

Tuesday, October 5, 2010, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

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

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

Addressing the Council on Items not on the Agenda – The Brown Act prohibits discussion or action on items not on the posted agenda. Individuals addressing the Council should state their names and addresses for the record, and for contact information. "Items from the Audience" following the Consent Calendar will be limited to 15 minutes. "Items from the Audience" listed near the end of the agenda will not have a maximum time limit. The five minute maximum time limit for each speaker applies to all "Items from the Audience." Any item not on the agenda, brought up by the public shall automatically be referred to staff. In accordance with Council policy, if staff is not able to resolve the matter satisfactorily, the member of the public may request a Council Member to sponsor the item for discussion at a future meeting. When citizens address the Council, speakers should be as specific as possible about their concerns. If several speakers comment on the same issue, an effort should be made to avoid repetition of views already expressed.

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

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

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

PRESENTATIONS – Employee of the Month

- Swearing In Firefighters
- Proclamation – “Make a Difference Day”
- Proclamation – “Domestic Violence Awareness Month”
- Youth Advisory Commission Annual Report

1. CONSENT CALENDAR

A. Minutes Approval

B. Acceptance of the Shoulder Backing at Various Street Locations, 2009 Project - CIP 73120, Completed by Teichert Construction, of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion

C. Authorize a Professional Services Agreement with West Coast Arborist, Inc. for Tree Maintenance in the Tracy Consolidated Landscape Maintenance District for Fiscal Year 2010-2011, Authorize the City Manager to Execute Subsequent Agreement Extensions for Up to Four One-Year Terms, and Authorize the Mayor to Execute the Agreement

2. ITEMS FROM THE AUDIENCE

3. PUBLIC HEARING TO CONSIDER APPLICATIONS TO AMEND THE BROOKVIEW CONCEPT, PRELIMINARY AND FINAL DEVELOPMENT PLAN AND THE BROOKVIEW VESTING TENTATIVE SUBDIVISION MAP FOR THE 10-ACRE PARCEL LOCATED AT THE NORTHWEST CORNER OF BROOKVIEW DRIVE AND PERENNIAL PLACE, ASSESSOR'S PARCEL NUMBER 248-560-28. THE APPLICANT AND PROPERTY OWNER IS BROOKVIEW PROPERTIES, LLC. APPLICATION NUMBERS D10-0003 AND TSM10-0001

4. ITEMS FROM THE AUDIENCE

5. COUNCIL ITEMS

6. ADJOURNMENT

June 15, 2010, 7:00 p.m.

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1. Mayor Ives called the Special Meeting to order at 8:40 p.m.
2. Roll call found Council Members Abercrombie, Maciel, Tolbert, Mayor Pro Tem Tucker, and Mayor Ives present.
3. Items from the Audience – None.
4. APPROVAL OF THE RETAIL INCENTIVE PROGRAM AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND TRACY MALL PARTNERS, L.P. AND APPROPRIATION OF \$2,750,000 OF RSP FUNDS - Leon Churchill, Jr., City Manager, presented the staff report. On May 4, 2010, the Council adopted amendments to the City's Retail Incentive Program, including the establishment of a West Valley Mall Revitalization Program (Resolution 2010-057). The purpose of the Revitalization Program is to support the West Valley Mall, a vital part of the City's economic base and a significant source of sales tax revenue. The West Valley Mall Revitalization Program Guidelines provide that the Council may approve a financial incentive to the Mall Owners or to a prospective tenant. The incentive must be used for tenant improvements, and must be reflected in a written agreement in a form approved by the City Attorney. Any such agreement must be approved by the Council after making the following findings:
 1. The net financial benefit to the public is larger than the financial incentive.
 2. The agreement represents a direct public benefit.
 3. There are identified City or other funds that are available to make the financial incentive.
 4. The financial incentive is secured by an appropriate form of financial security, if any direct financial assistance is involved.

In January of 2009, Gottschalk's filed for bankruptcy and began closing all of its retail locations. At over 100,000 square feet, the Tracy store is one of the largest retail anchors at the Mall. Given the severity of the current economic recession, as well as rapidly declining sales tax, the City is concerned about the outlook for the Mall if a major anchor location remains vacant for an extended period of time.

Although the Mall's Owner was involved in the General Growth bankruptcy proceedings, it is no longer part of these proceedings. The City engaged in conversations with the Mall Owner shortly after Gottschalk's filed for bankruptcy to better understand the impact to the Mall of losing Gottschalk's.

Before Gottschalk's bankruptcy announcement, the City had approached the Mall Owner about the possibility of attracting Macy's to the Mall. The Mall Owner and Macy's have had conversations over the years but Macy's was never willing to commit to the Mall.

With the new vacancy, discussions between the City, the Mall Owner and Macy's have resumed and have culminated in the proposed Retail Incentive Agreement. The Agreement outlines the incentive necessary to attract Macy's to West Valley Mall. The salient terms of the Retail Incentive Agreement are as follows:

- The City will provide \$2.75M to the Mall Owner to be used for tenant improvements.
- The Mall Owner agrees to cause Macy's to operate at the Mall for at least 10 years through a lease agreement.
- The Mall Owner will repay the retail incentive payment to the City in the amount of \$151,250 per year for 20 years.
- The Mall Owner will receive a credit toward the annual payment in the amount of sales tax collected by the City generated by Macy's and new tenants of the Mall.
- The Mall Owner will provide a letter of credit to secure the Mall Owner's obligations pursuant to the Retail Incentive Agreement.

During negotiations with Macy's it became apparent that "but for" the incentive provided by the Mall Owner and the City, Macy's would not locate at the Mall. Macy's tenancy at the Mall is vital to the revitalization of the Mall and the Mall Owner's ability to attract other quality tenants. The City will benefit by collecting sales tax generated by Macy's above the \$2.75M City investment. Any new retailers that lease space at the Mall due to the Macy's lease agreement will generate sales tax which will be net new sales tax to the City. The \$2.75M is an investment that will generate a future return for the City.

The proposed Retail Incentive Program Agreement satisfies the required criteria of the West Valley Mall Revitalization Program, based on the following:

1. *The net financial benefit to the public is larger than the financial incentive.*

Under the Retail Incentive Agreement, the City will provide a financial incentive of \$2,750,000 to the Mall Owner. Over the 20 year term of the Agreement, the Mall Owner is obligated to repay the City for the financial incentive at the rate of \$151,250 a year or \$3,025,000 for the 20 year term. The Mall Owner will receive a credit towards the annual payment in the amount of sales tax collected by the City generated by Macy's and new tenants of the Mall. Therefore, under the terms of the Agreement, the City will receive a financial benefit of at least 10% more than the financial incentive.

2. *The agreement represents a direct public benefit.*

"Direct public benefits" are defined in the Retail Incentives Programs as "benefits to the City and community which justify a public incentive under this program. They may include, but are not limited to: (1) whether the business is a regional draw; (2) the amount of net new sales tax to be received by the City over a fixed period of time; (3) the creation of jobs; (4) capital investment by the business; (5) other benefits identified in the performance contract."

The Retail Incentive Agreement represents a direct public benefit in that Macy's as a regional draw, will attract other new tenants to the Mall, and will prevent the possible deterioration of the Mall. Macy's will also generate approximately:

- \$32.5 million in total economic impact
- \$20.5 million annually in new dollars to the County

- \$13.0 million in annual labor income
- 448 full time and part time jobs
- \$4.6 million in capital income (non-labor benefits)
- \$2.7 million in annual tax revenues

The above numbers came from an Economic Impact Analysis prepared for the City by Solution Mountain, Inc.

3. *There are identified City or other funds that are available to make the financial incentive.*
4. *The financial incentive is secured by an appropriate form of financial security, if any direct financial assistance is involved.*

The Retail Incentive Agreement requires that the financial incentive be secured by a letter or letters of credit, a guarantee from an entity acceptable to the City in its sole discretion, or other security acceptable to the City.

Staff recommended that the money for the \$2.75M financial incentive be allocated from the City's Residential Specific Plan Fund (RSP). In September 2003, the RSP capital improvement program was closed out when the City and the RSP Developers entered into a settlement and release agreement ("Settlement Agreement"). RSP developers received a lump sum reimbursement and the City retained the remaining RSP capital funds. At the time of the Settlement Agreement, three major RSP public projects remained to be constructed: a new City Hall, partial funding of a relocated fire station, and the extension of McArthur Drive (south of Eleventh Street). City Hall has been completed and a relocated fire station is currently being designed with funding of approximately \$1.6 million already appropriated from the RSP. The McArthur Drive extension has not been designed or completed; however, the City has segregated approximately \$6 million toward this project. The Settlement Agreement prohibits RSP developers from claiming any additional reimbursement and/or challenging the City's use of remaining RSP capital funds.

This project is exempt from CEQA pursuant to section 15301 of the CEQA Guidelines (existing facilities).

Staff recommended that the Council: 1) approve the Retail Incentive Program Agreement between the Mall Owner and the City; 2) authorize and direct the Mayor to sign the Agreement on behalf of the City; 3) authorize and direct the City Manager to sign such further documents and agreements that may be necessary and appropriate to carry out the terms of the Retail Incentive Agreement; and 4) appropriate \$2,750,000 of RSP funds and amend the City's budget to the extent necessary to make such appropriation.

Paul Chase, General Growth Properties, outlined General Growth's financial commitment to bring Macy's to the Tracy Mall.

Council Member Abercrombie asked if the proposal had to go before a bankruptcy court. Mr. Chase stated no, that the Mall is out of bankruptcy.

Council Member Abercrombie asked for clarification regarding the size of the store. Mr. Chase indicated the square footage of the Tracy store was similar to the current store in Antioch, or 100,000 square feet.

Council Member Abercrombie asked if there were other tenants wanting to come to the mall because of the addition of Macys. Mr. Chase stated yes.

Mayor Ives invited members of the public to address Council on the item.

Robert Rickman, 700 Lawn Court, stated he was concerned that this Macy's would not be up to par with the Stockton or Modesto Macy's.

Bob Elliott, 3168 Hutton Place, stated this was an investment in the Mall and in the community. Mr. Elliott urged Council to approve the expenditure to bring the project to Tracy.

Robert Tanner, 1371 Rusher Street, asked who provided the revenue stream and if the City would not be able to recover their investment in 10 years. Mr. Johnston responded the City has access to sales tax information that is confidential. However, through the sales tax auditor, Tracy has access to similar information, and through that process was able to confirm the available information. Mr. Churchill stated the agreement is between Macy's and General Growth. Mr. Churchill added the 20 year agreement is conservative, and it is expected the investment will be paid off sooner.

Mr. Tanner asked if there was an incentive for them to pay it off sooner. Mr. Johnston stated yes, and explained the process.

Mayor Ives asked if Macy's could expand in the future. Mr. Chase indicated the parking area does allow for future expansion.

Mayor Ives asked if there were similar sized, well performing stores. Mr. Chase indicated the Antioch store was similar in size and they are profitable.

As there was no one further wishing to address Council on the item, Mayor Ives referred the item back to Council for discussion.

Council Member Maciel stated he was excited to be having this conversation, even with the risk involved. Council Member Maciel added this investment will help the revenue flow.

Mayor Pro Tem Tucker stated she was thrilled to have Macy's coming to Tracy. Mayor Pro Tem Tucker indicated the City, and other local businesses will benefit from the addition of Macy's.

Council Member Tolbert stated the timing is right to give the Mall a boost. Council Member Tolbert stated the women of Tracy are excited for Macy's to open.

Council Member Abercrombie thanked Mr. Chase for his time and commitment, and for staffs' efforts on the project.

Mayor Ives stated he was pleased that the timing has come together for the City to be able to partner with the Mall to bring Macy's to Tracy.

It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Tucker to adopt Resolution 2010-095 approving: 1) the Retail Incentive Program Agreement between the Mall Owner and the City; 2) directing the Mayor to sign the Agreement on behalf of the City; 3) directing the City Manager to sign such further documents and agreements that may be necessary and appropriate to carry out the terms of the Retail Incentive Agreement; and 4) appropriating \$2,750,000 of RSP funds and amend the City's budget to the extent necessary to make such appropriation. Voice vote found all in favor; passed and so ordered.

5. ADJOURNMENT - It was moved by Council Member Maciel and seconded by Mayor Pro Tem Tucker to adjourn. Time: 9:00 p.m.

The above agenda was posted at the Tracy City Hall on June 10, 2010. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk

August 3, 2010, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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Mayor Ives called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

The invocation was given by Pastor Edward Dondi – Church of the Resurrection.

Roll call found Council Members Abercrombie, Maciel, Tolbert, Mayor Pro Tem Tucker and Mayor Ives present.

1. CONSENT CALENDAR - It was moved by Council Member Abercrombie and seconded by Council Member Tolbert to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Minutes Approval – Regular meeting minutes of May 4, 2010, and June 1, 2010, and closed session minutes of July 20, 2010, were approved
 - B. Approval of a Union Pacific Railroad (UPRR) Company Supplemental Agreement to Reconstruct the Corral Hollow Road at Grade Railroad Crossing Near Old Schulte Road at Mile Post 69.20, on the Owens Illinois Lead and Authorization for the Mayor to Sign the Agreement – Resolution 2010-126 approved the supplemental agreement.
 - C. Authorize Amendment of the City's Classification and Compensation Plan and Position Control Roster by Approving the Establishment of a New Class Specification and Salary Range for Crime Prevention Specialist, Reallocation of Two Community Service Officer Positions to Crime Prevention Specialist, and Reclassification of One Employee to Crime Prevention Specialist – Resolution 2010-127 authorized amendment of the plan.
 - D. Authorization to Enter into a 5 Year Agreement with Microsoft for Automatic Updates to Computer and Selected Server Software and Authorization for the Mayor to Execute the Agreement – Resolution 2010-128 authorized entering into the agreement.
2. ITEMS FROM THE AUDIENCE - Brian Van Lehn, 540 Winston Court, addressed Council regarding noise issues with Leprino Foods. Mr. Van Lehn indicated that the City's refusal to address the noise problem subjects the City and Council to civil litigation. Mayor Ives responded that after reviewing the facts of this issue at the May 18, 2010 City Council meeting, staff has been unable to conclude that Leprino is in violation of its Conditional Use Permit or any of the City's municipal codes.

Robert Tanner addressed Council regarding budget cuts undertaken by the City. Mr. Tanner suggested the City still needed to make further cuts.

3. PUBLIC HEARING TO CONSIDER THE RE-ALLOCATION OF OUTSTANDING COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS; AND APPROVAL OF A RE-ALLOCATION OF UNUSED COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING TO FUND IMPROVEMENTS TO THE MCHENRY HOUSE; A PROFESSIONAL SERVICES AGREEMENT WITH NEW CITY AMERICA AND THE ADA UPGRADE PROJECT DOWNTOWN; AND AUTHORIZE THE MAYOR TO SIGN THE PROFESSIONAL SERVICES AGREEMENT - Ursula Luna- Reynosa, Economic Development Director, provided the staff report. Ms. Luna-Reynosa stated that in fiscal year 2009-2010 McHenry House Homeless Shelter received a CDBG allocation of \$60,500 to re-roof the shelter house and carport. The work is under construction. The outside porch, at the rear of the house, contains the washer and dryer and is used by the residents not only as a place to do laundry but also as access to and from the back of the house. Currently the porch is a partially open structure exposed to the weather. If the porch could be enclosed, it would provide a dry and safe place for residents to do laundry, leave and enter the house, provide coverage for basement access and, besides providing shelter it would connect the house to the carport.

In fiscal year 2007-2008, McHenry House Homeless Shelter received an allocation of \$85,000 in CDBG HOME funds to perform work on the low-income units. Only part of that money was used and there is currently a balance of \$26,294.00 remaining. McHenry House has requested re-allocating the fund balance for the purpose of enclosing the porch at the back of McHenry House Shelter to make it weatherproof and connect it to the carport, and to perform needed plumbing and stucco repairs to the low-income units.

Currently, the exterior kitchen pipes at the low-income units are cast iron and are rotting and scaling. Six of the eight units need to have these pipes replaced with ABS pipes. In addition, the exterior stucco on the building is crumbling and there are leaks throughout the structure as well as wooden window frames that are rotting and in need of replacement.

The estimate to enclose the porch is \$13,400 which leaves a balance of \$12,894 (\$26,294 - \$13,400) for plumbing and stucco repairs. The final bill for the re-roof project has not yet been submitted but it is expected that there will be an excess balance of approximately \$4,300 left from the original allocation of \$60,500. McHenry House would like to add any excess from the roofing project to the \$12,894 balance for a total of approximately \$17,254 to be used for needed plumbing and stucco repairs on the low income units. This amount is in line with the estimates that have been received to perform the plumbing and stucco work.

In fiscal year 2009-2010 the City received a CDBG allocation of \$70,000 for the Lolly Hansen Senior Center Community Garden project. This project is not moving forward. The Tracy City Center Association (Association) has recently been incorporated as a non-profit corporation to manage the Downtown Tracy Community Benefit District (CBD). The City retained the services of New City America (Consultant) to establish the CBD and assist with the formation of the Association. The Association Board of Directors has requested that the City fund an additional year of support by the Consultant. The Consultant has provided a scope of work which results in a proposed Professional Services Agreement (PSA) for an amount not to exceed \$48,000. The CBD was formed for the purpose of assisting downtown businesses that are economically disadvantaged, are underutilized and are unable to attract customers due to inadequate facilities,

services and activities. The Consultant will provide expert technical assistance and support for one year to help the CBD realize its goals of bringing economic revitalization to the downtown business core which provides goods and services to low and moderate income residents living in and near the downtown.

CDBG funding is an eligible source of funds to pay for the Consultant's PSA under the eligible activity of economic development. Staff recommended that the City Council reallocate \$48,000 of the \$70,000 previously allocated to the Lolly Hansen Senior Center Community Garden project which will leave a remaining balance of \$22,000. Staff further recommended that the remaining \$22,000 be reallocated to the current City ADA upgrade project in the downtown. The reallocation of the \$70,000 is contingent upon the County's approval of the City's application for the \$48,000.

There is no fiscal impact to the City's General Fund or to the CDBG fund as the proposed action reallocates previously allocated money. Staff recommended that the City Council approve the following:

- Reallocate \$96,294 of CDBG funds
- \$26,294 to complete an enclosure to McHenry House Family Shelter that will cover a back porch, and make needed plumbing and stucco repairs to the low-income units and re-allocate any excess from fund 09-05 to the plumbing and stucco repair project at the McHenry House low-income units
- \$48,000 to fund the PSA with the Consultant
- \$22,000 toward current City ADA upgrade project in the downtown
- Approve the PSA by and between the City of Tracy and Consultant; and
- Authorize and direct the Mayor to sign the Agreement on behalf of the City.

Council Member Tolbert stated past practices were that CDBG funds were allocated yearly after non-profits submitted an application for funds. Council Member Tolbert further stated this process seemed different and wanted assurance that the process to allocate funds is allowable under the CDBG laws. Council Member Tolbert further asked if there was still going to be a separate allocation of CDBG funds.

Ms. Luna-Reynosa indicated the County approved the staff report and will be held accountable by HUD. Ms. Luna-Reynosa stated these funds were coming from the facility funds. The program fund is where the applications for funds are drawn from.

Sharon Marr, Community Development Analyst, added the application process came from San Joaquin County. The funds are not new, but were previously allocated to McHenry House.

Council Member Tolbert stated in the past, the County had representatives that sat on a panel that met once a year and asked if that process had been abandoned. Ms. Marr indicated she was not aware of that process. Ms. Marr indicated the cities of San Joaquin meet to discuss the annual allocation.

Council Member Tolbert asked when she was dropped from the CDBG board and not invited to provide input to that board. Ms. Marr indicated she would check into the membership of the CDBG Board.

Mayor Pro Tem Tucker stated was concerned with the \$70,000 being allocated to the recommended project. Mayor Pro Tem Tucker stated the consultant's fee sheet appears to be on the high end. Ms. Marr stated CDBG funds are federal funds that come to the City of Tracy through San Joaquin County and are used to serve low and moderate income families and projects that eliminate blight.

Mayor Ives invited members of the public to address Council on the item.

Paula McKig, 1981 Standard Road, had a question about City America and asked for clarification of the fees assessed to downtown property owners.

As there was no one further wishing to address Council on the item, the public hearing was closed.

Council Member Tolbert indicated she was not aware that the community garden project was not going to be done at the Lolly Hansen Senior Center.

Leon Churchill, Jr., City Manager, responded stating the community garden was approved, along with one that was approved at a church. Mr. Churchill added the Lolly Hansen Senior Center was not approved, along with another a community garden near Tracy High School. Mr. Churchill indicated there has not been sufficient interest in a community garden and if the City doesn't use the funds, the City will loose those funds. Mr. Churchill indicated there may be an opportunity to re-direct those funds to another project.

Council Member Maciel stated he was supportive of spending the money to enhance the McHenry House program.

Mayor Pro Tem Tucker asked how much New America had been paid to date. Ms. Luna-Reynosa outlined the expenses to date.

Council Member Tolbert indicated she liked their specific objective of revitalizing the downtown area. Council Member Tolbert added she would like to have a periodic report of the creative things they are coming up with and the support level they receive from the community.

Ms. Luna-Reynosa indicated she could provide that report to Council.

It was moved by Council Member Abercrombie and seconded by Council Member Tolbert to adopt Resolution 2010-129 approving the re-allocation of unused Community Development Block Grant Funds and Home Funds to fund improvements at the McHenry House; a Professional Services Agreement with New City America and the ADA upgrade project downtown. Roll call vote found Council Member Abercrombie, Maciel, Tolbert, and Mayor Ives in favor; Mayor Pro Tem Tucker opposed. Motion carried 4:0:1.

4. APPROVE ACTIONS RELATED TO THE PLACEMENT OF A ONE-HALF CENT TRANSACTIONS AND USE (SALES) TAX MEASURE ON THE NOVEMBER 2, 2010 BALLOT, INCLUDING (1) CALLING FOR A MUNICIPAL ELECTION TO SUBMIT TO THE VOTERS A LOCAL BALLOT MEASURE ADOPTING A ONE-HALF CENT TRANSACTIONS AND USE (SALES) TAX, WITH A FIVE-YEAR SUNSET CLAUSE, TO

FUND TRACY CITY SERVICES, REQUESTING THE BOARD OF SUPERVISORS OF SAN JOAQUIN COUNTY TO CONSOLIDATE A MUNICIPAL ELECTION ON THE LOCAL MEASURE WITH OTHER ELECTIONS TO BE HELD ON THE NOVEMBER 2, 2010 REGULAR ELECTION DATE; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURE; AND SETTING THE DATES FOR ARGUMENTS ON THE MEASURE; (2) INTRODUCTION OF AN ORDINANCE ENACTING A TRANSACTIONS AND USE (SALES) TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION UPON APPROVAL BY THE VOTERS AT THE NOVEMBER 2, 2010 ELECTION; (3) AUTHORIZATION FOR THE CITY COUNCIL, AS A LEGISLATIVE BODY, OR A COUNCIL MEMBER OR MEMBERS, TO AUTHOR THE ARGUMENT IN SUPPORT OF, AND/OR AGAINST, THE MEASURE AND SETTING THE DATES FOR ARGUMENTS REGARDING THE MEASURE - Maria Hurtado, Assistant City Manager, presented the staff report. Ms. Hurtado stated that over the course of the last couple of years, the City of Tracy has taken several actions to address the City's structural budget deficit. These actions include cost containment measures, service delivery model changes, and process improvement efforts. However, State Budget actions and the current economy compound the challenge to the City in addressing its structural budget deficit.

At the October 6, 2010 budget workshop, staff acknowledged that attrition had slowed significantly and achieving sufficient personnel savings solely through attrition was no longer a viable option. As such, staff began the right-sizing effort to sustain operations, maintain fiscal health, improve productivity, and ensure that quality customer service for core services continues.

On November 3, 2009, staff presented Council with the City Manager's right-sizing plan to reduce expenses. Five workforce reduction principles were used including (1) reducing complexity and consolidating similar services where possible; (2) de-layering management and supervision levels; (3) increasing span of control for all levels in the organization; (4) automating routine and back office functions where viable, and (5) contracting out where feasible.

Since then, a number of labor negotiations have been completed and several labor units and groups have worked with the City to address the fiscal situation. During the past year, the City has cut spending by \$5 million a year and eliminated 16% of the work force, including police officers, firefighters, parks, recreation, and maintenance staff. Unfortunately, the recession and state takeaways continue to reduce the City's revenue. In today's tough economy and state budget crisis, the City has been working diligently on a strategy of maintaining current levels of police, fire and emergency medical services including neighborhood patrols, crime prevention and investigation programs, and 9-1-1 response times, as well as other City services, such as recreation and after school programs. At the same time, the City must address a \$4.8 million budget deficit projected for fiscal year 2010/2011. Without additional revenue the City will have to cut \$4.8 million to close its current budget gap which will significantly affect its ability to continue providing services at the level that residents desire.

At the November 17, 2009, Council meeting, Council discussed potential placement of a public safety parcel tax or a Landscape Maintenance District (LMD) revenue measure on the ballot and requested that staff return with additional information.

At the June 1, 2010, Council meeting, Council discussed a number of revenue options, which including a LMD financing measure, parcel tax and the implementation of the EMS fee. Staff informed Council that preliminary community survey efforts were underway via the Godbe Research firm to assess the community's perspectives on a variety of issues, including its potential support of a local revenue measure to maintain local services. At that meeting, Council determined that staff should return with the results of the revenue measure community survey and postpone implementation of the EMS fee until January, 2011.

On June 15, 2010, Council approved Resolution 2010-088 calling a municipal general election, and Resolution 2010-089 requesting the City's election be consolidated with the State General Election on November 2, 2010.

At the July 6, 2010, Council meeting, staff presented the results of the community survey and informed Council that the survey results indicated strong community support (64%) for a half-cent sales tax measure to maintain City services. The survey also found that a shorter duration would garner stronger support, with 67% of respondents indicating support for a measure that had a five-year sunset clause.

Additionally, the community survey found that having a resident oversight committee would be preferred to ensure transparency about how the funds were spent. Polling results show that a majority of Tracy residents have identified public safety and economic development as top priorities. The survey also found that the priorities of the community align with the funding needs of the City, including maintenance of public safety and emergency medical services, economic development, and programs for seniors and youth.

Given the results of the survey, staff recommended that the Council place a one-half cent transactions and use (sales) tax measure on the November 2, 2010, ballot with a five year sunset clause. Revenue from this measure will assist in achieving the City's objective of maintaining current levels of service, such as maintaining firefighters, police officers, 9-1-1 emergency response services, neighborhood police patrols and fire protection, and other essential City services. Money from this measure is legally required to be spent only on the City's needs and none of the money can be taken or borrowed by the State.

If the measure is approved by the voters an ordinance needs to be adopted imposing a transactions and use tax to be administered by the State Board of Equalization. This ordinance makes all the necessary adjustments to the Municipal Code to clarify how the tax would be imposed, collection procedures, and use of tax proceeds. The ordinance also clarifies that the authority to levy the tax expires five years from the date the tax starts being collected. Additionally, the ordinance specifies that the Residents' Oversight Committee will be established no later than March 1, 2011, to review the expenditures of the revenue from the proposed transactions and use (sales) tax. Staff from the California State Board of Equalization have reviewed and approved the form of the proposed ordinance.

As mentioned in the July 20, 2010 staff report related to the City Clerk ballot measure, if the Council chooses to file an argument in support of or against the measure it may authorize the argument to be authored by the entire legislative body. In the past, when

using this method to submit an argument related to a measure, the Council has created an ad hoc subcommittee to draft and file the argument on its behalf.

Alternatively, City Council may authorize one or more of its members to author and file a written argument in support of and/or against the measure. If neither of the above options is chosen, under California Elections Code section 9287, a bona fide citizens group or a registered voter may file arguments in favor of, or against, the measure.

Only one argument filed in support of, or against, a measure may be selected to appear with the measure. If multiple arguments in favor of, or against, the measure are timely filed with the City Clerk's Office, then the City Clerk must grant preference first to any argument authored by the legislative body, then to an authorized Council member or members, then to a bona fide citizens group, and finally to an individual voter registered and eligible to vote on the measure.

Funds to cover the cost of the City's General Municipal Election have been allocated in the budget for Fiscal Year 2010-2011.

Staff recommended that Council:

(1) adopt a resolution calling for a municipal election to submit to the voters a local ballot measure adopting a one-half cent transactions and use (sales) tax, with a five-year sunset clause, to fund Tracy city services, requesting the Board of Supervisors of San Joaquin County to consolidate a municipal election on the local measure with other elections to be held on the November 2, 2010, regular election date; directing the City Attorney to prepare an impartial analysis of the measure; and setting the dates for arguments on the measure;

(2) introduce an ordinance enacting a transactions and use (sales) tax to be administered by the State Board of Equalization upon approval by the voters at the November 2, 2010 election, and

(3) adopt a resolution authorizing City Council, as a legislative body, to author the argument in support of, and/or against, the measure.

Mayor Ives asked for clarification regarding the "and/or" arguments for the initiative.

Mr. Sodergren indicated the City Council as a body could author one argument, and if a Council Member wanted to author an opposing argument and the Council authorizes them to do so, that Council member can write the argument. If Council does not allow the Council member to file the opposing argument, that Council member can write a rebuttal as an individual.

Council Member Tolbert stated that as a professional public administrator she applauded the efforts of administrative staff and managers regarding the measures that have been taken to streamline the system. Council Member Tolbert stated she would like to see a pie graph of things that cannot be cut because of contracts, state mandates, etc.

Mayor Ives asked what this meant to other cities in the county. Leon Churchill, Jr., City Manager stated sales tax rates in surrounding cities are currently at 9.25%. Approval of this measure would put Tracy on a par with those cities.

Mayor Ives asked if other cities had a sunset clause. Mr. Churchill stated it was common.

Mayor Ives opened the public hearing.

Tim Case, 10906 W. Larch Road, stated that he was surprised that a sales tax is even being considered. Mr. Case stated although he was impressed with what has been done to date including cutting services he had not seen any across the board pay cuts. Mr. Case further added there would be a good reason to look at re-distributing the wealth between the salary levels. Mr. Case indicated retirement benefits in the high 5% or 6% and funded by the public is extreme.

Robert Tanner, 1371 Rusher Street, stated Council has not shown the public enough cuts before asking for an increase in sales tax. Mr. Tanner urged Council to take further cuts.

Larry Gamino, 21 W. First Street, addressed Council indicating now was not the time to tax Tracy residents. Mr. Gamino urged Council to not raise taxes.

Jim Freeman, 705 Mt. Rushmore Ave., addressed Council regarding the survey on the proposed tax measure. Mr. Freeman stated he was concerned that the funds will not be earmarked for 911 or police services, but placed in the General Fund. Mr. Freeman stated he believed that buyers would notice the tax increase and would choose not to purchase in Tracy.

Paula McKay, 1981 Standridge Road, addressed Council stating a new sales tax is not good, and that she didn't believe the voters would approve it. Ms. McKay added revenue will go down because people would buy less because they cannot afford it.

John Morley, 4262 Middlefield Drive, President and co-founder of the Tracy Tea Party, stated he was opposed to a sales tax increase. Mr. Morley stated raising taxes would mean less revenue and suggested decreasing taxes by ½ cent to encourage spending.

Council Member Maciel thanked the speakers and complimented those who had done their homework. Council Member Maciel stated he had looked at Tracy's history and appreciated that the City is on sound fiscal footing. Council Member Maciel indicated he supported the measure because the City is asking residents for direction regarding maintaining the current level of services in Tracy. The City will continue to cut where it can, but the City's only source of income comes from taxpayers.

Council Member Tolbert stated if the Council was voting to raise taxes she would vote no, but Council is asking taxpayers to raise their taxes. Council Member Tolbert added this was a statement of how residents want to raise money to provide necessary services.

Mayor Pro Tem Tucker stated the problem the City has relates to the general fund which is made up of property tax and sales tax. The City receives \$.01 of the 8.75% sales tax collected. Mayor Pro Tem Tucker added the City still needed to cut 10% across the board in salary and benefits and to get tougher with the unions. Mayor Pro Tem Tucker stated she was opposed to asking for any increase in taxes or placing the measure on the ballot.

Council Member Abercrombie asked how much sales tax is generated from individuals who live outside of Tracy. Ms. Hurtado stated approximately 40%.

Council Member Abercrombie asked what cuts employees have taken. Mr. Churchill stated the total value of employee concessions totals \$2.8 million across all union groups. Mr. Churchill stated that in order to achieve the remaining \$5 million needed would require an additional 25% pay cut in addition to what has already been realized. Mr. Churchill indicated additional efforts will be taken to reduce costs through cuts.

Council Member Abercrombie asked if the City excludes pay cuts how many positions would need to be eliminated. Mr. Churchill stated approximately 90-100 positions. Mr. Churchill added currently, the City has 470 employees.

Mr. Churchill stated if the sales tax measure did not pass, there would be further cuts that would include police and fire. Mr. Churchill stated it was a question of what services residents want, and what sort of community they want in the next four to five years.

Council Member Maciel asked for clarification regarding the labor groups and their percentage of reductions. Mr. Churchill indicated between 2%-8%. Mr. Churchill added executive staff had made double digit reductions.

Mayor Ives indicated this was a difficult situation for the Council and was a question of service levels. Mayor Ives further indicated the City will fix the structural deficit. Mayor Ives stated he was in favor of putting the measure before the voters.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-130 calling for a Municipal Election to submit to the voters a local ballot measure adopting a one-half cent transactions and use (sales) tax to fund Tracy city services, requesting the Board of Supervisors of San Joaquin County to consolidate a Municipal Election on the local measure with other elections to be held on the November 2, 2010 regular election date; directing the City Attorney to prepare an impartial analysis of the measure; and setting dates for arguments on the measure. Voice vote found Council Member Abercrombie, Maciel, Tolbert, and Mayor Ives in favor; Mayor Pro Tem Tucker opposed.

The Clerk read the title of proposed Ordinance 1151.

It was moved by Councilmember Abercrombie and seconded by Council Member Maciel to waive the reading of the text. Voice vote found Council Members Abercrombie, Maciel, Tolbert, and Mayor Ives in favor; Mayor Pro Tem Tucker opposed. Motion carried 4:1.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to introduce Ordinance 1151. Voice vote found Council Member Abercrombie, Maciel, Tolbert, and Mayor Ives in favor; Mayor Pro Tem Tucker opposed. Motion carried 4:1.

Mayor Pro Tem Tucker indicated she was not interested in providing an argument in opposition to the measure. Council Member Tolbert suggested a staff member prepare the argument. Mr. Sodergren indicated staff was restricted to providing only information. Mr. Sodergren indicated the deadline to file an argument was next Friday.

Council Member Maciel indicated he was in favor of working on the argument. Council Member Abercrombie stated he would work with Council Member Maciel.

Mr. Sodergren stated the resolution would be amended accordingly.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-132 authorizing Council Member Maciel and Council Member Abercrombie to author written arguments for a City measure adopting a one-half cent transactions and use (sales) tax to fund Tracy city services. Voice vote found Council Member Abercrombie, Maciel, Tolbert, and Mayor Ives in favor; Mayor Pro Tem Tucker opposed. Motion carried 4:1.

Mayor Ives called for a recess at 8:52 p.m. The meeting was reconvened at 9:00 p.m.

5. RECEIVE AND DISCUSS THE END OF YEAR REPORT ON THE GRAND THEATRE CENTER FOR THE ARTS - Leon Churchill, Jr., City Manager, introduced Jeff Haskett who presented the staff report. Mr. Haskett stated that the Grand Theatre Center for the Arts' Presenting Season has scheduled performances from September through May. During the third year of operations, five categories were offered in various styles of presentation: three Off-Broadway; two World Entertainment; three Family Treasures; and the Classic Movie Series showing three classics on the big screen and three Hitchcock classics in the studio theatre. Also introduced for the first time to fill the Studio Theatre Series was a new Resident Theatre Program.

The Tracy Performing Arts Foundation was accepted as The Grand Theatre's first resident company and supplied five successful shows.

Family Treasures, the most successful Series, originally offered three performances in the morning that were geared toward school assemblies. The series was so well attended that a fourth had to be added. The response to the Classic Cinema Series inspired the purchase of a projector and expansion of such a series for next year. The total attendance for the presenting season was 4,838 a 24% increase from last year.

COMMUNITY AND COMMERCIAL PRESENTATIONS - The community has continued to respond positively to the Grand Theatre Center for the Arts, evidenced by the continuing high demand for the use of the facility. The Grand Theatre Center for the Arts' rentals totaled 157 in the third year. The majority of the rentals are non-profit community-based organizations, but several commercial rentals continue to return to the Grand Theatre Center for the Arts. Rental operations remain active six to seven days a week depending on demand, and staff continues to work with community groups to showcase their performances. Overall attendance for the community and commercial presentations was 15,814 patrons during the 2009-2010 Season.

GRAND GALLERIES - The Grand Galleries exhibition schedule operated five days a week from July 2009 through June of 2010 and presented six exhibits. The most notable exhibition was *Socio-technic Evolution* by artist Adam Reeder of San Ramon, an emerging celebrated sculptor and arts educator. Not only was this the first large scale sculpture exhibit in the galleries but one of Mr. Reeder's pieces, Atlas, was put on display as part of the Macworld Conference & Expo in San Francisco this last February.

Across the 2008-09 Season, the overall attendance of the Grand Galleries was 8,965. Visitors and patrons interacted with exhibitions programming, including a multitude of special events such as receptions, gallery talks by the artists, demonstrations and workshops.

Introduced at the start of the holiday season in December of 2009, a new program called Art Co-opted was placed in the Matthews Gallery and served as a modern, cooperative exhibition space. The Co-Op exhibited original artwork, limited editions and artist designed products at low prices. During the first year 100 items were sold grossing \$4,415.50.

ARTS EDUCATION - The Arts Education Program operates 12 months of the year, six days a week, 12 hours a day. The Arts Education Program presented a variety of classes and workshops in visual and performing arts for children, teens, and adults. Classes included tap, ballet, hip-hop, ballroom dance, oil and acrylic painting, drawing, ceramics wheel throwing, photography and private and group music instruction. There were 12 new and 34 returning contract instructors hired to facilitate this programming. Staff will continue to assess the interests and demands of arts education within our community by listening to public feedback, appraising student evaluations, and speaking with faculty members. The program held 999 classes with 2,825 participants.

UPCOMING FISCAL YEAR 2009-2010 PROGRAMMING - This year for the anniversary weekend, the Season will kick off with Comedian John Heffron, winner of NBC's Last Comic Standing, on Saturday evening, September 11, 2009. The following Sunday the festivities continue with "Sound of Music" on the big screen for .25¢ per person. The Arts Leadership Alliance will underwrite the weekend performances. The Grand Galleries season will kickoff the anniversary weekend with a historical exhibition, noting the 100 year anniversary of the incorporation of the City of Tracy.

The remainder of the 2010-2011 Season will consist of two musicals, eight plays, seven concerts, six family events, a jazz night club series and 22 cinematic treasures. In addition, five performances will be scheduled during the day for school-age children to attend and will be marketed directly to the schools for assembly attendance. The Galleries will feature six exhibitions and a special holiday event in the Co-Op, and the Arts Education program will continue its regular programming and explore new classes to offer.

The 2009-10 fiscal year actual operating budget expenditures for the Cultural Arts Division were \$1,247,079. Actual funding sources for the Cultural Arts Division budget included \$ 830,681 from the General Fund, and \$ 416,398 from fee revenues.

Staff recommended Council discuss the end of year report on the Grand Theatre Center for the Arts.

Mayor Ives invited members of the public to address Council on the item.

Juana Dement, 1525 Franklin Ave., thanked Mr. Haskett for putting together the presentation, and stated staff at the Grand has done a wonderful job.

Council Member Maciel thanked Mr. Haskett for the report, and encouraged everyone to attend an event at the Grand.

Mayor Pro Tem Tucker stated she was thrilled that the City is on the right track; the goal being to have the Grand as self sufficient as possible. Mayor Pro Tem Tucker indicated the subsidy needs to continue decreasing each year.

Mayor Ives stated the City was moving in the right direction in regard to the Grand Theatre.

Council accepted the end of the year report on the Grand Theatre Center of the Arts.

6. COUNCIL ITEMS

- A. Designation of Voting Delegate and Up to Two Voting Alternates for the 2010 League of California Cities Annual Conference - Maria Hurtado, Assistant City Manager, presented the staff report. The League of California Cities Annual Conference is scheduled for Wednesday, September 15, 2010, through Friday, September 17, 2010, in San Diego. An important part of the Annual Conference is the Annual Business Meeting. At this meeting, the League membership considers and takes action on resolutions that establish League policy. In order to expedite the conduct of business at this policy-making meeting, each City Council should designate a voting delegate and up to two alternates who will be registered at the conference and present at the Annual Business Meeting. A voting card will be given to the City official who is designated on the Voting Delegate Form.

Staff recommended that Council designate a voting delegate and up to two voting alternates for the League of California Cities Annual Conference Business Meeting.

Council Member Maciel suggested one delegate should represent the City. Council Member Tolbert volunteered to be the voting delegate.

Mayor Ives invited members of the public to address Council on the item. There was no one wishing to address Council on the item.

It was moved by Council Member Maciel and seconded by Mayor Pro Tem Tucker to designate Council Member Tolbert as the voting delegate for the League of California Cities Annual Business Meeting. Voice vote found all in favor; passed and so ordered.

- B. Adopt a Resolution Approving the Argument in Favor of the Measure Regarding Whether the Office of the City Clerk Should be Appointed and Requesting the Board of Supervisors of San Joaquin County to Consolidate the Local Measure with the State General Election to be Held on November 2, 2010 - Maria Hurtado, Assistant City Manager, presented the staff report. Ms. Hurtado stated that during the past two months the Council has taken a number of actions related to the City's General Municipal Election to be held on November 2, 2010. On June 15, 2010, the Council adopted Resolution 2010-088 calling for the election of the Mayor and two Council Members, and Resolution 2010-089 requesting the County consolidate the City's General Municipal Election with the State's General Election.

On July 6, 2010, the Council adopted Resolution 2010-111 authorizing a measure be placed on the November 2, 2010 ballot to allow Tracy voters to determine if the office of the City Clerk should be appointed. On July 20, 2010, the Council adopted three resolutions related to the ballot measure. Resolution 2010-122 sets the deadline for submitting arguments for and against the measure for August 13, 2010 at 5:00 p.m. and directs the City Attorney to prepare an impartial analysis; Resolution 2010-123, amends Resolution 2008-101, and sets the deadline for submitting rebuttal arguments for August 23, 2010 at 6:00 p.m. and, Resolution 2010-124 authorizes the Council, as a legislative body, to author the argument in support of the measure. The Council also created an ad hoc subcommittee consisting of Council Member Maciel and Council Member Abercrombie to draft an argument in favor of the measure and bring it back to Council for review at the August 3, 2010 meeting.

The Registrar of Voters Office has requested the Council adopt a resolution requesting the Board of Supervisors of San Joaquin County to consolidate the local measure with the state general election to be held on November 2, 2010.

All costs associated with the City's consolidated election have been included in the FY 10-11 budget.

Staff recommended that the City Council adopt a resolution approving the argument in favor of the measure regarding whether the office of the city clerk should be appointed, and requesting the Board of Supervisors of San Joaquin County to consolidate the local measure with the state general election to be held on November 2, 2010.

Tom Benigno, 2473 Angora Court, addressed Council in opposition to removing the election process from the City Clerk's position. Mr. Benigno referred to the three stage process of preparing an argument. Mr. Benigno stated he was prepared to provide an argument in opposition to the ballot measure.

Mayor Ives asked staff to address who can file an opposition statement, and the salary savings to be realized.

Ms. Hurtado discussed the salary savings to be realized by appointing the City Clerk. Mr. Sodergren stated any individual or citizens group could file a statement in opposition with the City Clerk by August 13, 2010.

It was moved by Council Member Abercrombie and seconded by Council Member Tolbert to adopt Resolution 2010-131 approving the argument in favor of the measure regarding whether the office of the City Clerk should be appointed and requesting the Board of Supervisors of San Joaquin County to consolidate the local measure with the State General Election to be held on November 2, 2010. Voice vote found all in favor; passed and so ordered. It was Council consensus to allow the subcommittee to file a rebuttal if necessary. Voice vote found all in favor; passed and so ordered.

7. ITEMS FROM THE AUDIENCE – None.

8. ADJOURNMENT - It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adjourn. Voice vote found all in favor; passed and so ordered. Time: 9:38 p.m.

The above agenda was posted at the Tracy City Hall on July 29, 2010. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk

AGENDA ITEM 1.B

REQUEST

ACCEPTANCE OF THE SHOULDER BACKING AT VARIOUS STREET LOCATIONS, 2009 PROJECT - CIP 73120, COMPLETED BY TEICHERT CONSTRUCTION, OF STOCKTON, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

The contractor has completed shoulder backing of various streets in accordance with plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends Council accept the project to enable the City to release the contractor's bonds and retention.

DISCUSSION

On December 15, 2009, City Council awarded a construction contract to Teichert Construction, of Stockton, California, for construction the Shoulder Backing at Various Locations, 2009 Project - CIP 73120, in the amount of \$69,875.

This project involved improving the existing shoulders of various rural streets which do not have curb, gutter, or sidewalks. The scope of work for this project included the following work: installing temporary traffic control systems, providing construction area signage, clearing and grubbing roadway shoulders, grading, furnishing and installing 2,067 tons of class 2 aggregate base shoulder backing on various streets throughout the City. The streets included various segments of Corral Hollow Road between I-580 to the California Aqueduct, Lammers Road north of Old Schulte Road, MacArthur Drive from I-205 to Arbor Avenue, and MacArthur Drive north and south of Schulte Road. The project plans and specifications were prepared in house by engineering staff.

No change orders were issued and the status of budget and project costs is as follows:

A. Construction Contract Amount	\$ 69,875.00
Deductive change (based upon actual quantities)	(13,546.35)
Total Construction Cost	\$ 56,328.65
B. Design, construction management, inspection, testing, project management charges & miscellaneous expenses	<u>\$ 6,900.00</u>
Total Project Costs	\$ 63,228.65
Budgeted Amount	\$150,000.00

The project construction contract unit prices are based on estimated engineering quantities. Actual payment is based on field-measured quantities installed by the

contractor. According to City of Tracy inspection records, actual field measured quantities were \$13,546.35 less than the estimated contract quantities.

A significant portion of the budgeted amount remains unused after completion of this project. Remaining funds in the amount of \$86,771.35 will be used in next year's shoulder backing project at other roadway locations within the City.

The project has been completed well within the available budget, on schedule, per plans, specifications, and City of Tracy standards.

STRATEGIC PLAN

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

FISCAL IMPACT

CIP 73120 is an approved Capital Improvement Project with sufficient funding and there will be no fiscal impact to the General Fund.

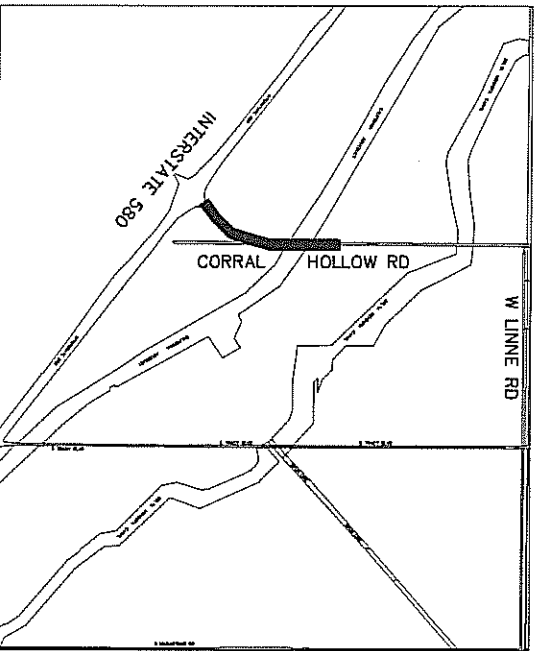
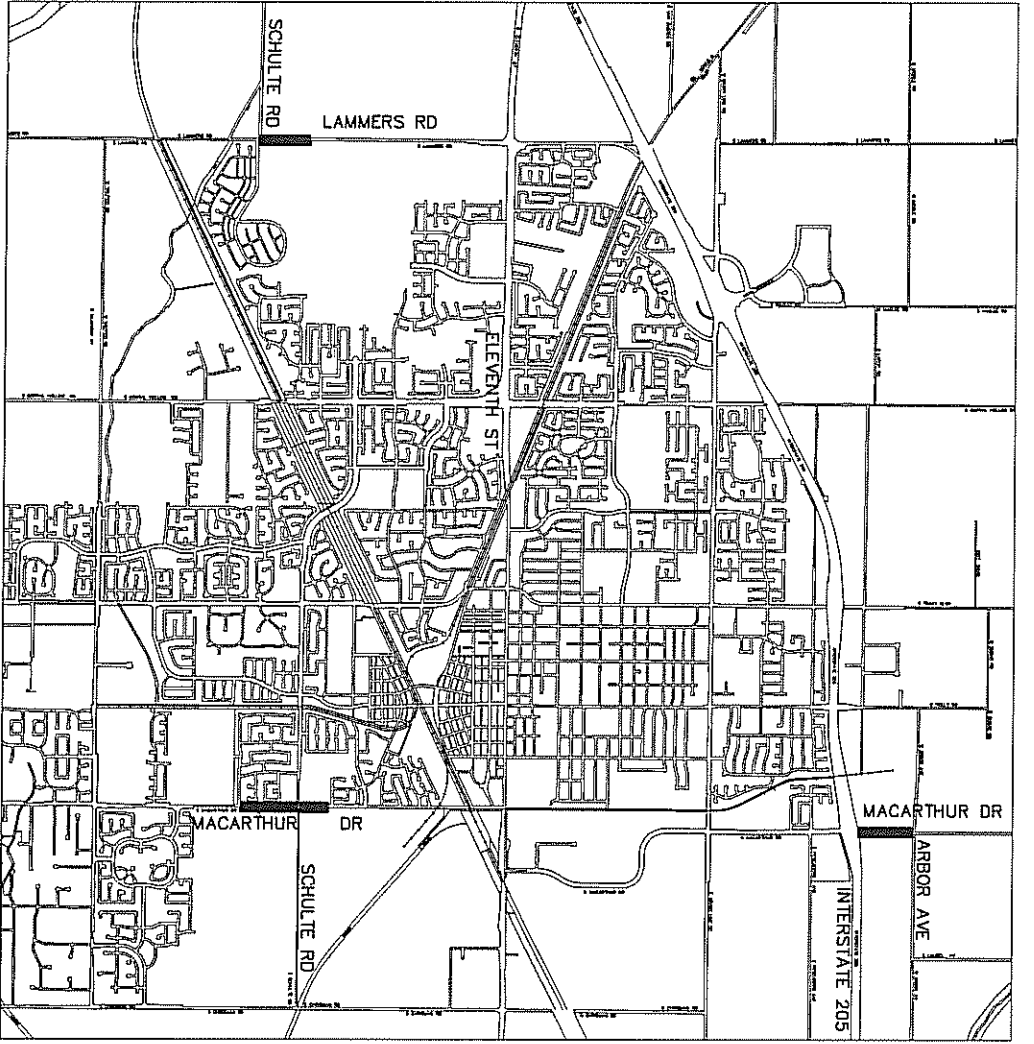
RECOMMENDATION

That City Council, by resolution, accept the Shoulder Backing at Various Street Locations, 2009 Project - CIP 73120, as completed by Teichert Construction, of Stockton, California, in accordance with the project plans and specifications, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

Prepared by: Moheb Argand, Associate Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer

Approved by: Andrew Malik, Development and Engineering Services Director
Leon Churchill, Jr., City Manager



LEGEND

█ SHOULDER BACKING

SHOULDER BACKING PROJECT CIP 73120

RESOLUTION _____

ACCEPTING THE SHOULDER BACKING AT VARIOUS STREET LOCATIONS, 2009 PROJECT - CIP 73120, COMPLETED BY TEICHERT CONSTRUCTION, OF STOCKTON, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS, On December 15, 2009, City Council awarded a construction contract to Teichert Construction, of Stockton, California, for construction the Shoulder Backing at Various Locations, 2009 Project - CIP 73120, and

WHEREAS, This project involved improving the existing shoulders of various rural streets which do not have curb, gutter, or sidewalks, and

WHEREAS, No change orders were issued and the status of budget and project costs are as follows:

Construction Contract Amount	\$ 69,875.00
Deductive change (based upon actual quantities)	(13,546.35)
Total Construction Cost	\$ 56,328.65
Design, construction management, inspection, testing, project management charges & miscellaneous expenses	<u>\$ 6,900.00</u>
Total Project Costs	\$ 63,228.65

WHEREAS, According to City of Tracy inspection records, actual field measured quantities were \$13,546.35 less than the estimated contract quantities, and

WHEREAS, Remaining funds in the amount of \$86,771.35 will be used in next year's shoulder backing project at other roadway locations within the City, and

WHEREAS, The project has been completed well within the available budget, on schedule, per plans, specifications, and City of Tracy standards, and

WHEREAS, CIP 73120 is an approved Capital Improvement Project with sufficient funding and there will be no fiscal impact to the General Fund;

NOW, THEREFORE BE IT RESOLVED, That City Council accepts the Shoulder Backing at Various Street Locations, 2009 Project - CIP 73120, as completed by Teichert Construction, of Stockton, California, in accordance with the project plans and specifications, and authorizes the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

Resolution _____

Page 2

The foregoing Resolution _____ was adopted by the City Council on the 5th day of October 2010, by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.C

REQUEST

AUTHORIZE A PROFESSIONAL SERVICES AGREEMENT WITH WEST COAST ARBORIST, INC. FOR TREE MAINTENANCE IN THE TRACY CONSOLIDATED LANDSCAPE MAINTENANCE DISTRICT FOR FISCAL YEAR 2010-2011, AUTHORIZE THE CITY MANAGER TO EXECUTE SUBSEQUENT AGREEMENT EXTENSIONS FOR UP TO FOUR ONE-YEAR TERMS, AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

This item requests authorization of a Professional Services Agreement with West Coast Arborists, Inc. to provide tree maintenance services in the Tracy Consolidated Landscape Maintenance District (TCLMD). West Coast Arborists, Inc. has maintained TCLMD trees since 2006 and is currently maintaining trees in the City's General Fund areas. The Agreement is for one year with the option to extend the Agreement for four additional one-year terms.

DISCUSSION

The City, having conducted a competitive bid process, currently holds a Professional Services Agreement with West Coast Arborists, Inc. to maintain park and street trees funded by the General Fund. The TCLMD's tree maintenance contract with West Coast Arborists expired on June 30, 2010.

West Coast Arborists has agreed to honor the rates bid during the 2005-2006 competitive TCLMD bid process (including the inflationary adjustment through Fiscal Year 2009-2010) for the duration of the Agreement, including optional extensions. The rates are less than the rates in the Agreement for General Fund areas and are competitive with recent bids conducted in the cities of Sacramento, Oakley, and Newark.

Given the favorable rates, the consistent service level throughout the City gained by using the same tree maintenance company, as well as the ease in administering a contract with a single firm, staff recommends that Council finds that compliance with the formal request for proposals process is not in the best interest of the City and that the City should continue using West Coast Arborists, Inc. for tree maintenance services.

The Agreement is proposed to be for the remainder of Fiscal Year 2010-2011 with the option to extend the Agreement for four additional one-year terms.

STRATEGIC PLAN

This agenda item supports the organizational effectiveness strategic plan and specifically implements the following goal and objectives:

Goal 3: Preserve and maintain existing community assets

Objective 3a: To fund maintenance and replacement of community amenities

FISCAL IMPACT

Assessments levied and collected within the TCLMD will be used to pay for tree maintenance services as needed. For Fiscal Year 2010-2011, the TCLMD has budgeted approximately \$772,000 for tree maintenance services.

RECOMMENDATION

That the City Council, by resolution, find that compliance with the formal requests for proposal procedure is not in the best interest of the City, authorize a Professional Services Agreement with West Coast Arborist, Inc. to provide tree maintenance services for the remainder of Fiscal Year 2010-2011, authorize the City Manager to execute subsequent extensions to the Agreement for up to four one-year terms, and authorize the Mayor to execute the Agreement.

Prepared by: Anne Bell, Public Works Management Analyst II
Mike Contreras, Tracy Consolidated Landscape District Supervisor
Reviewed by: Kevin Tobeck, Director of Public Works
Approved by: Leon Churchill, Jr., City Manager

Attachment: PSA

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT
TRACY CONSOLIDATED LANDSCAPE MAINTENANCE DISTRICT TREE
MAINTENANCE**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "CITY"), and WEST COAST ARBORIST, INC., a California corporation, (hereinafter "CONSULTANT").

RECITALS

- A. On January 3, 2006, CITY Council authorized the execution of a Professional Services Agreement with CONSULTANT for tree maintenance within the Tracy Consolidated Landscape Maintenance District (TCLMD) based on negotiations of the proposal submitted on October 26, 2005.
- B. Upon expiration of the initial Agreement term on June 30, 2008, CITY Council authorized a two year Agreement extension through June 30th, 2010.
- C. CONSULTANT has agreed to rates, which CITY has determined to be favorably competitive and in the best interest of the CITY to enter into an Agreement.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** CONSULTANT shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference. The services shall be performed by, or under the direct supervision of, CONSULTANT's Authorized Representative: Victor M. Gonzalez. CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT use any subcontractors or subconsultants, without the prior written consent of the CITY.
- 2. **TERM.** The term of the Agreement will be October 6, 2010 through June 30, 2011. CITY retains the option to have the City Manager extend the Agreement period for four additional one-year terms up to a maximum of four additional years. The CITY may exercise its option at its sole discretion. CONSULTANT's performance will be reviewed on a semi-annual basis by the Public Works Director or Director's designee.
- 3. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. CONSULTANT shall commence performance, and shall complete all required services no later than the dates and/or times set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CONSULTANT shall submit all requests for extensions of time to the CITY in writing no later than ten (10) days after the start of the condition which

purportedly caused the delay, and not later than the date on which performance is due. CITY shall grant or deny such requests at its sole discretion.

4. **INDEPENDENT CONSULTANT STATUS.** CONSULTANT is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. CONSULTANT is not CITY's employee and CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless the CITY provides prior written authorization to CONSULTANT. CONSULTANT and contractors are free to work for other entities while under contract with the CITY. CONSULTANT and subconsultants or subcontractors are not entitled to CITY benefits.
5. **CONFLICTS OF INTEREST.** CONSULTANT (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. In the event that CONSULTANT maintains or acquires such a conflicting interest, any contract (including this Agreement) involving CONSULTANT's conflicting interest may be terminated by the CITY.
6. **COMPENSATION.**
 - 6.1. For services performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "C," attached hereto and incorporated herein by reference. CONSULTANT's fee for this Agreement is Not-to-Exceed the unit rates as set forth in Exhibit "C". CONSULTANT's billing rates shall cover all costs and expenses of every kind and nature for CONSULTANT's performance of this Agreement. No work shall be performed by CONSULTANT in excess of the Not-to-Exceed rates without the prior written approval of the CITY.
 - 6.2. CONSULTANT shall submit monthly invoices to the CITY describing the services performed, including times, dates, and names of persons performing the service. Services and billing amounts shall be itemized by TCLMD Zones within which work is performed (see Exhibit B, TCLMD Map).
 - 6.3. Within thirty (30) days after the CITY's receipt of responsive invoice, CITY shall make payment to the CONSULTANT based upon the services described on the invoice and approved by the CITY.
 - 6.4. In the event that CONSULTANT causes damage to CITY property, CONSULTANT shall, at CITY'S election, upon receipt of written notice from CITY EITHER: (a) reimburse CITY (and CONSULTANT'S payment may be off-set) for the full amount of damages incurred, or (b) make correct to CITY'S satisfaction, those areas of damage. Nothing in this section shall be interpreted to relieve or limit CONSULTANT'S liability for any damages to the CITY to relieve CONSULTANT from any of the indemnity, hold harmless, and defend provisions contained in this Agreement or to limit the extent to which such indemnity will apply.

7. **TERMINATION.** The CITY may terminate this Agreement by giving ten (10) days written notice to CONSULTANT. Upon termination, CONSULTANT shall give the CITY all original documents, including electronic data, preliminary drafts and supporting documents, prepared by CONSULTANT for this Agreement. The CITY shall pay CONSULTANT for all services satisfactorily performed in accordance with this Agreement up to the date notice is given.
8. **OWNERSHIP OF WORK.** All original documents and electronic data prepared by CONSULTANT for this Agreement, whether complete or in progress, are the property of the CITY, and shall be given to the CITY at the completion of CONSULTANT's services, or upon demand from the CITY. No such documents or electronic data shall be revealed or made available by CONSULTANT to any third party without the prior written consent of the CITY.
9. **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.
10. **INDEMNIFICATION.** CONSULTANT shall indemnify, defend, and hold harmless the CITY (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of CONSULTANT's performance of services under this Agreement.
11. **BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, CONSULTANT shall obtain a CITY of Tracy Business License.
12. **INSURANCE.**
 - 12.1. **General.** CONSULTANT shall, throughout the duration of this Agreement, maintain insurance to cover CONSULTANT, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
 - 12.2. **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
 - 12.3. **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
 - 12.4. **Workers' Compensation** coverage shall be maintained as required by the State of California.
 - 12.5. **Professional Liability** "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of CONSULTANT in an amount not less than \$1,000,000 per claim.

- 12.6. **Endorsements.** CONSULTANT shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 12.6.1 The CITY (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
- 12.6.2 For any claims related to this Agreement, CONSULTANT's coverage shall be primary insurance with respect to the CITY. Any insurance maintained by the CITY shall be excess of the CONSULTANT's insurance and shall not contribute with it.
- 12.7. **Notice of Cancellation.** CONSULTANT shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the CITY should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 12.8. **Authorized Insurers.** All insurance companies providing coverage to CONSULTANT shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 12.9. **Insurance Certificate.** CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the CITY, no later than five (5) days after the execution of this Agreement.
- 12.10. **Substitute Certificates.** No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, CONSULTANT shall provide a substitute certificate of insurance.
- 12.11. **CONSULTANT's Obligation.** Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever (including indemnity obligations under this Agreement), and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.

13. **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT's duties be delegated, without the written consent of the CITY. Any attempt to assign or delegate this Agreement without the written consent of the CITY shall be void and of no force and effect. Consent by the CITY to one assignment shall not be deemed to be consent to any subsequent assignment.

14. **NOTICES.**

- 14.1 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:

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To CITY:

City of Tracy
Public Works Director
520 N Tracy Boulevard
Tracy, CA ~~86376~~ 95376

To CONSULTANT:

Victor M. Gonzalez
Director of Marketing
West Coast Arborists, Inc.
2200 E. Via Burton Street
Anaheim, CA 92806

With a copy to:

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

- 14.2 Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated above, or (2) three working days following the deposit in the United States Mail of registered or certified mail, sent to the addresses designated above.
15. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
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. **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.
19. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed for this project. This Agreement supersedes all prior negotiations, representations, or agreements.
20. **COMPLIANCE WITH THE LAW.** CONSULTANT shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
21. **STANDARD OF CARE.** Unless otherwise specified in this Agreement, the standard of care applicable to CONSULTANT's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

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 CONSULTANT and the CITY. Corporate Resolution from CONSULTANT is required noting signer as corporate authorized signatory; otherwise, a second signature is required by CONSULTANT'S authorized Financial Officer. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

CITY OF TRACY

CONSULTANT
WEST COAST ARBORIST, INC.,

By: Brent Ives
Title: Mayor
Date: _____

By: Patrick Mahoney
Title: President
Date: 9/15/10
Fed. Employer ID No. 95-3250682

Attest:

By: Sandra Edwards
Title: CITY CLERK
Date: _____

By: Rose Epperson
Title: Financial Secretary
Date: 9/15/10

Approved to Form:

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

**EXHIBIT “A”
SCOPE OF SERVICES**

SPECIFICATIONS FOR TREE MAINTENANCE

SECTION 1 – DESCRIPTION OF WORK

The work that will be required from the CONSULTANT consists of tree maintenance and inventory within the Landscape Maintenance District (see TCLMD Map, Exhibit “B”). Areas of work are designated as specified herein. The CONSULTANT will furnish all labor, equipment, materials, and supervision to perform tree maintenance and inventory as described herein.

The intent of the CITY of Tracy (“CITY”) is to contract with the CONSULTANT to establish a level of tree maintenance that will present an attractive and desirable landscape and streetscape appearance at all times. This will be accomplished by keeping trees in a healthy, well-kept state at all times. The scope of work will include tree wells and the immediate area on or around the trees that are the subject of these specifications. The CITY’s Director of Public Works, or designee, may determine that additional maintenance is required to meet the standards set forth in these contract documents.

SECTION 2 – SUPERVISION

All work must be conducted in a manner which meets the approval of the CITY’s Public Works Director. CONSULTANT shall meet with CITY representatives on a daily basis if deemed necessary by CITY, to report daily activities, and at a minimum there shall be a weekly meeting on site with the appointed and agreed upon representative/Project Manager/Supervisor of the CONSULTANT and the CITY’s Director of Public Works, or designee, to certify the accomplishment of work. Any specific problem area which does not meet the conditions of the specifications set forth herein shall be called to the attention of the CONSULTANT along with action required to satisfy the specifications. Any new on-site supervisor of the CONSULTANT will be shown all areas of responsibility, plus new additions as they come on-line by the CONSULTANT.

SECTION 3 – SPECIFICATIONS

These specifications are intended to cover all labor, material and standards of landscaping, and workmanship to be employed in the work called for in these specifications or reasonably implied by terms of same. Work or materials of a minor nature which may not be specifically mentioned, but which may be reasonably assumed as necessary for the completion of this work shall be performed by the CONSULTANT as if described in the specifications.

SECTION 4 – CORRESPONDENCE

All correspondence shall be addressed to the Director of Public Works, 520 N. Tracy Boulevard, Tracy, CA 95376.

SECTION 5 – PROVISIONS FOR EXTRAS AND ADDITIONAL WORK

No new work of any kind shall be considered an extra unless a separate estimate is given in writing for said work and the estimate is approved in writing by the CITY's Public Works Director, or designee, before the work commences. All cost estimates must be consistent and commensurate with previously provided pricing and charges in (EXHIBIT C), to that with newly added areas or requests for additional work.

SECTION 6 – SUSPENSION AND/OR CANCELLATION OF CONTRACT

A. By Reason of CONSULTANT's Default:

If the CONSULTANT shall be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of insolvency, then in any such case the CITY shall have the power to suspend or cancel the contract.

Should the CONSULTANT fail to begin work within the time required or in such manner as to fail to insure full compliance with the contract or if the work to be done under the contract is abandoned by the CONSULTANT, or if at any time the CITY is of the opinion that the said work is unnecessarily or unreasonably delayed, or that said CONSULTANT is willfully violating any of the terms of the contract, or is not executing the contract in good faith, or is not following the instructions of the CITY as to additional force necessary in the opinion of the CITY for its completion within the required time, or standard, or if at any time the CONSULTANT is not properly carrying out the provisions of his contract in their true intent, quality and meaning, then in any such case, notice thereof in writing will be served upon him, and should he neglect or refuse to provide means for a satisfactory compliance with the contract and with the direction of the CITY within the time specified in such notices, the CITY shall have the power to suspend the operation of the contract in whole or in part by serving a "Notice of Suspension" on CONSULTANT.

Upon receiving such "Notice of Suspension," said CONSULTANT shall discontinue said work, or such parts of it as the CITY may designate. Upon such suspension, the CITY may employ other parties to carry on the contract to completion, employ the necessary workmen, substitute other machinery or materials, purchase the materials contracted for in such manner as the CITY may deem proper, or hire such manpower, and buy such machinery, tools, appliances, materials, and supplies at the CONSULTANT's expense, as may be necessary for the proper conduct of the work and for the completion thereof. Any excess of costs arising there from over and above the contract price will be charged against the CONSULTANT and his sureties, who shall be liable therefore.

In the event of such suspension, all monies due the CONSULTANT or retained under the terms of the contract shall be forfeited to the CITY; but such forfeitures will not release the CONSULTANT or his sureties from liability for failure to fulfill the contract.

The CITY reserves the right and option at any time after serving the "Notice of Suspension" to annul and cancel the contract and to re-let the tree maintenance scope of work or any part thereof, and said CONSULTANT shall not be entitled to any claim for damages on account of such annulment, nor shall such annulment affect the right of the CITY to recover damages which may arise from such failure on the part of said CONSULTANT to fulfill the term of the contract. And, in case of such annulment, all monies due said CONSULTANT, or retained under the terms of the contract, shall be forfeited to the CITY, but such forfeiture shall not become liable to the CITY on account of the default of said CONSULTANT.

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In determination of the question whether there has been such non-compliance with the contract as to warrant the suspension or annulment thereof, the decision of the CITY's Public Works Director, or designee, will be binding on both parties.

By reason of acts beyond the control of the CITY, the contract entered into under these specifications may be terminated by the CITY without liability for damages whenever the CITY is prevented by operation of law, an act of God, or by the official action of any public, Federal, State or Municipal authorities from completing the work contemplated hereunder.

It is further agreed that in the event the CITY should require any or all work to be suspended or canceled, such suspension or cancellation shall be made without liability to the CITY.

B. Notification:

Notice of suspension or cancellation for any reason shall be given in writing and shall be complete one day after deposit in the United States mail in the County of San Joaquin, in a sealed envelope with postage prepaid and directed to the CONSULTANT at his address as filed with the CITY. Such notice shall be complete upon personal delivery to any person whose actual knowledge of such suspension or cancellation would be sufficient notice to the CONSULTANT. This notice shall be given five (5) days ahead of suspension and five (5) days ahead of cancellation. Actual knowledge of such suspension or cancellation by an individual CONSULTANT or by a co-partner, if the CONSULTANT be a partnership, or by the president, vice president, secretary, or general manager, if the CONSULTANT be a corporation, by a managing member if the CONSULTANT be a limited liability company, or by the managing agent regularly in charge of the work on behalf of said CONSULTANT, shall in any case be sufficient notice.

SECTION 7 – EXAMINATION OF SITE AND WORK

CONSULTANT warrants that he has examined the location, physical conditions, and surroundings of the proposed work and judged for themselves the extent to which these factors influenced the performance and cost of the contract work.

SECTION 8 – QUALITY OF WORK AND MATERIAL

All materials and equipment furnished by the CONSULTANT shall be in good working order, new where applicable, of high grade and quality, and free from defects and imperfections, unless otherwise hereinafter specified. Workmanship shall be in accordance with the best standard practices. Both materials and workmanship shall be subject to the approval of the CITY's Public Works Director or designee. All materials used, including but not limited to tree stakes, ties, tree stock and type, and any replacement parts outlined in Section 9, shall be submitted in writing and approved in advance by the CITY's Public Works Director or designee. CONSULTANT will provide CONSULTANT's crews with sufficient tools, inventory equipment, safety equipment and tree maintenance equipment necessary to do the required work.

SECTION 9 – SAFETY AND DAMAGES

The CONSULTANT shall provide a work force sufficient to complete the work as it is specified. Included in this work force shall be a competent supervisor/project manager acceptable to the Director of Public Works, or designee, who shall be responsible for adherence to the specifications and shall be available to the CITY on a regular and routine basis.

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- A. The CONSULTANT shall take all necessary precautions for the safety of employees on the work crew to prevent accidents or injury to persons on, about, or adjacent to the premises where the work is being performed. The CONSULTANT shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against hazards created by such features of landscape maintenance. All work to be done in accordance with State laws and CALOSHA.
- B. The CONSULTANT's Supervisor/Project Manager will have control of all work crews assigned to perform work under this contract.
- C. The CONSULTANT's Supervisor/Project Manager is expected to be in Tracy during times when work crews are assigned to perform work and is to be available to the CITY during working hours.
- D. The CONSULTANT's Supervisor/Project Manager will report without delay any damage to CITY equipment or property and shall be held responsible for the replacement of any such damage caused by his crew or equipment.
- E. When performing work adjacent to roadways and intersections, CONSULTANT shall provide safe sight visibility for vehicles entering the intersection at all times and adhere to Cal Trans standards for street and lane closures and/or the following, which ever is more conservative and cautious:
 - 1. CONSULTANT shall erect signs and barricades, advising of the work in progress, and shall channelize vehicle and pedestrian traffic in the vicinity of the work area to insure the safe passage of the public. Traffic control in the vicinity of the work area shall be consistent with the methods described in the "Work Area Traffic Control Handbook", available from the Department of Transportation (DOT).
 - 2. Use of these methods shall in no way relieve the CONSULTANT from its responsibility for the safe conduct of vehicle and pedestrian traffic through its work area.
 - 3. Safe, adequate, continuous and obstructed pedestrian and vehicular access shall be maintained to residences, commercial and industrial establishments, churches, schools, access rights of the public shall be considered at all times.
- F. CITY may specify certain times of the day or certain days when lane closures will be allowed or prohibited dependent on factors including, but not limited to traffic congestion, other road and street projects, school bell times. CITY may designate certain hours for lane closures in certain directions based on known traffic patterns by commuters and school traffic and shall be dependent upon the specific location and the negative impact that a lane closure will have on traffic.
- G. CONSULTANT shall prune trees so that all traffic control lights and signs are clearly visible to approaching drivers.
- H. The necessity for repairs to the irrigation and sprinkler systems resulting from damage either by the CONSULTANT or not related to the CONSULTANT's operation, shall be reported promptly to the CITY's Director of Public Works, or designee, by the CONSULTANT.

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- I. Replacement of all plant materials, shrubs, ground cover, mulch, pebble, bark, plants and/or other trees due to CONSULTANT's negligence shall be the responsibility of the CONSULTANT and should be replaced within fourteen (14) days of CITY being notified of damage. If work is not completed, CONSULTANT will be back charged.
- J. Trees that are destroyed by vandalism or that are destroyed due to construction or by the CITY forces shall be the responsibility of the CITY. The CITY may request the CONSULTANT to perform the work at the CITY'S expense as reflected in the rates contained in Exhibit "C".
- K. Any damage to trees by rodents/pests or that have been neglected by CONSULTANT shall be replaced by CONSULTANT at no additional cost to the CITY.

SECTION 10 – PERSONNEL QUALIFICATIONS

- A. All contract personnel working in the outlined areas shall be of good character, and neat in appearance and shall wear identifiable uniforms or other markings to designate them as employees of the CONSULTANT including a name badge of some type.
- B. The CONSULTANT's Supervisor/Project Manager is to be thoroughly skilled and experienced in tree maintenance, must have served as a supervisor for at least three (3) years in a comparable/compatible environment, and be a licensed pesticide applicator as authorized by the State of California.
- C. CONSULTANT shall propose the name and qualifications of the Supervisor/Project Manager to be responsible for this project. The CITY reserves the right to approve or disapprove a replacement Supervisor should the CONSULTANT propose a Supervisor different than that accepted during the proposal process.
- D. An ISA Certified Arborist must be made available by the CONSULTANT to assess tree conditions and make oral and written recommendations and advice for tree care, whenever conditions are noticed on a routine basis by CONSULTANT or by CITY at no additional fee to CITY. Specialized requests from the CITY of a larger nature will be included on a time and materials basis at rates negotiated and agreed to in writing in advance between CONSULTANT and CITY.

SECTION 11 – CLEANING

The CONSULTANT shall maintain the work areas clean of debris at all times. Upon completion of any work project, the CONSULTANT shall remove remaining excess materials, waste, rubbish, debris, and construction and installation equipment from the premises immediately. Any dirt or stains caused by the work shall be promptly removed. Requests to leave debris (i.e., properly tied and bagged tree trimmings) on site longer than eight (8) hours must be approved in writing by the CITY's Director of Public Works, or designee in advance.

SECTION 12 – PAYMENTS

Payments to the CONSULTANT will be on a monthly basis upon satisfactory completion of scope of work and presentation and approval of monthly job sheets to the CITY. CITY's specifications require that all tasks within a landscaping area be performed in order for payments to be approved for that landscaping area. Invoices shall be submitted in a format that

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shows the agreed upon amounts by zone and/or area and/or street address or specific tree location.

SECTION 13 – COORDINATION

CONSULTANT shall coordinate efforts with CITY's existing landscaping CONSULTANT, CITY Landscape Maintenance District staff, staff from the Public Works Department as needed and determined by the CITY. This will include reporting findings or observations of poor conditions of trees, landscaping and irrigation problems that will have adverse or negative impacts on the CITY's landscape improvements. This could include reporting weeds, soil that has settled, dying plant materials, and/or staking and tying needs. CONSULTANT will also report to the CITY's Director of Public Works, or designee any malfunction or damage of the irrigation systems in any CITY maintenance area. Report graffiti to the Director of Public Works, or designee.

Additionally, CONSULTANT will coordinate work with residents and property owners by posting door hangers, approved by the CITY, informing residents of the work that is to be performed, including specific dates and times. These notices will be delivered within the time specified by the CITY. CONSULTANT shall provide a contact phone number for residents to make inquiries. CONSULTANT shall answer questions and provide information to residents including offering help concerning care of trees, pamphlet distribution and returning calls in a timely manner. Follow up information must be provided to property owners about the care and maintenance of trees that have been pruned or replaced, as well as information on pest control and other helpful advice. Additionally, notices via US Mail or email, copied to the CITY, will be sent informing residents of the work that is to be performed. These notices will include a photo of the new tree that is to be planted along with a description of its characteristics. Residents are to be given care instructions; for example, avoid weed whackers injuring the bark of new trees. Tracking of resident feedback is expected. All notices, door hangers or other written materials will require approval from the CITY's Public Works Director before distribution. CONSULTANT will post official "No Parking" signs on Right-Of-Way at a minimum of 24 hours in advance.

Public outreach is an important function of the CITY, and CONSULTANT should participate in various outreach functions where appropriate, including ceremonial tree dedications, park dedications and other special events.

SECTION 14 – SCOPE OF WORK

CONSULTANT shall furnish all labor, equipment, materials, and supervision necessary to perform the tree maintenance described herein, including but not limited to the following:

A. Working Hours:

CONSULTANT's normal working hours shall be between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday. In accordance with Tracy Municipal Code Section 4.12.840, no excessive noise shall be made adjacent to residences before 7:00 a.m. or after 10:00 p.m.

B. Grid Tree Trimming and Pruning:

(1) CONSULTANT will perform a systematic trimming and inventory per pre-designed district (to be determined by the CITY and CONSULTANT) per a grid or trim route occurring on a set cycle to include all trees with the LMD. All pruning will be completed in accordance with the standards set forth by the Western Chapter of the

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International Society of Arboriculture, ANSI A300 Standards, and the CITY.
CONSULTANT shall remove all debris from the job site daily.

- (2) CONSULTANT shall perform tree pruning so as to:
- a. Prevent branch and foliage interference with safety requirements
 - b. Remove all broken or loose branches
 - c. Clear trees of weed, sprout or sucker growth
 - d. Obtain a balanced appearance when viewed from the opposite side of the street immediately opposite the tree
 - e. Remove and control tree limbs so as to cause no damage to other parts of the tree, or to other plants or property
 - f. Fertilize as appropriate for the tree, conditions and age, etc. The frequency of fertilizer application will be such that healthy conditions are maintained and the appearance of the tree is full and lush. A fertilizer schedule to include application dates, product specifications and application rates shall be prepared and presented by the CONSULTANT to the CITY for approval by the Director of Public Works, or designee before applying fertilizer.

C. Service Request Tree Trim:

CONSULTANT may need to provide service for some trees prior to their scheduled grid trim to rectify an immediate problem. CONSULTANT shall complete a full trim during the grid trimming cycle. The CITY's representative will submit specific pruning requests to the CONSULTANT daily, who will perform site visits and make recommendations to the CITY. CONSULTANT must have Internet access as work requests from the CITY will be delivered via Web format. Any work must be completed within two (2) weeks or as otherwise determined by the CITY. CONSULTANT shall utilize and access the CITY's service request software and provide updates and responses to requests that the CITY forwards to the CONSULTANT for service.

D. Utility Line Clearance Tree Trim:

CONSULTANT shall trim trees that interfere or have probability of interfering with the utility lines in a manner to achieve the required clearances as specified by the CITY in accordance with the California Public Utilities Commission. In addition to abiding by the clearance specification set forth in General Order 95, CONSULTANT shall perform utility line clearance pruning to protect the current health and condition of the trees and to maintain symmetry. CONSULTANT shall remove limbs overhanging primary conductors, and use natural pruning techniques to direct the growth away from utility lines.

E. Clearance Trim/Pruning:

CONSULTANT must maintain trees to a standard height of fourteen (14) feet clearance from the top of the curb when practical, or a height otherwise established in writing by the CITY, for the purpose of creating adequate room for transportation, utility vehicles and pedestrian traffic. In those cases, trees shall not overhang a sidewalk or walks at less than eight (8) feet in height, twelve (12) feet for bike paths, or a roadway at less than fourteen (14) feet in height. CONSULTANT will typically perform the Clearance Trim/Pruning during the Grid Tree Trimming and Pruning or as necessary as a Service Request Tree Trim. This operation also involves clearing limbs or branches away from

electrical wires, lights, buildings, and/or traffic signal devices. CONSULTANT shall prune trees as required to remove broken, diseased branches or for general containment. Pruning shall promote structural strength and accentuate the plant's natural forms and features within limitations of space. CONSULTANT shall structurally prune such trees as Crape Myrtle trees during dormancy to promote spring growth and flowering. CONSULTANT's removal of all trunk sprouts, suckers, and limbs to provide for pedestrian travel is included. CONSULTANT shall perform all work in accordance with Western Chapter ISA Pruning Standards, ANSI A300 Standards and CITY specifications. CONSULTANT shall remove all debris from the job site and taken to a designated green waste facility for recycling. CONSULTANT shall remove all such debris from the job site daily and properly dispose of same at the end of each workday. CONSULTANT shall leave all job sites clean when work is completed, including raking of leaves, twigs, etc., from turf and parkways and the sweeping of streets.

F. Small Tree Care:

- (1) CONSULTANT shall prune to encourage good tree structure, weed abatement, watering and staking, and tying needs. CONSULTANT shall perform selective thinning, removal of dead, interfering, split and broken limbs, weed abatement, lawn raking and watering. Trees and adjacent parkways have definite maintenance needs, therefore, CONSULTANT shall establish a Small Tree Care Maintenance Action Plan to address the tree and parkway maintenance requirements on an individual basis. CONSULTANT shall inspect each tree to determine specific needs and maintenance activities which CONSULTANT will then perform accordingly. CONSULTANT shall follow the following guidelines:
- a. Check parkway grade
 - b. Check size and tree well condition
 - c. Prune trees as necessary
 - d. Weed tree well as needed
 - e. Re-stake and re-tie as needed to promote health and to avoid any leaning of tree
 - f. All guys, stakes and ties shall be checked to avoid girdling and to check for leaning on an ongoing basis. Remove guys, stakes and ties as required for the tree's health being careful to not induce a leaning tree.

G. Tree Removal:

It is anticipated that the CONSULTANT will remove all dead trees within the LMD in the first three (3) to six (6) months of the contract. Additionally, CONSULTANT shall capture information concerning all removed trees in the Tree Inventory for possible future replacement. CONSULTANT shall complete removals per monthly lists compiled and submitted by the CITY or on an "as needed" basis. With a minimum of forty-eight (48) hours advance notice, CONSULTANT will inform Underground Service Alert (USA) of the location of work for the purpose of identifying any and all utility lines. CONSULTANT shall clean job sites daily, including raking of leaves and removal of all debris. The removal process will prevent any hardscape damage and the CONSULTANT shall remove debris (including glass, etc.) from the job site and taken to a designated green waste facility. CONSULTANT shall neatly stack on parkways logs of desirable length that could be used as firewood for pickup by residents. CONSULTANT shall remove all wood not picked up five (5) days after removal of tree. Immediately following the removal, CONSULTANT shall cause the stump to be ground down in accordance with ISA Standards, ANSI A300 Standards and CITY specifications. Upon CITY notice,

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CONSULTANT will then re-plant and restore the existing landscape in accordance with the CITY's specifications.

H. Stump Removals:

Stumps will be ground by CONSULTANT to a depth of eighteen (18) inches. All holes will be backfilled by CONSULTANT, as well as all debris cleaned up and hauled off on the day the stump removal is completed.

I. Tree Planting:

CITY approved planting will be performed by CONSULTANT in accordance with ISA and ANSI Standards and CITY specifications, which includes the tree, root barrier (when required by specifications) stakes, ties, soil preparation, watering, complete installation and surrounding landscape restoration and repair. Planting lists will be submitted as needed by the CITY. All planted trees will be guaranteed by CONSULTANT for a period of ninety (90) days, excluding vandalism and extreme weather conditions. CONSULTANT will plant trees from lists compiled and submitted monthly by the CITY, or an "as needed" basis and in accordance with the CITY's specification. Trees will be planted by CONSULTANT in a location to be approved by the CITY and the Master Tree List will be updated with new data.

J. Hourly Crew Rental:

CONSULTANT's standard crew should be three (3) personnel, one (1) chipper truck, one (1) chipper, (1) one aerial tower, and all necessary hand tools. The crew and equipment can be modified to complete any type of miscellaneous tasks including special requests that may consist of extraordinary work such as hanging flags, changing light bulbs, or trimming specific trees requiring immediate attention prior to their schedule trim, within the CITY of Tracy CITY limits.

K. Emergency Call Out:

CONSULTANT shall provide a list of emergency phone numbers to the CITY along with an Emergency Response procedure manual. CONSULTANT will respond to emergency calls on a 24-hour, 7 day a week basis. CONSULTANT shall begin emergency work on site within 90 minutes from the time of the notification by the CITY. The CONSULTANT's crew shall do what is necessary to remove/secure the hazardous tree or render the tree-related condition safe until the following workday.

L. Watering:

CONSULTANT shall perform watering with a one-person crew with water truck, which will water various routes including landscape medians and young trees that are three (3) years old or younger, upon request by the CITY.

M. Natural Treatment and Pesticide Application:

CONSULTANT shall provide annual pest control when requested by the CITY to control pests and diseases as needed. CONSULTANT shall provide a schedule of applications to the CITY. Pesticide operations shall be performed by a State of California QAC or QAL. The CONSULTANT shall be responsible for the selection and proper application of insecticides, fungicides, herbicides or rodenticides. Only a license-holding QAC or QAL will be allowed to apply pesticide. The CONSULTANT shall obtain approval for all pesticide use from the Director of Public Works, or designee prior to use. Any property damage resulting from the use of such pesticides shall be the responsibility of the CONSULTANT.

N. Tree Inventory Collection, Management and Updating:

CONSULTANT shall update and maintain the CITY's tree inventory using all existing data from internal and external sources for successful management of the CITY's urban forest. Initially, CONSULTANT shall have each tree inspected by a ISA Certified Arborist to collect an entire inventory of tree data and to assess the condition of trees in each zone to establish a standard database, or to complete the tree site inventory using Geographical Positioning Satellite (GPS) devices integrated with computers and unique tree care and tree management software programs. CONSULTANT shall make recommendations for a Master Tree Plan and a complete street tree-planting program. The plan must incorporate existing species and recommend new species based on conditions exclusive to that site. Vacant sites may also be collected based on the spacing criteria specifications set forth by the CITY, incorporating the existing species and recommending new ones based on similar planting conditions such as, parkway size, overhead utilities and residential and arterial area. CONSULTANT may be asked to incorporate historical data on trees that have previously had work done, including removal or replacement, into the new inventory.

O. Updating Tree Inventory:

CONSULTANT shall be required to provide daily record keeping, maintenance scheduling and reporting. CONSULTANT shall record each tree site, including TCLMD Zone, maintenance performed, and submit such record to CITY on a bi-weekly basis. CONSULTANT shall provide a hardcopy of this data and a diskette that is compatible to the CITY's computer system, with each invoice to eliminate dual inputting and to keep the tree inventory current. CONSULTANT shall use an online service that is accessible by CITY staff.

P. Assembly Bill 939 (AB939) Green Waste Recycling Reporting

CONSULTANT shall comply with AB 939 which establishes an integrated waste management hierarchy in the following order of importance:

1. Source reduction
2. Recycling and composting
3. Environmentally safe transformation and land disposal of solid waste
4. A monthly Green Waste Recycling report is to be provided and included in the proposal amount.

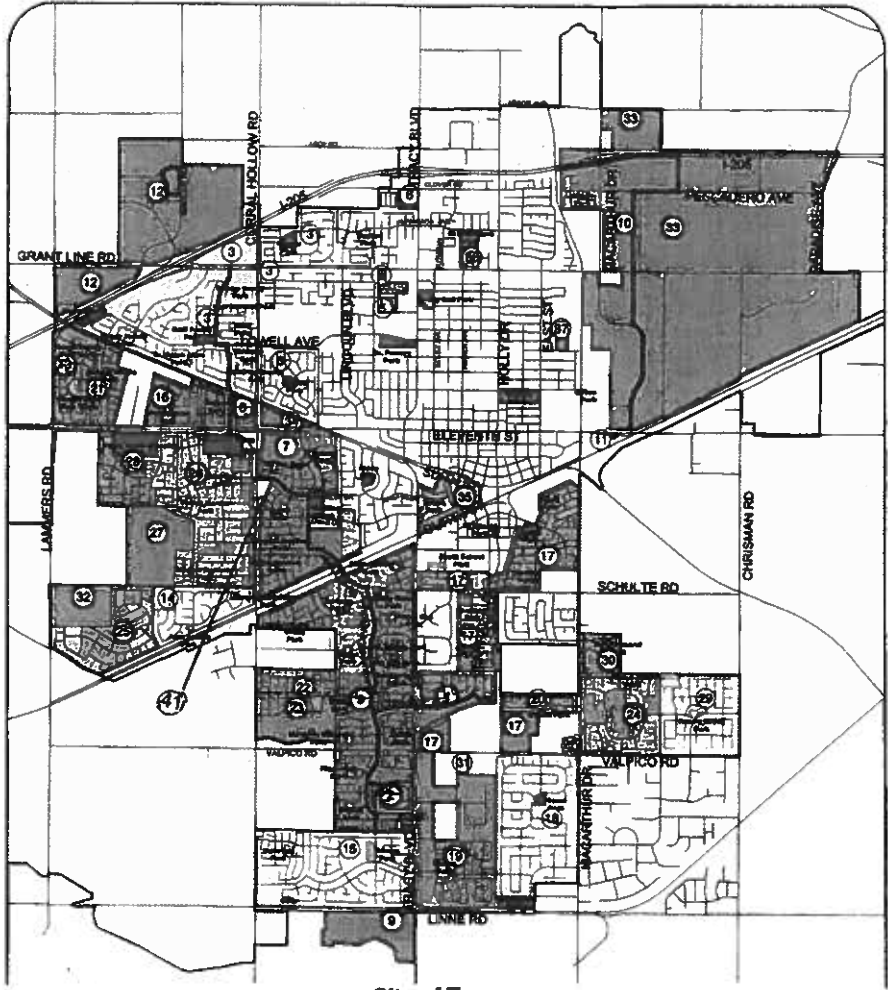
Q. Standards of Performance:

All other portions of these specifications notwithstanding, it is agreed that the intent of these specifications is to provide a level of maintenance that will present an attractive and desirable appearance at all times. CONSULTANT agrees to maintain all designated areas covered by these specifications at this level. The CITY's Director of Public Works or designee shall be the sole judge as to the adequacy of maintenance.

SECTION 15 – EXTRA WORK

- A. Extra work will not be performed without prior approval by the CITY's Director of Public Works or designee unless a condition exists wherein it appears there is a safety concern, danger of injury to residents, or damage to property.
- B. Extra work may be required of CONSULTANT by the CITY's Director of Public Works, or designee as a result of acts of God, vandalism, theft, civil disturbances, or accidents.
- C. Extra work may be required by the CITY's Director of Public Works, or designee to add new landscaping or to delete or modify existing landscaping.
- D. CITY's payment for approved extra work shall be based on actual cost of labor plus wholesale cost of materials plus ten percent (10%) or the fees outlined in EXHIBIT C, whichever is less.

EXHIBIT "B"
TCLMD ZONE DESIGNATIONS



City of Tracy
 Consolidated Landscape Maintenance District

District	Year Formed	Zones
8501	1985	1, 2
8801	1988	3-13, 36, 37
9802	1998	14-35
Consolidated	2003	All Zones Above
Consolidated	2007	40
Consolidated	2010	41

Exhibit C

Schedule of Compensation:

In conformity with the terms and conditions of the request for proposals, and specifications, terms, and conditions specified herein, CONSULTANT West Coast Arborists, Inc. shall be compensated for work it performs as directed by CITY according to the following schedule of compensation through the duration of this Agreement:

<u>DESCRIPTION</u>	<u>UNIT</u>	<u>UNIT PRICE</u>
Annual Tree Trimming on District/Zone basis	per tree	\$ <u>52.00</u>
SERVICE REQUESTS – Work performed on an individual basis		
FULL TRIM		
0-6" dbh	per tree	\$ <u>21.00</u>
7-16" dbh	per tree	\$ <u>64.00</u>
17-24" dbh	per tree	\$ <u>101.00</u>
25-36" dbh	per tree	\$ <u>191.00</u>
37" dbh & over	per tree	\$ <u>308.00</u>
PALM TREE TRIMMING		
Coco palm, any size	per tree	\$ <u>21.00</u>
Washingtonia palm, any size	per tree	\$ <u>53.00</u>
Canary Island Date Palm, any size	per tree	\$ <u>159.00</u>
TREE REMOVAL		
Tree and stump removal	per diameter inch	\$ <u>18.00</u>
Tree removals over 36" dbh	per diameter inch	\$ <u>41.00</u>
Stump only removal	per inch	\$ <u>10.00</u>
PLANTING		
15 gallon tree	per tree	\$ <u>122.00</u>
24 inch box tree	per tree	\$ <u>260.00</u>
36 inch box tree	per tree	\$ <u>743.00</u>
TREE WATERING	per day	\$ <u>424.00</u>
CREW RENTAL		
3 man crew with equipment	per hour	\$ <u>159.00</u>
2 man crew with equipment	per hour	\$ <u>106.00</u>
1 man crew with equipment	per hour	\$ <u>53.00</u>
SPECIALTY EQUIPMENT		
95 Aerial Tower	per hour	\$ <u>74.00</u>
Crane	per hour	\$ <u>74.00</u>
EMERGENCY RESPONSE		
3-man crew with equipment (evening, weekend, or holiday call-out)	per hour	\$ <u>207.00</u>

**CITY OF TRACY – PSA
TCLMD TREE MAINTENANCE
Page 20 of 20**

TREE INVENTORY AND SOFTWARE PACKAGE	per tree site	\$ <u>1.00</u>
GPS INVENTORY (Optional)	per tree site	\$ <u>3.00</u>
TREE INVENTORY UPDATES	per tree site	\$ <u>.00</u>
TREE ARBORIST SERVICES FOR LARGE REQUESTS	per hour	\$ <u>80.00</u>
CLEARANCE PRUNING (1-50 TREES)	per tree site	\$ <u>42.00</u>
CLEARANCE PRUNING (50 TREES & OVER)	per tree site	\$ <u>21.00</u>
TREE PLANTING WITH 3 STAKE SPECS		
15 gallon tree	per tree	\$ <u>138.00</u>
24 inch box tree	per tree	\$ <u>276.00</u>
36 inch box tree	per tree	\$ <u>796.00</u>
ROOT BARRIER INSTALLATION	per linear foot	\$ <u>10.00</u>
ORGANIC PEST CONTROL (LACEWING AND LADYBUG APPLICATION)	per tree	\$ <u>5.00</u>
TREE FERTILIZATION		
0-16" dsh	per tree	\$ <u>64.00</u>
17" dsh and over	per tree	\$ <u>64.00</u>
PEST CONTROL		
0-16" dsh	per tree	\$ <u>64.00</u>
17" dsh and over	per tree	\$ <u>64.00</u>

RESOLUTION _____

AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH WEST COAST ARBORIST, INC. FOR TREE MAINTENANCE IN THE TRACY CONSOLIDATED LANDSCAPE MAINTENANCE DISTRICT FOR FISCAL YEAR 2010-2011, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE FUTURE AGREEMENT EXTENSIONS FOR UP TO FOUR ADDITIONAL ONE-YEAR TERMS.

WHEREAS, In January, 2006, the City, after a competitive bid, awarded a Professional Services Agreement to West Coast Arborist, Inc. for tree maintenance within the Tracy Consolidated Landscape Maintenance District (TCLMD) through June 30, 2008, and

WHEREAS, The City extended the Agreement through June 30, 2010, and

WHEREAS, The City, after a competitive bid, awarded a Professional Service Agreement to West Coast Arborist, Inc. for maintenance of street and park trees through Fiscal Year 2010-2011 in areas funded by the General fund, and

WHEREAS, Staff has recommended that the City Council find that compliance with the formal request for proposals procedure is not in the best interest of the City pursuant to Tracy Municipal Code section 2.20.140(b)(6). This recommendation is based on West Coast Arborist, Inc. agreeing to honor its bid originally submitted in 2005, inflated through 2009-2010, for the duration of the Agreement; the consistency of service by having the same firm maintain all trees within the City; and the ease of administering contracts with a single company, and

WHEREAS, The initial term of the Agreement shall be from the date of execution through the remainder of Fiscal Year 2010-2011, with the option, at the City Manager's discretion, to extend the Agreement for up to four additional one-year terms, and

WHEREAS, Funding is through the levying of assessments within the Tracy Consolidated Landscape Maintenance District and no work will be authorized over and above the approved budgeted amounts as reported in the Annual Engineer's Report;

NOW, THEREFORE, BE IT RESOLVED That the City Council:

1. Finds that compliance with the formal request for proposals procedure is not in the best interest of the City pursuant to Tracy Municipal Code section 2.20.140(b)(6); and
2. Authorizes a Professional Services Agreement with West Coast Arborists, Inc. for the remainder of Fiscal Year 2010-2011; and
3. Authorizes the Mayor to execute the Agreement; and
4. Authorizes the City Manager to execute future Agreement extensions for up to four additional one-year terms.

* * * * *

RESOLUTION _____

Page 2

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 5th day of October, 2010, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 3

REQUEST

PUBLIC HEARING TO CONSIDER APPLICATIONS TO AMEND THE BROOKVIEW CONCEPT, PRELIMINARY AND FINAL DEVELOPMENT PLAN AND THE BROOKVIEW VESTING TENTATIVE SUBDIVISION MAP FOR THE 10-ACRE PARCEL LOCATED AT THE NORTHWEST CORNER OF BROOKVIEW DRIVE AND PERENNIAL PLACE, ASSESSOR'S PARCEL NUMBER 248-560-28. THE APPLICANT AND PROPERTY OWNER IS BROOKVIEW PROPERTIES, LLC. APPLICATION NUMBERS D10-0003 AND TSM10-0001

EXECUTIVE SUMMARY

The applicant is proposing to amend the Brookview Concept, Preliminary and Final Development Plan and the Brookview Vesting Tentative Subdivision Map. The proposed changes to the Brookview project primarily include reducing the density from 95 to 80 lots, removing the voluntary Affordable Housing component, amending the housing types to all two-story designs, and removing the zero lot line houses.

BACKGROUND

The subject property consists of a vacant 10-acre parcel located approximately 300 yards east of Tracy Boulevard, in the vicinity of Whispering Wind Drive. More specifically, the site is bordered by Brookview Drive on the south, Perennial Place on the east, Lasata Drive on the north, the rear of residential lots that front onto Treana Court on the northwest, and a 2-acre City park on the southwest (Attachment A: Location Map).

The subject property is contained within Garden Square, which is an existing 375-lot residential subdivision consisting of approximately 91 acres. The 10-acre subject property was originally designated as a school site by the Concept Development Plan (CDP) for Garden Square, which was approved in October 2000. However, in September 2002, the Jefferson School District informed the property owner and the City that it no longer desired to locate a school on this site and released all interest in the property, which granted development opportunity back to the property owner.

On June 19, 2007, City Council approved a 95-lot residential subdivision on the 10-acre subject property, known as Brookview (Application Numbers 12-04-D and 3-04-TSM). Since that time, no development has occurred on the vacant parcel.

On June 23, 2010, Brookview Properties, LLC submitted applications to amend the Brookview Concept, Preliminary and Final Development Plan and the Brookview Vesting Tentative Subdivision Map. The proposed changes primarily include reducing the density from 95 to 80 lots, removing the voluntary Affordable Housing component, amending the housing types to all two-story designs, and removing the zero lot line houses.

This report includes a discussion of the following: (1) the previously approved Brookview project, (2) the proposed amendments to the Brookview project, (3) General Plan conformity, (4) schools, (5) parks, (6) neighborhood concerns, (7) Planning Commission recommendation, and (8) the environmental document.

DISCUSSION

1. Previously Approved Brookview Project

The previously approved Brookview project consisted of a 95-lot residential subdivision. The development plan contained elements such as houses that fronted onto the adjacent public park, a variety of residential building types, and a portion of the houses with alley loaded garages (Attachment B: Development Plan for the Previously Approved Brookview Project).

The general layout showed houses and lots on the perimeter fronting Lasata Drive to the north and Perennial Place to the east that were similar to the existing houses in the surrounding neighborhood. The interior of the site was denser and included zero lot line houses, which had a similar appearance to duplexes and triplexes, but were actually detached single-family houses to be built within inches of the side property lines.

The street pattern was characterized by a through street with side alleys. The street pattern and sidewalks allowed for vehicle and pedestrian circulation within the subdivision and had connections on Brookview Drive and Perennial Place to connect the site to the surrounding neighborhood and other points of interest. The site included three public alleys as a means of limiting the number of garages facing the street. A pedestrian path connected the residential neighborhood to the adjacent public park.

The 18 lots on the perimeter fronting Lasata Drive and Perennial Place had lot sizes ranging between approximately 6,000 and 7,800 square feet. These lots contained a mix of single-story and two-story houses with sizes ranging between approximately 2,500 and 3,000 square feet.

The 77 lots with the zero lot line houses had lot sizes ranging between approximately between 2,000 and 3,000 square feet. These lots contained a mix of two-story and three-story houses with sizes ranging between approximately 1,200 and 1,800 square feet. Twenty-two houses had rear-loaded garages with an alley.

The architecture featured a variety of house designs with ten plan types and each plan type having two to four different elevations. The architectural styles included Craftsman, Mediterranean, French Country, and English Country. The architecture included a variety of building materials and details appropriate to the various styles.

The previously approved Brookview project also included a voluntary component for 14 Affordable Housing units. Two of the Affordable Housing units would be available for households of "low income" and twelve of the Affordable Housing units would be available for households of "moderate income." Low income households are households

whose income is 60% to 80% of area median gross income as adjusted by household size. Moderate income households are households whose income is between 80% and 120% of area median gross income as adjusted by household size. Given the dramatic loss in home values over the past two years, the developer is requesting removal of the voluntary affordable housing component from the project.

2. Proposed Amendments to the Brookview Project

The proposed changes to the Brookview project primarily include reducing the density from 95 to 80 lots, removing the Affordable Housing component, amending the housing types to all two-story designs, and removing the zero lot line houses (Attachment C: Proposed Amendment to the Brookview Concept, Preliminary and Final Development Plan).

The street layout and block configuration would remain the same, with the exception that the alley in the center block would be eliminated. The project would still feature houses fronting onto the adjacent public park and a portion of the houses would have alley-loaded garages.

The proposed amendment to the Vesting Tentative Subdivision Map would subdivide the 10-acre parcel into 80 residential lots, public streets and alleys (Attachment D: Proposed Amendment to the Brookview Vesting Tentative Subdivision Map). The street sections would include a five-foot landscape strip between the curb and sidewalk as previously approved.

The project would include two primary product types, described as "traditional lots" and "alley loaded lots." The traditional lots would be located on the perimeter of the site fronting Lasata Drive and Perennial Place, and in the center block area. The traditional lots would range in size from approximately 3,600 to 5,000 square feet and contain houses ranging between approximately 2,100 and 2,500 square feet with front-loaded garages.

The alley loaded lots would be located in the southwestern portion of the site, adjacent to the public park and at the entry point from Brookview Drive. The alley loaded lots would range in size from approximately 2,600 to 5,000 square feet and contain houses ranging between approximately 1,700 and 2,000 square feet with rear-loaded garages. In order to make up for the lack of rear yard area and the narrow side yards, these lots would have an easement on the contiguous neighbor's side yard, so that each property owner would enjoy the use of one 10-foot wide side yard, while giving up their 5-foot side yard on the opposite side.

The proposed architecture features a variety of house designs with six plan types and each plan type having two to three different elevations. The architectural styles proposed in the various plans and elevations include Traditional, Mediterranean, and Spanish. The architecture includes a variety of building materials and details appropriate to the styles. Garages are deemphasized and 18 houses have garages that would face an alley.

The proposed amendments to the Brookview PUD zoning regulations are intended to allow for a creative site plan that includes a mix of residential building types, sizes, and densities and a variety of lot sizes and configurations (Attachment E: PUD Zoning Regulations). Setbacks and other development standards are planned to accommodate the proposed development and also to address future property owner requests such as shade structures, pools, and detached accessory buildings.

3. General Plan Conformity

The General Plan land use designation is Residential Low. The proposed project would be consistent with the density allowed for by the General Plan designation of Residential Low. Densities in the Residential Low category range from 2.1 to 5.8 units per gross acre with an average of 3.5 units per gross acre. The density of the Garden Square subdivision is currently 4.1 units per gross acre and with the proposed project it would be 5.0 units per gross acre (375 existing dwellings + 80 new dwellings = 455 dwellings, divided by 91.1 acres = 5.0 dwelling units per gross acre).

The proposed amendments to the Brookview project would be consistent with the City's Design Goals and Standards and the following General Plan policies:

Community Character Element - CC-6.1 – Policy P4

Blocks within neighborhoods should contain a mix of lot sizes and house sizes.

Community Character Element - CC-6.1 – Policy P1

There shall be a variety of architectural styles in each neighborhood and within each block of a neighborhood.

Community Character Element – CC-6.2 – Policy P5

The exterior of residential buildings shall be varied and articulated to provide visual interest to the streetscape.

4. Schools

The proposed project is located within the Jefferson Elementary School District for grades K – 8 and the Tracy Unified School District for grades 9 – 12. As stated above, the project site was originally planned for a school but the Jefferson School District informed the City and the property owner that it no longer desired to locate a school on this site, which granted development opportunity back to the property owner.

In order to mitigate the proposed project's impacts on school facilities, the Tracy Unified School District has a mitigation agreement in place for the entire Garden Square subdivision, which would apply to the proposed project. The Jefferson Elementary School District has a fee of \$2.94 per square foot of residential development, which would apply to the proposed project, payable at the time of building permit issuance.

5. Parks

Parks are required to be established within residential neighborhoods to serve the residents of the homes that are established in Tracy. In order to meet the need for park land, projects are either required to build parks or pay park in-lieu fees. The City's requirement for park land is 3 acres of Neighborhood Park and 1 acre of Community Park, for a total of 4 acres of park land per 1,000 residents.

In this case, staff has determined that no dedication of park acreage is desired within the proposed project because the Garden Square subdivision is adjacent to an existing park. Garden Square contains a 2-acre park in the vicinity of Regis Drive and Brookview Drive; and an 8-acre park in the vicinity of Dietrick Avenue and Dandelion Loop, which is along the southern boundary of the subdivision. The total existing park acreage is approximately 10 acres.

The population estimate for Garden Square, including the proposed project, is 1,492 residents (375 existing dwelling units + 80 new dwelling units = 455 total dwelling units, multiplied by 3.28 people per unit). The City's requirement of park land for a subdivision consisting of 1,492 residents is approximately 6 acres.

The applicant would be required and has agreed to pay the park in-lieu fees. These fees would provide funds for the creation of parks and recreation facilities consistent with the Parks Master Plan and the City's General Plan.

6. Neighborhood Concerns

Staff requested the applicant conduct a neighborhood meeting to share the proposed amendments to the Brookview project with the nearby residents. The applicant conducted a neighborhood meeting on July 27, 2010. Five neighbors were present at the meeting. According to the applicant, the primary concern of the neighbors was related to existing high-speed traffic on Brookview Drive.

During the review process for the previously approved Brookview project, many of the neighborhood residents expressed concerns and opposition. The primary concerns of the neighbors were related to traffic, density, building height, and Affordable Housing. Many of these previous concerns have been addressed by the reduction in density, the removal of the zero lot line houses, the removal of the three-story houses, and the elimination of the Affordable Housing component.

A traffic study was conducted as part of the previously approved Brookview project. The traffic study concluded that all eight study intersections currently operate at acceptable LOS (level of service) and are expected to continue to operate acceptably with the proposed project. The eight study intersections include South Tracy Boulevard and Whispering Wind Drive, Whispering Wind Drive and Regis Drive, Brookview Drive and Regis Drive, Brookview Drive and Bonsai Avenue, Brookview Drive and Perennial Place, Lasata Drive and Perennial Place, Lasata Drive and Treana Court, and Lasata Drive and

Regis Drive. The two future street intersections at Brookview Drive and Perennial Place are also expected to operate acceptably with the proposed project.

7. Planning Commission

Planning Commission held a public hearing on August 25, 2010 to review and consider the applicant's proposal. There were no comments from the public. Following questions from Planning Commissioners for staff and the applicant, the Planning Commission voted 4-0-0-1 to recommend that City Council approve the project (Attachment F: Draft Planning Commission Minutes).

8. Environmental Document

This project is consistent with the Mitigated Negative Declaration that was adopted by City Council on June 19, 2007 for the previously approved Brookview project. The proposed amendments to the Brookview project would include a reduction in density from 95 to 80 lots. The street and block layout would be the same as previously approved. No potentially significant impacts would result from this project that weren't previously addressed in the adopted Mitigated Negative Declaration. In accordance with CEQA Guidelines Section 15183, no further environmental assessment is required.

The amended Brookview project would be required to comply with the mitigation measures of the adopted Mitigated Negative Declaration. The mitigation measures include requiring compliance with all applicable rules and regulations of the San Joaquin Valley Air Quality Pollution Control District, compliance with General Plan mitigation measures to reduce the impacts of temporary noise from construction activities, and requirement of the applicant to pay an in-lieu park fee.

STRATEGIC PLAN

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

FISCAL IMPACT

There would be no impact to the General Fund as a result of this project.

RECOMMENDATION

Staff and Planning Commission recommend that the City Council take the following actions for the 10-acre parcel located at the northwest corner of Brookview Drive and Perennial Place, Assessor's Parcel Number 248-560-28, Application Numbers D10-0003 and TSM10-0001:

1. Introduce an ordinance amending the Concept Development Plan for the Brookview Planned Unit Development from a 95-lot residential subdivision to an 80-lot residential subdivision; and

2. Amend the Brookview Preliminary and Final Development Plan and the Brookview Vesting Tentative Subdivision Map, subject to the conditions and based on the findings contained in the City Council Resolution dated October 5, 2010.

Prepared by Scott Claar, Associate Planner

Reviewed by Bill Dean, Assistant Development & Engineering Services Director

Approved by Andrew Malik, Development & Engineering Services Director

ATTACHMENTS

- A: Location Map
- B: Development Plan for the Previously Approved Brookview Project
- C: Proposed Amendment to the Brookview Concept, Preliminary and Final Development Plan
- D: Proposed Amendment to the Brookview Vesting Tentative Subdivision Map
- E: Brookview PUD Zoning Regulations
- F: Draft Planning Commission Minutes from August 25, 2010



**Project
Location**

JAMES W S

KELLEY MIST

AREZZO WY

HOLMES CT

FOSCATA AV

FICUS WY

PERENNIAL WY

MILLBERRY CT

GLEN HAVEN DR

LINDSEY LN

GLEN HAVEN DR

REGIS PK

VOLENTI WY

BORSARI WY

DIETRICK AV

FT. NOBLE DR

CHERRYB WY

DR

DARBY DR

DARBY CT

WHEAT LN

SUNNYSIDE LN

SASEWOOD LN

MORNING BROOK LN

TWIN OAKS DR

ENGLISH OAK AV

S TRACY BL

S TRACY BL

BROOKVIEW
PLANNED UNIT DEVELOPMENT (PUD)
ZONING REGULATIONS

I. PURPOSE

The purpose of the Brookview PUD is to achieve (1) a mix of residential types and sizes within an 80 lot single family detached residential subdivision; (2) a variety of lot sizes and configurations; (3) a creative site plan that includes some streets with alley loaded garages and houses fronting onto the adjacent public park; (4) and separated sidewalks permitting trees and groundcover immediately adjacent to streets.

II. PROPERTY DESCRIPTION

The subject parcel consists of approximately 10.01 acres located at the northwest corner of Brookview Drive and Perennial Place. The subject parcel is contained within the Garden Square Subdivision, which is an existing 375 lot residential subdivision consisting of approximately 91.1 acres. The subject parcel is bordered by Lasata Drive on the north, Perennial Place on the east, Brookview Drive on the south, a 2-acre City park on the southwest and residential lots facing Treana Court on the northwest.

III. PERMITTED USES

The project shall consist of 80 single-family detached residential dwellings as shown in the Final Development Plan. Accessory uses, home occupations, and large-family day care uses shall comply with the requirements of the Medium Density Cluster (MDC) Zone and all other applicable requirements of the Tracy Municipal Code.

IV. DEVELOPMENT STANDARDS

Except as otherwise specified herein, the Brookview PUD shall comply with the development standards for the Medium Density Cluster (MDC) Zone and all other applicable requirements of the Tracy Municipal Code, such as requirements for swimming pools, shade structures, detached accessory buildings, fences and projections into yards.

A. PUD Lots 1 thru 31 and 50 through 80 (Traditional Lots)

1. Lot area and width

The lot area and width requirements shall be consistent with the Final Development Plan.

2. Density

The density requirements shall be consistent with the Final Development Plan.

3. Minimum yards

- a. The minimum front yard setback shall be ten feet (10'), except garages, which shall be setback a minimum of eighteen feet (18') to the face of the garage door.
- b. With respect to Lot 78, the southern property line shall be the front property line and the northern property line shall be the rear property line.
- c. With respect to Lot 79, the northern property line shall be the front property line and the southern property line shall be the rear property line.
- d. The minimum side yard setbacks shall be five feet (5'), with the exception that on corner lots, excluding Lots 60, 78, 79 and 80, the minimum street side yard setback shall be ten feet (10'). For Lots 60, 78, 79, and 80, the minimum street side yard setback shall be five feet (5').
- e. The minimum rear yard setback shall be ten feet.

4. Height

The maximum height shall be 35 feet.

5. Lot Coverage

The maximum lot coverage of all buildings shall not exceed fifty-five percent (55%) of the lot area.

6. Off-street parking

The minimum off-street parking requirement shall be one non-tandem two car garage for each dwelling unit. The garage shall contain a minimum inside dimension of 19' x 19' clear interior space. Carports and similar, temporary, permanent, or portable structures intended to provide shade for vehicles and boats are not permitted.

7. On-street parking

The on-street parking requirements shall be consistent with the approved Final Development Plan.

B. PUD Lots 32 thru 49 (Alley Loaded Lots)

1. Lot area and width

The lot area and width requirements shall be consistent with the approved Final Development Plan.

2. Density

The density requirements shall be consistent with approved Final Development Plan.

3. Minimum yards

Lots 32, 33, 36, 37, 38, 39, 40, 41, 42, 45, 46, 47, and 48, shall include a side yard on one side of the house plus a landscape and recreational easement on the contiguous side yard of the adjacent property. The landscape and recreational easement shall be included within the fenced side yard of the dominant tenement. The details of the recreational and landscape easement shall be included in the Covenants, Conditions and Restrictions (CC&R's) and in an easement recorded with the San Joaquin County Recorder. The easement shall specify that it runs with the land and is non-transferrable separate from the property. The easement and CC&Rs shall disclose that the property owner may be subject to property tax on the portion of the property owner's fee interest subject to the easement. Prior to the issuance of building permits for these lots, the developer shall submit draft copies of the easement and CC&R's for review and written approval by the Development and Engineering Services Director, record the easements after such approval, and then submit copies of the final version recorded at the San Joaquin County Recorder's Office, to the satisfaction of the Development and Engineering Services Director.

- a. The minimum front yard setback shall be ten feet (10') from the property line. The front yard shall be the yard between the front of the house and either the street or the park.
- b. The minimum side yard setback for interior lots shall be five feet (5'). On corner lots, the minimum street side yard setback shall be ten feet (10') and the minimum interior side yard setback shall be five feet (5').

- c. The minimum rear yard setback shall be five feet (5').
- d. Patio covers and shade structures may be located in a required rear or side yard setback, provided they are located within the rear two-thirds of the lot.

4. Height

The maximum height shall be 35 feet.

5. Lot Coverage

The maximum lot coverage of all buildings shall not exceed sixty percent (60%) of the lot area.

6. Off-Street Parking

The off-street parking requirements shall be consistent with the approved Final Development Plan. The minimum off-street parking requirements shall be one non-tandem two car garage for each dwelling unit. The garage shall contain a minimum inside dimension of 19' x 19' clear interior space. Carports and similar, temporary, permanent, or portable structures intended to provide shade for vehicles and boats are not permitted.

7. On-street parking

The on-street parking requirements shall be consistent with the approved Final Development Plan.

ATTACHMENT F

- A. PUBLIC HEARING TO CONSIDER APPLICATIONS TO AMEND THE CONCEPT, PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR THE BROOKVIEW PLANNED UNIT DEVELOPMENT AND TO AMEND THE BROOKVIEW VESTING TENTATIVE SUBDIVISION MAP TO SUBDIVIDE THE 10-ACRE PARCEL INTO 80 RESIDENTIAL LOTS. THE PROJECT IS LOCATED AT THE NORTHWEST CORNER OF BROOKVIEW DRIVE AND PERENNIAL PLACE, ASSESSOR'S PARCEL NUMBER 248-560-28. THE APPLICANT AND PROPERTY OWNER IS BROOKVIEW PROPERTIES, LLC. APPLICATION NUMBERS D10-0003 AND TSM10-0001

Scott Claar, Associate Planner provided the staff report. Mr. Claar indicated that the project involved a ten acre vacant site located in Garden Square, which had been approved in October of 2000. Mr. Claar further indicated that the site had been identified as a future school site, but the Jefferson School District had released their interest in the site in 2002. Mr. Claar stated that in 2007 Council had approved a 95 lot residential subdivision for the site. Mr. Claar stated that recently the developer had applied to amend the project to adapt to the current economic situation. Mr. Claar indicated that the changes involved reducing the density from 95 to 80 homes, removing the affordable housing component, and amending the housing type to all two story homes, and making all the homes detached single family homes. Mr. Claar stated that the street layout would not change. Mr. Claar further stated that there would still be 18 alley loaded lots. Mr. Claar indicated that the project with its amendments would be consistent with the General Plan. Mr. Claar indicated that staff had asked the applicant to hold a neighborhood meeting and they did. Mr. Claar stated that as he understood it, there were about five citizens in attendance, and the major concerns involved the high speed traffic on Brookview Drive. Mr. Claar indicated that the concerns did not have a direct relationship to the project. Mr. Claar indicated that staff recommended approval of the project.

Commissioner Ransom asked if there was a public safety issue for the alley loaded parking, as there appeared to be only one entrance. Mr. Claar indicated that there were a very limited number of houses on the alley. Commissioner Ransom asked about the accessibility to the alleyway for public safety vehicles. Mr. Claar stated that police and fire had reviewed that proposal and had stated that the alley was adequate to provide public safety services to the residents.

Chair Mitracos opened the public hearing.

Jerry Finch, one of the managers of Brookview Properties, LLC, at 2406 Merced Street San Leandro addressed the Commission. Mr. Finch stated that the market had dropped 50%, and in looking at the project, they had determined that the market demanded single family detached homes. Mr. Finch stated that for the previous project approval there had been a neighborhood meeting with 45 or more people in attendance, and there had been several concerns voiced at that time. Mr. Finch stated that he felt the proposed project addressed the citizens concerns better than the previously approved project. Mr. Finch indicated that due to the economy, much of Tracy housing had become affordable, and if built today, the alley loaded properties would sell for less than the proposed affordable housing units would have three years before. Mr. Finch stated that he felt the new proposal would be a more attractive project, would be better suited to the surrounding neighborhood, and would enable them to start the project within the next twelve months.

Mr. Finch introduced the project architect, Dan Hale, 444 Spear Street, San Francisco. Mr. Hale provided an electronic presentation with street layouts, floor plans and elevations of the proposed project.

Vice Chair Alexander stated he was concerned with the reduction of the number of lots from 95 to 80. Vice Chair Alexander further stated he was concerned with the elimination of the affordable housing element. Mr. Finch indicated that in the current market, what people were looking for in Tracy was single family detached homes to build a family in. Mr. Finch stated that the City had repeatedly turned down a mandatory affordable housing requirement, and his organization had proposed those in the previous project voluntarily. Mr. Finch indicated that the economics had changed, and the selling of the market rate houses included in the project would no longer cover the losses of the homes being sold below market rate. Vice Chair Alexander asked what the prices of the homes would be once completed. Mr. Finch stated that in the current market they would be in the \$250-360 thousand range; however they were hopeful the market would improve before the project was completed.

Commissioner Johnson stated that he had contacted the developer, to gather some information about the project, and found that approximately 20 years ago he had a very small part in one of their projects; however he did not feel that precluded him from participating in the discussion. Bill Sartor, Assistant City Attorney agreed that he did not feel that would preclude Commissioner Johnson from participating and he appreciated Commissioner Johnson putting it in the public record.

Commissioner Johnson asked about the traffic issue in the area of the project. Mr. Finch stated that there had been some complaints about speeding on Brookview Drive. Commissioner Johnson asked how the issue had been addressed. Mr. Finch answered that the traffic study was deemed fully in compliance with all the legal requirements. Mr. Finch stated that regarding the traffic issues, staff had indicated it may be an enforcement issue. Mr. Malik added that the City had in the past two years began a traffic calming program, and if there were speed concerns, they could be addressed through the program.

Commissioner Johnson asked for clarification on two lots that were very shallow. Mr. Hale stated that the houses would be sideways and front each other, and have private driveways that would turn into side-loaded garages.

Commissioner Johnson stated that he felt the project was in line with the General Plan, that he felt the reduction in lots was in line with the current economy, and that he felt the architecture fit the Community Character element.

Commissioner Ransom stated that she had drove past the project site everyday, and she appreciated the architectural renderings, and she commended the applicant.

Commissioner Manne stated that he was disappointed to have not been included in the community workshop, as he lived 700 feet away from the project site. Commissioner Manne stated that he felt the applicant had addressed his neighbors concerns with the previous proposal. Commissioner Manne stated that he was excited that there would not be three story homes in the neighborhood. Commissioner Manne indicated that he was concerned with the traffic study that had been performed in the past, although he knew it was outside the scope of this meeting. Commissioner Manne stated that he felt there was a lack of traffic flow in the area currently, and this proposal would add another 80 homes. Cris Mina, Senior Civil Engineer

stated that the traffic study was done in 2007. Mr. Mina stated that the study had shown that the width of the streets were sufficient to carry the traffic in the area. Mr. Claar stated that the study had shown that the project would provide less traffic than the previously approved school on the site.

Commissioner Manne stated that the students in the 80 homes would go to the east to Hawkins School. Mr. Finch stated that they had been told by the Jefferson School District that the students in the homes would not go to Hawkins, but would actually go to Monticello. Commissioner Manne stated that he felt that it would be nice to see homes versus a field of dry grass. Commissioner Manne further stated that he thought the homes fronting the park was a good idea, as it would be nice to see something other than the back of homes. Mr. Commissioner Manne further stated that appreciated that there would be architectural detail on all four sides of the home.

Chair Mitracos indicated that he would hope to see some one story homes on the site.

Chair Mitracos closed the public hearing.

It was moved by Commissioner Johnson and seconded by Commissioner Ransom to recommend the City Council approve Development Application numbers D10-0003 and TSM10-0001, for the ten-acre parcel located at the northwest corner of Brookview Drive and Perennial Place, Assessor's Parcel Number 248-560-28, subject to the conditions and based on the findings contained in the Planning Commission Resolution dated August 25, 2010, which include the following:

1. Amend the Concept, Preliminary and Final Development Plan for the Brookview Planned Unit Development; and
2. Amend the Brookview Vesting Tentative Subdivision Map to subdivide the ten-acre parcel into 80 residential lots

Voice vote found Commissioner Johnson, Commissioner Ransom, Vice Chair Alexander, and Chair Mitracos in favor, Commissioner Manne abstained; passed 4-0-0-1.

The Planning Commission adjourned to City Hall conference room 109.

ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY AMENDING THE CONCEPT DEVELOPMENT PLAN FOR THE BROOKVIEW PLANNED UNIT DEVELOPMENT FROM A 95-LOT RESIDENTIAL SUBDIVISION TO AN 80-LOT RESIDENTIAL SUBDIVISION FOR THE 10-ACRE PARCEL LOCATED AT THE NORTHWEST CORNER OF BROOKVIEW DRIVE AND PERENNIAL PLACE, ASSESSOR'S PARCEL NUMBER 248-560-28

WHEREAS, The subject property is a 10-acre parcel located at the northwest corner of Brookview Drive and Perennial Place, Assessor's Parcel Number 248-560-26; and

WHEREAS, The subject property is contained within Garden Square, which is an existing 375-lot residential subdivision consisting of approximately 91 acres; and

WHEREAS, In October 2000, the City approved the Concept Development Plan (CDP) for the Garden Square Planned Unit Development (PUD), which showed the 10-acre subject property as a school site, at the request of the Jefferson School District; and

WHEREAS, In September 2002, the Jefferson School District informed the property owner and the City that it no longer desired to locate a school on this site and released all interest in the property, which granted development opportunity back to the property owner; and

WHEREAS, On June 19, 2007, City Council amended the Garden Square CDP for the 10-acre subject property from a school site to a 95-lot residential subdivision, known as Brookview; and

WHEREAS, On June 23, 2010, Brookview Properties, LLC submitted an application to amend the Brookview CDP from a 95-lot residential subdivision to an 80-lot residential subdivision; and

WHEREAS, The subject property is designated Residential by the Industrial Areas Specific Plan and Residential Low by the General Plan, which allows a density range of 2.1 to 5.8 residential units per gross acre; and

WHEREAS, The density of the Garden Square subdivision with the proposed amendment to the Brookview CDP would be 5.0 residential units per gross acre, which is consistent with the General Plan; and

WHEREAS, The Planning Commission considered this matter at a noticed public hearing held on August 25, 2010 and recommended that City Council amend the Brookview CDP from a 95-lot residential subdivision to an 80-lot residential subdivision; and

WHEREAS, The City Council held a duly noticed public hearing to consider the ordinance on October 5, 2010.

The Tracy City Council hereby ordains as follows:

SECTION 1: The Concept Development Plan for the Brookview Planned Unit Development is amended from a 95-lot residential subdivision to an 80-lot residential subdivision for the 10-acre parcel located at the northwest corner of Brookview Drive and Perennial Place, Assessor's Parcel Number 248-560-28.

SECTION 2. The project is consistent with the Mitigated Negative Declaration that was adopted by City Council on June 19, 2007 for the previously approved Brookview project. The amendment to the Brookview project would include a reduction in density from 95 to 80 lots. The street and block layout would be the same as previously approved. No potentially significant impacts would result from this project that weren't previously addressed in the adopted Mitigated Negative Declaration. In accordance with California Environmental Quality Act Guidelines Section 15183, no further environmental assessment is required. The amended Brookview project would be required to comply with the mitigation measures of the adopted Mitigated Negative Declaration. The mitigation measures include requiring compliance with all applicable rules and regulations of the San Joaquin Valley Air Quality Pollution Control District, compliance with General Plan mitigation measures to reduce the impacts of temporary noise from construction activities, and requirement of the applicant to pay an in-lieu park fee.

SECTION 3. This Ordinance shall take effect thirty (30) days after its final passage and adoption.

SECTION 4. This Ordinance shall be published once in a newspaper of general circulation within fifteen (15) days from and after its final passage and adoption.

* * * * *

The foregoing Ordinance was introduced at a regular meeting of the Tracy City Council on the 5th day of October, 2010, and finally adopted on the _____ day of _____, 2010, by the following vote:

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

Mayor

ATTEST:

City Clerk

RESOLUTION _____

AMENDING THE BROOKVIEW PRELIMINARY AND FINAL DEVELOPMENT PLAN AND
THE BROOKVIEW VESTING TENTATIVE SUBDIVISION MAP FOR THE 10-ACRE
PARCEL LOCATED AT THE NORTHWEST CORNER OF BROOKVIEW DRIVE AND
PERENNIAL PLACE, ASSESSOR'S PARCEL NUMBER 248-560-28
APPLICATION NUMBERS D10-0003 AND TSM10-0001

WHEREAS, On June 19, 2007 City Council approved the Brookview Preliminary and Final Development Plan and the Brookview Vesting Tentative Subdivision Map for a 95-lot residential subdivision on a 10-acre parcel located at the northwest corner of Brookview Drive and Perennial Place, Assessor's Parcel Number 248-560-28, Application Numbers 12-04-D and 3-04-TSM; and

WHEREAS, On June 23, 2010, Brookview Properties, LLC submitted applications to amend the Brookview Preliminary and Final Development Plan and the Brookview Vesting Tentative Subdivision Map; and

WHEREAS, The proposed changes include reducing the density from 95 to 80 lots, removing the Affordable Housing component, amending the housing types to all two-story designs, and removing the zero lot line houses; and

WHEREAS, The subject property is designated Residential by the Industrial Areas Specific Plan and Residential Low by the General Plan, which allows a density range of 2.1 to 5.8 units per gross acre; and

WHEREAS, The density of the Garden Square subdivision with the proposed amendment to the Brookview project would be 5.0 units per gross acre, which is consistent with the General Plan; and

WHEREAS, The proposed development plan contains desirable elements, such as houses that front onto the adjacent public park, a variety of residential building types, and a portion of the houses with alley-loaded garages; and

WHEREAS, The architectural renderings are in compliance with Tracy's Design Goals and Standards because they have incorporated significant variation between floor plans and elevations, located many of the garages in areas not readily visible from the street, and used architectural features on all four sides of each house; and

WHEREAS, The amended Brookview project would be consistent with the following General Plan policies:

Community Character Element - CC-6.1 – Policy P1

There shall be a variety of architectural styles in each neighborhood and within each block of a neighborhood.

Community Character Element - CC-6.1 – Policy P4

Blocks within neighborhoods should contain a mix of lot sizes and house sizes.

Community Character Element – CC-6.2 – Policy P5

The exterior of residential buildings shall be varied and articulated to provide visual interest to the streetscape.

WHEREAS, The following findings address the amendment to the Brookview Vesting Tentative Subdivision Map:

1. The project is consistent with the General Plan, the Industrial Areas Specific Plan, and Title 12, the Subdivision Ordinance, of the Tracy Municipal Code, in terms of density, circulation, and land use; and
2. The site is physically suitable for the type of development, as the site, once graded will be virtually flat and the characteristically high clay content of Tracy's soils may require amendments and treatment for proposed landscaping, foundations, and other surface and utility work. The physical qualities of the property make it suitable for residential development in accordance with City standards; and
3. The site is physically suitable for the proposed density of development, which is below the maximum density allowed by the General Plan designation of Residential Low. Traffic circulation is designed in accordance with City standards for the proposed density to ensure adequate traffic service levels are met; and
4. The design of the subdivision or the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat; and
5. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision; and
6. The project complies with all other applicable ordinances, regulations and guidelines of the City, including but not limited to, the local floodplain ordinance. The subject property is not located within any floodplain and the project, with conditions, will meet all applicable City design and improvement standards; and
7. All the public facilities necessary to serve the subdivision will be in place prior to the issuance of building permits. All the public facilities necessary to serve the subdivision or mitigate the impacts created by the subdivision will be assured through a subdivision improvement agreement prior to the approval of a final map; and

WHEREAS, The project is consistent with the Mitigated Negative Declaration that was adopted by City Council on June 19, 2007 for the previously approved Brookview project. The proposed amendment to the Brookview project would include a reduction in density from 95 to 80 lots. The street and block layout would be the same as previously approved. No potentially significant impacts would result from this project that weren't previously addressed in the adopted Mitigated Negative Declaration. In accordance with California Environmental Quality Act Guidelines Section 15183, no further environmental assessment is required; and

WHEREAS, The amended Brookview project would be required to comply with the mitigation measures of the adopted Mitigated Negative Declaration. The mitigation measures include requiring compliance with all applicable rules and regulations of the San Joaquin Valley Air Quality Pollution Control District, compliance with General Plan mitigation measures to reduce the impacts of temporary noise from construction activities, and requirement of the applicant to pay an in-lieu park fee; and

WHEREAS, The Planning Commission conducted a public hearing to review and consider the project on August 25, 2010 and recommended that City Council amend the Brookview Preliminary and Final Development Plan and the Brookview Vesting Tentative Subdivision Map; and

WHEREAS, The City Council conducted a public hearing to review and consider the project on September 21, 2010;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby amends the Brookview Preliminary and Final Development Plan and the Brookview Vesting Tentative Subdivision Map for the 10-acre parcel located at the northwest corner of Brookview Drive and Perennial Place, Assessor's Parcel Number 248-560-28, Development Application Numbers D10-0003 and TSM10-0001, subject to conditions stated in Exhibit "1", attached and made part hereof.

* * * * *

The foregoing Resolution _____ was adopted by the City Council on the 5th day of October 2010, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

Development and Engineering Services Department Conditions of Approval

Conditions of Approval for the amendment to the Brookview Preliminary and Final Development Plan and the Brookview Vesting Tentative Subdivision Map, which is an 80-lot subdivision
Application Numbers D10-0003 and TSM10-0001

A. General Provisions and Definitions

1. These Conditions of Approval shall apply to the real property described as the amendment to the Brookview Preliminary and Final Development Plan and the Brookview Vesting Tentative Subdivision Map, which is an 80-lot single-family residential subdivision, Application Numbers D10-0003 and TSM10-0001 (hereinafter "Project"), located on an approximately 10-acre parcel at the northwest corner of Brookview Drive and Perennial Place, Assessor's Parcel Number 248-560-28.
2. The following definitions shall apply to these Conditions of Approval:
 - a. "Applicant" means any person, or other legal entity, defined as a "Developer".
 - b. "City Engineer" means the City Engineer of the City of Tracy, or any other duly licensed engineer designated by the City Manager, or the Public Works Director, or the City Engineer to perform the duties set forth herein.
 - c. "City Regulations" means all written laws, rules, and policies established by the City, including those set forth in the City of Tracy General Plan, the Tracy Municipal Code, ordinances, resolutions, policies, procedures, and the City's Design Documents (including the Standard Plans, Standard Specifications, Design Standards, and relevant Public Facility Master Plans).
 - d. "Development and Engineering Services Director" means the Development and Engineering Services Director of the City of Tracy, or any other person designated by the City Manager or the Development and Engineering Services Director to perform the duties set forth herein.
 - e. "Conditions of Approval" shall mean the conditions of approval applicable to the amendment to the Brookview Preliminary and Final Development Plan and the Brookview Vesting Tentative Subdivision Map, which is an 80-lot single-family residential subdivision, Application Numbers D10-0003 and TSM10-0001.
 - f. "Project" means the amendment to the Brookview Preliminary and Final Development Plan and the Brookview Vesting Tentative Subdivision Map, which is an 80-lot single-family residential subdivision, Application Numbers D10-0003 and TSM10-0001, consisting of approximately 10 acres located at the northwest corner of Brookview Drive and Perennial Place, Assessor's Parcel Number 248-560-28.
 - g. "Subdivider" means any person, or other legal entity, who applies to the City to divide or cause to be divided real property within the Project boundaries, or who applies to the City to develop or improve any portion of the real property within the Project boundaries. "Subdivider" also means the Developer. The term "Subdivider" shall include all successors in interest.

B. Planning Division Conditions

1. The Developer shall comply with all laws (federal, state, and local) related to the development of real property within the Project, including, but not limited to: the Planning and Zoning Law (Government Code sections 65000, *et seq.*), the Subdivision Map Act (Government Code sections 66410, *et seq.*), the California Environmental Quality Act (Public Resources Code sections 21000, *et seq.*, "CEQA"), and the Guidelines for California Environmental Quality Act (California Administrative Code, title 14, sections 15000, *et seq.*, "CEQA Guidelines").
2. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all City Regulations.
3. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all mitigation measures identified in the General Plan Environmental Impact Report, approved July 20, 2006, and the Environmental Impact Report for the Bank of America General Plan Amendment Planned Development, approved February 17, 1998, to the satisfaction of the Development and Engineering Services Director.
4. Pursuant to Government Code Section 66020, including Section 66020 (d)(1), the City HEREBY NOTIFIES the Developer that the 90-day approval period (in which the Developer may protest the imposition of any fees, dedications, reservations, or other exactions imposed on this Project by these Conditions of Approval) has begun on the date of the conditional approval of this Project. If the Developer fails to file a protest within this 90-day period, complying with all of the requirements of Government Code Section 66020, the Developer will be legally barred from later challenging any such fees, dedications, reservations or other exactions.
5. The applicant shall pay all applicable fees for the project, including, but not limited to, development impact fees, building permit fees, plan check fees, grading permit fees, encroachment permit fees, inspection fees, school fees, landscape maintenance district fees, parks fees, or any other City or other agency fees or deposits that may be applicable to the project.
6. All improvements shall be consistent with the Tracy Municipal Code, Standard Plans, and other applicable City Regulations.
7. All Final Maps shall be consistent with the Amended Vesting Tentative Map received by the Development and Engineering Services Department on June 23, 2010, unless modified herein.
8. Prior to the issuance of a building permit, the developer shall document compliance with all applicable school mitigation requirements consistent with City Council standards and obtain certificate of compliance from Tracy Unified School District and the Jefferson School District for each new residential building permit.
9. Prior to approval of the first Final Map, the Developer shall obtain approval of all street names from the Development and Engineering Services Department. At least one street

shall be named after a deceased veteran in accordance with City Council Resolution Number 87-041.

10. Prior to the recordation of the first Final Map, the Subdivider shall show public utility easements necessary to accommodate the needs of local utility providers in accordance with City standards, to the satisfaction of the City Engineer.
11. The development plan, floor plans and architectural elevations, except as modified herein, shall be consistent with the plans received by the Development and Engineering Services Department on June 23, 2010, to the satisfaction of the Development and Engineering Services Director.
12. All of the development standards for the 80 lots shall comply with the standards as listed in the "Brookview Planned Unit Development (PUD) Zoning Regulations" document, received by the Development and Engineering Services Department on June 23, 2010, to the satisfaction of the Development and Engineering Services Director.
13. The Developer shall comply with all mitigation measures of the Brookview Mitigated Negative Declaration and Initial Study, to the satisfaction of the Development and Engineering Services Director.
14. Prior to the issuance of each building permit, the Developer shall specify the house type (i.e. floor plan type and elevation type) for each particular lot in a manner that achieves a sufficient mix and variety in the streetscape view, such that there shall be no approvals of the same floor plan type used on three consecutive lots, no approvals of the same floor plan type and same elevation type used on two consecutive lots, and all floor plan types and elevation types must be used on a minimum of three lots, to the satisfaction of the Development and Engineering Services Director.
15. Lots 32, 33, 36, 37, 38, 39, 40, 41, 42, 45, 46, 47, and 48, shall include a side yard on one side of the house plus a landscape and recreational easement on the contiguous side yard of the adjacent property. The landscape and recreational easement shall be included within the fenced side yard of the dominant tenement. The details of the recreational and landscape easement shall be included in the Covenants, Conditions and Restrictions (CC&R's) and in an easement recorded with the San Joaquin County Recorder. The easement shall specify that it runs with the land and is non-transferrable separate from the property. The easement and CC&Rs shall disclose that the property owner may be subject to property tax on the portion of the property owner's fee interest subject to the easement. Prior to the issuance of building permits for these lots, the developer shall submit draft copies of the easement and CC&R's for review and written approval by the Development and Engineering Services Director, record the easements after such approval, and then submit copies of the final version recorded at the San Joaquin County Recorder's Office, to the satisfaction of the Development and Engineering Services Director.
16. The original vesting date of the Brookview Vesting Tentative Map (Application Number 3-04-TSM), which was approved by City Council on June 19, 2007, shall remain in effect and be unchanged by this Amended Brookview Vesting Tentative Map (Application Number TSM10-0001). The approval of a Vesting Tentative Map expires 24 months

from its approval date, unless this time period is extended under Tracy Municipal Code Section 12.16.090. A statutory extension of 12 months was granted by the State Legislature on July 15, 2008 (Government Code Section 66452.21). A statutory extension of 24 months was granted by the State Legislature on July 15, 2009 (Government Code Section 66452.22). The Brookview Vesting Tentative Map was eligible for both of these statutory extensions. Therefore, the Amended Brookview Vesting Tentative Map has a vesting date of June 19, 2007 and does not expire until June 19, 2012.

C. Engineering Conditions of Approval Prior to Signature on the Tentative Subdivision Map.

Prior to signature of the Tentative Subdivision Map by the City Engineer, the Subdivider shall make the modifications to the tentative map as required by these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to, the following:

1. The Subdivider shall satisfy the City Engineer that the design, development or improvements relating to this subdivision are in compliance with the City adopted General Plan, Specific Plans, relevant ordinances, policies and standards in effect at the time of approval of the Vesting Tentative Subdivision Map for Brookview II, Tract 3568, that was approved by the City Council on June 19, 2007.

D. Engineering Conditions of Approval Prior to Complete Final Map Applications. No application for any final map within the Project boundaries will be accepted by the City as complete until the Subdivider provides all documents required by City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to, the following:

1. The Subdivider has completed all requirements set forth in Condition B, above.
2. One reproducible copy of the approved Tentative Subdivision Map for the Project within ten (10) days after Subdivider's receipt of notification of approval of the tentative map.
3. The final map application including closure calculations for the entire tract, street right of way, and the residential lots, preliminary title report or subdivision map guarantee issued by a competent title company, tax certification issued by the San Joaquin County Tax Collector's Office, recorded maps and documents referenced in the final map and as required by the City Engineer.
4. The final map prepared in accordance with the Subdivision Ordinance and the City Design Documents.
5. The improvement plans for all improvements (on-site and off-site) required to serve the Project as described by the final map in accordance with the Subdivision Ordinance, the City Regulations, and these Conditions of Approval. The improvement plans shall specifically include, but not be limited to, the following items:
 - a. All existing and proposed utilities.
 - b. All supporting calculations, specifications, and reports related to the design of the improvements.

- c. The improvement plans shall be drafted and prepared on a 4-mil thick and 24" x 36" size polyester film (mylar).
 6. The grading plan in accordance with the requirements of the applicable sections of the Tracy Municipal Code.
 7. The landscape, irrigation, and retaining wall plans. Improvement plans must be submitted with technical specifications and supporting calculations as required by the City Engineer.
 8. Private utility and joint-trench plans.
 9. A construction cost estimate for all required public facilities, prepared in accordance with City Regulations. Total construction cost shall include fifteen percent (15%) construction contingencies.
 10. Payment of all processing fees including costs of technical analyses by City's consultants as required by these Conditions of Approval and City Regulations.
- E. Engineering Conditions of Approval Prior to Approval of Final Map. No final map within the Project boundaries will be approved by the City until the Subdivider demonstrates, to the satisfaction of the City Engineer, compliance with all required Conditions of Approval, including, but not limited to, the following:
1. The Subdivider has completed all requirements set forth in Condition C, above.
 2. The Subdivider has obtained the approval of all other public agencies with jurisdiction over the required public facilities.
 3. The final map shall include dedications or offers of dedication of all rights-of-way and easements including Public Utility Easement (PUE) required to serve the Project as described by the final map, in accordance with City Regulations and these Conditions of Approval.
 4. Horizontal and vertical control for the Project shall be based upon the City of Tracy coordinate system and at least three 2nd order Class 1 control points establishing the "Basis of Bearing" and shown as such on the final map. The final map shall also identify surveyed ties from two of the control points to a minimum of two separate points adjacent to or within the property described by the final map.
 5. Updated Final Map Guarantee or Guarantee of Title as required in section 12.20.060(i) of the Tracy Municipal Code, issued by a competent title company to and for the benefit and protection of the City and shall remain valid up to the time of recording the Final Map.
 6. Tax Certification as required in section 12.20.060(d) of the Tracy Municipal Code, from the San Joaquin County tax Collector's office stating that all taxes and assessments due

have been paid. Tax certificate is acceptable if the certificate is not more than thirty calendar (30) days old.

7. Signed and notarized Subdivision Improvement Agreement, executed in duplicate originals, for the construction of subdivision improvements, as required by these Conditions of Approval and Condition L-2, below. The City will be responsible for the preparation of the Subdivision Improvement Agreement. The cost of processing the agreement is \$6,254, and must be paid, prior to the release of the first draft of the agreement.
8. Signed and notarized Faithful Performance Bond, Labor and Materials Bond and Warranty Bond (Improvement Security), as required in Condition L-4, below. The amounts and type of the Improvement Security shall be in accordance with the requirements of section 12.36 of the Tracy Municipal Code and the Subdivision Improvement Agreement, described above.
9. Three (3) sets of the Storm Water Pollution Prevention Plan (SWPPP) and a copy of the Notice of Intent (NOI) submitted to the State Water Quality Control Board (SWQCB) and any documentation or written approvals from the SWQCB including the state-issued Wastewater Discharge Identification number, as required in Condition I-3, below.
10. Three (3) sets of the site investigation report prepared by a competent biologist to determine presence of protected and endangered species within the Project, with recommended mitigation measures, if protected and endangered species are found at the site.
11. Tracy's Fire Marshall's signature on the Improvement Plans indicating their approval on the Project's fire service connection and fire and emergency vehicle access shown on the improvement plans, and street names shown on the final map and improvement plans, as required in Conditions J-2 and J-3, below. Written approval from the Fire Department must be obtained by the Subdivider, prior to City Engineer's signature on the improvement plans.
12. All documents such technical analyses, cost analysis, and others required by these Conditions of Approval and as required by the City Engineer.
13. Documentation of insurance, as required by these Conditions of Approval and specifically by Conditions L-5, below. The certificate of insurance shall name the City of Tracy, all its elected officials, employees, and authorized representatives, as additional insured.
14. Payment of engineering review fees and all fees required by this Conditions of Approval and the City Regulations.
15. The Subdivider shall also participate in a Benefit District(s) for public improvements that were constructed by other development projects that benefit this Project and shall pay the Project's share as determined by the Benefit District or in accordance with the timing specified in the written notice from the City Engineer, if applicable.

16. All public facilities required to serve the Property and all the proposed development within the final map boundaries, including wastewater capacity, water capacity, and storm drainage capacity, shall be financially assured by the Subdivider. Such public facilities are not available unless certain improvements are completed by the Subdivider as identified in the various technical analyses completed for this Project. The Subdivider shall bear all costs related to construction of the public facilities (including all costs of design, construction, construction management, plan check, inspection, land acquisition, program implementation, and contingency), and no reimbursements or credits will be applicable unless otherwise specifically stated herein or in City Regulations. The City will make reasonable efforts to facilitate the necessary planning, but cannot and does not guarantee that sufficient public facilities, and the resulting capacity, will be available before expiration of the tentative map (under Government Code Section 66452.6 and relevant City Regulations).

F. Engineering Conditions of Approval Prior to Approval of Building Permit. No building permit within the Project boundaries will be approved by the City until the Subdivider demonstrates, to the satisfaction of the City Engineer, compliance with all required Conditions of Approval, including, but not limited to, the following:

1. The Subdivider has completed all requirements set forth in Condition D, above.
2. Signed and stamped letter from the Project's Geo-technical Engineer certifying that grading work performed by the Subdivider within the Project meets the requirements of the Project's Engineering Soils Reports and the recommendations of the Project's Geo-Technical Engineer's and the grading work were performed under the direct supervision of the Project's Geo-technical Engineer, as required in Condition I-1, below.
3. Letter to the City acknowledging participation in a benefit district, if applicable, as required by these Conditions of Approval. The letter shall state that the Subdivider agrees to pay the Project's proportional share of cost of public improvements as determined by the Benefit District and shall deliver the payment at the time specified by the City or in a written notice from the City requesting payment to be made.
4. The Subdivider shall pay all applicable Infill Properties development impact fees with the exception of sewer, water and storm drainage development impact fees.
5. The Property is within the Assessment Districts 84-1 (Wastewater Facilities) and 87-3 (Water Facilities). Subdivider agrees to pay sewer and water development impact fees and storm drainage fees, if applicable, per the South Industrial Specific Plan (ISP) Finance Implementation Plan (FIP) and in accordance with the sewer, water and storm drainage technical analyses for ISP.

G. Engineering Conditions of Approval Prior to Final Building Inspection. The City shall not conduct a final building inspection on any building within the Project boundaries until the Subdivider provides documentation which demonstrates, to the satisfaction of the City Engineer, that:

1. The Subdivider has completed all requirements set forth in: Condition E, above.

2. The Subdivider has completed construction of all public facilities required to serve the building for which a final building inspection is requested. Unless specifically provided in these Conditions of Approval, or some other City Regulation, the Subdivider shall take all actions necessary to construct all public facilities required to serve the Project, and the Subdivider shall bear all costs related to construction of the public facilities (including all costs of design, construction, construction management, plan check, inspection, land acquisition, program implementation, and contingency).

H. Street Improvements

1. The Subdivider shall dedicate right-of-way, design, and construct all roadway improvements (including traffic circulation, and on-site and off-site improvements) required for the Project in conformance with these Conditions of Approval and City Regulations. The traffic circulation for this Project requires the onsite and offsite streets to function, and to be designed and constructed as recommended in Traffic Report prepared by TJKM and comply with City Regulations. Costs of dedicating the right of way, design and construction of the onsite and offsite public streets, unless otherwise specified, are the sole responsibility of the Subdivider, and no separate payment or reimbursement whatsoever will be due from the City or any developing property(s). The City will accept offers of dedication of rights-of-way including streets and utilities improvements after these public improvements are completed by the Subdivider, and accepted by the City Council as complete.
2. The Subdivider shall comply with all the mitigation measures and recommendations identified in the traffic analysis prepared by TJKM Transportation Consultants entitled "Traffic Study for the Brookview II Residential Subdivision" dated October 12, 2006 (Traffic Report). Cost of public improvements and cost of mitigating Project's traffic impact identified in the Traffic Report shall be paid by the Subdivider. The Traffic Report is on file with the office of the City Engineer and is available for review upon request. Street right-of-way width for streets "A", "B" and "C" shall not be less than 56 feet with 36 feet distance between face of curbs. Curb radius at street corner shall not be less than 30 feet.
3. The Subdivider shall submit for City's review a detailed design of all streets within the Project at the time of submittal of Improvement Plans. The street and utilities improvements shall include but not be limited to curb, gutter, sidewalk, landscape and residential trees with automatic irrigation system, street lighting, street pavement, sanitary sewer main and lateral with clean-out, sewer manhole, water main and domestic water service with radio- read water meter, fire hydrant, gate valve, storm drain main, catch basin, storm drop inlet, storm drain manhole, signing and striping and other improvements as determined by the City Engineer as necessary to create a safe and functional street and meets City Regulations.
4. Pavement markings and traffic signs shall be constructed in accordance with City Regulations.
5. All streets shall be paved and improved after underground utilities are installed. No asphalt concrete paving for streets within the Project will be allowed if the measured temperature is below 55 degrees Fahrenheit.

6. Pavement design shall be based on State of California "R" value method, using Traffic Indices specified in the Design Standards, to the satisfaction of the City Engineer. Pavement section of streets shall not be less than what is specified in the Design Standards based on the corresponding classification of the street, using an R value of 5.
7. The street longitudinal grade on any street shall not be less than 0.4%. Street crown shall have a minimum slope of 2%.
8. Slope easements shall be dedicated to the City where cuts or fills do not match existing ground or final grade adjacent to public right-of-way (up to a maximum grade differential of two feet only), prior to issuance of the first building permit. Retaining walls shall be installed where grade differential exceeds 12 inches. Reinforced concrete or masonry retaining wall with provisions for lateral drainage and connection to City's storm drainage system shall be used for retaining wall where grade differential is more than 12 inches. Using sloped backfill materials to eliminate grade differential will not be allowed.
9. No City utility connection(s) (including storm drain, sanitary sewer, water, utility box, etc.), either proposed or existing, will be allowed within residential driveway approaches or in the driveway. Location and placement of water meter and cleanout shall meet City Regulations.
10. Valley gutters shall not be used to provide drainage across any through street or through intersections. Concrete valley gutters may be allowed at the entrance of cul-de-sacs only, with specific approval from the City Engineer.
11. All traffic control devices, including stop signs, speed limit signs, street name signs, legends, markings and striping shall be installed in accordance with a detailed striping and signing plan consistent with City Regulations prepared by the Subdivider and approved by the City Engineer.
12. The Subdivider shall design and install streetlight in accordance with City Standards and at locations approved by the City Engineer.
13. Prior to the approval of the Final Map, Subdivider shall provide street names for approval by the City's Fire Department. Subdivider shall reserve one (1) street to be named after a deceased war veteran or police officer selected by the City. The name of the deceased war veteran or police officer will be provided, prior to the finalization of the final map and improvement plans. Subdivider shall install a special street name sign for the deceased war veteran or police officer. Location and construction detail of the special street name sign shall be per City Regulations.
14. No parking shall be allowed on any portion of the alleyways. The Subdivider shall install "No Parking Any Time" signs on each side of the alleyways. Location and construction details of the traffic signs described above shall meet City regulations and Caltrans standards.

I. Storm Drainage Facilities

1. Prior to approval of any Final Map, the Subdivider shall demonstrate to the satisfaction of the City Engineer, that the storm drainage facilities are adequate to meet Project demands, and that the improvements are consistent with the City's Storm Drainage Master Plan. The Subdivider shall pay the cost of analysis by the City (including cost of consultants) required to demonstrate satisfaction of this condition.
2. The Subdivider shall dedicate right of way, and design and construct storm drainage improvements to satisfy all the recommendation in the technical analysis prepared by the City's consultant entitled "Brookview II Subdivision", Storm Drainage Analysis" dated June 1, 2006 (Storm Drainage Analysis), approved by the City, all at the Subdivider's sole cost and expense. These improvements must be completed by the Subdivider, prior to final inspection of the first building constructed within the Project. A copy of the Storm Drainage Analysis is on file with the office of the City Engineer and is available for review upon request.

J. Grading and Erosion Control

1. A Grading Plan prepared by a Registered Civil Engineer and accompanied by Engineering Soils and Geology reports shall be submitted to the City with the Improvement Plans for the subdivision improvements. The reports shall provide recommendations regarding adequacy of sites to be developed by the proposed grading and also information relative to the stability of soils within the Project. Slope easements shall be used, if the City determines that a retaining wall cannot be installed and shall be recorded per City Regulations. Prior to the issuance of the first building permit within the Property, the Subdivider shall submit a letter, signed and stamped by a Registered Geo-technical Engineer, certifying that grading work including excavation, backfilling, compacting and backfilling work performed by the Subdivider, meets the requirements of the Project's Soils Report and was completed under the supervision of the Project's Geo-technical Engineer (licensed to practice in the State of California).
2. The Project's site grading and on-site storm drainage system shall be designed in such a way that the Project has an overland storm drainage release point to an improved public street with existing and functional storm drainage system. Overland storm drainage release point is a location on the project's boundary where storm runoff leaves the Property and it overland drains to a public street with storm drainage system in the event the Project's entire storm drainage system fails or it is clogged. Residential building finish floor shall be at least 0.70 feet higher than the overland storm drainage release point. City will not allow overland storm drainage release through private properties. Grading and Drainage Plans must show and indicate location and elevation of the overland storm drainage release point and all improvements that are necessary to create a functional overland storm drainage release point for this Project, to the satisfaction of the City Engineer.
3. Prior to the issuance of the Grading Permit, the Subdivider shall submit three (3) sets of the Storm Water Pollution Prevention Plan (SWPPP) and a copy of the Notice of Intent (NOI) submitted to the State Water Quality Control Board (SWQCB) and any documentation or written approvals from the SWQCB. After the completion of the Project, the Subdivider is responsible for filing the Notice of Termination (NOT) required by SWQCB. The Subdivider shall provide the City, a copy of the completed Notice of

Termination. Cost of preparing the SWPPP, NOI and NOT including the filing fee of the NOI and NOT shall be paid by the Subdivider. The Subdivider shall provide the City with the Waste Water Discharge Identification number, prior to the issuance of the grading permit. The Subdivider shall comply with all the requirements of the SWPPP and applicable Best Management Practices (BMPs) and the City's Storm Water Management Program.

4. All grading shall require a Grading Permit. Erosion control measures shall be implemented in accordance with plans approved by the City Engineer for all grading work not completed before October 15. Improvement Plans shall designate all erosion control methods and materials to be employed.

K. Water System

1. The Subdivider shall design and construct water system facilities in accordance with City Regulations, all at the Subdivider's sole cost and expense. These public improvements must be completed by the Subdivider, prior to final inspection of the first residential building constructed within the Property.
2. The Subdivider shall design and install fire hydrants at locations approved by the City's Fire Department. Fire hydrants shall also be installed along the Project's frontage on Brookview Drive, Lasata Drive and Perennial Place in conformance with City Regulations at the locations approved by the City's Fire Department.
3. The Subdivider shall design and install the fire service line for the Project in accordance with City regulations and to the satisfaction of the City's Fire Department. Size, type, location and construction details of the fire service line shall be approved by the Fire Department. Vehicular access through the Project for emergency purposes shall be reviewed and approved by the City's Fire Department. Prior to obtaining the City Engineer's signature on the improvement plans, the Subdivider must obtain written approval from the City's Fire Department, for the location and construction detail of the Project's fire service(s) and emergency access.
4. The existing 8-inch diameter, 4-inch diameter and 3-inch diameter water stubs on Brookview Drive shall remain. Subdivider shall install blind flange at the end of the 8-inch diameter water stub.

L. Sanitary Sewer System

1. The Subdivider shall design and construct sanitary sewer facilities to serve this Project in accordance with the City Regulations.
2. Prior to approval of the first Final Map, the Subdivider shall demonstrate to the satisfaction of the City Engineer, that wastewater facilities (capacities at the wastewater treatment plant and sewer trunk lines or conveyance lines) are adequate to meet project service demands, and are consistent with the City's Wastewater Facility Master Plan.

M. Agreements, Improvement Security, and Insurance.

1. Inspection Improvement Agreement. Prior to the approval of the final map, the Subdivider may request to proceed with construction with the public facilities required to serve the real property described by the final map only if the Subdivider satisfies all of the following requirements to the satisfaction of the City Engineer:
 - a. The Subdivider has submitted all required improvement plans in accordance with the requirements of City Regulations and these Conditions of Approval, and the City Engineer has approved the improvement plans.
 - b. The Subdivider has submitted a complete application for a final map, served by the required public improvements, and the final map is in the process of being reviewed by the City.
 - c. The Subdivider has paid all required processing fees including plan check and inspection fees.
 - d. The Subdivider executes an Inspection Improvement Agreement, in substantial conformance with the City's standard form agreement, by which (among other things) the Subdivider agrees to complete construction of all required improvements, and the Subdivider agrees to assume and accept the risk that the City may not approve the final map.
 - e. The Subdivider posts all required improvement security and provides required evidence of insurance.
 - f. Letter signed by the Subdivider stating that the Subdivider is proceeding with the construction of subdivision improvements at the Subdivider's risk and sole responsibility and indemnifies the City, its elected and appointed officials, employees and consultants, from liabilities, costs and damages, arising out or as a result of the construction of subdivision improvements or allowing the Subdivider to proceed with the construction of the subdivision prior to approval of the Inspection Improvement Agreement.

2. Subdivision Improvement Agreement. Concurrently with the City's processing of a final map, and prior to the City's approval of the final map, the Subdivider shall execute a Subdivision Improvement Agreement (for the public facilities required to serve the real property described by the final map), which includes the Subdivider's responsibility to complete all of the following requirements to the satisfaction of the City Engineer:
 - a. The Subdivider has submitted all required improvement plans in accordance with the requirements of City Regulations and these Conditions of Approval, and the City Engineer has approved the improvement plans.
 - b. The Subdivider has submitted a complete application for a final map, which is served by the required public improvements, and the City Engineer has approved the final map.

- c. The Subdivider has paid all required processing fees including plan check and inspection fees.
 - d. The Subdivider executes a Subdivision Improvement Agreement, in substantial conformance with the City's standard form agreement, by which (among other things) the Subdivider agrees to complete construction of all required improvements.
 - e. The Subdivider posts all required improvement security and evidence of insurance.
3. Deferred Improvement Agreement. Prior to City's approval of the first final map within the Project, the Subdivider shall execute a Deferred Improvement Agreement for public infrastructure improvements, if any, that are required by these Conditions of Approval, and City Regulations that will not be completed with the approval of the first final map, or for subdivision improvements that will be constructed at a later date in accordance with the approved construction phasing of the Project. The Subdivider shall post all required improvement security and submit all required improvement plans and specifications in accordance with the requirements of City Regulations and these Conditions of Approval.
4. Improvement Security. The Subdivider shall provide improvement security for all public facilities, as required by an Inspection Improvement Agreement or a Subdivision Improvement Agreement, or a Deferred Improvement Agreement. The form of the improvement security may be a bond, or other form in accordance with City Regulations. The amount of the improvement security shall be in accordance with City Regulations, generally, as follows: Faithful Performance (100% of the approved estimates of the construction costs of public facilities), Labor & Material (100% of the approved estimates of the construction costs of public facilities), and Warranty (10% of the approved estimates of the construction costs of public facilities). An Engineer's Estimate shall be submitted by the Subdivider, to be approved by the City, for calculation of engineering review fees and for bonding purposes. The Subdivider shall obtain approval from the City for the type and amount of improvement security. The Subdivider shall provide improvement security prepared or issued by an admitted surety provider in the State of California.
5. Insurance. For each Inspection Improvement Agreement and Subdivision Improvement Agreement, the Subdivider shall provide the City with evidence of insurance, as follows:
 - a. General. The Subdivider shall, throughout the duration of the Agreement, maintain insurance to cover Subdivider, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under the Agreement at the minimum levels set forth below.
 - b. Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 11 88) coverage shall be maintained in an amount not less than

\$3,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

- c. Automobile Liability (with coverage at least as broad as ISO form CA 00 01 06 92, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- d. Workers' Compensation coverage shall be maintained as required by the State of California.
- e. Endorsements. Subdivider shall obtain endorsements to the automobile and commercial general liability with the following provisions:
 - f. The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
 - g. For any claims related to this Agreement, Subdivider's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Subdivider's insurance and shall not contribute with it.
- h. Notice of Cancellation. Subdivider shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the City should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- i. Authorized Insurers. All insurance companies providing coverage to Subdivider 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.
- j. Insurance Certificate. Subdivider shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City.
- k. Substitute Certificates. No later than thirty calendar (30) days prior to the policy expiration date of any insurance policy required by the Agreement, Subdivider shall provide a substitute certificate of insurance.
- l. Subdivider's Obligation. Maintenance of insurance by the Subdivider as specified in the Agreement shall in no way be interpreted as relieving the Subdivider of any responsibility whatsoever (including indemnity obligations under the Agreement), and the Subdivider may carry, at its own expense, such additional insurance as it deems necessary.

N. Conditions of Approval Prior to City Release of Improvement Security.

1. The City shall not release any improvement security for faithful performance until after the Subdivider has completed all required public improvements and provided As-built Plans, record drawings and final map in Autocad format all to the satisfaction of the City Engineer and the requirements of Section 12.36.080(d)(1) have been satisfied. Within twenty (20) days after the City's approval of the final map, the City shall provide the Subdivider one (1) set of reproducible duplicates on polyester film of all approved Improvement Plans. Upon completion of the construction by the Subdivider, the City shall temporarily release the originals to the Subdivider so that the Subdivider will be able to document revisions to show the "As Built" configuration of all improvements. The Subdivider shall submit these As-Built Plans (or Record Drawings) to the City Engineer within 30 days after City Council acceptance of the public improvements.
 2. The City shall not release any improvement security for labor and materials (also known as payment) until the statutory time has passed for claimants to file claims with the City on the security and the requirements of Section 12.36.080(d)(2) have been satisfied. Generally, claimants have six months after acceptance of improvements to file a claim.
 3. The City shall not release any improvement security for warranty (also known as maintenance) until satisfactory completion of the 12-month warranty period, expiration of the one year warranty period and there are no deficiency(s) to be corrected as determined by the City Engineer and the requirements of Section 12.36.080(d)(3) have been satisfied.
 4. After the City Council's acceptance of the public improvements, the Subdivider shall prepare a Notice of Completion and file the notice with the San Joaquin County Recorder. The recorded Notice of Completion must be provided to the City together with the letter signed by the Subdivider requesting the release of improvement security.
- O. Benefit District. The Subdivider may make a written request to the City for the formation of a Benefit District only if the written request is made prior to the approval of the final map for which the public facilities are required, and in accordance with these conditions of approval and City Regulations (including the Tracy Municipal Code).
1. The written request shall include a description of all information relevant to the formation of the Benefit District, including the following: the public facility for which the Subdivider requests reimbursement; the estimated costs related to the construction of the public facility; the amount of capacity provided by the public facility; the amount of capacity in the public facility which is supplemental to the capacity required to serve the Project, including a detailed description of the method of allocating capacity; and the dollar amount for which the Subdivider requests reimbursement.
 2. Concurrently with the written request, the Subdivider (hereinafter, "Responsible Subdivider") shall pay the City a processing fee to cover all costs related to the formation of the Benefit District.
 3. After the City has received the required processing fee from the Responsible Subdivider, the City shall prepare a first draft Benefit District Study, and the City shall provide a written notice to all affected property owners, and the City shall accept written comments

on the first draft Benefit District Study for a period not less than 14 days. The written notice shall include, at a minimum, the following elements, each to the satisfaction of the City Engineer:

c(1). A notice of the City's intention to form a Benefit District, and a request for written comments until a specified date not less than 14 days after the date the City sends the written notice.

c(2). A notice of the date, time, and place of a public hearing before City Council will be set to discuss approval of the Benefit District. The hearing will be scheduled no earlier than 14 days after the date the City sends the written notice.

c(3). A description of the geographical area ("Benefit District Area") that will be served by the Benefit District Public Facilities. This description shall include a description of the assumptions regarding amounts and locations of the proposed land uses and/or dwelling unit types within the Benefit District Area. The description shall include maps, graphs, tables, and narrative text, and a numbering system to identify each legal parcel within the Benefit District Area.

c(4). A description of the Benefit District Public Facilities that includes an outline of all essential elements of the Benefit District Study in a level of detail satisfactory to the City Engineer.

c(5). An estimate of all costs related to the construction of the public facilities included in the Benefit District Area. The cost estimate shall include costs of design, construction, construction management, plan check, inspection, land acquisition, program implementation, and contingency.

c(6). An identification of the owners of real property, other than the Responsible Subdivider, which benefit from the Benefit District Public Facility ("Benefiting Subdividers"). The identification of real property owners shall be based upon information from the County Assessors office, or any other more accurate evidence of property ownership provided to the City, as of the date of the notice of public hearing.

c(7). A quantification of the capacity (or benefit) created by the Benefit District Public Facilities, a description of how the Responsible Subdivider and the Benefiting Subdividers benefit from the Benefit District Public Facility, a description of the method of spreading the capacity to the Responsible Subdivider and the Benefiting Subdividers, a description of the method of spreading the cost of the Benefit District Public Facility to the Responsible Subdivider and the Benefiting Subdividers so that there is a reasonable relationship between each development project and the benefit received from the Benefit District Public Facility, and a quantification of the resulting Benefit District Fee.

c(8). A statement that the full text of the final draft Benefit District Study is available for review, upon request, in the office of the City Engineer. The Benefit District Study shall include, at a minimum, the following items prepared to the

satisfaction of the City Engineer, in accordance with City Regulations: a preliminary design based upon technical analysis of the Benefit District Public Facilities, and a precise plan line describing the location of the Benefit District Public Facilities. The precise plan line for any roadway shall take into consideration, and coordinate with, the alignment of all other required public facilities including water, wastewater, and storm drainage, as well as other private utilities.

4. After the City Council approves the Benefit District Study, any final map for any Benefiting Subdivider shall not be approved by the City until the Benefiting Subdivider demonstrates to the satisfaction of the City Engineer that either: (1) the Benefiting Subdivider has entered into a written agreement with the Responsible Subdivider including essential terms in a form substantially the same as that set forth in Condition subsection f, below; or (2) the Benefiting Subdivider has paid a Benefit District Fee to the City (to be reimbursed to the Responsible Subdivider) for the Benefiting Subdividers' proportionate share of all costs related to construction of the Benefit District Public Facilities, in an amount established by the City Engineer (including the City's cost of administering the collection of the fee and reimbursement to the Responsible Subdivider) in accordance with the approved Benefit District Study.
5. After the City Council approves the Benefit District Study, the Benefit District Fee shall be a fixed dollar amount, and the obligation to pay the Benefit District Fee shall be recorded against the real property of all Benefiting Subdividers. Provided, however, that the Responsible Subdivider or any Benefiting Subdivider may apply for an amendment to the Benefit District Study in the event that the Subdivider establishes, to the satisfaction of the City Engineer, that actual construction costs vary from the estimated construction costs by more than 10 percent. The application for the amendment to the Benefit District Study shall include the payment of a processing fee by the Responsible Subdivider to cover the City's estimated costs of reviewing the application. A notice of the request for amendment shall be sent to all Benefiting Subdividers, including all relevant information and notice of public hearing as required by this condition. The amendment shall be subject to the approval of City Council at a duly noticed public hearing.
6. The form of the agreement between the Benefiting Subdivider and the Responsible Subdivider, as referenced in Condition subsection d, above, shall contain, at a minimum, all of the following essential elements, to the satisfaction of the City Engineer: (a) Identifying information including: an identification of the legal names of all relevant parties, an identification of the Benefit District Public Facilities which is the subject of the agreement, an identification of the legal descriptions of all real property benefiting from the Benefit District Public Facilities, a quantification of the dollar amount paid by the Responsible Subdivider for the costs related to construction of the Benefit District Public Facilities, a quantification of the Benefiting Subdivider's proportionate share of the costs related to construction of the Benefit District Public Facilities; and (b) The Responsible Subdivider's signed waiver of rights to any reimbursement in language substantially the same as the following: "The Responsible Subdivider hereby acknowledges that it has received valuable

consideration from the Benefiting Subdivider, in return for which the Responsible Subdivider hereby waives its right to request reimbursement for the Benefiting Subdivider's proportionate share of the costs related to construction of the Benefit District Public Facilities. The Responsible Subdivider shall indemnify, defend, and hold harmless the Benefiting Subdivider and the City of Tracy (including their officials, officers, agents, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of Benefiting Subdivider's failure to pay an in-lieu fee to the City for costs related to construction of the Benefit District Public Facilities."

7. The City shall use reasonable efforts to administer the reimbursements from the Benefiting Subdivider to the Responsible Subdivider. The City shall make reimbursement payments to the Responsible Subdivider only to the extent that the City actually receives reimbursement payments from Benefiting Subdividers pursuant to Condition subsection d, above. Under no circumstances will the City be required to make any reimbursement payments to the Responsible Subdivider unless the City has actually received an equivalent sum in reimbursement payments from a Benefiting Subdivider. The City shall make no reimbursement payments to the Responsible Subdivider until after the construction of the Subregional Public Facilities are accepted as complete by the City Council. The right to receive reimbursement payments, if any, shall be personal to the Responsible Subdivider and shall not run with the land.
8. The Responsible Subdivider shall maintain a file, for a minimum of five years after completion of construction of the Benefit District Public Facility, of all original documents related to: the construction of the Benefit District Public Facility, and all costs for which the Responsible Subdivider seeks reimbursement. The Responsible Subdivider shall provide access to the file to the City, upon reasonable prior notice from the City. After completion of construction of the Benefit District Public Facility, the Responsible Subdivider shall provide access to the file to any Benefiting Subdivider, upon reasonable prior notice from the Benefiting Subdivider.

P. Fees, Deposits, and Reimbursements

1. Subdivider shall pay all applicable impact fees and processing fees in accordance with City Regulations and these Conditions of Approval.
2. The Subdivider shall participate in any applicable Benefit Districts, Assessment Districts, or sub-regional reimbursement areas, in accordance with City Regulations, and shall pay fees or costs determined and identified in the Benefit Districts, Assessment Districts, or sub-regional reimbursement areas, in accordance with City Regulations.
3. Request for release of refundable deposits shall be made with a letter signed by the Subdivider, stating the purpose of the refundable deposit, or reference to a conditions or agreement.

Q. Special Conditions

1. The Subdivider will be required to underground overhead private utilities within the Property and along street frontages including the Project's service connections, in accordance with the requirements of section 7.04.120 of the Tracy Municipal Code (TMC). The limits of undergrounding of overhead utilities will be the total frontage length of the Project and to the nearest pole(s) on both sides of the Project, if such condition exists. If the nearest pole(s) is more than 100 feet, the pole(s) can be relocated so that its final location is 100 feet away from the Project's projected property line.
2. All existing on-site wells shall be abandoned in accordance with the City and San Joaquin County requirements. All costs associated with the abandonment of existing wells including the cost of permits, if required, shall be the responsibility of the Subdivider. The Subdivider shall provide the City documentation or copy of permit issued by the San Joaquin County, approving the removal of destruction of existing well, if applicable, prior to the issuance of the Grading Permit.
3. Prior to recordation of any final map within the Project, the Subdivider shall coordinate with the City and the School District regarding vehicular and pedestrian access to schools from this residential development. The Subdivider shall submit improvement plans to the City showing pedestrian routes, facilities for bus transportation and bike paths for approval by the City, with a letter issued by the School District stating that the plans were reviewed by the School District. The Subdivider shall install signing and pavement marking and striping including school zone improvements as required by the City, all at the Subdivider's sole cost and expense, without reimbursement from the City, with the subdivision improvements.
4. Subdivider has verbally notified the City that it intends to file multiple final maps. If more than one unit is to be recorded on the area of the Tentative Subdivision Map, the Subdivider shall prepare and provide to the City any necessary technical analysis, including any or all of the following: supplemental master plans, subregional studies, or site studies for water mains, sanitary sewers, and storm sewers that will also be consistent with the construction phasing approved by the City for this Project. The City, prior to the submittal of an improvement plan must approve any such required study. Any such required study is subject to review with requested time extension of the approval or life of the Tentative Subdivision Map.
5. Subdivider shall coordinate with the Tracy Post Master for location of, and installation (by Subdivider) of, cluster type mailbox units. Design and construction criteria shall be in accordance with City requirements. Prior to the approval of the Final Map, the Subdivider shall submit a letter signed by the Local Postmaster indicating approval of the location and construction detail of the cluster mail units.
6. Where pavement cuts on City streets are made for utilities connections, including on Brookview Drive and Perennial Place, Subdivider shall apply 2 inches thick asphalt concrete overlay with reinforcing fabric and grind the existing pavement to a uniform depth of 2 inches throughout the entire paved area to be repaired (limits of AC overlay). The limits of AC overlay shall not be less than 25 feet from both sides of

the trench and half of the street. If the street cut goes beyond the pavement centerline, Subdivider shall apply asphalt concrete overlay over the entire width of the pavement and also replace pavement marking and striping affected by the overlay work. Cost of work described in this section shall be paid by the Subdivider, with no reimbursement due from the City.

7. The Subdivider shall design and install street landscaping with automatic irrigation system (with Motorola Controller) on streets within the Project, subdivision entries and on frontages of the Project on Brookview Drive and Perennial Drive in accordance with the City's Streetscape Landscaping Design Standards and the Parks and Parkways Design Manual. Type, size and location of trees on residential streets shall be per City's Streetscape Landscaping Design Standards and the Park and Parkways Design Manual, and must be identified in a tree chart shown on the improvement plans. Irrigation and landscape improvement plans shall be signed and stamped by a Landscape Architect. The final submittal of irrigation and landscape plans must include a signed and stamped cost estimate for the cost of public improvements.
8. The lot between Lots 38 and 39 will be dedicated to the City as a public right-of-way for a pedestrian walkway that will connect the alleyway with the existing mini park north of the Project. Design and construction of improvements within the pedestrian walkway shall meet City standards. Cost of improvements shall be the responsibility of the Subdivider. Necessary pedestrian access easements on Lots 38 through Lot 35 and on Lots 39 through Lots 43 will be dedicated on the final map or in a separate instrument, prior to the issuance of building permit on any of these lots. No mid-block crossing will be allowed on "B" Street and "C" Street.
9. Residential sidewalk on "A" Street, "B" Street and "C" Street shall not be less than 5 feet. The distance from the face of curb to the back of the sidewalk shall not be less than 5.5 feet.
10. Subdivider shall dedicate a 10-foot wide Public Utility Easement (PUE) on the residential lots with frontage on "A" Street, "B" Street and "C" Street, on the final map, for the installation, use, repair, operation and maintenance of public utilities including gas, telephone, TV-cable, electric, and others. At locations where the PUE is less than 10 feet, Subdivider shall obtain a letter from PG&E stating no-objection to the proposed width of the PUE.
11. Subdivider, and/or owner of record, is responsible for assuring the maintenance of public improvements installed in the right-of-way. The public improvements include, but are not limited to, streetscape landscaping, trees, and all improvements as defined in California Streets and Highway Code Sections 22525 et. seq. Subdivider shall be responsible for all formation costs, if applicable. To comply with this obligation, Subdivider, and/or owner of record, shall evidence one of the following prior to approval of Final Subdivision Map(s): (i) participation in an existing Landscaping Maintenance District, or (ii) formation of a new Landscaping Maintenance District that is required to maintain the public improvements installed in City's right-of-way.

12. On December 6, 2005, the City Council adopted a resolution establishing Regional Transportation Impact Fees to be collected by the City for the RTIF Program pursuant to RTIF Technical Report. Rate of fee applicable to any particular type of development was set. Tracy Council Resolution No. 2005-308 is on file with the office of the City Engineer and is available for review upon request. These fees will be collected, administered and adjusted consistent with the RTIP Technical Report and the Regional Transportation Impact Fee Program Operating Agreement. The adopted fees will apply and are payable prior to the issuance of the building permit.
13. Subdivider will be required to pay the San Joaquin County Facilities Fees that were adopted by the City Council on May 17, 2005, per Resolution no. 2005-142. The purpose of the County Facilities Fee Program is to finance the design and construction of region-serving facilities to reduce or soften impacts caused by future development in the San Joaquin County area. The specific facilities were identified in the San Joaquin County Facilities Fees Nexus Report. The adopted County fee for Single-Family Residential is \$1,463 per unit and for Multi-Family Residential is \$1,254 per unit. County update these fees.

Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Tracy, or other public agency having jurisdiction. These Conditions of Approval do not preclude the City from requesting additional revisions and requirements to the improvement plans prior to the City Engineer's signature and approval of the improvement plans if the City deems it necessary. The Developer shall bear all cost for the inclusion, design and implementations of such additions or revisions and requirements without reimbursement or any payment from the City.