																											
Task 2. Develop Cost Allocation Plan Structure																											
Task 3. Full Cost Allocation Model Development																											
Task 4. Full Cost Allocation Plan Documentation																											
Task 5.OMB A-87 Compliant Cost Allocation Plan																											
WORK PLAN 5. MASTER FEE STUDY																											
Task 1. Fee Structure Design and Organizational Analysis																											
Task 2. Time and Service Analysis																											
Task 3. Time Valuation																											
Task 4. Cost of Service Analysis																											
Task 5. Conduct Comparative Survey																											
Task 6. Draft Review and Revision																											
Task 7. Documentation																											
ALL TASKS: PROJECT COMMENCEMENT ACTIVITIES																											
Presentations																											
Meetings																											

TBD by City =>

Upon project commencement, the timing requirements for each proposed work plan will be discussed and further defined. A more detailed schedule and task plan will then be developed for mutual acceptance by the City and consultants. It is important that the consultants and City project management work closely together to determine a reasonable schedule that balances the preferred date for project completion with City staff's existing workload and priorities. During the data collection tasks of each proposed work plan, NBS will proactively remind of agreed upon submittal dates, and strive to process submittals quickly to keep the project moving forward.

Exhibit “B” Fee Schedule

Professional fees are based on understanding of the City’s needs and the effort NBS believes is necessary to complete the scope of services/task plan described. NBS express this honestly and transparently through price proposal.

The following hourly rates derive the overall not-to-exceed pricing for the requested scope of services. NBS’ rates are inclusive of all costs associated with professional time, such as travel, document production, and incidentals. The rates will apply for the duration of contract:

Title	Hourly Rate
Director	\$205
Associate Director	190
Manager	160
Consultant	140
Analyst	120

NBS invoices on a monthly basis, paralleling completion of the work. At no time will NBS invoice for charges in excess of the fee to which the City and NBS mutually agree. Should the City specifically request additional services beyond those described in this document, NBS will discuss those requests and associated costs at that later time and only invoice for additional fees upon separate written authorization from the City.

WORK PLANS 1, 2, AND 5:

NBS will complete the scope of services as described in this proposal, for a **fixed price contract amount** for services shown on the following page:

PROJECT COST DETAIL CITY OF TRACY Task Plan	NBS Consultant Labor (Hours)				Grand Totals	
	Kissam	Davis	Shell	Wahidi	Consultant Labor (Hours)	Consultant Costs (\$)
	Director	PM / Lead Consultant	PM / Lead Consultant	Analyst		
Hourly Rate	\$205	\$190	\$160	\$120		
ALL TASKS: PROJECT COMMENCEMENT ACTIVITIES						
All proposed project commencement activities	2.0	-	12.0	2.0	16.0	2,570
Subtotal	2.0	-	12.0	2.0	16.0	\$ 2,570
WORK PLAN 1. INTERNAL SERVICE CHARGES ANALYSIS						
Task 1. Review City's Existing Internal Service Fund Charges Methodology	2.0	-	8.0	-	10.0	1,690
Task 2. Calculate Internal Service Fund Charges	2.0	-	20.0	16.0	38.0	5,530
Task 3. Review Updated Calculations and Final Approval	4.0	-	20.0	8.0	32.0	4,980
Subtotal	8.0	-	48.0	24.0	80.0	\$ 12,200
WORK PLAN 2. INDIRECT COST (CENTRAL SERVICES) ANALYSIS						
Task 1. Review City's Existing Indirect Cost Analysis	4.0	-	4.0	-	8.0	1,460
Task 2. Develop Cost Allocation Plan Structure	2.0	-	24.0	8.0	34.0	5,210
Task 3. Full Cost Allocation Model Development	1.0	-	6.0	16.0	23.0	3,085
Task 4. Full Cost Allocation Plan Documentation	2.0	-	8.0	12.0	22.0	3,130
Task 5.OMB A-87 Compliant Cost Allocation Plan	1.0	4.0	8.0	2.0	15.0	2,485
Subtotal	10.0	4.0	50.0	38.0	102.0	\$ 15,370
WORK PLAN 5. MASTER FEE STUDY						
Task 1. Fee Structure Design and Organizational Analysis	1.0	-	56.0	12.0	69.0	10,605
Task 2. Time and Service Analysis	1.0	-	52.0	16.0	69.0	10,445
Task 3. Time Valuation	1.0	-	40.0	16.0	57.0	8,525
Task 4. Cost of Service Analysis	2.0	-	32.0	16.0	50.0	7,450
Task 5. Conduct Comparative Survey	4.0	-	20.0	20.0	44.0	6,420
Task 6. Draft Review and Revision	1.0	-	24.0	12.0	37.0	5,485
Task 7. Documentation	1.0	-	12.0	4.0	17.0	2,605
Subtotal	11.0	-	236.0	96.0	343.0	\$ 51,535

PROJECT COST DETAIL CITY OF TRACY Task Plan	NBS Consultant Labor (Hours)				Grand Totals	
	Kissam	Davis	Shell	Wahidi	Consultant Labor (Hours)	Consultant Costs (\$)
	Director	PM / Lead Consultant	PM / Lead Consultant	Analyst		
<i>Hourly Rate</i>	\$205	\$190	\$160	\$120		
ALL TASKS: PROJECT COMMENCEMENT ACTIVITIES						
Presentations	1.0	-	12.0	2.0	15.0	2,365
Meetings	<i>Included above</i>				-	-
Subtotal	1.0	-	12.0	2.0	15.0	\$ 2,365
TOTAL ALL PROJECTS	32.0	4.0	358.0	162.0	556.0	\$ 84,040
WORK PLAN 1. OPTIONAL FLEET PROGRAM ANALYSIS						
All tasks	40.0	-	-	24.0	64.0	11,080
Subtotal	40.0	-	-	24.0	64.0	\$ 11,080

OPTIONAL WORK PLANS:

1. **Work Plan 1: Fleet Program Analysis.** NBS will complete these services as described for a fixed price of \$11,080.
2. **Work Plan 3 and Work Plan 4:** Additional consulting hours as required to provide technical assistance with the Transportation Division overhead rate calculations, grant specific questions, etc., as well as hours as required to provide additional analysis for the City's Development and CIP billing rates. NBS will complete these services as described on a time and materials basis. NBS recommends an initial contingency budget of approximately **\$3,000**, to be used only upon request or approval by City staff.
3. **Additional presentations and/or public hearings:** The proposed work plan for this engagement includes up to two (2) meetings and/or public hearings for presentations across all work plans. NBS finds that nearing the end of a project, clients require flexibility in choosing the number of meetings required for project implementation. NBS will attend any community stakeholder or public meeting for an additional fee of approximately **\$1,000 per meeting**. NBS recommends the City place the appropriate expected budget for additional presentations or meetings in a separate project "contingency" budget, to be used by NBS only upon authorization/request from the City. Please note that if presentations or additional outreach is combined with site-visits for regular Work Plan tasks, NBS will charge only the incremental time required to prepare for and conduct each presentation above and beyond the primary site visit's work task.

AGENDA ITEM 1.F

REQUEST

APPROVE THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND TRACY FRIENDS FOR PARKS, RECREATION AND COMMUNITY SERVICES FOUNDATION

EXECUTIVE SUMMARY

Since 1992, the Tracy Friends for Parks, Recreation and Community Services Foundation has been a non-profit organization dedicated to assisting the City in providing funds to support the City of Tracy Parks & Recreation Department programs, events, special projects and scholarship opportunities for youth.

DISCUSSION

Tracy Friends for Parks, Recreation and Community Services Foundation was formed in 1992. The Foundation's mission is to increase scholarship opportunities for Tracy youth, provide funding for special projects, enhance programs, activities and events offered by the City of Tracy Parks & Recreation Department that promote the social, cultural and leisure needs of the residents of the City of Tracy.

The City of Tracy entered into a Memorandum of Understanding (MOU) with the Tracy Friends for Parks, Recreation and Community Services Foundation on May 3, 2011, for a term of five years, which has now expired.

Since 2012, the Foundation has re-engaged in multiple efforts to raise funds to make significant contributions to City parks and recreation projects and programs. For example, Foundation Board members have been working with the City and Tracy City Center Association to raise funds by serving beverages at the Tracy Downtown Block Parties for the past three years.

In mid-2015, the Foundation contributed \$5,000 in funds and \$7,000 in in-kind services to complete an addition and improvements to the El Pescadero Dog Park. The project included the addition of a quarter-acre small dog are with fountain, bench, trash and fencing improvements, and was dedicated at a ceremony on June 2, 2015.

The Foundation has set up a scholarship account of approximately \$3,000 to provide swim lessons to local Tracy youth, which is administered through the Parks & Recreation Department.

The Foundation has also committed up to \$2,000 in matching funds to purchase a new BINGO machine. The Senior BINGO program is operated by volunteers who are seeking donations from various service groups to match the Foundation's contribution.

In order for the Tracy Friends for Parks, Recreation and Community Services Foundation to continue to support the efforts of the Parks & Recreation Department and provide potential funding for scholarships and special projects, the Foundation is

requesting to again enter into an MOU to receive facility use for its meetings and two fundraising events per year.

STRATEGIC PLAN

This agenda item supports the City Council Quality of Life Strategic Priority and specifically implements the following goal and objective:

Goal 1: Address City amenities and facility usage with an emphasis on accessibility, streamlined services and cost recovery.

Objective 1: Update Facility Use and Special Event Memorandum of Understanding (MOU) policies.

FISCAL IMPACT

There is no additional impact to the general fund. Costs related to this MOU will be absorbed in its respective Department operating budget.

RECOMMENDATION

That City Council, by resolution, approve the Memorandum of Understanding with the Tracy Friends of Parks, Recreation and Community Services Foundation, and authorize the Mayor to execute the MOU.

Prepared by: Christine Mabry, Management Analyst I

Reviewed by: Ed Lovell, Management Analyst II
André Pichly, Parks & Recreation Director
Don Scholl, Public Works Director
Martha Garcia, Interim Administrative Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A - Memorandum of Understanding between the City of Tracy and Tracy Friends of Parks, Recreation and Community Services Foundation

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF TRACY AND TRACY FRIENDS FOR PARKS,
RECREATION AND COMMUNITY SERVICES FOUNDATION**

- I. **PARTIES:** This Memorandum of Understanding (hereinafter "MOU") is made by and between the City of Tracy (hereinafter "City"), a municipal corporation, and Tracy Friends for Parks, Recreation and Community Services Foundation (hereinafter "TFPRCSF"), a non-profit, public benefit California corporation.
- II. **RECITALS:** TFPRCSF was formed in 1992. TFPRCSF's mission is to increase scholarship opportunities for Tracy youth, provide funding for special projects, enhance programs, activities and events offered by the City of Tracy Parks & Recreation Department that promote the social, cultural and leisure needs of the residents of the City of Tracy.

The City recognizes TFPRCSF as a non-profit organization dedicated to assisting the City in providing funds to support the City of Tracy Parks and Community Services Department programs, events, special projects, and scholarships for our youth.

- III. **RESPONSIBILITIES:** It is agreed by and between the parties hereto that each party have the following responsibilities:

A. City shall:

1. Upon submission of a Facility Use Application, waive permit application fee and facility use fees for use of a small meeting room at the Tracy Transit Station for monthly meetings and monthly Executive Board meetings.
2. Upon submission of a Facility Use Application, waive permit application fee and facility use fees for use of a City facility of the Parks & Recreation Director's, or designee's, choosing up to twice a year for TFPRCSF fundraising events.

B. TFPRCSF shall:

1. Provide additional funding to assist and support the City of Tracy Parks & Recreation Department's programs, events, special projects and youth scholarships.
2. Provide and conduct adequate fundraising activities to obtain funds needed to insure on-going operations of TFPRCSF and its ability to fulfill its mission.
3. Provide payment of refundable security deposit at current rate when reserving a City facility for purposes of a fundraising event.

4. Adequately clean any City facilities to acceptable condition after permitted use and facilitate any repairs to damages caused by such use.
5. Maintain, at all times during the term of this MOU, the following insurance:
 - a. **Commercial General Liability Insurance** (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. The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional 'insured'."

C. The parties shall agree that:

1. TFPRCSF shall indemnify, defend, and hold harmless the City (including its elected officials, officers, agents, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of the performance of this MOU by TFPRCSF or TFPRCSF's agents, representatives, contractors, subcontractors, or employees.
2. This MOU shall be subject to any and all policies, regulations and ordinances of the City of Tracy.

IV. **TERMINATION:** Either party may terminate this MOU by providing prior written notice to the other party of intention to terminate not less than ninety days prior to actual termination.

V. **TERM:** This MOU shall take effect on October 18, 2016, and shall expire on December 31, 2018.

VI. **AMENDMENTS:** This MOU may be amended in writing and the amendment must be approved by the City Council and TFPRCSF.

VII. **DESIGNATED REPRESENTATIVES:** For the purposes of administering the MOU, the President of TFPRCSF and the Director of Parks & Recreation for the City of Tracy shall act as representatives for their respective organizations.

VIII. **NOTICES:**

To City:
 Parks & Recreation Director
 333 Civic Center Plaza
 Tracy, CA 95376

To TFPRCSF:
 Tracy Friends for Parks, Recreation and
 Community Services Foundation
 Dan Schack, Chair
 1024 N. Central Ave.
 Tracy, CA 95376

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

- IX. **ENTIRE AGREEMENT:** This MOU constitutes the entire agreement between the City and TFPRCSF. Any amendment to this MOU, including oral modification, must be reduced to a writing and signed by both the City and TFPRCSF.
- X. **SIGNATURES:** The individuals executing this MOU represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this MOU on behalf of the respective legal entities of TFPRCSF and the City. This MOU shall inure to the benefit of and be binding upon the parties thereto and their respective successors and assigns.

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

City of Tracy

Tracy Friends for Parks, Recreation
and Community Services Foundation,
a non-profit, public benefit California
corporation

By: _____
Michael Maciel

By: Dan Schack
Dan Schack

Title: Mayor

Title: Foundation Chair

Date: _____

Date: Oct 5, 2016

Attest:

By: Greg Behrmann
Greg Behrmann

By: _____
Nora Pimentel, City Clerk

Title: Foundation Treasurer

Date: 10/5/2016

Approved as to form

City Business License # 83648

By: _____
Bill Sartor, City Attorney

RESOLUTION 2016-_____

APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND TRACY FRIENDS FOR PARKS, RECREATION AND COMMUNITY SERVICES FOUNDATION, AND AUTHORIZING THE MAYOR TO EXECUTE THE MOU

WHEREAS, Since 1992, the Tracy Friends for Parks, Recreation and Community Services Foundation has been a non-profit organization dedicated to assisting the City in providing funds to support the City of Tracy Parks & Recreation Department programs, events, special projects and scholarship opportunities for our youth, and

WHEREAS, The mission of the Tracy Friends for Parks, Recreation and Community Services Foundation is to increase activities that promote the social, cultural and leisure needs of the residents of the City of Tracy, and

WHEREAS, In order for the Tracy Friends for Parks, Recreation and Community Services Foundation to continue to support the efforts of the Parks & Recreation Department and provide potential funding for scholarships and special projects, an MOU Agreement with the City of Tracy is needed;

NOW, THEREFORE, BE IT RESOLVED, That the City Council does hereby approve a Memorandum of Understanding (MOU) with the Tracy Friends for Parks, Recreation and Community Services Foundation and authorizes the Mayor to execute the MOU.

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

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.G

REQUEST

NULLIFY THE OCTOBER 4, 2016 SECOND READING AND ADOPTION OF ORDINANCE 1225 AUTHORIZING THE AMENDMENT TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM PLAN TO PROVIDE SECTION 20516 (EMPLOYEES SHARING ADDITIONAL COST) OF 3% FOR ALL LOCAL POLICE MEMBERS IN THE TRACY POLICE OFFICERS ASSOCIATION DUE TO AN ADMINISTRATIVE ERROR AND TO COMPLY WITH GOVERNMENT CODE SECTION 20471

EXECUTIVE SUMMARY

This report recommends that City Council nullify its October 4, 2016 second reading and adoption of Ordinance 1225 to comply with Government Code Section 20471, allowing for an amendment to the contract with the California Public Employee Retirement System (CalPERS) to allow for employees of the Tracy Police Officers' Association to pay 3% of the employer share of CalPERS costs.

DISCUSSION

On September 20, 2016 a Resolution of Intention and Ordinance 1225 were presented to the City Council for first reading and introduction to allow members of the Tracy Police Officers' Association to pay 3% towards the employers' share of CalPERS pension costs, regardless of which CalPERS pension formula is applicable to the employee. In exchange, the City shall pay the corresponding salary increase that represents the 3% contribution. In order to allow this to occur, the City is required to amend the contract between the City of Tracy and the California Public Employees' Retirement System to provide for Employees Sharing Additional cost (Section 20516 of Public Employees Retirement Law).

Pursuant to California Government Code section 20471, a 20-day period between the adoption of the Resolution of Intention and adoption of the Ordinance is required. Due to an administrative error, the Ordinance was presented to the City Council for adoption on October 4, 2016, which was less than the 20-day period required under Government Code section 20471.

As such, staff recommends that Council nullify its second reading and adoption of Ordinance 1225. Ordinance 1225 has not yet taken effect because ordinances, other than urgency ordinances and those related to elections, do not become effective until 30 days after adoption. A separate action item is on the consent portion of this agenda to again adopt Ordinance 1225 which will now become effective 30 days after November 1, 2016.

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

There is no impact to the General Fund for approval of this action. This action is to correct an administrative error and comply with CalPERS Government Code Section 20471.

RECOMMENDATION

That Council nullify the October 4, 2016 second reading and adoption of Ordinance 1225.

Prepared by: Judy Carlos, Human Resources Analyst

Reviewed by: Midori Lichtwardt, Human Resources Manager
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

AGENDA ITEM 1.H

REQUEST

WAIVE SECOND READING AND ADOPT AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TRACY AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF TRACY AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

EXECUTIVE SUMMARY

Ordinance 1225 was introduced at the Council meeting held on September 20, 2016. Ordinance 1225 is before Council for adoption.

DISCUSSION

Pursuant to adopted Memorandum of Understanding between the City of Tracy and the Tracy Police Officers' Association, the parties stipulated that the City will amend its contract with California Public Employees' Retirement System (CalPERS) to provide for Section 20516 of the Public Employees Retirement Law (Employees Sharing Additional Cost). Ordinance 1225 was introduced at the Council meeting held on September 20, 2016, to amend the contract with the CalPERS to allow for employees of the Tracy Police Officers' Association to pay 3% of the employer share of CalPERS costs.

Ordinance 1225 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 1225.

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 1225

ORDINANCE 1225

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TRACY AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF TRACY AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

WHEREAS, The Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said contract: and

WHEREAS, The Government Code sets forth procedures to amend this contract: and

WHEREAS, One of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of an ordinance to approve an amendment to said contract: and

WHEREAS, Pursuant to adopted Memorandum of Understanding between the City of Tracy and the Tracy Police Officers' Association, the parties stipulated that the City will amend its contract with California Public Employees' Retirement System to provide for Section 20516 of the Public Employees Retirement Law (Employees Sharing Additional Cost); and

WHEREAS, A Resolution of Intention (Resolution 2016-199) to approve the Public Employees' Retirement System contract amendment was adopted on September 20, 2016; and

NOW, THEREFORE, The City Council of the City of Tracy does ordain as follows:

SECTION 1: That an amendment to the contract between the City Council of the City of Tracy and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked as Exhibit, and by such reference made a part hereof as though herein set out in full.

SECTION 2: That the Mayor of the City of Tracy is hereby authorized, empowered, and directed to execute said amendment for and on behalf of the City of Tracy.

SECTION 3: That this Ordinance shall take effect 30 days after the date of its adoption, and prior to the expiration of fifteen (15) days from the passage thereof shall be published once in the Tri-Valley Herald, a newspaper of general circulation, published and circulated in the City of Tracy and thenceforth and thereafter the same shall be in full force and effect.

* * * * *

The foregoing Ordinance 1225 was introduced at a regular meeting of the Tracy City Council on the 20th day of September, 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



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Tracy

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective October 1, 1948, and witnessed September 8, 1948, and as amended effective January 1, 1960, June 1, 1972, November 1, 1972, March 19, 1974, July 1, 1978, February 1, 1983, September 1, 1983, May 3, 1985, January 18, 1991, June 30, 1997, November 16, 1997, June 1, 2000, January 1, 2004, January 1, 2005, January 1, 2006, October 1, 2006, July 2, 2010, December 17, 2010 and July 16, 2016 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 20 are hereby stricken from said contract as executed effective July 16, 2016, and hereby replaced by the following paragraphs numbered 1 through 20 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for classic local miscellaneous members, age 62 for new local miscellaneous members, age 50 for classic local police members entering membership in the police classification on or prior to July 2, 2010, age 55 for classic local police members entering membership for the first time in the police classification after July 2, 2010, age 55 for classic local fire members and age 57 for new local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after January 10, 1948 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorney fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas.
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

NO ADDITIONAL EXCLUSIONS

6. Prior to January 1, 1975, those members who were hired by Public Agency on a temporary and/or seasonal basis not to exceed 6 months were excluded from PERS membership by contract. Government Code Section 20336 superseded this contract provision by providing that any such temporary and/or seasonal employees are excluded from PERS membership subsequent to January 1, 1975. Legislation repealed and replaced said Section with Government Code Section 20305 effective July 1, 1994.
7. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local miscellaneous member in employment before and not on or after October 1, 2006 shall be determined in accordance with Section 21354 of said Retirement Law subject to the reduction provided therein for Federal Social Security (2% at age 55 Modified).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local miscellaneous member in employment on or after October 1, 2006 and not entering membership for the first time with this agency in the miscellaneous classification after December 17, 2010 shall be determined in accordance with Section 21354.4 of said Retirement Law subject to the reduction provided therein for Federal Social Security (2.5% at age 55 Modified).
9. The percentage of final compensation to be provided for each year of credited current service as a classic local miscellaneous member entering membership for the first time with this agency in the miscellaneous classification after December 17, 2010 shall be determined in accordance with Section 21354 of said Retirement Law subject to the reduction provided therein for Federal Social Security (2% at age 55 Modified).
10. The percentage of final compensation to be provided for each year of credited prior and current service as a new local miscellaneous member shall be determined in accordance with Section 7522.20 of said Retirement Law (2% at age 62 Supplemental to Federal Social Security).
11. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local police member entering membership in the police classification on or prior to July 2, 2010 shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).

12. The percentage of final compensation to be provided for each year of credited current service as a classic local police member entering membership for the first time with this agency in the police classification after July 2, 2010 shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).
13. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local fire member shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).
14. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2.7% at age 57 Full).
15. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance) for local safety members only.
 - b. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local safety members only.
 - c. Section 20965 (Credit for Unused Sick Leave) for local fire members entering membership on or prior to May 3, 1985 only.
 - d. Section 20475 (Different Level of Benefits). Section 20965 (Credit for Unused Sick Leave) is not applicable to local fire members entering membership for the first time with this agency in the fire classification after May 3, 1985.

Section 21363.1 (3% @ 55 Full formula) is applicable to classic local police members entering membership for the first time with this agency in the police classification after July 2, 2010.

Section 21354 (2% @ 55 Modified formula) and Section 20037 (Three-Year Final Compensation) are applicable to classic local miscellaneous members entering membership for the first time with this agency in the miscellaneous classification after December 17, 2010.
 - e. Section 20903 (Two Years Additional Service Credit).
 - f. Section 21024 (Military Service Credit as Public Service).

g. Section 20042 (One-Year Final Compensation) for classic local miscellaneous members entering membership on or prior to December 17, 2010 and classic local safety members.

h. Section 20516 (Employees Sharing Additional Cost):

From and after July 16, 2016, 3% for local miscellaneous members in the Confidential Mid-Managers Unit, local police members in the Tracy Police Management Association and local fire members in the Confidential Mid-Managers Unit.

From and after the effective date of this amendment to contract, 3% for local police Members in the Tracy Police Officers Association.

The portion of the employer's contribution that the member agrees to contribute from his or her compensation, over and above the member's normal contribution ("Cost Sharing Percentage"), shall not exceed the Employer Normal Cost Rate, as that rate is defined in the CalPERS Actuarial Valuation for the relevant fiscal year. If the Cost Sharing Percentage will exceed the relevant Employer Normal Cost Rate, the Cost Sharing Percentage shall automatically be reduced to an amount equal to, and not to exceed, the Employer Normal Cost Rate for the relevant fiscal year.

16. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on February 1, 1983. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
17. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
18. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local safety members.

- b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
19. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
20. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF TRACY

BY _____
CHERYL EASON
CHIEF FINANCIAL OFFICER
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

PLEASE DO NOT SIGN "EXHIBIT ONLY"
PLEASE DO NOT SIGN "EXHIBIT ONLY"

AGENDA ITEM 3

REQUEST

RECEIVE AND DISCUSS THE GRAND THEATRE CENTER FOR THE ARTS ANNUAL REPORT, ACCEPT THE GRAND FOUNDATION'S FISCAL YEAR 2016-2017 ANNUAL UNDERWRITING SUPPORT IN THE AMOUNT OF \$20,000 AND APPROVE A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$20,000 FOR PROGRAMMING AND TECHNICAL SUPPORT AT THE GRAND THEATRE CENTER FOR THE ARTS

EXECUTIVE SUMMARY

This report discusses the activities of the Grand Theatre for the Arts during the previous year, including operational details, performance highlights, community programming, art exhibitions, arts educations, ticket sales and attendance.

Staff is requesting that Council accept \$20,000 from the Grand Foundation and approve a supplemental appropriation of this \$20,000 from the Grand Foundation for programming and technical support for Fiscal Year 2016-2017.

DISCUSSION

The Grand Theatre Center for the Arts began celebrating its 10th Year Anniversary as it entered into the fiscal 2016-2017 year. The last presenting season began in August, 2015 with a variety of new programming and presentations and the Grand Theater again enjoyed steady performance attendance throughout the season.

There have been significant changes in staff, increased and diversified marketing efforts, and a continued collaboration with the Grand Foundation, which has resulted in greater efficiencies and streamlining processes for the Theatre presentations and rentals.

The City Council named "Quality of Life" as a strategic priority for those living and working in Tracy and the Grand Theatre Center for the Arts was established with that priority in mind. Going into our tenth year of programming and education, we strive to increase satisfaction and uphold the community's and City Council's "Quality of Life" values and expectations.

Attached to this report is a summary of the Grand Foundation's 2015-2016 fundraising and operations efforts, which will be presented by the Grand Foundation at the conclusion of staff's report. The Grand Foundation has a Memorandum of Understanding (MOU) with the City of Tracy which is set to expire in 2017 and staff will begin negotiations in the next several months. The current MOU agreement provided Foundation support in the amount of \$150,000 to be paid in installments from 2011-2017.

The Endowment goal was \$55,000 and currently has a balance of \$25,955. The Foundation hopes to increase this balance and meet their goal through the Annual Seat Campaign program.

YEAR 2015-2016 PRESENTING PROGRAM AND RENTALS OVERVIEW

The 2015-2016 Season kicked off with an evening with Pete Escovedo with surprise guest, Shelia E. Additional performances included: Mariachi Reyna De Los Angeles, Central West Ballet, Comedian Louie Anderson, Dave Mason, Y & T and many more.

The holiday season highlights included the sold-out LeAnn Rimes *One Christmas Tour* and the always popular ballet, *The Nutcracker*, presented by the Children's Dance Theatre. Other holiday performances included a presentation by Notre Dame de Namur University of the musical, *In the Heights*, a presentation of *Alice in Wonderland*, and a sold out concert by Aaron Lewis.

During the 2015-2016 season, movies returned to the Grand Theatre Center for the Arts through "The Family Movie Series" sponsored by Dr. Shailaja Singh, which featured movies for the entire family such as *Home Alone* and *Hook*. Additionally, Dr. Singh sponsored *Dr. Seuss's Birthday Party* for a sold-out crowd which featured storytelling, arts and crafts, treats and goodie bags for children in attendance.

In summary, the 2015-2016 Presenting season had an attendance of over 10,000 guests. Gross tickets sales totaled \$255,131. Performance sponsorships included \$10,000 from the Grand Foundation and \$7,000 from Dr. Shailaja Singh.

Community Rentals for Fiscal Year 2015-2016 included non-profit and commercial rentals that generated \$84,174.50 in revenue which is a decrease of \$17,135 under the projected adopted rental revenue for Fiscal Year 2015-2016. This decrease was due to the increase in non-profit rentals which limited the number of available dates for commercial rentals. Non-profits are offered a low discounted rate for use of the Theater as well as other amenities.

There were 4 commercial rentals that generated \$15,808 and 43 non-profit rentals that generated \$68,366.50. Grace Church had an extended rental agreement with the City of Tracy which generated \$46,516 of that revenue. There was a fifth commercial rental that would have added an additional \$2,800 in revenue, but was deemed uncollectable.

Non-profits make up close to 92% of the rental fees. Rental fees have never been increased since the opening of the Grand Theatre Center for the Arts ten years ago. Staff is planning to include rental fees as part of a City fee study to ensure that fees keep up with increasing costs and demands.

YEAR 2016-2017 PRESENTING PROGRAM PREVIEW

The 2016-2017 Presenting Season opened with Country superstar Trace Adkins who played to a sold-out show. The following weekend, the community was invited to the 10th Anniversary Party. The event was filled with music, food, drinks and live performances. The party was free to the public and was attended by over 1,500 guests.

Staff developed a comprehensive marketing plan that included print, social media, television, radio, a commemorative piece and various collateral items to celebrate the 10th Anniversary. Various items are available for purchase in the Grand Theatre Center for the Arts Galleries. The 10th Anniversary branding and marketing will continue throughout the year.

The Grand Theatre Center for the Arts' 10th Anniversary Presenting Season continues to be varied and exciting, appealing to a wide range of community and regional interests. Upcoming performances for the season include such acts as comedian Paula Poundstone; rockers The Tubes, Y & T, Tommy Castro & The Pain Killers; ballet performances from Central West Ballet; plays; family entertainment from the Children's Dance Theatre; cultural events including *Batare*; country music; Thursday Night Jazz, and a holiday *cappella* performance by Rockapella.

YEAR 2015-2016 ARTS EDUCATION PROGRAM

The Arts Education Program (AEP) served 5,049 participants through classes, workshops, camps and special events for all ages. Programming included classes in Dance, Drama, Music, Visual Arts, Ceramics, and Senior Tuesdays. The AEP generated \$131,356 in General Fund revenues and received \$7,900 of underwriting support from the Grand Foundation. Of the 35 instructors active in FY 2015-2016, five were new to the Grand during that period.

Although the total number of course offerings has decreased from the 2014-2015 fiscal year, the quality of those programs has increased, as shown by the 30% increase from \$101,176 in Gross Revenue to \$131,365 in FY 2015-2016. This exceeded revenue projections by \$11,365 (+9.46%). Senior Tuesdays experienced growth since launching the new program in FY 2014-2015. Popular activities included specialized movement, visual arts and creative expression classes designed for active adults ages 50 and over.

The AEP maintained the monthly e-newsletter, increased use of social media and increased website content. It also launched an Arts Education Instagram profile. These efforts provide more engaging and easily accessible information available to the public including featured and new programming, photos, short videos, news and events, and more information regarding staff and instructors. Across FY 2015-2016, the AEP maintained collaborative relationships with Main Street Music, Young Rembrandts Shaping Future Artists, Tracy Art League, Tracy Camera Club, Music Together of Tracy, Rueda Con Ritmo, Tracy Academy of Performing Arts, Flow Yoga Studios, Pan Afrikan Dance & Music History Education Association, and Intermission Productions.

YEAR 2016-2017 ARTS EDUCATION PREVIEW

The AEP expects to serve a greater amount of patrons and increase revenue in 2016-2017, as new Contract Instructors are recruited and additional classes are offered.

These increases should be seen in the Winter/Spring and Summer Semesters, and continue forward across 2017.

In the summer of 2016, Intermission Productions offered two Summer Drama Camps for Youth, which received outstanding reviews. Both camps concluded with a public performance. The Academy of Performing Arts offered a Musical Theatre Camp for Special Needs, which also concluded with a public performance. All three of these camps were supported with Grand Foundation Underwriting.

YEAR 2015-2016 EXHIBITIONS PROGRAM OVERVIEW

The Exhibitions Program (EP) presented six feature exhibitions in the Souza and GWF Energy Galleries collaborating with 49 artists and lenders. In addition, the EP managed Art Co-Opted, a curated sales cooperative, in the South Gallery working with over 40 artists and lenders. Gallery attendance increased 24% to 7,229 from the previous year, averaging 38.6 daily and 229 weekly and forecasted economic growth was significant with revenues exceeding projections by 131%. The EP recorded \$6,883 in sales, the highest sales total since opening in 2007-08. The Co-Op set new records in sales at \$8,154 as well as the number of artwork/objects sold (255), since operations began in FY 2009-2010.

YEAR 2016-2017 EXHIBITIONS PREVIEW

The 2016-2017 Exhibition Season will present six feature exhibitions and one special exhibit in the Souza and GWF Energy Galleries. In addition, *Art Co-Opted* will continue in the South Gallery. Among the featured exhibitions include:

Local Presence – Paintings by Carolyn Lord opened in conjunction with the 10th Year Anniversary Party and the Art Awards Luncheon the weekend of August 26th/27th. As part of the annual *Holidays at the Grand* programming, over 40 local and regional artists will participate in the Co-Op exhibition spanning all three galleries in November and December. Patrons from across the region and beyond particularly enjoy shopping for one-of-a-kind gifts at this time of year.

In 2017, the EP will present several exhibitions including local artist/educator Alex Nelson, *Expressions! Selections*, in collaboration with the Tracy Art League, and a special collaboration between the Grand Foundation and Tracy Press to create a Youth Photography display, contest and publication. The Artist-In-Residence Program will return in the summer of 2017 with an incredible look in the artistry and magic of stop motion animation.

STRATEGIC PLAN

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

Goal 1: Improve current recreation and entertainment programming & services to reflect the community interests and demands.

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

2. This agenda item also supports the Economic Development Strategy, specifically:

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

Objective 2: Increase the entertainment and recreational opportunities and events that draw people into Tracy.

FISCAL IMPACT

Acceptance of programming and technical underwriting support from the Grand Foundation to the Cultural Arts Division, for the 2016-2017 Fiscal Year will result in an appropriation of \$20,000 to the Cultural Arts Division.

RECOMMENDATION

Staff recommends that Council accept the Grand Theatre Center for the Arts Annual Report, accept the Grand Foundation's Fiscal Year 2016-2017 Annual Underwriting support of \$20,000, and approve supplemental appropriation of \$20,000 in proceeds for programming and technical support at the Grand Theatre Center for the Arts.

Prepared by: Kim Scarlata, Division Manager II

Reviewed by: Stephanie Garrabrant-Sierra, Assistant City Manager
Martha Garcia, Acting Administrative Services Director

Approved by: Troy Brown, City Manager

ATTACHMENTS

Exhibit A – Summary of 2015-2016 Grand Foundation Fundraising and Operations



Grand Foundation Annual Report 2015-2016

...to enrich community life in the City of Tracy by promoting, preserving, and perpetuating the arts.

The Grand Foundation works in partnership with the City of Tracy to support the Grand Theatre Center for the Arts as a leading regional center for the arts.

The 2015-16 fiscal year was a year of rebuilding and learning for the Grand Foundation. With a new Executive Director and changes in Board membership and leadership, the Foundation began the year with educational and strategic planning meetings to establish a strong starting point for growth. We are excited to provide this report describing the Foundation's growing ability to promote the Grand Theater Center for the Arts.

The Grand Foundation has a responsibility under the MOU with the City of Tracy to

- support community relations efforts, gather public input, and develop programming policy in collaboration with City staff
- conduct a membership campaign
- support Board development
- market the Grand Theatre and the work of the Foundation
- provide financial support to the Grand Theatre

The Grand Foundation supports community relations, gathers public input, and develops programming policy in collaboration with City staff. To foster community relations, the Foundation arranged with Grand Theatre staff to hold meetings with community organizations (Noon Rotary and Inner Wheel) at the Theatre with Board Member Ann Langley providing tours. In addition, Foundation staff attended the meetings of the Sunrise Rotary Club, Noon Rotary, the Tracy Lions Club, the Tracy Camera Club, the Tracy Arts League, the Tracy Arts Commission, and the Central Valley Association of Realtors to talk about the Grand Theatre and the work of the Foundation.

Each month, the Grand Foundation produces a newsletter highlighting upcoming Grand Theatre shows and gallery exhibitions, acknowledging community members who have joined the Foundation, and recognizing donors, sponsors, and local artists/teachers who have supported the arts in our community. This newsletter is emailed to members and supporters and is printed for distribution at community events.

The Grand Foundation's Dancing with the Tracy Stars is also designed to support community relations. The event highlights six local "celebrities" who promote the Grand Theatre and raise money on behalf of at least six other charities in addition to the Grand Foundation. This past year,

the Dancing with the Tracy Stars program was almost completely sold out and provided over \$19,000 to the dancers' identified charities, including non-profits such as the Boys & Girls Club of Tracy, Relay for Life, and McHenry House. The community leaders who were chosen as dancers increased awareness of the Grand Theatre by promoting their fundraising campaigns through their professional organizations (realtor associations, Chamber of Commerce), service clubs, and business contacts.

The Grand Foundation gathers public input by distributing information and conducting surveys at community events, such as this summer's Artwalks. This past year, the Foundation also surveyed over 400 students in art classes at Tracy High School to learn whether they were aware of classes offered at the Grand Theatre and what kind of programs teens would like to see offered. The results of these surveys are being shared with arts education staff to help strengthen the Grand's programming. In addition, the Foundation Program Advisory & Community Outreach Committee has regular meetings with Grand Theatre staff to help evaluate proposals for arts education programs.

The Grand Foundation administers a membership program for individuals, families, and businesses. The Grand Foundation Membership Program is a crucial component in the Foundation's efforts to support the Grand Theatre. Members receive regular newsletters designed to make them feel more connected to the Grand Theatre and apprise them of upcoming events. The regular membership program has five levels ranging from the \$50 Grand Supporter level to the \$1,000 Grand Seat Patron level. The Corporate Membership program has levels ranging from \$250 to \$3,000. Membership benefits include discounts on theatre tickets and art center classes and invitations to member-only events.

A highlight of our membership program is the Advanced Ticket Purchase Party where the Foundation treats members to a party while Grand Theatre staff help them purchase tickets to the Presenting Season events before those seats become available to the public. This event serves as an opportunity for collaboration between the Foundation and the City, where both membership and ticket sales are supported.

During FY 2015-16, general membership grew by almost 30 percent, while corporate membership grew by 50 percent. The goal for FY 2016-17 is to increase membership by another 50%, and the Foundation has already made great strides toward reaching that goal.

The Grand Foundation supports board development as a way to strengthen the abilities of Board Members to work on behalf of the Grand Theatre. At the beginning of FY2015-16, the Foundation arranged for Linda Philipp from the San Joaquin Community Foundation to conduct a board development workshop. As the Grand Foundation clarified its goals and defined the role of Board members as active advocates and fundraisers, there was some turnover among the Board, which currently stands at 13. Maintaining a well-rounded Board is an ongoing goal and the Foundation is working to identify additional interested community leaders.

Board Member Responsibilities: To advocate and be a genuine ambassador of the Grand Theatre Center for the Arts; to raise funds that will contribute toward underwriting costs and endowment goals; to support the Grand Foundation by becoming a member; and to positively represent the Grand Foundation and the Grand Theatre.

The Grand Foundation markets the Grand Theatre and the work of the Foundation in a variety of ways. In the past fiscal year, the Foundation

- created a new website at grandfoundation.org to educate the public about Foundation and Theatre events and the benefits of membership;
- sent a monthly email newsletter to members and interested and influential members of the community that highlights Grand Theatre events, the Foundation's Dedicate a Seat Campaign, the benefits of membership, and other information designed to make the public feel more connected to the Grand Theatre;
- shared information about Grand Theatre events and Foundation news on Facebook and through emails to members;
- issued press releases that resulted in press coverage about board appointments, the Dedicate a Seat Campaign, and Dancing with the Tracy Stars;
- created a Dedicate a Seat Campaign with marketing materials and a mobile display that is moving to different City and business locations;
- provided tickets to events at the Theatre to potential members and donors

The Grand Foundation provides direct and indirect financial support to the Grand Theatre.

Direct financial support

- The Foundation has a responsibility to underwrite performances and programs at the Grand Theatre Center for the Arts to help support the Grand's mission. In the 2015-16 fiscal year, the Grand Foundation provided \$20,000 to the City of Tracy to underwrite the costs of a variety of arts education programs, exhibition events, and a concert.

Specifically, Foundation underwriting provided:

- \$7900 for arts education classes and supplies
- \$2100 for hospitality at gallery exhibitions
- \$10,000 for the Aaron Lewis concert

In the current 2016-17 fiscal year, the Foundation will be providing \$20,000 to underwrite education and programming at the Grand Theatre, based on recommendations by the City staff. Already in FY16-17, the Foundation has contributed an additional \$12,500 to the City from donations to the Foundation for 10th Anniversary events, including \$10,000 in concert support from Tracy Hills. Discussions are underway to determine the projects that will be supported by a \$25,000 donation from Surland Companies, including the creation of a piece of art that will honor the Anton Heinsbergen mural that used to exist in the Grand Theatre lobby.

- The Foundation also has a responsibility to provide an ongoing, long-term funding source for the Grand Theatre. In the 2012-13 fiscal year, the Foundation created the Clyde Bland Endowment Fund through the Community Foundation of San Joaquin with an initial investment of \$5,000. In the past fiscal year, the Foundation added \$19,042 to the Endowment through the Dedicate a Seat Campaign. Donations made through the Dedicate a Seat Campaign are deposited into the Endowment, minus the costs of the donor plaque.

The Campaign marketing and administration costs are absorbed by the Foundation so that the maximum benefit can be realized from Seat Campaign donations.

The current balance of the Clyde Bland Endowment Fund is \$25,955. While Foundation did not achieve the \$45,000 goal outlined in the MOU for the endowment, the Foundation has made substantial progress in this past year and has made the Dedicate a Seat Campaign one of its top priorities for the current fiscal year.

Indirect financial support

As part of its mission to generate community support and conduct a membership campaign, the Grand Foundation staff and Board members spend numerous hours promoting the Grand Theatre Center for the Arts. In fiscal year 2015-16, the Foundation, in collaboration with the Grand Theatre, held

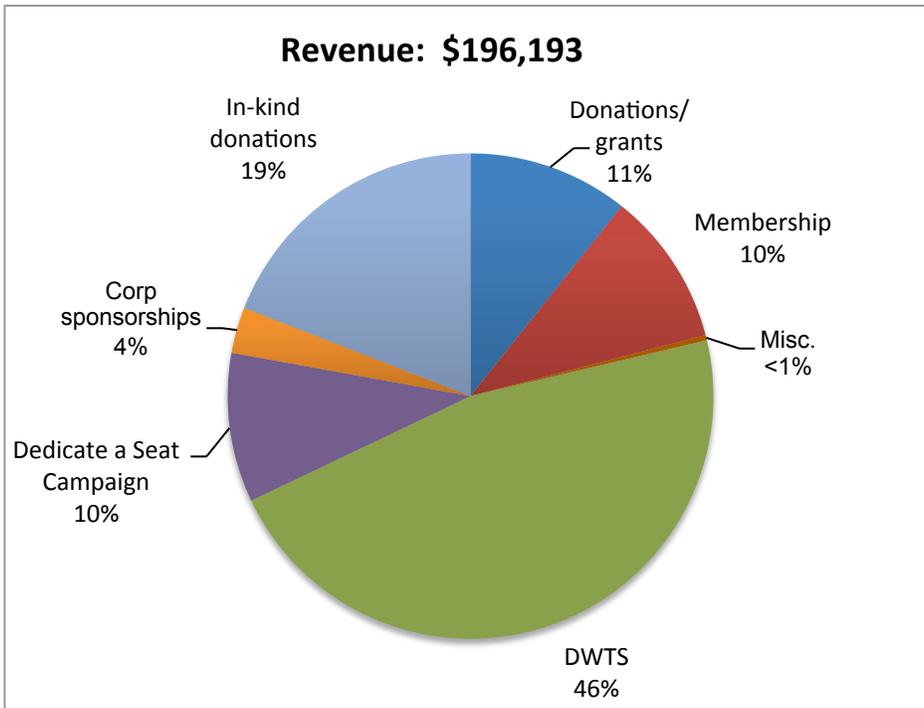
- an Advanced Ticket Purchase Party designed to support ticket sales as well as recruit and retain members,
- four VIP membership receptions prior to Grand Theatre performances;
- a Patron Reception for high level members and past Theatre donors to thank Theatre supporters and promote the Dedicate a Seat Campaign.

Significant Foundation staff and volunteer time is committed to supporting the membership program. Cultivating relationships with members is crucial to developing the long-term members and donors needed by the Grand Theatre. The costs of these receptions as well as staff time to support the Membership Program are part of the Program expenses for the Foundation as they directly support the Foundation's mission.

Looking Forward With Gratitude

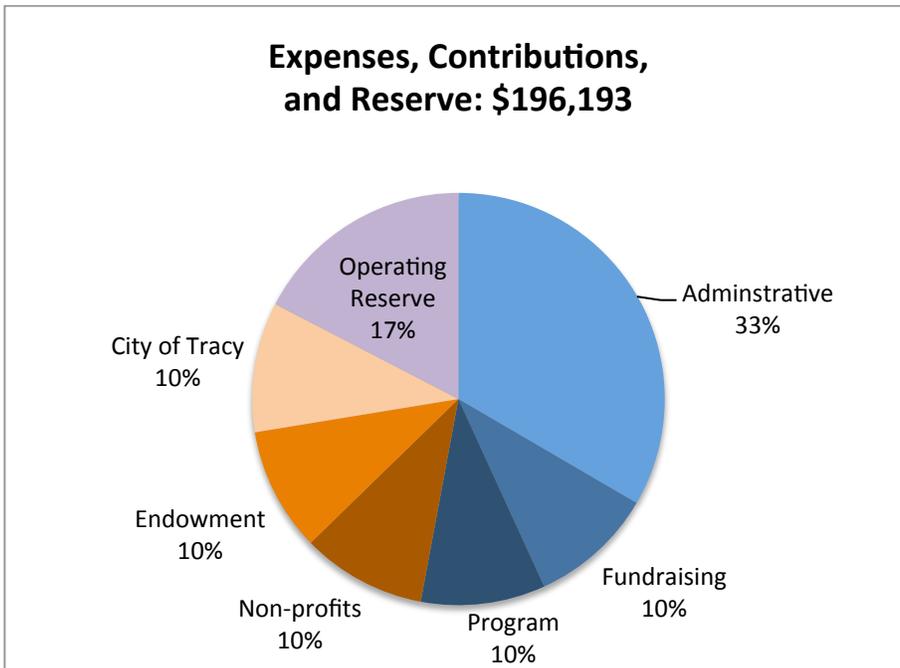
The Grand Foundation is proud to work in collaboration with the City of Tracy and the staff of the Grand Theatre Center for the Arts to promote the arts in Tracy and support the Grand Theatre. The Foundation's Board Members recognize that this type of collaboration is often difficult, but it is worth the effort in order to build community support for this important institution. Foundation Board members and staff worked hard this past year to serve as the community's voice for the arts. As we progress through the current fiscal year, the Foundation intends to build the Membership Program, fund its underwriting obligations, and meet its endowment goals. In addition, the Foundation is providing additional financial and programming support to the 10th Anniversary celebrations. We thank the City of Tracy and Grand Theatre staff for their help over the past ten years and look forward to our continued joint efforts on behalf of the Grand Theatre.

MOU Reporting



Donations/grants	\$21,000
In-kind donations	\$37,400
Corporate sponsorships	\$ 6,000
DWTS	\$91,456
Membership	\$20,100
Dedicate a Seat	\$19,500
Misc.	\$ 697

Revenue from Dancing with the Tracy Stars reflects the \$19,184 collected and distributed to other charities as well as the \$18,500 in sponsorships to cover the cost of the event.



Administrative	\$65,551
Fundraising	\$19,151
Program	\$19,146
City of Tracy (underwriting)	\$20,000
DWTS Non-profits	\$19,184
Endowment*	\$19,042
Operating Reserve	\$34,119

*The Endowment balance stood at \$25,955 at the end of the 2015-15 fiscal year.

Administrative expenses include portion of Executive Director salary, value of City’s in-kind donation of rent and utilities, insurance, office supplies, accounting, and repairs to donor wall.

Fundraising expenses include costs of Dancing with the Tracy Stars: talent, lodging, printing and marketing, reception, rentals, prizes, etc.

Program expenses are expenses related to supporting the Grand Foundation’s mission. They include a portion of Executive Director salary, membership reception costs, membership supplies and mailings.

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RESOLUTION

RECEIVING THE GRAND THEATRE CENTER FOR THE ARTS ANNUAL REPORT AND ACCEPTING THE GRAND FOUNDATION'S FISCAL YEAR 2016/17 ANNUAL UNDERWRITING SUPPORT OF \$20,000 AND APPROVING A SUPPLEMENTAL APPROPRIATION OF \$20,000 IN PROCEEDS FOR PROGRAMMING AND TECHNICAL SUPPORT AT THE GRAND THEATRE CENTER FOR THE ARTS

WHEREAS, Staff is presenting an overview of the ninth year of operations and the upcoming tenth year operations of the Grand Theatre Center for the Arts, and

WHEREAS, Over the past year the Grand Theatre Center for the Arts has increased performance attendance and visibility in Tracy and surrounding communities, and

WHEREAS, Staff is requesting that Council accepts \$20,000 in annual funding support and approves a supplemental appropriation of funding of \$20,000 from the Grand Foundation for programming and technical support expenditures for Fiscal Year 2016/17;

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby accepts the Grand Foundation's Fiscal Year 2016/17 Annual Underwriting Support of \$20,000 and approves a supplemental appropriation of \$20,000 in proceeds for programming and technical support at the Grand Theatre Center for the Arts.

* * * * *

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

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK



**RECEIVE AND DISCUSS THE GRAND
THEATRE CENTER FOR THE ARTS
ANNUAL REPORT AND ACCEPT THE
GRAND FOUNDATION'S FISCAL
YEAR 2016/2017 ANNUAL
UNDERWRITING SUPPORT**

Presentation to City Council
November 1, 2016

Background

- △ The Grand Theatre began celebrating its 10th Year Anniversary as it entered into the fiscal year 2016-2017.
- △ Over the past year the Grand Theatre Center for the Arts has hosted a variety of new programming and performances and enjoyed steady performance attendance throughout the season.
- △ Arts Education and the Grand Galleries continue to offer diverse cultural experiences to the community.

Grand Theatre Center for the Arts Named Best of Tracy



Fiscal Year 2015/2016 Presenting Season



Grand Theatre
Center for the Arts
Season Opener

Pete Escovedo
Orchestra
August 22
8pm
\$25-\$45



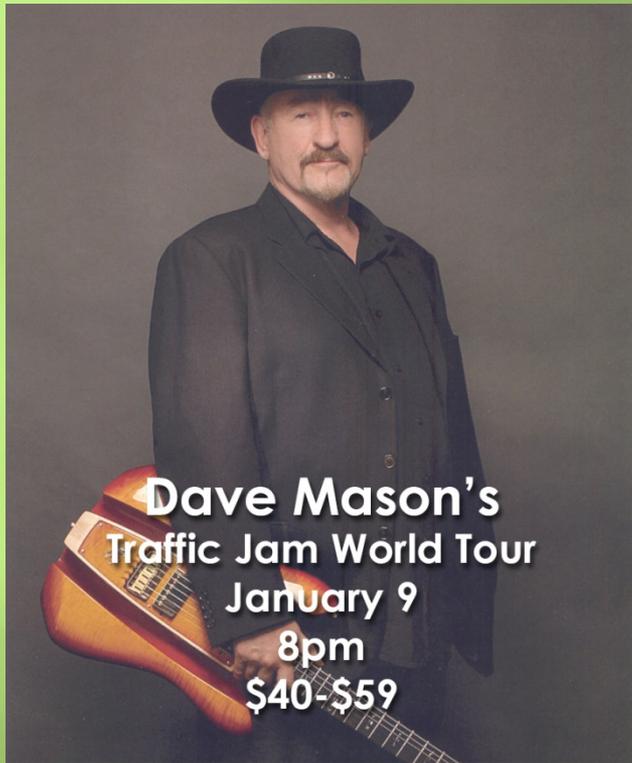
Louie Anderson

November 20
8pm
\$32-\$49



LeAnn Rimes
One Christmas

December 11
8pm
\$59-\$99



Dave Mason's
Traffic Jam World Tour
January 9
8pm
\$40-\$59

GRAND THEATRE CENTER FOR THE ARTS PRESENTS



AARON LEWIS LIVE

SOLD OUT

March 26, 2016
8:00 PM \$32 - \$59

THE ROAD

AARON LEWIS

THE GRAND THEATRE CENTER

Grand Theatre Center for the Arts
715 Central Avenue, Tracy 95376
Box Office (209) 881-6111 (6858)
www.gti.org / BoxOffice.tickets

GRAND FOUNDATION


 [FACEBOOK.COM/AARONLEWISMUSIC](https://www.facebook.com/aaronlewismusic)
 [TWITTER.COM/AARONLEWISMUSIC](https://twitter.com/aaronlewismusic)



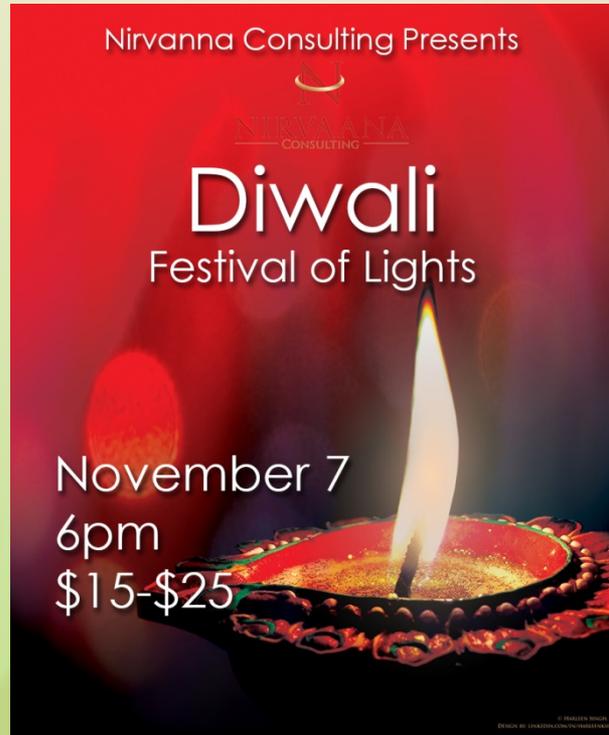
Community Co-Presents



The First Ladies of Mariachi

MARIACHI
Reyna
DE LOS ANGELES

October 17
7pm
\$30-\$70



Nirvana Consulting Presents

NIRVANA
CONSULTING

Diwali
Festival of Lights

November 7
6pm
\$15-\$25

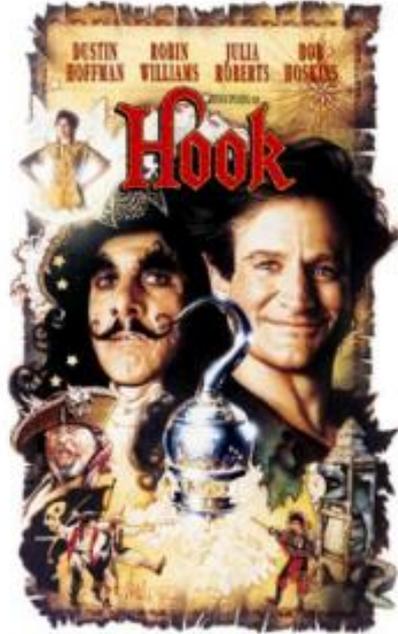
© FRANKLIN TRAVIS 2015
DESIGN BY CONCEPTUALARTS.COM/FRANKLINTRAVIS.COM



Nutcracker
December 19 & 20
1pm & 6pm
\$15-\$50

Family Fun

HOME ALONE



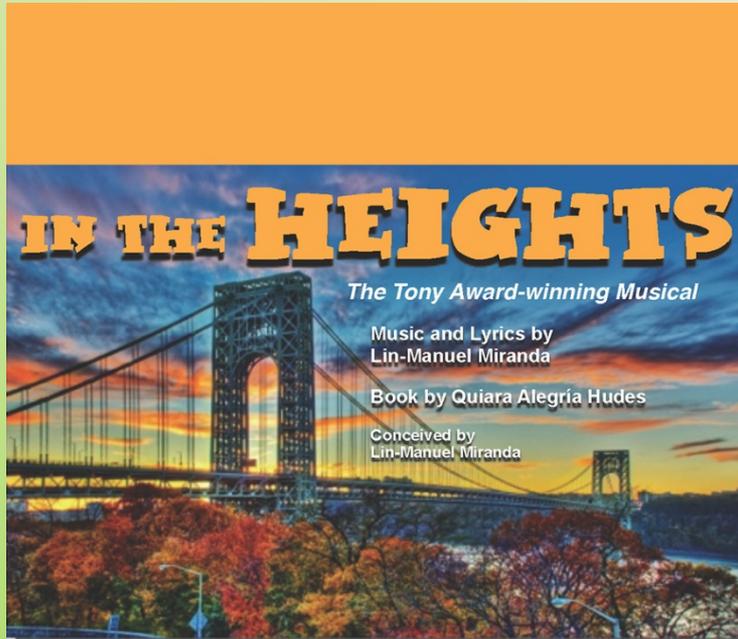
© TriStar Pictures



**Dr Seuss' Birthday Celebration
Family Event - \$5 per person
March 2nd, 10 AM**

• • Hosted by Dr. Shailja Singh of Singh Dental Center • •

Notre Dame de Namur University



March 12
7pm
\$15-\$18



© Richard Pineda 2016

2015/2016 SEASON FINALE

- △ 22- PERFORMANCES
- △ 12- CO PRESENT EVENTS
- △ 10,152 EVENT TICKETS SOLD
- △ \$255,131 GROSS TICKET SALES
- △ 47 RENTALS
- △ \$84,175 RENTAL REVENUE

10



20
16 | 17

PRESENTING SEASON



SEASON OPENER
TRACE ADKINS
SAT AUG 20, 2016
TIME: 8PM TIX: \$80 - \$110

TRACE
ADKINS

Concert Supported By

TRACY HILLS

Sold Out



X
10
20
16 | 17
ANNIVERSARY

10 YEAR ANNIVERSARY PARTY

Friday, August 26, 2016
7:00 pm - 9:00 pm
Free & Open to the Public!

An evening to the community
to experience food, fun and live
entertainment celebrating the 10th
Anniversary of the Grand Theatre
Center for the Arts!



ART = LIFE

outside the lines, Tracy CA



2015-16 Arts Education Program



Tracy Art League at the Grand

Collaboration in Our Creative Community

2015-16 Arts Education Program



Music Together at the Grand

Parents & Children Learning Together through Music & Movement

2015-16 Arts Education Program



Senior Tuesdays at the Grand

Arts, Wellness & Social Activities for Adults age 50+

2016-2017 Arts Education Preview

- △ Increase patrons and revenue
- △ New Contract Instructors
- △ Additional programming offered
- △ Summer Programming

2015-16 Exhibitions Program



Father Clay – Bruce Duke Retrospective Curated by Cathy Anderson

August 29th – October 17th, 2015

2015-16 Exhibitions Program



Drawn from Nature California Landscapes by Milt Bullard
January 23rd – March 5th, 2016

2015-16 Exhibitions Program



The Convict and a Boy – A Graphic Novel by Kenney Mencher

May 28th – July 16th, 2016

2016 Downtown Tracy Artwalk & Mural Project



2016-2017 Exhibitions Preview

- △ Six feature exhibitions and one special exhibit
- △ Arts Awards Luncheon
- △ Holidays at the Grand
- △ *Expressions! Selections*
- △ Youth Photography display



Grand Foundation
Annual Report FY2015-16



Board of Directors

Dr. Kaylin Schack, President
Cynthia Souza, Vice President
Cliff Hudson, Treasurer
Andrea Fagundes, Secretary
Ann Langley, Executive Board
Mike Souza, Executive Board
Jim Haskell

Janice Johnson
Michael Langley
Grace Paget
CP Riddle
Judy Rodriguez
Dr. Andrew Trosien

Tiffanie Heben, Executive Director



The Grand is the cultural heart of Tracy. It is the place where artists, art appreciators, children and families can engage with the arts. The City of Tracy has the vision to create and support a place that recognizes the significant role that the arts play in enabling individuals to express themselves creatively and value the creative expression of others. Our community is vastly richer because we have the Grand.

Susan Richardson, Artist

Membership Campaign

- Benefits include
 - Discounted ticket prices
 - Discounted arts classes
 - Discounted art purchases
 - Invitations to VIP events
 - Advance ticket purchases
- 30% growth in general membership; 50% growth in corporate membership
- Goal is to increase membership by another 50% in 2016-17



With support from the Grand Theatre and the business community, the Grand Foundation held many events to recruit and support membership:

- 4 VIP receptions
- Patron Reception to thank high level members and past donors
- Advance Ticket Purchase Party

Thanks to our wonderful sponsors: BAC Community Bank, Chevron, and Notre Dame du Namur

Community Engagement

Dancing with the Tracy Stars!



serving the Grand Theatre Center for the Arts and the Tracy community

Executive Director's Corner

At the November 17th meeting of the Tracy City Council, Grand Foundation President Kayla Strack presented Mayor Mike Maciel with a check for \$25,000. This donation will underwrite the costs of all classes, performances, and equipment at the Grand Theatre Center for the Arts. I am grateful to our members and supporters who helped make this donation possible.

We had more good news this past month with the Grand Foundation's contribution of \$4,000 to the Open World Endowment Fund. The Foundation created the endowment a couple years ago with the purpose of generating a source of long-term support for the arts in our community. Two recent donations by generous Grand Foundation members to the Dedicate a Seat Campaign allowed the Foundation to add to the fund. These members will have engraved plaques bearing their inscriptions on seats in the Elise Tansopoulos-Foxhall Theatre.

As I complete my first six months with the Grand Foundation, I am happy to see so providing support to the arts in Tracy. I hope the Board of Directors to give themselves a pat on the back because their work is paying off...Morally, I hope that all a supporter of the Grand Foundation, you will do the same.

Thank you for your patronage and generosity during this past year. I wish you and your family a wonderful holiday season.

Titilike Helen
Executive Director
titilike@grandfoundation.org

Happy Holidays

713 Central Avenue, Tracy, CA 95376 209.833.3900

#GIVINGTUESDAY
How will you give?

We all know about Black Friday and CyberMonday, which focus on shopping by the millions. Giving Tuesday was created to encourage people to remember and support the organizations that help our community. Every year, the Grand Foundation receives thousands of dollars in the Grand Theatre Center for the Arts to underwrite the costs of art classes, exhibitions, and performances. We need your support! We encourage you to make your Grand Theatre Center gift, either online or making a bar deductible donation to the Grand Foundation.

Holiday Wish List
Caring for our members...
Support for all...
Support to the Grand Theatre Center for the Arts...
Member of our family...

Gallery Talk
Artists Bruce Greenberg, Patricia Kennedy, Rick Ingerman, and Linda Knoll spoke about the value of creativity and their experiences as artists. A Gallery Talk in conjunction with International Expressions, which runs through May 7th.

In the News
On April 26th, the Tracy Press highlighted the advice of last year's Dancing with the Tracy Stars' winner, Eric, who said this year's dancers to "give what you have and enjoy what you're doing." We are so grateful to the 2016 Stars and to the prior years' Stars who have made this event a wonderful community celebration!

SAVE THE DATE!
Grand Theatre Center for the Arts
10th Anniversary Celebration
Advance Ticket Purchase Party
Monday, July 11
6:30 - 8:30 pm

Buy discounted tickets to the 2016-17 Presenting Season concerts and performances before they become available to the general public.

The Grand Theatre Center for the Arts will celebrate its 10th Anniversary this year with many outstanding performances. Don't miss out!

This event is only available for Grand Foundation members. To become a member, contact the Grand Foundation at members@grandfoundation.org or 209.833.3900.

Like us on Facebook! or go to grandfoundation.org for more information.

- 3rd annual DWTS event raised over \$50,000
- Over \$19,000 went to outside charities
- Sold out event

Save the Date:
May 6, 2017

Public Relations

- Monthly newsletter to members and supporters
- Information tables at community events
- Newspaper articles/press releases/media interviews
- Presentations/tours for community organizations
- Facebook and website - publicize Grand Theatre events and Foundation news

Financial Support

Underwriting

In FY15-16, the Foundation provided \$20,000 for

- Arts education, including reducing costs for classes and purchasing arts supplies and equipment
- Gallery Exhibition support
- Sold-out Aaron Lews concert



Dedicate a Seat...



Mark the Event
The concert you and your friends will never forget, the night he proposed...



Honor the Person
Your child who starred in a show, a special friend, a fellow theatre lover, your teacher or mentor...

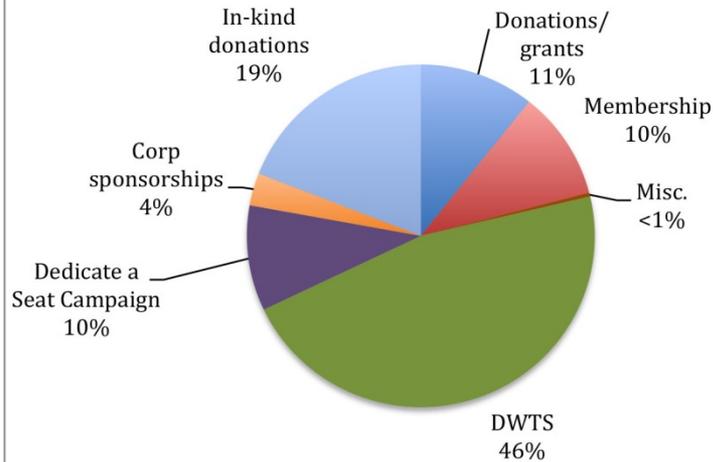
Remember the Moments
The night you performed on stage, the dance recital when she made you so proud...



Dedicate a Seat Campaign

- Campaign raised \$19,500 this past fiscal year
- Supports the Clyde Bland Endowment Fund
- Endowment now holds \$25,955

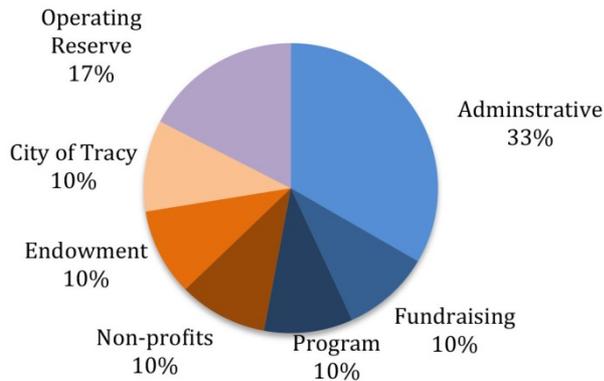
Revenue: \$196,193



Revenue

Donations/grants	\$21,000
In-kind donations	\$37,400
Corporate sponsorships	\$ 6,000
DWTS	\$91,456
Membership	\$20,100
Dedicate a Seat	\$19,500
Misc.	\$ 697

Expenses, Contributions, and Reserve: \$196,193



Expenses, Contributions, & Reserve

Administrative	\$65,551
Fundraising	\$19,151
Program	\$19,146
City of Tracy (underwriting)	\$20,000
DWTS Non-profits	\$19,184
Endowment*	\$19,042
Operating Reserve	\$34,119

*The Endowment balance stood at \$25,955 at the end of the 2015-15 fiscal year.

Administrative expenses include portion of Executive Director salary, value of City’s in-kind donation of rent and utilities, insurance, office supplies, accounting, and repairs to donor wall.

Fundraising expenses include costs of Dancing with the Tracy Stars: talent, lodging, printing and marketing, reception, rentals, prizes, etc.

Program expenses are expenses related to supporting the Grand Foundation’s mission. They include a portion of Executive Director salary, membership reception costs, membership supplies and mailings.

Moving Forward

- \$20,000 underwriting for FY2016-17
- Continued focus on increasing Endowment through Dedicate a Seat Campaign
- Increase membership by 50%
- Additional support of 10th Anniversary Projects
 - Financial support for Trace Adkins concert & VIP Reception
 - Financial support for 10th Anniversary Party
 - Commission of work to honor mural from Grand Theatre lobby
 - Student Film Festival
 - Youth Photography Show



The Grand Foundation is grateful to the City of Tracy and the staff of the Grand Theatre Center for the Arts for the help and support over the past 10 years! We are proud to be your non-profit partner.

November 1, 2016

AGENDA ITEM 4

REQUEST

**ACCEPT REPORT REGARDING PUBLIC SAFETY EFFORTS IN ADDRESSING
ILLEGAL FIREWORKS ON THE 4TH OF JULY OF 2016**

EXECUTIVE SUMMARY

This staff report provides the City Council with background information regarding the coordinated efforts by Police, Fire, and the City Attorney's Office in addressing the use of illegal fireworks on and around July 4th, 2016.

DISCUSSION

Education/Prevention:

The Tracy Fire Department coordinated illegal fireworks education and prevention measures. Efforts were made to inform the community regarding the consequences of using illegal fireworks prior to the 4th of July holiday. Fire and Police Department personnel worked with the Tracy Press to provide information to the community the week prior to the holiday. An article was published on June 24, 2016 explaining the difference between safe and sane fireworks and illegal fireworks. The article further explained planned enforcement efforts, negative impacts to the 9-1-1 system, citations and associated monetary fines. Staff also produced a 30-second Public Service Announcement (PSA) regarding illegal fireworks use and how to report illegal activity. The PSA was aired on Channel 26 and posted to the City's social media sites.

On June 16, 2016, the Fire Department hosted a fireworks safety seminar for the non-profit organizations scheduled to sell safe and sane fireworks in Tracy. The attendees were encouraged to share with their customers the importance of using only safe and sane fireworks. The intent was to partner with the non-profit organizations to assist in advocating use of legal fireworks, while simultaneously promoting their fundraising efforts.

Staff from both the Fire and Police Departments compiled information regarding previous known violators of illegal fireworks. Known violators were notified that the Fire and Police Departments would be deploying additional resources on the 4th of July for fireworks enforcement, and they had been identified as a previous offender. Cooperation was requested from the identified offenders and they were warned that a zero tolerance enforcement action would be taken.

Enforcement:

Staff from the Police Department monitored social media and internet-based advertising

in an attempt to identify individuals selling illegal fireworks in Tracy. Some activity was uncovered; however, only one individual was connected to the Tracy Area. This individual was contacted during an undercover operation and arrested for the possession and sale of illegal fireworks.

Police patrol staff was provided the names and addresses of chronic offenders and specific areas that have a high level of reported illegal fireworks activity. On those nights leading up to the 4th of July, the Police Department received several reports of illegal fireworks. Officers were dispatched as units were available, based on the priority of other pending calls. Two individuals were cited for misdemeanor violations prior to the holiday.

On the 4th of July, the Police Department deployed 4 additional police officers to conduct specific enforcement for illegal fireworks. These officers were deployed in undercover vehicles so the officers had the ability to on-view the violations without being detected. Ten individuals were cited for misdemeanor violations. In addition, the Fire Department deployed an extra engine company and a command officer to assist with monitoring illegal fireworks activity.

The Police Department responded to 338 calls for service in the 24-hour period of the 4th of July. 142 of the calls for service were fireworks-related. Between the hours of 7 pm on the 4th of July, and 2 am of the 5th of July, the Police Department received 125 fireworks-only related calls for service. Thirty-five of the reporting parties refused to be involved in a citizen's arrest. Eighty of the calls were anonymous reporting parties, though some did give specific addresses they believed the fireworks were coming from. Ten of the calls were on-viewed by officers which resulted in the issuance of citations, as noted above.

Fireworks Calls for Service 4th of July 7 pm to 2 am Summary:

Total Fireworks Calls – 125

RP Refused involvement in a Citizen's Arrest- 35

RP was anonymous- 80

Officer witnessed/Citation- 10

The Fire Department handled 30 calls for service in the 24-hour period of the 4th of July. Nine of the 30 calls were grass or outside rubbish fires. None could be specifically attributed to fireworks.

Prior to enforcement activity, staff from the Police Department worked with Deputy City Attorney Kat Wellman to coordinate the prosecution of fireworks violations. Deputy City Attorney Wellman acted on behalf of the City and prosecuted each case. Nine cases have successfully been adjudicated and 3 cases are pending.

The Police Department was not able to provide any additional staff above the 4 designated officers for enforcement due to the number of Police Department resources committed to working the Tracy Chamber's celebration in the park, which includes a morning parade, all day activities in Lincoln Park, and nighttime fireworks show at Tracy High School.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact related to accepting this report. Costs for these services were absorbed within Police and Fire operating budgets.

RECOMMENDATION

It is the recommendation that the City Council accept the report regarding public safety's efforts in dealing with the use of illegal fireworks associated with the 4th of July.

Prepared by: Mark Duxbury, Police Captain

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

Approved by: Troy Brown, City Manager

AGENDA ITEM 5

REQUEST

PUBLIC HEARING TO APPROVE AN AMENDMENT TO THE SAN JOAQUIN COUNTY MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN (SJMSCP) DEVELOPMENT FEE, RESULTING IN AN INCREASE IN FEES FOR 2017

EXECUTIVE SUMMARY

In 2001 the City began participating in the newly established San Joaquin County Multi Species Habitat Conservation and Open Space Plan (SJMSCP). The fees for participation in the plan were established in 2001, and updated in 2005, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016. Pursuant to the land sales comparables and the Consumer Price Index, the fees are proposed to be updated for collection starting January 1, 2017. The revised fees represent an overall 14 percent increase from the fees collected in 2016.

DISCUSSION

The key purpose of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP or Plan), is to provide a strategy for balancing the need to conserve open space and permit development while protecting the region's agricultural economy and sensitive habitat. The fees collected as development occurs enable the protection of open space and habitat off site from the development sites themselves. The Plan stems from requirements under the Federal Endangered Species Act and the State Endangered Species Act.

Background

In 2001, City Council approved a resolution to establish the authority to collect a development fee for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). That fee was established in 2001, and subsequently updated in 2005, and annually 2007 through 2016.

The formula for updating the fee was categorized into three distinct components to better calculate an accurate fee per acre [FEE = Category A (acquisition) + Category B (assessment & enhancement) + Category C (management & admin)]. The final mitigation fees (Table 1) reflect true costs in each category and other real costs associated to fulfill the goals of the plan.

Every five years, San Joaquin Council of Governments (SJCOG, Inc. – the administrators of the SJMSCP) completes a financial analysis that examines and potentially updates the methodology used to calculate the fees. This year's analysis resulted in some refinements as described in each category below.

Category A (acquisition) - Comparables

This category is directly related to land valuation based on comparables which occur in

specific zones of the plan. This category is evaluated on a yearly basis by taking all qualified comparables in each zone, including SJCOG, Inc. easements, to set a weighted cost per acre using the same methodology as in the Financial Analysis Update in 2006 as amended in mid-2012 by the Habitat Technical Advisory Financial Sub-Committee and SJCOG Inc. The SJCOG, Inc. easements are evaluated using the appraised value of the property in the before condition included with the fee title sales of other property occurring in San Joaquin County. The final weighted cost per acre of each zone is calculated into a blended rate under Category A (acquisition) figure for each habitat type.

The criteria to determine valid comparables used in the weighted calculation are:

1. All SJCOG, Inc. transactions (fee title and appraised value of unencumbered property).
2. Sales not less than 40 acres.
3. Sales not greater than 640 acres (this has increased from 500 acres in previous years).
4. No parcels with vineyard or orchard (except SJCOG, Inc. transactions for special needs).
5. Must be land which would fulfill mitigation under the plan.
6. Comparable sales reviewed by the Habitat Technical Advisory Financial Sub-committee.
7. Not greater than 2 years old from the date of June 30th of each year with all acceptable comparables included (criteria 1-5). A minimum of 10 acceptable comparables are required for analysis. If the minimum of 10 transactions are not available, the time period will extend at 3 month intervals prior to the beginning date until 10 comparables are gathered.

The calculation of fees in this category now includes the following factors:

1. The update also changes the index used to bring the nominal values of the older comparable values in the 24-month set of comparables to current market values. The new approach better captures actual land market trends by changing the inflator from a flat percentage to an annual average representing the change in nominal land values represented by the prior two years of comparable transactions.
2. The 2016 update also revises the method for determining encumbered land sale values for use in the fee calculation model. Prior to this update, the model was limited to the rare resales of encumbered properties within the County. The 2016 update analysis determined that encumbered land sales, on average, represent 70% of the fee title value. Rather than apply an index to older encumbered property sales for use in the fee model, the 2016 revised model established the basis for calculating a weighted average cost of easement acquisition as a set 70% of fee title value.

3. Future fee calculations will be based on the term of the SJMSCP permits remaining (*e.g.*, the term of the permits is 50 years and in 2016 there are 36 years remaining). Rather than calculate the fee based on the static 50-year term of the permits, the new model takes into consideration time actually left on the permit and gives a better correlation of acres remaining to be acquired under the plan during the life of the plan.

The calculation results in an increase to the Agricultural/Natural Habitat type of Category A component from \$9,427.21 to \$10,413.67.

Category B (assessment & enhancement) - Consumer Price Index

This category is an average of the California Consumer Price Index (CPI), as reported by the California Department of Finance, for a 12 month period following a fiscal year (July – June) to keep up with inflation on a yearly basis. The CPI has been deemed appropriate regarding the cost of inflation for this category. The California CPI calculation increased 2.1%.

The changes in this category include refined cost factors for biological site assessment and preserve enhancement and management planning.

1. Refined costs to better reflect the enhancement and restoration requirements of the SJMSCP.
2. The updated analysis redistributes preserve acres across the habitat types to more accurately reflect the range and types of natural lands preserves described in the adopted SJMSCP rather than all in riparian habitat classification.

The calculation results in an increase of the Category B component to be \$3,426, up from last year's \$3,302.

Category C (management & administration) - Consumer Price Index

The changes to this category include refined monitoring costs and updated management and administration costs that are based on actual SJCOG, Inc. expenditures incurred in these categories:

1. The update includes refinement to costs anticipated to be incurred once the term of the permit expires and assumes that the post permit costs will be lower than costs incurred during the permit term as many of the monitoring, reporting, and administrative compliance costs are not required post-permit.
2. Updates annual management, administrative, legal and other consultant costs associated with administration of the SJMSCP.
3. This category is an average of the California Consumer Price Index (CPI), as reported by the California Department of Finance, for a 12 month period following a fiscal year (July – June) to keep up with inflation on a yearly basis. The CPI has been deemed an

appropriate regarding the cost of inflation for this category. The California CPI calculation increased 2.1%.

The calculation results in a decrease of the Category C component to be \$770.86, down from \$1,880.37 in 2016.

SJCOG, Inc. staff calculated the fees using the SJMSCP Financial Analysis formula model [FEE = Category A (acquisition) + Category B (assessment & enhancement) + Category C (management & Admin)] which is shown in Table 1 below. The overall result in the calculations was an increase in the fees from 2016 to 2017.

Table 1 – Mitigation Fees to Be Adopted for 2017

Habitat Type	Category A	Category B	Category C	Total Fee	Rounded Fee*
Open Space	\$6,806.00	\$1,713.00	\$385.94	\$8,904.94	\$8,905
AG/Natural	\$13,611.00	\$3,426.00	\$770.86	\$17,807.86	\$17,808
Vernal Pool (grasslands)	\$50,187.00	\$13,902.00	\$2,348.30	\$66,437.30	\$66,437
Vernal Pool (wetted)	\$49,273.00	\$58,159.00	\$2,305.42	\$109,737.42	\$109,737

*rounded to the nearest dollar to be adopted and in place by January 1, 2017

All of the land within and adjacent to the current City limits are classified as Open Space or AG/Natural, as there are no vernal pools near the City of Tracy. The current (2016) per-acre fees in the relevant categories are \$7,807 per acre for Open Space, and \$15,596 for AG/Natural.

Monitoring Plan Funding:

Along with the annual index adjustment, the SJMSCP is required to monitor the plan to address funding shortfalls as stated in Section 7.5.2.1 of the plan. SJCOG, Inc. shall undertake an internal review of the SJMSCP funding plan every three years to evaluate the adequacy of each funding source identified in the plan, identify existing or potential funding problems, and identify corrective measures, should they be needed in the event of actual or potential funding shortfalls. This will be reported to the permitting agencies for review in Annual Reports. A review of the Financial Analysis Plan, similar to the process undertaken in the 2006, 2011 and 2016 reviews, will occur every five years to ensure the adopted methodology is fulfilling the goals of the plan.

FISCAL IMPACT

This agenda item will not require any specific expenditure of funds. All of the fees collected with each project will be applied toward the SJMSCP.

STRATEGIC PLAN

This agenda item does not relate to any of the Council's Strategic Plans.

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and approve, by adoption of a resolution, the amended development fees for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan, as shown in the City Council resolution dated November 1, 2016.

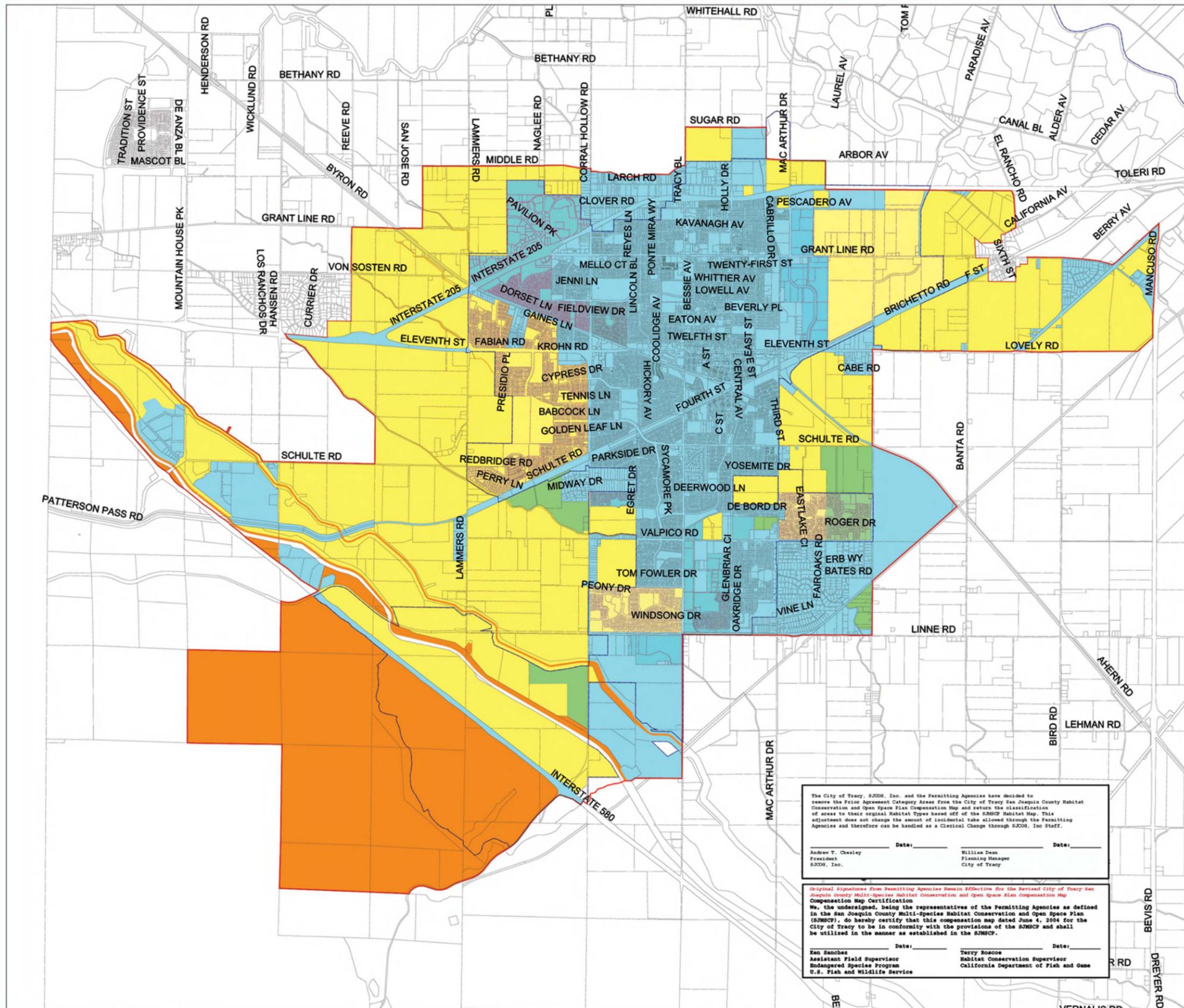
Prepared by: Victoria Lombardo, Senior Planner, City of Tracy
Steve Mayo, Senior Regional Planner, SJCOG, Inc.

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

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A – City of Tracy Land Category / Pay Zones Map



- LAND CATEGORY / PAY ZONES**
- CATEGORY A
EXEMPT
NO PAY ZONE
 - CATEGORY B
OTHER OPEN SPACES
PAY ZONE A
 - CATEGORY C
AG. HABITAT OPEN SPACES
PAY ZONE B (Agricultural)
 - CATEGORY D
NATURAL LANDS HABITAT
PAY ZONE B (Natural)
 - CATEGORY E
VERNAL POOLS
PAY ZONE C
- PLANNING AREA BOUNDARY**
- URBAN EXPANSION AREA
 - CITY LIMITS
 - PARCEL LINE

San Joaquin County Multi-Species Habitat Conservation and Open Space Plan

The City of Tracy, 2006, Inc. and the Permitting Agencies have decided to remove the Prior Agreement Category Areas from the City of Tracy San Joaquin County Habitat Conservation and Open Space Plan Compensation Map and return the classification of areas to their original Habitat Types based off of the SJMSCP Habitat Map. This adjustment does not change the amount of incidental take allowed through the Permitting Agencies and therefore can be handled as a Clerical Change through SJ006, Inc Staff.

Date: _____
Andrew T. Chesley
President
SJ006, Inc.

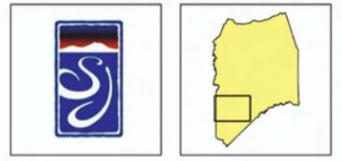
Date: _____
William Dean
Planning Manager
City of Tracy

Original Signatures from Permitting Agencies Remain Effective for the Revised City of Tracy San Joaquin County Multi-Species Habitat Conservation and Open Space Plan Compensation Map

We, the undersigned, being the representatives of the Permitting Agencies as defined in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), do hereby certify that this compensation map dated June 4, 2004 for the City of Tracy to be in conformity with the provisions of the SJMSCP and shall be utilized in the manner as established in the SJMSCP.

Date: _____
Ken Sanchez
Assistant Field Supervisor
Endangered Species Program
U.S. Fish and Wildlife Service

Date: _____
Terry Roscoe
Habitat Conservation Supervisor
California Department of Fish and Game



CITY OF TRACY COMPENSATION MAP (REVISED MARCH 2006)

San Joaquin Council of Governments
555 East Weber Avenue
Stockton, CA 95202

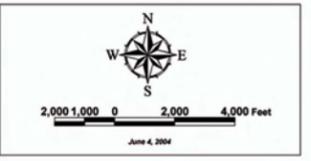


Exhibit A

2016 Updated Habitat Fees

Habitat Type	Fee Per Acre
Multi-Purpose Open Space	\$ 8,905
Natural	\$ 17,808
Agriculture	\$ 17,808
Vernal Pool - uplands	\$ 66,437
Vernal Pool - wetted	\$ 109,737

RESOLUTION 2016-_____

ADOPTING AMENDED DEVELOPMENT FEES FOR THE SAN JOAQUIN COUNTY MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN (SJMSCP)

WHEREAS, The City Council of the City of Tracy adopted an (Ordinance / Resolution) establishing the authority for collection of a Development Fee for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) for all new developments pursuant to the SJMSCP within the City of Tracy, and

WHEREAS, A "Fee Study" dated July 16, 2001, was prepared which analyzed and identified the costs, funding, and cost-benefit of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan, and

WHEREAS, The purpose of the SJMSCP Development Fee is to finance the goals and objectives of the SJMSCP that include, but are not limited to preserve land acquisition, preserve enhancement, land management, and administration that compensate for such lands lost as a result of future development in the City of Tracy and in San Joaquin County, and

WHEREAS, After considering the Fee Study and the testimony received at the public hearing, the Tracy City Council approved said report; and further found that the future development in the City of Tracy will need to compensate cumulative impacts to threatened, endangered, rare and unlisted SJMSCP Covered Species and other wildlife and compensation for some non-wildlife related impacts to recreation, agriculture, scenic values and other beneficial Open Space uses, and

WHEREAS, Updated Fee Studies which analyzed and identified the costs and funding of the SJMSCP were adopted in 2011 and 2016,, and the Tracy City Council approved updated SJMSCP Development Fees annually since 2006, and

WHEREAS, The current SJMSCP Development Fee for open space lands is \$7,807 an acre for the year 2016 due to annual adjustments consistent with the California Construction Cost Index (CCCI), and

WHEREAS, The current SJMSCP Development Fee for natural lands and agricultural lands is \$15,596 an acre for the year 2016 due to annual adjustments consistent with the California Construction Cost Index (CCCI), and

WHEREAS, The updated fee per acre for open space lands as adjusted pursuant to land sale comparables and the Consumer Price Index for the year 2017 is \$8,905, and

WHEREAS, The updated fee per acre for natural lands and agricultural lands as adjusted pursuant to land sale comparables and the Consumer Price Index for the year 2017 is \$17,808, and

WHEREAS, To ensure that the SJMSCP development fees keep pace with inflation, annual adjustments, based on the method set forth in this resolution, shall be made to the fees annually, and

WHEREAS, The Assessment and Enhancements and Management and Administration components shall be adjusted annually based on the Consumer Price Index (CPI). The

Acquisition Cost component shall be adjusted annually based on a minimum of ten comparable agricultural sales within the previous two years. If ten acceptable comparables are not found, then the two year window will increase in three month intervals until ten acceptable comparable agricultural sales are found. The comparable agricultural sales shall meet the following criteria: over forty acres in size, but under 640 acres in size, no orchard or vineyard properties shall be included, and all comparable sales must be on land that is consistent as mitigation land under the SJMSCP. In addition, all SJCOG, Inc. transactions regardless of size or sale type will be included in the comparables, and

WHEREAS, The Updated Fee Study with the SJMSCP and the fee amendment were available for public inspection and review in the office of the City Clerk for more than 10 days prior to the date of this Public Hearing;

NOW, THEREFORE, BE IT RESOLVED that:

1. The City Council finds and declares that the purposes and uses of the Development Fee, and the determination of the reasonable relationship between the fees' uses and the type of development project on which the fees are imposed, are all established in Resolutions 2001-050 and 2007-021, and remain valid, and the City Council therefore adopts such determinations.
2. The City Council finds and declares that since adoption of Resolutions 2001-050 and 2007-021, the cost of land has changed in San Joaquin County, and that in order to maintain the reasonable relationship established by Resolutions 2001-050 and 2007-021, it is necessary to adjust the Development Fee for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan.
3. The City Council adopts a Development Fee for open space in the amount of \$8,905 an acre, as adjusted pursuant to land sale comparables and the Consumer Price Index, as shown in Exhibit A attached hereto.
4. The City Council adopts a Development Fee for natural lands and agricultural land in the amount of \$17,808 an acre as adjusted pursuant to land sale comparables and the Consumer Price Index, as shown in Exhibit A attached hereto.
5. The City Council adopts a Development Fee for vernal pool habitat and multi-purpose open space conversion in an amount consistent with the table identified in Exhibit "A" and attached hereto.
6. The Fee provided in this resolution shall be effective on January 1, 2017, which is at least sixty days after the adoption of this resolution.

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

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

MAYOR

ATTEST:

CITY CLERK