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9 Attorneys for Cross-Complainants
SURLAND LLC, a California limited liability company
10 SURLAND COMMUNITIES, LLC, a California
limited liability company, and ELLIS VILLAGE, LLC,
11 a California limited liability company

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN JOAQUIN
15

16 CITY OF TRACY, a municipal corporation,
17 Plaintiff,
18 v.
19 SURLAND COMMUNITIES, LLC, a
California limited liability Company and
20 DOES 1 through 20, inclusive,
21 Defendants.

22
23 SURLAND LLC, a California limited
liability company; SURLAND
24 COMMUNITIES, LLC, a California limited
liability company; and ELLIS VILLAGE,
25 LLC, a California limited liability company,
26 Cross-Complainants,

27 v.
28 CITY OF TRACY; CITY COUNCIL OF THE

Case No. STK-CV-UBC-2024-0002338

CROSS-COMPLAINT FOR:

- 1) BREACH OF CONTRACT
- 2) QUANTUM MERUIT
- 3) UNJUST ENRICHMENT
- 4) INVERSE CONDEMNATION
- 5) DECLARATORY AND INJUNCTIVE RELIEF
- 6) QUIET TITLE
- 7) CONSTRUCTIVE TRUST
- 8) SLANDER OF TITLE
- 9) CANCELLATION OF WRITTEN INSTRUMENT PURSUANT TO CAL. CIV. CODE SEC. 3412

Action Filed: February 26, 2024
Trial Date: None Set

1 CITY OF TRACY and ROES 1 through 100,
2 inclusive,

3 Cross-Defendants.

4 Cross-Complainants Surland Communities, Surland LLC, Surland Communities,
5 LLC, and Ellis Village, LLC, upon information and belief, alleges as follows:

6 **THE PARTIES**

7 **A. Cross-Complainants.**

8 1. Cross-Complainant SURLAND LLC ("Surland LLC") is a limited liability
9 company, duly organized and existing under the laws of the State of California, with its principal
10 place of business located in the City of Tracy, California.

11 2. Cross-Complainant SURLAND COMMUNITIES, LLC ("Surland
12 Communities") is a limited liability company, duly organized and existing under the laws of the
13 State of California, with its principal place of business located in the City of Tracy, California.

14 3. Cross-Complainant ELLIS VILLAGE, LLC ("Ellis Village") is a limited
15 liability company, duly organized and existing under the laws of the State of California, with its
16 principal place of business located in the City of Tracy, California. Ellis Village has an ownership
17 interest in and is the developer of certain real property located within the current sphere of
18 influence of the City of Tracy as described below.

19 4. Collectively, Surland LLC and Surland Communities are referred to herein
20 as "Surland" or "Cross-Complaints".

21 **B. Cross-Defendants.**

22 5. Cross-Defendant CITY OF TRACY (the "City") is, and at all relevant times
23 was, a general law city duly organized and existing under and pursuant to the laws of the State of
24 California.

25 6. Cross-Defendant THE CITY COUNCIL OF THE CITY OF TRACY (the
26 "City Council") is, and at all relevant times was, the duly organized legislative body of the City
27 existing under and by virtue of the laws of the State of California. The City Council is, and at all
28 relevant times was, the local legislative body charged with and responsible for enacting and

1 **FACTUAL ALLEGATIONS**

2 **The Development Agreement between Surland and the City**

3 10. This lawsuit arises from the City’s breaches and other wrongful actions with
4 respect to Surland’s contractual and property rights under certain agreements with the City, as
5 more specifically described below.

6 11. A development agreement is a legislatively approved contract between a
7 property owner and/or developer and a local government which sets forth the parties’ respective
8 obligations, as well as the standards and conditions, that will govern the development of certain
9 property subject to the agreement. (See, Govt. Code §§ 65804-65869.5). A development
10 agreement is intended to provide mutual, respective assurances to the parties, including an
11 assurance to the developer that upon approval of the project, the developer may proceed in
12 accordance with existing policies, rules, and regulations and that said policies, rules, and
13 regulations will not become modified or altered during the pendency of the project.

14 12. In January 2009, the City Council adopted Ordinance 1131, approving a
15 Development Agreement with Surland (the “Original DA”). Shortly thereafter, the City and
16 Surland executed and entered into the Original DA.

17 13. Following litigation not relevant to this Complaint, the Original DA was
18 found to be invalid, and as a result, on or about April 8, 2013, Surland Communities and the City
19 entered into an “Amended and Restated Development Agreement” (“Development Agreement” or
20 “2013 DA”) for the 321-acre Ellis Specific Plan Area in Tracy, California which replaced the
21 Original DA. At the time the City and Surland entered into the 2013 DA, Surland owned or had an
22 enforceable right to purchase all of the property in the Ellis Specific Plan Area and therefore, all of
23 the real property subject to the 2013 DA. A true and correct copy of the 2013 DA is attached
24 hereto as **Exhibit 1**.

25 14. As set forth in the 2013 DA, “[t]he establishment of a family-oriented swim
26 center is one of the City’s priorities, has been contemplated for years, and is overwhelmingly
27 supported by the Tracy community. Yet City funding for such an effort is lacking.” (2013 DA, ¶
28 C.) As a result, Surland “a local developer with a long track record of award-winning development

1 in the City” proposed, and the City agreed, that in consideration for Surland being eligible for a set
2 number of Residential Growth Allotments, Surland would provide the City extensive community
3 benefits, including the dedication of 16 acres of land (at no cost to the City) and payment of \$10
4 million towards the construction of an aquatic swim center. (*Id.*)

5 15. Surland and the City subsequently entered into the First Amendment to the
6 2013 DA (the “First Amendment”) which was approved by Ordinance 1194. The First
7 Amendment extended the deadline for Surland to make a payment for developing the swim center
8 and for the City to accept the land dedication for this swim center. (First Amendment, ¶ B.) A true
9 and correct copy of the First Amendment is attached hereto as Exhibit 2.

10 16. On or about May 3, 2018, the City and Surland Communities entered into a
11 “Second Amendment to Amended and Restated Development Agreement” (“Second
12 Amendment”), approved by Ordinance 1253, which made certain further amendments to the
13 Development Agreement. The Second Amendment replaced several sections of the 2013 DA,
14 including Section 1.07. Under the Second Amendment, Section 1.07(b)(ii) and (h), as amended,
15 described the circumstances and procedures under which Surland could propose, and the City
16 could consider (but was not required to approve) amending the legal description of the property
17 subject to the 2013 DA to include property that Surland acquired after the 2013 DA’s approval
18 and execution. A true and correct copy of the Second Amendment is attached hereto as Exhibit 3.

19 17. The Second Amended DA was later invalidated by judicial action via writ
20 of mandate on the grounds that, *inter alia*, the procedure set forth in Sections 1.07(b)(ii) and (h)
21 was not permissible under Government Code section 65865 because it purported to allow property
22 to be added to the 2013 DA which Surland did not own. As a result, the City was ordered to set
23 aside, rescind, and vacate the Second Amendment and Ordinance No. 1253 adopting it (Case No.
24 STK-CV-UWM-2018-5531, upheld on appeal, Third District Case No. C093383 (unpublished).)
25 A Return of the Writ was lodged with the Trial Court and the Writ dissolved. As a consequence,
26 the operative agreement is the 2013 DA, as amended by the First Amendment.

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28

1 **The Reimbursement Agreement**

2 18. On or about November 27, 2018, the City and Surland, LLC entered into a
3 Master Program Improvements Credit and Reimbursement Agreement (“Reimbursement
4 Agreement”) by which Surland was to be reimbursed for the installation and construction of
5 public improvements that it was not otherwise obligated or required to provide under the 2013
6 DA. A true and correct copy of the Reimbursement Agreement is attached hereto as **Exhibit 4**.
7 The City directed and controlled the City process leading to the City’s approval of the
8 Reimbursement Agreement.

9 19. Although the Reimbursement Agreement was entered into after the City and
10 Surland entered into the Second Amendment, negotiations and discussions regarding the
11 Reimbursement Agreement predate the Second Amendment and were independent of the Second
12 Amendment process. Additionally, reimbursement obligations under the Reimbursement
13 Agreement are separate and distinct from those set forth in the Second Amendment. The Writ of
14 Mandate invalidating the Second Amendment did not invalidate or otherwise address the
15 Reimbursement Agreement. Furthermore, the Petition for Writ of Mandate did not present a cause
16 of action or otherwise mention the Reimbursement Agreement.

17 20. Despite the fact that the Reimbursement Agreement is separate and distinct
18 from the Second Amendment, and despite the fact the City and Surland began negotiating the
19 terms of the Reimbursement Agreement well in advance of the Second Amendment, and despite
20 the fact that there has been no judicial or other action invalidating the Reimbursement Agreement,
21 the City asserts invalidating the Second Amendment also requires invalidation of the
22 Reimbursement Agreement.

23 21. The City has also, and in addition, taken the position that the
24 Reimbursement Agreement was not properly authorized by the City Council, notwithstanding the
25 fact that it was signed by the City Manager, approved as to form by the City Attorney, and attested
26 by the City Clerk. Also, the City and not Surland, directed and controlled the procedure to
27 approve and execute the Reimbursement Agreement. Surland is informed and believes, and on that
28

1 basis alleges, that the City's custom and practice is to enter into such agreements without formal
2 action of the City Council, which action is not legally required.

3 22. In correspondence dated February 9, 2023, and March 27, 2023, the City set
4 forth its position to Surland that, for the reasons described in paragraphs 20 and 21 above, the
5 Reimbursement Agreement is null and void and that Surland is not entitled to reimbursement for
6 the substantial sums it had expended under the auspices of that agreement. The City has not taken
7 any formal effort to rescind the Reimbursement Agreement and the time for performance under
8 the Reimbursement Agreement has not yet ripened. Thus, the City is engaged in an ongoing
9 anticipatory repudiation of the Reimbursement Agreement, the City's performance under which is
10 not yet due.

11 23. Surland has expended substantial sums in constructing public improvements
12 that it was not otherwise obligated or required to provide in reliance on the validity and
13 enforceability of the Reimbursement Agreement and the City's representations that Surland would
14 be credited those amounts in fee reimbursements. The City approved construction drawings and
15 designs for the public improvements, inspected the construction of the public improvements to
16 assure the improvements were constructed in accordance with the City approved construction
17 drawings and designs, and then accepted the improvements as public improvements. These public
18 improvements are in use for the benefit of the general public today.

19 24. The City has been unjustly enriched by the extensive public improvements
20 Surland installed at its own expense in reliance on the Reimbursement Agreement.

21 25. The City has also engaged in an ongoing repudiation of its agreement with
22 Surland that amounts expended by Surland to design an aquatic center for the City would count
23 against Surland's \$10 million contribution as called for in the Second Amended DA. Surland
24 expended more than \$1.3 million on design and related costs for the aquatic center, in reasonable
25 reliance on its agreement with the City, costs it would not have incurred had it the City not agreed
26 upon the amended swim center obligations as set forth in the Second Amended DA. Surland
27 expended sums in reliance on the City's assurance that it would be reimbursed for these expenses,
28 as well as the City's review and approval of its expenditures for the aquatic center design as they

1 were incurred. Surland operated as a project manager at no cost to the City, and at the instruction
2 of the City, reimbursed consultants and vendors in reliance on the City reimbursing Surland for
3 making these payments.

4 **The Irrevocable Offer of Dedication of Fee Interest**

5 26. Pursuant to the Second Amendment, in or about January of 2021, Surland
6 provided the City with a signed and notarized form Irrevocable Offer of Dedication of Fee Interest
7 (“IOD”) offering to dedicate a piece of real property for the public purpose of community park
8 land for an aquatic water park more particularly described in **Exhibit 5** attached hereto and
9 incorporated herein by this reference (“IOD Property”).

10 27. Under the Development Agreement, the City previously had until
11 September 15, 2015, to accept a dedication from Surland for the aquatic water park, which the
12 City failed to do. Thereafter, the parties entered into an agreement which required the City to
13 accept this dedication on or before May 8, 2019, which again, the City failed to do. Due to the
14 City’s failure to timely accept the two prior IODs, the City no longer had a mechanism to secure
15 the land for the aquatic water park. The City therefore raised the need for a new IOD during the
16 parties’ ongoing discussions regarding Surland’s duty to design and construct the aquatic water
17 park as required by the Second Amendment.

18 28. For example, on September 14, 2020 (before the Second Amendment was
19 found to be invalid), the City Attorney submitted an email to Surland’s counsel which set forth
20 eight (8) procedures that the City maintained Surland was obligated to comply with in order to
21 continue proceeding with the Aquatic Center project under the Second Amendment. One of these
22 procedures was to execute a new IOD for the aquatic park.

23 29. Indeed, because Surland had completed its obligations under the 2013 DA
24 and the City had allowed the two prior IODs to lapse, the Second Amendment was the only
25 remaining vehicle for the City to compel this offer of dedication.

26 30. The IOD submitted by Surland in January of 2021 included a certification
27 for the City to countersign, indicating its immediate acceptance of the IOD. The certification was
28 already signed and notarized by Surland when it was presented to the City. Specifically, the

1 Certification sent by Surland to the City stated, in relevant part: “This is to certify that the interest
2 in real property conveyed by this Irrevocable Offer of Dedication (IOD) is hereby accepted at this
3 time by the undersigned City Clerk of the City of Tracy...” This was a material term of the IOD
4 because recording the IOD prior to acceptance by the City would burden Surland with owning the
5 IOD Property without being able to fully enjoy the benefits of title to that property. Indeed, absent
6 acceptance prior to recordation consistent with the express terms of the IOD, the City could later
7 accept it and thus divest Surland of title, while in the interim Surland was obligated to maintain,
8 insure, and pay taxes on the IOD Property. Surland was left with none of the benefits but all of
9 the burden of property ownership.

10 31. Upon information and belief, the City unilaterally altered the Certification
11 without Surland’s knowledge or consent, and contrary to the express terms of the IOD, to state
12 that the IOD “is hereby **not** accepted at this time by the undersigned City Clerk of the City of
13 Tracy...” (emphasis added.) The City Clerk signed the altered certification on or about January
14 28, 2021, and the City wrongfully recorded the IOD the same day. A true and correct copy of the
15 IOD as altered by the City is attached hereto as **Exhibit 6**.

16 32. Had the City desired to not immediately accept the IOD, the proper course
17 would have been to ask Surland for a new IOD that allowed the City to not accept it immediately,
18 rather than to substantively alter a document that had already been signed and notarized as the
19 IOD was.

20 33. On or about July 5, 2023, over two years later, the City wrongfully accepted
21 the improperly modified IOD over Surland’s objections that the certification on the IOD had been
22 improperly and unilaterally modified, and was void ab initio. At the time the City improperly
23 accepted the modified IOD, the City was acting under the advice and guidance of City Attorney
24 Bijal Patel who was not licensed to practice law because she had been suspended by the State Bar.
25 Despite this demand, the City has failed and refused to acknowledge the wrongful recordation and
26 later acceptance of the IOD, or take actions to return legal title to the property described therein to
27 Surland.

28

1 34. Given the City’s position that the Second Amendment and all actions taken
2 pursuant to it are void ab initio, and because the IOD was submitted to the City pursuant to the
3 Second Amendment, the IOD should also be considered void ab initio. Instead, the City is
4 attempting to selectively and inconsistently enforce certain agreements to the exclusion of others
5 on the grounds that the agreement(s) in question arise under and/or were entered into pursuant to
6 the Second Amendment. In so doing, the City has damaged and will continue to damage Surland
7 in an amount to be proven at trial.

8 **Compliance with Procedural Requirements**

9 35. Surland has performed all conditions precedent to initiating this lawsuit
10 against Cross-Defendants.

11 36. On or about December 20, 2023, Surland presented the City with a Claim
12 for Damages pursuant to Government Code section 910, the Government Tort Claims Act (the
13 “Claim”), which sought damages arising from the City’s repudiation and anticipatory breach of the
14 Reimbursement Agreement between Surland and the City as well as the City’s unlawful
15 acceptance of the IOD which the City unilaterally modified without Surland’s knowledge or
16 consent before recording it with the County. The City rejected the Claim by letter dated January
17 24, 2024.

18 **FIRST CAUSE OF ACTION**

19 **(Breach of Contract against All Cross-Defendants and ROES 1-100)**

20 37. Surland realleges and incorporates herein by this reference each and every
21 allegation in the foregoing paragraphs, as though fully set forth herein.

22 38. On or about November 27, 2018, the City and Surland, LLC entered into
23 the Reimbursement Agreement by which Surland was to be reimbursed for installing and
24 constructing public improvements that it was not otherwise obligated or required to provide.

25 39. Although the Reimbursement Agreement was entered into after the City and
26 Surland entered into the Second Amendment, negotiations and discussions regarding the
27 Reimbursement Agreement predate the Second Amendment and were independent of the Second
28

1 Amendment process. Additionally, reimbursement obligations under the Reimbursement
2 Agreement are separate and distinct from those set forth in the Second Amendment.

3 40. Despite the fact that the Reimbursement Agreement is separate and distinct
4 from the Second Amendment, and despite the fact that the City and Surland began negotiating the
5 terms of the Reimbursement Agreement well in advance of the Second Amendment, and despite
6 the fact that there has been no judicial or other action invalidating the Reimbursement Agreement,
7 the City has taken the position that the invalidation of the Second Amendment also requires
8 invalidation of the Reimbursement Agreement. The City has also taken the position that the
9 Reimbursement Agreement was not properly authorized by the City Council, notwithstanding the
10 fact that it was signed by the City Manager, approved as to form by the City Attorney, and attested
11 by the City Clerk.

12 41. As of February 2023, the City has taken the position that the
13 Reimbursement Agreement is null and void and that Surland is not entitled to reimbursement for
14 the substantial sums it had expended in reliance on the validity and enforceability of that
15 agreement. The City has not taken any formal effort to rescind the Reimbursement Agreement and
16 the time for performance under the Reimbursement Agreement has not yet ripened. Thus, the City
17 is engaged in an ongoing anticipatory repudiation of the Reimbursement Agreement.

18 42. Surland has expended substantial sums in constructing public improvements
19 that it was not otherwise obligated or required to provide in reliance on this agreement and the
20 City's representations that Surland would be credited those amounts in fee reimbursements. To
21 the extent the City intends to not compensate Surland for those funds, it has breached the
22 Reimbursement Agreement.

23 WHEREFORE, Cross-Complainants pray for relief as set forth below.

24 **SECOND CAUSE OF ACTION**

25 **(Quantum Meruit against All Cross-Defendants and ROES 1-25)**

26 43. Surland realleges and incorporates herein by this reference each and every
27 allegation in the foregoing paragraphs, as though fully set forth herein.

28

1 44. Under the Reimbursement Agreement, Surland and the City had an express
2 agreement for Surland to design and construct certain public improvements Surland was not
3 required to install, and to be reimbursed by the City for those improvements. As part of this
4 process, Surland has expended substantial sums in constructing public improvements that it was
5 not otherwise obligated or required to provide in reliance on this agreement and the City's
6 representations that Surland would be credited those amounts in fee reimbursements. Those
7 amounts will be established according to proof at trial.

8 45. In addition, Surland has expended more than \$1.3 million on design and
9 related costs for the aquatic center project in reliance on the City's representations and assurance
10 that it would reimburse Surland for those expenses, all to the City's benefit and Surland's
11 detriment. Surland consulted the City throughout the design process for the aquatic center and the
12 City approved of Surland's proceeding with that work.

13 46. At the time this work was performed, the cost for such work had a
14 reasonable value of approximately \$1.3 million. The City is refusing to credit Surland for the
15 value of the design work on the aquatic center.

16 47. Surland has made a demand upon Cross-Defendants for the sums past due
17 and owing but Cross-Defendants have failed and refused to pay such sums.

18 WHEREFORE, Cross-Complainants pray for relief as set forth below.

19 **THIRD CAUSE OF ACTION**

20 **(Unjust Enrichment against All Cross-Defendants and ROES 1-100)**

21 48. Surland realleges and incorporates herein by this reference each and every
22 allegation in the foregoing paragraphs, as though fully set forth herein.

23 49. As a result of the actions and omissions described herein, Cross-Defendants
24 have been unjustly enriched. Said unjust enrichment includes, but is not limited to, any profits,
25 revenues, or other financial benefit or assets acquired as a result of Cross-Defendants' attempt to
26 repudiate the Reimbursement Agreement. Cross-Defendants have been unjustly enriched in an
27 amount to be proven at trial.

28

1 50. The unjust enrichment of Cross-Defendants comes at the expense, and to
2 the detriment, of Surland. It is unconscionable and unjust to allow Cross-Defendants to retain the
3 amount of their unjust enrichment, and it is equally unconscionable and unjust to allow Surland to
4 bear the burden of the losses caused by the actions and omissions of Cross-Defendants.

5 WHEREFORE, Cross-Complainants pray for relief as set forth below.

6 **FOURTH CAUSE OF ACTION**

7 **(Inverse Condemnation against All Cross-Defendants and ROES 1-100)**

8 51. Surland realleges and incorporates herein by reference each and every
9 allegation in the foregoing paragraphs, as though fully set forth herein.

10 52. Ellis Village, at all relevant times, had an ownership interest in the IOD
11 Property.

12 53. The City is, and at all relevant times was, a charter city duly organized and
13 existing under its charter, and pursuant to the laws of the State of California, which exercises land
14 use authority under its constitutional police power and also has the power of eminent domain.

15 54. The City’s unilateral modification and subsequent recording and acceptance
16 of the IOD constitutes and will continue to constitute a taking by Cross-Defendants of Cross-
17 Complainants’ property rights.

18 55. If Cross-Defendants’ unlawful action in modifying and recording the IOD is
19 not set aside, and legal title to the IOD Property returned, Cross-Complainants will further suffer a
20 permanent taking of their property.

21 56. As a direct and proximate result of the improper modification and recording
22 of the IOD, Cross-Complainants have suffered an unlawful and unconstitutional taking of their
23 property rights without just compensation, and will continue to suffer a variety of damages in
24 violation of Surland’s rights under the Fifth Amendment to the U.S. Constitution and Article I
25 Section 19 of the California State Constitution, including but not limited to, the diminution in
26 value of the IOD Property, loss of use of the IOD Property, loss of access to the IOD Property,
27 costs to independently examine and evaluate the damage caused by Cross-Defendants as a result
28 of the unilateral modification to the IOD, costs of legal counsel, and incidental expenses. (U.S.

1 Const. amend. V; Cal. Const., art. I, § 19.) As a result, Surland is entitled to just compensation in
2 the form of monetary damages in an amount to be determined at trial.

3 57. The above described damage to Cross-Complainants' property was
4 proximately and substantially caused by Cross-Defendants due to their improper modification and
5 subsequent recording of the IOD.

6 58. In addition, Cross-Defendants have taken Surland's property in the form of
7 sums Surland expended in reasonable reliance on the Reimbursement Agreement in installing
8 public improvements Surland was not otherwise obligated to fund or install, as well as the City's
9 agreement that design costs towards the aquatic center funded by Surland would be credited
10 against Surland's \$10 million obligation towards the center.

11 59. As a direct and proximate result of the City's refusal to credit Surland for
12 the incurred sums, Cross-Complainants have suffered an unlawful and unconstitutional taking of
13 their property rights without just compensation, and will continue to suffer a variety of damages in
14 violation of Surland's rights under the Fifth Amendment to the U.S. Constitution and Article I
15 Section 19 of the California State Constitution, including but not limited to funds it expended to
16 benefit the City as set forth above, costs of legal counsel, and incidental expenses. (U.S. Const.
17 amend. V; Cal. Const., art. I, § 19.) As a result, Surland is entitled to just compensation in the
18 form of monetary damages in an amount to be determined at trial.

19 60. To date, Surland has not received or been offered just, or any, compensation
20 on account of the above-described damage to its property.

21 61. Surland has incurred and will continue to incur attorney, appraisal, and/or
22 expert fees for the prosecution of this action, which fees are recoverable under the authority of
23 Code of Civil Procedure section 1036.

24 WHEREFORE, Cross-Complainants pray for relief as set forth below.

25 **FIFTH CAUSE OF ACTION**
26 **(Declaratory and Injunctive Relief Against All Cross-Defendants and ROES 1-100)**

27 62. Surland realleges and incorporates herein by this reference each and every
28 allegation in the foregoing paragraphs, as though fully set forth herein.

1 63. An actual controversy has arisen and now exists between Surland and
2 Cross-Defendants concerning the accuracy, validity and sufficiency of the Reimbursement
3 Agreement and the parties' rights and duties with respect thereto. As set forth more fully above,
4 Surland contends that Cross-Defendants, and each of them, have an obligation and duty to comply
5 with all terms of the Reimbursement Agreement, and that Cross-Defendants, and each of them,
6 have failed to do so.

7 64. Surland is informed and believes, and on that basis alleges, that Cross-
8 Defendants contend that the Reimbursement Agreement is null and void. Surland contends that
9 the Reimbursement Agreement remains valid and enforceable. Therefore, a judicial declaration as
10 to the legality and validity of the Reimbursement Agreement and all related actions is necessary
11 and appropriate to determine the respective rights and duties of the parties.

12 65. An actual controversy has also arisen between Surland and the City
13 concerning the accuracy, validity, and sufficiency of the IOD submitted by Surland on January 21,
14 2021. Surland contends (i) that if the City has taken the position that all agreements entered into
15 and/or arising under the Second Amendment are void ab initio, this should also render the IOD
16 void ab initio as well, and further contends that (ii) the IOD is void and invalid because its terms
17 were unilaterally and without Surland's consent changed by the City prior to recordation

18 66. Surland is informed and believes, and on that basis alleges, that Cross-
19 Defendants contend that the IOD is separate and distinct from the Second Amendment. Therefore,
20 a judicial declaration as to the legality and validity of the IOD and all related actions is necessary
21 and appropriate to determine the respective rights and duties of the parties.

22 67. Additionally, absent immediate intervention by this Court, Surland will
23 suffer imminent and irreparable injury as a result of the City's wrongful acceptance of the
24 improperly modified IOD including, but not limited to, the slander of Plaintiff Ellis Village's title
25 to the IOD Property. Cross-Defendants by comparison, will suffer little or no harm if this Court
26 grants the relief requested herein. Indeed, Cross-Defendants will incur no new or additional
27 obligations, in that they will be required to do only what they are already obligated by law to do.

28

1 68. Surland has no plain, speedy and adequate remedy in the ordinary course of
2 law, other than the relief sought herein. Therefore, Surland requests that this Court temporarily
3 and/or preliminarily and permanently enjoin the City from taking any action in furtherance of
4 implementation and enforcement of the IOD.

5 WHEREFORE, Cross-Complainants pray for relief as set forth below.

6 **SIXTH CAUSE OF ACTION**

7 **(Quiet Title on Behalf of Ellis Village Against the City and ROES 1-100)**

8 69. Surland realleges and incorporates herein by this reference each and every
9 allegation in the foregoing paragraphs, as though fully set forth herein.

10 70. Surland is informed and believes that prior to purporting to accept and
11 record the IOD as set forth above, someone at the City materially changed the document after it
12 had been signed and notarized in derogation of California law. Alternatively, the IOD is subject to
13 being set aside as arising from the Second Amendment under Cross-Defendants' theory as to the
14 invalidation of that document.

15 71. As such, the IOD as altered is void ab initio and cannot convey good title to
16 the IOD Property. Accordingly, title to the IOD Property is properly held by Ellis Village and not
17 the City.

18 72. Ellis Village seeks to quiet title against the City and Roes 1-100, and each
19 of them. The claims of the City and Roes 1-100 are without any validity and such Cross-
20 Defendants have no right, title, estate, lien, or interest whatsoever in the IOD Property.

21 73. Ellis Village seeks to quiet title against the City and Roes 1-100, and each
22 of them, as of the date this complaint is filed.

23 WHEREFORE, Cross-Complainants pray for relief as set forth below.

24 **SEVENTH CAUSE OF ACTION**

25 **(Constructive Trust on Behalf of Ellis Village Against the City and ROES 1-100)**

26 74. Surland realleges and incorporates herein by this reference each and every
27 allegation in the foregoing paragraphs, as though fully set forth herein.

1 75. Surland is informed and believes that prior to purporting to accept and
2 record the IOD as set forth above, someone at the City materially changed the document after it
3 had been signed and notarized in derogation of California law. Alternatively, the IOD is subject to
4 being set aside as arising from the Second Amendment under Cross-Defendants' theory as to the
5 invalidation of that document.

6 76. As such, the IOD as altered is void ab initio and cannot convey good title to
7 the IOD Property. Accordingly, beneficial title to the IOD Property is properly held by Ellis
8 Village and not the City.

9 77. Despite Ellis Village's repeated demands, Cross-Defendants, and each of
10 them, have failed and refused to correct and/or rescind the IOD.

11 78. Cross-Defendants' refusal to correct and/or rescind the IOD was, and is,
12 wrongful, as Ellis Village is the rightful owner of the IOD Property.

13 79. By virtue of Cross-Defendants' wrongful acts and Ellis Village's rightful
14 ownership of the IOD Property, Cross-Defendants hold legal title to the IOD Property as
15 constructive trustees for the benefit of Ellis Village.

16 WHEREFORE, Cross-Complainants pray for relief as set forth below.

17 **EIGHTH CAUSE OF ACTION**

18 **(Slander of Title on Behalf of Ellis Village Against the City and ROES 1-100)**

19 80. Surland realleges and incorporates herein by this reference each and every
20 allegation in the foregoing paragraphs, as though fully set forth herein.

21 81. Surland is informed and believes that prior to purporting to accept and
22 record the IOD as set forth above, someone at the City materially changed the document after it
23 had been signed and notarized in derogation of California law. Alternatively, the IOD is subject to
24 being set aside as arising from the Second Amendment under Cross-Defendants' theory as to the
25 invalidation of that document.

26 82. As such, the IOD as altered is void ab initio and cannot convey good title to
27 the IOD Property. Accordingly, title to the IOD Property is properly held by Ellis Village and not
28 the City. Cross-Defendants have slandered, and continue to slander, Plaintiff Ellis Village's title to

1 the IOD Property in that they, and each of them, intentionally and without justification, claim an
2 interest in the IOD Property when in fact, they, and each of them, did not and do not have any
3 rights therein. In so doing, Cross-Defendants, and each of them, have cast doubt on Ellis Village's
4 ownership of the IOD Property in reckless disregard of the truth or falsity as to whether Ellis
5 Village owns the IOD Property.

6 83. Plaintiff Ellis Village has been damaged by the slander of title in that their
7 title to the IOD Property has been cast in doubt and the marketability, salability, and value has
8 been impaired.

9 84. As the proximate result of Cross-Defendants' wrongful acts, Ellis Village
10 was required to retain counsel to bring an action to clear title to the IOD Property. Eillis Village is
11 entitled to recover all attorney fees and costs incurred in bringing the action.

12 WHEREFORE, Cross-Complainants pray for relief as set forth below.

13 **NINTH CAUSE OF ACTION**

14 **(Cancellation of Instrument Pursuant to Cal. Civ. Code Section 3412, *et. seq.* on Behalf of**
15 **Ellis Village Against the City and Does 1-100)**

16 85. Surland realleges and incorporates herein by this reference each and every
17 allegation in the foregoing paragraphs, as though fully set forth herein.

18 86. Surland is informed and believes that prior to purporting to accept and
19 record the IOD as set forth above, someone at the City materially changed the document after it
20 had been signed and notarized in derogation of California law. Alternatively, the IOD is subject to
21 being set aside as arising from the Second Amendment under Cross-Defendants' theory as to the
22 invalidation of that document.

23 87. Despite Ellis Village's repeated demands, Cross-Defendants, and each of
24 them, have failed and refused to correct and/or rescind the IOD.

25 88. Cross-Defendants' refusal to correct and/or rescind the IOD was, and is,
26 wrongful, as Ellis Village is the rightful owner of the IOD Property.
27
28

1 to the damage to Cross-Complainants' Property, the decrease in value to Cross-Complainants'
2 Property, and loss of monies, goodwill, and improvements.

3 (b) For general damages in an amount to be determined according to
4 proof at trial.

5 (c) For reasonable attorney's fees, litigation expenses, appraisal fees,
6 engineering fees and costs, and expert witness fees pursuant to Code of Civil Procedure 1036 and
7 all applicable law.

8 (d) For pre-judgment and post-judgment interest.

9 4. On the Fifth Cause of Action

10 (a) For a declaration of the validity and sufficiency of the
11 Reimbursement Agreement as well as Plaintiff and Cross-Defendants' respective rights, interests,
12 duties, and obligations thereto;

13 (b) For a declaration of the validity and sufficiency of the IOD as well
14 as Plaintiff and Cross-Defendants' respective rights, interests, duties, and obligations thereto; and

15 (c) For an injunction enjoining the City from accepting the IOD.

16 5. On the Sixth Cause of Action

17 (a) For an order and judgment quieting title in the IOD Property in Ellis
18 Village against the claims of the City and ROES 1-100.

19 6. On the Seventh Cause of Action

20 (a) For an order declaring that Cross-Defendants hold the IOD Property,
21 plus interest at the legal rate from and after January 21, 2023, in trust for the benefit of Ellis
22 Village;

23 (b) For an order compelling Cross-Defendants to transfer title of the
24 IOD Property to Ellis Village;

25 (c) For costs of suits; and

26 (d) For such other and further relief as the Court deems appropriate;

27 7. On the Eighth Cause of Action

28 (a) For compensatory damages according to proof at trial;

- 1 (b) For special damages representing the costs and expenses that Ellis
2 Village incurred for the inconvenience and time suffered in removing the cloud of title;
3 (c) For costs of suit herein; and
4 (d) For such other and further relief as the Court deems just and proper;
5 8. On the Ninth Cause of Action
6 (a) For an order and judgment canceling the IOD;
7 (b) For compensatory damages according to proof at trial;
8 (c) For such other and further relief as the Court deems appropriate;
9 9. On each and Every Cause of Action
10 (a) Actual damages, including but not limited to statutory damages,
11 compensatory damages, and other such relief as provided by law;
12 (b) Pre-judgment interest and post-judgment interest on any such
13 monetary relief;
14 (c) The costs of bringing this suit, including reasonable attorneys' fees;
15 and
16 (d) All other relief to which Cross-Complainants may be entitled in law
17 or equity.

18
19 Dated: March 8, 2024

MILLER STARR REGALIA


20 By: 
21 _____
22 MATTHEW C. HENDERSON
23 BASIL S. SHIBER
24 BRIAN D. SHAFFER
25 BRIANA J. BRAMER
26 Attorneys for Cross-Complainants SURLAND
27 LLC; THE SURLAND COMPANIES, LLC; and
28 ELLIS VILLAGE, LLC,
a California limited liability company

EXHIBIT 1

Recording Requested By:

Sandra Edwards
City Clerk

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08/17/2013 12:44:51 PM
Page: 1 of 45 Fee: \$146.00
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**AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF TRACY
AND
SURLAND COMMUNITIES, LLC**

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**AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF TRACY
AND
SURLAND COMMUNITIES, LLC**

This "Agreement," dated this 18th day of April, 2013 ("Agreement Effective Date"), is entered into by and between the CITY OF TRACY, a municipal corporation ("City"), and SURLAND COMMUNITIES, LLC, a California limited liability company ("Owner"), pursuant to Government Code sections 65864 *et seq.* ("Development Agreement Statute"), City Resolution No. 2004-368 (establishing rules, regulations, procedures and requirements, including fees, for the processing and approval of a development agreement ("Enabling Resolution")), and Article XI, section 7 of the California Constitution ("Police Powers"). From time to time, City and Owner are individually referred to in this Agreement as a "Party," and are collectively referred to as the "Parties."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. The preceding Preamble, and the following Recitals, are true and correct, are a part of this Agreement, and the terms defined in both are used throughout this Agreement.

B. To strengthen the public planning process, to encourage private participation in the provision, dedication and funding of community benefits and amenities that could not otherwise be required under controlling law (such as the below-described swim center), to set forth the procedures and processes to be employed in the processing of subsequent development requests, to ensure compliance with all state and federal procedural and substantive laws prior to action on such development requests, and to ensure compliance with all City laws, including without limitation the City's Growth Management Ordinance (except as provided to the contrary herein), City and Owner enter into this Agreement. This Agreement has been drafted and processed pursuant to the Development Agreement Statute, Enabling Resolution and the City's Police Powers.

C. The establishment of a family-oriented swim center is one of the City's priorities, has been contemplated for years, and is overwhelmingly supported by the Tracy community. Yet City funding for such an effort is lacking. Owner, a local developer with a long track record of award-winning development in the City, made a proposal to City whereby Owner would offer to dedicate to City (at no cost to City) 16 acres of land, would conceptually design, would assist City with project oversight, and would fund \$10 million toward the construction of a swim center, as described in this Agreement, for the Tracy community; and provide certain other benefits to the City, in return for being eligible for a set number of "Residential Growth Allotments" (also referred to in this Agreement as "RGAs") This Owner proposal has secured

remarkable community support. All of these swim center-related Owner commitments are specifically described in this Agreement and its exhibits and are collectively referred to in this Agreement as the "Swim Center Obligations."

D. Owner first filed land use applications in 2007 to entitle the Ellis Project. Those applications included applications for the Ellis Specific Plan, General Plan Amendment and an annexation and rezoning of the Ellis Property. In addition, Owner filed an application for negotiation and approval of the original Development Agreement by and between the City of Tracy and Surland Communities LLC (the "**Original Development Agreement**"). The City processed the various applications and commissioned the preparation of an environmental impact report for the Original Development Agreement and the 2007 land use applications (the "**Original EIR**"). On December 16, 2008, the City certified the Original EIR and approved the various applications for the entitlements for the Ellis Project, including the 2008 Ellis Specific Plan, 2008 General Plan amendment, approval of rezoning and annexation, and the Original Development Agreement (collectively the "**Original Ellis Entitlements**"). Following the approval of the Original Ellis Entitlements, opponents to the Ellis Project filed litigation challenging the sufficiency of the Original EIR and the legality of the Original Ellis Entitlements in a mandamus action filed in San Joaquin County Superior Court, *Tracy Regional Alliance for a Quality Community v. City of Tracy, et al.* On October 31, 2011, the trial court issued its Statement of Decision and Judgment finding the Original EIR and the Original Ellis Entitlements to be inadequate and ordering that they be set aside. The Statement of Decision and Judgment specifically found certain defects in the Original Development Agreement that the trial court believed needed to be amended and modified in order to comply with the law. In November 2011, the Original Owner and the City each filed appeals from the trial court's judgment; as a result of which appeals, the trial court's judgment ordering that the certification of the Original EIR and adoption of the Original Development Agreement be set aside is stayed pending the outcome of the appeals.

E. In February, 2011 the Tracy City Council approved and adopted an updated General Plan (the "**2011 General Plan**"). The General Plan now acknowledges the Ellis Specific Plan area and establishes a land use category of Traditional Residential-Ellis (TR-Ellis) which, on page 2-20, is designated as the majority of former Urban Reserve 10. In order for development of the property designated as TR-Ellis to go forward, the General Plan requires the adoption of a specific plan implementing certain designated criteria.

F. In December, 2011, Owner filed applications with the City for an amendment and restatement of the Original Development Agreement as well as amendments and modifications to the other Original Ellis Entitlements (collectively, the "**Revised Ellis Entitlements**"). The City has commissioned a revised Environmental Impact Report for the project proposed by the December 2011 applications (the "**Revised EIR**") which was prepared in response to the trial court's Statement of Decision and Judgment, addressing and remedying those things that the trial court found insufficient. This Agreement has been negotiated and shall be implemented so as to address, revise and remedy those portions of the Original Development Agreement found by the trial court's Statement of Decision and Judgment to be legally deficient by amending and restating the Original Development Agreement, while at the same time the parties continue to pursue their judicial remedies by prosecution of their appeals of the trial court's Judgment.

G. The 2011 General Plan envisions that development within TR-Ellis shall be done by Specific Plan. The revised Ellis Specific Plan ("2013 Ellis Specific Plan") which is a part of the Revised Ellis Entitlements, contemplates a unique community of distinct character, with well-planned homes, small-scale businesses, major public amenities, including a proposed swim center, and an integrated, multi-use village center that promotes businesses that are small, local, and neighborhood-serving. The swim center is proposed to be located adjacent to the village center. The character of development within the 2013 Ellis Specific Plan evokes the wonderful historic neighborhoods of Tracy. Traditional planning techniques and architecture true to the local vernacular capture the essence of Tracy and are intended to create timeless neighborhoods that fit seamlessly into the City. All these planning goals and ideals have been considered and acted upon by City (in its sole and exclusive discretion) after a lengthy public process.

H. Over time, the City has completed environmental review of the potential direct and indirect environmental impacts of development in the area subject to the 2013 Ellis Specific Plan and this Agreement pursuant to the California Environmental Quality Act and its implementing regulations, known as the CEQA Guidelines (collectively, "CEQA") as follows:

(1) As a part of its General Plan efforts, and prior to adopting the General Plan, City undertook environmental review of the potential direct and indirect environmental impacts of the General Plan pursuant to CEQA, certified the Final Environmental Impact Report for the General Plan, State Clearinghouse #2008092006 ("General Plan EIR"), and adopted findings, mitigation measures and a statement of overriding considerations in connection therewith. As set forth in greater detail herein, this Agreement is consistent with the General Plan EIR.

(2) As a part of the original South Schulte Specific Plan efforts, City prepared and certified an EIR ("South Schulte EIR"). The South Schulte EIR was challenged in court and a settlement was arrived at ("South Schulte EIR Settlement") that required City to conduct additional studies and analysis. Initially, the City began to process a Supplemental EIR to address the South Schulte EIR Settlement. However, with the General Plan Update and its new approach to the area formerly known as the South Schulte Community Area, and with the City desire to conduct a thorough analysis of the new Urban Reserve 10, City decided to cause to be prepared an entirely new Environmental Impact Report.

(3) As part of the General Plan Amendment of 2011, the City Council certified as adequate a Final Supplemental Environmental Impact Report to address and mitigate the impacts of the General Plan, including without limitation the creation of the TR-Ellis land use designation.

(4) As part of its review of Owner's December 2011 development applications, City caused to be prepared the Revised EIR, analyzing both the 2013 Ellis Specific Plan (including a swim center) and this Agreement. This Agreement does not impede, impair or otherwise seek to truncate or limit future CEQA review. Future CEQA review shall take place as required by applicable law.

I. As of the execution of this Agreement by the Parties, various land use regulations, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the 2013 Ellis Specific Plan, including, without limitation, all of the following:

- (1) Revised EIR (City Council Resol. No. 2013-011)
- (2) 2013 Ellis General Plan Amendment (City Council Resol. No. 2013-012)
- (3) 2013 Ellis Specific Plan (City Resol. No. 2013-012)
- (4) This Agreement (City Ordinance No. 1182)

The above-listed approvals are collectively referred to herein as the "Ellis Project Approvals" and are more particularly described in the Revised EIR and the resolutions adopting those approvals. The development of the Property described in and permitted by the Revised EIR, the 2013 Ellis Specific Plan, the 2013 General Plan Amendment and this Agreement, is referred to herein as the "Ellis Project." Except as provided to the contrary herein, the 2011 General Plan as amended by the 2013 Ellis General Plan Amendment (hereafter, the "General Plan", and the 2013 Ellis Specific Plan are hereby incorporated by reference in to this Agreement.

J. Given the community character and quality of the 2013 Ellis Specific Plan, its compliance with CEQA and applicable planning and zoning laws, and its approval by the City, and given Owner's significant land dedication, financial obligations and personnel commitment to a swim center (as set forth in this Agreement), the City wishes to allow Owner to be eligible to apply for and potentially receive up to 2,250 RGAs and Building Permits, as more specifically provided in this Agreement. Owner shall record this Agreement against the property comprising and subject to the 2013 Ellis Specific Plan (the "Property") (shown on *Exhibit A* to this Agreement).

K. City's issuance of RGAs under this Agreement complies with City's Growth Management Ordinance and the City's Growth Management Ordinance Guidelines (collectively, "GMO") except as specifically provided herein, and the maximums they set for annual RGA and building permit issuance for development agreements (referred to in this Agreement as the "GMO Maximums" and further defined below in this Agreement).

L. Owner represents and warrants to the City that Owner either owns, or holds legally enforceable contracts to purchase, all of the Property (as defined in Exhibit A). In preparing this Development Agreement, the City and Owner are guided by and follow the legal authority of *National Parks and Conservation Association v. County of Riverside* (1996) 42 Cal. App.4th 1505, 1520-1523. Further, Owner represents and warrants to City that Owner has a legal or equitable interest in the Property for the development contemplated by the Ellis Project Approvals sufficient to satisfy the requirements of the Development Agreement Statute.

M. The Property that is the subject of this Agreement is all of the property comprising and subject to the Ellis Specific Plan, which is depicted and legally described on *Exhibit A* to this Agreement (the "Property"). The covenants and/or servitudes contained in this Development Agreement are intended to run with the land.

N. It is in this unique setting -- a strong community desire to construct a swim center and Owner's willingness to provide such an extraordinary commitment in return for future eligibility to apply for RGAs -- that the Parties have drafted this Agreement, ensuring that all of the requirements of controlling law are satisfied. This Agreement meets all of the requirements of law: it meets the contents requirements of the Development Agreement Statute and applicable law, and it establishes a protocol for the processing of future approvals. City and Owner are entering into this Agreement now in this fashion because of the unique community interest in a swim center and the benefits it will bring to Tracy and the unique opportunity the City presently has with the Owner's willingness to make substantial land dedication, design creation and financial contribution commitments to make a swim center a reality. The consideration by City of a swim center, the offer by Owner and this Agreement have been underway for more than ten years. In 2001, a survey of the Tracy community and public workshops were held that identified the need for community aquatic facilities. In 2003, NTD Architects completed the Tracy Aquatic Center Feasibility Study. In July 2005, the City Council directed Tracy Tomorrow and Beyond to make recommendations for a swim center. In the summer of 2005, Tracy Tomorrow and Beyond conducted additional public workshops. In October of that year, the City Council received the recommendations of Tracy Tomorrow and Beyond. Also in October 2005, Owner proposed Ellis as a location to be considered for a swim center. Between October 2005 and January 2006, the City studied a number of possible sites for a swim center including the existing Tracy ballpark. In January 2006, the City Council selected the Ellis Specific Plan as a potential site for a swim center. In April 2006, the City Council authorized City Staff to begin negotiations with Owner for a Development Agreement with provisions for the granting of funds and land by Owner for a swim center. In August 2006, the City Council, Planning Commission, and Parks Commission approved a conceptual design for a swim center at Ellis. In May 2007, the City Council directed City Staff to prioritize the Original Development Agreement for Ellis, including a swim center. In January 2008, a joint Planning Commission/City Council workshop was held to discuss the Original Development Agreement, the 2008 Ellis Specific Plan, and the swim center. Between April and December of 2008, the Planning Commission held a series of public meetings to discuss the Original EIR, the 2008 General Plan Amendment, the 2008 Ellis Specific Plan and the Original Development Agreement. The City Council and the Planning Commission provided direction and the public provided comment throughout this process.

O. For all of the reasons stated above, this Agreement is consistent with the General Plan and the 2013 Ellis Specific Plan. For example, as required by the General Plan, this Agreement envisions proper environmental analysis and a proper planning process in compliance with controlling law before any approval allowing development can take place. No additionally required Owner Approvals, as defined herein, are granted through, nor guaranteed by, this Agreement, and this Agreement ensures that the City's future consideration and decision on such approvals shall be in the sole and exclusive discretion of the City. (General Plan Goal LU-1 and Objective LU-1.1 (and its Policy P1); Objective LU-1.2 (and its Policy P3); Goal LU-6; and Goal LU-7.) Further, this Agreement requires that any distribution of RGAs under this Agreement comply with all applicable City regulations, including the General Plan (Objective LU-1.4, Policies P1-P5 and Action A1). While this Agreement preserves the City's full and unfettered discretion with respect to whether or not it will approve the development of a swim center, it is nonetheless intended to help bring to fruition a swim center as envisioned by the General Plan (Objective OSC-4.1, Policy P3), should the City exercise its discretion accordingly. In fact, the General Plan recognizes this Agreement as a potential vehicle by which the City and

Owner could reach agreement relative to such a swim center in a manner that City could not otherwise require Owner to do, that Owner may receive RGAs only if and after all requirements of controlling law have been satisfied, and that such risk shall be placed on Owner alone. Finally, this Agreement is not contrary to nor contradictory of any General Plan text or diagrams.

P. On December 19, 2012, following duly noticed and conducted public hearings, the Planning Commission, a hearing body for purposes of the Development Agreement Statute, took appropriate action under CEQA, the Planning and Zoning Law, and the Tracy Municipal Code, and made recommendations regarding this Agreement to the City Council. On January 22, 2013, following duly noticed and conducted public hearings, the City Council certified the Revised EIR, took appropriate action under the Planning and Zoning Law, and introduced and conducted the first reading of Ordinance No. 1182, an ordinance approving this Agreement, and directing this Agreement's execution by City ("**Approving Ordinance**"). On March 19, 2013, the City Council conducted the second reading and adopted the Approving Ordinance.

ARTICLE 1

APPLICABLE DEVELOPMENT TERMS

1.01 The Swim Center Obligations.

(a) Owner hereby commits to make two non-refundable payments totaling ten million dollars (\$10,000,000.00) ("**Owner Swim Center Contribution**") to the City, as set forth in this Section 1.01(a), to fund the design, construction, operation and maintenance of a swim center. Owner shall deposit into a segregated and interest-bearing City account the Owner Swim Center Contribution, for use by the City for the construction and operation of a swim center as provided herein. Upon completion of the Owner Swim Center Contribution, Owner shall be deemed to have satisfied any and all fees applicable to the Property or the Ellis Project for a swim center or pool.

(1) Not later than sixty (60) days after the "**Annexation Effective Date**", as defined herein, Owner shall deposit into a segregated and interest-bearing account designated by the City (the "**Swim Center Funds Account**") two million dollars (\$2,000,000.00) ("**Owner's First Swim Center Payment**") for use by the City in the development, construction, operation and maintenance of a swim center.

(2) Not later than three (3) years following the date of Owner's First Swim Center Payment, Owner shall deposit into the Swim Center Funds Account eight million dollars (\$8,000,000.00) for use by the City in the development, construction, operation and maintenance of a swim center.

(3) Owner's obligations under this section are separate and independent of Owner's obligations under Subsection (b), and are binding upon Owner regardless of whether or not City accepts Owner's Dedication Offer as provided in Subsection (b).

(4) In addition to any other remedies available to the City under this Agreement, and any and all other provisions of this Agreement or the City's Growth

Management Ordinance and Guidelines to the contrary notwithstanding, if Owner fails to make either or both of the two non-refundable payments as required by Sections 1.01(a)(1) and (2) above, then the City may, in its sole and exclusive discretion, withhold from Owner such Residential Growth Allotments or building permits as Owner would otherwise be entitled to receive under this Agreement or the City's Growth Management Ordinance or Guidelines, and may continue to withhold the issuance of such Residential Growth Allotments or building permits until all such overdue payment or payments due under this Agreement have been made in full.

(b) Owner shall offer to dedicate to the City approximately sixteen (16) acres of land as described generally in the Revised EIR and the Ellis Specific Plan as the location of the "Potential Swim Center" (the "Ellis Swim Center Site"), subject to the following:

(1) Within thirty (30) days of the Annexation Effective Date, Owner shall offer to dedicate to the City, at no cost to the City, the Ellis Swim Center Site ("Land Dedication Offer"). City shall have one (1) year from the Annexation Effective Date to accept the Land Dedication Offer ("Dedication Acceptance Period"), subject to such extensions as may be mutually agreed by the Parties. If City does not accept the Land Dedication Offer within the Dedication Acceptance Period, then one day after the conclusion of the Dedication Acceptance Period, the Land Dedication Offer shall be considered rejected by the City and shall expire without any further action of the Parties. Thereafter, the Ellis Swim Center Site shall be available for development by Owner pursuant to the 2013 Ellis Specific Plan. Additionally, at any time prior to the end of the Dedication Acceptance Period, City may, by resolution of the City Council, reject the Land Dedication Offer and upon such City rejection, the Ellis Swim Center Site shall be available to Owner for development pursuant to the 2013 Ellis Specific Plan.

(2) The minimum on-site park requirements of the Ellis Specific Plan are addressed in Section 1.15 of this Agreement. If the City accepts the Land Dedication Offer, the swim center constructed on the Ellis Swim Center Site shall be considered a City "Community Park", as defined in the General Plan and other City laws. Upon City acceptance of the Land Dedication Offer, Owner shall be deemed to have satisfied its applicable community park obligation for the 2013 Ellis Specific Plan maximum entitlement of up to 2,250 residential units.

(c) If the City elects to construct a publicly-operated swim center anywhere in the City, City shall contribute toward the swim center that amount of money (plus interest earned) that City has already collected (and will continue to collect) from the Plan C FIP designated for an aquatic center ("City Swim Center Contribution"). The Owner Swim Center Contribution and the City Swim Center Contribution are collectively referred to in this Agreement as the "Swim Center Funds." Additionally, City shall consider establishing and imposing against new development a fee, charge, assessment or other financial obligation to be used toward the costs of the design, construction, operation and maintenance of a swim center ("New Development Swim Center Contribution"). Any and all New Development Swim Center Contributions collected by City prior to the construction of a swim center should be added to the Swim Center Funds.

(d) Owner already has provided a design team to City, and Owner has already conducted an outreach program that led to the completion of the "Conceptual Design" of a swim center. The Conceptual Design provides detail for a swim center project description contemplated by this Agreement. Owner has also funded various studies and analyses relating to the required infrastructure for, and potential environmental impacts from, a swim center on the Ellis Swim Center Site, including but not limited to the Revised EIR for the 2013 Ellis Specific Plan. Owner hereby agrees that all costs associated with conducting the outreach program and developing the Conceptual Design, all costs associated with preparation of the Revised EIR and the various infrastructure studies, and all other costs incurred by Owner and paid to City in connection with City's consideration of Owner's proposal to develop a swim center at the Ellis Swim Center Site, shall constitute an additional contribution by Owner to the City's development of a swim center, which contribution is independent of and in addition to the Swim Center Payments and Swim Center Land Dedication described in Sections 1.01(a) and (b) above, and Owner shall not seek credit for or reimbursement of any such costs.

(e) If the City elects to construct a publicly-operated swim center using the Owner Swim Center Contribution anywhere in the City, the swim center shall be named the "Serpa Swim Center." After acceptance of such publicly-operated swim center by the City, but prior to the opening of such swim center to the public, City shall allow Owner to use and occupy such swim center for one (1) day without charge. Owner shall provide adequate insurance coverage for such use and occupancy.

(f) The amenities included in the Conceptual Design for a publicly-operated swim center have been selected through a public outreach program, are subject to the constraints of the City's swim center budget and compliance with controlling law, and may include the following:

- (1) 50 Meter (approximately) Competition Pool
- (2) Recreation Pool (separate from Competition Pool)
- (3) Spray ground
- (4) Water Slide
- (5) Wet Play Structure
- (6) Lazy River
- (7) Flow Rider
- (8) Showers and Locker Rooms
- (9) Ticket Facilities
- (10) Pool Equipment Room and Storage

(11) On Site Development (parking, ancillary structures, landscaping, etc.).

(g) If a funding shortfall should exist, the work for each phase of the swim center may be prioritized for that particular phase at the time that City seeks bids for the particular phase, so that work receiving a higher priority could be completed first so as to ensure its completion. As a result, if work cannot be completed due to a budget shortfall, that work receiving a lower priority could potentially be deferred.

(h) This Agreement provides a framework for City and Owner to work cooperatively to develop a swim center, as described herein. However, all provisions and language herein to the contrary notwithstanding, including but not limited to Sections 1.01 and 1.02, nothing in this Agreement is intended to or shall be construed to require City to construct a swim center on the Ellis Swim Center Site or anywhere else.

(i) If a publicly-operated swim center is approved and constructed on the Ellis Swim Center Site, then during the design and construction phases, Owner representatives shall be invited to participate and provide input to City regarding the design and construction processes for such swim center, which participation may include attending design and construction meetings with City's design consultants, construction managers and contractors; provided, however, that the Parties hereby acknowledge and agree that Owner's input on such swim center project shall be provided to City and City staff, Owner shall not be entitled or permitted to direct City's consultants, construction managers, contractors or other employees or agents, and City retains its full discretion to accept or not to accept Owner's input regarding the design and construction of such swim center.

(j) Monies withdrawn from the Swim Center Funds Accounts shall be for the sole purpose of funding the design, construction, operation, and/or maintenance costs of a swim center. City shall make withdrawals from the Swim Center Fund Account in the amounts and at the times it deems necessary in order to pay those costs authorized hereunder.

1.02 Other Processing.

(a) Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, nor to limit the discretion of City or any of its officers or officials with regard to those "Owner Approvals" (defined below) that require the exercise of discretion by City, provided that such discretion shall be exercised consistent with the laws contained within the Applicable Law.

(b) At its approval and execution, this Agreement does not provide Owner with any right to develop or construct any project or to secure any Owner Approval; instead, it simply provides certain rights and responsibilities regarding approvals already given for the Ellis Specific Plan, provides certain vested rights to laws and approvals already in place, provides a protocol by which later Owner Approvals may be processed by Owner and later included into this Agreement, if and only if such Owner Approvals are compliant with all controlling California law (including proper Planning and Zoning Law and CEQA compliance), have secured approval of the Parties, and are adopted/approved by the City (who shall retain all

discretion in this regard) – and provides the process by which this Agreement will be recorded against the Property. The public review process envisioned by this Agreement is ongoing, and following City's adoption of this Agreement, that public review process shall continue.

(c) City shall inform Owner, upon request, of the necessary submission requirements for a complete application for each Owner Approval. Owner Approval shall include, without limitation, a City resolution of application to the San Joaquin County Local Agency Formation Commission ("LAFCO") seeking all LAFCO approvals relative to the annexation of the Property into the City. Provided Owner has paid all appropriate Processing Fees, City shall accept, process, review and act upon all applications for Owner Approvals pursuant to this Agreement and the Applicable Law it describes with "Good Faith and Fair and Expeditious Dealing." Likewise, City shall commence, continue and diligently process any and all initial studies, assessments, BIRs and other relevant CEQA compliance documents regarding the Owner Approvals with Good Faith and Fair and Expeditious Dealing. For the purposes of this Agreement, "Good Faith and Fair and Expeditious Dealing" shall mean that the Parties shall act toward each other and the tasks necessary or desirable to the processing contemplated by this Agreement pursuant to the Applicable Law and in a fair, diligent, expeditious and reasonable manner (except in those cases where a Party is given sole discretion under this Agreement), and that no Party or Parties shall take any action that will prohibit, impair or impede any other Party's or Parties' exercise or enjoyment of its rights and obligations secured through this Agreement.

(d) If Owner requests, City shall meet with Owner prior to Owner's submission of applications for Owner Approvals for the purpose of ensuring all requested information is understood by Owner so that Owner's applications, when submitted, will be accurate and complete. Upon submission by Owner of an application for an Owner Approval, together with appropriate Processing Fees, City shall process such application for Owner Approval with Good Faith and Fair and Expeditious Dealing. If City is unable to so process any such application, or upon request by Owner, City shall engage mutually acceptable outside consultants to aid in such processing. Owner shall be required to pay all of City's actual costs related to such outside consultants. Owner, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder, and Owner shall cause the Owner's planners, engineers and all other consultants to submit in a timely manner all required materials and documents. If City denies an application for an Owner Approval, City shall specify in detail the modifications, changes, or improvements that are required to obtain approval. City and Owner shall cooperate, with the goal being to obtain and issue Owner Approvals that are consistent with the modifications, changes, or improvements that are required by City. City shall with Good Faith and Fair and Expeditious Dealing consider any subsequently submitted Owner Approval application that complies with the City-specified modifications.

1.03 Applicable Law.

(a) As used in this Agreement, "Applicable Law" shall exclusively mean all of the following:

(1) As relates to the development of any or all of the Property, the terms and conditions of this Agreement.

(2) The Revised EIR, the General Plan, the Ellis Specific Plan and its zoning regulations, Finance Implementation Plan adopted for the Ellis Project (the "Ellis FIP") and all other land use regulations, entitlements, grants, permits, plans and other approvals (collectively, the "Owner Approvals") that City has already or will in the future specifically approve, adopt, issue, and/or grant relative to Owner requests relating to the use and development of the Property, provided such Owner Approvals are:

(A) Compliant with all controlling California law (e.g., Planning and Zoning Law, CEQA, etc.);

(B) Mutually agreed to by the Parties;

(C) Adopted by the City; and

(D) Take "Legal Effect."

(3) As relates to the development of any or all of the Property, the City rules, regulations, ordinances, policies, standards, specifications, practices and standard operating procedures of City (whether adopted by the City Council, the Planning Commission, the City staff or the voters of the City) in force and effect on the Effective Date ("Existing City Laws"), including, without limitation the GMO and GMO Guidelines.

(4) As relates to the development of any or all of the Property, the City "Processing Fees" for land use approvals, including without limitation, fees for processing zoning, subdivision maps, building permits and other similar permits and entitlements which are charged for processing applications and which are in force and effect on a Citywide basis at the time the application for the Owner Approval is presented to the City.

(5) As relates to the development of any or all of the Property, the California Building Code (as modified by City), and those other State-adopted construction, fire and other codes, including "Green Codes" (as all may be modified by City) applicable to improvements, structures and development, and the applicable version or revision of said codes by local City action (collectively referred to as "Construction Codes") in place at that time (date) that building plans subject to such Construction Codes are submitted by Owner to City for an Owner Approval, provided that such Construction Codes have been adopted by City and are in effect on a Citywide basis.

(6) As relates to the development of any or all of the Property, the "Mandated New City Law(s)," pursuant to Section 1.05(e) of this Agreement.

(7) As relates to the development of any or all of the Property, the "New City Law(s)" that Owner elects to be subject to pursuant to Section 1.05(d).

(b) This Agreement complies with laws regarding the Development Agreement Statute (including without limitation section 65865.2), which require this Agreement to specify the duration (Term) of the Agreement, the permitted uses of the Real Property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The duration of this Agreement is set

forth in Section 1.06 of this Agreement, and this Agreement sets forth provisions for the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes in the Applicable Law provisions of this Agreement, either by its terms or through its incorporation of the General Plan and the 2013 Ellis Specific Plan. For example, the 2013 Ellis Specific Plan is part of the Applicable Law for the Property, and the 2013 Ellis Specific Plan sets forth the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes for the Property.

(c) The Parties acknowledge that Owner Approvals likely will be processed in stages and, therefore, one or more Owner Approvals may take Legal Effect before other Owner Approvals. Provided Owner submits applications as provided herein, the City shall process such applications and applications for other entitlements as are necessary to allow development of 2,250 residential units as part of the 2013 Ellis Specific Plan in implementation of the TR Ellis land use designation in the General Plan.

1.04 Vested Right to Applicable Law.

(a) By this Agreement, the Property shall have a vested right to the Applicable Law.

(b) During the Term of this Agreement, any development of the Property and any discretion exercised by City on an Owner Approval shall occur pursuant to only the law that comprises the Applicable Law. During the Term of this Agreement, City regulation of the development of the Property shall occur pursuant to only the Applicable Law.

1.05 New City Law(s).

(a) Any City ordinance, resolution, minute order, rule, motion, policy, standard, specification, or a practice adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not part of the Applicable Law and that takes effect on or after the Agreement Effective Date is hereby referred to as a "New City Law(s)." The parties recognize the City may, from time to time, modify its GMO Ordinance and Guidelines and none of these modifications shall apply to the development of the Property, which shall be governed by the GMO Ordinance and Guidelines in effect on the Effective Date, except as otherwise provided herein. Except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Ellis Project would accomplish any of the following results, either by specific reference to the Ellis Project or as part of a general enactment which affects or applies to the Ellis Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Property or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Property and/or Owner Approvals in any manner, or take any action or refrain from taking any action that results in Owner's having to substantially delay construction on the Property or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Property in a manner that is inconsistent with or more restrictive than the limitations in the Ellis Approvals and Applicable Law;

(5) Limit the processing of Owner Approvals.

(6) Except for uniform adjustments formulated according to an inflation or cost of construction index, City changes in development, infrastructure or building standards, policies or ordinances that increase the cost of or impose new costs to develop and construct the project according to the Ellis Project Approvals.

(b) City shall not apply any New City Law(s) to the Property that is in conflict with this Agreement or that is excessive under controlling law (collectively, "in conflict with" or "inconsistent with"). If City believes that it has the right under this Agreement to impose/apply a New City Law on the Property/project, it shall send written notice to Owner of that City position ("Notice of New Law(s)"). Upon receipt of the Notice of New City Law, if Owner believes that such New City Law is in conflict with this Agreement, Owner may send written notice to City within thirty (30) days of Owner's receipt of City's Notice of New Law ("Objection to New City Law(s)"). Owner's notice to City of its Objection to New City Law(s) shall set forth the factual and legal reasons why Owner believes City cannot apply the New City Law(s) to the Property. City shall respond to Owner's Objection to New City Law(s) ("City Response") within thirty (30) days of receipt of said Owner Objection to New City Law(s). Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Owner's receipt of the City Response and shall continue to meet over the next sixty (60) days ("Meet and Confer Period") with the objective of arriving at a mutually acceptable solution to this disagreement. The New City Law(s) shall not be applied to the Property until the dispute over the applicability of the New City Law(s) is resolved. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Owner of that City determination. If City determines to impose/apply the New City Law(s) to the Property in question, then Owner shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Owner's right to judicial review of the New City Law(s) shall commence upon the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law(s) (at the highest judicial level sought and granted), the reviewing court determines that Owner is not subject to the New City Law(s), such New City Law(s) shall cease to be a part of the Applicable Law, and City shall return Owner to the position Owner was in prior to City's application of such New City Law(s) (e.g., City return fees, return dedications, etc.). Notwithstanding any of the preceding language in this Section 1.05(b) to the

contrary, upon the City's issuance to Owner of a Notice of New Law(s), any Party may opt out of the subsequent objection and resolution process described in this Section 1.05(b) provided that the opting out Party notifies the other Party(ies) that the opting out Party agrees to meet and confer regarding any disputes over New City Laws.

(c) The above-described procedure shall not be construed to interfere with City's right to adopt or apply any New City Law(s) with regard to all other areas of City (excluding the Property and Owner Approvals).

(d) Owner, in its sole and absolute discretion, may elect to be subject to a New City Law(s) that is/are not otherwise a part of the Applicable Law. In the event Owner so elects, Owner shall provide notice to City of that election and thereafter such New City Law(s) shall be part of the Applicable Law.

(e) City shall not be precluded from applying any New City Law(s) to the extent that such New City Law(s) are specifically mandated to be applied to developments such as the development of the Property by changes in State or Federal laws or regulations (and implemented through the Federal, State, regional and/or local level) ("Mandated New City Law(s)"). In the event such Mandated New City Law(s) prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by City for the Property, this Agreement shall be modified, extended or suspended as may be necessary to comply with such Mandated New City Law(s). Immediately after enactment of any such Mandated New City Law(s) that will materially affect the terms and conditions of this Agreement, the Parties shall meet and confer in good faith to determine the feasibility of any such modification, extension or suspension based on the effect such modification, extension or suspension would have on the purposes and intent of this Agreement. In the event that an administrative challenge and/or legal challenge (as appropriate) to such Mandated New City Law(s) preventing compliance with this Agreement is brought and is successful in having such Mandated New City Law(s) determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

1.06 Term.

(a) The term of this Agreement shall commence thirty (30) days after the adoption of the Approving Ordinance ("Agreement Effective Date"), and shall continue twenty five (25) years plus one day ("Term"), unless said Term is otherwise terminated, modified or extended as provided in this Agreement or any amendment thereto.

(b) If any administrative, legal and/or equitable action and/or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, the Ellis Project, the Ellis Project Approvals, the Owner Approvals and their respective projects, or the sufficiency of any environmental review under CEQA ("Third Party Challenge") is filed, then the Term of this Agreement shall be tolled for the period of time from the date of the filing of such Third Party Challenge until the conclusion of such litigation by dismissal or entry of a final judgment, provided such tolling period does not exceed five (5) years. The filing of any such Third Party Challenge(s) against City and/or Owner shall not delay or stop the development, processing or construction of the Ellis Project or

issuance of any Owner Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

(c) Notwithstanding any other part of this Section 1.06, as it relates to a residential unit, this Agreement shall terminate and be of no further force and effect for each individual residential unit on the Property on that date a "Certificate of Occupancy" is issued by City for such residential unit if such residential unit is transferred and conveyed to a third party intending to use the unit for residential purposes.

(d) Pursuant to Government Code section 66452.6(a) (or its successor section in substantially the same form) and this Agreement, and subject to the provisions of subdivision (f) of this Section 1.06, the term of any tentative map, vesting tentative map, parcel map, vesting parcel map or final map, or any re-subdivision or any amendment to any such map (collectively referred to as "Subdivision Document") relating to the Property shall automatically be extended to and until the later of the following: (1) the end of the term of this Agreement; or (2) the end of the term or life of any such Subdivision Document otherwise given pursuant to the Subdivision Map Act or local regulation not in conflict with the Subdivision Map Act. Any improvement agreement entered into pursuant to the Subdivision Map Act or other State or local regulation shall have a term no shorter than 365 days from execution of the improvement agreement and no longer than that term decided by City.

(e) If this Agreement terminates for any reason prior to the expiration of vested rights otherwise given under the Subdivision Map Act to any vesting tentative map, vesting parcel map, vesting final map or any other type of vesting map on the Property (or any portion of the Property) (collectively, "Vesting Map"), such termination of this Agreement shall not affect Owner's right to proceed with development under such Vesting Map in accordance with the ordinances, policies and standards so vested under the Vesting Map. Notwithstanding the foregoing or any other provision of this Agreement or the Applicable Law it describes, no Vesting Map shall extend the Applicable Law beyond the stated Term of this Agreement (and the rules, regulations and official policies of City applicable to that portion of the Property covered by such Vesting Map shall become those in effect as of the expiration of such Term), except as otherwise agreed to by City and Owner; provided, however, that City and Owner may agree to an extension of the Term of this Agreement with respect to the area covered by any such Vesting Map.

(f) The term of any Owner Approvals, including without limitation, all development plans, development permits, design review approvals, or other permit, grant, agreement, approval or entitlement for the general development of all or any part of their respective projects and properties, shall automatically be extended to and until the later of the following: (1) the end of the Term of this Agreement; or (2) the end of the term or life of the Owner Approval otherwise given pursuant to controlling law.

(g) The Parties hereby agree that, as of the Effective Date, this Agreement supersedes the effectiveness of the Original Development Agreement and all of the Parties' respective rights and obligations thereunder while this Agreement remains in effect; provided, however, that if the validity of this Agreement is overturned or set aside by a decision of a court

of competent jurisdiction, then the suspension of the Original Development Agreement and superseding effect of this Agreement set out in this section shall, likewise, be overturned and of no further force and effect, and the Original Development Agreement and all of the parties' respective rights and obligations thereunder shall be restored.

1.07 Residential Growth Allotments.

(a) City shall reserve, and Owner shall be eligible for, the allocation of up to 2,250 Residential Growth Allotments ("RGAs") for residential development on the Property, as provided in this Agreement. City and Owner agree that the RGAs allocated under this Agreement apply only to the Property and may not be applied or transferred to any other property.

(b) In no event shall Owner be eligible for more than 2,250 RGAs over the Term of this Agreement ("Overall RGA Maximum"). Further, each year Owner shall be eligible for RGAs as provided in the GMO and the GMO Guidelines in effect on the Effective Date, but in no event more than 225 RGAs per year ("Annual RGA Eligibility").

(c) Owner shall make application to City for RGAs ("RGA Application(s)") according to the requirements of the GMO Guidelines in effect on the Effective Date using the RGA Application form attached hereto as Exhibit B or the form then stipulated in the GMO Guidelines then in effect, at the option of the Owner.

(d) Owner shall provide a separate RGA Application for each calendar year in which Owner seeks RGAs. The total RGAs sought by Owner in any calendar year shall not exceed the total Annual RGA Eligibility for that calendar year set by this Agreement.

(e) Owner shall be eligible for building permits according to the requirements of the GMO and the GMO Guidelines in effect on the Agreement Effective Date.

1.08 Significant Actions by Third Parties.

(a) Owner shall be responsible for the acquisition of permits, approvals, easements and services required to serve the Property from all non-City providers of utilities at Owner's cost. Owner shall also be responsible for coordinating with any non-City providers of utilities to ensure the proper installation and construction of non-City utilities in accordance with the Applicable Law. The provision of all such services shall be subject to City approval, which City approval shall be subject to Good Faith and Fair and Expeditious Dealing.

(b) At Owner's sole discretion and in accordance with Owner's construction schedule, Owner shall apply for such other permits and approvals as may be required by other private and public and quasi-public entities in connection with the development of, or the provision of services to, the Property. City shall cooperate with Owner in Good Faith and Fair and Expeditious Dealing, at no cost to City, in Owner's efforts to obtain such permits and approvals and City shall, from time to time (at the request of Owner), use its Good Faith and Fair and Expeditious Dealing to enter into binding agreements with any such other entity as may be necessary to ensure the timely availability of such permits and approvals to Owner, provided such permits and approvals are mutually determined by City and Owner to be reasonably

necessary or desirable and are consistent with Applicable Law. In the event that any such permit or approval as set forth above is not obtained within three (3) months from the date application is deemed complete by the appropriate entity, and such circumstance materially deprives Owner of the ability to proceed with development of the Property or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of Owner, Owner and City shall meet and confer with the objective of attempting to mutually agree on alternatives, Owner Approvals, and/or an amendment to this Agreement to allow the development of the Property to proceed with each Party substantially realizing its bargained-for benefit there from.

(c) City and Owner acknowledge and agree that City may from time to time enter into (with Good Faith and Fair and Expeditious Dealing) joint exercise of power agreements or memoranda of understanding with other governmental agencies consistent with and to further the purposes of this Agreement.

1.09 Amendment of this Agreement; Inclusion of Owner Approvals into this Agreement.

(a) This Agreement may be amended from time to time in accordance with California Government Code section 65868 and the Enabling Resolution, and upon the mutual written consent of City and Owner, with City costs payable by the Owner. Owner may seek City interpretation regarding one or more of the terms and conditions of this Agreement to determine whether or not an amendment is needed.

(b) This Agreement anticipates and provides the process and rules governing subsequent Owner Approvals. No amendment of this Agreement shall be required in connection with City processing and/or approval of any such Owner Approval for the Property. Any such Owner Approval that is approved by City and becomes part of the Applicable Law pursuant to the requirements of this Agreement shall be vested into by Owner and City, and shall become a part of this Agreement as if set forth herein in full. City shall not process or approve any Owner Approval unless Owner requests such process and approval.

1.10 Annexation.

(a) Within ninety (90) days after the Effective Date, or as soon thereafter as a "Plan for the Provision of Services" (as that phrase is defined by the law controlling the San Joaquin County Local Agency Formation Commission ("LAFCO") and all other materials required by controlling law and/or requested by LAFCO can be prepared and completed relating to the Property, City shall consider a "Resolution of Application" to LAFCO requesting annexation of the Property. City shall submit such Resolution of Application, Plan for the Provision of Services and other material required by controlling law and/or requested by LAFCO. City may process any such annexation of the Property concurrently with other Owner Approvals.

(1) City shall use Good Faith and Fair and Expeditious Dealing to cause the completion of such annexation of the Property subject to all applicable requirements of law. If such annexation of the Property cannot be accomplished without conditions that are

unacceptable to Owner then, at Owner's request, City shall terminate or request termination of the proceedings, as appropriate.

(2) Owner shall pay City's reasonable costs relating to all City actions taken pursuant to this Section 1.11, including reasonable consultant costs, and including such LAFCO fees, costs and charges relating to such annexation(s) that LAFCO charges to City.

(3) If City's first Resolution of Application to LAFCO requesting annexation of the Property is denied by LAFCO, then the Parties shall continue to work together to secure such annexation in such a manner as they may mutually agree, including annexing only portions of the Property at different times until such time as all of the Property is annexed to City. To the extent that the law requires a date to be set forth within this Agreement by which annexation of Annexation Property must be accomplished, that date shall be two (2) days prior to the termination of the Term of this Agreement.

(b) Owner shall be responsible for the City's processing costs regarding actions taken by City pursuant to this Section.

1.11 Adequate Water Supply.

(a) Pursuant to the water supply assessment ("WSA") by City relating to the potential development this Agreement addresses, adequate water supplies are known and will be available during the Term of this Agreement for the potential maximum development that may occur pursuant to this Agreement. Therefore, City shall make such water supplies available to Owner for such potential development during the Term of this Agreement. Except as provided herein, there shall be no cost to Owner for such water supply. Neither City nor Owner shall take any actions, including without limitation, approval by City of any new development after the Effective Date, that would impair or impede the City's ability to make such water supplies available to Owner during the Term of this Agreement for the potential maximum development that may occur pursuant to this Agreement. Water supply verifications shall take place at the subdivision map approval stage for all development of the Property as required by such law. If for any reason, despite the City's best efforts, such water supplies are not available from surface water supplies for Owner's use on such development when needed, then the following shall apply:

(1) City shall pursue interim measures to satisfy such water supply requirements, including without limitation, City's use of groundwater.

(2) If for any reason, despite City's best efforts, such interim measures are either not available, or are available but not in quantities necessary to fully satisfy such water supply requirements, then Owner may, at Owner's sole and exclusive discretion, advance to City such funds as are necessary to design, construct, operate and maintain one (1) ground water well, and such ancillary facilities as are necessary to provide potable water service to the Property until such time as City-provided permanent surface water supplies are available. Such ground water well and ancillary facilities, including without limitation water treatment facilities, as are necessary, as determined by City, to provide potable water service to the Property, shall collectively be referred to herein as the "Additional Well." Such Additional Well shall not be

implemented unless and until Owner, in Owner's sole and exclusive discretion, elects to advance to City all costs associated with its design, construction, operation and maintenance, and Owner's development will not be served from the Additional Well until construction of the Additional Well is completed and accepted by the City. After sufficient City-provided, permanent surface water supplies are made available to serve the Property, such that the Additional Well is no longer necessary, as determined by City, to serve the Property, City may use the Additional Well for emergency water supply purposes in accordance with the City's water Master plan, provided City reimburses Owner for all costs to Owner of the design, construction, operation and maintenance of the Additional Well that exceed Owner's fair share of such costs. Such reimbursement to Owner shall be made from appropriate development impact fees subsequently collected by City from other properties determined by City to benefit from the Additional Well, in the normal course of development of such properties. If any ancillary improvements to the Additional Well are required for the benefit of Ellis Project or are the part of the Ellis FIP, the cost of such facilities will not qualify for reimbursements from other developments.

The costs related to the transmission of the water supplies provided to the Property shall be paid by those impact fees that are established in the Ellis FIP .

1.12 Recycled Water Program.

All other provisions in this Agreement to the contrary notwithstanding, Owner hereby agrees that the Property and the Ellis Project shall be subject to such City recycled water fee requirements as may be set forth in the Ellis FIP . In addition to complying with such requirements, Owner hereby agrees that, as a condition of approval for any subdivision map for the Property or the Ellis Project, the subdivider shall design and construct, in conformance with applicable City standards, such recycled water infrastructure and facilities on collector streets as are sufficient to provide recycled water for irrigation of Ellis parks, and as are sufficient to provide recycled water for irrigation of such other landscaped public spaces on the Property and within the Ellis Specific Plan area as are mutually agreed on by the Parties.

1.13 Wastewater Treatment and Conveyance Capacity.

(a) Wastewater Treatment Capacity.

(1) Upon the Effective Date, City shall make available capacity from the existing City wastewater treatment plant sufficient to provide the Ellis Project with adequate wastewater treatment capacity for eight hundred (800) single-family detached residential units, a swim center and Storage Uses ("Ellis Initial Capacity"). There shall be no cost to Owner for the Ellis Initial Capacity

(2) Beyond the Ellis Initial Capacity referenced above, the Ellis Project shall receive that wastewater treatment capacity ("Additional Capacity") needed to adequately service the Property, with said Additional Capacity coming from the City's existing capacity at the existing wastewater treatment plant or "Expansion" of the existing wastewater treatment plant. For the purposes of this Agreement, "Expansion" shall mean that expansion of the existing treatment capacity of the existing wastewater treatment plant, which Expansion will increase the treatment capacity of the plant from the existing approximately 9.0 million gallons

per day of treatment capacity to approximately 20 million gallons per day of treatment capacity. Such Expansion may be done in incremental phases. Owner shall pay in accordance with the Ellis FIP, the costs of the Expansion (taking into account all users that will use the Expansion) through a form of municipal financing or other mechanism acceptable and agreeable to the Parties. City shall take such measures as needed to ensure that other public and private development projects proposing to utilize the Expansion shall pay their fair share of the funding needed to construct, maintain and operate the Expansion. Owner's above-described funding obligations shall be coordinated with the other public and private development projects to ensure that such monies are collected from Owner and other public and private development projects at approximately the same time. If the required funding from other users or development projects is not available for the phase of Expansion needed to provide the Additional Capacity Owner needs when Owner needs it, or if some funding from others is available but is not adequate to fund the phase of Expansion needed to provide said Additional Capacity Owner needs when Owner needs it, then, at Owner's sole and exclusive discretion, Owner may pay the balance of the cost of such phase of Expansion needed to provide such Additional Capacity ("Owner Funded Phase"). In such a case, Owner shall be reimbursed for that portion of the Owner Funded Phase that exceeds Owner's Additional Capacity needs. Except for responsibilities provided for in applicable FIPs, CIPs and/or other developments to pay their fair share, City shall not be obligated to advance funds for Additional Capacity Expansion.

(b) Conveyance Capacity.

(1) Initial Capacity in Corral Hollow System: Owner is afforded the right to use 330 residential units of existing capacity in the Corral Hollow Sewer Conveyance System on a permanent basis. There shall be no cost to Owner for transmission for up to 550 units. Conveyance capacity shall be increased in accordance with any City-adopted Wastewater Master Plan and the Ellis FIP.

(2) Additional Capacity in Corral Hollow System: In addition to the 330 units of capacity mentioned above, there is an additional two hundred twenty (220) units of permanent sewer conveyance capacity in the existing Corral Hollow conveyance system. Commencing on January 31, 2016, Owner may secure for its use such additional existing capacity as has not been reserved and secured by other developers or land owners by paying or otherwise securing payment to the City of their "fair share" portion (as determined by the City) of the Corral Hollow Sewer Conveyance System expansion cost by paying or otherwise securing payment of its "fair share" portion of said cost. Provided that Owner has complied with all of its obligations under this Agreement and is not otherwise in default under this Agreement, then between January 31, 2016 and April 30, 2016, City shall reserve exclusively for Owner all such remaining additional capacity in the existing Corral Hollow conveyance system, which Owner may secure by paying or otherwise securing payment to the City of Owner's "fair share" portion (as determined by the City) of the Corral Hollow Sewer Conveyance System expansion cost. Commencing on May 1, 2016, to the extent that Owner has not secured such remaining additional capacity in the existing Corral Hollow Conveyance System as provided in this Section 1.13(b)(2), the City's obligation to reserve such remaining additional capacity for Owner shall terminate.

(3) Interim Capacity in Eastside Sewer Conveyance System: In addition to the permanent sewer conveyance capacity mentioned above, the Property shall be

allocated an additional two hundred fifty (250) units of sewer conveyance capacity currently existing in the Eastside Sewer Conveyance System on an interim basis until phase one of the Corral Hollow Sewer Conveyance System upgrade is completed. There shall be no charge to Owner for said interim capacity.

(4) City shall take such measures as needed to ensure that other public or private development projects proposing to use the Conveyance Expansion shall pay their fair share (proportional) of the costs of such Conveyance Expansion. If additional funding from such other development projects is not available prior to Owner's need for the Conveyance Expansion, Owner, in its sole and exclusive discretion, may request City to construct all or a portion of the Conveyance Expansion using funds to be provided by Owner. On the date that the City determines that the Conveyance Expansion funded by Owner becomes available, Owner shall be entitled to such capacity as is necessary to meet Owner's needs, which needs shall be equal to the conveyance capacity for which owner has funded. To the extent that such Owner-funded capacity exceeds Owner's needs, such excess capacity shall be available on a first-come, first-served basis to property owners within the service area of the capacity, and Owner shall be entitled to reimbursement for funding provided by Owner in excess of Owner's fair share of the costs of the Owner-funded Conveyance Expansion, and such reimbursement shall occur prior to use by other property owners. All wastewater conveyance connections will be available to Owner only after the required improvements are completed and accepted by City. Wastewater conveyance capacity expansion to serve the Project shall be provided from the Corral Hollow sewer line and other western sewer lines as set forth in the Ellis FIP for the maximum development authorized by this Agreement. Except for responsibilities provided for in applicable CIPs and/or other developments to pay their fair share, City shall not be obligated to advance funds for conveyance improvements.

1.14 Schools.

(a) Owner has entered into Memorandums of Understanding with the Tracy Unified School District and with the Jefferson School District.

(b) Prior to the first residential building permit issuance, Owner shall execute a school facilities mitigation agreement with the Jefferson School District to mitigate the impact of the Ellis Specific Plan on Jefferson School District facilities.

1.15 Ellis Specific Plan Parks.

(a) Owner shall provide and dedicate to City neighborhood and community parks pursuant to the four (4) acres per thousand formula required by the Ellis Specific Plan and Applicable Law ("Park Requirements"). Owner shall construct all improvements for neighborhood parks, consistent with the description of such parks in the Ellis Specific Plan, prior to dedication to City. Owner's compliance with community park obligations shall be subject to and consistent with Section 1.01 of this Agreement. No additional park dedications, in lieu fees or other park-related requirements shall be imposed by City on Owner or the Property beyond the Park Requirements of this Agreement.

(b) The timing of the dedication to City of Ellis Specific Plan parks and the construction of Ellis Specific Plan park improvements shall be determined by City at the time of City approval of subdivision maps for the Property.

1.16 Future Impact Fees; Nexus.

(a) During the Term of this Agreement, only those impact fees that are included in the Ellis FIP shall apply to the development of the Property.

(b) Except as provided in this Agreement, this Agreement is not intended to change or affect either Parties' rights or obligations regarding the over-sizing of improvements, services and/or facilities beyond the impacts of the Property.

ARTICLE 2
ASSIGNMENT, DEFAULT, ANNUAL REVIEW,
TERMINATION, LEGAL ACTIONS

2.01 Covenants Run With The Land.

(a) This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants, obligations, benefits and burdens shall be binding upon and inure to the Parties and their respective heirs, successors (by merger, consolidation, or otherwise), assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Property, or any part thereof, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns (collectively, "Assignee").

(b) Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Owner's rights and interests under this Agreement, Owner shall be released from its obligations with respect to the Property, or any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the date of such assignment. A default by any Assignee shall only affect that portion of the Property owned by such Assignee and shall not cancel or diminish in any way Owner's rights hereunder with respect to the assigned portion of the Property not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property owned by such Assignee. Any and all provisions of this Agreement to the contrary notwithstanding, Owner shall not be released from any of its obligations under this Agreement, whether by assignment, conveyance, or any other means, unless and until Owner has fully satisfied its obligations under Section 1.01 of this Agreement

2.02 Defaults.

(a) Any failure by City or Owner to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days following written notice of such failure from the other Party (unless such period is extended by written mutual consent), shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the

manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default.

(c) During any cure period specified under this Section and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter and pending its resolution or formal termination of the Agreement as provided herein.

(d) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to a development proposal on the Property with respect to which there is an alleged default hereunder.

(e) In the event either Party is in default under the terms of this Agreement, the non-defaulting Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies, and/or (iii) pursue judicial remedies. In no event shall City modify this Agreement as a result of a default by Owner except in accordance with the provisions of Section 1.14 above.

(f) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by the other Party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder or to seek specific performance. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement shall be deemed a final agency action.

(g) The Parties hereby acknowledge that the City would not have entered into this Agreement if doing so would subject it to the risk of incurring liability in money damages, either for breach of this Agreement, anticipatory breach, repudiation of the Agreement, or for any actions with respect to its negotiation, preparation, implementation or application. The Parties further acknowledge that money damages and remedies at law generally are inadequate, and specific performance is the most appropriate remedy for the enforcement of this Agreement and should be available to all Parties for the following reasons:

(1) Money damages are excluded as provided above;

(2) Due to the size, nature, and scope of the Project, it may not be practical or possible to restore the Property to its original condition once implementation of this Agreement has begun. After such implementation, Owner may be foreclosed from other choices it may have had to utilize the Property or portions thereof. Owner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the

terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate Owner for such efforts.

Therefore, the Parties hereby acknowledge and agree that it is a material part of Owner's consideration to City that City shall not be at any risk whatsoever to liability for money damages relating to or arising from this Agreement, and except for non-damages remedies, including the remedy of specific performance, Owner, on the one hand, and the City, on the other hand, for themselves, their successors and assignees, hereby release one another's officers, trustees, directors, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth and Fourteenth Amendments of the United States Constitution, or any other law or ordinance which seeks to impose any money damages, whatsoever, upon the Parties because the Parties entered into this Agreement, because of the terms of this Agreement, or because of the manner of implementation or performance of this Agreement.

2.03 Annual Review.

(a) The Enabling Resolution provides for annual review of Owner's good faith compliance with the terms of this Agreement. Each year during the term of this Agreement, City shall initiate the annual review by written notice to Owner. Upon receipt of such written notice, Owner shall comply with such requirements of the Enabling Resolution and shall furnish to City a report demonstrating good faith compliance by Owner with the terms of this Agreement.

(b) Following any such annual review, if Owner is determined to be in good faith compliance with the terms of this Agreement, City shall furnish Owner, upon Owner's request, a certification of compliance in recordable form.

(c) Following any such annual review, if Owner is determined to not be in good faith compliance with the terms of this Agreement, City shall furnish to Owner a notice of noncompliance, which shall be deemed a notice of default and shall commence the cure period set forth in Section 2.02 above.

(d) In addition to the annual review provided for in this Section, City may investigate or evaluate from time to time during the course of any given year, and regardless of whether such investigation or evaluation takes place as part of the annual review, any subject matter that is properly the subject of an annual review.

2.04 Force Majeure Delay, Extension of Times of Performance.

(a) In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities other than City, its departments, agencies, boards and commissions, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this

Agreement whether instituted by Owner, City, or any other person or entity) (each a "Force Majeure Event").

(b) Either Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, either Party may take action as permitted under this Agreement.

2.05 Third Party Legal Actions.

(a) If there are any third party administrative, legal or equitable actions challenging any of the Project Approvals or the Subsequent Approvals, including without limitation this Agreement and all CEQA processes and actions by City relating to the Project, Owner shall defend and indemnify the City against any and all fees and costs arising out of the defense of such actions, including the fees and costs of City's own in-house or special counsel retained to protect the City's interests. Each Party is entitled to legal counsel of its choice, at Owner's expense. The Parties and their respective counsel shall cooperate with each other in the defense of any such actions, including in any settlement negotiations. If a court in any such action awards any form of money damages to such third party, or any attorneys' fees and costs to such third party, Owner shall bear full and complete responsibility to comply with the requirements of such award, and hereby agrees to timely pay all fees and costs on behalf of the City.

(b) If any part of this Agreement, any Project Approval or Subsequent Approval, is held by a court of competent jurisdiction to be invalid, the Parties shall cooperate to use their best efforts, to the extent permitted by law, to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement.

ARTICLE 3 GENERAL PROVISIONS

3.01 Definitions.

(a) To the extent that any capitalized terms contained in this Agreement or its Exhibits are not defined below, then such terms shall have the meaning otherwise ascribed to them in this Agreement and its Exhibits and/or the Applicable Law.

(b) As used in this Agreement and its Exhibits, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

(1) "Agreement" shall mean this Amended and Restated Development Agreement between City and Owner.

(2) "Agreement Effective Date" shall have the meaning set forth in Section 1.06(a) of this Agreement.

(3) "Annexation Effective Date" shall mean that date upon which all of the following have occurred: the Ellis Project Approvals have been approved by the City and the annexation of the Property has been approved by LAFCO, the Ellis Project Approvals and LAFCO's annexation approvals have taken effect under controlling law, the applicable statute of limitations has run on the Ellis Project Approvals and LAFCO annexation approvals without a lawsuit being filed within that statutory limitations period, or if a lawsuit has been filed within that statutory limitations period, that the defendant and real party have prevailed in the lawsuit, or the Ellis Project Approvals and LAFCO annexation approvals are otherwise determined legal and effective.

(4) "Annual RGA Eligibility" shall have the meaning set forth in Section 1.07(b) of this Agreement.

(5) "Applicable Law" shall have that meaning set forth in Section 1.03 of this Agreement.

(6) "Approving Ordinance" shall have the meaning set forth in Recital paragraph P of this Agreement.

(7) "Assignee" shall have the meaning set forth in Section 2.01(a) of this Agreement.

(8) "CEQA" shall have that meaning set forth in Recital paragraph H of this Agreement.

(9) "Certificate of Occupancy" shall mean a certificate issued or final inspection approved by the City authorizing occupancy of a residential unit.

(10) "City" shall have that meaning set forth in the preamble of this Agreement.

(11) "City Swim Center Contribution" shall have the meaning set forth in Section 1.01(c) of this Agreement.

(12) "Claims" shall have the meaning set forth in Section 3.04 of this Agreement.

(13) "Conceptual Design" shall have the meaning set forth in Section 1.01(d) of this Agreement.

(14) "Construction Codes" shall have the meaning set forth in Section 1.03(a) (5) of this Agreement.

(15) "Development Agreement Statute" shall have the meaning set forth in the preamble of this Agreement.

- (16) "Ellis FIP" shall have the meaning set forth in Section 1.03(a)(2) of this Agreement.
- (17) "Ellis Initial Capacity" shall have the meaning set forth in Section 1.14(a) (1) of this Agreement.
- (18) "Ellis Project" shall have the meaning set forth in Recital paragraph I of this Agreement.
- (19) "Ellis Project Approvals" shall have the meaning set forth in Recital paragraph I of this Agreement.
- (20) "Ellis Swim Center Site" shall have the meaning set forth in Section 1.01(b) of this Agreement.
- (21) "Enabling Resolution" shall have the meaning set forth in the preamble of this Agreement.
- (22) "Existing City Laws" shall have the meaning set forth in Section 1.03(a) (3) of this Agreement.
- (23) "Force Majeure Event" shall have the meaning set forth in Section 2.04(a) of this Agreement.
- (24) "General Plan" shall mean the City of Tracy General Plan as amended by the City Council on January 22, 2013, by Resolution No. 2013-012, as described in Recital paragraph I of this Agreement.
- (25) "GMO" shall mean the City of Tracy Residential Growth Management Plan set forth in Chapter 10.12 of Title 10 of the City of Tracy Code of Ordinances, as may be amended from time to time.
- (26) "GMO Guidelines" shall mean the GMO Guidelines adopted by the City Council of the City of Tracy pursuant to Title 10, Chapter 10.12, Section 10.12.050 of the City of Tracy Code of Ordinances, that are in effect on the Agreement Effective Date.
- (27) "Good Faith and Fair and Expeditious Dealing" shall have the meaning set forth in Section 1.02(c) of this Agreement.
- (28) "LAFCO" shall have the meaning set forth in Section 1.02(c) of this Agreement.
- (29) "Land Dedication Offer" shall have the meaning set forth in Section 1.01(b) (1) of this Agreement.
- (30) "Legal Effect" shall mean that the ordinance, resolution, permit, license or other grant of approval (collectively, "permit") in question, has been adopted by City and that all applicable administrative appeal periods and statutes of limitations have run and that

the permit has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction or other tribunal with final and binding decision authority.

(31) "Mandated New City Law(s)" shall have the meaning set forth in Section 1.05(e) of this Agreement.

(32) "New City Law(s)" shall have the meaning set forth in Section 1.05(a) of the Agreement.

(33) "Notice of New Law(s)" shall have the meaning set forth in Section 1.05(b) of this Agreement.

(34) "Original Development Agreement" shall mean that development agreement by and between the City of Tracy and Surland Communities, LLC, approved by the City of Tracy on December 16, 2008, executed by the City of Tracy and Surland Communities, LLC, between January 28, 2009 and February 5, 2009, and recorded in the San Joaquin County Recorder's office on February 5, 2009 as Document Number 2009-022386.

(35) "Original EIR" shall have the meaning set forth in Recital paragraph D of this Agreement.

(36) "Overall RGA Maximum" shall have the meaning set forth in Section 1.07(b) of this Agreement.

(37) "Owner" shall have that meaning set forth in the preamble of this Agreement.

(38) "Owner Approvals" shall have the meaning set forth in Section 1.03(a)(2) of this Agreement.

(39) "Owner Funded Phase" shall have that meaning set forth in Section 1.13(a)(2) of this Agreement.

(40) "Owner Swim Center Contribution" shall have the meaning set forth in Section 1.01(a) of this Agreement.

(41) "Park Requirements" shall have the meaning set forth in Section 1.15(a) of this Agreement.

(42) "Party" and "Parties" shall have the meaning set forth in the preamble of this Agreement.

(43) "Police Powers" shall have the meaning set forth in the preamble of this Agreement.

(44) "Processing Fees" shall mean fees charged by the City which represent the costs to City for City staff (including consultants) time and resources spent

reviewing and processing applications for Owner Approvals, as governed by Government Code section 66014.

(45) "Property" shall have the meaning set forth in Recital paragraph M of this Agreement.

(46) "Residential Growth Allotments" or "RGAs" shall have the meaning set forth in the GMO.

(47) "Revised EIR" shall have the meaning set forth in Recital paragraph F of this Agreement.

(48) "Subdivision Document" shall have the meaning set forth in Section 1.06(d) of this Agreement.

(49) "Swim Center Funds" shall have the meaning set forth in Section 1.01(c) of this Agreement.

(50) "Swim Center Funds Account" shall have the meaning set forth in Section 1.01(a) (1) of this Agreement.

(51) "Term" shall have the meaning set forth in Section 1.06(a) of this Agreement.

(52) "Third Party Challenge" shall have the meaning set forth in Section 1.06(b) of this Agreement.

(53) "Vesting Map" shall have the meaning set forth in Section 1.06(e) of this Agreement.

(54) "WSA" shall have the meaning set forth in Section 1.11(a) of this Agreement.

3.02 Requirements of Development Agreement Statute.

(a) The permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to any development and construction on the Property shall be those set forth in the General Plan and the Ellis Specific Plan, as incorporated by reference herein, and all other provisions of the Applicable Law, as provided for and consistent with the provisions of Section 1.03(b) above.

(b) During the Term of this Agreement, and pursuant to Government Code section 65866, the rules, regulations, official policies and all other controlling criteria shall be the Applicable Law, which Applicable Law may expand pursuant to this Agreement to include New City Law(s), Owner Approvals, and other subsequent actions that this Agreement includes in the Applicable Law.

(c) As stated above, this Agreement complies with laws regarding Development Agreement Statute (including without limitation Government Code section 65865.2), which requires this Agreement to specify the duration (Term) of the Agreement, the permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The duration of this Agreement is set forth herein, and this Agreement sets forth provisions for the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes in the Applicable Law provisions of this Agreement.

3.03 Development Timing.

The Parties acknowledge that the timing, sequencing, and phasing of any later-approved development is solely the responsibility of Owner. In particular, the Parties desire to avoid the result of the California Supreme Court's holding in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), where the failure of the parties therein to consider and expressly provide for the timing of the development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement.

3.04 Hold Harmless and Indemnification.

Owner shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) (collectively, "Claims") resulting from or arising out of the development contemplated by this Agreement, other than a liability or claim based upon City's gross negligence or willful misconduct. The indemnity obligations of this Agreement shall not extend to Claims arising from activities associated with the maintenance or repair by the City or any other public agency of improvements that have been accepted for dedication by the City or such other public agency.

3.05 Miscellaneous.

(a) Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Owner acknowledges and agrees that City has approved and entered into this Agreement in the sole exercise of its legislative discretion and the standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of the City. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(b) Development Is a Private Undertaking. The development contemplated by this Agreement is a separately undertaken private development. No partnership, joint venture, or other association of any kind between the Owner, on the one hand, and City on the other, is formed by this Agreement. The only relationship between City and Owner is that of a governmental entity regulating the development of private property and the owners of such private property.

(c) Construction. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(d) Notices.

(1) All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective Party as follows:

If to the City:

City Manager
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Telephone: (209) 831-6000
Facsimile: (209) 831-6120

With a copy to:

City Attorney
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Telephone: (209) 831-6130
Facsimile: (209) 831-6137

If to Owner:

Les Serpa
Chris Long
Surland Communities, LLC
1024 Central Avenue
Tracy, CA 95376
Telephone: (209) 832-7000
Facsimile: (209) 833-9700

With a copy to:

Wilson F. Wendt
Miller Starr Regalia
1331 N. California Boulevard
Walnut Creek, CA 94596
Telephone: (925) 935-9400
Facsimile: (925) 933-4126

(2) Either Party may change the address stated herein by giving notice in writing to the other Party, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to Owner as required by this Agreement shall also be given to all other signatory Parties hereto and any lender which requests that such notice be provided. Any signatory Party or lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(e) Recordation. No later than ten (10) days after the Effective Date, the Clerk of the City shall record a copy of this Agreement in the Official Records of the Recorder's Office of San Joaquin County. Owner shall be responsible for any recordation fees.

(f) 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.

(g) 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.

(h) Execution/Entire Agreement. This Agreement may be executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement, including these pages and all the exhibits inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(i) 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 Owner and City. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

(j) Severability. Should any part, term or provision of this Agreement or any document required herein to be executed or delivered be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

(k) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Property Legal Description

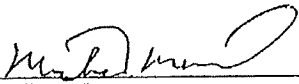
Exhibit B RGA Transmittal and Application Form

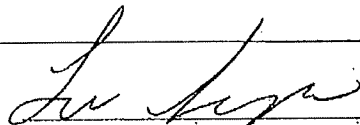
[SIGNATURES ON FOLLOWING PAGE]

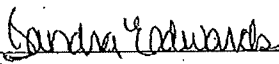
IN WITNESS WHEREOF, the Parties do hereby agree to the full performance of the terms set forth herein.

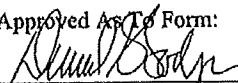
"City"
CITY OF TRACY, a municipal corporation

"Owner"
SURLAND COMMUNITIES, LLC, a California limited liability company


By: ~~XXXXXXXX~~ Michael Maciel
Title: Mayor Pro Tem
Date: 9-17-13

By: 
By: Les Serpa
Title: President
Date: 3-29-13

Attest:

By: Sandra Edwards
Title: CITY CLERK
Date: 9-17-13

Approved As To Form:

By: Daniel Sodergrah
Title: City Attorney
Date: 9/17/13

ACKNOWLEDGMENT

State of California
County of San Joaquin

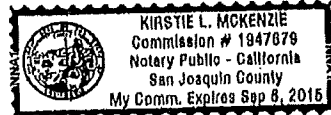
On March 29, 2013 before me, Kirstie L. McKenzie, Notary Public
(Insert name and title of the officer)

personally appeared Les J. Serpa
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 Kirstie L. McKenzie (Seal)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1109

State of California

County of San Joaquin

On 9/17/13 before me, Sharon K. Davis Notary Public

Here Insert Name and Title of the Officer

personally appeared Michael Maciel

Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature: Sharon K. Davis

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Amended & Restated Development Agreement

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Signer's Name: _____

Corporate Officer — Title(s): _____

Corporate Officer — Title(s): _____

Individual

Individual

Partner — Limited General

Partner — Limited General

Attorney in Fact

Attorney in Fact

Trustee

Trustee

Guardian or Conservator

Guardian or Conservator

Other: _____

Other: _____

Signer Is Representing: _____

Signer Is Representing: _____

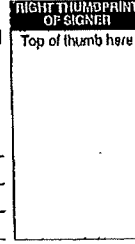




Exhibit A
Property Description

2025-11-14 14:51:52

AR 01371

The land situated in the unincorporated area of the County of San Joaquin, State of California, and described as follows:

PARCEL NO. 1:

A portion of Section 6, Township 3, South, Range 5 East, Mount Diablo Base and Meridian according to the Official Plat thereof, more particularly described as follows: Beginning at an iron pipe in the East line of the Southwest 1/4 of said Section 6, bearing South 0° 17' East 4220.90 feet from the iron bolt at the Northeast corner of the Northwest 1/4 of said Section 6; thence along the East line of the Southwest 1/4 of said Section 6, South 0° 17' East, 964.50 feet to iron pipe in the North line of right of way the Western Pacific Railroad; thence along the North line of said right of way being 50 feet North of the center line of the main line tract of said railroad, South 89° 49' West 1796.43 feet to an iron rod at the Southeast corner of the tract of land conveyed to the United States of America by Deed recorded in Book of Official Records of San Joaquin County, Vol. 1061, Page 45, San Joaquin County Records; thence along the Northeasterly boundary line of said property conveyed to the United States of America, as follows: North 74° 58' West 550.5 feet to an iron rod; North 16° 08' West 317.4 feet to an iron rod; North 58° 09' West 1563.2 feet to an iron rod; South 89° 41' West 437.8 feet to an iron rod in the East line of the Lammers Road which is 25 feet East of the West line of said Section 6; thence along the East line of the Lammers Road, North 0° 11' West 40 feet to an iron pipe; thence 89° 41' East 449.24 feet to an iron pipe; thence South 58° 09' East 677.57 feet to an iron pipe; thence North 89° 43' 30" East 3152.53 feet to the point of beginning.

APN: 240-140-18

PARCEL NO. 2:

A tract of land situated in the County of San Joaquin, State of California in the Southwest 1/4 of Section 6, Township 3 South, Range 5 East, Mount Diablo Base and Meridian, more particularly described as follows:

Parcel 2 as shown upon Parcel Map recorded December 31, 1992 in Book of Parcel Maps, Vol. 18, Page 167, San Joaquin County Records.

APN: 240-140-22

PARCEL NO. 3:

A tract of land situate in the Southwest 1/4 of Section 6 Township 3 South, Range 5 East, Mount Diablo Base and Meridian, more particularly described as follows: Beginning at an iron pipe in the East line of the Northwest 1/4 of said Section 6 bearing South 0° 17' East, 2977.36 feet from the iron bolt at the Northeast corner of the Northwest 1/4 of Section 6; thence along the East line of the Southwest 1/4 of said Section 6, South 0° 17' East 590.08 feet to an iron pipe; thence South 89° 43' 30" West, 4175.03 feet to an iron pipe in the East line of the Lammers Road which is 25 feet East of the West line of said

Section 6; thence along the East line of said Lammers Road, North 0° 11' West 590.08 feet to an iron pipe; thence North 89° 43' 30" East, 4174 feet to the point of beginning. EXCEPT THEREFROM a portion of the Southwest 1/4 of Section 6, Township 3 South, Range 5 East, Mount Diablo Base and Meridian, more particularly described as follows:

Beginning at a 1 inch iron pipe at the Northwest corner of that certain tract of land described in a Deed to Roy Tuso and Margaret Tuso, husband and wife, recorded June 8, 1949, in Book of Official Records, Vol. 1213, Page 30, San Joaquin County Records, said point of beginning being on the East line of Lammers Road (a 50 foot road); thence along the North line of said Tuso property North 89° 44' 00" East 710.00 feet to a 3/4 inch iron pipe; thence South 0° 11' East 17.00 feet to a 3/4 inch iron pipe; thence South 89° 44' 00" West, and parallel to the North line of said Tuso property, a distance of 710.00 feet to a 3/4 inch iron pipe on the East line of said Lammers Road; thence along the East line of Lammers Road North 0° 11' West, 17.00 feet to the point of beginning.

APN: 240-140-16

PARCEL NO. 4:

A portion of the Southwest Quarter of Section 6, Township 3 South, Range 5 East, Mount Diablo Base and Meridian, more particularly described as follows:

Parcel 1, as shown on that certain Parcel Map filed for record December 31, 1992, in Book 18 of Parcel Maps, at Page 167, San Joaquin County Records.

APN: 240-140-23

PARCEL NO. 5:

Parcel One, as shown on that certain Parcel Map entitled "PA-0800181, Parcel Map", filed January 27, 2009, in Book 25 of Parcel Maps, at Page 33, in the Office of the Recorder of San Joaquin County.

APN: 240-140-30

PARCEL NO. 6:

The Southeast Quarter of Section 6, Township 3-South, Range 5 East, Mount Diablo Base and Meridian.

EXCEPT THEREFROM that portion in County Road along the Easterly boundary of said Quarter Section, as said road existed on July 17, 1901.

ALSO EXCEPT THEREFROM that portion thereof conveyed to the Western Pacific Railway Company, a railroad corporation, by Deed recorded June 13, 1906 in Book "A" of Deeds, Vol. 145, Page 528, San Joaquin County Records.

ALSO EXCEPT THEREFROM that portion conveyed to Carol Joan Maridon, aka Carol J. Maridon in Deed recorded January 28, 1989 Instrument No. 89057861 and described as follows:

A portion of the Southeast one quarter of the Southeast one quarter of Section 6, Township 3 South, Range 5 East, Mount Diablo Base and Meridian, described as follows:

BEGINNING at an iron rod at the intersection of the West line of a County Road (Corral Hollow Road) and the North line of that certain parcel of real property as originally conveyed to Western Pacific Railroad Company by Deed recorded June 13, 1906 in Book A of Deeds, Vol. 145, Page 528, San Joaquin County Records; said point of beginning being North 0° 12' 00" East, along the Section line, 138.28 feet and North 89° 44' 22" West 30 feet from the Southeast corner of said Section 6, Township 3 South, Range 5 East, Mount Diablo Base and Meridian; and running thence North 89° 44' 22" West along said North line, parallel with, and 50.0 feet distant from the centerline of the existing Union Pacific Railroad tracts, 500.00 feet to an iron rod; thence North 0° 12' 00" East, parallel with Corral Hollow Road and the East line of said Section 6, 174.24 feet to an iron rod; thence South 89° 44' 22" East, parallel with said North boundary conveyed to Western Pacific Railroad Company, 500.00 feet to an iron rod on the West line of Corral Hollow Road; thence South 0° 12' 00" West along said West line, 174.24 feet to the point of beginning.

EXCEPT THEREFROM that portion conveyed to the County of San Joaquin in Deed recorded January 27, 1989, Document No. 89007328, Official Records.

ALSO EXCEPT THEREFROM all of Parcel One as shown on that certain Parcel Map entitled "PA-0800181, Parcel Map", filed January 27, 2009, in Book 25 of Parcel Maps, at Page 33, in the Office of the Recorder of San Joaquin County.

Note: The above described parcel of land is also shown as the "Designated Remainder" on that certain Parcel Map entitled "PA-0800181, Parcel Map", filed January 27, 2009, in Book 25 of Parcel Maps, at Page 33, in the Office of the Recorder of San Joaquin County.

APN: 240-140-31

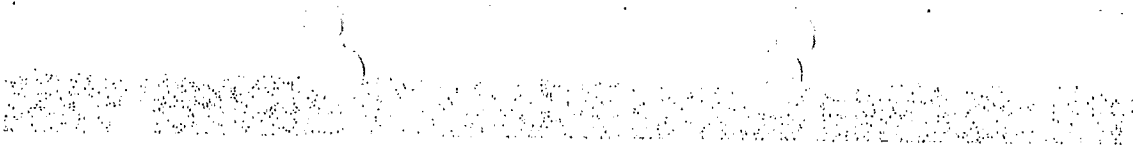


Exhibit B
RGA Application

8000116014000000

RGA Transmittal Form

SURLAND DEVELOPMENT AGREEMENT RESIDENTIAL GROWTH ALLOTMENT APPLICATION

This is a Residential Growth Allotment (RGA) application as provided for in the Development Agreement between THE CITY OF TRACY and SURLAND COMMUNITIES, LLC dated _____ ("Agreement").

Submitted by: _____
Date: _____

Received by: _____
Date: _____

APPLICATION FOR RESIDENTIAL GROWTH ALLOTMENTS

Purpose Of Application

RGA's: _____

Exception (For Affordable Housing Units): _____

Applicant's Information

Name: _____ Telephone No.: _____

Company: _____ Fax No.: _____

Mailing Address: _____

City/State/Zip Code: _____

Property Owner's Information

Name: _____ Telephone No.: _____

Company: _____ Fax No.: _____

Mailing Address: _____

City/State/Zip Code: _____

(If necessary, please attach a sheet listing additional property owner information)

Project Information

Recorded Subdivision Name: _____

Tract No.: _____ Total No. of Lots: _____ Total Acreage: _____

Specify Planning Area (ex: Ellis, etc.): _____

Project (Ownership) Area for which RGA's are applied

Project Area name (if different from above): _____

Project Area ownership: _____

Project Area acreage: _____ Total number of Project Area lots: _____

Assessor's Parcel No(s): _____

Project (Ownership) Area for which RGA's are applied (continued)

Total number of RGA's previously awarded to Project Area: _____

Total number of building permits issued: _____

Total number of unused RGA's (RGA's previously awarded less the total number of RGA's used for building permit issuance): _____

Total number of RGA's requested in this application: _____

Identify the relevant plan approval(s) that have been obtained for the Project Area: _____

Applicant's Signature

I, the undersigned, have complied with all the requirements of the Agreement relevant to this application:

Applicant's Signature

Date

EXHIBIT 2

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

The City of Tracy
333 Civic Center Plaza
Tracy, California 95376

Doc #: 2014-064062
06/30/2014 12:03:32 PM
Page: 1 of 7 Fee: \$0
Kenneth W Blakemore
San Joaquin County Recorders
Paid By: CITY OF TRACY



Space above this line for Recorder's use.

**FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT
AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND
SURLAND COMMUNITIES, LLC**

This FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY and SURLAND COMMUNITIES, LLC (the "First Amendment") is made and entered into as of this 3rd day of July, 2014 (the "Effective Date") by and between the CITY OF TRACY, a municipal corporation ("City"), and SURLAND COMMUNITIES, LLC, a California limited liability company ("Owner"), pursuant to Government Code sections 65864 et seq. and City Resolution No. 2004-368 which establishes the rules, regulations and procedures for the approval, operation and modification of development agreements and the provisions of that certain Amended and Restated Development Agreement By and Between The City of Tracy and Surland Communities, LLC dated April 18, 2013 and recorded on September 17, 2013 as Document No. 2013-119548 Official Records of San Joaquin County, California (the "Development Agreement").

RECITALS

A. The City and Owner entered into the Development Agreement in order to strengthen the public planning process and encourage private participation and the funding of community benefits and amenities that could not otherwise be required under controlling law. Specifically, the Development Agreement provides for the offer to dedicate by Owner of sixteen (16) acres of land and the contribution of \$10,000,000 (the "Owner's Swim Center Contribution") towards the cost of construction of the swim center for the benefit of the greater Tracy community. The Owner's Swim Center Contribution is to be made in two installments. The First Payment of \$2,000,000 was due September 15, 2013 (60 days after the Annexation Effective Date) and the Second Payment of \$8,000,000 will be due July 17, 2016 (3 years after the Annexation Effective Date). The offer of dedication shall be made by Owner to the City within thirty (30) days after the Annexation Effective Date, as defined in the Development

SUDC#1502007816.6

-1-

AR 05116

Agreement. The parties have calculated the Annexation Effective Date to be July 17, 2013, and the date for the offer of dedication to be August 16, 2013.

B. The parties wish to modify and amend the Development Agreement to extend the date for payment of the Owners' First Swim Center Payment of \$2,000,000 to no later than September 15, 2014, and to extend the time in which the City may accept the Land Dedication Offer to September 15, 2015.

C. Pursuant to the provisions of the Development Agreement Enabling Resolution, Government Code section 65868 and the provisions of the Development Agreement, Owner has filed with the City an application for an amendment to the Development Agreement. The City has considered the application and reviewed the substance of the proposed changes, modifications, and amendments contained in this First Amendment. By entering into and executing this First Amendment, the parties hereto agree that the Development Agreement shall hence forward be modified and amended as contained herein.

D. On April 23, 2014, the City Planning Commission, following a duly noticed public hearing and following appropriate notice, recommended approval of this First Amendment. On June 3, 2014, the City Council, following a noticed public hearing which was held on May 20, 2014, adopted Ordinance No. 1194 approving this First Amendment and authorizing its execution. That Ordinance took effect on July 3, 2014, the Effective Date of the First Amendment.

NOW, THEREFORE, the parties hereto agree as follows:

1. Incorporation of Recitals: The recitals set forth above are incorporated into this First Amendment as though set forth in full herein.

2. Subsection 1.01(a), The Swim Center Obligations, shall be amended to read as follows:

1.01 The Swim Center Obligations.

(a) Owner hereby commits to provide ten million dollars (\$10,000,000.00) ("Owner Swim Center Contribution") to the City, as set forth in this Section 1.01(a), to fund the design, construction, operation and maintenance of a swim center. Owner shall deposit into a segregated and interest-bearing City account the Owner Swim Center Contribution, for use by the City for the construction and operation of a swim center as provided herein. Upon completion of the Owner Swim Center Contribution, Owner shall be deemed to have satisfied any and all fees applicable to the Property or the Ellis Project for a swim center or pool.

(1) Not later than September 15, 2014, Owner shall deposit into a segregated and interest-bearing account designated by the City (the "Swim Center Funds Account") two million dollars (\$2,000,000.00) ("Owner's First Swim Center

Payment”) for use by the City in the development, construction, operation and maintenance of a Swim Center.

(2) Not later than two (2) years following the date of Owner’s First Swim Center Payment, Owner shall deposit into the Swim Center Funds Account eight million dollars (\$8,000,000.00) (“Owner’s Second Swim Center Payment”) for use by the City in the development, construction, operation and maintenance of a Swim Center.

(3) Owner’s obligations under this section are separate and independent of Owner’s obligations under Subsection (b), and are binding upon Owner regardless of whether or not City accepts Owner’s Dedication Offer as provided in Subsection (b).

(4) In addition to any other remedies available to the City under this Agreement, and any and all other provisions of this Agreement or the City’s Growth Management Ordinance and Guidelines to the contrary notwithstanding, Owner fails to make either or both of the two non-refundable payments as required by Sections 1.01(a)(1) and (2) above, then the City may, in its sole and exclusive discretion, withhold from Owner such Residential Growth Allotments or building permits as Owner would otherwise be entitled to receive under this Agreement or the City’s Growth Management Ordinance or Guidelines, and may continue to withhold the issuance of such Residential Growth Allotments or building permits until all such overdue payment or payments due under this Agreement have been made in full.

3. Subsection 1.01(b)(1) shall be amended to read as follows:

(b) Owner shall offer to dedicate to the City approximately sixteen (16) acres of land as described generally in the Revised EIR and the Ellis Specific Plan as the location of the “Potential Swim Center” (the “Ellis Swim Center Site”), subject to the following:

(1) Not later than September 15, 2014, Owner shall offer to dedicate to the City at no cost to the City, the Ellis Swim Center Site (“Land Dedication Offer”). City shall have until September 15, 2015 to accept the Land Dedication Offer (“Dedication Acceptance Period”), subject to such extensions as may be mutually agreed by the Parties. If City does not accept the Land Dedication Offer within the Dedication Acceptance Period, then one day after the conclusion of the Dedication Acceptance Period, the Land Dedication Offer shall be considered rejected by the City and shall expire without any further action of the Parties.

Thereafter, the Ellis Swim Center Site shall be available for development by Owner pursuant to the 2013 Ellis Specific Plan. Additionally, at any time prior to the end of the Dedication Acceptance Period, City may, by resolution of the City Council, reject the Land Dedication Offer and upon such City rejection, the Ellis Swim Center Site shall be available to Owner for development pursuant to the 2013 Ellis Specific Plan.

4. This First Amendment shall become effective upon the Effective Date which is deemed to be thirty (30) days after the adoption of the Ordinance approving this First Amendment, which Effective Date shall then be inserted into this First Amendment.

5. Recordation: Pursuant to the provisions of Government Code section 65868.5, the duly executed and notarial acknowledged copy of this First Amendment shall be recorded in the Official Records of San Joaquin County, California, no later than ten (10) days following its Effective Date and the burdens and benefits conferred herein will constitute covenants running with the land binding on successors and assigns.

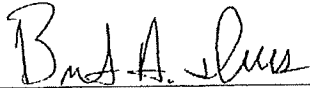
6. Continued Effectiveness of Development Agreement: Except as expressly modified herein, the Development Agreement shall remain in full force and effect. The provisions of this First Amendment are several and separate and should a legal challenge be brought challenging the First Amendment, such challenge shall in no way affect or impact the continued validity and existence of the Development Agreement.

[Signatures on following page]

Executed on the date indicated below.

"City"

CITY OF TRACY, a municipal corporation



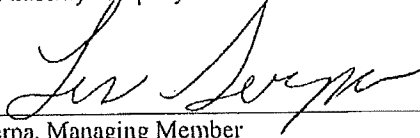
By: Brent Ives

Title: Mayor

Date: 6/5/14

"Owner"

SURLAND COMMUNITIES, LLC, a California limited liability company



Les Serpa, Managing Member

Title: Managing Member

Date: 5/28/14

Attest:

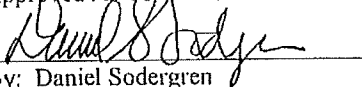


By:

Title: CITY CLERK

Date: June 9, 2014

Approved As To Form:



By: Daniel Sodergren

Title: City Attorney

Date: 6/4/14

ACKNOWLEDGMENT

State of California
County of San Joaquin)

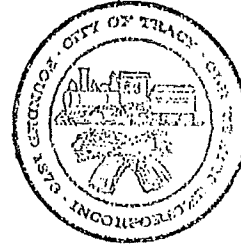
On June 25, 2014 before me, Carole Herschmann, Interim City Clerk
(insert name and title of the officer)

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



STATE OF CALIFORNIA)
COUNTY OF San Joaquin) ss.

On May 28th, 2014 before me, Kirstie L. McKenzie, Notary Public, personally appeared Les Serpa, 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.

Kirstie L. McKenzie
Notary Public



STATE OF CALIFORNIA)
COUNTY OF _____) ss.

On _____, 2014 before me, _____, Notary Public, personally appeared _____, 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.

Notary Public

EXHIBIT 3

Doc #: 2018-055247
05/18/2018 09:22:47 AM
Page: 1 of 59 Fee: \$0
Steve J. Bestolarides
San Joaquin County Recorders
Paid By: SHOWN ON DOCUMENT

Recording Requested By:



Adrienne Richardson
City Clerk

Return To:
City Hall
City Clerk's Office
333 Civic Center Plaza
Tracy, CA 95376

Document Title

SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT
AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND
SURLAND COMMUNITIES, LLC

AR 05029

SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT
AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND
SURLAND COMMUNITIES, LLC

This SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY and SURLAND COMMUNITIES, LLC (the "Second Amendment") is made and entered into as of this 3rd day of May, 2018 (the "Effective Date") by and between the CITY OF TRACY, a municipal corporation ("City"), and SURLAND COMMUNITIES, LLC, a California limited liability company ("Owner"), pursuant to Government Code sections 65864 et seq. and City Resolution No. 2004-368 which establishes the rules, regulations and procedures for the approval, operation and modification of development agreements and the provisions of that certain Amended and Restated Development Agreements By and Between The City of Tracy and Surland Communities, LLC dated April 18, 2013 and recorded on September 17, 2013 under Recorder's Serial No. 2013-119548, Official Records of San Joaquin County, California (the "Development Agreement").

Exhibits A, B, C, D are attached.

RECITALS

A. The City and Owner entered into the Development Agreement in order to strengthen the public planning process and encourage private participation and the funding of community benefits and amenities that could not otherwise be required under controlling law. Among other things, the Development Agreement provides for Owner to (i) provide \$10,000,000 (the "Owner Swim Center Contribution") to be used to design and fund the construction of a public swim center (the "Swim Center"), and (ii) offer to dedicate approximately 16 acres of land to the City, which will be used for the proposed Swim Center (the "Land Dedication Offer"). The Development Agreement also provides that, in exchange for the Owner Swim Center Contribution and Land

Dedication Offer, the City shall reserve and Owner shall be eligible for the allocation of up to 2,250 Residential Grown Allocations ("Subsection F.3. RGAs") to be used exclusively on the Property.

B. On October 14, 2014 (Recorders Serial # 2014-097799), Owner timely made Owner's Land Dedication Offer. Under the Agreement to Extend (Recorder's Serial # 2015-073934), the City had until September 15, 2016, to accept the Land Dedication Offer or the City would be deemed to have rejected the Land Dedication Offer and the land would be available for development by Owner consistent with the Ellis Specific Plan. Following Owner's submittal of the Land Dedication Offer, the City and Owner agreed that there is an alternate location in the Ellis Specific Plan area that may be preferable as the location for the proposed Swim Center, and Owner agreed to prepare and submit to the City a revised land dedication offer (the "Revised Land Dedication Offer") to replace the original Land Dedication Offer.

C. Under the Development Agreement, the Owner Swim Center Contribution was due in two (2) installment payments. Owner timely made Owner's First Swim Center Payment on September 5, 2014. Owner's second installment payment of \$8,000,000 ("Owner's Second Swim Center Payment") is a subject of this amendment.

D. On August 16, 2016, the City Council approved Owner's request to negotiate a second amendment to the Development Agreement to extend the deadline for Owner's Second Swim Center Payment and the deadline for the City's acceptance of the Land Dedication Offer, in exchange for Owner's providing to the City certain infrastructure improvements relating to the proposed Swim Center.

E. To give the Parties time to prepare and process Owner's requested Development Agreement amendment, the City and Owner executed that certain Agreement To Toll And Extend

The Dedication Acceptance Period And The 60-Day Cure Period Respecting The Second Swim Center Payment Under Amended And Restated Development Agreement By And Between The City Of Tracy And Surland Communities, LLC (the "First Tolling Agreement"), by which the City and Owner agreed to: (i) extend the sixty-day cure period for Owner's Second Swim Center Payment to September 5, 2017; (ii) extend the time period for the City's acceptance of the Land Dedication Offer to November 24, 2017; and (iii) require Owner to deliver the Revised Land Dedication Offer not later than September 15, 2017.

F. In December of 2016, the City and Owner began discussions to expand the scope of the proposed Development Agreement amendment to provide for Owner to assume the obligation to design and construct the proposed Swim Center, and to describe a process by which other real property could become subject to the Development Agreement, subject to future Owner applications and future City approvals. The City and Owner agreed that such expanded negotiations would require additional time to prepare and process the expanded second amendment to the Development Agreement, and on August 15, 2017, the City Council approved that certain Second Agreement To Toll And Extend The Dedication Acceptance Period And The 60-Day Cure Period For The Second Swim Center Payment Under The Amended And Restated Development Agreement By And Between The City Of Tracy And Surland Communities, LLC (the "Second Tolling Agreement"), by which the City and Owner agreed to: (i) extend the sixty-day cure period for Owner's Second Swim Center Payment to December 5, 2017; (ii) extend the time period for the City's acceptance of the Land Dedication Offer to December 5, 2017, provided that the City shall not accept the Land Dedication Offer before November 15, 2017; and (iii) require Owner to deliver the Revised Land Dedication Offer not later than December 5, 2017. Subsequently in

November 2017 the parties entered into a third tolling agreement that extends the time for the parties to perform their obligations until April 4, 2018.

G. On February 14, 2018, the City Planning Commission, following a duly noticed public hearing, recommended approval of the Second Amendment. On April 3, 2018, the City Council following a duly noticed public hearing, adopted Ordinance No. 1253 approving this Second Amendment and authorizing its execution. That Ordinance took effect on May 3, 2018 the Effective Date of the Second Amendment.

H. Pursuant to the provisions of the Development Agreement Enabling Resolution, Government Code section 65868 and Section 1.09 of the Development Agreement, Owner has filed with the City an application for an amendment to the Development Agreement. The City found that the Owner was not in default under the Development Agreement, has considered the application and reviewed the substance of the proposed changes, modifications, and amendments contained in this Second Amendment. By entering into and executing this Second Amendment, the parties hereto agree that the Development Agreement shall hence forward be modified and amended as contained herein.

I. This Agreement is consistent with the General Plan and the 2013 Ellis Specific Plan as further amended in 2014. Owner has filed further amendments to the Ellis Specific Plan which are scheduled to be considered by the City Council in March 2018. As required by the General Plan, this Agreement envisions proper environmental analysis and a proper planning process in compliance with controlling law before any approval allowing development can take place.

J. The parties understand and agree that:

(i) In order to achieve area wide consistency in planning and design achieve General Plan goals, policies objectives to efficiently use land and public infrastructure,

and for community consistency Owner intends to annex to the Ellis Property Owners Association all real property which is subsequently subject to the Development Agreement; and, (ii) such other real property may adopt the Ellis Specific Plan design and planning standards for all infrastructure and site improvements.

K. This Development Agreement for all purposes in naming and otherwise shall be referred to as the "Surland Development Agreement".

NOW, THEREFORE, the parties hereto agree as follows:

1. Incorporation of Recitals: The recitals set forth above are incorporated into this Second Amendment as though set forth in full herein.

2. Section 1.01(j). The Swim Center Obligations, is added as follows. Section 1.01 The Swim Center Obligations.

(j) (i) Owner agrees to retain and compensate consultants to design the Swim Center with input from the community and City staff and with direction from the City Council. All true and correct expenses paid by Owner concerning the design and construction of the Swim Center shall be a credit against the Owner's contribution identified in Recital A. In anticipation of this Development Agreement amendment and at the request of City, Owner retained consultants prior to the approval and execution of this Development Agreement amendment, and funds expended by Owner during the period before the Second Amendment is executed shall be eligible for credits. The parties acknowledge that the studies, reports and designs prepared by Owner's consultants shall be the property of Owner and shall not without prior written consent of Owner be used by City in any manner. The studies, reports and designs shall be jointly owned by

Owner and City after Owner is fully reimbursed for Owner's costs of obtaining the studies, reports and designs through reimbursements and/or credits unless City is subsequently in default under this Agreement in which case City shall not longer be treated as a co-owner. All studies, reports and designs shall be assigned to City upon Owner's transfer of ownership of the Swim Center to City.

(ii) Before Owner prepares construction improvement plans the City Council shall approve a final conceptual plan. City and Owner shall agree upon a list of design, construction and/or improvements that Owner shall design and/or construct. If, after the City Council approves a final conceptual plan, it decides to modify the plan or add additional features or amenities then the cost of changing the conceptual plan or any design or construction plans relying on the original conceptual plan shall be additive funding provided by the City above the initial Swim Center funding.

(iii) Previously Owner has provided Two Million Dollars of a Ten Million Dollar contribution to the City for the Swim Center. City, in a manner consistent with the performance, funding and construction agreement mentioned subsequently, shall cause the Two Million Dollars initial contribution to be applied to the Swim Center's design and construction activities. If the Swim Center is relocated to a location other than a location within the Ellis Specific Plan area then Owner shall pay the remaining Eight Million Dollar future contribution to the City. However, if the Swim Center continues to be sited within the Ellis Specific Plan area then, since the Two Million Dollar initial contribution has previously been paid by Owner to City, the remaining Eight Million future contribution shall be satisfied in full by Owner providing Swim Center design and construction of improvements equal to Eight Million Dollars in costs incurred by Owner. The initial contribution of Two Million Dollars shall be used to pay for Swim Center

design and construction. The parties shall enter into a design, funding and construction agreement contemporaneously with the approval of this Second Amendment. The City Council has requested Owner facilitate additional design, construction, operations, and improvements beyond the Owner contribution. Owner has agreed and shall facilitate completion of additional design improvements and construction of approved plans beyond Eight Million Dollars with funding provided by City in an amount equal to Thirty Five Million Dollars with a supplementary contingency amount of twenty percent of the total estimated costs of Forty Five Million Dollars (Swim Center Funding). The City shall have the right to review and approve the design and improvement plans and City shall not unreasonably withhold approval. This additional construction of approved plans shall represent Owner's entire obligation to facilitate design and construction improvements for the Swim Center improvements and once the additional agreed upon improvements are constructed Owner's obligation to facilitate design and construction improvements for the Swim Center under this Agreement shall terminate. If the parties agree that Owner shall construct Swim Center improvements in addition to the final conceptual plan approved by City Council and the list of design, construction and/or improvements then the parties shall meet in good faith to negotiate and execute agreements concerning the method of City paying for additional constructed improvements. All subsequent costs shall be paid by the City and not the Owner, and Owner shall have no further financial obligation toward the design, construction, development, operation or maintenance of the Swim Center.

(iv) As required by and according to the manner established by the CFD, each residential lot and Commercial parcel (as defined in subsection v) within the Ellis Property Owners Association (which is defined to mean for purposes of this Agreement a property owners association established by Owner) shall pay an annual fee of \$110 per lot/parcel toward Swim

Center maintenance, which fee shall be adjusted annually according to the applicable community facility district formula.

(v) The residents of each residential dwelling shall receive from the City an annual all access family pass administered by the EPOA, and the Ellis Commercial Association shall receive one all access family pass for each legally created lot designated village center or commercial (Commercial) located within the Ellis Property Owners Association boundary to the Swim Center at no additional cost.

(vi) Owner has made an irrevocable offer to dedicate approximately sixteen acres for a swim center and subsequently the City Council has determined that the Swim Center shall be located at the property offered for dedication, therefore, Owner's contribution of land for the Swim Center shall be equal to and be treated as the dedication of sixteen (16) acres of community park land under the City's parkland dedication ordinance and this credit of sixteen (16) acres of park land and shall be available by Owner and shall be applied at the option of Owner to the Property and/or to such other real property which is subsequently subject to the Development Agreement (DA Property). (The criteria for Owner applying this Agreement to DA Property is explained in subsection 1.07(h) of this Agreement.) After Owner's irrevocable offer of dedication and the City's determination that this land shall be used for the swim center then there shall be no more dedications and/or community park fees collected or paid by any residential or commercial real property within the Property, and any land offered for dedication or community park fees previously collected shall be reimbursed to Owner within thirty (30) days of approval of this agreement which is date of the decision to locate the Swim Center at Ellis. However, the decision of when to accept the dedication of land may be made at any time until the City accepts the Swim Center improvements constructed by Owner.

(vii) If the City elects to construct or authorize Owner to construct the Swim Center using the Owner Swim Center Contribution then the Swim Center shall be named the "Serpa Aquatic Park" for all naming and identification purposes, as further described in Exhibit A, including but not limited to digital, print and signage, the designation of "Les and Carol Serpa Aquatic Park" may also be used. If the City elects to construct or authorize the Owner to construct the Swim Center at the Ellis Swim Center Site, the site shall only be used for a public swim center with only those uses as formally agreed upon by the City and Owner or Owner's designee. In making the dedication of the real property for the Swim Center it was the intent of the parties that the real property shall only be used for an aquatic park and no other use and the City shall not sell the real property. This term shall survive the term of this Development Agreement.

(viii) City shall promptly and immediately take reasonable actions necessary to expeditiously process all required plans, City Council approval of improvement plans, acquire all land necessary, (including by not limited to easements, real property, entitlements, project approval(s), San Joaquin County approval (s), railroad easements, any other agency approvals), and completion of all actions necessary shall be perfected without unreasonable delay whatsoever, for the approval and start of construction of Storm Basin 3A by Owner or Owner's designee as soon as practical. Owner or Owner's designee shall promptly and immediately take reasonable actions necessary to finalize an off-site improvement agreement with City Council approval, and following those actions expeditiously to prepare all required plans, process improvement plans for City Council approval, and commence construction once all permits, easements and other approvals have been provided by the City. The parties agree that in performing this obligation time is of the essence. Unless expressly prohibited by law or expressly required by a condition of a grant, City shall not charge any development, planning or construction fees or charge (including

overhead, plan checking, building permit, project management, or any other fee) for the Swim Center. Any and all regulatory agency fees, or actual special outside plan review costs, including but not limited to the SJCOG conservations easement costs, shall be paid by the City. If improvements are funded by a CFD and funds are available to the City of Tracy from the CFD, no bonding shall be required as part of an improvement agreement or any public improvements.

3. Section 1.07, Residential Growth Allotments, shall be deleted from the Development Agreement and the following inserted in its place:

1.07 Residential Growth Allotments; Building Permits.

(a) Treatment of Development Agreement Residential Growth Allocations.

(i) Through this Development Agreement City shall reserve and vest in favor of Owner, and Owner shall be eligible for, the allocation of 2,250 Development Agreement Residential Growth Allotments and building permits (Subsection F.3 RGAs) for residential development on the Property as may be revised from time to time, minus any Subsection F.3 RGAs already issued by City to Owner. As explained subsequently Owner is eligible to receive Subsection F.4 RGAs (Subsection F.4. RGAs or RGAs) and building permits from any available source of allocating RGAs or building permits other than through this Development Agreement. This amendment to the Development Agreement does not exempt building permits from being subject to plan check, building code requirements, and other permit related requirements in effect as of the Effective Date of the amendment to the Development Agreement.

(ii) At Owner's option, Subsection F.3 RGAs may be applied to a project as defined in the GMO on the Development Agreement Effective Date (Project) within the Property's

boundary and all Subsection F.3 RGAs perfected (a RGA is perfected when a residential building permit is issued according to the allocated RGA) for which a building permit is issued shall be deducted from the 2,250 DA RGAs allocated by this Agreement and to DA Property which become part of the Property in accordance with section 1.07(f)(i) through and including (iv), below. For a calendar year where Owner applies Subsection F.3 RGAs to a Project, or more than one Project in that calendar year the Project(s) may not receive more than 225 Subsection F.3 RGAs and building permits. At the end of the calendar year this limitation of receiving no more than 225 Subsection F.3 RGAs and being unable to receive RGAs from other sources for those Projects shall automatically lapse. The Subsection F.3 RGAs applied to the Project(s) and for which building permits are issued shall be deducted from the 2,250 Subsection F.3 RGA allocation derived from and vested by this Development Agreement.

(iii) Except as otherwise provided herein, in no event shall Owner be allocated more than 2,250 Subsection F.3 RGAs from this Development Agreement over the Term of this Agreement (“Overall RGA Maximum”) (the 2,250 Subsection F.3 RGAs includes any Subsection F.3 RGAs allocated by the City to Owner and perfected prior to the Effective Date of this Amendment) which may be applied to the Property.

(b) Treatment of RHNA or unused RGAs that may become available for re-issuance from subsequent rounds of RGA allocations under the GMO or other sources other than this Development Agreement.

(i) This Development Agreement vests Owner with the absolute right to obtain Subsection F.4 RGAs and building permits from any and all other sources. Thus each year Owner

shall be eligible for Subsection F.4 RGAs as provided in the GMO and the GMO Guidelines in effect on the Effective Date (“Annual RGA Eligibility”).

(ii) This amendment is designed to permit additional property to be added to and incorporated in to the Development Agreement and therefore become Property of the Development Agreement, and Owner may apply for RGAs for Projects and home builders within the Property (whether or not annexed to the ESP) area. Owner shall not apply RGAs subject to this Agreement to other real property unless this property has been added to the Development Agreement as Property pursuant to subsection 1.07(h). Owner may allocate RGAs, building permit or both, derived from any source, including the Growth Management ordinance, this Development Agreement, the RHNA or any other sources not specifically identified herein to Projects or homebuilders within the property subject to this Agreement and building permits in certain circumstances may be acquired without an RGA such as through RHNA, and as subsequently provided by this section.

(iii) RGAs secured by Owner by means of any provision of the GMO Guidelines other than subsection F.3, RHNA, subsequent rounds of the allocation of RGAs under the GMO or from any other source other than from Section F.3 RGAs through this Development Agreement shall not be deducted from the Overall RGA Maximum and shall not be subject to a limitation of 225 subsection F.3 RGAs in a single calendar year. The parties acknowledge and agree that Owner has a vested right to receive no more than 2,250 RGAs and building permits through this Development Agreement; however, this limitation of receiving 2,250 RGAs and building permits at a rate of no more than 225 Subsection F.3 RGAs and building permits during a calendar year does not operate in any manner to prevent or frustrate Owner’s efforts to obtain RGAs and building permits from all other sources and applying those RGAs and building permits

to Projects within the Property that do not receive Section F.3 RGAs and building permits during the applicable calendar year.

(c) Owner shall apply to City for Subsection F.3.RGAs and/or Subsection F.4 RGAs (“RGA Application(s)”) according to the Development Agreement and the requisite applicable requirements of the GMO Guidelines in effect on the Development Agreement Effective Date using the Application form attached hereto as Exhibit B or the form then stipulated in the GMO Guidelines then in effect, at the option of the Owner. The form shall designate the Project receiving the Subsection F.3 RGAs/Subsection F.4 RGAs and shall identify whether the application is for Subsection F.3 RGAs or Subsection F.4 RGAs.

(d) Owner shall provide a separate Application for each calendar year in which Owner seeks Subsection F.3 RGAs/Subsection F.4 RGAs. There shall be a separate application for each type of RGA applied for. Pursuant to Section F.4(c) of the GMO Guidelines, Owner shall have the first right and shall be entitled to apply for at any time during the year and obtain for the Property any RGAs not applied for, applied for but not granted, unclaimed, or unassigned to the Tracy Hills project, or granted RGAs which have been rescinded from the Tracy Hills project, according to the maximum amount of RGAs available or prioritized for Tracy Hills through the GMO in any calendar year, during any calendar year during the term of this Agreement and all RGAs obtained through this process and applied to the Project shall not be deducted from the annual Overall RGA Maximum. Owner shall have the right to apply RGAs obtained under this subsection (d) to any DA Properties and these RGAs shall not be subject to the total or annual limitation of Subsection F.3 RGA allocations or be a deduction against the Overall Subsection F.3 RGA Total.

Only Owner may apply for Subsection F.3 RGAs/Subsection F.4 RGAs for property subject to this Agreement, unless Owner notifies City in writing of an exception and designates another entity to apply for RGAs. Pursuant to Section F.4(c) of the GMO Guidelines, City shall notify Owner within ten (10) days of any RGAs not applied for, applied for but not granted, unclaimed, or unassigned to the Tracy Hills project, or granted RGAs which have been rescinded from the Tracy Hills project according to the maximum amount of RGAs available or prioritized for Tracy Hills through the GMO in any calendar year. City agrees to make RGAs available to Owner pursuant to Section F.4(c) of the GMO Guidelines at the earliest possible date such RGAs become available after the time for Tracy Hills to request a RGA has passed or at the earliest possible time to acquire an allocated RGA after the time for Tracy Hills to perfect the allocated RGA has lapsed without Tracy Hills perfecting the allocated RGA pursuant to GMO rules. If RGAs are available Owner shall have the right to apply for Tracy Hills RGAs and the Growth Management Board shall allocate Tracy Hills RGAs to the Project(s) identified by Owner within fifteen (15) days of the date the Growth Management Board received the Owner's application(s).

(e) (i) With the expressed exception of subsection F.1 "Vested Projects", in instances where all RGAs are not claimed or claimed but are not perfected (collectively unclaimed RGAs) such unclaimed RGAs shall be allocated using the following procedure, priority and percentages. RGAs shall be allocated according to each category's percentage of the total number of eligible RGAs until all RGAs are claimed or the City conducts an entire round of RGA allocations and no RGAs are claimed by any category. The priority of categories shall follow the order the subcategories are listed in subsection F of the GMO Guidelines. Hence the priority shall be Primary Growth Areas, Development Agreements, Tracy Hills and Ellis Specific Plan Projects, and then Other Projects. Since subsection F.1, Vested Projects, is not assigned a total number of

RGAs by the GMO Guidelines it does not participate in subsequent rounds of RGA allocations. Vested Project as defined in Subsection F.1 of the GMO at the time of this amendment approval shall retain all rights as provided by the GMO immediately prior to this amendment being effective.

(ii) Notwithstanding any other provision of this Amendment, Owner's right to seek RGAs allocated by the GMO Guidelines to subsections F.2, F.3, and F.5 does not extend to instances where eligible property owners within the designated subsection claim the GMO Guideline allocated RGAs. Rather Owner's right to seek RGAs allocated by the GMO Guidelines to subsections F.2, F.3, and F.5 only extends to instances where these eligible property owners within the designated subsection do not claim the GMO Guideline allocated RGAs. In addition, the parties do not intend this Amendment to the Development Agreement to change the current City practice of issuing RHNA permits on a "first come/first serve" basis nor do the parties intend for this Agreement to grant to Owner a priority to receive RHNA permits over any other applicant for RHNA permits.

(f)(1) However, after first excluding RHNA or other similar sources of building permits, Owner agrees it will not apply for Tracy Hills RGAs or other Available RGAs in a manner that is responsible for the City allocating more than the maximum possible RGAs in a given calendar year.

(f)(2) This Agreement does not intend to prohibit or prevent the City from granting RGAs in the future to any other person or entity in a manner consistent with the GMO and GMO Guidelines, so long as a future city decision does not impair Owner's right and ability to obtain RGAs as provided by this Agreement.

(g) Owner shall be eligible for building permits according this Development Agreement and to the applicable requirements of the GMO and the GMO Guidelines in effect on the Development Agreement Effective Date and the building permits issued hereunder shall be in accordance with the following:

(i) Building permits issued hereunder shall be deemed to have been secured by Owner upon the meeting of applicable plan check review requirements to issue a building permit and payment to the City of the building permit plan check inspection fee, due under the Municipal Code;

(ii) Despite any provision of the Municipal Code to the contrary, building permits issued hereunder shall continue in existence for a period of not less than twenty-four (24) months or until a certificate of occupancy for the structure is issued, whichever first occurs, and plot plans approved at the time of building permits may be adjusted or resubmitted during this period without further fees for minor modifications

(iii) If noticed by Owner to City for a Project, all development impact fees and other fees and contributions identified in the EFIP, or agreed upon by the City and Owner in other finance plans such as the City Master Plans, or any other Fee Programs, or other impact fee, agreed to by the City and Owner and attributable to a structure shall be due and payable through close of escrow for a home builder to a home buyer for a residential structure, and upon a final inspection approval for a commercial structure for the noticed Project. The process for such payment is attached hereto and incorporated herein by this reference as Exhibit C. However, if a type of fee to be collected is immediately necessary to fund infrastructure construction that is directly needed by the building being constructed by the building permit for a commercial building then a fee for

that relevant category shall be collected at the time the building permit is issued by the City, if prior to issuing the building permit City sends Owner a written justification for accelerating collection of the fee based upon the reason stated in this sentence and second meets and confers with Owner in good faith at the earliest possible time before accelerating collection of the specific category of fee for the specific building permit. However, if a type of fee to be collected is immediately necessary to fund infrastructure construction that is directly needed by the building being constructed for a residential building then the fee for that related category shall be collected at the time the building permit is issued by the City, if the determination for the need to accelerate payment is made prior to approving the final map that including the relevant building lot(s). City shall send Owner a written detailed and comprehensive justification for accelerating collection of the fee based upon the reason stated in this sentence and shall meet and confer with Owner in good faith at the earliest possible time before accelerating collection of the specific category of fee for the specific final map buildings. In no event shall the time to pay the applicable fees exceed twenty four (24) months from approval of the final inspection for a residential lot.

However, if during the twenty-four months City determines that some or all of the deferred fees are immediately needed to fund infrastructure construction that is directly needed for the future occupants of the residential unit then the City has the right to deliver written notice to the real property owner demanding payment of the applicable fee and the real property owner shall pay the demand within thirty (30) days of receipt of City's written notice.

(iv) The Ellis Specific Plan Finance and Implementation Plan ("EFIP") shall be the finance plan for ESP Property, and the amount of fees as documented is a vested element, and no other fees shall be charged without the mutually written consent of the parties. Owner may request that the ESP or a portion of the ESP join another finance district and upon approval by Owner and City

the ESP or a portion of the ESP may be included in a different finance district, including updating the EFIP as needed.

(v) For any finance district, district fee, or community facility districts to be effective Owner's prior written consent, which may be withheld for any reason, is required for any property subject to this development agreement and, the Ellis Community Facilities District (ECFD) has been approved by Owner and is in effect. The obligation to make ECFD payments to City for maintaining the Swim Center shall be considered a community wide benefit and shall take the place of, be the equivalent of participating in and shall constitute full satisfaction for any future community wide facilities district or fees, including any facility district or other funding mechanism to fund public services, public landscape, park maintenance, basin maintenance, project-specific maintenance, police, fire and/or public works. Owner agrees to include Property into the ECFD and therefore, City shall not delay, deny, or condition any application filed, or processing for any Property because any or all of the Property is not joined into a CFD, Mello Roos District, or other Financing District.

(h) Subject to Section 1.02, Owner shall have the right but not the obligation to file a request with the City to approve and if approved thereafter have recorded this development agreement against DA Property subject to the following conditions being satisfied:

(i) The DA Property has been annexed to the City of Tracy;

(ii) The Owner owns or has an enforceable right, within the meaning of "legal and equitable interest in real property" as used in current Government Code Section 65865(a) and (b), to purchase DA Property;

(iii) The Owner agrees to annex the DA Property into the Ellis Property Owners Association, the ECFD or equivalent community finance district, the Ellis Finance Plan, or other requisite finance districts; and,

(iv) The development agreement, either in the form of this Development Agreement or as may be modified by the parties, proposed for DA Property contains an amended property description that includes a property description of the DA Property.

(v) The City Council adopts a finding that amending the property description into this Development Agreement is not inconsistent with the GMO in its form as of the Effective Date of this Agreement.

For purposes of this subsection 1.07(h) the parties acknowledge and agree the term “annexed to the City of Tracy” as used in subsection 1.07(h)(i) means the City of Tracy has complied with the California Environmental Quality Act for purposes of adopting a general plan designation, a zoning or pre-zoning classification, an application to the San Joaquin Local Agency Formation Commission (LAFCo) and, at Owner’s option, a specific plan and one or more tentative parcel or subdivision maps, and LAFCo has approved the City’s annexation request and, if required a sphere of influence amendment for real property not currently subject to the Development Agreement

(i) Notwithstanding any other provision of this Agreement or any other City ordinance, rule, regulation or custom: (1) except for a tentative map receiving DA RGAs in a calendar year, the Property shall not be subject to any limitation or condition concerning the total number of RGAs or building permits from all potential sources in any year or during any RGA and/or building permit cycle; and, (2) approved plot plans and building permits shall have a term of at least two

(2) years and shall be eligible for extensions as provided by the City ordinance, rules and regulations or other applicable laws.

5. Section 1.15(c) is added as follows.

(c) The concept plan for neighborhood parks shall be first presented to the City Parks Commission, the concept plan shall then be updated in coordination with City staff, and if City Council approves the neighborhood parks as part of the Specific Plan or relevant planning and approval documents (Project Plan) then the neighborhood park concept and design shall be in accordance with the then existing Project Plan and may including approximate size, name, location site plans, structures, equipment, uses, plants, trees, signage, color palette and features. Neighborhood parks may be one acre or more, and parks of two acres or more are allowed to have adjacent mail boxes with a roof structure, lighting and other features for mail service to the neighborhood residents, adjacent mail boxes with a roof structure shall not be a credit towards neighborhood park acreage, and maintenance for such neighborhood parks shall be funded by the Ellis community facility district or similar district. The neighborhood parks shall be bonded through a park improvement agreement or other acceptable agreement, at a bonding amount determined by the applicable finance plan or Project Plan, the developer shall be responsible for building the parks and there shall be no impact fee or other fees collected for neighborhood parks. The Project Plan shall provide developed neighborhood park land of three (3) acres per thousand residents. The Project Plan shall provide regulations on the character and amenities for each park. As the park system is implemented detailed designs will be developed for the construction of each park and the final location of parks shall be identified by Owner on tentative maps(s). Modifications and refinements of individual park designs including park location will be considered a minor variation as per the approved Project Plans. The elimination of a major

amenity, or comprehensive change of a major amenity to another use shall be considered a major variation and require review by the City parks commission.

6. Section 1.15 Ellis Specific Plan Parks (b) is deleted and replaced with the following:

(b) The timing of constructing Property neighborhood park improvements shall be according to the applicable Project Plan.

7. Section 1.15(d) is added as follows.

(d) Except for neighborhood park land which shall be maintained by City with funding from the ECFD, all landscape improvements shall be maintained by the Ellis Property Owners Association (EPOA), with funding from the ECFD. The City and EPOA have or shall enter into a maintenance agreement to set forth and facilitate among other things the required maintenance obligations, standards for maintenance, and other associated obligations(s) as well as compliance with the Ellis operations and maintenance manual, to ensure the long-term maintenance of all public park and landscape areas, and other public improvements within the ECFD boundaries. The City and EPOA may amend and make changes agreed upon to the maintenance agreement and Ellis operations and maintenances manual upon mutual consent. The maintenance manual will be updated by Owner periodically to include improvements which have been installed in public parks, landscape areas, and other public improvements within the ECFD boundaries, and updated versions shall be provided to the City and EPOA. The City and EPOA may then amend and make changes to existing improvement standards or guidelines which are part of the manual upon mutual agreement.

8. A new section 1.16(e) is added as follows:

e. On August 16, 2016 the parties agreed to defer the performance of certain acts. As consideration for this deference Owner agreed to:

(i) design and construct the Swim Center monument sign at the corner of Summit Drive and Corral Hollow Road at Owner's sole expense in an amount not to exceed One Hundred and Fifty Thousand Dollars (\$150,000); and,

(ii) expand and improve the Summit Drive paved travel section to the northeast along the frontage of the Swim Center to a five-foot wider section to accommodate potential future Swim Center turn lanes; and,

(iii) construct the frontage improvements for the Swim Center on Summit Drive; and,

(iv) construct the stubbed utilities to the Swim Center site from Summit Drive; and,

(v) fund up to One Hundred Thousand Dollars (\$100,000) for the resources of Surland planners and architects to work with the City to complete a design for the Swim Center.

9. A new section 1.17 is added as follows:

Section 1.17 **Community Facilities District.**

The City and Owner shall cooperate to annex property into the ECFD and the ECFD shall authorize bond indebtedness, and authorize the special taxes, and bond proceeds from the ECFD. Property identified as a Future Annexation Area may annex into a then existing improvement area, or a new improvement area using the unanimous approval process.

Any fees paid from Property or Owner which are determined to be subject to reimbursement with ECFD proceeds or other proceeds shall be deemed "deposits" which may be returned to Owner upon payment of an equivalent amount to the City from ECFD proceeds. City and Owner shall agree on all Property which shall be subject to any other community facility district.

10. A new section 1.18 is added as follows:

Section 1.18 Program/Public Improvements/Infrastructure

A. Except for the process to fund, design, and/or construct the Aquatic Center which is described at section 1.01(j) of this Second Amendment, Owner or Owner's designee may fund, design, and/or construct any program/public infrastructure upon the execution of the requisite improvement agreement, as approved by the City which approval shall not be unreasonably withheld. Owner shall notify the City in writing of the intent to design and/or construct improvements, and at the time of such notice there shall not be a construction or improvement contract in effect that provides for the construction of the specific improvement. Owner shall insure that improvement agreements have been executed and security is posted for the work of the improvement. Owner shall be eligible for credits and/or reimbursements for the work in amounts equal to the full amount of the capital improvement program plan identified in the applicable fee program, or other public improvements, in such instances City shall not charge cost recovery for the related component of the plans and improvements, plans check fees shall be fully reimbursable. For site improvements which Owner or Owner's designee will fund, design, and/or construct public infrastructure, and a plan check fee is collected by City, Owner shall be eligible to receive reimbursements of plan check fees paid, after acceptance of the improvement by the City, the City shall then reconcile actual costs against the plan check fee paid and shall only charge based on the

actual costs, for any project work over five million dollars which is allowed by City code. City shall keep all EFIP funds in discrete accounts, including program management, and provide Owner with an annual accounting of all accounts.

B. After the parties execute a written agreement to fund, design, and/or construct program infrastructure improvements all credits and reimbursements available to Owner, including without limitation credits and reimbursements available as a result of Owner's election,, shall apply to any program expenditure. Owner shall be eligible for both a credit against fees paid, and/or against future fees to be paid, and reimbursement. Owner and City shall enter into a master reimbursement agreement to identify credits and reimbursements, which shall become part of the reimbursement agreement prior to, concurrent with, or subsequent to the improvement(s).

C. Reimbursement Agreement credits and reimbursements, approved by the City through a Reimbursement Agreement shall be allocated in such a manner determined, and in the sole discretion of Owner as Owner deems appropriate, with credits being allocated to "like-kind" fees, like-kind fees shall be fees which are in the same fund type of infrastructure, such as water, wastewater, storm, transportation/roads, public facilities, parks, etc. Owner may have balances of credits before impact fee payments are due, in such event Owner may allocate such credits to specific lots by written direction to the City indicating available credits being applied to specific lots.

D. All program infrastructure/public improvement capacity funded or constructed by Owner shall be available to accommodate the fair share capacity for Owner's Property as approved by City in the relevant agreement (for purposes of this subsection D and section 1.18. F) The City has discretion on the use of the capacity prior to when Owner needs occur, so long as the capacity is available without delay or restriction to Owner or any partial use of this capacity is required or

needed. Owner may construct on-site and off-site infrastructure necessary to provide recycled water service. Recycled Water Fees will be paid in an amount equal to the requisite finance plan, and in accordance Project Plans but no other current or future fee. All recycled water infrastructure improvements within entry, collector and community streets, and other public streets as approved by the City, and as defined by the requisite Project Plan will be recommended by staff to be program costs as part of the water master plan update. Once adopted these costs will be subject to credit and reimbursement according to the reimbursement agreement designee. Concurrent with approval of a final map for any part of Property subject to the Agreement City shall review, and if capacity not currently being used exists, shall reserve wastewater services capacity for treatment and conveyance for residential and commercial wastewater uses included in the approved final map. Through this Agreement City shall allocate and vest in favor of Owner and City shall supply Owner water supply for 2,250 residential units, including all commercial areas and uses (Including Ellis Village Center and Limited Use Area) in the Ellis Specific Plan, including the Swim Center in accordance with the Ellis FIP. Owner shall have the right to use all fair share infrastructure capacity described in the Ellis FIP, including but not limited to storm, water, wastewater, transportation (traffic), community park and public buildings. The applicable Project Plan shall identify the financial plan(s) such as the Ellis FIP, the City Master Plans, or any other Fee Programs, or other impact fee, development impact fees and other fees and contributions identified and agreed upon by the City and Owner and attributable to a structure.

E. The Reimbursement Agreement shall be approved prior to the City Council second reading of with this Agreement, and within thirty (30) days after approval of the Reimbursement Agreement for the funding and/or constructing infrastructure, the City shall immediately establish separate Reimbursement accounts for the work identified in the Reimbursement Agreement, and

the work identified in future additional work to the Reimbursement Agreement for depositing reimbursements funds due per the Reimbursement Agreement. City shall provide Owner with a written accounting of funds available for reimbursement to the party identified in the Reimbursement Agreement for the Work within sixty (60) days after executing the Reimbursement Agreement or additional work to the Reimbursement Agreement, City shall transfer to the appropriate reimbursement account all available funding necessary to reimburse Developer for any of the Work Components identified in the Reimbursement Agreement which are subject to an executed Improvement Agreement, Off-Site Improvement Agreement, or other agreement to construct the Work Components. In accordance with the Reimbursement Agreement Fee Credits, as this term is defined in the Reimbursement Agreement, credits may be applied toward impact fees due or paid, on any property with like kind infrastructure fees, by notice to the City from Reimbursement Agreement identified party, after the City Council accepts the Work component identified in the Reimbursement Agreement. The City and Owner shall cooperate to amend the Reimbursement Agreement to add additional Work components as necessary. Reimbursements and credits will be based on infrastructure category funds such as water, wastewater, roadways, parks, and storm, etc.

Sources for the Reimbursements may include monies from the South ISP, Plan C, RSP, Infill, I-205, Ellis FIP, Master Plans, benefitting properties, and/or other City Impact Fee Funds, Finance Plans, or other funding sources, as identified by the City. Credits shall apply against Impact Fees, which otherwise would be payable by properties to City, and applied as directed in writing to the City by the party identified in the Reimbursement Agreement. Payment of reimbursements by City shall be by check or by wire and payable as per the Reimbursement

Agreement. City shall provide Owner a quarterly report indicating the balance of said reimbursement accounts. Administrative costs may apply for enhanced reporting and accounting.

All reimbursements shall be made in full in accordance with the Reimbursement Agreement from funds available at least as often as each City fiscal quarter the City shall release and immediately disburse all funds in any accounts in accordance with the Reimbursement Agreement. The reimbursement agreement will not substantially impair existing reimbursement agreements, or written commitments in effect, as of the date of this amendment. The City represents, warrants and covenants that the funds deposited in infrastructure fund account(s) available for reimbursement shall not be used for any intra-fund transfer without the prior written consent in accordance with the Reimbursement Agreement. Funds in the account shall be deposited in an interest-bearing account and all interest shall be paid in accordance with the Reimbursement Agreement as additional consideration for entering into this Agreement. City shall make all reasonable efforts to provide the "Total Credit and Reimbursement" as of approval of an agreement for the improvement(s) or work, or as soon thereafter as possible. The right to Reimbursement for the improvement(s) or work shall have priority over other improvement projects, or reimbursements. The reimbursement agreement will not substantially impair existing reimbursement agreements, or written commitments in effect as of the date of this amendment.

F. Wastewater treatment capacity needed by Owner which have not yet been provided shall be made available from existing available capacity of the Tracy Waste Water Treatment Plant by determining the capacity requirements of a final map for use of available capacity during the processing of the final map. Owner may participate in additional expansions above for Owner needs by request to the City. The Ellis Initial Capacity shall be applied to the Property according to written directions from Owner to City. In addition to the Ellis Initial Capacity, all property

depicted on final maps which are approved by the City shall be served by the existing wastewater treatment capacity. The Ellis Initial Capacity credits shall be applied to the Property according to written directions from Owner to City. Owner wastewater conveyance needs which have not been met shall be included in the Corral Hollow Conveyance Expansion, or other requisite conveyance system(s) as approved by City, which approval shall not be unreasonably withheld. City shall make available a minimum capacity from the Corral Hollow Conveyance Capacity Phase 1 Expansion (referred to as a choke point at times) for five hundred and fifty (550) residential units whenever needed by Owner for project improvements and/or development until the ultimate Corral Hollow Conveyance Expansion is complete. Owner may use the Eastside sewer conveyance system via a connection through Peony on an interim basis for the first 550 residential units until the ultimate Corral Hollow Conveyance Expansion upgrades are constructed and operational, including the Corral Hollow conveyance system connection to Ellis Town Drive to serve conveyance required by Owner in the Corral Hollow Conveyance System for property subject to this Agreement.

11. Section 3.01(b).4 is deleted.

12. Section 3.01(b).9 shall be deleted from the Development Agreement and the following inserted in its place.

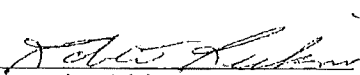
(9) "Certificate of Occupancy" shall mean a certificate issued by the City authorizing occupancy of a residential unit.

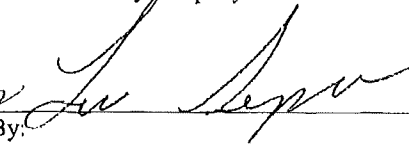
[SIGNATURES ON THE FOLLOWING PAGE]

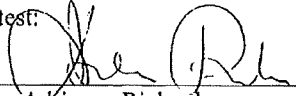
IN WITNESS WHEREOF, the Parties do hereby agree to the full performance of the terms set forth herein.

"City"
CITY OF TRACY, a municipal corporation

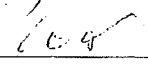
"Owner"
SURLAND COMMUNITIES, LLC, a California limited liability company


By: Robert Rickman
Title: Mayor
Date: 5-10-18


By: _____
Title: Les Serpa
Date: President
May 3, 2018

Attest:

By: Adrienne Richardson
Title: CITY CLERK
Date: 5/16/2018

APPROVED AS TO FORM:


By: Thomas Watson
Title: CITY ATTORNEY
Date: 5/18/18

ACKNOWLEDGMENT

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

State of California
County of San Joaquin)

On May 3, 2018 before me, Kirstie L. McKenzie, Notary Public
(insert name and title of the officer)

personally appeared Les Serpa
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 Kirstie L. McKenzie (Seal)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California }
County of San Joaquin }
On 5/10/18 before me, Sharon K. Davis, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Robert Rickman
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature Sharon K. Davis
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer – Title(s): _____ Corporate Officer – Title(s): _____

Partner – Limited General Partner – Limited General

Individual Attorney in Fact Individual Attorney in Fact

Trustee Guardian of Conservator Trustee Guardian of Conservator

Other: _____ Other: _____

Signer is Representing: _____ Signer is Representing: _____

EXHIBIT A

When Recorded return to:

For Recorder's Use Only

AQUATIC PARK TERMS

- 1.1. Aquatic Park Annual Pass. Members of the EPOA, as property owners within the boundaries of the ECFD, shall receive a pass (pass for annual all access and use at no charge for utilization of all facilities and amenities located within the Aquatic Park 16-acre site for residents of a household at any time (the "Aquatic Center Pass")) for each member's household to the Aquatic Park at Ellis which is within the boundaries of the ECFD. The Commercial Property Owners Association ("CPOA") shall receive a number of Aquatic Center Passes equal to the number of commercial lots, parcels, and condominium units, within the Ellis Storage/Limited Use and Ellis Village Center area which are within the boundaries of the ECFD. The EPOA and CPOA shall, for the benefit of the City, administer the process of annually providing the Aquatic Center Pass and shall keep accurate records of property ownership, lots/parcels/units, and determine eligibility.

- 1.2. Naming Rights. Serpa Aquatic Park shall be the official and the sole and exclusive name for aquatic park at Ellis. The exclusive imaging elements and permanent signage connected to the aquatic park shall come from the design of the aquatic park which shall have the locations and dimensions generally set forth in the Surland aquatic park design which shall then become Exhibit "A" to this Document shall not change without written agreement of Rights Holder. Permanent signage is defined as any fixed signage that is present for all events, including any digital signage. The cost of the design, installation, implementation and maintenance of such signage shall be paid as a cost of the aquatic park project. Serpa Aquatic Park shall be the exclusive Aquatic Park name for the park, and shall be included in all signage, digital signage, marketing, promotion, websites, apparel, and printed material, and shall have prominence and dominance over any naming or sponsors having a presence inside or outside of the Aquatic Park. Prominence must be present in the embodiment of the park structures and each and every event at the facility. No other signage, or naming shall be placed on any structures, buildings, offsite or onsite signage, or used in digital, or fixed signage without written consent of Rights Holder. The style manual which includes approved artwork for park logos and stylized form of the park name shall be used for all signage, websites, advertising, paper products, tickets, passes, apparel, marketing, print, merchandise inventory, and other items. The Les and Carol Serpa Aquatic Park may also be prominently used throughout the Aquatic Park as generally set forth in Exhibit "A" to this Document and shall not change without written consent of Rights Holder. The Aquatic Park signage locations, size, and style as depicted

in Exhibit "A" to this Document shall not change without the consent of Rights Holder. Any signs prepared for gyms, party rooms, event areas, archways and entry gates, or any other signs for the Aquatic Park shall include the official name or logo either in or adjacent to the name of the respective arch or entry. Any apparel, wrist bands, tickets, or other items prepared, given away, used, or sold for the gym, party rooms, events, passes, or any other productions for the Aquatic Park shall include the official name or logo prominently. Aquatic Park official name or logo shall be prominently displayed in and on all design materials, images, illustrations, renderings, site plans, blueprints, animation, video or other depictions that are developed for the Aquatic Park.

- 1.3. **Exclusivity.** Other than using the official name, unless approved in writing by Rights Holder, the City will not permit any exterior signage, advertising, or promotion on the aquatic park or, on the grounds surrounding the aquatic park (including the entry, gym, parking lots, driveways and roads approaching and surrounding the aquatic park), either temporary or permanent. The City agrees to provide that any party entering into an agreement with the City to use the aquatic park for any event cannot remove, cover or otherwise obscure the view of any signage, or naming without the written consent of Rights Holder.
- 1.4. **Advertising, Marketing, Events.** All advertising, marketing, website, and any other locational information, including event advertising, and promotion by any party shall use the following for identification and naming purposes of the event "Serpa Aquatic Park at Ellis". The name shall be of the same font size as the largest font size in the print, and shall be a minimum of 10% of the total area, or 10% of the total time as applicable.
- 1.5. **Indemnification Against Claims by Third Parties.** The City shall defend, indemnify and hold harmless, to the extent permitted by law, Rights Holder from and against any and all claims, damages, causes of action, judgments, liens, losses and costs and liabilities including, without limitation, attorneys, fees and other litigation expenses arising from the City's acts, omissions or breach of this Document and/or from any litigation, arbitration, hearing, investigation or other proceeding commenced by any third party alleging or arising from claims of wrongful conduct or omission by the City, including, but not limited to, negligence, breach of warranty, and unsafe, hazardous, or defective product or service, except to the extent that such damages, claims, losses and judgments and costs incident thereto are caused by the negligence or intentional misconduct of any party seeking indemnification hereunder. The City shall at all times be insured with liability insurance and such insurance as will provide against claims which may arise from the City's operations of the aquatic park and under this Document.
- 1.6. **Copyrights, Trademarks, Service Marks, Logos and Similar Rights of Serpa Aquatic Park, Serpa Aquatic Park Marks.** The parties acknowledge that Rights Holder shall own, and have the responsibility to protect, in the United States, and elsewhere in its sole discretion, the trade name "Serpa Aquatic Park", "Serpa Aquatic Park at Ellis", and all associated trademarks, logos, designs, and service marks (the "Aquatic Park Marks"). Rights Holder hereby grants the City a non-exclusive royalty-free, worldwide license to use the Aquatic Park Marks, subject to the terms provided below, for the purpose of promoting the Aquatic Park. Rights Holder further grants the City the right to sublicense the Aquatic Park Marks as approved from time to time by Rights Holder. Further, all such uses of the Aquatic Park Marks shall be subject to the prior written consent of Rights Holder as to form, copy and content. The City agrees that it will

include the name of "Serpa Aquatic Park" and any related logo or trademark for all of the following related to the Aquatic Park, on all of its letterhead, envelopes, invoices, brochures, business cards and shall include the name of the Aquatic Park in its address. The City shall use "Serpa Aquatic Park" when making reference to the aquatic park and no other name shall be used without the written consent of Rights Holder. The City in any and all contracts, agreements, arrangements, writings and communications, entered into or amended after the date of this Document, pertaining in any manner to the Aquatic Park (such as contracts with tenants, lessors, operators, and users, suppliers, clubs, media, advertisers and others) shall refer to, and as a term of such contracts, agreements and/or arrangements shall require all other parties to such contracts, agreements and/or arrangements to refer to the Aquatic Park as, and only as, "Serpa Aquatic Park." All printed materials promulgated by the City which would normally refer to the address or site of the Aquatic Park shall refer to the Aquatic Park as "Serpa Aquatic Park at Ellis." The City agrees to use reasonable efforts to ensure that the name "Serpa Aquatic Park" is (i) used in all communications and media concerning the Aquatic Park; and (ii) used by all media and news organizations. With respect to all events that are specifically created for the Aquatic Park by the City or scheduled or hosted in the Aquatic Park by the City or its affiliates, or lessors during the Term, the City agrees that for all such events the City shall use its best efforts to require that (i) all communications and media concerning the Aquatic Park; (ii) all local media and news organizations; and (iii) all tickets issued by users of the Aquatic Park will refer to the Aquatic Park as "Serpa Aquatic Park at Ellis." In addition, the City shall use its reasonable efforts to require that all advertising by users of the Aquatic Park, including teams, leagues, business, or associations refers to the Aquatic Park as "Serpa Aquatic Park at Ellis".

- 1.7. Entire Document; Amendment; Assignment. This Document constitutes the entire agreement and understanding between Rights Holder and the City and supersedes all prior agreements, understandings and representations relating to the subject matter. This Document may only be amended, modified or supplemented by a written agreement between Rights Holder and the City. This Document may not be assigned by either party except with the prior written consent of the other party; provided, however, that Rights Holder may assign this Document as part of any planning undertaken by Rights Holder for future authorizations related to this Document.

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

EXHIBIT B

APPLICATION FOR RESIDENTIAL GROWTH ALLOTMENTS – GMO Subsection F.3

Application

Applicant Information

Name: _____ Telephone No.: _____

Company: _____

Mailing Address: _____

City/State/Zip Code: _____

Owner Information

Name: _____ Telephone No.: _____

Company: _____

Mailing Address: _____

City/State/Zip Code: _____

Tentative Map / Map / RGA Information

Tentative Map or other Map: _____

of RGA's requested: _____

Applicant's Signature

I, the undersigned, have complied with the requirements of the Development Agreement relevant to this application:

Applicant's Signature

Date

APPLICATION FOR RESIDENTIAL GROWTH ALLOTMENTS – GMO Subsection F.4

Application
Applicant Information

Name: _____ Telephone No.: _____

Company: _____

Mailing Address: _____

City/State/Zip Code: _____

Owner Information

Name: _____ Telephone No.: _____

Company: _____

Mailing Address: _____

City/State/Zip Code: _____

Tentative Map / Map / RGA Information

Tentative Map or other Map: _____

of RGA's requested: _____

Applicant's Signature

I, the undersigned, have complied with the requirements of the Development Agreement relevant to this application:

Applicant's Signature

Date

When Recorded return to:

EXHIBIT C

For Recorder's Use Only

AGREEMENT FOR DEFERRAL OF CERTAIN IMPACT FEES

THIS AGREEMENT is entered into by and between the City of Tracy ("City"), and _____, ("Applicant") on _____ to secure the payment of certain impact fees, which the City has agreed may be deferred until sometime after the filing of the Final Map for this Project and the issuance of building permits.

Recitals

- A. Applicant owns the land included on the final map entitled "_____" ("Final Map"), which is to record concurrently with this Agreement for Deferral of Certain Impact Fees ("Agreement") for the project known as _____, ("Project"). New homes will be constructed on the lots created by the Final Map.
- B. Applicant has requested a deferral of certain impact fees, which are imposed under Tracy ordinances and resolutions for said Project.
- C. City has agreed to defer the payment of such impact fees ("Deferred Impact Fee") until each new home that is constructed on a lot depicted on the Final Map is sold and conveyed to the original homebuyer as evidenced by a completed close of escrow transaction. The impact fees that shall be paid to the City are itemized on a per lot basis on the Deferred Impact Fee Schedule by Lot No. attached as Exhibit "B" ("Deferred Impact Fee"). The Deferred Impact Fee Schedule may be adjusted by mutual consent of the City and Applicant at any time prior to payment in order to account for fee credits or fee adjustments.
- D. Applicant shall cause an escrow to be opened with an escrow holder ("Escrow Holder") who is processing the escrow closings for the sale of the new homes in the Project. The Deferred Impact Fee shall be paid to City by the Escrow Holder through the escrow upon the close of escrow of each new home sale in the Project to the original homebuyer.
- E. Upon request from Applicant, City shall provide Escrow Holder with a Demand Letter that provides the Deferred Impact Fee for particular lot in the form attached as Exhibit "C" in connection with the sale of a new home to a homebuyer.

- F. Upon receipt of Deferred Impact Fee from Escrow Holder, City shall provide Escrow Holder with a Confirmation and Instruction Letter that confirms the Deferred Impact Fee for a particular lot has been received by City and paid in full, in the form attached as Exhibit "A".

NOW, THEREFORE, the parties hereto agree to the following:

1. This Agreement shall be recorded immediately after the recordation of the Final Map
2. Upon completion of the new home on any lot as shown on the Final Map in the Project, the City shall allow Applicant to obtain utility services, including water, sewer, gas and electricity, to the house; but, shall not allow occupancy until the Escrow has closed and the City has received the Deferred Impact Fee, as set forth below.
3. The Applicant shall instruct the Escrow Holder to deduct sufficient funds to pay the Deferred Impact Fee from the sale escrow of a new home to the original buyer and such Deferred Impact Fee shall be wired by the Escrow Holder to the City as a condition of the closing of such escrow and the conveyance of a lot in the Project to the original homebuyer.
4. Upon receipt of said Deferred Impact Fee by the City from the sale of a new home located on a lot shown on the Final Map that is conveyed to the original homebuyer, this Agreement shall be deemed irrevocably released on said lot in the Project without the necessity of a recorded release signed by the City, and Escrow Holder shall remove any and all exceptions or notices on the title or record related to Deferred Impact Fee for said lot. City agrees to promptly execute and record a release of the Agreement, upon request, if necessary to remove the Agreement from the title to a lot.
5. General Provisions.
 - 5.1 Notices. Notices to the parties shall be in writing and delivered in person, or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the City and Applicant. Notice shall be effective on the date delivered in person or the date when the postal authorities indicate the mailing was delivered to the address of the receiving party indicated below.

To Applicant:	To City:
---------------	----------
 - 5.2 California Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of California.
 - 5.3 Severability. If any one or more of the provisions of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the

validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or be impaired in any way.

- 5.4 Attorneys' Fees. If any party files an action or brings any proceeding against the other party arising out of this Agreement or for the declaration of any rights under this Agreement, the prevailing party shall be entitled to recover from the other parties all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party as determined by the court.
- 5.5 Modification. This Agreement cannot be modified in any respect except by a writing signed and entered into by the Applicant and the City.
- 5.6 Captions. The captions of the paragraphs of this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope of the intent of the Agreement.

IN WITNESS WHEREOF, this Agreement is executed by THE CITY OF TRACY and by APPLICANT.

CITY OF TRACY

By: _____

Its: _____

APPLICANT

By: _____

Its: _____

Approved as to form and legality this
_____ day of _____, 20__ .

City Attorney

Exhibit "A"

Confirmation and Instruction Letter

To: _____ (Escrow Holder)
From: The City of Tracy
Re: Payment of Deferred Fee
Final Map _____, Lot # _____
Address _____ of _____ Property: _____
Your Escrow Number if applicable: _____
Date: _____

Regarding the above referenced escrow, Escrow Holder is directed, pursuant to the provisions of the Agreement of Deferral of Certain Impact Fees, recorded on _____, as Document Number _____ in Official Records of the San Joaquin County Recorder's Office, that the following amount has been collected from the above referenced Lot either directly by the City or from Escrow the sum of \$ _____, representing the amount of the Deferred Impact Fee ascribable to the above referenced Lot. Such Deferred Fee has been collected and received by the City of Tracy.

Upon the Escrow Holder receipt of this Confirmation and Instruction Letter, the Agreement of Deferral of Certain Impact Fees shall be deemed irrevocably released on said lot in the Project with this letter considered a release signed and authorized by the City, which may be recorded.

City of Tracy

By: _____

Its: _____

Exhibit "B"
Deferred Fee Schedule
By Lot No.

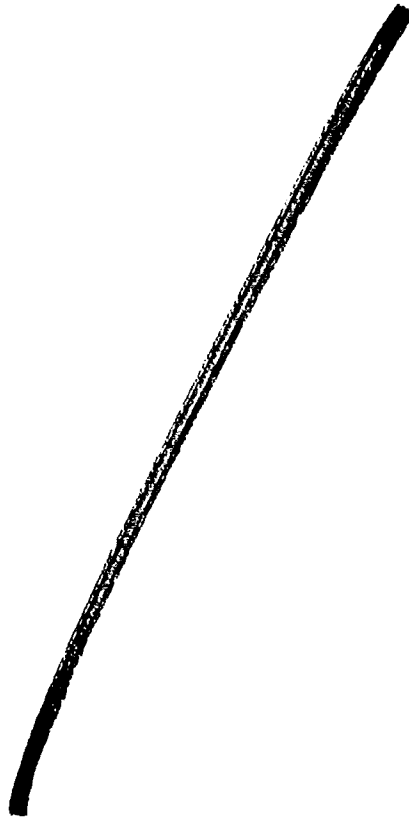


Exhibit "C"
Demand Letter

To: _____ (Escrow Holder)

From: The City of Tracy

Re: Payment of Deferred Fee

Final Map _____ Lot # _____
Address of Property: _____
Your Escrow Number: _____

Date: _____

Regarding the above referenced escrow, you are directed, pursuant to the provisions of the Agreement of Deferral of Certain Impact Fees, recorded on _____, as Document Number _____ in Official Records of the San Joaquin County Recorder's Office, to collect from the above referenced Escrow the sum of \$ _____, representing the amount of the Deferred Impact Fee allocated to the above referenced Lot. Such Deferred Fee shall be collected at the closing the escrow and wired to the City of Tracy as follows:

Wiring Instructions.

Upon the City of Tracy's receipt of such Deferred Impact Fee, the Agreement of Deferral of Certain Impact Fees shall be deemed irrevocably released on said lot in the Project without the necessity of a recorded release signed by the City.

City of Tracy

By: _____

Its: _____

EXHIBIT D

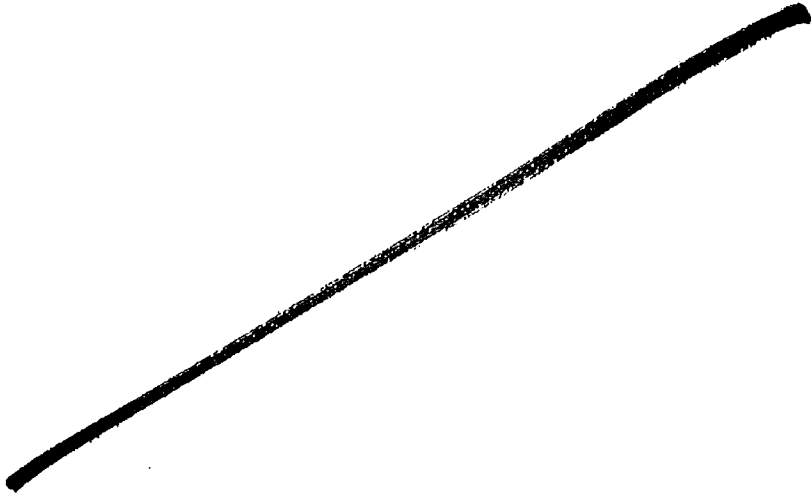
**SWIM CENTER
DESIGN, FUNDING, AND CONSTRUCTION
AGREEMENT**

By and Between the

CITY OF TRACY,
a municipal corporation and

SURLAND COMMUNITIES, LLC

Effective Date: _____, 20__



SWIM CENTER

AGREEMENT

This Swim Center Acquisition Agreement ("Agreement") is made by and between the CITY OF TRACY, a municipal corporation ("City"), and SURLAND COMMUNITIES, LLC ("Owner") (City and Owner are collectively referred to as "Parties") and is effective as of May 3, 2018.

RECITALS

- A. The Ellis Specific Plan identifies an approximately 1.6 acre (the "Property") within the plan for an Swim Center.
- B. On April 3, 2018, the City Council approved and adopted a development agreement amendment which includes the Property (the "DA").
- C. The DA obligates Owner to retain and compensate consultants, and contractors for the design and construction of a Swim Center ("Swim Center") on the Property, and requires Owner and the City to execute this Agreement to provide for and memorialize the Parties' obligations with regard to site acquisition, design, and construction of the Swim Center. This Agreement intends to provide the method by which Owner will perform this obligation but does not intend to expand or change the Owner obligation as presented in the amendment to the Development Agreement. The City acknowledges that Owner is not a licensed contractor and therefore in performing the obligations of this Agreement Owner shall retain the services of license contractor as required by law.

AGREEMENT

Based upon the foregoing Recitals, which are incorporated herein as provisions of this Agreement by this reference, and in consideration of the covenants and promises of the City and Owner contained in this Agreement, the Parties agree to perform each of their respective obligations in a timely manner.

SECTION 1 -Definitions

"Affiliate" means (i) an entity that, directly or indirectly, controls, is controlled by, or is under common control with, Owner; or (ii) an entity in which Owner directly or indirectly owns at least a twenty-five percent (25%) interest.

"City" means the City of Tracy, acting through its City Council, officers, employees, and authorized representatives.

"City Engineer" means the City Engineer for the City of Tracy or authorized delegee.

"Construction Contract" means the contract between Owner and Owner's contractor(s) for all of the Work (as defined below) required to construct the Swim Center as designed, including all

services required to be provided by or customarily provided by or under the direction of a licensed general contractor.

"Construction Contract Price" means the total amount of contractors Construction Contract(s).

"Construction Documents" means the design and construction documents, including the Construction Contract and all drawings, specifications, and schematic plans prepared pursuant to the RFP (as defined below), if Owner elects to follow the RFP process, and consistent with all applicable local, state, and federal laws, ordinances, policies, and regulations.

"Development Agreement" or "DA" is defined in Recital B.

"Final Acceptance" means that, following Final Completion, the City has received Owner's irrevocable offer of dedication for the Swim Center Site and all improvements thereon, and the City Council has formally accepted the Work by resolution.

"Final Completion" means that the City Engineer and City Building Official have determined that the Work has been fully completed in accordance with the Construction Documents and this Agreement, including all Punch List items, and title to the Swim Center Site is free and clear of all construction liens and encumbrances, unless otherwise assumed by City.

"Site" is defined as the real property selected by the City Council for this project.

"Swim Center" is defined in Recital C and in the Ellis Specific Plan.

"Swim Center Site" means the Site for the Swim Center that is owned by or under contract to purchase by Owner or Owner's affiliate until City's acquisition at Final Acceptance, and is further described in Section 3.

"Request for Proposal" or "RFP" means Owner's optional "Request for Proposals for Consultant Services" related to design, architectural, and other consultant services, including construction of the Swim Center.

"Total Cost" means all costs, including, but not limited to, costs of design, architectural, consultants, engineering, plan checking, land preparation, utilities installation, project management and overhead, applicable governmental fees, materials, labor, and construction.

"Work" means all of the design and construction services necessary or incidental to completing the Swim Center in conformance with the requirements of the DA, this Agreement, and the Construction Documents.

SECTION 2 – City Site Selection

Pursuant to the DA and Section 2 of this Agreement, the City has selected the Site for the Swim Center. The Site shall be in the location, and as described in the offer of dedication. Owner shall own or acquire the Site selected by the City, and the City shall not own the Swim Center Site until Final Acceptance.

SECTION 3 – City Approval of Plans and Construction Documents

Within sixty (60) days after the Development Agreement Amendment is Effective, the Specific Plan is approved and the Owner-Tracy Swim Center construction agreement is executed, then Owner and City representatives shall meet to establish joint timelines and milestones for event 3) and event 4): 1) Owner presenting a final conceptual plan for the Swim Center to the City for City review and approval on or before April 30, 2018; 2) a community groundbreaking ceremony on or before September 30, 2018; 3) After the City has approved all necessary design, plans and construction documents, Owner bid out and enter into a construction contract; and, 4) Owner completing the construction according to the construction documents and this document.

Before Owner starts preparing construction improvement plans the City Council shall approve a final conceptual plan, and a list of design, construction and/or improvements that Owner shall cause to be designed and/or constructed. If, after the City Council approves a final conceptual plan, it decides to modify the plan or add additional features or amenities then all direct and indirect costs of changing the conceptual plan or any design or construction plans relying on the original conceptual plan shall be additive funding provided by the City above the initial Swim Center funding and within the time periods specified herein. To insure the Swim Center is completed with available funds the project may be bid with a base bid, and with bid alternatives, depending on available funds bid alternates may or may not be awarded. City shall promptly approve the Construction Documents, including all design plans, drawings, and specifications. The Construction Documents must include an estimated Construction Contract Price, and must comply with the following:

1. California Building Code; and
2. Applicable Law

SECTION 4 – Schedule

A. General Surety Requirements

Each bond must be issued by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from City, Owner must substitute a surety reasonably acceptable to City.

B. Required Bonds

1. Faithful Performance Bond

To secure faithful performance of this Agreement each contractor not covered by a bond for the project shall provide a faithful performance bond in the amount of the work provided, a performance bond shall be provided to the City in the amount of the Construction Contract Price prior to commencement of

construction. The bond must be in the form required by Government Code sections 66499 through 66499.10.

2. Warranty Bond

As a condition precedent to City's Final Acceptance of the Swim Center, a warranty bond must be provided in the amount of 10% of the final Construction Contract Price of the Swim Center, as a full guarantee for one year of Work following Final Acceptance.

Bonds and insurance shall be purchased from the Owner's Contribution funds, funds contributed by the City for the project, or paid for by the contractor.

SECTION 5 – Construction

A. Owner's Obligation to Cause to Construct

Owner shall cause to be constructed the Swim Center in conformance with the Construction Documents to Final Completion.

B. Owner's Swim Center Contribution

Owner's maximum financial obligation regarding the Swim Center is Ten Million Dollars (\$10,000,000.00) ("Owner's Contribution") for the Total Cost. Previously Owner has provided Two Million Dollars of a Ten Million Dollar contribution to the City for the Swim Center. City shall cause the Two Million Dollars initial contribution to be applied to the Owner's design and construction activities in accordance with Exhibit "A", including but not limited to reimbursing Owner for all of Owner's design activity expenses undertaken prior to executing this Agreement, subject to Owner providing City true and correct copies of invoices for the work performed or, at the discretion of Owner, the City shall treat the expense of all of Owner's design activities as credits against development fees. After the Two Million Dollar initial contribution is applied to the Eight Million future contribution then the remaining obligation shall be satisfied in full by Owner facilitating Swim Center design and construction of improvements equal to Ten Million Dollars in costs incurred by Owner. In anticipation of this agreement and at the City's request, the Owner retained consultants prior to approving and executing this agreement or the amendment to the Development Agreement, and funds expended by the Owner prior to this agreement or the amendment to the Development Agreement being executed shall be eligible for reimbursement or credits.

C. City's Obligation for Costs over Owner's Contribution

The City shall provide funding for the Swim Center in an amount equal to Thirty-Five Million Dollars with a supplementary contingency amount of twenty percent of the total

estimated costs of Forty-Five Million Dollars (Swim Center Funding). This additional construction of approved plans, which shall take into account the total Swim Center Funding, shall represent Owner's entire obligation to facilitate design and construction improvements for the Swim Center improvements and once the additional agreed upon improvements are constructed the Owner's obligation to facilitate design and construction improvements for the Swim Center under this agreement automatically terminates. Owner shall have no obligation to advance funds above the Owner's Contribution to continue or complete the Swim Center and upon reaching the amount of Owner's Contribution if City fails to fund its share, Owner shall be conclusively deemed to have satisfied its obligation under this agreement and the Development Agreement. City shall pay in full all requested invoiced payments to Owner or Contractor within thirty (30) days of the portion of the Work completion from city Swim Center funding.

D. Change Orders

Change orders which include costs of more than 10% of the construction contingency shall require the City Manager's or his/her designee's approval, which shall not be unreasonably withheld or delayed. Change orders which include costs 10% or less of the construction contingency shall require the Assistant City Manager's or his/her designee's approval, which shall not be unreasonably withheld or delayed.

E. Prevailing Wages

Each worker performing Work under this Agreement that is covered under Labor Code section 1720 or 1720.9, including cleanup of the construction site, must be paid at a rate not less than the prevailing wage as defined in sections 1771 and 1774 of the Labor Code.

F. Payroll Records

At all times during performance of this Agreement, Owner's contractor must comply with the provisions of Labor Code section 1776 and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records.

G. Insurance

Prior to the commencement of construction, the Owner shall furnish or cause to be furnished evidence to the City that all of the following insurance requirements have been satisfied:

1. General Requirements

The Owner shall or shall cause its agents or contractors to maintain insurance to cover Owner, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

2. Policies and Limits

- (a) Commercial General Liability Insurance ("CGL"): A CGL policy (with coverage at least as broad as ISO form CG 00 01 01 96) 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.
- (b) Automobile Liability Insurance: An automobile policy (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- (c) Workers' Compensation Insurance and Employer's Liability: As required by the State of California.

3. Required Endorsements

The automobile and commercial general liability policies shall contain endorsements with the following provisions:

- (a) The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
- (b) For any claims related to this Agreement, the required coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Owner's (or contractor or agent, if provided by them) insurance and shall not contribute with it.

4. Notice of Cancellation

All insurance policies required hereby shall contain endorsements 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. Authorized Insurers

All insurance companies providing coverage required by this Agreement 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.

6. Insurance Certificate

Owner (or its agent or contractor) shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney.

7. Substitution of Certificates

No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, Owner (or agent contractor) shall provide a substitute certificate of insurance.

8. Owner's Obligation

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

SECTION 6: Inspection and Final Completion

A. Inspection and Oversight

The City may perform daily field inspections of the construction in progress, during regular business hours, as required to assure that the construction is in accordance with the requirements of this Agreement. All inspections shall be coordinated with Owner's designee with at least 24 hours advance written notice and the City inspection team shall be accompanied by Owner's designee at all times when on Site. In order to permit the City to inspect the Work, the Owner shall, at all times, provide to the City proper and safe access to the site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation. The City shall receive copies of materials quality tests required to assure that the quality meets the construction plans requirements, and may require inspection or any re-testing which may be necessary. The City will perform a final inspection of the Work and prepare an inspection report, setting forth any deficiencies from the Construction Documents that may exist (the "Punch List"). Prior to determining that Owner has achieved Final Completion, as described below, the City may re-inspect any corrective work performed by Owner and the as-built construction plans and records to insure the Punch List has been completed.

B. Final Completion

The City shall certify that Owner has achieved Final Completion when both the City Engineer and City Building Official have determined that the Work is fully completed in accordance with the Construction Documents and this Agreement. Final Completion cannot be achieved until Owner has completed all Punch List items and provided all required submittals, including any contractor warranty, and as-built drawings, to City's satisfaction. After Final Completion has occurred, the City Engineer will

recommend Final Acceptance to the City Council. Upon request by Owner City shall provide a Punch List within fifteen days, and once the work from the Punch List provided is complete City shall certify that Owner has achieved Final Completion.

SECTION 7: Dedication and Acceptance

Final Acceptance by the City Council will not be made unless and until a final inspection and determination of Final Completion has been made by the City Engineer and City Building Official in accordance with Section 5.B above, and Owner has submitted to the City an irrevocable offer of dedication for the Swim Center Site with improvements from Owner and evidence that the title to the Swim Center Site is free of all construction liens and encumbrances. Upon recommendation of the City Engineer, the City Council shall formally accept the Work by resolution.

SECTION 8: Warranties and Fee Credits

A. Correction of Defective Work During the Warranty Period

The Contractor(s) shall warrant the quality of the Work, in accordance with the terms of the plans and Construction Documents, for a period of one year after Final Acceptance of the Work by the City Council. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer, or if requested validated by a 3rd party agreed upon by Contractor and City to be defective, the City shall notify Owner of the defect and the Owner shall begin facilitation of the correction of the defect within ten (10) days of receiving notice of the defect from the City. If the defect cannot be corrected within 30 days, Owner shall have such time as is necessary to correct the defect, provided that Owner has timely caused the correction to begin and the contractor is diligently continuing the work necessary to correct the defect. If Owner fails to have the contractor begin the work to correct the defect within 60 days of receiving such notice, or fails to diligently have the contractor continue such work, as reasonably determined by the City, City may take actions as necessary to complete the Work using the Warranty Bond. Pursuant to Section 4.B.3 of this Agreement, Contractor's must provide City with a warranty bond as a condition precedent to Final Acceptance.

SECTION 9: Indemnity

To the fullest extent permitted by law, Owner must indemnify, defend, and hold harmless the City, its agents and consultants (individually, an "Indemnatee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with acts or omissions of Owner, its employees, subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Agreement, except such Liability caused by the active and sole negligence, or willful misconduct, of an Indemnatee. Owner's failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Agreement. Upon Final Acceptance to the fullest extent permitted by law, City must indemnify, defend, and hold harmless the Owner, its agents and consultants (individually, an "Indemnatee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with acts or omissions of City, its employees, subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Agreement, except such Liability caused by the active and sole negligence, or willful misconduct, of an Indemnatee. City's failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Agreement.

SECTION 10: Miscellaneous Provisions

A. Integration; Severability

This Agreement, the DA, and the Construction Documents incorporated herein, including authorized amendments or change orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Owner. If any provision of this Agreement, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect.

B. Amendment

No amendment or modification of this Agreement will be binding unless it is in a writing duly authorized and signed by the parties to this Agreement, and unless any such amendment conforms to the requirements of the DA, as that document may be amended.

C. Governing Law and Venue

This Agreement will be governed by California law and venue will be in the Superior Court of San Joaquin County, and no other place.

D. Assignment and Successors

Owner may not assign its rights or obligations under this Agreement, in part or in whole, without City's written consent and without simultaneous assignment of its rights and obligations under the DA. Notwithstanding the foregoing, Owner may assign its obligations hereunder to an Affiliate, provided that any such assignment shall not release Owner from responsibility for ensuring that the assigned obligations are satisfied, and Owner shall remain liable to the City for any and all failures by any assignee to fully perform all obligations under this Agreement, such that a failure by an assignee to fully perform an obligation under this Agreement shall constitute a default by Owner.

E. Notice

Any notice given pursuant to this Agreement must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email. Notice shall be deemed to have been given and received on the first to occur of: (i) actual receipt at the address designated above, or (ii) two working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated below. Notice for each party must be given as follows:

City:

City Manager
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Telephone No.: (209) 831-6400

Facsimile
No.: (209)
831-6439



With copy to:

City Attorney
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Telephone No.: (209) 831-6130
Facsimile No.: (209) 831-6137

Owner:

Surland Communities
1024 Central Avenue
Tracy, CA 95376
Attention Les Serpa
Telephone No.: (209) 832-7000
Facsimile No.: (209) 833-9700

With copy to:

Herum Crabtree
5757 Pacific Avenue, Suite 222
Stockton, California 95207
Attention: Steve Herum
Telephone: (209) 472-7700
Facsimile: (209) 472-7986

F. Default

1. General

In the event that the Owner is in a material default of this Agreement, as defined in this section, the City Engineer shall provide written notice to the Owner in which the default is described.

2. Default Defined

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

- (a) The Owner is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.

(b) The Owner abandons the Work for a continuous period of thirty (30) days that is not due to weather conditions, labor disputes, acts of God, lack of city funding, or other circumstances beyond the control of Owner,

(c) The Owner fails to perform one or more requirements of this Agreement.

(d) The Owner fails to remedy any loss or damage incurred by the City caused by Owner or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work in instance where Owner does not dispute that it is responsible for the loss or damage.

(e) The Owner violates any legal requirement related to the Work.

3. Cure

In the event that the Owner fails to cure the default within thirty (30) days, or provide adequate written assurance to the satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in the discretion of the City Engineer, take any or all of the following actions:

(a) Cure the default.

(b) Demand the Owner to complete performance of the Work.

G. Independent Contractor Status

The Owner is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Owner is not City's employee and Owner 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 Owner.

H. Attorneys' 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.

I. Waiver

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.

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

[SIGNATURE PAGE FOLLOWS]

"City"
CITY OF TRACY, a municipal
corporation

"Owner"
SURLAND COMMUNITIES, LLC, a California
limited liability company

By: _____
Title: _____
Date: _____

By: _____
Title: Les Serpa
Date: _____

Attest:

By: _____
Title: CITY CLERK
Date: _____

EXHIBIT 4

CITY OF TRACY
MASTER PROGRAM IMPROVEMENTS CREDIT AND REIMBURSEMENT AGREEMENT

This Master Program Improvements Credit and Reimbursement Agreement (hereinafter "**Agreement**") is made and entered into this 27th day of November 2018, ("**Effective Date**") by and between the City of Tracy, a municipal corporation (hereinafter "**City**"); and Surland, LLC, a California limited liability company (hereinafter "**Developer**"). City and Developer are from time to time referred to in this Agreement as a "Party" and collectively as the "Parties."

RECITALS

- A. Developer is the master developer of the Ellis Specific Plan (the "ESP") project, and other projects in Tracy. The Property identified in the Development Agreement is subject to the Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC, recorded in the official records of San Joaquin County as Document Number 2013-119548 on September 17, 2013 (hereafter, the "**Development Agreement**").
- B. The Developer and/or Development Agreement Property has constructed and contemplates constructing certain public, Ellis Specific Plan Finance and Implementation Plan (the "EFIP"), and/or City Master Plan Program Improvements ("**Program Improvements**") as more specifically described in Exhibit "A" ("**Improvements**") which is attached hereto and incorporated herein by this reference.
- C. The Development Agreement was amended by the Tracy City Council by Ordinance 1253 (hereinafter "**Second Amendment**") on April 3, 2018, effective May 3, 2018. Section 1.18 of the Development Agreement provides that Developer and City shall enter into a "master reimbursement agreement to identify credits and reimbursements" for Program Improvements. The Parties are entering into this Agreement to satisfy that provision of the Development Agreement.
- D. City consultant, West Yost Associates, identified Program Improvements to the City Water System which the Ellis project has constructed or plans to construct and which are or will be eligible for credits and/or reimbursements from the City as depicted on Exhibit "B" ("**Water System Improvement Components**") which is attached hereto and incorporated herein by this reference.
- E. A City consultant, Storm Water Consulting, Inc., identified Program Improvements to the City storm drainage system, as described in Exhibit "A" of which the Ellis project has constructed or plans to construct, and which are or will be eligible for credits and/or reimbursements from the City as depicted on Exhibit "C" ("**Storm Drainage Improvement Component**") which is attached hereto and incorporated herein by this reference.
- F. Ellis project engineer, Carlson, Barbee & Gibson identified various traffic and circulation improvements, including frontage and landscape improvements, as described in Exhibit "A" which the Ellis project has designed and constructed or plans to construct (or manage the construction of), and which are or will be eligible for reimbursements from the City as depicted on Exhibit "D" (hereinafter "**Corral Hollow Road Curb to Curb Improvements**") which is attached hereto as Exhibit "D" and incorporated herein by this reference.

- G. Developer project engineer, Carlson, Barbee & Gibson identified Recycled Waterline in Ellis Town Drive and Summit Drive and all streets within phases of Ellis as depicted in Exhibit "A" of which a Developer project has constructed or plans to construct, and Developer is or will be eligible for credits and/or reimbursements for these activities from City as described in Exhibit "E" (hereinafter "**Recycled Waterline Improvement Component**") which is attached hereto and incorporated herein by this reference.
- H. Developer has satisfied the required San Joaquin County Multi-Species Habitat Conservation & Open Space Plan fee for the 16-acre Tracy Aquatic Center parcel. The fee to be reimbursed to Developer as stated in Section 9 of this Agreement.
- I. Ellis project engineer, Carlson, Barbee & Gibson identified traffic improvements, as described in Exhibit "A" which the Ellis project has designed and constructed or plans to construct (or manage the construction of), and which are or will be eligible for reimbursements from the City as depicted on Exhibit "F" (hereinafter "**Corral Hollow Road Frontage Improvements – Aquatic Center Frontage Improvements**") which is attached hereto as Exhibit "F" and incorporated herein by this reference.
- J. EFIP Program Management fee components which are eligible for reimbursement are identified in Exhibit "H" (hereinafter "**Program Management Category Components**") which is attached hereto as Exhibit "H" and incorporated herein by this reference.
- K. The Ellis Finance and Implementation Plan (the "EFIP") identified the amount of Ellis Specific Plan EFIP obligations by Improvement Component Category which are identified in Exhibit "I". The EFIP Improvement Component Categories which have been satisfied or amounts which have been paid are also identified in Exhibit "I" (hereinafter "**EFIP Obligation by Improvement Plan Component Category**") attached hereto as Exhibit "I" and incorporated herein by this reference.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **TIME AND PERFORMANCE.** Time is of the essence in performing the obligations and requirements of this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing by mutual consent of the parties.
2. **TERM OF AGREEMENT.** The term of this MASTER PROGRAM IMPROVEMENTS CREDIT AND REIMBURSEMENT AGREEMENT shall be (a) thirty-five (35) years from the effective date of this Agreement or (b) when the Developer receives full and complete reimbursement as provided by this Agreement and all credits have been applied and exhausted, whichever event occurs last.
3. **FEE CREDITS AND REIMBURSEMENTS.** The terms of the potential Credits and Reimbursements payable to Developer shall also be according to and as specified in this agreement, and the attached Exhibits previously referenced and attached hereto and incorporated herein by reference.

Within thirty (30) days after executing this Agreement, the City shall establish separate Reimbursement accounts for the work identified in this Agreement and described in Exhibits herein (hereafter, the "Work") for purposes of depositing funds to reimburse Developer. Not later than sixty (60) days after executing this Agreement, and at the end of each ninety (90) day period thereafter until Developer is fully reimbursed and/or has received all credits due hereunder, the City shall (i) provide Developer with a written

accounting of funds available to reimburse Developer for the Work, and (ii) transfer to the appropriate reimbursement account(s) all like kind funds available to reimburse Developer for any Work Components identified in this Agreement that are the subject of an executed Improvement Agreement, an executed Off-Site Improvement Agreement, or other executed funding or construction agreement (collectively, "Improvement Agreements"). Funds shall be reimbursed when the Work is accepted by the City.

Within sixty (60) days after executing a new Improvement Agreement for the funding or construction of public infrastructure other than the Work described herein, or the pre-payment of City Impact Fees, and to the extent that the City determines that such public infrastructure costs would otherwise be reimbursable or creditable under either the Development Agreement or this Agreement, or Title 13 of the City of Tracy Municipal Code (hereafter, "Title 13"), the City and Developer shall amend this Agreement to apply to the reimbursable/creditable public infrastructure work described in the new Improvement Agreement, and the terms and conditions of this Agreement shall apply to the new Improvement Agreement. Any such amendment of this Agreement shall add an exhibit to this Agreement that describes the work subject to the new Improvement Agreement in a level of detail substantially equal to the detail provided in the attached Exhibits.

Developer may apply all fee credits and reimbursement rights earned under an Improvement Agreement toward "like-kind" development impact fees due or already paid on any property that is subject to this Agreement or the Development Agreement (hereafter, "DA Property"). For purposes of this Agreement, "like-kind" development impact fees are impact fees which are in the same fund category and support the same type of infrastructure facilities (e.g., water conveyance and/or treatment, wastewater conveyance and/or treatment, storm drainage, transportation-traffic-roads, public buildings and facilities, parks, public safety, neighborhood parks, community parks, recycled water, and any other city program impact fee facilities). If Developer elects to apply earned fee credits or reimbursement rights to impact fees that have already been paid, Developer shall be entitled to reimbursement of such previously-paid impact fees after eligible facilities are complete, and the City accepts the facilities. For purposes of this Agreement, fee credits and reimbursement rights are "earned" when Developer or its designee has executed an Improvement Agreement and posted security (consistent with the security requirements set forth, in this Agreement, and applicable in Title 13) for eligible public improvements, including but not limited to the Work described in the exhibits to this Agreement. Reimbursements or "earned" reimbursement rights are reimbursed when the facilities are complete, and the City accepts the facilities. Such fee credits and/or reimbursements being earned up to the value of such public improvements as set forth herein (for the Work) and in the applicable Ellis Finance and Implementation Plan, City Master Plans, or other finance plans (for all other public improvements).

Fee credits and reimbursement rights earned hereunder may be applied to the eligible lots, parcels, or commercial structures on the DA Property in whatever manner Developer deems appropriate, in Developer's sole and exclusive discretion, subject to the limitations of this Agreement. Developer shall notify the City in writing of each specific lot, parcel, or commercial structure to which Developer intends to apply earned fee credits rights not later than thirty (30) days prior to the issuance of a building permit, using the credit notice forms attached hereto as Exhibit J.

Should Developer seek to exercise earned reimbursement rights, sources of funds to disburse earned reimbursements may include like-kind impact fees, and funds from the South ISP, Plan C, RSP, Infill, 1-205, EFIP, Master Plans, Core Fees, benefitting properties, and/or other Development Impact Fee Funds, Finance Plans, or any other funding sources which have nexus, as reasonably determined by the City. City shall receive funds from reimbursement sources prior to reimbursement. City shall make payment of earned reimbursements in such a manner and to such persons as directed in writing by Developer.

Subject to the limitations on water system infrastructure fee credits and reimbursements set forth in Exhibit B hereto, at least as often as each City fiscal quarter the City shall disburse to Developer all earned funds in Developer's reimbursement accounts. The City represents, warrants and covenants that the funds deposited in Developer's reimbursement accounts shall not be used for any intra-fund transfer without the prior written consent of Developer, which Developer may refuse to give for any reason whatsoever. Funds in such accounts shall be deposited in one or more interest-bearing accounts and all interest shall be paid to Developer. Through applying credits or making reimbursement payments as quickly as possible the parties intend to fully reimburse Developer in the shortest possible time. City shall make all reasonable efforts to provide the "Total Credit " as of approval of an Improvement Agreement(s) for the Work, or as soon thereafter as possible. "Total Reimbursement" will be provided as soon as Work is completed, accepted by the City, and as funds are available. The reimbursement agreement will not substantially impair existing reimbursement agreements, or written commitments in effect as of the date of this amendment.

A project may receive credits for any category up to the amount of the project finance plan category, any amounts over the finance plan category shall be reimbursable. To be eligible for credits or reimbursements improvements must be based on a finance plan or infrastructure improvements approved by the City Council. If applicable credits or reimbursements shall comply with Community Facilities District (CFD) requirements. No City General Fund money will be used as a source of reimbursements, other than those eligible reimbursements associated with the Aquatic Center CIP.

4. **IMPACT FEES.** After the DA Property project finance plan identified amounts of City impact fees for a component in the project have been fully paid or satisfied such that no City impact fees remain to be paid by the project for this impact fee component, then the project shall be relieved of all obligation to pay fees for the identified City impact fee improvement category component, or install Program Improvements. The EFIP identifies the total amount of impact fees by improvement category component for the ESP, which are identified in Exhibit I. Program Management fees shall be paid by the EFIP up to the amount identified in Exhibit H, and funds shall not be reimbursable until the all improvements for the impact fee component have been completed.
5. **WATER.** Except as otherwise expressly set forth in this Agreement, Developer shall not be responsible for paying any water impact fees or constructing any additional program water system public infrastructure required for development of the ESP as approved on the Effective Date of this Agreement. Within thirty (30) days of the last occurrence of (1) written notice from Developer, (2) project completion, or (3) acceptance by the City, City shall refund all DA Property fees paid for public water improvements in accordance with this agreement, and per Section 3.

6. **STORM.** Not later than ninety (90) days after the City and Developer or at Developer's option it's designee have executed an Improvement Agreement and Developer or at Developer's option it's designee has posted security for the construction of the Storm Drainage Improvement Component identified in Exhibit C, the City shall establish a benefit district applying to the real property identified in Exhibit C, page 2, to collect from such properties their contributions to the Storm Drainage Improvement Component (the "Storm Drainage Benefit District") as set forth in Exhibit C, page 2. The Storm Drainage Benefit District shall be designed and formed to collect such contributions at City building permit issuance, annexation into City limits, or the first City issued discretionary or ministerial development permit or approval sought by such properties, whichever occurs first. The formation of the Storm Drainage Benefit District and any documents recorded in the official records of San Joaquin County relating thereto shall be mutually approved by the City and Developer. If any new property not identified on Exhibit C, page 2, is served by the Storm Drainage Improvement Component in the future, the City and Developer shall cooperate to determine such new property's contribution to the costs of the Storm Drainage Improvement Component and adjust the property contributions allocated to Developer and to the properties identified in Exhibit C, page 2. Upon such adjustments, the City and Developer shall amend this Agreement to reflect the new property's contribution to the Storm Drainage Improvement Component and the adjustments to the property contributions allocated to Developer and the properties identified in Exhibit C, page 2. Not later than sixty (60) days following an executed Improvement Agreement between City and Developer, the City shall fully reimburse Developer for all Storm Drainage Impact Fees and all Additional Storm Drainage Improvement Fees paid by real property identified in Exhibit C, page 2 prior to the Effective Date of this Agreement. The term and duration of the Storm Drainage Benefit District shall extend until Developer has been fully reimbursed for excess costs incurred by Developer for the Storm Drainage Improvement Component in accordance with this Agreement. Upon written notice from Developer, project completion, and acceptance by the City, City shall within thirty (30) days refund all Storm impact fees paid for public storm improvements by DA Property in accordance with this agreement, and per Section 3. Except as otherwise expressly set forth in this Agreement, after execution of an Improvement Agreement and Developer or at Developer's option its designee has posted security for the construction of the Storm Drainage Improvement Component identified in Exhibit C Developer shall not be responsible for paying any storm impact fees or constructing any additional program storm system public infrastructure required for development of the DA Property.

7. **TRAFFIC:**

A. CORRAL HOLLOW ROAD FRONTAGE – CURB TO CURB IMPROVEMENTS:

Concerning Corral Hollow Road Frontage – Curb to Curb Improvement Component contemplated and identified in Exhibit D, the City shall reimburse Developer or it's designee for all Impact Fees paid for Traffic Improvements by DA Property, and provide credit or reimbursement in accordance with this agreement, and per Section 3, all Additional Traffic Improvement Fees collected from DA Property, including the EFIP, and Reimbursement from other available City funds as identified by the City up to \$1,808,000, shall be made once the project has been completed, and accepted by the City.

B. CORRAL HOLLOW ROAD – AQUATIC CENTER FRONTAGE: Concerning Corral Hollow Road Aquatic Center Frontage Component contemplated and identified in Exhibit F. The City will reimburse Developer the funds identified in Exhibit F once the Aquatic Center Funds have been identified and the budget has been approved by Council.

8. **RECYCLED WATERLINE IMPROVEMENT CATEGORY COMPONENT:** Concerning Recycled Waterline Improvement Category Component Improvements contemplated and identified in Exhibit E, the City shall reimburse Developer or its designee for all Impact Fees paid for Recycled Water Improvements from the ESP. The City shall provide credit upon execution of an Improvement Agreement and posted security, and any reimbursement shall be made once the Work has been completed, and accepted by the City for all Recycled Water Fees to be collected for DA Property Work, including the Ellis FIP, and Reimbursement from other available City funds as identified by the City up to \$1,512,000, once the recycled water Master Plan fee program has been updated per the Ellis DA as amended, or June 30, 2018 whichever occurs first. All other Recycled Water Improvements by DA Property shall be added to this agreement and shall earn fee credits and/or reimbursements in accordance with this agreement, and per Section 3 which may be applied to DA Property. Recycled Water fee credits may be earned in accordance with the Surland DA.
9. **COMMUNITY PARK REQUIRED ACREAGE:** Concerning Community Park Category Component Improvements, Developer has sixteen (16) acres of credit which are available for credit or reimbursement in accordance with this agreement, and per Section 3.
 - A. The ESP is allocated 6.4 acres of Community Park credit, which satisfies the full ESP Community Park obligation. Except as set forth in this Agreement, the ESP Project shall not be responsible for payment of any community park impact fees for the full development of the ESP or implementation of the EFIP. Upon written notice from Developer, City shall within thirty (30) days refund all DA Property fees paid for public community park in accordance with this agreement, and per Section 3.
 - B. The remaining credit after the ESP allocation of 6.4 acres is 9.6 acres, which credit may be allocated in accordance with a future Surland DA Amendment.
10. **HABITAT MITIGATION FEE REIMBURSEMENT**

Once available funds have been identified for the full Aquatic Center CIP, the City shall reimburse Surland \$301,132 associated with the 16-acre Aquatic Center
11. **REIMBURSEMENT SCHEDULE:** Reimbursements identified in Exhibit G shall be reimbursed according to the exhibit schedule estimates, in compliance with this agreement, and per Section 3.
12. **PROGRAM MANAGEMENT.** Program Management Fees shall be collected by the City at the later of (1) when each building permit is paid or (2) as permitted by the DA for the Improvement Component Category amount based on the project Finance Plan for DA Property. Program Management shall only be used to implement the applicable project FIP/finance plan for the Improvement Components but, for no other purposes. Developer shall be eligible for Program Management Fee reimbursements in compliance with this agreement, and per Section 3 of the remaining available funds for the FIP/finance plan Program Management Fees may be reimbursed once all infrastructure improvements as identified in the project Finance Plan component category such as water, are fully complete and the improvements are accepted by the City. The EFIP Program Management Component amounts are identified in Exhibit H and are subject to reimbursement in accordance with this agreement and Exhibit H. Consistent with this Agreement the City shall provide an accounting of the use of funds for each component, and the remaining amount shall be available for reimbursement in accordance with the terms of this agreement.

13. **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 respective Party as follows:

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

With copy to:

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

Owner:

Surland
Attn. President
1024 Central Avenue
Tracy, CA 95376

With copy to:

Herum Crabtree
Attn. Steve Herum
5757 Pacific Avenue, Suite 222
Stockton, California 95207

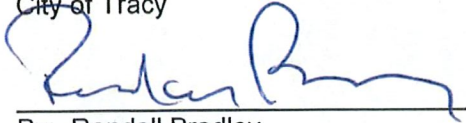
- 13.1 Communications shall be deemed to have been given and received on the first to occur of (1) actual receipt at the address designated above, or (2) three working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

14. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
15. **ASSIGNMENTS.** This Agreement may not be assigned by Developer without the City's prior written consent, which shall not be unreasonably withheld. With respect to specific earned fee credits, Developer may assign such rights to any property or properties reasonably determined by the City to benefit from the public infrastructure for which the fee credits were earned such that the property or properties would have been obligated to contribute to the funding of such infrastructure. With respect to earned reimbursement rights, Developer may assign any such rights, in all or a portion of the earned amount, to any person or entity, in Developer's sole and exclusive discretion. Developer shall notify the City in writing of Developer's intent to assign fee credits or reimbursements not later than ten (10) days prior to such assignment(s), such notice to include the identity of the assignee and/or assignee property(ies).

16. **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.
17. **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.
18. **NO MONEY DAMAGES.** The Parties hereby acknowledge and agree that money damages are excluded as a remedy available to either Party for a breach of this Agreement, and that specific performance is the sole and exclusive remedy available to either Party for a breach of this Agreement
19. **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.
20. **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.
21. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between the parties concerning the improvements to be constructed for this project. This Agreement supersedes all prior negotiations, representations, or agreements.
22. **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"
City of Tracy



By: Randall Bradley
Title: City Manager

Date: 11/27/18

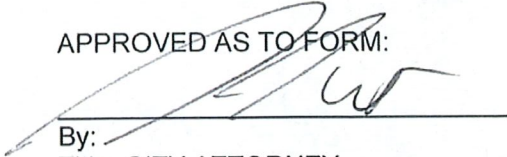
"Developer"
Surland, LLC



By: Les Serpa
Title:

Date: 11.27.18

APPROVED AS TO FORM:



By:
Title: CITY ATTORNEY

Date: 11/27/2018

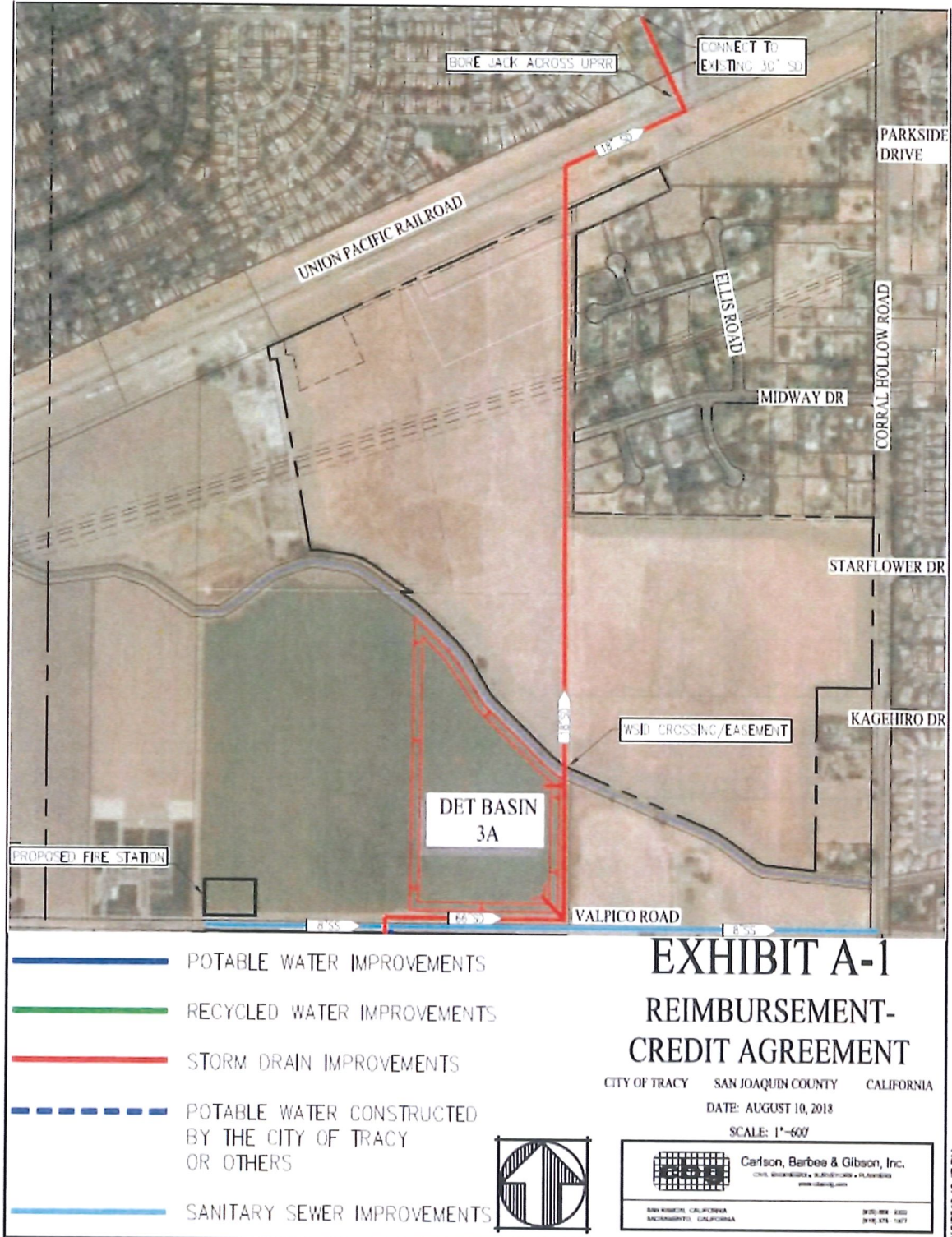
Attest:



By:
Title: CITY CLERK

Date: 11/27/2018

**EXHIBIT "A" (page 1 of 9)
IMPROVEMENTS**



- POTABLE WATER IMPROVEMENTS
- RECYCLED WATER IMPROVEMENTS
- STORM DRAIN IMPROVEMENTS
- - - POTABLE WATER CONSTRUCTED BY THE CITY OF TRACY OR OTHERS
- SANITARY SEWER IMPROVEMENTS

**EXHIBIT A-1
REIMBURSEMENT-
CREDIT AGREEMENT**

CITY OF TRACY SAN JOAQUIN COUNTY CALIFORNIA
DATE: AUGUST 10, 2018
SCALE: 1"=600'



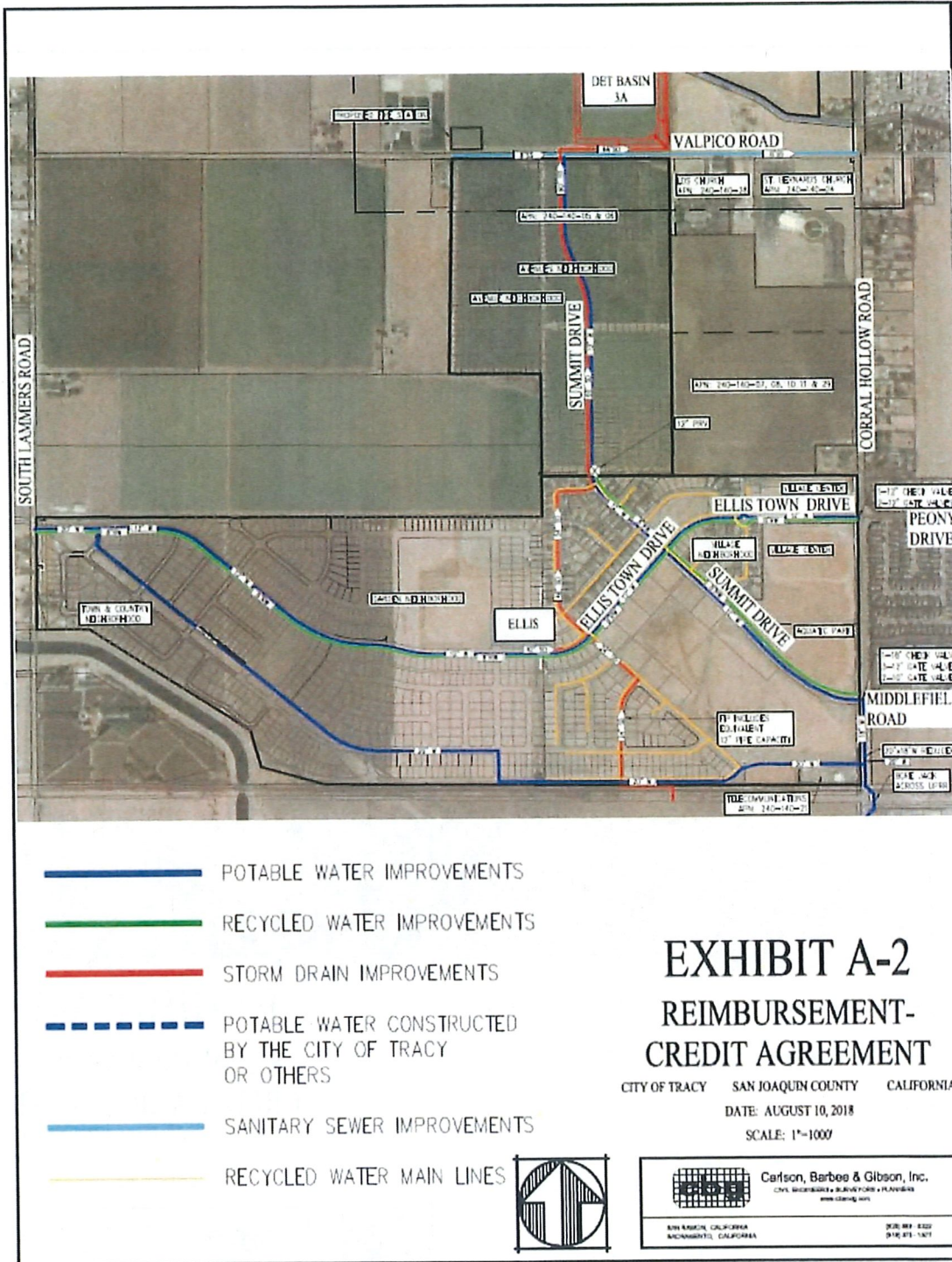
Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS & ARCHITECTS • PLANNERS
www.carlsonbg.com

800 KIMMEL, CALIFORNIA 95208-0001
BACENMENTO, CALIFORNIA 95825-1447

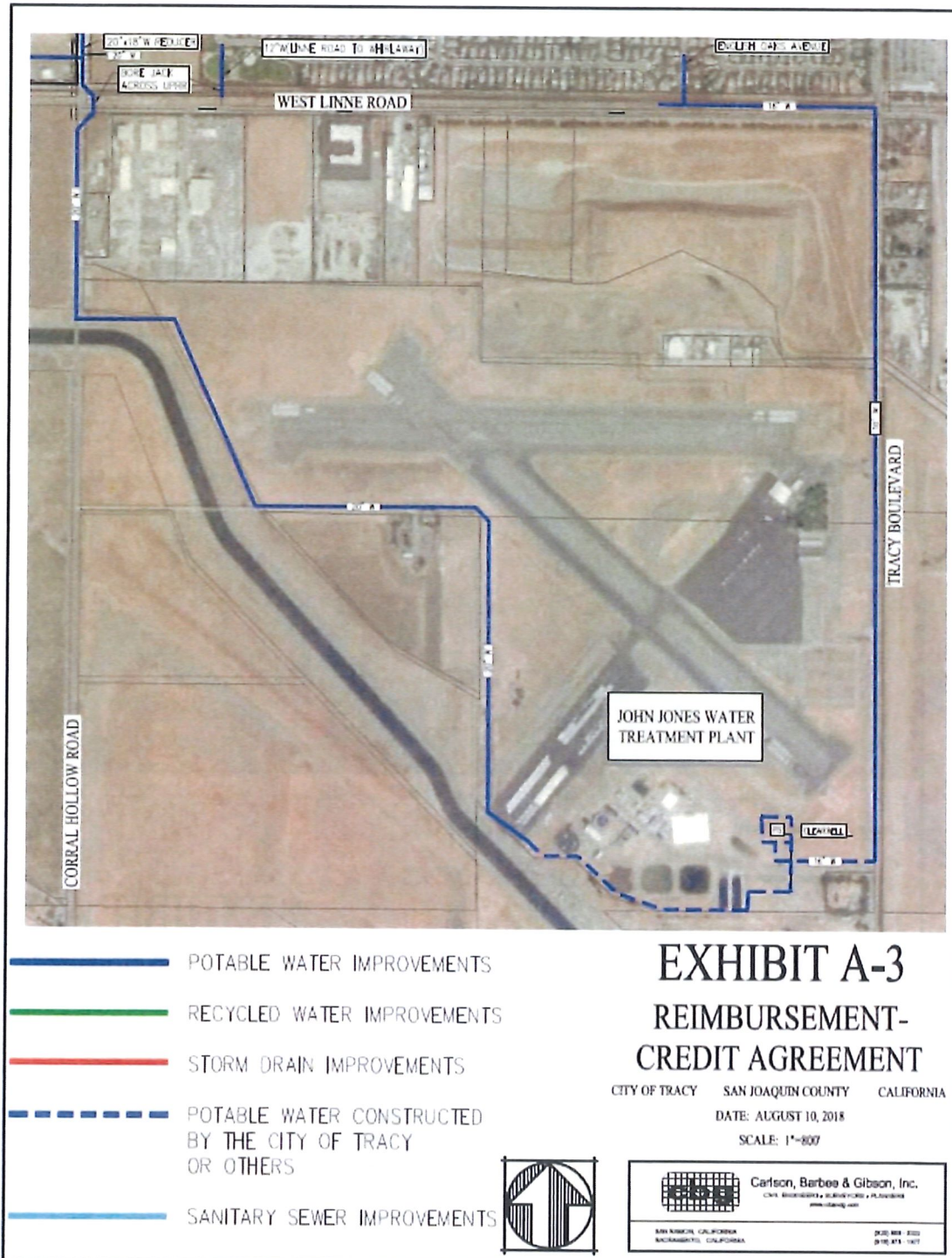
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**EXHIBIT "A" (page 2 of 9)
IMPROVEMENTS**



**EXHIBIT "A" (page 3 of 9)
IMPROVEMENTS**



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EXHIBIT "A" (page 4 of 9)
WATER SYSTEM PROGRAM IMPROVEMENT COMPONENTS

358-4237-XEL73	City – Side Booster Pump Station Pressure Zone 3 – 6.48 MGD (JJWTP)
358-4237-XEL73	Clearwell at JJWTP 2.0 MGD
358-4237-XEL73	John Jones Water Treatment Plant Expansion 15.0 MGD
358-4237-XEL73	Water Transmission Line 12" (ESP backbone Phase 1)
358-4237-XEL73	Long-term Emergency Groundwater Storage 2,500 gpm
358-4237-XEL73	Land Acquisition
358-4237-XEL73	Water Transmission Line 12" (ESP backbone Phase 1)
358-4237-XEL73	Water Transmission Line 12" (ESP backbone Buildout)
358-4237-XEL73	Water Transmission Line 12" (ESP Backbone -Phase 1 to Valpico Rd)
358-4237-XEL73	Water Transmission Line 24" (JJTP Clearwell to PBS3)
358-4237-XEL73	Water Transmission Line 20"(ESP-JJWTP BPS3 to Corral Hollow Rd and Linne Rd. Phase 1)
358-4237-XEL73	Water Transmission Line 20"(Corral Hollow Rd and Linne Rd to Middlefield Rd. - buildout)
358-4237-XEL73	Water Transmission Line 18"(ESP Corral Hollow Rd and Linne Rd to Middlefield Rd -buildout)
358-4237-XEL73	Water Transmission Line 18"(ESP-Linne Rd. to Corral Hollow Rd. Phase 1 - PZ2 Bypass)
358-4237-XEL73	Water Transmission Line 16"(from existing Clearwell No. 2 to English Oaks)
358-4237-XEL73	20" Jack and Bore under Delta Mendota Canal
358-4237-XEL73	20" Jack and Bore (CH and Linne under Railroad)
358-4237-XEL73	Water Transmission Line 12" (Whirlaway Ln. to Linne Rd.)
358-4237-XEL73	12" Jack and Bore (SW Portion of Plan C under RR to Linne Rd.)
358-4237-XEL73	18" Check Valve Connection at Middlefield Dr.
358-4237-XEL73	Connection at Middlefield Drive 12" Diameter bypass PZ2 on Corral Hollow, Jack and Bore (SW portion of the Plan C under Corral Hollow
358-4237-XEL73	Pressure Reducing Valve ESP - Phase 1 to Valpico Rd (12-inch Diameter)
358-4237-XEL73	Citywide Recycled Water Contribution

Source: Ellis Finance & Implementation Plan – Water

EXHIBIT "A" (page 5 of 9)

STORM SYSTEM PROGRAM IMPROVEMENT COMPONENTS

STORM DRAIN SYSTEM IMPROVEMENT COMPONENTS				
DESCRIPTION	QTY	UNIT	UNIT COST	TOTAL COST
ELLIS PROGRAM SUB-BASIN				
Construction of Major Facilities				
DET 3A (36AF, plus 36 AF add'l excavation)	72 AF		\$ 10,000	\$ 720,000
DET SL (17AF, plus 8 AF add's excavation)	25 AF		\$ 10,000	\$ 250,000
Construction of Storm Drains				
12" SD	2,800 LF		\$ 75	\$ 210,000
12" SD (Bore & Jack)	100 LF		\$ 500	\$ 50,000
60" SD	2,640 LF		\$ 550	\$ 1,452,000
66" SD (Valpico Road)	660 LF		\$ 650	\$ 429,000
66" SD (to DET 3A)	2,100 LF		\$ 650	\$ 1,365,000
18" SD	1,600 LF		\$ 100	\$ 160,000
18" SD (Bore & Jack)	100 LF		\$ 600	\$ 60,000
Other Items				
Dewatering	1 LS		\$ 200,000	\$ 200,000
UPTC/WPRR Crossing AgreementsRR Crossing Agreements	2 EA		\$ 5,000	\$ 10,000
WSID Crossing Agreement	1 EA		\$ 5,000	\$ 5,000
Subtotal of Construction				\$ 4,911,000
Design & Planning @ 10% of Construction Subtotal				\$ 491,100
Construction Management @ 10% of Construction Subtotal				\$ 491,100
General Contingency @ 15% of Construction Subtotal				\$ 736,650
Program Administration @ 5% of Construction Subtotal				\$ -
Land Acquisition				
DET 3A	46.67 AC		\$ 100,000	\$ 4,667,000
DET SL	8.00 AC		\$ 100,000	\$ 800,000
66" SD Easement	0.8 AC		\$ 50,000	\$ 40,000
18" SD Easement	0.3 AC		\$ 50,000	\$ 15,000
Subtotal of Land Acquisition				\$ 5,522,000
TOTAL ESTIMATED COST				\$ 12,151,850

Source: Ellis Finance & Implementation Plan – Storm Drain Report (rev. 8/19/15)

EXHIBIT "A" (page 6 of 9)

STORM SYSTEM PROGRAM IMPROVEMENT COMPONENTS

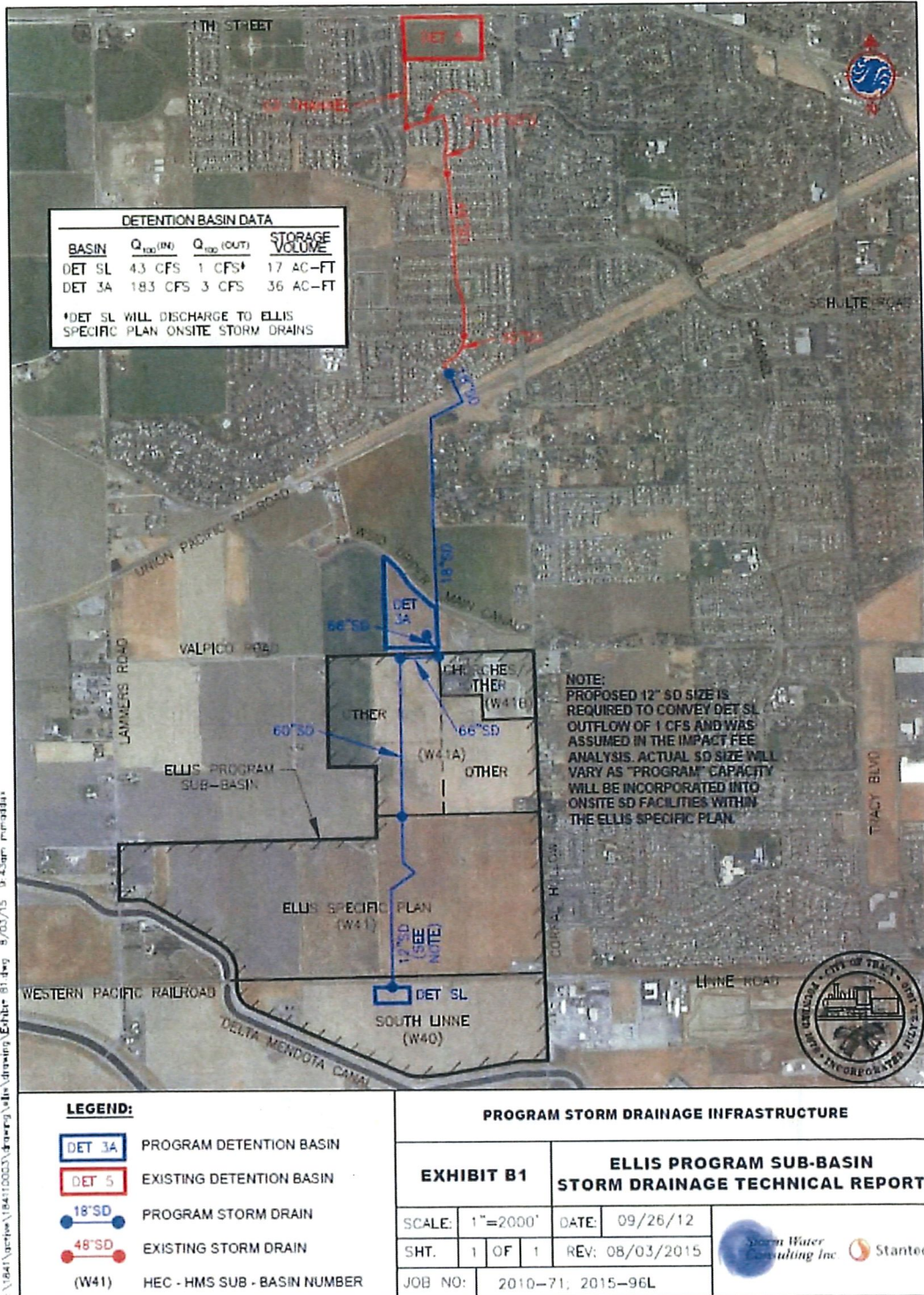
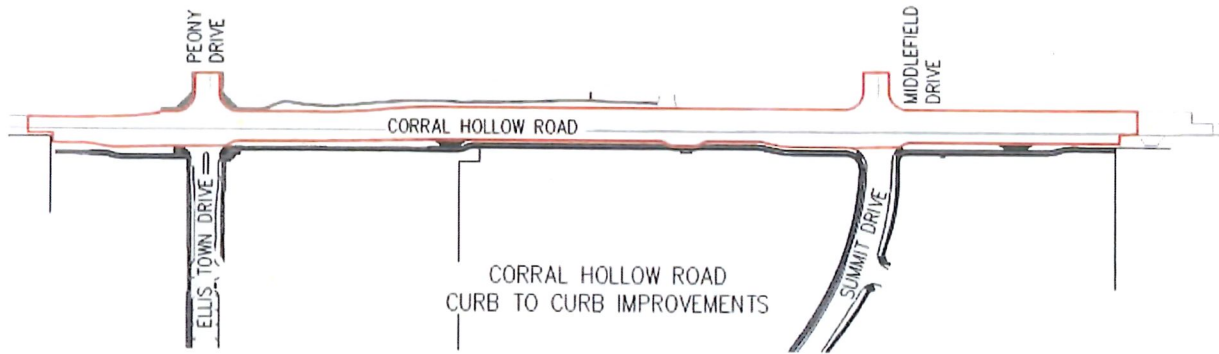


EXHIBIT "A" (page 7 of 9)

CORRAL HOLLOW ROAD IMPROVEMENTS

CORRAL HOLLOW ROAD CURB TO CURB IMPROVEMENTS



AQUATIC CENTER FRONTAGE IMPROVEMENTS

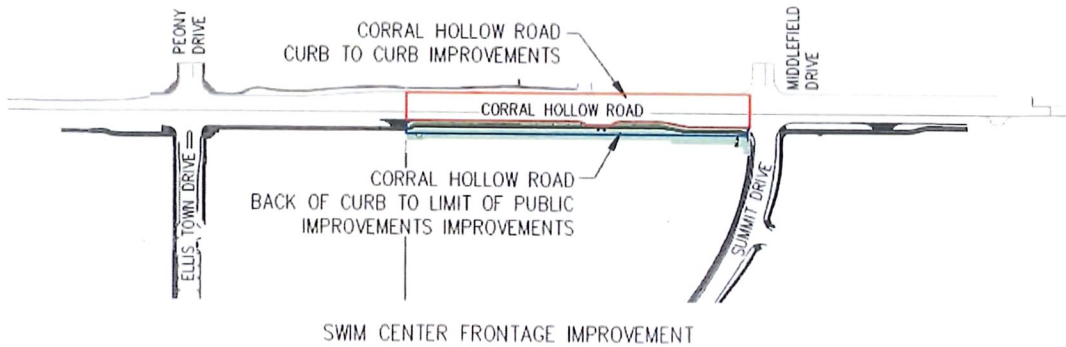
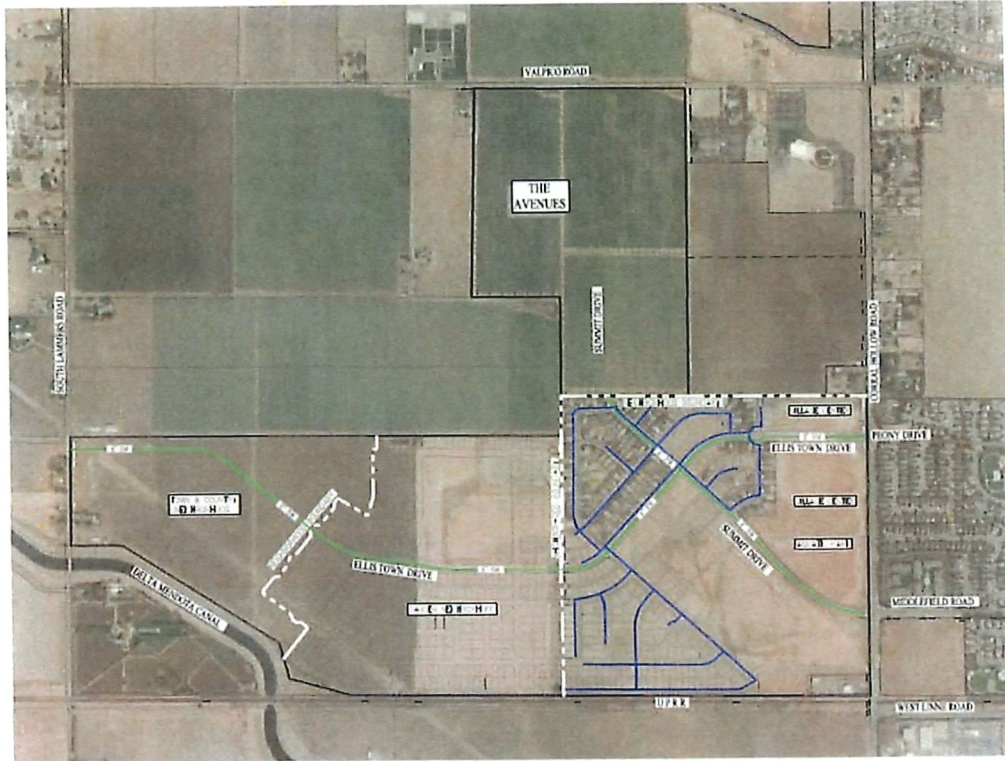


EXHIBIT "A" (page 8 of 9)

RECYCLED WATERLINE IMPROVEMENT COMPONENT



LEGEND
— RECYCLED WATERLINE
— WATERLINE
--- PROPERTY BOUNDARY

EXHIBIT "A" (page 9 of 9)

SAN JOAQUIN COUNTY MULTI-SPECIES HABITAT CONSERVATION & OPEN SPACE PLAN



SJCOG, Inc.

555 East Weber Avenue • Stockton, CA 95202 • (209) 235-0600 • FAX: (209) 235-0438

San Joaquin County Multi-Species Habitat Conservation & Open Space Plan (SJMSCP)

Kathleen Miller
CHAIR

Robert Rickman
VICE CHAIR

Andrew T. Chandy
PRESIDENT

Member Agencies
CITIES OF
DUBLIN,
LATHROP,
LODI,
MANTUA,
RIPON,
STOCKTON,
TRACY,
AND
THE COUNTY OF
SAN JOAQUIN

2018 Updated Habitat Fees*

Habitat Type	Fee Per Acre
Multi-Purpose Open Space	\$9,701
Natural	\$19,400
Agriculture	\$19,400
Vernal Pool - uplands	\$72,523
Vernal Pool - wetted	\$116,871

* Effective January 1, 2018 – December 31, 2018

2018 Endowment Fees with In-lieu Land**

Type of Preserve	Enhancement Cost/acre	Land Management Cost/acre	TOTAL PER ACRE ENDOWMENT
Agricultural Habitat Lands:	\$3,547.00	\$790.90	\$4,337.90
Natural Lands:	\$3,547.00	\$790.90	\$4,337.90
Vernal Pool Habitat			
<i>Vernal Pool Grasslands</i>	\$14,261.00	\$2,409.36	\$16,670.36
<i>Vernal Pool Wetted</i>	\$59,669.00	\$2,365.36	\$62,034.36

** Effective January 1, 2018 – December 31, 2018 in lieu of fees to be used as the endowment for the dedicated land preserves (Category B + C)

Amount of Reimbursement:

16 acres @ Agriculture fee level of \$19,400 per acre equals reimbursement of \$310,400 less Aquatic Center frontage amount (see Exhibit "D") of \$9,268 equals total reimbursement due of \$301,132.

EXHIBIT "B" page 1 of 2
WATER SYSTEM IMPROVEMENT COMPONENTS

Developer shall be entitled to the following Impact Fee Credits and Reimbursements.

1. Amount of Maximum Potential Credit. The City Engineer and the Community Services Director hereby find that the reasonable estimated construction costs as determined by City consultants from City Finance Plans for the Work, and the amount of "Maximum Potential Credit" available to the Developer are pursuant to Tracy Municipal Code and is \$14,957,325 (a) for Water Impact Fees. The Maximum Potential Credit shall be granted to Developer. These credits may be applied to off-set Like-Kind Fees.

a. Water Fee Credit Sources:

- i. Water System Responsibility see (1) below: \$14,957,325

2. Amount of Minimum Potential Reimbursement. Pursuant to Tracy Municipal Code the City shall pay the Developer no less than \$680,830 [see (a)(i) below] as the "Minimum Potential Reimbursement" plus the unused portion of the Maximum Potential Credit specified in Paragraph 1 above. If the Developer does not receive credits equal to the Maximum Potential Credit shown above in Paragraph 1, the Minimum Potential Reimbursement shall be increased by the corresponding amount to match the Total Credit and Reimbursement in the amount of up to \$15,638,155 [see (a)(ii) below]. City shall make all reasonable efforts to provide Developer with the "Total Credit and Reimbursement" as of the effective date of this agreement, or as soon thereafter as possible. Developer's right to Reimbursement for the Water System Work shall have priority over other City Water System Improvement projects.

a. Water Reimbursement Sources:

MINIMUM REMBURSEMENT

Exhibit "B" (page 2) Developer Credit w/o PM: \$16,192,130

Ellis Total Responsibility for Water Imp. w/o AC with PM: \$15,511,300

- i. TOTAL MINIMUM REIMBURSEMENT: \$ 680,830

MAXIMUM REMBURSEMENT

Maximum Potential Credit – from 1. above: \$14,957,325

Minimum reimbursement due – see (a)(i.) above: \$ 680,830

- ii. TOTAL MAXIMUM REIMBURSEMENT: \$15,638,155

EXHIBIT "B" page 2 of 2
WATER SYSTEM IMPROVEMENT COMPONENTS

Group 75

CIP Projects

CIP #	Item	Unit	Unit Price	QTY	Total Construction Cost	Total Mark-up	Total Cost	Ellis %	Project Cost	Program Management	Total Cost	Credit for Facilities (less 5%PM)
75PP-XX	City - Side Booster Pump Station Pressure Zone 3 - 6.48 MGD (JWTP)	ea	\$1,852,675	1	\$1,852,675	\$741,070	\$2,593,745	37%	\$926,100	\$34,300	\$960,400	
75PP-XX	Clearwell at JWTP 2.0 MG	ea	\$3,251,699	1	\$3,251,699	\$1,300,680	\$4,552,379	63%	\$2,760,750	\$102,250	\$2,863,000	
75PP-XX	John Jones Water Treatment Plant Expansion 15.0 mgd	ea	\$33,269,046	1	\$33,269,046	\$11,307,618	\$46,576,664	15%	\$6,527,250	\$241,750	\$6,769,000	
75PP-XX	Long-term Emergency Groundwater Storage 2,500 gpm	ea	\$2,500,000	1	\$2,500,000	\$1,000,000	\$3,500,000	26%	\$893,700	\$33,100	\$926,800	
	Land Acquisition	ac	\$184,316	0.25	\$46,079	\$0	\$46,079	100%	\$44,357	\$1,643	\$46,000	
On-site Backbone Pipelines												
75PP-XX	Water Transmission Line 12" (ESP backbone Phase 1)	LF	\$210	8700	\$1,827,000	\$730,800	\$2,557,800	37%	\$913,950	\$33,850	\$947,800	\$2,466,450
75PP-XX	Water Transmission Line 12" (ESP backbone Buildout)	LF	\$210	4370	\$917,700	\$367,080	\$1,284,780	37%	\$459,400	\$17,000	\$476,400	\$1,218,895
75PP-XX	Water Transmission Line 12" (ESP Backbone - Phase 1 to Valpico Rd)	LF	\$210	2615	\$549,150	\$219,660	\$768,810	37%	\$274,050	\$10,150	\$284,200	\$741,353
Water Transmission Mains from JWTP Z3-City-side BPS												
75PP-XX	Water Transmission Line 24" (JTP Clearwell to PBS)	LF	\$375	35	\$13,125	\$5,250	\$18,375	37%	\$6,557	\$243	\$6,800	\$0
75PP-XX	Water Transmission Line 20" (ESP-JWTP BPS to Corral Hollow Rd and Linne Rd Phase 1)	LF	\$320	9300	\$2,976,000	\$1,190,400	\$4,166,400	37%	\$1,487,700	\$55,100	\$1,542,800	\$4,017,600
75PP-XX	Water Transmission Line 20" (Corral Hollow Rd and Linne Rd to Middlefield Rd - buildout)	LF	\$320	7950	\$2,544,000	\$1,017,600	\$3,561,600	37%	\$1,271,700	\$47,100	\$1,318,800	\$3,434,400
75PP-XX	Water Transmission Line 18" (ESP Corral Hollow Rd and Linne Rd to Middlefield Rd - buildout)	LF	\$300	705	\$211,500	\$84,600	\$296,100	37%	\$105,300	\$3,900	\$109,200	\$285,525
75PP-XX	Water Transmission Line 18" (ESP-Linne Rd to Corral hollow Rd Phase 1 - PZ2 Bypass)	LF	\$300	120	\$36,000	\$14,400	\$50,400	36%	\$17,550	\$650	\$18,200	\$48,600
75PP-XX	Water Transmission Line 16" (from existing Clearwell No. 2 to English Oaks)	LF	\$210	1705	\$1,772,150	\$708,860	\$2,481,010	37%	\$885,600	\$32,800	\$918,400	\$2,392,403
75PP-XX	20" Jack and Bore under Delta Mendota Canal	LF	\$1,005	488	\$460,290	\$184,116	\$644,406	37%	\$229,500	\$8,500	\$238,000	\$621,392
75PP-XX	20" Jack and Bore (CH and Linne under Railroad)	LF	\$1,005	250	\$251,250	\$100,500	\$351,750	37%	\$125,550	\$4,650	\$130,200	\$339,188
Water Transmission Lines to move Portion of Plan C into Zone A												
75PP-XX	Water Transmission Line 12" (Whirlaway Ln. to Linne Rd)	LF	\$210	563	\$118,230	\$47,292	\$165,522	37%	\$59,400	\$2,200	\$61,600	\$159,611
75PP-XX	12" Jack and Bore (SW Portion of Plan C under RR to Linne Rd)	LF	\$690	150	\$103,500	\$41,400	\$144,900	37%	\$51,107	\$1,893	\$53,000	\$139,725
Valve Connections												
75PP-XX	18" Check Valve Connection at Middlefield Dr.	EA	\$84,000	1	\$84,000	\$33,600	\$117,600	37%	\$41,850	\$1,550	\$43,400	\$113,400
75PP-XX	Connection at Middlefield Drive 12" Diameter bypass PZ2 on Corral Hollow, Jack and Bore (SW portion of the Plan C under Corral Hollow)	LF	\$690	60	\$41,400	\$16,560	\$57,960	37%	\$20,636	\$764	\$21,400	\$55,890
75PP-XX	Pressure Reducing Valve ESP - Phase 1 to Valpico Rd (12-inch Diameter)	EA	\$102,000	1	\$102,000	\$40,800	\$142,800	37%	\$51,300	\$1,900	\$53,200	\$137,700
Total:					\$52,926,794	\$21,152,286	\$74,079,080		\$17,152,907	\$635,293	\$17,788,200	
Ellis Water Contribution:									\$17,152,907	\$635,293	\$17,788,200	\$16,192,130

Developer Credit: \$16,192,130
 Ellis Responsibility (does not include Aquatic Center): \$15,511,300
 Reimbursement: \$ 680,830

Source: Ellis Finance & Implementation Plan – (Harris & Associates 11-15-18)

EXHIBIT "C" page 1 of 3
STORM DRAINAGE IMPROVEMENT COMPONENT

Developer shall be entitled to the following Impact Fee Credits and Reimbursements upon City Council acceptance of the Component or any segment thereof.

1. Amount of Maximum Potential Credit. The City Engineer and the Community Services Director hereby find that the reasonable estimated construction costs as determined by City consultants from City Finance Plans for the Work, and the amount of "Maximum Potential Credit" available to the Developer are pursuant to Tracy Municipal Code and is \$5,177,012 (1) for Storm Drainage Impact Fees. Since the components are in different stages of the process of construction, Developer shall receive Credit for a component in the amount noted in the Storm Drain System Improvement Table described herein, when said component has an Improvement Agreement, if all components have an Improvement Agreement, then the Maximum Potential Credit shall be granted to Developer.

2. Amount of Minimum Potential Reimbursement. Pursuant to Tracy Municipal Code the City shall pay the Developer no less than \$6,974,839 (2) as the "Minimum Potential Reimbursement," from the Storm Drainage Properties as identified herein Exhibit C, plus the unused portion of the Maximum Potential Credit specified in Paragraph 1 above. If the Developer does not receive credits equal to the Maximum Potential Credit shown above in Paragraph 1, the Minimum Potential Reimbursement shall be increased by the corresponding amount to match the Total Credit and Reimbursement in the amount of up to \$12,151,850 (3). City shall make all reasonable efforts to provide Developer with the "Total Credit and Reimbursement" as of the effective date of this agreement, or as soon thereafter as possible. Developer's right to Reimbursement for the Storm Drainage Work shall have priority over other City Storm Drainage Improvement projects. Developer's right to Reimbursement for the Storm Drainage Basin 3A Work from the Properties identified below shall be fully satisfied for each property prior to the earlier of any of the following 1) a property grading permit; 2) connecting to any City utility including storm drainage, water, or sewer; 3) annexing to the City of Tracy; 4) any permit for construction or improvements; 5) approval of any map by the City of Tracy.

(1) \$5,177,012: Source Ellis FIP (total Ellis FIP Storm responsibility amount available credit

(2) \$6,974,839 = \$5,177,012 - \$12,151,850

(Other property Ellis FIP and Master Plan responsibility. \$6,974,839 reimbursement amount)

(3) \$12,151,850 = \$5,177,012 + \$6,974,839

(total storm improvements available for credit and/or reimbursement)

**EXHIBIT "C" page 2 of 3
STORM DRAINAGE IMPROVEMENT COMPONENT**

Storm Drainage Benefit & Non-Benefit District Properties	APN	Reimbursement Amount
Church (LDS) (1)	240-140-28	\$ 325,867
Church (St. Bernard's) (1)	240-140-24	\$1,070,705
Public Facilities (2)	253-020-11 & 253-020-12	\$ 393,109
Industrial (South Linne) (1)	253-020-11 and 253-020-12	\$4,422,475
Telecommunications (1)	240-140-21	\$ 73,708
Residential (1)	240-140-07, 08, 10, 11, 29	\$ 688,975
Reimbursement from Benefit District and Non-Benefit District Properties	TOTAL REIMBURSEMENT	\$6,974,839

(1) Benefit District Properties \$6,581,730
(2) Non-Benefit District Property \$ 393,109
(Public Facility, Swim Center)

CREDITS

RML	\$1,453,468
RMM	\$2,587,407
RMH	\$ 137,847
Commercial A	\$ 884,495
Commercial B	\$ 113,795
TOTAL CREDITS	\$5,177,012

**EXHIBIT "C" page 3 of 3
STORM DRAINAGE IMPROVEMENT COMPONENT**

Storm Drainage Benefit & Non-Benefit District Properties	APN	Average by Land Use Category	Proportional Land Use Area	Percent Impervious	Proportional Funding Factor (Land Use % times % Impervious)	Proportional Funding Responsibility (Funding factor % of total)	Fee Responsibility	Credit Amount	Reimbursement Amount	Benefit District Amount	
Church (LDS) (1)	240-140-28	5.6	0.95%	90.00%	0.0085	2.68%	\$ 325,867			\$ 325,867	
Church (St. Bernard's) (1)	240-140-24	18.4	3.11%	90.00%	0.0280	8.81%	\$ 1,070,705			\$ 1,070,705	
Public Facilities (2)	Swim Center	16	2.71%	38.00%	0.0103	3.23%	\$ 393,109		\$ 393,109		
Industrial (South Linne) (1)	253-020-11 and 253-020-12	120	20.30%	57.00%	0.1157	36.39%	\$ 4,422,475			\$ 4,422,475	
Telecommunications (1)	240-140-21	2	0.34%	57.00%	0.0019	0.61%	\$ 73,708			\$ 73,708	
RML	ESP, 240-140-05 and 6	140.5	23.77%	16.00%	0.0380	11.96%	\$ 1,453,468	\$ 1,453,468			
RMM		181.9	30.77%	22.00%	0.0677	21.29%	\$ 2,587,407	\$ 2,587,407			
RMH		5.2	0.88%	41.00%	0.0036	1.13%	\$ 137,847	\$ 137,847			
Residential (1)	240-140-07, 08, 10, 11 and 29	66.6	11.27%	16.00%	0.0180	5.67%	\$ 688,975			\$ 688,975	
ESP Commercial - Standard	ESP	24	4.06%	57.00%	0.0231	7.28%	\$ 884,495	\$ 884,495			
ESP Commercial - Gravel	ESP	11	1.86%	16.00%	0.0030	0.94%	\$ 113,795	\$ 113,795			
TOTALS		591.2	100.00%		0.3179	100.00%	\$ 12,151,850	\$ 5,177,012	\$ 393,109	\$ 6,581,729	\$ 12,151,850

EXHIBIT "D" page 1 of 2

CORRAL HOLLOW ROAD CURB TO CURB IMPROVEMENTS

Developer shall be entitled to the following Credit or Reimbursement from Like-Kind Fees.

ENGINEER'S PRELIMINARY COST ESTIMATE				August 10, 2018	
CORRAL HOLLOW ROAD				Job No.: 1725-000	
CURB TO CURB IMPROVEMENTS					
FOR TRAFFIC FEE CALCULATIONS					
ELLIS - PHASE 1					
TRACY, CALIFORNIA					

Item	Description	Quantity	Unit	Unit Price	Amount
<u>STREET WORK</u>					
1	Finish Grading (Ep. to Back of Curb)	65,250	SF	\$ 0.30	\$ 19,575
2	6.6" Asphalt Concrete	60,500	SF	\$ 3.30	\$ 199,650
3	26.4" Aggregate Base	60,500	SF	\$ 3.18	\$ 192,390
4	Fog Seal	60,500	SF	\$ 0.20	\$ 12,100
5	Vertical Curb and Gutter (With AB Cushion)	2,100	LF	\$ 24.00	\$ 50,400
6	Miscellaneous Striping	1	LS	\$ 25,000.00	\$ 25,000
7	Saw-Cut Edge of Existing Pavement	2,400	LF	\$ 1.17	\$ 2,808
8	AC Grind and Overlay	11,900	SF	\$ 4.00	\$ 47,600
9	Traffic Control	1	LF	\$ 25,000.00	\$ 25,000
10	Bus Turnout (12" PCC / 12" AB with 2 Layers of #4 Rebar)	1,020	SF	\$ 24.00	\$ 24,480
	Subtotal Street Work				\$ 599,003
<u>SJMSCP HABITAT FEE</u>					
11	SJMSCP Habitat Fee (Curb to Existing ROW Frontage Improvement = 20,810 SF)	0.5	AC	\$ 19,400.00	\$ 9,268
	Subtotal Habitat Fee				\$ 9,268
<u>WSID IRRIGATION LINE RELOCATION</u>					
12	30" Irrigation Line	780	LF	\$ 150.00	\$ 117,000
	Subtotal WSID Irrigation Line Relocation				\$ 117,000
<u>TRAFFIC SIGNAL IMPROVEMENTS (ELLIS TOWN DRIVE / CORRAL HOLLOW ROAD AND SUMMIT DRIVE / CORRAL HOLLOW ROAD INTERSECTION)</u>					
13	Ellis Town Drive / Corral Hollow Road Traffic Signal	1	LS	\$ 301,100.00	\$ 301,100
14	Summit Drive / Corral Hollow Road Traffic Signal	1	LS	\$ 202,000.00	\$ 202,000
	Subtotal Traffic Signal Improvements				\$ 503,100
	SUBTOTAL CORRAL HOLLOW ROAD IMPROVEMENT COSTS				\$ 1,228,371
<u>DESIGN AND CONSTRUCTION MANAGEMENT</u>					
15	Design, Plan Preparation (10% of Improvement Cost)	1	EA	\$ 122,837.10	\$ 122,837
16	Mobilization (8% of Improvement Cost)	1	EA	\$ 98,269.88	\$ 98,270
17	Construction Management (10% of Improvement Cost)	1	EA	\$ 122,837.10	\$ 122,837
	SUBTOTAL CORRAL HOLLOW ROAD DESIGN AND CONSTRUCTION MANAGEMENT COSTS				\$ 343,944
	SUBTOTAL CORRAL HOLLOW ROAD CURB TO CURB IMPROVEMENTS CONSTRUCTION COST				\$ 1,572,315
	15% CONTINGENCY				\$ 235,847
	TOTAL CORRAL HOLLOW ROAD CURB TO CURB IMPROVEMENTS CONSTRUCTION COST				\$ 1,808,000
					<i>(to the nearest \$1,000)</i>

Notes:

1. Unit prices for Civil Improvements are based on combination of Teichert's unit prices and CalAtlantic unit prices.
2. Traffic Signal estimate provided by TJKM. Cost is based on the approved plans prepared by TJKM dated July 7, 2017.

EXHIBIT "D" page 2 of 2
CORRAL HOLLOW ROAD CURB TO CURB IMPROVEMENTS

1. Amount of Maximum Potential Credit. The City Engineer and the Community Services Director hereby find that the reasonable estimated construction costs as determined by engineers for the Work, and the amount of "Maximum Potential Credit" available to the Developer are pursuant to Tracy Municipal Code and is \$1,808,000 for Traffic Impact Fees. The Maximum Potential Credit shall be granted to Developer. These credits may be applied to off-set Like-Kind Fees.

2. Amount of Potential Reimbursement. Pursuant to Tracy Municipal Code if the Developer does not receive credits equal to the Maximum Potential Credit shown above in Paragraph 1, the Minimum Potential Reimbursement shall be increased by the corresponding amount to match the Total Credit and Reimbursement in the amount of up to \$1,808,000. City shall make all reasonable efforts to provide Developer with the "Total Credit and Reimbursement" as of the effective date of this agreement, or as soon thereafter as possible. Developer's right to Reimbursement for the Traffic Work shall have priority over other City Traffic Improvement projects

EXHIBIT "E" page 1 of 1
RECYCLED WATERLINE IMPROVEMENT COMPONENT

ENGINEER'S PRELIMINARY COST ESTIMATE					August 8, 2018
RECYCLED WATERLINE REIMBURSEMENT COST TRACY, CALIFORNIA					Job No.: 1725-000
Item	Description	Quantity	Unit	Unit Price	Amount
<u>RECYCLED WATERLINE CONSTRUCTION COST</u>					
1	8" PVC Recycled Waterline (Ellis Phase 1 - Summit Drive)	2,940	LF	\$ 44	\$ 129,360
2	8" PVC Recycled Waterline (Ellis Phase 1 - Ellis Town Drive)	3,100	LF	\$ 44	\$ 136,400
3	8" PVC Recycled Waterline (Ellis Phase 2 - Gardens - Ellis Town Drive)	2,200	LF	\$ 44	\$ 96,800
4	8" PVC Recycled Waterline (Ellis Phase 2 - Town and Country - Ellis Town Drive)	2,300	LF	\$ 44	\$ 101,200
5	2" PVC Recycled Irrigation Main line (Ellis Phase 1A - Residential Streets)	14,400	LF	\$ 20	\$ 288,000
6	2" PVC Recycled Irrigation Main line (Ellis Phase 1B - Residential Streets)	11,960	LF	\$ 20	\$ 239,200
7	2" PVC Recycled Irrigation Main line (Ellis Phase 1 - Park)	1,820	LF	\$ 20	\$ 36,400
Subtotal Recycled Waterline Construction Cost					\$ 1,027,360
<u>DESIGN AND CONSTRUCTION MANAGEMENT</u>					
8	Design and Plan Preparation (10% of Construction Cost)	1	LS	\$ 102,736	\$ 102,736
9	Mobilization (8% of Construction Cost)	1	LS	\$ 82,189	\$ 82,189
10	Construction Management (10% of Construction Cost)	1	LS	\$ 102,736	\$ 102,736
Subtotal Design and Construction Management Cost					\$ 287,661
SUBTOTAL RECYCLED WATERLINE CONSTRUCTION COST					\$ 1,315,021
15% CONTINGENCY					\$ 197,253
TOTAL RECYCLED WATERLINE CONSTRUCTION COST					\$ 1,512,000
<i>(to the nearest \$1,000)</i>					

Notes:

1. Unit prices are based on Teichert's unit prices dated October 27, 2016.
2. Unit prices includes appurtenances such as valves, fittings, blowoffs and cathodic protection.

1. **Amount of Maximum Potential Credit.** The City Engineer and the Community Services Director hereby find that the reasonable estimated construction costs as determined by engineers for the Work, and the amount of "Maximum Potential Credit" available to the Developer are pursuant to Tracy Municipal Code and is \$1,512,000 for Recycled Water Fees. The Maximum Potential Credit shall be granted to Developer. These credits may be applied to off-set Like-Kind Fees.
2. **Amount of Potential Reimbursement.** Pursuant to Tracy Municipal Code if the Developer does not receive credits equal to the Maximum Potential Credit shown above in Paragraph 1, the Minimum Potential Reimbursement shall be increased by the corresponding amount to match the Total Credit and Reimbursement in the amount of up to \$1,512,000. City shall make all reasonable efforts to provide Developer with the "Total Credit and Reimbursement" as of the effective date of this agreement, or as soon thereafter as possible. Developer's right to Reimbursement for the Recycled Water Work shall have priority over other City Recycled Water Improvement projects

EXHIBIT "F" page 1 of 2
CORRAL HOLLOW ROAD
AQUATIC CENTER FRONTAGE IMPROVEMENTS

ENGINEER'S PRELIMINARY COST ESTIMATE CORRAL HOLLOW ROAD BACK OF CURB TO LIMIT OF PUBLIC IMPROVEMENTS ALONG AQUATIC CENTER FRONTAGE ELLIS - PHASE 1 TRACY, CALIFORNIA					August 10, 2018 Job No.: 1725-000
Item	Description	Quantity	Unit	Unit Price	Amount
<u>STREET WORK</u>					
1	Finish Grading (<i>Back of Curb to Limit of Public Improvements</i>)	31,000	SF	\$ 0.30	\$ 9,300
2	Sidewalk (<i>With AB Cushion</i>)	8,900	SF	\$ 8.50	\$ 75,650
3	Traffic Sign (<i>Includes Bus Sign</i>)	4	EA	\$ 275.00	\$ 1,100
Subtotal Street Work					\$ 86,050
<u>JOINT TRENCH</u>					
4	Joint Trench (<i>Includes Street Lighting</i>)	1	LS	\$ 50,150.00	\$ 50,150
Subtotal Joint Trench					\$ 50,150
<u>LANDSCAPE IMPROVEMENTS</u>					
5	Bench	2	EA	\$ 2,500.00	\$ 5,000
6	Tree Uplights	20	EA	\$ 950.00	\$ 19,000
7	Transit Shelter	1	EA	\$ 16,000.00	\$ 16,000
8	Tree (<i>24" Box - Including Irrigation and Root Control</i>)	45	EA	\$ 650.00	\$ 29,250
9	Palm Tree (<i>Including Irrigation and Drainage</i>)	10	EA	\$ 25,000.00	\$ 250,000
10	Planting (<i>Including Soil Preparation, Irrigation, and Mulch</i>)	35,000	SF	\$ 8.00	\$ 280,000
11	Water Meter (<i>Irrigation</i>)	1	EA	\$ 3,500.00	\$ 3,500
12	Irrigation Controller	1	EA	\$ 8,000.00	\$ 8,000
Subtotal Landscape Improvements					\$ 610,750
SUBTOTAL CORRAL HOLLOW ROAD BACK OF CURB TO LIMIT OF PUBLIC IMPROVEMENT COSTS					\$ 746,950
<u>DESIGN AND CONSTRUCTION MANAGEMENT</u>					
13	Design, Plan Preparation (<i>10% of Improvement Cost</i>)	1	EA	\$ 74,695.00	\$ 74,695
14	Mobilization (<i>8% of Improvement Cost</i>)	1	EA	\$ 59,756.00	\$ 59,756
15	Construction Management (<i>10% of Improvement Cost</i>)	1	EA	\$ 74,695.00	\$ 74,695
SUBTOTAL CORRAL HOLLOW ROAD DESIGN AND CONSTRUCTION MANAGEMENT COSTS					\$ 209,146
SUBTOTAL IMPROVEMENT COST, DESIGN AND MANAGEMENT COST					\$ 956,096
15% CONTINGENCY					\$ 143,414
TOTAL COST OF DESIGN, MANAGEMENT AND CONSTRUCTION					\$ 1,100,000

Notes:

1. Unit prices for Civil Improvements are based on combination of Teichert's unit prices dated October 27, 2016 and CalAtlantic
2. Landscape estimate provided by Gates & Associates.
3. Joint Trench estimate provided by Giacalone Design.

EXHIBIT "F" page 2 of 2
CORRAL HOLLOW ROAD
AQUATIC CENTER FRONTAGE IMPROVEMENTS

1. Amount of Maximum Potential Credit. The City Engineer and the Community Services Director hereby find that the reasonable estimated construction costs as determined by engineers for the Work, and the amount of "Maximum Potential Credit" available to the Developer are pursuant to Tracy Municipal Code and is \$1,100,000 for Traffic Impact Fees. The Maximum Potential Credit shall be granted to Developer. These credits may be applied to off-set Like-Kind Fees.

2. Amount of Potential Reimbursement. Pursuant to Tracy Municipal Code if the Developer does not receive credits equal to the Maximum Potential Credit shown above in Paragraph 1, the Minimum Potential Reimbursement shall be increased by the corresponding amount to match the Total Credit and Reimbursement in the amount of up to \$1,100,000. City shall make all reasonable efforts to provide Developer with the "Total Credit and Reimbursement" as of the effective date of this agreement, or as soon thereafter as possible. Developer's right to Reimbursement for the Traffic Work shall have priority over other City Traffic Improvement projects

**EXHIBIT "G" page 1 of 1
REMBURSEMENT SCHEDULE**

Specific reimbursements as identified below shall be reimbursed according to the following schedule and in accordance with Section 3 of this agreement:

HABITAT MITIGATION		
1	FUNDING AVAILABLE AS PER THE TERMS OF THIS AGREEMENT OR AS AGREED BY THE PARTIES	\$ 301,132.00
WATER		
1	ONCE IMPROVEMENT ACCEPTED BY CITY EST. FUNDING DATE 1/31/19	\$ 680,830.00
STORM		
1	FUNDING AVAILABLE THROUGH BENEFIT DISTRICT	\$ 6,581,730.00
2	FUNDING AVAILABLE AS PER THE TERMS OF THIS AGREEMENT OR AS AGREED BY THE PARTIES	\$ 393,109.00
TRAFFIC - CORRAL HOLLOW ROAD FRONTAGE - CURB TO CURB IMPROVEMENTS		
1	ONCE IMPROVEMENT ACCEPTED BY CITY EST. FUNDING DATE 1/31/19	\$ 1,808,000.00
RECYCLED WATERLINE IMPROVEMENT		
1	PER DA AND THIS AGREEMENT	\$ 751,082.00
TRAFFIC - CORRAL HOLLOW ROAD - AQUATIC CENTER FRONTAGE		
1	FUNDING AVAILABLE AS PER THE TERMS OF THIS AGREEMENT OR AS AGREED BY THE PARTIES	\$ 1,100,000.00
PROGRAM MANAGEMENT FEES		
1	GROUP 75 - ONCE IMPROVEMENT ACCEPTED BY CITY EST. FUNDING DATE 1/31/19	\$ 553,975.00
2	GROUP 78 - COMMUNITY PARK - PER DA PARK CREDIT AVAILABLE - ESTIMATED FUNDING DATE OF 1/31/19	\$ 124,889.00
COMMUNITY PARK		
1	PER DA PARK CREDIT AVAILABLE - ESTIMATED FUNDING DATE OF 1/31/19	\$ 513,645.00

EXHIBIT "H" page 1 of 1
ELLIS PROGRAM MANAGEMENT CATEGORY COMPONENTS

1. **Amount of Maximum Potential Reimbursement.** The City shall pay the Developer up to \$3,484,904 as the "Maximum Potential Reimbursement". City shall make all reasonable efforts to provide Developer with the Reimbursement on the effective date of this agreement, or as soon thereafter as possible. Developer's right to Reimbursement for Program Management shall have priority over other City Program Management costs and reimbursements.

2. **Water System Complete Category Component.** Pursuant to this agreement, Group 75 Water of the Ellis FIP, the Program Management fee component amount of \$553,975 is reimbursable as the City impact fees in the Ellis finance plan for Water System Improvements have been fully satisfied such that no City impact fees remain to be paid by the project for this work component category.

3. **Community Park Complete Category Component.** Pursuant to this agreement, Group 78 Community Park Obligation of the Ellis FIP, the Program Management fee component amount of \$124,889 is reimbursable as the City impact fees in the Ellis finance plan for Community Park Obligations have been fully satisfied such that no City impact fees remain to be paid by the project for this work component category.

Program Management	
Group 71 Public Facilities	\$ 242,403
Group 72 & 73 Streets & Traffic	\$ 471,402
Group 74 Wastewater	\$ 560,353
* Group 75 Water	\$ 553,975
* Group 75 Recycled Water	\$ 208,048
Group 76 Storm Drainage	\$ 889,410
Neighborhood Park	\$ 434,424
Community Park	\$ 124,889
Total Program Management	\$ 3,484,904

*Water & Recycled Water Program Management calculation notes:

Ellis PM	\$553,975
Aquatic PM	\$ 81,318
Recycled Water PM	\$208,048
TOTAL	\$843,341

EXHIBIT "I" page 1 of 1
EFIP OBLIGATION BY IMPROVEMENT PLAN COMPONENT CATEGORY

1. Amount of the Total Ellis Specific Plan Obligation by Improvement Component Category, per the Ellis Program Area Finance and Implementation Plan.

A. Public Buildings:	\$ 6,787,273
B. Traffic:	\$ 7,469,256
C. Wastewater:	\$15,689,875
D. Water:	\$15,511,300
E. Recycled Water:	\$ 5,825,339
F. Storm Drain:	\$12,151,850
G. Neighborhood Park:	\$12,163,874 or 19.1 acres
H. Community Park:	\$ 3,496,900 or 6.4 acres

2. Amount of Ellis Specific Plan Obligation by Improvement Component Category, Funding Satisfied or Paid as of the Execution date of this Agreement.

I. Public Buildings:	\$ 984,557
J. Traffic:	\$ 762,119
K. Wastewater:	\$ 2,359,371
L. Water:	Obligation Completed/Satisfied
M. Recycled Water:	\$ 751,082
N. Storm Drain:	\$ 1,310,856
O. Neighborhood Parks:	3.0 acres
P. Community Parks:	Obligation Completed/Satisfied

EXHIBIT "J" page 1 of 2
CREDIT NOTICE TO CITY

CREDIT NOTICE TO CITY

{Insert Fee Category Component}

Date: _____

Pursuant to the Program Improvements Credit and Reimbursement Agreement (the "PICRA") dated _____ between the City of Tracy ("City") and Surland, LLC ("Surland"), Surland has credit for *{Insert Fee Category Component}* obligations (the "*{Insert Fee Category Component}*").

The *{Insert Fee Category Component}* credit is available for use by Surland (for lots/parcels it designates) at no cost or charge. This notice provides written notice to Tracy that no *{Insert Applicable Finance Plan}* (the "*{Insert Finance Plan Name}*") fee payment, or any other impact fee payment, or charge shall be made or collected by City for *{Insert Fee Category Component}* for designated lots or parcels at any time, including but not limited to issuing building permits for lots/parcels designated herein by Surland to benefit from the *{Insert Fee Category Component}* credit.

This letter constitutes Surland's notice to the City that Surland allocates *{Insert Fee Category Component}* credits as follows:

Project Name: _____

Tract/APN Number: _____

Units of Capacity: _____

Total Lots/Parcels: _____ (Schedule attached)

The lots or parcels for which this notice may be applied are listed on the Schedule attached hereto.

The application of *{Insert Fee Category Component}* credit to certain real property pursuant to this notice shall remain in effect to and until the date Surland notifies the City in writing that it is revoking the notice, in which event the allocation at that time shall remain permanently in effect with respect to all lots or parcels for which *{Insert Applicable Finance Plan}* or impact fees for *{Insert Fee Category Component}* which would have been previously collected by the City prior to the City receipt of the notice of revocation, and any revocation shall only apply with respect to the portion of the lots or parcels for which *{Insert Fee Category Component}* related to the *{Insert Finance Plan Name}* or any other *{Insert Fee Category Component}* impact fees which are not yet due for payment.

EXHIBIT "J" page 2 of 2
CREDIT NOTICE TO CITY

Notice To:

City of Tracy:

City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

SURLAND, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT 5

Recording Requested by:
City of Tracy

Return to:
Adrienne Richardson, City Clerk
333 Civic Center Plaza
Tracy, CA 95376

Recording Fee: Exempt
(Government Code Section 6103 and 27383)

Space above this line for Recorder's use
APN: 240-140-43

Documentary Transfer Tax: Exempt
(Revenue and Taxation Code Section 11922)

IRREVOCABLE OFFER OF DEDICATION OF FEE INTEREST

For A Valuable Consideration, receipt of which is hereby acknowledged, Ellis Village, LLC represents that, as the owner(s) of the herein-described real property (in the case of multiple owners, collectively referred to as "Grantor"), Grantor hereby makes an Irrevocable Offer of Dedication of fee interest to THE CITY OF TRACY, A MUNICIPAL CORPORATION, the hereinafter described real property for the following public purpose:

[Community Park Land for an Aquatic Park]

The real property referred to above is situated in the City of Tracy, County of San Joaquin, State of California and is more particularly described as follows:

SEE ATTACHED:

EXHIBIT A FOR LEGAL DESCRIPTION

EXHIBIT B FOR PLAT

This Offer of Dedication is made pursuant to Section 7050 of the Government Code of the State of California and may be accepted at any time by the City of Tracy.

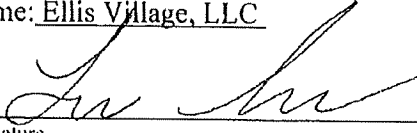
This Offer of Dedication of fee interest shall be irrevocable and shall be binding on the Grantor, its heirs, executors, administrators, successors and assigns. The City and its successors or assigns shall incur no liability with respect to this offer of dedication, and shall not assume any responsibility for the Property or any improvements thereon, until this offer has been accepted by the City of Tracy.

SIGNATURE PAGE

Signed this 30 day of October, 2020

Corporation/Business Name: Ellis Village, LLC

Grantor Signatures:


Signature

Les Serpa, Managing Member
Print Name and Title

Signature

Print Name and Title

** Corporations - signature of two (2) officers required or one (1) officer plus corporate seal.
Partnership - signature of a partner required
Sole Proprietorship - signature of proprietor required
LLC - signature of proprietor or partner required*

(Notary Acknowledgment Required for Each signatory)

CERTIFICATION

This is to certify that the interest in real property offered herein to the City of Tracy is hereby accepted pursuant to the authority conferred by Tracy City Council Resolution No. 1670, dated August, 6, 1968 and the grantee consents to the recordation thereof.

DATED: _____

By: _____
Adrienne Richardson
City Clerk and Clerk of the City Council
City of Tracy

ACKNOWLEDGMENT

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

State of California

County of San Joaquin

On November 5th, 2020 before me, Kirstie L. McKenzie, Notary Public
(Insert name and title of the officer)

personally appeared Les Serpa,
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 Kirstie L. McKenzie (Seal)



OCTOBER 30, 2020
JOB NO.: 1725-000

LEGAL DESCRIPTION
SWIM CENTER
PORTION OF RESULTANT PARCEL A (DN 2016-129622)
AND A PORTION OF SUMMIT DRIVE (42 M&P 43)
TRACY, CALIFORNIA

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

BEING A PORTION OF RESULTANT PARCEL A, AS SAID PARCEL A IS DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED OCTOBER 21, 2016, IN DOCUMENT NO, 2016-129622 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN JOAQUIN COUNTY, AND A PORTION OF THAT PORTION OF SUMMIT DRIVE (FORMERLY MIDDLEFIELD ROAD) THAT WAS REJECTED ON THE FINAL MAP FOR TRACT NO. 3764, RECORDED SEPTEMBER 28, 2015, IN BOOK 42 OF MAPS AND PLATS, AT PAGE 43, IN SAID OFFICE OF THE COUNTY RECORDER OF SAN JOAQUIN COUNTY AND AS SAID FINAL MAP WAS CORRECTED PER CERTIFICATE OF CORRECTION RECORDED JANUARY 29, 2016, IN DOCUMENT NO. 2016-011616 OF OFFICIAL RECORDS IN SAID OFFICE OF THE RECORDER OF SAN JOAQUIN COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERN CORNER OF SAID RESULTANT PARCEL A;

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE EAST LINE OF SAID SUMMIT DRIVE, SOUTH 00°23'03" WEST 45.50 FEET TO A POINT ON THE CENTERLINE OF SAID SUMMIT DRIVE, AS SAID CENTERLINE IS SHOWN AS SO DESIGNATED ON SAID FINAL MAP (42 M&P 43);

THENCE, LEAVING SAID EAST LINE OF SUMMIT DRIVE, ALONG SAID CENTERLINE, THE FOLLOWING NINE (9) COURSES:

- 1) NORTH 89°36'57" WEST 85.81 FEET,
- 2) ALONG THE ARC OF A TANGENT 400.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 17°32'03", AN ARC DISTANCE OF 121.41 FEET,
- 3) NORTH 72°04'54" WEST 73.11 FEET,
- 4) ALONG THE ARC OF A TANGENT 575.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 19°17'08", AN ARC DISTANCE OF 193.55 FEET,
- 5) NORTH 52°47'46" WEST 93.42 FEET,
- 6) ALONG THE ARC OF A TANGENT 2,200.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 14°10'55", AN ARC DISTANCE OF 544.55 FEET,
- 7) NORTH 38°36'51" WEST 124.65 FEET,
- 8) ALONG THE ARC OF A TANGENT 600.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 09°16'47", AN ARC DISTANCE OF 97.18 FEET, AND

- 9) NORTH 47°53'38" WEST 28.79 FEET TO A POINT ON THE NORTHWESTERN LIMIT OF SAID PORTION OF SUMMIT DRIVE (FORMERLY MIDDLEFIELD ROAD) THAT WAS REJECTED, WHICH IS ALSO THE SOUTHWESTERLY PROLONGATION OF THE WESTERN LINE OF SAID RESULTANT PARCEL A;

THENCE, LEAVING SAID CENTERLINE, ALONG SAID NORTHWESTERN LIMIT, AND ALONG THE WESTERN LINE OF SAID RESULTANT PARCEL A, THE FOLLOWING THREE (3) COURSES:

- 1) NORTH 42°06'22" EAST 100.00 FEET,
- 2) SOUTH 89°50'36" EAST 222.58 FEET, AND
- 3) NORTH 00°23'03" EAST 111.39 FEET;

THENCE, LEAVING SAID WESTERN LINE OF RESULTANT PARCEL A, SOUTH 89°36'57" EAST 791.27 FEET TO A POINT ON SAID EASTERN LINE OF RESULTANT PARCEL A;

THENCE, ALONG SAID EASTERN LINE OF RESULTANT PARCEL A, SOUTH 00°23'03" WEST 888.98 FEET TO SAID POINT OF BEGINNING.

CONTAINING 16.00 ACRES OF LAND, MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION AND, BY THIS REFERENCE, IS MADE A PART HEREOF.

END OF DESCRIPTION

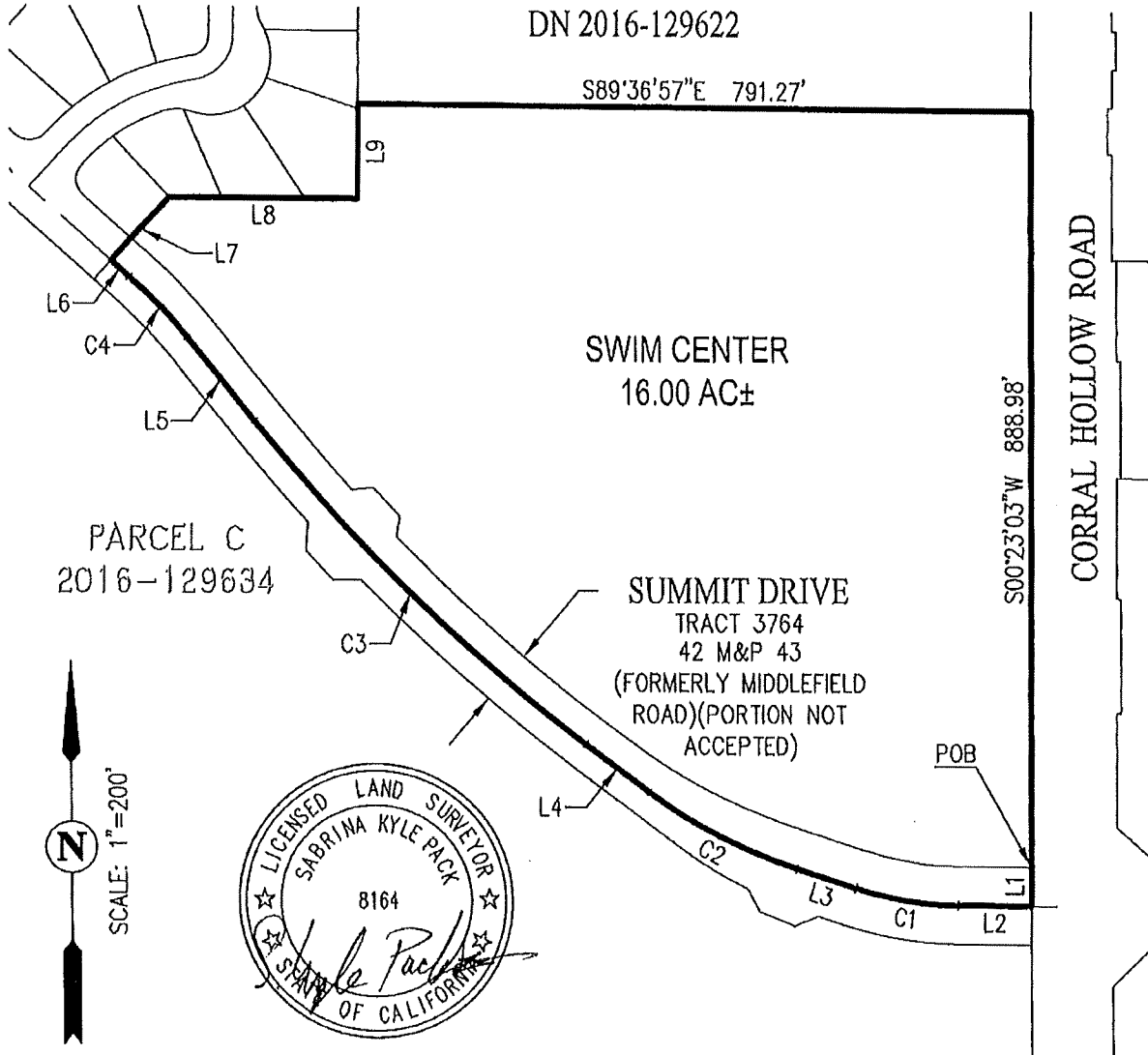




SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

TRACT 3764
42 M&P 43

RESULTANT PARCEL A
DN 2016-129622



S89°36'57"E 791.27'

S00°23'03"W 888.98'

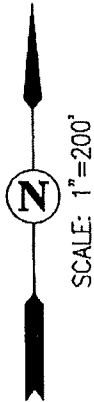
CORRAL HOLLOW ROAD

SWIM CENTER
16.00 AC±

PARCEL C
2016-129634

SUMMIT DRIVE
TRACT 3764
42 M&P 43
(FORMERLY MIDDLEFIELD
ROAD)(PORTION NOT
ACCEPTED)

POB



SEE SHEET 2 FOR COURSE TABLES.

PLAT TO ACCOMPANY LEGAL DESCRIPTION

SWIM CENTER
PORTION OF RESULTANT PARCEL A (DN 2016-129622) AND PORTION OF SUMMIT DRIVE (42 M&P 43)
TRACY, CALIFORNIA

OCTOBER 30, 2020

SHEET 1 OF 2

Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS
2633 CAMINO RAMON, SUITE 350
SAN RAMON, CALIFORNIA, (925) 866-0322

LINE TABLE		
NO	BEARING	LENGTH
L1	S00°23'03"W	45.50'
L2	N89°36'57"W	85.81'
L3	N72°04'54"W	73.11'
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PLAT TO ACCOMPANY LEGAL DESCRIPTION

SWIM CENTER

PORTION OF RESULTANT PARCEL A (DN 2016-129622) AND PORTION OF SUMMIT DRIVE (42 M&P 43)
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OCTOBER 30, 2020

SHEET 2 OF 2

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CIVIL ENGINEERS • SURVEYORS • PLANNERS

2633 CAMINO RAMON, SUITE 350

SAN RAMON, CALIFORNIA, (925) 866-0322

EXHIBIT 6

Recording Requested by:
City of Tracy

Return to:
Adrienne Richardson, City Clerk
333 Civic Center Plaza
Tracy, CA 95376

Doc #: 2021-016679
01/28/2021 02:52:22 PM
Page: 1 of 8 Fee: \$0
Steve J. Bestolarides
San Joaquin County Recorders
Paid By: SHOWN ON DOCUMENT



Recording Fee: Exempt
(Government Code Section 6103 and 27383)

Space above this line for Recorder's use
APN: 240-140-43

Documentary Transfer Tax: Exempt
(Revenue and Taxation Code Section 11922)

IRREVOCABLE OFFER OF DEDICATION OF FEE INTEREST

For A Valuable Consideration, receipt of which is hereby acknowledged, Ellis Village, LLC represents that, as the owner(s) of the herein-described real property (in the case of multiple owners, collectively referred to as "Grantor"), Grantor hereby makes an Irrevocable Offer of Dedication of fee interest to THE CITY OF TRACY, A MUNICIPAL CORPORATION, the hereinafter described real property for the following public purpose:

[Community Park Land for an Aquatic Park]

The real property referred to above is situated in the City of Tracy, County of San Joaquin, State of California and is more particularly described as follows:

SEE ATTACHED:

EXHIBIT A FOR LEGAL DESCRIPTION

EXHIBIT B FOR PLAT

This Offer of Dedication is made pursuant to Section 7050 of the Government Code of the State of California and may be accepted at any time by the City of Tracy.

This Offer of Dedication of fee interest shall be irrevocable and shall be binding on the Grantor, its heirs, executors, administrators, successors and assigns. The City and its successors or assigns shall incur no liability with respect to this offer of dedication, and shall not assume any responsibility for the Property or any improvements thereon, until this offer has been accepted by the City of Tracy.

SIGNATURE PAGE

Signed this 30 day of October, 2020

Corporation/Business Name: Ellis Village, LLC

Grantor Signatures:

[Signature]
Signature

Les Serpa, Managing Member
Print Name and Title

Signature

Print Name and Title

**Corporations - signature of two (2) officers required or one (1) officer plus corporate seal.
Partnership - signature of a partner required
Sole Proprietorship - signature of proprietor required
LLC - signature of proprietor or partner required*

(Notary Acknowledgment Required for Each signatory)

CERTIFICATION

This is to certify that the interest in real property offered herein to the City of Tracy is hereby accepted pursuant to the authority conferred by Tracy City Council Resolution No. 1670, dated August, 6, 1968 and the grantee consents to the recordation thereof.

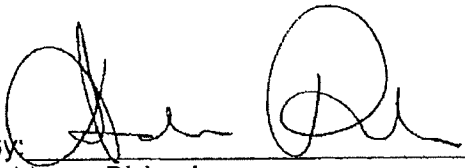
DATED: _____

By: _____
Adrienne Richardson
City Clerk and Clerk of the City Council
City of Tracy

See next page for
Certification

CERTIFICATION

This is to certify that the interest in real property conveyed by this Irrevocable Offer of Dedication (IOD) is hereby not accepted at this time by the undersigned City Clerk of the City of Tracy, pursuant to authority conferred by Resolution No. 1670 of the Tracy City Council, adopted on August 6, 1968, and recorded with the San Joaquin County Recorder on August 14, 1968, Book 3231, pages 581 through 583, and the grantee consents to recordation thereof by its duly authorized officer, and the grantee reserves the right to accept the offer of dedication in fee title by separate document.

By:  Date: January 28, 2021
Adrienne Richardson
City Clerk of the City Council
City of Tracy

Pursuant to Section 66477.5 of the California Government Code, the local agency shall reconvey the property to the subdivider if the local agency makes a finding that the same purpose for which the property was dedicated does not exist or any portion thereof is not needed for public utilities, as specified in Subdivision C of the Section.



ACKNOWLEDGMENT

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

State of California
County of San Joaquin

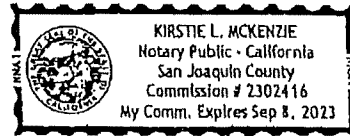
On November 5th, 2020 before me, Kirstie L. McKenzie, Notary Public
(Insert name and title of the officer)

personally appeared Les Serpa,
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 Kirstie L. McKenzie (Seal)



OCTOBER 30, 2020
JOB NO.: 1725-000

LEGAL DESCRIPTION
SWIM CENTER
PORTION OF RESULTANT PARCEL A (DN 2016-129622)
AND A PORTION OF SUMMIT DRIVE (42 M&P 43)
TRACY, CALIFORNIA

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

BEING A PORTION OF RESULTANT PARCEL A, AS SAID PARCEL A IS DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED OCTOBER 21, 2016, IN DOCUMENT NO, 2016-129622 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN JOAQUIN COUNTY, AND A PORTION OF THAT PORTION OF SUMMIT DRIVE (FORMERLY MIDDLEFIELD ROAD) THAT WAS REJECTED ON THE FINAL MAP FOR TRACT NO. 3764, RECORDED SEPTEMBER 28, 2015, IN BOOK 42 OF MAPS AND PLATS, AT PAGE 43, IN SAID OFFICE OF THE COUNTY RECORDER OF SAN JOAQUIN COUNTY AND AS SAID FINAL MAP WAS CORRECTED PER CERTIFICATE OF CORRECTION RECORDED JANUARY 29, 2016, IN DOCUMENT NO. 2016-011616 OF OFFICIAL RECORDS IN SAID OFFICE OF THE RECORDER OF SAN JOAQUIN COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERN CORNER OF SAID RESULTANT PARCEL A;

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE EAST LINE OF SAID SUMMIT DRIVE, SOUTH 00°23'03" WEST 45.50 FEET TO A POINT ON THE CENTERLINE OF SAID SUMMIT DRIVE, AS SAID CENTERLINE IS SHOWN AS SO DESIGNATED ON SAID FINAL MAP (42 M&P 43);

THENCE, LEAVING SAID EAST LINE OF SUMMIT DRIVE, ALONG SAID CENTERLINE, THE FOLLOWING NINE (9) COURSES:

- 1) NORTH 89°36'57" WEST 85.81 FEET,
- 2) ALONG THE ARC OF A TANGENT 400.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 17°32'03", AN ARC DISTANCE OF 121.41 FEET,
- 3) NORTH 72°04'54" WEST 73.11 FEET,
- 4) ALONG THE ARC OF A TANGENT 575.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 19°17'08", AN ARC DISTANCE OF 193.55 FEET,
- 5) NORTH 52°47'46" WEST 93.42 FEET,
- 6) ALONG THE ARC OF A TANGENT 2,200.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 14°10'55", AN ARC DISTANCE OF 544.55 FEET,
- 7) NORTH 38°36'51" WEST 124.65 FEET,
- 8) ALONG THE ARC OF A TANGENT 600.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 09°16'47", AN ARC DISTANCE OF 97.18 FEET, AND

LEGAL DESCRIPTION
PAGE 2 OF 2

OCTOBER 30, 2020
JOB NO. 1725-000

- 9) NORTH 47°53'38" WEST 28.79 FEET TO A POINT ON THE NORTHWESTERN LIMIT OF SAID PORTION OF SUMMIT DRIVE (FORMERLY MIDDLEFIELD ROAD) THAT WAS REJECTED, WHICH IS ALSO THE SOUTHWESTERLY PROLONGATION OF THE WESTERN LINE OF SAID RESULTANT PARCEL A;

THENCE, LEAVING SAID CENTERLINE, ALONG SAID NORTHWESTERN LIMIT, AND ALONG THE WESTERN LINE OF SAID RESULTANT PARCEL A, THE FOLLOWING THREE (3) COURSES:

- 1) NORTH 42°06'22" EAST 100.00 FEET,
- 2) SOUTH 89°50'36" EAST 222.58 FEET, AND
- 3) NORTH 00°23'03" EAST 111.39 FEET;

THENCE, LEAVING SAID WESTERN LINE OF RESULTANT PARCEL A, SOUTH 89°36'57" EAST 791.27 FEET TO A POINT ON SAID EASTERN LINE OF RESULTANT PARCEL A;

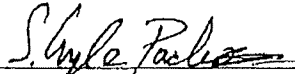
THENCE, ALONG SAID EASTERN LINE OF RESULTANT PARCEL A, SOUTH 00°23'03" WEST 888.98 FEET TO SAID POINT OF BEGINNING.

CONTAINING 16.00 ACRES OF LAND, MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION AND, BY THIS REFERENCE, IS MADE A PART HEREOF.

END OF DESCRIPTION



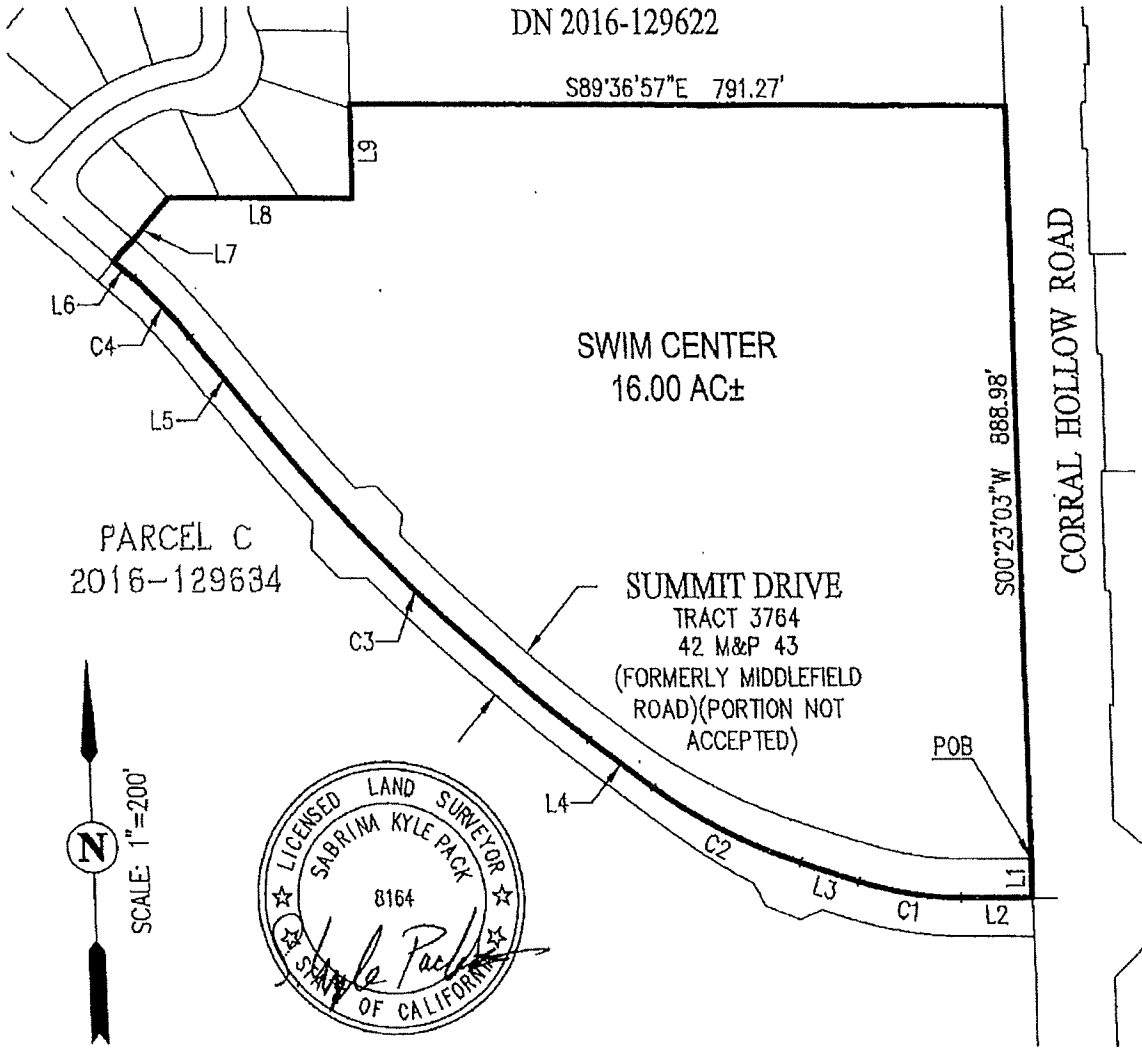


SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

TRACT 3764
42 M&P 43

RESULTANT PARCEL A
DN 2016-129622

S89°36'57"E 791.27'



SEE SHEET 2 FOR COURSE TABLES.

PLAT TO ACCOMPANY LEGAL DESCRIPTION

SWIM CENTER
PORTION OF RESULTANT PARCEL A (DN 2016-129622) AND PORTION OF SUMMIT DRIVE (42 M&P 43)
TRACY, CALIFORNIA

OCTOBER 30, 2020

SHEET 1 OF 2

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SHEET 2 OF 2

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