

Tuesday, February 21, 2012, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

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

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

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

Presentations to Council - Persons who wish to make presentations which may exceed the time limits are encouraged to submit comments in writing at the earliest possible time to ensure distribution to Council and other interested parties. Requests for letters to be read into the record will be granted only upon approval of the majority of the Council. Power Point (or similar) presentations need to be provided to the City Clerk's office at least 24 hours prior to the meeting. All presentations must comply with the applicable time limits. Prior to the presentation, a hard copy of the Power Point (or similar) presentation will be provided to the City Clerk's office for inclusion in the record of the meeting and copies shall be provided to the Council. Failure to comply will result in the presentation being rejected. Any materials distributed 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 – Stephen Qualls, League of CA Cities - Review of 2011 Legislative Session

1. CONSENT CALENDAR

- A. Minutes Approval
- B. Acceptance of the Widening of Grant Line Road Project (between Bessie Avenue and Macarthur Drive) - CIPs 73052, 74057, 75A0, & 72067, Completed by Desilva Gates Construction of Dublin, California, and Authorization for the City Clerk to File the Notice of Completion
- C. Approve an Offsite Improvement Agreement (OIA), for the Construction of Public Improvements along the Frontage of the Proposed RV Storage Facility to be Located on 4180 North Tracy Boulevard, and Authorization for the Mayor to Execute the OIA
- D. Approve Amendment 7 to the Professional Services Agreement with RBF Consulting, for the Ellis Specific Plan Project
- E. Approving the 2012 Calendar Year Budget for the Operation of the Tracy Material Recovery Facility and Solid Waste Transfer Station
- F. Authorize the Mayor to Execute a Cooperative Agreement with SJCOG for Proposition 1B PTMISEA Funds in the Amount of \$55,531 for the Purchase of a Transit Bus and Appropriate the Funds to CIP 77542

2. ITEMS FROM THE AUDIENCE

- 3. PUBLIC HEARING TO CONSIDER A PRELIMINARY AND FINAL DEVELOPMENT PLAN APPLICATION FOR A CALIFORNIA HIGHWAY PATROL FACILITY AND A CONDITIONAL USE PERMIT APPLICATION FOR A TELECOMMUNICATION FACILITY ON A SITE TOTALING APPROXIMATELY 4.7 ACRES ON PESCADERO AVENUE, APPROXIMATELY 2,100 FEET EAST OF MACARTHUR DRIVE, ASSESSOR'S PARCEL NUMBER 213-070-75. APPLICANT IS KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS AND PROPERTY OWNER IS PONY UP TRACY, LLC. APPLICATION NUMBERS D11-0007 AND CUP11-0005
- 4. PUBLIC HEARING TO ADOPT TAXI RATE FEES EFFECTIVE MARCH 1, 2012 AS RECOMMENDED BY STAFF
- 5. CITY COUNCIL DIRECTION RELATED TO AMENDING A DEVELOPMENT AGREEMENT WITH SURLAND COMMUNITIES, APPLICATION DA11-0002
- 6. ACCEPT THE GENERAL FUND FY 11-12 MID-YEAR FINANCIAL REPORT

7. HEAR REPORT AND PROVIDE DIRECTION REGARDING ASSUMPTIONS CONSIDERED IN COMPILING A FIVE YEAR GENERAL FUND BUDGET FORECAST
8. ITEMS FROM THE AUDIENCE
9. STAFF ITEMS
 - A. City Council Review and Provide Direction Regarding Staff's Proposal to Expand the Provisions of the Existing Boarding of Buildings with Unsecured Openings Ordinance
10. COUNCIL ITEMS
11. ADJOURNMENT

November 15, 2011, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

The invocation was provided by Deacon Jack Ryan.

Roll call found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel and Mayor Ives present.

Mayor Ives presented a Certificate of Recognition to Bill Fields, founder of Surtec Adopt-A-Family Program, Inc. for their generosity and support of the Tracy community for the past 20 years.

Mayor Ives recognized D.A.R.E graduates from Bohn, Central, McKinley, North and Villalovoz Elementary Schools.

1. CONSENT CALENDAR - Following the removal of item 1-B by Mayor Pro Tem Maciel, it was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt the consent calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Minutes Approval – Special meeting minutes of October 4, 2011, and closed session minutes of November 1, 2011, were approved
 - C. Authorize Amendment of the City's Classification and Compensation Plan and Position Control Roster by Approving the Establishment of Class Specification and Salary Range for Senior Accountant in the Finance and Administrative Services Department; Authorize Amendment of the City's Classification Plan by Approving a Revised Class Specification for Equipment Mechanic II in the Public Works Department – Resolution 2011-214 authorized the amendment.
 - D. Adoption of Resolution Supporting the Extension of the San Joaquin County Abandoned Vehicle Abatement Program until April 2022 – Resolution 2011-215 supported the extension.
 - B. Award a Construction Contract for the Traffic Signal Coordination – Grant Line Road (CCTV Installation) Project – CIP 72076 (Federal Project No. CML 5192-031), to W. Bradley Electric, Inc., of Novato, California, and Authorize the Mayor to Execute the Contract – Kuldeep Sharma, City Engineer, presented the staff report. The project provides for the installation of six closed circuit television (CCTV) cameras at six signalized intersections including the Wal-Mart entrance, Joe Pombo Parkway, Corral Hollow Road, Tracy Boulevard, Holly Drive and MacArthur Drive on Grant Line Road from the western city limits to MacArthur Drive. The cameras will enable staff to monitor traffic conditions at these intersections from the City's traffic control center located in the Support Services

Building and adjust timing to enhance traffic circulation in the area. Other cities installing such cameras include Pleasanton, Livermore, Fremont and Modesto.

Project design, improvement plans, specifications, and contract documents were prepared by TJKM Transportation Consultants of Pleasanton. The project was advertised for competitive bids on September 5 and September 12, 2011. The City received five bids on October 5, 2011.

W. Bradley Electric, Inc., is the lowest monetary bidder. The bid analysis indicates that the bid is responsive and the bidder is responsible. The contractor has good references and has completed similar projects for the City and other agencies.

A total of \$164,000 is budgeted for this project. The City has received a grant of \$120,000 from the state. The remaining funding will come from the Gas Tax Fund. Construction is anticipated to begin by December 1, 2011. Completion is expected by the end of February 2012.

Staff recommended that the Council award a construction contract to W. Bradley Electric., of Novato, California in the amount of \$116,500, for the Traffic Signal Coordination – Grant Line Road (CCTV Installation) Project – CIP 72076 (Federal Project No. CML 5192-031), and authorize the Mayor to execute the contract.

Mayor Pro Tem Maciel asked if the cameras have the ability to record and, therefore, the ability to aid in a collision investigation. Mr. Sharma stated there was no intent to record or video the intersections at this time.

In response to a question from Mayor Pro Tem Maciel regarding the cost of the software, Mr. Sharma responded it would be less than \$1,000. Mayor Pro Tem Maciel suggested it would be smart to take advantage of that possibility. Mr. Sharma stated staff could look into that possibility.

Council Member Abercrombie asked if Council wanted to pursue that option, should the item be pulled and brought back. Mr. Sharma stated the request was to award the construction contract. Mr. Churchill suggested that item could be done separately.

It was Council consensus to bring back information regarding the ability to record traffic.

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

Council Member Elliott asked if this system was intended as a prelude for adaptation later on for enforcement of traffic violations. Mr. Sharma stated the cameras used to document stop light violations were different and installed at different angles.

Council Member Elliott asked if this system was strictly for traffic flow. Mr. Sharma stated yes.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Elliott to adopt Resolution 2011-216 awarding a construction contract for the Traffic Signal Coordination – Grant Line Road (CCTV Installation) Project – CIP 72076 (Federal Project No. CML 5192-031), to W. Bradley Electric, Inc., of Novato, California, and authorizing the Mayor to execute the contract. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE - Josh Burwick and Courtney Scott, residents from outside of Tracy, addressed Council regarding an incident that took place on October 2, 2011, at the Great Plate. Mr. Burwick and Ms. Scott indicated they were victimized by police, and assaulted by multiple people including security. Mr. Burwick and Ms. Scott further indicated they had to call the Tracy Police to file a report (11-6966), and have not been called to identify the attackers. Mr. Burwick and Ms. Scott added the police report has been closed leaving them with an unresolved issue. Mr. Burwick and Ms. Scott suggested there was a cover up and that they wanted Council to be aware of the situation. Mr. Burwick asked for Council's assistance and indicated he would e-mail a copy of the report.

Marsha McCray, 550 W. Schulte, addressed Council regarding the recent ruling on the Aquatic Center. Ms. McCray stated TRAQC was ignoring the wishes of the community and the community was being held captive by TRAQC. Ms. McCray thanked staff and Council for their support.

Sue Rainey, 1328 Hamlet Court, addressed Council regarding the Ellis project. Ms. Rainey asked Council to continue working toward completion of the Ellis project.

Dave Helm, 1000 Central Avenue, addressed Council regarding the closing of his business due to a structural deficit in the building. Mr. Helm thanked friends and patrons for their support, and added the Code Enforcement Division did the right thing in closing the business.

3. DISCUSS AND PROVIDE DIRECTION ON THE REGULATION OF MEDICAL MARIJUANA - Dan Sodergren, City Attorney, presented the staff report. At the City Council meeting held on November 1, 2011, Council Member Rickman requested staff to present options to the Council relating to the regulation of medical marijuana cultivation.

The regulation of medical marijuana is subject to differing legal standards on the federal, state, and local level. Under both state and federal law, it is illegal to possess or cultivate marijuana. However, state law provides that such state law criminal provisions do not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the approval of a physician.

Notwithstanding federal and state law, the City may restrict the location, operation, or establishment of medical marijuana uses based on its land use and police power authority. However, while the City may restrict such uses, it may not specifically permit them because they are illegal under federal law.

Currently, medical marijuana uses, including cultivation (either as a primary use or as an accessory residential use in a backyard), are not allowed under the City's Zoning Ordinance because they are not specifically permitted in any of the City's zoning districts. Therefore, under the Tracy Municipal Code ("TMC"), such uses are considered public nuisances.

The Council could direct staff to present it with an ordinance clarifying the existing ban on such uses under the TMC by specifically referencing medical marijuana uses as not being allowed in any of the City's zoning districts.

Alternatively, the City Council could direct staff to present it with an ordinance that contains certain restrictions on medical marijuana uses (e.g., restricting or banning outdoor or all cultivation) and establishes immunity from civil and criminal enforcement of the TMC for those who operate in strict compliance with its terms.

Under both state and federal law, it is illegal to possess, distribute, or cultivate marijuana. However, state law provides that such state law criminal provisions do not apply to a patient, or to a patient's primary caregiver, who possesses, distributes, or cultivates marijuana for the personal medical purposes of the patient upon the approval of a physician.

The federal Controlled Substances Act ("CSA") was enacted in 1970 as part of President Nixon's "war on drugs." (21 U.S.C. §§801 – 904.) The CSA criminalizes the unauthorized manufacture, distribution, dispensing, and possession of substances classified in any of the Act's five schedules. The CSA includes marijuana on schedule I, the schedule of controlled substances that are subject to the most restrictions. (21 U.S.C. §812.) Drugs on other schedules may be dispensed and prescribed for medical use; drugs on schedule I may not.

Therefore, the CSA makes it illegal to manufacture, distribute, or possess marijuana. (21 U.S.C. §§ 841, 844.) It is also illegal under the CSA to maintain any place for the purpose of manufacturing, distributing, or using any controlled substance. (21 U.S.C. §856(a)(1).)

B. The Compassionate Use Act ("CUA")

The state Compassion Use Act ("CUA") was approved by voters as a ballot initiative in 1996. The CUA provides that certain state law criminal provisions relating to the possession and cultivation of marijuana "shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician." (Health & Saf. Code, §11362.5(d).) Apart from possession and cultivation, the CUA did not alter the other state statutory criminal prohibitions related to marijuana, including those that bar transportation, possession for sale, and sale. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747.)

C. The Medical Marijuana Program Act ("MMPA")

In 2003, the state Legislature enacted the Medical Marijuana Program Act ("MMPA"). (Health & Saf. Code, §§ 11362.7 – 11362.83.) The intent of the MMPA was to: (1) clarify the scope of the CUA and facilitate the prompt identification of qualified patients and

their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers; (2) to promote uniform and consistent application of the CUA; and (3) to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects. (Stats. 2003, ch. 875, §1.)

The MMPA created a voluntary program for the issuance of identification cards to qualified patients and primary caregivers. (Health & Saf. Code, §11362.71.)

The MMPA expressly immunizes from criminal liability qualified patients, persons with identification cards, and primary caregivers who transport or process marijuana for the personal medical use of a qualified patient or person with an identification card. (Health & Saf. Code, §11362.765(b)(1)-(2).) The MMPA also created an affirmative defense to criminal liability for qualified patients, persons with identification cards and primary caregivers who collectively or cooperatively cultivate marijuana. (Health & Saf. Code, §11362.775.)

III. The City's Ability to Restrict Medical Marijuana Uses

Notwithstanding the CUA and the MMPA, the City may restrict the location, operation, or establishment of medical marijuana uses based on its land use police power authority. However, while it may restrict such uses, it may not specifically permit such uses because they are illegal under federal law.

A. The City May Restrict Medical Marijuana Uses Based on its Police Power and Land Use Authority

Case law has made clear that neither the CUA nor the MMPA preempts cities from enforcing zoning requirements related to medical marijuana uses.

This has also been statutorily clarified. For example, the CUA expressly states that: "Nothing in this [Act] shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others . . ." (Health & Saf. Code, §11362.5(b)(2).) Similarly, the MMPA provides that "Nothing in this [Act] shall prohibit a city . . . from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider." (Health & Saf. Code, § 11362.768(f).)

Finally, as part of the 2011-2012 Regular Session, the Legislature adopted Assembly Bill ("AB") 1300. AB 1300 amended Health and Safety Code section 11362.83 to read as follows:

Nothing in this article shall prevent a city or other local governing body from adopting and enforcing any of the following:

- (a) Adopting local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective.
- (b) The civil and criminal enforcement of local ordinances described in subdivision (a).

(c) Enacting other laws consistent with this article.

B. Although the City May Restrict Medical Marijuana Uses, it May Not Permit Such Uses Because They are Illegal Under Federal Law

Although the City may restrict medical marijuana uses, it may not permit such uses because it would conflict with federal law. This was made clear in the recent case of *Pack v. Superior Court (City of Long Beach)* (2011) 199 Cal.App.4th 1070.

At issue in *Pack* was a comprehensive regulatory scheme enacted by the City of Long Beach by which medical marijuana collectives with the City are governed. The City charges an application fee, holds a lottery, and issues a limited number of permits. Permitted collectives, which must then pay an annual fee, are highly regulated, and subject to numerous restrictions on their operations.

The court in *Pack* found that, because the City's regulatory scheme *permitted* medical marijuana collectives rather than merely decriminalized specific acts, it was preempted by federal law. The court pointed out that: "The City's permit system . . . provides that collectives with permits may collectively cultivate marijuana with the City *and those without permits may not*. The City's permit is nothing less than an *authorization to collectively cultivate*."

Nevertheless, the court in *Pack* found that some of the regulations that were adopted by the City were in not in conflict with federal law because they did not permit or authorize activity prohibited under federal law. For example, the City's ordinance included provisions: (1) prohibiting a medical marijuana collective from providing medical marijuana to its members between the hours of 8:00 p.m. and 10:00 a.m.; (2) prohibiting a person under the age of 18 from being on the premises of a medical marijuana collective unless that person is a qualified patient accompanied by his or her physician, parent or guardian; and (3) prohibiting the collective from permitting the consumption of alcohol on the property or in its parking area. The court found that these provisions were not preempted by federal law.

IV. The City of Tracy's Zoning Ordinance

Under the City's Zoning Ordinance, any use that is not specifically authorized in a particular zone is prohibited. (Tracy Municipal Code ("TMC"), §10.08.1070.) Therefore, unauthorized uses are considered public nuisances. (TMC, §1.04.050.)

Medical marijuana uses, including cultivation (either as a primary use or as an accessory residential use in a backyard), are not allowable uses in any of the City's zoning districts.¹ Therefore, such uses are not allowed and are considered public nuisances.

In 2006, the City issued an Order to Abate Public Nuisance or Show Cause on the owners and operators of a medical marijuana dispensary, known as the Valley Wellness Center Collective, Inc., that was located at 130 West 11th Street. After a hearing on the Order, the Hearing Officer determined that the dispensary did not fall within any permitted uses with the City's Central Business District ("CBD") Zone in which it was located, and as such, was an unauthorized use in violation of the TMC. The Hearing Officer deemed the use a public nuisance and ordered that it be abated. The medical marijuana dispensary shut down as a result of the ruling.

V. Options

A. Clarify That Medical Marijuana Uses are Not Allowed Under the City's Zoning Ordinance

The City Council could direct staff to present it with an ordinance clarifying the existing ban on such uses under the TMC.

Such an ordinance would: (1) add a new section to Chapter 1.01 of the TMC (Adoption of Code) to clarify that "No use authorized under this code shall violate state or federal law"; and (2) add a new section to Article 23 of the Zoning Ordinance (General Provisions, Conditions, and Exceptions) expressly prohibiting medical marijuana uses in all zoning districts.

The purpose of adopting such a clarifying ordinance would be twofold: (1) to provide clear notice to the public that medical marijuana uses are prohibited under the TMC; and (2) to assist staff and the courts in interpreting and implementing the provisions of the TMC related to the use of medical marijuana.

Under this option, code enforcement would continue to enforce the Zoning Ordinance's prohibitions on such uses.

B. Restrict Medical Marijuana Uses and Provide Immunity from Prosecution Under the Tracy Municipal Code

Alternatively, the City Council could direct staff to present it with an ordinance that contains restrictions on medical marijuana uses and establishes immunity from prosecution under the TMC for those who operate in strict compliance with its terms.

As an example, the City of San Jose recently adopted an ordinance that: (1) requires medical marijuana collectives to register with the City; (2) restricts the number and location of collectives; (3) and provides operating regulations and conditions including those relating to cultivation (i.e., conditions relating to safety and operating hours). San Jose's ordinance makes clear that is intended only to establish an affirmative defense to criminal and civil enforcement of the San Jose Municipal Code (as such uses continue to be deemed "nuisances" under the San Jose Municipal Code because they conflict with federal law).

Although such an ordinance would establish immunity from prosecution under the TMC, it would not immunize medical marijuana uses from prosecution under federal law. This is important to keep in mind. On October 7, 2011, California's four U.S. attorneys held a

joint press conference announcing increased enforcement of federal laws criminalizing the cultivation and sale of medical marijuana and authorizing the seizure of real property used for such activities.

Under this option, code enforcement would not enforce the Zoning Ordinance's prohibitions on such uses as long as they complied with the restrictions contained in the ordinance.

Staff suggested Council consider:

- An ordinance clarifying that medical marijuana uses are not allowed under the City's zoning ordinance
- An ordinance restricting medical marijuana uses and providing immunity from prosecution under the TMC for those who strictly comply with the ordinance.

Mayor Pro Tem Maciel asked what enforcement options would be available under Option 1. Mr. Sodergren stated a citation for violating the TMC. Mayor Pro Tem Maciel asked if the plants could be seized. Mr. Sodergren responded staff would have to look into that.

Mayor Pro Tem Maciel asked if a resident possessed a medical marijuana card would they be immune from arrest under state law. Mr. Sodergren stated that was correct.

Mayor Pro Tem Maciel asked for clarification under Option 2. Mr. Sodergren stated under Option 2, the City would adopt restrictions regarding cultivation and the operation of collectives. If the individuals followed the Code no citations would be issued.

Council Member Elliott asked if Option 1 clarified the City's position. Mr. Sodergren stated there has been more clarity in the cases, but that it is more involved when a city has permissive zoning. Mr. Sodergren stated if there is something clearly in the Code that you can point to, it makes it much easier.

Council Member Elliott asked what would be the likelihood that the City would be sued to not uphold the federal law under Option 2. Mr. Sodergren stated he believed the important thing would be if an ordinance was adopted not authorizing them or permitting them, and would still be illegal in the City; that the City decided not to enforce those prohibitions.

Council Member Elliott asked if the City we were to pursue Option 2, what kind of dilemma would be added to police officers' duties. Gary Hampton, Police Chief, stated officers were not cross designated as federal officers, and therefore not required to enforce federal law. In some cases they are not allowed to arrest for federal violations. Chief Hampton stated the impact would be to the quality of life and attractive nuisances, especially in residential neighborhoods. Chief Hampton stated his greater concerns are the health and safety issues of cultivation in residential neighborhoods. Chief Hampton outlined some of the nuisances including burglaries and robberies, obnoxious odors, numerous complaints, and heavy traffic suggesting sales are occurring. Chief Hampton indicated Option 1 would more succinctly state what the zoning regulations are. Chief Hampton added he could not support Option 2.

Council Member Rickman asked Chief Hampton to elaborate on who can cultivate marijuana. Chief Hampton stated the law was vague on who may cultivate and provided an example of a residence that has six individuals cultivating in one yard.

Council Member Rickman stated his concern was public safety and the way the cultivators protect their homes. Council Member Rickman asked what would happen if the Police Department received a call and found 20-30 plants. Chief Hampton stated the officer would confirm that he has the appropriate paperwork. If not, the issue would be referred to the Code Enforcement division to pursue action through zoning violations.

Council Member Rickman asked what Council could do to remedy the situation. Chief Hampton stated Option 1 was the answer.

Council Member Rickman indicated the City of Ripon's ordinance seemed to be thorough and that other cities were ratcheting up their enforcement capabilities. Mr. Sodergren stated all those remedies would be available under Option 1.

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

Joseph Smith, Tracy resident, provided a handout regarding the struggles his family has endured because of a neighbor who cultivates medicinal marijuana. Mr. Smith urged the Council to act to protect his family, neighbors and community.

Dave Tillman, 610 Forest Hills, addressed Council regarding the intrusions on his property. Mr. Tillman urged Council to act on the item.

Dave Helm urged Council to consider what the County was doing with this problem. Mr. Helm stated he agreed that the hazards to the public need to be dealt with. Mr. Helm suggested Council consider action similar to what the County enforces and what the courts are willing to do.

A member of the audience stated he has been dealing with the problem on Cumberland for many years. The resident cited various crimes committed in the neighborhood due to the marijuana problem, and asked Council to do what they could to put a stop to the problem.

Danielle, Tracy resident, addressed Council regarding the current medical marijuana legislation. Danielle asked that an ordinance be passed to get the problem under control.

Scott Mitchell, 570 Forest Hills, voiced his concerns regarding the problem including the obnoxious odors and dangers for small children. Mr. Mitchell stated it has become a major problem and a public nuisance.

Ricky Hipp asked how this would affect those who grow marijuana plants indoors. Chief Hampton stated the indoor grows were equally problematic and represented an entire list of other health concerns and issues.

Mayor Pro Tem Maciel asked if neighbors can petition the court due to the nuisance issue. Chief Hampton stated there were certain civil processes neighbors could pursue to seek cease and desist orders.

Chief Hampton asked that anyone who was aware of any criminal activity should contact the Police Department; don't assume that no action has been taken. Chief Hampton reminded everyone that the Police Department was the investigative department and not the prosecuting arm.

Council Member Elliott asked if the City prohibited marijuana cultivation in the City limits, would the City be able to win a case or be able to remove marijuana found to be grown in the City limits. Mr. Sodergren stated he believed the plants could be removed as long as the process was followed and the City succeeded in any court action.

Council Member Abercrombie encouraged Chief Hampton and Mr. Sodergren to come up with an ordinance that provides the Police Department with the teeth to enforce it. Council Member Abercrombie indicated it appeared Option 1 was the best alternative.

Mayor Ives asked for clarification regarding Option 1. Mr. Sodergren stated if an ordinance was adopted, it would be fairly comprehensive and include dispensaries, cultivation, etc.

Mayor Pro Tem Maciel clarified that this is not a criminal matter and would be dealt with by code enforcement and the stricter, the better. Mayor Pro Tem Maciel suggested if there was a way to accelerate the process, it should be looked at. Mayor Pro Tem Maciel indicated he supported Option 1.

Council suggested staff work on an ordinance (option 1) and bring it back for consideration.

Council Member Elliott stated this is part of the Council's efforts to ensure City streets are safe for residents. Council Member Elliott stated he believed Option 1 was taking a step in that direction.

Council Member Rickman asked how quickly an item could be returned to Council for consideration. Mr. Sodergren stated that because it involves a zoning ordinance, it would have to go to the Planning Commission first.

Council Member Rickman asked if it could be expedited. Mr. Sodergren stated staff would do their best.

Council Member Rickman thanked everyone who spoke and voiced their concerns.

Chief Hampton asked anyone who believed a marijuana grow was occurring to please contact the Police Department who will investigate.

Mayor Ives called for a recess at 8:59 p.m. The meeting was reconvened at 9:08 p.m.

4. CONSIDERATION OF A PROPOSED INCREASE TO SOLID WASTE RATES AND AUTHORIZE STAFF TO HOLD A PUBLIC HEARING FOR THE ADOPTION OF PROPOSED SOLID WASTE RATES - Kevin Tobeck, Public Works Director, presented the staff report. The City maintains a Franchise Agreement with Tracy Delta Disposal Service Inc. (Tracy Disposal) for the collection of solid waste within Tracy. The City also maintains a Service Agreement with Tracy Material Recovery and Solid Waste Transfer Inc. (Tracy MRF) for the recycling, composting, processing, and disposal of solid waste. The City bills for all of Tracy Disposal and Tracy MRF services within Tracy and maintains a Solid Waste Fund that receives all revenues from collection rates. The funds received from rate collection must be sufficient to cover:

- Tracy Disposal's Service Fees;
- Tracy MRF Service Fees
- Disposal expense (tipping fees), which is paid directly by the City;
- Franchise fees;
- Bond covenant requirements; and
- Other expenses and reserves as are determined to be necessary by the City

In order to strategize a solution to the forecasted depletion of the Solid Waste Fund, R3 Consulting Group (R3) was retained by the City to perform a Fiscal Analysis and to provide a Rate Review Report of the City's Solid Waste Fund. The PSA scope of services required R3 to review the City's Solid Waste Fund operating budgets and provide a financial model used to adjust solid waste rates. An additional goal of the rate setting process is to establish fair and equitable distribution of costs among ratepayers.

The following factors were analyzed by R3 and City staff to determine that a rate increase was necessary:

Bond Requirements: Pursuant to the covenants of the bond requirements, a rate increase is warranted. The bond Consent and Agreement states that the City shall cause the Waste System Debt Service Coverage Ratio to be equal to at least 1.3 to 1 for each calendar quarter. In the event that the Waste System Debt Service Coverage Ratio falls below 1.3 to 1 for any calendar quarter, the City shall increase the Waste System Revenues until the Waste System Debt Service Coverage Ratio is equal to at least 1.3 to 1 by the next calendar quarter end. The City's Finance Department indicates that the current Waste System Debt Service Coverage Ratio is less than 1.3 to 1, thus justifying an increase in rates to raise revenues.

Increased Operational Costs: Tracy Disposal continues to be the City's exclusive garbage collection and disposal franchise hauler. Tracy Material Recovery continues to receive and process all municipal waste from the City of Tracy and plays an integral role in meeting the diversion requirements as mandated by AB939. Since the City's last rate increase in 2007, Tracy Disposal and Tracy Material Recovery have implemented reductions in operating costs, such as reduced labor and utilization of new technology. However, they continue to experience rising costs due to such factors as increased regulatory compliance to meet California Air Resources Board emission requirements for solid waste collection vehicles and processing equipment, fuel, and health insurance. Fuel costs year to date for 2011 are running \$3.90 per gallon as compared to \$2.70 in January, 2010. Health benefits continue to climb from 15% to 18% annually. Landfill

disposal rates from 2007 to January 2012 will have increased 22.5%, which is a \$6.30 per ton increase totaling an estimated \$341,000 additional cost for 2012. Significant drops in the recyclable markets, although staging a recent recovery, have also reduced revenues. Tracy Disposal and Tracy MRF are requesting a 9.5% and 23% increase respectively for their portion of the fees pertaining to collection, recycling, composting, processing, disposal costs, and regulatory compliance.

City Franchise Fee: The existing franchise agreement provides for a franchise fee in the amount of 10%. Such fee is a pass through cost directly supported by solid waste rates. The fee amount should be included in rates in addition to all other fees and expenses of the contract provider. During the review of City budget matters by Management Partners, it was noted that the City had only been collecting a 3% franchise fee. As such, the City began collecting the 10% franchise fee and the solid waste fund balance was sufficient for a period of time to cover this amount until the next rate setting process which would need to take the correct franchise fee of 10% into account when establishing new rates. This resulted in an additional cost to the Solid Waste Fund in Fiscal Year 2010/2011 of \$782,600 and a forecasted cost of approximately \$785,000 for Fiscal Year 2011/2012.

Additional Factors: The Solid Waste Fund has also been significantly affected by the housing market (foreclosures). Homes that are vacant do not pay for solid waste and recycling collection. This is lost revenue to the Solid Waste Fund, which, unlike water and sewer services, are still collected on foreclosed homes. Total Solid Waste Revenue for FY 2007/2008 was \$17,600,000 compared to FY 2010/2011 at \$16,000,000. The Solid Waste Fund is also being required per AB32 to implement a Mandatory Commercial Recycling Program enforceable by July 1, 2012.

Using the Solid Waste Fund Rate Model, provided by R3 Consulting Group, there are three rate adjustment scenarios for review that will provide a sufficient operating reserve fund balance. Scenario one proposes a one-time increase of 24% in FY 2011/2012.

The second scenario of a 17.7% increase in the first year with a 6% increase in FY 2012/2013 and a 5% increase in FY 2013/2014 will have a proposed rate adjustment of 28.7%, but due to compounding will be 31% over the next three years. Scenario three has a 12% increase for the first year, 10% increase for FY 2012/2013 and a 9.5% increase for 2013/2014 which will have a proposed rate adjustment of 31.5%, but again after compounding will result in a 35% rate change over the next three years. After the review of each scenario, staff recommends scenario one.

A proposed rate increase of 24% effective January 1, 2012 will alleviate the revenue shortfall to the Solid Waste Enterprise Fund and will provide a positive fund balance through Fiscal Year 2014/2015 and meet debt service coverage ratios. Other factors considered were the contracted service costs and comparable rates for similar services in neighboring jurisdictions.

The rate increase is proposed for Fiscal Year 2011/2012 beginning on January 1, 2012. The City will continue to review operational balances to determine when additional increases will be needed in the future.

The standard residential garbage and recycling fee will increase from \$29.45 a month to \$36.50 a month effective January 1, 2012. The rate adjustment will increase revenue to the Solid Waste Enterprise Fund by approximately \$2,000,000 for Fiscal Year 2011/2012. The General Fund will be supplemented by approximately \$785,000 annually for the increased Franchise Fee.

Staff recommended that the Council consider a proposed increase to solid waste rates and authorize staff to move forward with a public hearing for the adoption of the proposed solid waste rates.

Mayor Ives asked for clarification regarding what staff was requesting. Mr. Tobeck indicated staff would like guidance on what option Council preferred.

Council Member Abercrombie asked if Council chose the 24% increase, would that mean no increase until FY 14/15. Mr. Tobeck stated yes, based on current forecasting.

Mayor Pro Tem Maciel asked how many years it has been since the last increase. Mr. Tobeck stated the last increase took place in 2007. Mr. Sodergren suggested identifying which alternative Council was in favor of before the public notice is issued.

Council Member Elliott asked what other action could be taken if Council chose not to increase the fees. Mr. Tobeck stated it would be difficult to make further service reductions; however, one option would be to adjust the franchise fee.

Zane Johnston, Director of Finance and Administrative Services, stated the franchise fee was intended to compensate the City for the rent of the infrastructure. Mr. Sodergren stated the franchise fee is capped at 10%.

Council Member Elliott asked if the 24% increase was an increase of the user fee to keep the Enterprise Fund solvent. Mr. Johnston stated almost all cities ensure that all utilities are self-sustaining.

Mayor Ives asked staff to explain compounding. Mr. Tobeck explained the process.

Mayor Ives opened the public hearing.

Jay Morrey Gonzales asked what was done with the revenue generated from recycling. Mr. Tobeck stated the agreement the City has with the Material Recovery Facility states that part of the profit generated from recycling is used to cover the cost of the operation and any remaining profit is shared with the City. Mr. Johnston added it does offset rates.

Christine Frankel, 175 Victoria Street, stated managing waste was a key to sustainability and the existing plan does not address Council's sustainability program. Ms. Frankel indicated the City has not provided any choices in reducing waste and suggested Council not approve the request.

Robert Tanner, 1371 Rusher Street, asked why commercial customers have several options while residents only have two options. Mr. Tobeck stated a considerable amount of effort that went into analyzing commercial and residential plans. Mr. Tobeck introduced Scott Stortroen, Tracy Material Recovery. Mr. Stortroen provided a history of

how the totter sizes were decided upon. Mr. Stortroen stated a retrofit of the trucks would have to occur if smaller totters were considered, at a considerable expense.

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

Council Member Elliott stated the fiscally responsible thing would be to increase the rate so it can sustain itself.

Mayor Pro Tem Maciel stated an enterprise zone has to pay for itself and suggested that in the future the City could consider smaller increases vs. a one-time larger increase.

Council Member Rickman asked if the increase was due to the rate of foreclosures. Mr. Tobeck stated it could get better if the number of foreclosures decreased. Mr. Johnston added currently there were approximately 800 vacant homes in the City which represents between \$400,000 and \$500,000 per year in lost revenue.

Council Member Abercrombie asked if there were educational programs available. Mr. Tobeck stated there were a number of programs available. Jennifer Cariglio, Solid Waste Coordinator, visits schools and looks for events to promote recycling in the City.

Mayor Ives stated it was a hard pill to swallow and an unfortunate result of today's economy.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Elliott to direct staff to advertise a 24% rate increase. Voice vote found all in favor; passed and so ordered.

5. ACCEPT THE POLICE DEPARTMENT'S REORGANIZATION EFFORTS: AUTHORIZE AMENDMENT TO THE CITY'S CLASSIFICATION AND COMPENSATION PLANS AND POSITION CONTROL ROSTER BY APPROVING THE ESTABLISHMENT OF CLASSIFICATION SPECIFICATION AND SALARY RANGE FOR POLICE SUPPORT OPERATIONS MANAGER AND PROFESSIONAL STANDARDS OFFICER AND APPROVING THE ADDITION OF ONE POLICE CAPTAIN POSITION, ONE POLICE SUPPORT OPERATIONS MANAGER AND ONE PART-TIME PROFESSIONAL STANDARDS OFFICER - Maria Olvera, Human Resources Director, presented the staff report. On October 4, 2011, the City Council approved Resolutions 2011-185, 2011-186, and 2011-187, granting designated periods for two years additional service credit with the California Public Employees' Retirement System and the City's future organizational structure.

Recent change of leadership at the Police Department has provided an opportunity to reassess efficiencies and the effectiveness of the Department. The Police Chief, assisted by Police Department Command and Supervisory staff, completed an evaluation of the current organizational structure, seeking to ensure the greatest focus of organizational resources are directed toward serving the community at first line service levels. Utilizing the incentivized retirement program, the following positions are planned to be eliminated: two Police Sergeants, two Community Service Officers (non-sworn), one Crime Prevention Specialist (non-sworn), and one Administrative Assistant.

The planned structural reorganization of the Police Department effectively adds back the following positions to personnel staffing: one Police Captain, one non-sworn Police Support Operations Manager, one non-sworn Records Unit Supervisor, and one non-sworn Professional Standards Officer (part-time).

Through this plan, sworn staffing remains at 85 sworn personnel - one Chief of Police, two Captains, four Lieutenants, 10 Sergeants, and 68 Police Officers. Non-sworn staffing is reduced from 42 to 40 - one Police Support Operations Manager, one Records Unit Supervisor, one Communications Unit Supervisor, two Executive Assistants, two Administrative Assistants, one Crime Prevention Specialist, one Animal Services Supervisor, four Animal Services Officers, one Crime Analyst, 12 Communications Operators, one Crime Scene Unit Supervisor, four Crime Scene Technicians, two Community Service Officers, and seven Records Assistants.

The planned redeployment of existing staff, in concert with elimination and reallocation of specific staff positions, is designed to achieve the following goals:

- Enhanced Command structure achieving greater accountability and enhanced risk management;
- Increased staff deployment at first line service levels;
- Dedicated focus on suppression and eradication of gang and street crimes;
- Gained efficiencies through an organizational structure recommended by POST;
- Offset the cost of reorganization and achieve ongoing operational cost reduction;
- Preparation for future organizational growth;
- Succession planning; and
- Sustainment of current sworn staffing levels.

Based on the results of the classification study, the Human Resources Department recommends that the City's Classification and Compensation Plans and the Position Control Roster be amended to incorporate the following adjustments:

Establish Classification Specification and Salary Range: Police Support Operations Manager:

Staff recommends a salary range for Police Support Operations Manager of approximately \$109,076 to \$132,584 per year. This recommendation is based in part on internal equity among other Division Managers who serve as Assistant/Deputy Directors within their respective departments as well as an examination of similar at-will / confidential / Senior Management-level positions in other Police Departments where extensive law enforcement experience and/or management of the intricacies unique to Police Departments is required. This position will be responsible for general oversight of several departmental units including Records and Communications, budget and policy administration.

Establish Classification Specification and Salary Range: Professional Standards Officer (Part-Time, Limited Service):

Staff recommends that the hourly pay rate range for this part-time, limited service position be from \$40 to \$50 per hour. This classification will be responsible for conducting performance audits and various inquiries and investigations of Police Department employees as well as for reviewing departmental policies and procedures to ensure continual compliance with current laws and best practices.

Revise Classification Specification: Supervisor of Records Unit: Revision of the classification specification for the non-sworn position of supervisor over the Police Department's Records Unit will be brought before Council in the near future. It is anticipated that staff will recommend updating the title to bring the position in line with other non-sworn unit supervisors in the Police Department as well as update the specification to include advances in modern technology and any changes in responsibilities since the classification was last updated in 1998. Staff also anticipates proposing that the classification be placed in the Tracy Mid-Manager's Bargaining Unit in order to provide representation that is similar to the Council-approved representation for other non-sworn Police supervisors and City middle management classifications. As the classification is currently represented by the Tracy Police Officers Association, the City is required to Meet and Confer prior to implementing any bargaining unit modification. Any revision recommended will seek to ensure consistency with Council action to date, as well as ensure placement in an employee group that is organizationally appropriate.

Staff recommended that the Council adopt the Police Department's reorganization plan and authorize the Human Resources Director to amend the City's Classification and Compensation Plans and the Budget Officer to amend the Position Control Roster by approving the establishment of classification specification and salary range for Police Support Operations Manager and Professional Standard Officer, and approving the addition of one Police Captain position, one Police Support Operations Manager, and one Part-Time Professional Standards Officer.

Council Member Elliott stated he assumed that this was the organization Chief Hampton needed. Chief Hampton stated, yes, in order to prepare for current and future challenges of the Police Department.

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 Abercrombie and seconded by Council Member Rickman to adopt Resolution 2011-217 accepting the Police Department's reorganization efforts: authorizing Amendment to the City's classification and compensation plans and position control roster by approving the establishment of classification specification and salary range for Police Support Operations Manager and Professional Standards Officer and approving the addition of one Police Captain Position, one Police Support Operations Manager and one Part-Time Professional Standards Officer. Voice vote found all in favor; passed and so ordered.

6. SECOND READING AND ADOPTION OF ORDINANCE 1164, AN ORDINANCE OF THE CITY OF TRACY PREZONING THE FILIOS/DOBLER ANNEXATION PROJECT SITE PLANNED UNIT DEVELOPMENT (PUD) APPLICATION NUMBER A/P09-0002

The Clerk read the title of Proposed Ordinance 1164.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to waive the reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Ordinance 1164. Roll call vote found all in favor; passed and so ordered.

7. ITEMS FROM THE AUDIENCE – None.

8. COUNCIL ITEMS

A. Appointment of City Council Subcommittee to Interview Applicants for Four Vacancies on the Tracy Arts Commission – On December 31, 2011, there will be four vacancies on the Tracy Arts Commission due to term expirations. The vacancies are being advertised and the three week recruitment period will close on November 15, 2011. In accordance with Resolution 2004-152, a two-member subcommittee needs to be appointed to interview the applicants and make a recommendation to the full Council. Mayor Pro Tem Maciel and Council Member Elliott volunteered.

Council Member Abercrombie asked that Council consider endorsing the California Cancer Research Act and asked that it be brought back to Council for consideration.

Council Member Abercrombie stated Brighter Christmas needed help accepting applications on November 28 and 29, and would need help on December 3 to screen applicants.

Council Member Abercrombie wished his son good luck as he leaves for boot camp.

9. ADJOURNMENT - It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adjourn. Voice vote found all in favor; passed and so ordered. Time 9:48 p.m.

The above agenda was posted at the Tracy City Hall on November 10, 2011. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

February 7, 2012, 6:30 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Ives called the meeting to order at 6:30 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE – None
4. CLOSED SESSION -
 - A. (Real Property Negotiations (Govt. Code section 54956.8))
 - Property Location: 741 and 729 Central Avenue
(APN #235-068-06)

 - Negotiator(s) for the City Andrew Malik, Director of Development and Engineering Services; Scott Claar, Associate Planner

 - Negotiating Parties: Mary Ann Brigham

 - Under Negotiation: Price and terms of payment for the sale or lease of the property

 - B. Anticipated Litigation (Gov. Code, section 54956.9(b))
 - December 29, 2011 letter from Lance Rogers, Esq. threatening litigation
5. MOTION TO RECESS TO CLOSED SESSION – Council Member Abercrombie motioned to recess the meeting to closed session at 6:30 p.m. Council Member Elliott seconded the motion. Voice vote found all in favor; passed and so ordered.
6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 6:54 p.m.
7. REPORT OF FINAL ACTION - None
8. ADJOURNMENT – It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adjourn. Voice vote found all in favor; passed and so ordered. Time: 6:55 p.m.

The agenda was posted at City Hall on February 2, 2012. The above are action minutes.

Mayor Ives

ATTEST:

City Clerk

AGENDA ITEM 1.B

REQUEST

ACCEPTANCE OF THE WIDENING OF GRANT LINE ROAD PROJECT (BETWEEN BESSIE AVENUE AND MACARTHUR DRIVE) - CIPs 73052, 74057, 75A0, & 72067, COMPLETED BY DESILVA GATES CONSTRUCTION OF DUBLIN, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

The contractor has completed construction of the Grant Line Road Widening Project (between Bessie Avenue and MacArthur Drive), in accordance with plans, specifications, and contract documents. Project costs are within the available budget. The primary goal of this project was to widen Grant Line Road to four lanes, rehabilitate the pavement structural section, and replace decades-old underground utilities.

DISCUSSION

On August 4, 2009, City Council awarded a construction contract to DeSilva Gates Construction, of Dublin California, in the amount of \$6,743,113, involving the widening and reconstruction of the Grant Line Road Project (between Bessie Avenue and MacArthur Drive) - CIPs 73052, 74057, 75A0, & 72067.

The scope of work included reconstruction and widening of Grant Line Road into a four lane major arterial street between Bessie Avenue and MacArthur Drive. The work included new structural pavement section for unimproved portions of the street and rubberized asphalt concrete overlay over the existing base.

Approximately 10,000 linear feet of new trunk sewer and water distribution main was installed to replace the existing old deteriorated lines including service connections to individual properties and businesses.

The scope of work also included installation of driveways, wheelchair ramps, street lightings, fire hydrants, modification of existing traffic signals, and removal and replacement of curb, gutter, and sidewalk.

The project site is home for several underground service lines including a Chevron Gas transmission line, a PG&E gas line, an AT&T communication trunk line, along with the City's main water transmission line and a storm drainage collection line. The shallow depth of these pipes and the lack of as-built information made the execution of the project construction difficult and posed numerous challenges during construction. Fourteen change orders were issued to avoid utility conflicts, mitigate unforeseen conditions, or construct additional work in the amount of \$1,209,752.12.

One change order in the amount of \$306,743 was requested by the City to add medians and landscaping at certain locations to provide safe and environmentally friendly travelled lanes along the street. The second change order in the amount of \$129,436 was also requested by the City to add infrastructure for utility companies to underground the overhead utility poles at a later date. This was necessary to avoid future removal of

newly installed street section and side walk for installation of the utilities. The cost of this infrastructure (\$129,436) has been reimbursed to the City by PG&E and AT&T.

A third change order in the amount of \$36,566 was requested by the City to perform extra work mandated by Union Pacific Railroad for installation of new railroad crossing panels.

A fourth change order in the amount of \$107,561.85 was executed for additional compensation due to the contractor as a result of an increase in asphalt concrete prices due to fluctuations in oil prices. This compensation was paid in accordance with the contract specifications and was calculated based upon the Statewide Paving Asphalt Price Index determined by the California Department of Transportation.

The remaining change orders were for extra work needed to resolve conflicts with numerous old existing utilities or addition work due to unforeseen conditions. To avoid delays and claims, some of this additional work was completed on a time and material basis and the remaining work was pre-approved through change orders in accordance with the contract documents.

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 the City's inspection records, actual field measurement quantities exceeded the contract quantities in the amount of \$148,154.98. These quantities were generally in the asphalt concrete tonnage needed to strengthen weak spots in the sub-grade. There were also additions in concrete and sidewalk work quantities. These quantities were paid in accordance with the bid unit prices of the contract and are listed as over run quantities.

Status of budget and project costs is as follows:

A.	Construction Contract Amount	\$ 6,747,113.00
B.	Approved Change orders	\$ 1,209,752.12
C.	Over run of Quantities	\$ 148,154.98
D.	Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 1,548,960.00
E.	Project Management Charges (Estimated)	\$ 634,746.00
F.	Right-of-Way Cost	\$ 1,498,991.00
G.	Railroad Crossing	<u>\$ 185,000.00</u>
	Total Project Costs	\$11,972,717.10
	Budgeted Amount	\$13,369,800.00

The project has been completed within the available budget, within the time frame of the original contract plus the time extension given to the contractor for extra work including rain delays, per plans, specifications, and City of Tracy standards. The specifications required the contractor to water and maintain the street trees for a period of one year. To assure compliance with this requirement, the contractor has posted a cash bond in the amount of \$10,000 with the City.

STRATEGIC PLAN

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

FISCAL IMPACT

CIPs 7352, 7457, 75A0, & 72067 are approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund. All remaining funds will be transferred back into the respective CIPS.

RECOMMENDATION

That City Council, by resolution, accept the Grant Line Road Reconstruction (between Bessie Avenue and MacArthur Drive) Project - CIPs 7352, 7457, 75A0, & 72067, as completed by DeSilva Gates Construction, of Dublin, California, 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: Paul Verma, Senior Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer

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

RESOLUTION 2012-_____

ACCEPTING THE WIDENING OF GRANT LINE ROAD PROJECT (BETWEEN BESSIE AVENUE AND MACARTHUR DRIVE) - CIPs 73052, 74057, 75A0, & 72067, COMPLETED BY DESILVA GATES CONSTRUCTION OF DUBLIN, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS, On August 4, 2009, City Council awarded a construction contract to DeSilva Gates Construction, of Dublin California, in the amount of \$6,743,113, involving the widening and reconstruction of the Grant Line Road Project (between Bessie Avenue and MacArthur Drive) - CIPs 73052, 74057, 75A0, & 72067, and

WHEREAS, The scope of work included reconstruction and widening of Grant Line Road into a four lane major arterial street between Bessie Avenue and MacArthur Drive, and

WHEREAS, The shallow depth of pipes and the lack of as-built information made the execution of the project difficult and posed numerous challenges during construction, and

WHEREAS, Fourteen change orders were issued to avoid utility conflicts, mitigate unforeseen conditions, or construct additional work in the amount of \$1,209,752.12, and

WHEREAS, According to the City's inspection records, actual field measurement quantities exceeded the contract quantities in the amount of \$148,154.98, and

WHEREAS, Status of budget and project costs is as follows:

Construction Contract Amount	\$ 6,747,113.00
Approved Change orders	\$ 1,209,752.12
Over run of Quantities	\$ 148,154.98
Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 1,548,960.00
Project Management Charges (Estimated)	\$ 634,746.00
Right-of-Way Cost	\$ 1,498,991.00
Railroad Crossing	<u>\$ 185,000.00</u>
Total Project Costs	\$11,972,717.10

WHEREAS, The project has been completed within the available budget, within the time frame of the original contract plus the time extension given to the contractor for extra work including rain delays, per plans, specifications, and City of Tracy standards, and

WHEREAS, The specifications required the contractor to water and maintain the street trees for a period of one year and the contractor has posted a cash bond in the amount of \$10,000 with the City for this requirement, and

WHEREAS, CIPs 7352, 7457, 75A0, & 72067 are approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund. All remaining funds will be transferred back into the respective CIPS;

NOW, THEREFORE, BE IT RESOLVED that City Council accepts the Grant Line Road Reconstruction (between Bessie Avenue and MacArthur Drive) Project - CIPs 7352, 7457,

75A0, & 72067, as completed by DeSilva Gates Construction, of Dublin, California, 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.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 21st day of February, 2012 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.C

REQUEST

APPROVE AN OFFSITE IMPROVEMENT AGREEMENT (OIA), FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS ALONG THE FRONTAGE OF THE PROPOSED RV STORAGE FACILITY TO BE LOCATED AT 4180 NORTH TRACY BOULEVARD, AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE OIA

EXECUTIVE SUMMARY

Tracy Mini Storage, LLC, a limited liability company, the developer for the Tracy RV Storage Facility on Tracy Boulevard was required to complete offsite street frontage improvements on the east side of Tracy Boulevard as a condition of approval of their development and enter into an Offsite Improvement Agreement with the City to ensure completion of offsite improvements. Approval of this agreement will authorize construction of the offsite improvements and facilitate completion of the development project in a timely manner.

DISCUSSION

On March 29, 2011, the Director of Development Services approved development of a recreational vehicle storage facility also known as Tracy RV Storage. Approval of this development was subject to certain conditions of approval. The Developer was required to design and complete construction of street and utility improvements on the east side of Tracy Boulevard prior to the issuance of certificate of occupancy. The Developer was also required to enter into an Offsite Improvement Agreement (OIA) with the City, and post improvement security in an amount and form acceptable to the City Attorney, to guarantee completion of these improvements on Tracy Boulevard.

Improvement plans, specifications, and cost estimates for the frontage street and utility improvements on Tracy Boulevard have been prepared by the Developer and reviewed by Engineering staff. The Developer has executed the OIA and submitted the required security, to guarantee completion of the improvements covered under the OIA. The OIA is on file with the office of the City Engineer and is available for review upon request.

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

FISCAL IMPACT

There will be no impact to the General Fund. The Developer has paid the cost of reviewing the improvement plans, and processing the OIA.

STRATEGIC PLAN

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

RECOMMENDATION

That City Council, by resolution, approve the Offsite Improvement Agreement with Tracy Mini Storage, LLC, for construction of street and utility improvements on Tracy Boulevard, and authorize the Mayor to execute the Offsite Improvement Agreement.

Prepared by: Ranchhod Pandya, Assistant Civil Engineer
Cris Mina, Senior Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer

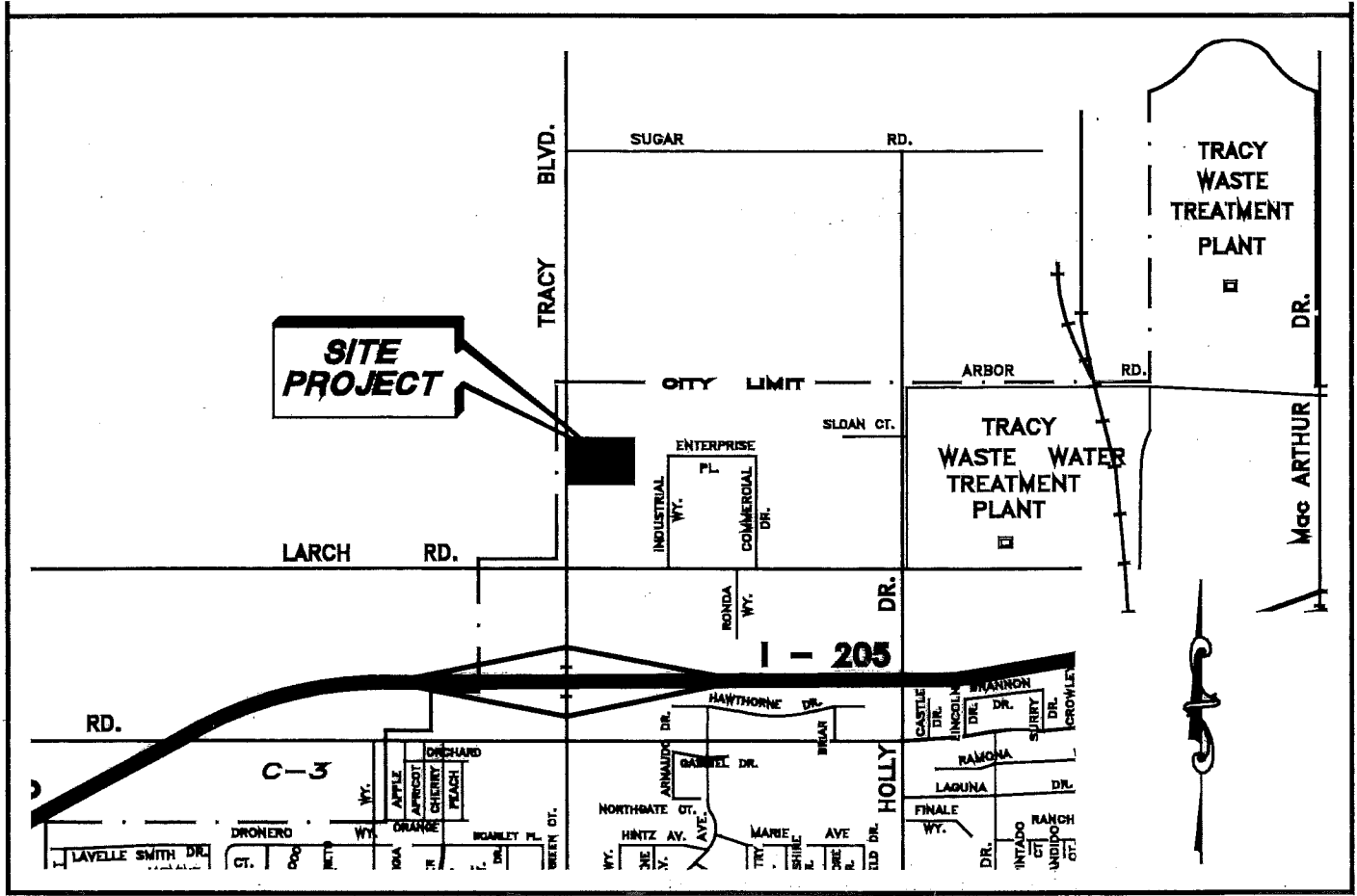
Approved by: Andrew Malik, Development and Engineering Services Director
Leon Churchill, Jr., City Manager

Attachment:

A – Vicinity Map

R. V. STORAGE

OFF-SITE IMPROVEMENT AGREEMENT



VICINITY MAP
(NTS)

RESOLUTION 2012-_____

APPROVING AN OFFSITE IMPROVEMENT AGREEMENT (OIA), FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS ALONG THE FRONTAGE OF THE PROPOSED RV STORAGE FACILITY TO BE LOCATED AT 4180 NORTH TRACY BOULEVARD, AND AUTHORIZING THE MAYOR TO EXECUTE THE OIA

WHEREAS, On March 29, 2011, the Director of Development Services approved development of a recreational vehicle storage facility also known as Tracy RV Storage, and

WHEREAS, Approval of this development was subject to certain conditions of approval, and

WHEREAS, The Developer was required to design and complete construction of street and utility improvements on the east side of Tracy Boulevard prior to the issuance of a certificate of occupancy, and

WHEREAS, Improvement plans, specifications, and cost estimates for the frontage street and utility improvements on Tracy Boulevard have been prepared by the Developer and reviewed by Engineering staff, and

WHEREAS, The Developer has executed the OIA and submitted the required security to guarantee completion of the improvements covered under the OIA, and

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

WHEREAS, There will be no impact to the General Fund. The Developer has paid the cost of reviewing the improvement plans, and processing the OIA;

NOW, THEREFORE, BE IT RESOLVED that City Council approves the Offsite Improvement Agreement with Tracy Mini Storage, LLC, for construction of street and utility improvements on Tracy Boulevard, and authorize the Mayor to execute the Offsite Improvement Agreement.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 21st day of February, 2012 by the following vote:

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

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.D

REQUEST

**APPROVE AMENDMENT 7 TO THE PROFESSIONAL SERVICES AGREEMENT
WITH RBF CONSULTING, FOR THE ELLIS SPECIFIC PLAN PROJECT**

EXECUTIVE SUMMARY

This request is to approve Amendment 7 to the Professional Services Agreement with RBF Consulting to complete the environmental review for proposed revisions, amendments and new applications for the Ellis Specific Plan project.

DISCUSSION

The Ellis Specific Plan, Development Agreement, and related project applications were approved by the City on December 16, 2008. Since that time a law suit was filed by Tracy Alliance for a Quality Community (TRAQC) challenging the Environmental Impact Report and the Development Agreement. TRAQC prevailed in the trial court and the case is now before the Court of Appeals. New applications have been filed to amend the Ellis Specific Plan and Development Agreement. Such applications and potential approvals first require review under the California Environmental Quality Act (CEQA).

Processing Steps for the new Ellis Project Applications

New applications for changes to the Specific Plan, General Plan Amendment, and Development Agreement will be reviewed and evaluated by staff, and environmental documentation would begin after refining the project description. Together, these processes will take several months to a year and will include public hearings with the Planning Commission and City Council. A separate agenda item addresses the authorization to negotiate revisions to the Development Agreement.

STRATEGIC PRIORITY

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

FISCAL IMPACT

There will be no impact to the General Fund. City Council approved a Reimbursement Agreement with the Surland Companies on August 5, 2003, to cover the costs of staff time and consultant work related to the Ellis Specific Plan Project (Resolutions 2003-276 and 2004-163). A new Cost Recovery Agreement (replacing the original agreement) was entered into on February 1, 2012, between the City and the Surland Companies to cover all costs (staff, consultant, and legal) associated with working on the project. RBF Consulting was selected to prepare environmental documents for the Ellis project after a Request for Proposal process.

RECOMMENDATION

Staff recommends that City Council, by resolution, authorize Amendment 7 to the Professional Services Agreement with RBF Consulting in the amount of \$239,090, and authorize the Mayor to execute the Amendment.

Prepared by: Bill Dean, Assistant DES Director

Reviewed by: Andrew Malik, Director of Development and Engineering Services

Approved by: Leon Churchill, Jr., City Manager

Attachment:

City Council Resolution approving PSA Amendment 7 with RBF, which includes as attachments to the resolution PSA Amendment 7 and Scope of Work for the Ellis Specific Plan project environmental work.

RESOLUTION 2012-_____

APPROVING AMENDMENT 7 TO THE PROFESSIONAL SERVICE AGREEMENT WITH RBF CONSULTING FOR THE ELLIS PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, On September 16, 2003, City Council approved a Professional Service Agreement with RBF Consulting after a request for proposals process in conformance with Tracy Municipal Code Section 2.20.140 to complete a Supplemental Environmental Impact Report (SEIR) for the South Schulte Specific Plan, in order to complete the environmental analyses required to develop a portion of the South Schulte area known as Ellis (Resolution 2003-326), and

WHEREAS, The Professional Service Agreement was amended to expand the work to complete the SEIR on June 1, 2004, by Resolution 2004-162, and

WHEREAS, The scope of work was increased on July 18, 2006, by Resolution 2006-167 to complete a full EIR for the Ellis site inclusive of an aquatics center, and

WHEREAS, The scope of work was increased on August 7, 2007, by Resolution 2007-189 to complete additional traffic modeling work, air quality analysis, alternatives analysis, and includes professional consulting services related to processing applications through the San Joaquin County Local Agency Formation Commission (LAFCO), and

WHEREAS, The scope of work was augmented on February 19, 2008, by Resolution 2008-026 to re-issue a Notice of Preparation and perform additional work related to a revised project description, addition of a project alternative to the analysis, inclusion of program level alternatives, reformatting the document to include a two-tiered document with both programmatic level of environmental review and project level of review, additional sewer capacity analyses, additional Phase 1 environmental review, and meetings, and

WHEREAS, City Council certified the City of Tracy/Surland Companies Development Agreement and Ellis Specific Plan Applications EIR (SCH # 2006102092) on December 16, 2008, and

WHEREAS, The scope of work was augmented on November 16, 2010, to address applications for new neighborhoods proposed to be added to the Ellis project which require a separate Supplemental Environmental Impact Report, and

WHEREAS, On December 15, 2011, the Surland Companies submitted an application to amend the Ellis Specific Plan, Development Agreement and related project applications, which will first require environmental review, and

WHEREAS, There is no fiscal impact to the General Fund because the developer is responsible for all costs associated with processing the environmental and other work related to the project and pursuant to the Cost Recovery Agreement dated February 1, 2012 between the City and Surland Companies;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves Amendment 7 to the Professional Service Agreement with RBF Consulting (Exhibit A to this resolution) as

specified in the Scope of Work (Exhibit A to the Professional Service Amendment 7) in the amount of \$239,090, and authorizes the Mayor to execute the Agreement.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 21st day of February, 2012 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

CITY OF TRACY
AMENDMENT NO. 7 TO PROFESSIONAL SERVICES AGREEMENT FOR
THE ELLIS SPECIFIC PLAN ENVIRONMENTAL IMPACT REPORT

This Amendment No. 7 (hereinafter "Amendment") to the Professional Services Agreement for the Ellis Specific Plan Environmental Impact Report is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "City"), and **RBF Consulting, Inc.** (hereinafter "CONSULTANT").

RECITALS

- A.** WHEREAS, on September 16, 2003 City Council approved the Agreement with RBF Consulting after a request for proposals process in conformance with Tracy Municipal Code Section 2.20.140 to complete the environmental analyses required to develop the Ellis project (City Council Resolution 2003-326), and
- B.** WHEREAS, on December 15, 2011, Surland Companies submitted applications for new/revised applications for a General Plan Amendment, Specific Plan, and annexation of the Ellis project, and
- C.** WHEREAS, the proposed applications will first require environmental review and the assistance of the City's Ellis Specific Plan environmental consultant,
- D.** WHEREAS, on February 1, 2012, the City entered into a Cost Recovery Agreement with Surland Companies to cover all staff and consultant expenses,

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. Incorporation By Reference.** This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.
- 2. Terms of Amendment.** Section 1 (Scope of Services) is amended to reflect a new Exhibit A to read as follows: CONSULTANT shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference. Section 2 (Time of Performance) is amended to reflect a new Exhibit A to read as follows: 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 set forth in Exhibit "A." Section 5.1 (Compensation) is amended to reflect a new Exhibit A to read as follows: CONSULTANT's fee for this Agreement is Not To Exceed \$239,090.

CITY OF TRACY
AMENDMENT NO. 7 TO PROFESSIONAL SERVICES AGREEMENT FOR THE ELLIS
SPECIFIC PLAN ENVIRONMENTAL IMPACT REPORT
Page 2 of 2

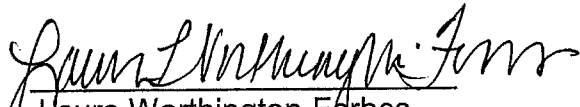
3. **Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.
4. **Severability.** In the event any term of this Amendment is held invalid by a court of competent jurisdiction, the Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in full force and effect.
5. **Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of the CONSULTANT and the City. This Amendment shall inure to the benefit of and be binding upon the parties thereto 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


RBF CONSULTING, INC.

By: _____
Brent H. Ives
Title: Mayor
Date: _____

By: 
Laura Worthington-Forbes
Title: Senior Vice President
Date: 2-9-12

Attest:

By: _____
Sandra Edwards
Title: City Clerk
Date: _____

By: 
Michael Valenza
Title: Asst. Secretary/VP Finance
Date: 2/10/12

Approved as to form

By: _____
Daniel G. Sodergren
Title: City Attorney
Date: _____

Ellis Specific Plan EIR Scope of Work

RBF Consulting is pleased to submit this Proposal to prepare an Environmental Impact Report to assess the potential impacts and to identify mitigation measures for the Ellis Specific Plan Project. The EIR and associated work products will be prepared in accordance with the criteria, standards, and provisions of the California Environmental Quality Act of 1970, (Section 21000 et. seq.), California Environmental Quality Act Guidelines (California Administrative Code Section 15000), the City of Tracy Environmental Guidelines, and the regulations, requirements and procedures of other responsible Public Agencies with jurisdiction by law.

RBF has prepared this Scope of Work based on both the submittal of a new project application and on the Trial Court Decision for the above mentioned Project dated October 31, 2011. The EIR will reflect the new application and removal of any references to the Surland Companies Development Agreement Program (DAP) and associated analysis. Upon RBF's review of the Court Decision and consultation with the City's legal team, it was determined that the removal of the DAP would eliminate the majority of the petitioner's challenges on the EIR. Therefore, the following Scope of Work addresses the petitioner's challenges specific to the Environmental Impact Report (EIR) for the Ellis Specific Plan Project and assumes that the DAP and associated analyses will be removed in its entirety from the document. The following itemizes the modifications to the previously certified EIR that are necessary to satisfy the Trial Court Decision for the Project as well as any new analysis triggered by the submittal of a new application:

Task 1 – Project Scoping

1.1 Refine Scope of Work

RBF will be available to the project team to assist in the various strategic planning, environmental, and legal issues that could arise between now and completion of a Draft EIR (Project). This task will likely involve project meetings and coordination with the project team and/or the City of Tracy, members of Surland Companies consulting team and other responsible affected agencies.

1.2 Kickoff Meeting

RBF will conduct an initial orientation meeting with City staff and Surland in order to ensure agreement on the basic project elements, as well as project approach. The meeting will include review of available project materials (Ellis Specific Plan modifications and any updated technical analyses supporting the Specific Plan) and a review of the existing relevant Ellis Specific Plan materials. Items to be addressed at the kick-off meeting include the project description, Project alternatives, and project schedule.

1.3 Research and Investigation

RBF will review and update as appropriate the available data for the project area, as well as policy documentation from the City of Tracy, County of San Joaquin, local, state, and federal agencies, and all other agencies that may have changed since certification of the EIR in December 2008.

Task 2 – Initial Study and Notice of Preparation

RBF will prepare a Draft Initial Study/NOP based on the previously approved Ellis Specific Plan (ESP) land uses and modifications that have been proposed by the Applicant subsequent to December 2008 approval date. The IS/NOP will reflect “project” conditions as a result of the recent General Plan Update as well. The Initial Study and Notice of Preparation will include background information on the Project. The Initial Study and Notice of Preparation will focus solely on the Ellis Specific Plan per the submittal of a new application. In accordance with § 15063(c)(3) of the State CEQA Guidelines, the Initial Study will assist in the preparation of the EIR by focusing on the effects determined to be significant, identifying the effects determined not to be significant, and explaining the reasons for determining that potentially significant effects would not be significant. RBF will take particular care in acknowledging issues that require review due to the publication of the Trial Court Decision, and those issues that do not require further review.

RBF will review all responses to the IS/NOP to ensure that all relevant concerns are addressed in the Draft EIR. RBF will correspond with the City and affected agencies, to ensure that all potentially significant regulatory or agency issues are addressed in the Draft EIR.

Based on preparation of previous documents (including the recently adopted General Plan Update and supporting EIR) and the Trial Court Decision dated October 31, 2011, RBF assumes that the following environmental issues will not need to be re-analyzed (the Petitioner did not raise issues specific to these areas relative to the ESP) in the IS and therefore would be excluded from further analysis in the Draft EIR:

- Aesthetics
- Agricultural Land Conversion
- Cultural Resources
- Geology, Soils, and Seismicity
- Land Use and Planning
- Mineral Resources
- Population and Housing
- Public Services

The elimination of these topics is based on a thorough review of the Trial Court Decision dated October 31, 2011 relative to the Ellis Specific Plan and the updated General Plan/General Plan EIR. RBF assumes two (2) rounds of revisions to the NOP/Initial Study.

Task 3 Preparation of Technical Studies

Task 3.1 Air Quality/GHG Analysis

Given the age of the previously prepared Air Quality Analysis, and due to the sensitivity and anticipated scrutiny of the proposed Project, RBF recommends conducting a full re-analysis of Air Quality and GHG emissions for the Project.

Task 3.1a - Existing Conditions. The City of Tracy is located within the San Joaquin Valley Air Basin (SJVAB), which is under the jurisdiction of the San Joaquin Valley Air Pollution Control District (SJVAPCD). Baseline and project setting meteorological and air quality data developed through the California Air Resources Board (CARB) and climatological and air quality profile data gathered by the SJVAPCD will be utilized for the description of existing ambient air quality. Air quality data from the nearest air quality monitoring stations will be included to help highlight existing air quality local to the proposed project site. The current status and

applicability of the SJVAPCD's Air Quality Attainment Plans (Ozone and Particulate Matter) and *Guide for Assessing and Mitigating Air Quality Impacts* (GAMAQI) will be described. An overview of the nature and location of existing sensitive receptors will be also provided.

Task 3.1b - Construction-Related Emissions. Equipment exhaust and fugitive dust emissions resulting from construction activities will be quantified using URBEMIS 2007. Based on data and assumptions provided by the project Applicant, the analysis will estimate equipment exhaust emissions utilizing the latest emission factors as prescribed by the California Air Resources Board (CARB) and the EMFAC2007 and OFFROADS2007 models. Emissions from soil hauling activities will also be quantified, if necessary. Fugitive dust emissions will be quantified based upon the area to be graded per day. RBF will also qualitatively discuss naturally occurring asbestos impacts as they relate to the proposed construction activities. RBF will also qualitatively discuss naturally occurring asbestos impacts as they relate to the proposed activities.

Task 3.1c - Construction Related Diesel Particulates. The construction of the proposed project is expected to result in increased concentrations of one or more toxic air contaminants (TAC), potentially exposing existing nearby residents to the proposed project. RBF will follow guidance from the California Air Pollution Control Officers Association (CAPCOA), *Health Risk Assessments for Proposed Land Use Projects* (July 2009). The Office of Environmental Health Hazard Assessment (OEHHA) provides the *Air Toxics Hot Spots Program Risk Assessment Guidelines* (August 2003), the SCAQMD provides the *Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics "Hot Spots" Information and Assessment Act (AB2588)* (July 2005), and the *Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis* (August 2003) for guidance. A screening level assessment will be conducted following these guidelines. For this project, the principle source of TAC during construction is expected to be the diesel-powered construction equipment. The only TAC of concern is expected to be diesel particulate matter.

Task 3.1d - Long-Term Emissions. RBF will quantify vehicular and area source emissions then provide a comparison to the SJVAPCD thresholds of significance. The emissions will be quantitatively derived utilizing the EMFAC2007 and URBEMIS2007 models. The indirect, direct, and cumulative emissions will also be analyzed in the context of the SJVAPCD's Indirect Source Review Guidelines, and will also consider health related impacts. As with the previously certified EIR, it is assumed that a formal Health Risk Assessment would not be required. RBF will also model intersections utilizing the BREEZE ROADS model.

Task 3.1e - Greenhouse Gas Analysis. RBF will follow the approach described in the SJVAPCD adopted guidance, *Guidance for Valley Land-use Agencies in Addressing GHG Emission Impacts for New Projects under CEQA* (December 2009). RBF will also incorporate guidance from the California Air Pollution Control Officers (CAPCOA) *CEQA and Climate Change White Paper* (White Paper) (January 2008) and CARB's *Climate Change Proposed Scoping Plan* (Scoping Plan)(October 2008). In addition, RBF will utilize the City's Sustainability Action Plan (SAP) and the City's General Plan Update in order to accurately assess greenhouse gas impacts. Where appropriate, RBF will incorporate goals, policies, and objectives from these two documents, which were not available when the previously certified EIR was prepared. The analysis will be structured to respond to the criteria specified in the CEQA Guideline Amendments that became effective on March 18, 2010, as well as the TrialCourt Decision dated October 31, 2011.

RBF will prepare an inventory of the GHG emissions. This section will also describe climate change effects on the project that could result in a physical impact (i.e., temperature change, water supply, flood control, etc.). RBF will incorporate strategies to reduce energy and water consumption, and to reduce vehicle miles traveled. The analysis will also present a matrix summarizing the various greenhouse gas reduction measures that can be incorporated into the project to illustrate compliance with the greenhouse gas reduction targets associated AB

32 horizon years 2020 and 2050. The list of measures will be presented in terms of their applicability and percentage of GHG reduction.

Task 3.2 Biological Assessment

Due to its years of agricultural use, the project provides limited habitat for native plant and wildlife species. Two previous studies, 1995 and 2006, looked at what sensitive species could potentially occur. The 2006 study also provided several mitigation measures in order to ensure compliance with the San Joaquin County Multiple-Species Habitat Conservation and Open Space Plan (SJMSCP). RBF will review the two previously prepared habitat assessments and conduct an updated literature search of any new and applicable studies and/or databases. In addition, RBF will review the current implementation measures for the SJMSCP. Based on a review of all information gathered during the literature review, RBF will develop a list of vegetation types and/or sensitive habitats that may occur onsite, as well as sensitive species, both those covered in the SJMSCP and those listed by the California Natural Diversity Database. A biologist from RBF will conduct a reconnaissance survey of the project site to verify that baseline conditions are the same or comparable to the previously defined conditions. During this site visit, special attention will be given to the presence or absence of habitat features that could support sensitive plant and wildlife species previously mentioned as potentially occurring either on the site or in the general vicinity, including the San Joaquin Kit Fox, California Tiger Salamander, California Red-legged Frog, and Swainson's Hawk. Although most of these sensitive species were found not to be present on the project site in the 1995 and 2006 studies, RBF will verify that this determination is still applicable today. Both of the previous studies determined that the project site did not provide any significant wildlife movement corridors. RBF will verify that this determination has not been changed since the 2006 assessment. And, finally, RBF will review and update all the previous mitigation measures that were developed by the 2006 habitat assessment to ensure compliance with the SJMSCP. Given the additional legal scrutiny afforded this Project, RBF may suggest additional performance criteria to the mitigation measures previously prepared by H.T. Harvey in their 2006 analysis.

Task 3.3 Noise

RBF will utilize the previously prepared Noise Analysis for the proposed Project. RBF will address applicable local noise and land use compatibility criteria for the Project area, and will assess noise and vibration impacts from construction. In addition, RBF will incorporate updated traffic counts into the Noise Analysis. As previously assessed, the proposed Project is anticipated to generate vehicular traffic trips from future growth. On- and off-site noise impacts from vehicular traffic will be assessed using the U.S. Federal Highway Traffic Noise Prediction Model (FHWA-RD-77-108). The analysis will focus on noise impacts associated with the development of the proposed project.

In addition, in response to the Trial Court Decision, RBF will conduct an analysis of airport noise as well. Specific mitigation will be provided, as appropriate, to satisfy the plaintiff's "issues" identified on page 36, Line 4 of the Trial Court Decision.

Task 3.4 Transportation

RBF will prepare an updated Traffic Analysis for the proposed Project. The following tasks will be conducted to assess potential traffic:

1. RBF will conduct new AM and PM peak period traffic counts at up to 5 key intersections and two roadway segments. These counts are needed to update previous traffic data used in the traffic analysis for the ESP. The new counts will be compared to the 2006 traffic counts from the December 2007 Ellis SP traffic study.

2. Obtain updated I-205 and I-580 freeway volumes and confirm the baseline analysis (2012) for the ESP.
3. Prepare updated trip generation estimates using the City of Tracy's travel demand model or trip generation rates from the latest Institute of Transportation Engineers Manual and compare the trip generation to the ESP.
4. Assign project trips to the roadway network using the City of Tracy's travel demand model.
5. Prepare a technical memorandum comparing the ESP Traffic Impact Analysis to the updated traffic count data and the City's travel demand model.
6. Prepare finding and identify potential gaps in the existing ESP for CEQA purposes and attend up to three meetings.

Our scope of work will address the points raised in the Trial Court Decision dated October 31, 2011. We will confirm validity of the traffic counts and assess the validity of the traffic study mitigations through assessing the ESP traffic distribution on the road network. If additional mitigations are required, RBF will identify the specific requirements for the mitigation, including performance standards, timing, cost and responsibility for implementation

Task 3.5 Oil and Gas Pipelines- RBF will address the points raised in the Trial Court Decision dated October 31, 2011. The purpose of an EIR is to identify the significant effects of a project on the environment, not the significant effects of the environment on the project. Therefore, while an analysis of this potential impact may not need to be included in the EIR pursuant to CEQA, it is being provided for informational purposes.

Task 3.6 Water Supply Assessment Update- The City will prepare the Water Supply Assessment Update. RBF will incorporate any updated information in the Public Utilities section of the Draft EIR.

Task 4 – Preparation of Administrative Draft EIR

This task includes preparation of the preliminary Administrative Draft EIR (ADEIR). The ADEIR will reflect the new project application and the removal of any references to the Development Agreement Program (DAP) per the Trial Court Decision (will address plaintiff's "issues" identified on pages 13, 25, 26, 32, 33, and 34), an update to the technical analysis described in Section 3 of this Scope of Work, as well as additional analysis and detailed information pertaining to the Swim Center. Therefore, the body of this analysis will focus on those aspects identified as "issues" by the petitioner in the Trial Court Decision.

The standards/criteria of significance will be developed based on the State CEQA Guidelines, and tailored or refined as relevant to City conditions (e.g. General Plan policies, programs or guidelines, and adopted ordinances). The impact analysis will specify the standards of significance thresholds for each topic. The EIR will explain and document any reasons why a particular standard, and thus impact discussion is not relevant to the proposed Project. The Administrative Draft will include (at minimum):

- Executive Summary
- Introduction and Purpose

- Project Description (will address plaintiff's "issues" identified on page 19, beginning on Line 23 of the Trial Court Decision)
 - Summary
 - Project Location (Regional and Local Vicinity)
 - Surrounding Land Uses
 - Project Setting
 - Project Characteristics
 - Project Objectives
 - Project Application and Discretionary Actions
 - Intended Use of the EIR

- Environmental Setting, Impacts & Mitigation Measures
- Air Quality (will address plaintiff's "issues" identified on page 36, beginning on Line 25 of the Trial Court Decision, conflicts with air quality plan, construction and operation air quality impacts)
- Biological Resources (including an assessment of potential impacts to protected species)
- Human Health/Risk of Upset (expanded discussion of airport hazards; expanded discussion of gas and oil pipelines) (will address plaintiff's "issues" identified on page 35, beginning on Line 4, and page 37, beginning on Line 6 of the Trial Court Decision) (The purpose of an EIR is to identify the significant effects of a project on the environment, not the significant effects of the environment on the project. Therefore, while an analysis of this potential impact may not need to be included in the EIR pursuant to CEQA, it is being provided for informational purposes)
- Greenhouse Gas Emissions (generation of greenhouse gases)
- Noise (expanded discussion of airport related noise, construction and operational noise)
- Traffic and Circulation (expanded discussion of traffic mitigation and timing requirements as well as increased traffic volumes) (will address plaintiff's "issues" identified on page 36, beginning on Line 12 of the Trial Court Decision)
- Water Supply (expanded discussion on water conservation measures and potential water supply issues) (will address plaintiff's "issues" identified on page 38, beginning on Line 12 of the Trial Court Decision)
- Other Public Services and Utilities (Expanded discussion of existing conditions, water supply impacts, expansion of water/wastewater/storm drainage facilities)
- Alternatives (Alternative Site evaluation process as detailed in the Final EIR will be incorporated into this Section of the EIR discussion will be further analyzed; on and offsite Project alternatives for the Swim Center will be further analyzed) (will address plaintiff's "issues" identified on page 27, beginning on Line 10, and page 28, beginning on Line 22 of the Trial Court Decision)
- Cumulative Impacts
- Growth Inducement
- Additional CEQA Required Sections and EIR Graphics
- References

Task 5 – Preparation of Draft EIR

Following consultation with the City and City's legal team, RBF will prepare one (1) round of revisions to the ADEIR and prepare a "Screencheck" Draft EIR for final review by City staff prior to public circulation. Once the City conducts their final review of the Screencheck, then RBF will print the Draft EIR for public circulation and review. It is assumed that revisions will be relatively minor and that no new technical analysis will be required.

Task 6 – Preparation of Final EIR

Task 6.1: Response to Comments

RBF will respond to all written or verbal comments received on the Draft EIR during the 45-day public review period, and any additional comments raised during public hearings. RBF will prepare thorough, reasoned, and sensitive responses to relevant environmental issues. This task includes written responses to both written and verbal comments received on the Draft EIR during the public review period. The Draft Responses to Comments will be prepared for review by City staff and legal counsel.

Following review of the Draft Responses to Comments, RBF will finalize this section for inclusion in the Final EIR. RBF assumes the City will distribute the Responses to Comments packet to Responsible Agencies, as required by CEQA. This task will be billed on a time and materials basis. However, an initial estimate of 110 hours has been provided for budgeting and scheduling purposes. When RBF reaches 80% of the budgeted fee, we will communicate the budget status and provide an estimate to completion.

Task 6.2: Errata

RBF will prepare an Errata section for inclusion with the Responses to Comments document, identifying all proposed changes to the Draft EIR, based on public comments or staff-initiated technical corrections.

Task 6.3: Final EIR

The Final EIR will consist of the Responses to Comments section, Draft EIR, Errata, and Appendices. *RBF assumes that City staff will prepare and post the Notice of Determination for the project.*

Task 6.4: Mitigation Monitoring and Reporting Program

In compliance with CEQA Guidelines Section 21081.6, RBF will prepare a Mitigation Monitoring and Reporting Program (MMRP) to be defined through coordination with City staff. The Mitigation Monitoring and Compliance Program will incorporate all mitigation measures from the EIR. RBF will prepare a Draft Mitigation Monitoring and Reporting Program that will be submitted to the City for review. RBF will respond to one set of City comments on the Draft Mitigation Monitoring and Reporting Program. This document will be attached to the City's staff report and resolution for project approval, and provided to City staff in electronic format (staff report to be prepared by City staff or others).

Task 6.5: Findings and Statement of Overriding Considerations

RBF will prepare a Statement of Facts and Findings to be defined through working with City staff. RBF will also assist City staff in preparing a draft Statement of Overriding Considerations, if necessary, for use by City staff in the Resolution. The Findings will address all environmental issue areas, including those previously addressed in the Initial Study as modified by the EIR's Effects Found Not To Be Significant discussion.

Task 7 – Project Coordination, Meetings, and Hearings

This Scope of Work assumes the following meeting requirements as part of Tasks 2 through 6:

Project Team Meetings	5
Agency Consultation	2

Public Meetings (2 PC/2 CC)	4
<i>Total</i>	<i>11</i>

Project Deliverables

1. Draft IS/NOP – 1 electronic copy (each)
2. Final IS/NOP –1 camera-ready, 1 electronic
3. Administrative Draft EIR – 6 copies
4. Screencheck Draft EIR – 1 copy
5. Draft EIR – 20 copies, 1 camera-ready, 1 electronic suitable for web posting; 30 CD's
6. Final EIR – 20 copies, 1 camera-ready, 1 electronic suitable for web posting; 30 CD's

Estimated Professional Fees

TASK	Principal in Charge	Project Planner/Specialist	Staff Planner	Graphics/Admin. Support	Total Hours	Sub-consultants	Total Cost
1.0 PROJECT SCOPING							
1.1 Refine Scope of Work	4	6			10		\$1,960
1.2 Kick-Off Meeting	4	1			5		\$1,260
1.3 Research and Investigation		4	2		6		\$760
Subtotal Task 1.0							\$3,980
2.0 Initial Study and Notice of Preparation							
2.1 Initial Study	8	40	10				\$8,640
2.2 Notice of Preparation		2					\$280
Subtotal Task 2.0							\$9,120
3.0 PREPARATION OF TECHNICAL STUDIES							
3.1 Air Quality Analysis (including GHG Analysis)		70					\$9,800
3.2 Biological Resources Assessment		57					\$7,980
3.3 Noise Analysis		32					\$4,480
3.4 Traffic Analysis		134					\$18,760
Subtotal Task 3.0							\$41,020
4.0 PREPARATION OF ADMINISTRATIVE DRAFT EIR							
4.1 Executive Summary	2	8	2		12		\$1,880
4.2 Introduction and Purpose	1	4			5		\$840
4.3 Project Description	2	10	2		14		\$2,160
4.4 Environmental Analysis		2			2		\$280
A. Air Quality/GHG Analysis	1	15			16		\$2,380
B. Biological Resources	1	8			9		\$1,400
C. Hazards and Hazardous Materials	1	10			11		\$1,680
D. Noise	1	15			16		\$2,380
E. Traffic and Circulation	6	16	16		38		\$5,520
F. Public Services and Utilities (including Water Supply)	12	24			36		\$6,720
4.5 Growth Inducement		4			4		\$560
4.6 Cumulative Impacts		8			8		\$1,120
4.7 Alternatives	8	20			28		\$5,040
4.8 Additional CEQA Sections	2	10			12		\$1,960
4.9 Graphic Exhibits				30	30		\$1,950
Subtotal Task 4.0							\$35,870
5.0 PREPARATION OF DRAFT EIR							
5.1 Preliminary Draft EIR	8	30	8	12	58		\$8,020
5.2 Completion of the Screencheck Draft EIR	8	16	8	8	40		\$5,800
Subtotal Task 5.0							\$13,820
6.0 PREPARATION OF FINAL ENVIRONMENTAL IMPACT REPORT							
6.1 Response to Comments (Time and Materials)	12	80	12	6	110		\$16,150
6.2 Errata	1	8			9		\$1,400
6.3 Final EIR	2	25	5	8	40		\$5,080
6.4 Mitigation Monitoring and Reporting Program	1	12		1	14		\$2,025
6.5 Findings and Statement of Overriding Considerations	2	20		1	23		\$3,425
Subtotal Task 6.0							\$28,080
7.0 PROJECT COORDINATION, MEETINGS & HEARINGS							
7.1 Project Coordination	60	50			110		\$23,800
7.2 Project Meetings	40	20			60		\$14,000
7.3 Project Hearings	20	20			40		\$8,400
Subtotal Task 7.0							\$46,200
TOTAL HOURS	207	781	65	66	766		
PROFESSIONAL LABOR COSTS							\$178,090
CONTINGENCY							\$50,000
DELIVERABLES (as outlined on Pages 7 & 8 of the Scope of Work)							\$9,000
REIMBURSABLES							\$2,000
TOTAL COSTS							\$239,090

All work except those tasks noted in the scope will be performed at a "Not to exceed" contract price, which will become the firm fixed price upon completion of negotiations with staff authorized to negotiate an agreement. The RBF project manager reserves the right to adjustment staff allocations as necessary within the overall budget.

This fee proposal shall remain in effect for not less than six (6) months.

x

 Laura Worthington-Forbes
 Senior Vice President, RBF Consulting

AGENDA ITEM 1.E

REQUEST

APPROVING THE 2012 CALENDAR YEAR BUDGET FOR THE OPERATION OF THE TRACY MATERIAL RECOVERY FACILITY AND SOLID WASTE TRANSFER STATION

EXECUTIVE SUMMARY

Approve the 2012 calendar year budget for the operation of the Tracy Material Recovery Facility and Solid Waste Transfer Station in the amount of \$10,557,600.

DISCUSSION

The Service Agreement between the City of Tracy and Tracy Material Recovery and Solid Waste Transfer, Inc., for the operation of the Material Recovery Facility (MRF), requires the budget for the MRF be approved annually by the City of Tracy. The MRF has been in operation since May 1, 1995. The attached budget submitted by Tracy Material Recovery and Solid Waste Transfer, Inc. for City Council approval is for calendar year 2012.

The total MRF budget is forecasted to be \$10,557,600 for 2012. Key factors for the proposed budget requirements include:

- Foothill Sanitary Landfill, the ultimate repository for the residual waste coming from the MRF, increased its tipping fee by \$1.56 a ton January 1, 2010, \$1.00 a ton January 1, 2011, and \$1.00 a ton January 1, 2012. The MRF has increased its tipping fees accordingly.
- The MRF processed 111,078 tons for 2010, revised forecast of 110,500 tons for 2011, and estimated 113,000 tons for 2012.
- Previous measures taken including employee layoffs, reduction in operating costs, and delayed capital purchases.
- A condition for permit extension/renewal by San Joaquin County requires the MRF to improve a section of roadway on MacArthur Drive. This improvement is estimated to cost \$1,200,000.

The City Council, by Resolution 2011-226 (December 6, 2011), authorized a new monthly solid waste rate to preserve the enterprise fund's economic health and comply with the covenants of the California Pollution Control Financing Authority (CPCFA) Solid Waste Refunding Revenue Bonds (Tracy Material Recovery Facility Project Series 1999A and 1999B). Below is a summary of the expenditures and revenues of the 2012 MRF budget:

**Tracy Material Recovery and
Solid Waste Transfer Station 2012 Budget**

Debt Service Requirements	\$ 844,258
Operating and Maintenance	6,473,900
Landfill disposal	2,809,000
Property taxes	153,700
Operators fee	276,742
	<u>\$10,557,600</u>
Revenue from the rate payers	\$7,450,285
Revenue from sale of recycled materials	1,230,000
Other revenue sources - Public, South County, Mountain House, Interest, etc.	2,432,200
Revenue excess to the City Solid Waste Fund	(554,885)
	<u>\$10,557,600</u>

STRATEGIC PLAN

This agenda item supports the Environmental Sustainability Strategic Plan through a budget that provides programs that help meet sustainability goals by waste reduction, increased recycling, and composting.

FISCAL IMPACT

There is no fiscal impact to the General Fund. The excess revenue will be placed in reserves of the Solid Waste Fund.

RECOMMENDATION

That the City Council, by resolution, approve the Tracy MRF budget of \$10,557,600 submitted by Tracy Material Recovery and Solid Waste Transfer, Inc. for the operation of the Tracy Material Recovery Facility and Solid Waste Transfer Station for calendar year 2012.

Prepared by Jennifer Cariglio, Management Analyst I, Public Works Department
Reviewed by Kevin Tobeck, Director of Public Works
Approved by Leon J. Churchill Sr., City Manager

Exhibit A: Tracy Material Recovery and Solid Waste Transfer, Inc. Forecasted Service Fee Budget

RESOLUTION _____

APPROVING THE 2012 CALENDAR YEAR BUDGET FOR THE OPERATION OF THE TRACY MATERIAL RECOVERY FACILITY AND SOLID WASTE TRANSFER STATION IN THE AMOUNT OF \$10,557,600

WHEREAS, The "Service Agreement" between the City of Tracy and Tracy Material Recovery and Solid Waste Transfer, Inc. (MRF) for the operation of the MRF requires that the budget for the MRF be approved annually by the City of Tracy, and

WHEREAS, The total MRF budget is forecasted to be \$10,557,600 for January 1, 2012 to December 31, 2012, and

WHEREAS, The City Council, by Resolution 2011-226 (December 6, 2011) authorized a new monthly solid waste rate to preserve the enterprise's economic health and comply with the covenants of the California Pollution Control Financing Authority (CPCFA) Solid Waste Refunding Revenue Bonds (Tracy Material Recovery Facility Project Series 1999A and 1999B), and

WHEREAS, There is no fiscal impact to the General Fund, and

WHEREAS, The projected revenue excess of \$554,885 from the MRF will be placed in the Solid Waste Fund;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby approves the Tracy MRF budget of \$10,557,600 submitted by Tracy Material Recovery and Solid Waste Transfer, Inc. for the operation of the Tracy Material Recovery Facility and Solid Waste Transfer Station for calendar year 2012.

* * * * *

The foregoing Resolution _____ was passed and adopted by the City Council of the City of Tracy on the 21st day of February 2012, by the following vote:

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

Mayor

ATTEST:

City Clerk

Exhibit A
Tracy Material Recovery and Solid Waste Transfer, Inc.
Forecasted Service Fee Calculation (Budget)
For the year ending December 31, 2012

(See Independent Accountants' Compilation Report and Summary of Significant Forecast Assumptions)

Debt Service		
Bond Principal	\$ 753,750	
Bond Interest	115,924	
Interest Earned-Trustee funds	(25,369)	
Rounding	(47)	\$ 844,258
Coverage Requirements - Covenant Requirements		
Additional Funding - City of Tracy Enterprise Fund		
Deposit from the City of Tracy		-
Operating and Maintenance		
Salaries	2,362,000	
Employee Benefits		
Payroll Taxes	202,700	
Health Insurance	450,615	
Dental Insurance	42,135	
Life Insurance	2,250	
Workers' Compensation	164,600	
401K Employers Match	23,000	
Hauling Expenses		
Fuel (Hauling and onsite)	666,000	
Repairs and Maintenance		
Transfer Trucks	70,000	
Transfer Trailers	55,000	
Secondary Haul	60,000	
Maintenance		
Shop Equipment	20,600	
MRF Equipment	298,000	
Buildings	103,000	
Janitorial	-	
Landscape	36,100	
Utilities		
Gas, Electric, and Propane	190,000	
Water	3,700	
Sewer	2,100	
Telephone	24,000	
Insurance - Liability/Pollution/Property	191,000	
Plant Generated Waste Hauling/Disposal	17,500	
Plant Supplies - MRF and Shop	131,000	
Office Supplies		
Printed Materials	6,200	
Other (Software, Shop, MRF, Visitor Center)	10,600	
Accounting Services	113,000	
Payroll/Human Resources	13,800	
Audit	13,000	
Legal	10,000	
Engineer	4,000	
Computer and Software Support (Network Admin.)	25,800	
Security	78,300	
Education and Training	2,000	
Public Awareness	7,000	
Equipment Rental - Tractor	-	
Equipment Rental - Shop/MRF	5,200	
Equipment Rental - Copier	8,500	
License Renewals	26,500	
Compliance, Permits, Bit Program	32,000	
Bank Fees-BNY	26,000	
Travel/Meetings/Conventions	2,100	
Arbitrage Services	1,500	
Interest Expense - Finance Ins. (Pollution/general liab policy)	2,000	
Interest Expense - Loan	25,000	
Property taxes - non pass through	100	
Dues and subscriptions	5,000	
Disposal Fees - non pass through		
CRT Disposal - E-waste	9,500	
Freon	7,500	
Tires	8,200	
Concrete	13,000	
Wood	5,000	
Compost Testing/Issues	28,000	
Equipment Replacement Reserve	800,000	
Solid Waste Permit Related Costs	69,800	
	<u>6,473,900</u>	

6,473,900

Tracy Material Recovery and Solid Waste Transfer, Inc.

Forecasted Service Fee Calculation (Budget)

For the year ending December 31, 2012

(See Independent Accountants' Compilation Report and Summary of Significant Forecast Assumptions)

Continued

Pass Through Costs

Landfill Disposal Costs	2,809,000	
Property Taxes	153,700	2,962,700

Operators Fee

276,742	276,742
---------	---------

Revenue from Recycled Materials

(1,230,000)	(1,230,000)
-------------	-------------

Other Revenues

Public Revenue - Self-haul - Weighed - refuse	(579,600)	
Public Revenue - Self-haul - Weighed - greenwaste	(124,800)	
Public Revenue - Self-haul - Minimum Fee	(384,300)	
San Joaquin County - Service Area F	(980,000)	
Mountain House	(248,000)	
Interest Revenue		
Bond Reserve Fund - applied to debt service	-	
Equipment Replacement Reserve/Operating Account	(7,500)	
Miscellaneous (sale of equipment)	-	
Rental income	(108,000)	
		<u>(2,432,200)</u>

Service Fee

<u>\$ 6,895,400</u>

Allocate revenue requirements based on tonnage

Tonnage Forecasted

Municipal	69,500
County Service Area F	18,300
Mountain House	5,300
Self-haul - refuse	9,200
Self-haul - greenwaste	2,600
Self-haul - minimum fee	6,100
Self-haul - noncharge wood, public works, other	2,000
	<u>113,000</u>

Operating and maintenance costs

<u>\$ 6,473,900</u>

Forecasted tonnage

<u>113,000</u>

Forecasted operating and maintenance costs per ton

<u>\$ 57.29</u>

Debt Service Coverage Ratio

Total Revenues	10,557,601	
Operating and maintenance costs	(6,473,900)	
Pass through costs	(2,962,700)	
Debt Service coverage requirement - City of Tracy Dep.	(33,954)	
Net divided by debt service	<u>1,087,047</u>	/ 869,674 = <u>\$ 1.25</u>

Debt Service

Principal Bonds	\$ 753,750
Interest Bonds	115,924
	<u>\$ 869,674</u>

Revenue from Current Rates

Municipal	
Forecasted revenue-current rates	\$ 7,450,286
Forecasted revenue required	6,895,400
Revenue excess	<u>\$ 554,885</u>

AGENDA ITEM 1.F

REQUEST

AUTHORIZE THE MAYOR TO EXECUTE A COOPERATIVE AGREEMENT WITH SJCOG FOR PROPOSITION 1B PTMISEA FUNDS IN THE AMOUNT OF \$55,531 FOR THE PURCHASE OF A TRANSIT BUS AND APPROPRIATE THE FUNDS TO CIP 77542

EXECUTIVE SUMMARY

Proposition 1B (Prop 1B) Funds are available to the City of Tracy in the amount of \$55,531 through the San Joaquin Council of Governments (SJCOG). These funds are for the purpose of public transportation modernization, improvement and service enhancement. An application to use these funds for the purpose of purchasing a replacement transit bus has already been approved by the state. To obtain these funds, The City and SJCOG must enter into a Cooperative agreement.

DISCUSSION

The City of Tracy applied for Prop 1B Public Transportation Modernization, Improvement, and Service Enhancement (PTMISEA) Funds with SJCOG in the amount of \$40,000 for the purchase of a replacement transit bus. In addition, the City has an additional \$15,531 in earned interest from a previous project available that can be used toward the purchase of a bus. To obtain the Prop 1B PTMISEA funding the City of Tracy must enter into a Cooperative Agreement with SJCOG.

The purpose of this project is to replace a bus where the service life has reached an end according to industry standards. Replacement of an aging vehicle will result in reduced maintenance costs and reduced downtime due to mechanical issues.

The funds in this cooperative agreement will need to be appropriated to existing CIP 77542. The total amount of \$55,531 will not completely pay for an new bus, but will be used to supplement existing FTA Section 5307 and TDA funds already apportioned for this purpose.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact to the General Fund. The costs are covered completely by Prop 1B PTMISEA funds, FTA funds, and TDA funds.

RECOMMENDATION

Authorize The Mayor to execute a Cooperative Agreement with SJCOG for Proposition 1B PTMISEA funds in the amount of \$55,531 for the purchase of a transit bus and appropriate the funds to CIP 77542.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Rod Buchanan, Director of Parks and Community Services

Approved by: R. Leon Churchill, Jr., City Manager

Attachment

Exhibit "A" –SJCOG Contract No.: 12-045 - Cooperative Agreement for PTMISEA Purchase of a Transit Cutaway Bus.

COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON November 1, 2011, is between the City of Tracy, acting by and through its Parks and Community Services Department, referred to herein as "CITY", and the

SAN JOAQUIN COUNCIL OF GOVERNMENTS,
a public entity,
referred to herein as "SJCOG"

RECITALS

1. CITY and SJCOG, pursuant to the authority provided by the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, passed by voters as Proposition 1B on November 7, 2006 are authorized to enter into a Cooperative Agreement for the Purchase of a Transit Cutaway Bus as defined in the California Department of Transportation approved (March 9, 2011) City of Tracy Public Transportation Modernization, Improvement, and Service Enhancement Program Application (PTMISEA) (see Attachment A).
2. CITY proposes to purchase a 30' medium duty CNG replacement bus from the Caltrans Procurement Program, or other available contract, to use for the CITY's fixed route transit operations referred to herein as "PROJECT".
3. SJCOG is willing to fund an amount not to exceed \$55,531 of total PROJECT costs. The total PROJECT cost is the combination of \$15,531 of FY 07/08 PTMISEA Section 99313 interest and \$40,000 in FY 08/09 PTMISEA Section 99313 allocated funds.
4. The terms of this Agreement ("Agreement") shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to PROJECT.
5. The parties now define herein below the terms and conditions under which PROJECT is to be developed and financed.

SECTION I

SJCOG AGREES:

1. To fund \$55,531 of all Project costs.

SECTION II

CITY AGREES:

1. City shall provide all necessary information to complete semiannual reporting requirements to SJCOG within reporting timeframes as identified by the California Department of Transportation in compliance with California Government Code section 8879.50(f)(1) which requires semiannual reports on the activities and progress made on the PROJECT to the California Department of Transportation to ensure the projects and activities funded through bond proceeds are being executed in a timely fashion, and are achieving the intended purposes.
2. All PROJECT work performed by City, or performed on City's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures, and standards that City would normally follow.

3. If City terminates the PROJECT prior to completion, City shall also be liable to compensate SJCOG for all the expenses incurred by SJCOG with regard to this Agreement.
4. To notify SJCOG when funds have been encumbered in compliance with Caltrans PTMISEA guidelines (October 2011).
5. If PROJECT is expected to exceed the California Department of Transportation approved (March 9, 2011) City of Tracy Public Transportation Modernization, Improvement, and Service Enhancement Program Application project budget, City shall provide a revised plan to SJCOG indicating how City will address the cost increase.
6. City agrees to obtain, as a PROJECT cost, all necessary PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies.
7. To notify SJCOG, by letter or email, when the PROJECT is complete.
8. City shall provide all necessary information to complete the Final Project Report, as required within six months after PROJECT completion, to SJCOG. The Final Project Report compares the actual project performance to the projected performance.
9. City shall provide all necessary information to complete the Additional Outcome Report to SJCOG 12 months following the completion of the PROJECT. The Additional Outcome Report documents the long-term benefits the PROJECT.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of SJCOG under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority and the allocation of funds by the State Controller's Office.
2. All PROJECT work is to be performed by City.
3. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement.
4. Neither City nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by City under or in connection with any work, authority, or jurisdiction conferred upon City or arising under this agreement. It is understood and agreed that, City will fully defend, indemnify, and save harmless SJCOG and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious,

contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by City under this Agreement.

- 5. Prior to the commencement of any work pursuant to this Agreement, either City or SJCOG may terminate this Agreement by written notice to the other party.
- 6. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
- 7. This Agreement shall terminate upon satisfactory completion of all post-PROJECT construction obligations of City and the delivery of required PROJECT construction documents, with concurrence of SJCOG, or on June 30, 2013, whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal challenges, and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction related or other claims arising out of PROJECT be asserted against one of the parties, the parties agree to extend the fixed termination date of this Agreement, until such time as the construction related or other claims are settled, dismissed or paid.

CITY OF TRACY

SAN JOAQUIN COUNCIL OF GOVERNMENTS

By: _____
Brent Ives
Mayor

By: _____
Chuck Winn
Chair of the Board

Attest: _____
Sandra Edwards
City Clerk

Attest: _____
Andrew T. Chesley
Executive Director

APPROVED AS TO FORM AND PROCEDURE

APPROVED AS TO FORM AND PROCEDURE

By: _____
Dan Sodergren
City Attorney

By: _____
Steve Dial
Deputy Executive Director/
Chief Financial Officer

Attachment A

City of Tracy Bus Replacement Allocation Request

7) AMENDMENT: Please describe any changes to the project scope, cost, and/or schedule that have occurred.

		Original	Revised
<u>Project Description/ Scope of Work</u>		The City of Tracy will purchase one Type VIII 30' medium duty CNG replacement bus from the Caltrans bus procurement program for fixed-route service on the City of Tracy's Tracer Transit system. The newer bus will lead to less downtime due to repairs that need to be made, resulting in an improved spare bus ratio.	
<u>Funding</u>			
	99313 :	\$40,000	
	99314 :		
	PTMISEA Interest :	\$15,414	\$117
Other Funds			
	Federal :	\$235,600	
	State :		
	Local :	\$18,900	
	Total :	\$309,914	
<u>Schedule Date</u>			
	Begin PA & ED :		
	End PA & ED :		
	Begin PS & E :		
	End PS & E :		
	Begin Right of Way :		
	End Right of Way :		
	Begin Construction :		
	End Construction :		
	Begin Vehicle/Equipment Order :	04/01/2010	10/1/2011
	End Vehicle/Equipment Order :	08/01/2010	8/31/2012
	Begin Closeout Phase :	09/01/2010	9/1/2012
	End Closeout Phase :	10/01/2010	10/1/2012
	Justification for Change :	Updated schedule and interest earned. \$15,414 from Tracy Transit Station South Parking Lot project rolled over to this project.	

PERSON PREPARING THIS REPORT (please type or print)		PHONE:	DATE:
Ed Lovell		209-831-6204	8/15/11
APPROVAL AUTHORITY* (signature)		TYPED NAME AND PHONE NUMBER	
Date: 8/15/11		Steve Dial, Deputy Executive Director/CFO 209-235-0600	

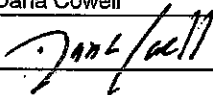
*Note: The same authority that signed the Allocation Request must sign here.

**Public Transportation Modernization, Improvement and
Service Enhancement Program (PTMISEA)
PROJECT DESCRIPTION AND ALLOCATION REQUEST**

	Regional Entity: San Joaquin Council of Governments
Project Lead*: San Joaquin Council of Governments	County: San Joaquin
Project Title: City of Tracy Bus Replacement	

I certify the scope, cost, schedule, and benefits as identified in the attached Project Description and Allocation Request (Request) and attachments are true and accurate and demonstrate a fully funded operable project. I understand the Request is subject to any additional restrictions, limitations or conditions that may be enacted by the State Legislature, including the State's budgetary process, which may effect the amount of bond proceeds received by the project sponsor now and in the future. Project sponsors may need to consider alternative funding sources if bond proceeds are not available. In the event the project cannot be completed as originally scoped, scheduled and estimated, or the project is terminated prior to completion, project sponsor shall, at its own expense, ensure that the project is in a safe and operable condition for the public. I understand this project will be monitored by the California Department of Transportation -- Division of Mass Transportation.

Name: Dana Cowell

Signature: 

Title: Deputy Director

Agency: San Joaquin Council of Governments

Date: 1-25-2010

*If this project includes funding from more than one project sponsor, the project sponsor above becomes the "recipient agency" and the additional contributing project sponsor(s) must also sign and state the amount and type of PTMISEA funds (GC Section 8879.55(a)(2) and/or Section 8879.55(a)(3)) contribution. Sign below or **attach a separate officially signed letter providing that information.**

Name: _____

Signature: _____

Title: _____

Agency: _____

Date: _____ **Amount:** _____

**PTMISEA 2009- 10 PROJECT DESCRIPTION
AND ALLOCATION REQUEST**

	7/8	8/9	9/10
Request Amount per GC 8879.55(a)(2)/PUC 99313:	\$	\$40,000	\$
Request Amount per GC 8879.55(a)(3)/PUC 99314:	\$	\$	\$
Total Project Allocation Request:	\$0	\$40,000	\$0
Project Title:	City of Tracy Bus Replacement		
Project Location/Address:	City of Tracy		

Table 1: Project Lead/Recipient Agency Information

Project Lead/ Recipient Agency: <u>San Joaquin Council of Governments</u>		<i>Legislative District Numbers</i>	
Contact: <u>Dana Cowell</u>		Senate: <u>14</u>	
Contact Phone #: <u>209-235-0600</u>		Assembly: <u>26</u>	
Email Address: <u>dcowell@sicog.org</u>	Amount:	Congressional: <u>11</u>	
Address: <u>555 E. Weber Avenue</u>	<u>\$40,000</u>	Fund Ty	<u>99313</u>
<u>Stockton, CA 95747</u>	<u>\$</u>		

Table 2: Contributing PTMISEA-Eligible Project Sponsor Information

PTMISEA Contributors:	Amount :	Fund Type
Contact: _____	\$ _____	_____
Contact Phone #: _____	\$ _____	_____
Email Address: _____		
Address: _____		
Other PTMISEA Contributors (Attach sheet with contact info)	Amount:	Fund Type
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
TOTAL	\$40,000	_____

(*Contributing project sponsors attach signed letters of verification as to amount and eligibility or sign cover page)

Table 3: Project Category

Check **only 1** box that best fits the description of the project being funded.

- | | |
|--|--|
| <input type="checkbox"/> Rehabilitation, Safety or Modernization Improvement | <input type="checkbox"/> Bus Rapid Transit |
| <input type="checkbox"/> Capital Service Enhancement or Expansion | <input checked="" type="checkbox"/> Rolling Stock Procurement: |
| <input type="checkbox"/> New Capital Project | <u>Expansion</u> |
| | <u>Rehabilitation</u> |
| | <u>X Replacement</u> |

Table 4: Project Summary

a) Describe the project (or minimum operable segment) for which you are applying for funds. Attach additional sheets if necessary. If the application is for the purchase of vehicles or rolling stock, please include information on number of vehicles, size, passenger count, accessibility, and fuel type:

Write here: The City of Tracy will purchase one Type VIII 30' medium duty CNG replacement bus from the Caltrans bus procurement program for fixed-route service on the City of Tracy's Tracer Transit system. The newer bus will lead to less downtime due to repairs that need to be made, resulting in an improved spare bus ratio.

b) Useful Life of the Project: 7 years

Table 5: Description of Major Benefits/Outcomes

a) Please check appropriate Benefit/Outcome:

<input type="checkbox"/> Increase Ridership	by _____ %
<input checked="" type="checkbox"/> Reduce Operating/Maintenance Cost	by <u>25</u> %
<input type="checkbox"/> Reduce Emissions	by _____ %
<input type="checkbox"/> Increase System Reliability	by _____ %

b) Please summarize and describe any other benefits.

Vehicle to be purchased will be one Type VIII 30' medium duty CNG replacement bus that will seat up to 33 passengers. It will also contain a wheelchair lift for ADA accessibility. The vehicle will run on CNG and is expected to have a useful life of approximately 7 years or 200,000 miles, whichever comes first.

Table 6: Project Schedule

	Date
Begin Project Approval & Environmental Document Phase	
CEQA/ Environmental Compliance	
End Project Approval & Environmental Document Phase	
Begin Plans, Specifications & Estimates Phase	
End Plans, Specifications & Estimates Phase	
Begin Right of Way Phase	
End Right of Way Phase	
Begin Construction Phase (Contract Award)	
End Construction Phase (Contract Acceptance)	
Begin Vehicle/Equipment Order (Contract Award)	04/01/2010
End Vehicle/Equipment Order (Contract Acceptance)	08/01/2010
Begin Closeout Phase	09/01/2010
End Closeout Phase	10/01/2010

Table 7: Tax Compliance Information

Is it reasonably anticipated that any money will be derived at any point in the future as a result of the project that will be paid to the State?

YES
 NO

If yes, please describe the source of the money and provide an estimate of the amount:

Estimate \$ _____

**Public Transportation Modernization, Improvement, and Service Enhancement Account
Total Project Cost and Funding Plan**

Shaded fields are automatically calculated. Please do not fill these fields.

Proposed Total Project Cost								Project
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED	0	0	0	0	0	0	0	0
PS&E	0	0	0	0	0	0	0	0
R/W	0	0	0	0	0	0	0	0
CON	0	0	0	0	0	0	0	0
Veh/Equip Purchase	0	0	40,000	254,500	0	0	0	294,500
Other	0	0	0	0	0	0	0	0
TOTAL	0	0	40,000	254,500	0	0	0	294,500

Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA)								Total
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase			40,000					40,000
Other								0
TOTAL	0	0	40,000	0	0	0	0	40,000

Funding Source: PTMISEA INTEREST								Total
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase								0
Other								0
TOTAL	0	0	0	0	0	0	0	0

Funding Source: FTA 5307								Total
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase				235,600				235,600
Other								0
TOTAL	0	0	0	235,600	0	0	0	235,600

Funding Source: TDA								Total
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase				18,900				18,900
Other								0
TOTAL	0	0	0	18,900	0	0	0	18,900

Funding Source:								Total
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase								0
Other								0
TOTAL	0	0	0	0	0	0	0	0

STAFF REPORT

SUBJECT: FY 08/09 Prop 1B Public Transportation Modernization and Service Enhancement (PTMISEA) Funding Recommendations

RECOMMENDED ACTION: Motion to Approve PTMISEA Funding Recommendations for FY 08/09 funds

BACKGROUND:

Proposition 1B included \$3.6 billion in the capital public transit modernization, improvement, and service enhancement over a 10 year period life (2007 – 2017). Prop 1B directs that these funds be distributed using the STA distribution process. This means that part of the Prop 1B funds will be received by eligible operators through the section 99314 formula and part will be received by SJCOG for distribution to transit agencies through section 99313 formula. This is an augmentation of funds through the normal STA program. Over the life of Proposition 1B SJCOG anticipates that it will receive about \$34 million for distribution through STA Section 99313. The amount available each year will vary depending on the amount of PTMISEA funds appropriated by the state in the annual Budget Act. In Fiscal Year 2008/2009 the legislature included \$360 million for PTMISEA, which results in approximately a \$3.01 million share of the funds available to SJCOG through Section 99313.

Discussion:

In October 2008 SJCOG requested that the transit operators propose capital improvement projects for the FY 08/09 PTMISEA funds based on the following principles.

1. All proposals should be consistent with each agencies most recently adopted short range transit plan;
2. Projects should be of critical need;
3. Each project should show a regional benefit;
4. Each project must have a full funding plan;
5. Each project must meet the criteria of Prop 1B PTMISEA funding; and
6. Each project must be a capital project.

SJCOG staff received 8 project proposals totaling approximately \$5.6 million from RTD, the RRC, the City of Lodi, the City of Manteca, the City of Escalon, and the City of Tracy. The STA Policy Revision Committee met three times throughout the month of December to reach consensus on a FY 08/09 PTMISEA funding recommendation. As part of the funding

recommendation the STA Policy Review Committee recognized that should the City of Escalon not be awarded the FTA Section 5310 funds as identified in the December 2008, CTC Draft 5310 funding recommendation, the Rail Commission and RTD project awards will be decreased by \$24,000 respectively to fully fund the City of Escalon project at \$62,000. The STA Policy Revision Committee's funding recommendation is summarized in the table below.

FY 08/09 PTMISEA Funding Recommendation

Project Sponsor	Project Title	Project Description	Funding Request
City of Escalon	Purchase New Cutaway Bus	Purchase 25' transit cutaway bus	\$14,000
Rail Commission	UPRR Stockton Rail Yard-Fresno Subdivision Track Extension	Construct new track off the UPRR mainline	\$1,275,882
City of Manteca	Manteca Transit Bus Stop Design and Engineering	Design and engineering for all Manteca Transit bus stops in conjunction with Citywide bus stop improvement project	\$75,000
City of Tracy	Electric Vehicles	Purchase electric vehicles for use by Tracy Transit Station staff to conduct transportation related tasks	\$40,000
City of Lodi	Bus Replacement	Purchase 30' transit bus replacement	\$337,305
RTD	Mall Transfer Project	Construction of bus transfer structure by the mall (Pacific and Yokuts)	\$400,000
RTD	Land Acquisition for Regional Operations Facility	Land Acquisition for Regional Operations Facility	\$875,883

Fiscal Impact:

Approval of staff's recommendation will result in the allocation of \$3,018,070 in PTMISEA regional funding to transit capital projects throughout San Joaquin County.

7) AMENDMENT: Please describe any changes to the project scope, cost, and/or schedule that have occurred.

	Original	Revised
<u>Project Description/ Scope of Work</u>	The City of Tracy will purchase one Type VIII 30' medium duty CNG replacement bus from the Caltrans bus procurement program for fixed-route service on the City of Tracy's Tracer Transit system. The newer bus will lead to less downtime due to repairs that need to be made, resulting in an improved spare bus ratio.	
<u>Funding</u>		
99313 :	\$40,000	
99314 :		
PTMISEA Interest :	\$15,414	\$117
Other Funds		
Federal :	\$235,600	
State :		
Local :	\$18,900	
Total :	\$309,914	
<u>Schedule Date</u>		
Begin PA & ED :		
End PA & ED :		
Begin PS & E :		
End PS & E :		
Begin Right of Way :		
End Right of Way :		
Begin Construction :		
End Construction :		
Begin Vehicle/Equipment Order :	04/01/2010	10/1/2011
End Vehicle/Equipment Order :	08/01/2010	8/31/2012
Begin Closeout Phase :	09/01/2010	9/1/2012
End Closeout Phase :	10/01/2010	10/1/2012
Justification for Change :	Updated schedule and interest earned. \$15,414 from Tracy Transit Station South Parking Lot project rolled over to this project.	

PERSON PREPARING THIS REPORT (please type or print)		PHONE:	DATE:
Ed Lovell		209-831-6204	8/15/11
APPROVAL AUTHORITY* (signature)		TYPED NAME AND PHONE NUMBER	
Date: 8/15/11		Steve Dial, Deputy Executive Director/CFO 209-235-0600	

*Note: The same authority that signed the Allocation Request must sign here.

RESOLUTION _____

AUTHORIZE THE MAYOR TO EXECUTE A COOPERATIVE AGREEMENT WITH SJCOG FOR PROPOSITION 1B PTMISEA FUNDS IN THE AMOUNT OF \$55,531 FOR THE PURCHASE OF A TRANSIT BUS AND APPROPRIATE THE FUNDS TO CIP 77542

WHEREAS, Proposition 1B Public Transportation Modernization, Improvement, and Service Enhancement (PTMISEA) funds are available to the City of Tracy in the amount of \$55,531 through the San Joaquin Council of Governments (SJCOG) for the purpose of purchasing a transit bus; and

WHEREAS, To secure the Proposition 1B PTMISEA funds, the City must enter into a Cooperative Agreement with the San Joaquin Council of Governments; and

WHEREAS, The costs are covered completely by Proposition 1B PTMISEA funds, FTA funds and TDA funds.

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby authorizes the Mayor to execute a Cooperative Agreement with the San Joaquin Council of Governments for Proposition 1B PTMISEA funds in the amount of \$55,531 for the purchase of a transit bus and appropriates the funds to CIP 77542.

* * * * *

The foregoing Resolution _____ was passed and adopted by the City Council of the City of Tracy on the 21st day of February, 2012, 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 A PRELIMINARY AND FINAL DEVELOPMENT PLAN APPLICATION FOR A CALIFORNIA HIGHWAY PATROL FACILITY AND A TELECOMMUNICATION FACILITY ON A SITE TOTALING APPROXIMATELY 4.7 ACRES ON PESCADERO AVENUE, APPROXIMATELY 2,100 FEET EAST OF MACARTHUR DRIVE, ASSESSOR'S PARCEL NUMBER 213-070-75. APPLICANT IS KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS AND PROPERTY OWNER IS PONY UP TRACY, LLC. APPLICATION NUMBER D11-0007.

EXECUTIVE SUMMARY

This agenda item relates to the review and approval of a Preliminary and Final Development Plan for a California Highway Patrol (CHP) facility in the Northeast Industrial Area (NEI). The proposed facility will be comprised of an office and accessory buildings, commercial truck inspection, CHP vehicle service and storage, and a freestanding telecommunication tower for public safety use.

DISCUSSION

Background

In 1996, City Council adopted the NEI Concept Development Plan within which the project area is located. The site is zoned Planned Unit Development (PUD), is designated Industrial by the General Plan, and is designated Light Industrial by the NEI Concept Development Plan. In accordance with Tracy Municipal Code (TMC) Section 10.08.1830, the Planning Commission and the City Council shall review all Planned Unit Development Preliminary and Final Development Plans (PDP/FDP).

Site and Project Description

The project site is one parcel of approximately 4.7 acres located on the south side of Pescadero Avenue, approximately 2,100 feet east of MacArthur Drive and directly north of the Home Depot distribution center (Attachment A). A storm water detention basin and dirt stock pile that serves the site will be developed on an approximately 0.9 acre parcel immediately to the east. The basin and pile will remain until permanent storm water infrastructure is constructed to serve the NEI area and project site.

The proposed project is a CHP facility, comprised of a 16,367 square foot office building, a 4,793 square foot automobile service building, a patrol car fueling station, storage buildings totaling 1,951 square feet, carports with solar panels, and associated onsite parking and landscaping improvements (Attachment B). The proposal includes a 140-foot tall four-legged lattice telecommunication tower with associated antennas, microwave dishes, and ground equipment. In accordance with State requirements, the project has been designed to comply with the Essential Services Seismic Safety Act (ESA) regulated by the California Health and Safety Code. Although not a City requirement, the project is also aiming to achieve Leadership in Energy and

Environmental Design (LEED) Gold standard from the United States Green Building Council (USGBC). According to the applicant, the existing CHP office on Grant Line Road will close upon the opening of the new facility.

Architecture

The proposed CHP facility meets the City's Design Goals and Standards for commercial development. The buildings are proposed to be constructed of colored concrete masonry and metal roofs, including equipment storage areas for architectural consistency throughout the site. The office and auto service buildings are located adjacent to Pescadero Avenue, which results in a strong architectural presence on the street. A majority of the parking area is located behind the office and auto service buildings so that it is not readily visible from the street. The storage buildings and telecommunication tower are located along the rear of the site. Aside from the telecommunication tower, all ground-mounted equipment will be screened from public view with walls or landscaping. Onsite security fencing, which encloses employee parking areas, CHP vehicle storage areas, auto service areas, equipment storage areas, and the telecommunication tower, is proposed to be constructed of metal posts and masonry columns and walls to match and compliment the building architecture.

Circulation, Parking, and Landscaping

The parking area has been designed to provide adequate vehicular and pedestrian circulation as well as security of employee-only areas. The proposed parking area meets the minimum parking and landscaping requirements established in the TMC and NEI plan. Landscaping of parking areas is required for customer and employee parking areas, but is not required for facilities and equipment storage areas, including automobile service areas and storage of CHP vehicles.

Telecommunication Facility

The TMC Telecommunications Ordinance defines new freestanding telecommunication facilities as major facilities. Approval of a Conditional Use Permit (CUP) granted by the Planning Commission is required for major facilities. The Development Review for the facility requires City Council approval as part of the project PDP/FDP. The Telecommunications Ordinance requires that telecommunication facilities taller than thirty-five feet to be monopoles or guyed towers to minimize visibility of the tower from adjacent properties. However, if a self-supporting tower, such as a lattice tower, is required for the capacity or height of the telecommunication use, and evidence is submitted to demonstrate such need, a self-supporting tower may be approved.

According to the applicant, the proposed telecommunication tower is necessary for the operation of the CHP facility. The tower is proposed to be a four-legged lattice tower with a total height of 140 feet (Attachment B). The tower has been designed to ESA standards and to accommodate antennas and microwave dishes for CHP and other local, state, and federal agency use. According to the applicant, this can only be achieved with the design and rigidity of a four-legged freestanding tower. Additionally,

the microwave dishes operate by line of sight, which is dependent upon strategic vertical and horizontal separation between dishes. A monopole, by comparison, does not provide the rigidity or antenna space needed for CHP's antennas and microwave dishes. A photographic example of the tower is provided as Attachment C, and photosimulations of the tower in the context of the site are provided as Attachment D.

While a freestanding lattice tower of this height and size is not preferred over monopoles, CHP has deemed it necessary for the operation of the CHP facility. On January 11, 2012, the Planning Commission granted a CUP for the telecommunication facility contingent upon City Council approval of the PDP/FDP for the facility.

Existing CHP Office

There is an existing CHP office operating at 385 W. Grant Line Road. According to CHP staff, the CHP is currently leasing the building from its property owner. Upon completion of the new facility, the existing office will be closed and the operations will be relocated to the new facility. It is not known at this time who will retenant the building at 385 W. Grant Line Road.

Planning Commission Recommendation

The Planning Commission evaluated this project during two public hearings. On December 7, 2011, the Planning Commission reviewed and discussed the proposed applications. Planning Commission was generally in favor of the proposed building and site improvements and welcomed CHP to Tracy. The Commission questioned the necessity for the telecommunication tower to be so large and what the tower and site would look like once it is built. The applicant was unable to answer the Commission's questions regarding the technical reasons for the size of the tower. The Commission discussed the aesthetic impact of the telecommunication tower on Tracy and considered the need for a peer review. The agenda item was continued until photographic examples, photo-simulations, and more information regarding the tower size from the CHP could be made available. An excerpt from the Minutes from this Planning Commission meeting is included as Attachment E.

The item was heard for a second time on January 11, 2012. CHP staff and engineering consultants were present at the meeting to provide information on the telecommunication tower. They explained that the Tracy CHP facility is part of a statewide public safety network and their engineers recommended the proposed tower size to meet the operational needs of the microwave network. They also stated that future telecommunication towers will be built and existing towers will be retrofitted to this height and size. The applicant provided a photographic example (Attachment C) and photo-simulations of the proposed tower in the context of the site from multiple perspectives, which some Commissioners felt did not clearly demonstrate how the tower would look once built. After discussion, the Commission voted unanimously to recommend approval of the PDP/FDP to City Council and to approve the CUP application subject to City Council approval of the PDP/FDP. An excerpt from this Planning Commission meeting's Minutes is included as Attachment F.

Environmental Document

The proposed development is consistent with the Environmental Impact Report (EIR) that was prepared for the Northeast Industrial Areas Concept Development Plan and certified in 1996. In accordance with CEQA Guidelines Section 15183, no further environmental assessment is required. An analysis of the project shows that no significant on or off-site impacts will occur as a result of this particular project that were not already discussed in the Northeast Industrial Areas Concept Development Plan EIR. No evidence exists of any significant impacts to occur off-site as a result of the project because traffic, air quality, aesthetics, land use and other potential cumulative impacts have already been considered within the original environmental documentation. No new evidence of potentially significant effects has been identified as a result of this project.

The proposed telecommunication facility is categorically exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15332, which pertains to certain in-fill development projects. Because the project is consistent with the General Plan and Zoning, occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses, has no value as habitat for endangered, rare or threatened species, would not result in any significant effects relating to traffic, noise, air quality, or water quality, and can be adequately served by all required utilities and public services, no further environmental assessment is necessary.

FISCAL IMPACT

This project does not require the expenditure of any City funds.

STRATEGIC PRIORITY

This project supports the Public Safety Strategic Priority by permitting the establishment of a new California Highway Patrol facility in Tracy.

RECOMMENDATION

Staff and Planning Commission recommend that the City Council approve the PDP/FDP for the CHP facility and telecommunication tower located on a 4.7 acre site on Pescadero Avenue, Application Number D11-0007, subject to the conditions and based on the findings contained in the City Council Resolution dated February 21, 2012.

Prepared by: Kimberly Matlock, Assistant Planner
Reviewed by: Bill Dean, Assistant DES Director
Approved by: Andrew Malik, Development Services Director
Leon Churchill, Jr., City Manager

ATTACHMENTS

Attachment A – Location Map

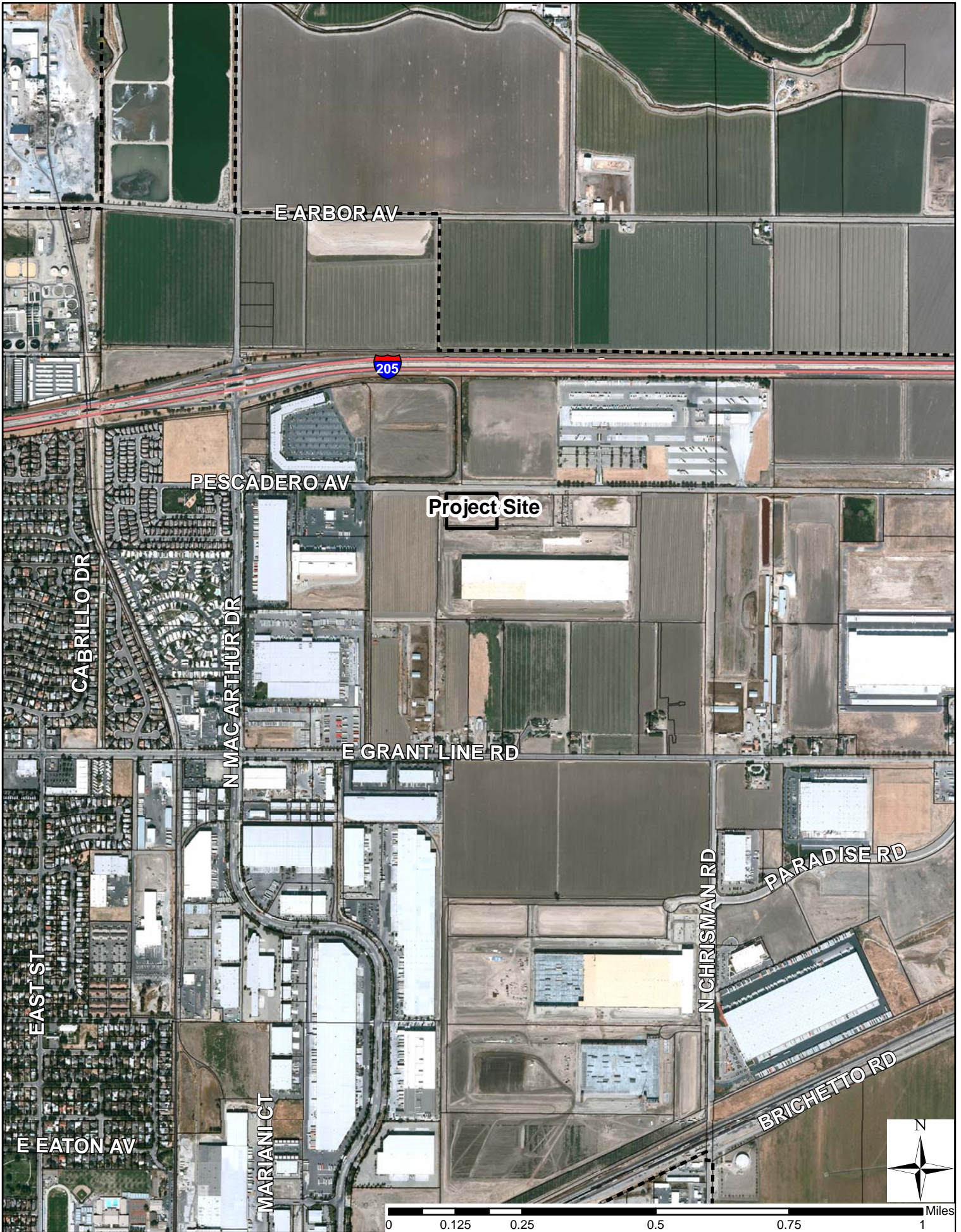
Attachment B – Site, Floor, Landscape, Civil, and Elevation Plans dated February 16, 2012
(oversized – provided separately)

Attachment C – Photographic example of a similar CHP telecommunication tower dated
January 11, 2012

Attachment D – Photosimulations of telecommunication tower dated February 8, 2012

Attachment E – Excerpt from Planning Commission Minutes dated December 7, 2011

Attachment F – Excerpt from Planning Commission Minutes dated January 11, 2012



Project Site

E ARBOR AV

PESCADERO AV

205

CABRILLO DR

N MAC ARTHUR DR

E GRANT LINE RD

PARADISE RD

N CHRISMAN RD

BRICHETTO RD

EAST ST

E EATON AV

MARIANI CT

0 0.125 0.25 0.5 0.75 1 Miles





10/25/2011 04:37 PM



View 1

California Highway Patrol, Tracy



Photo Simulation of View Looking
West along South Side of Pescadero

Artist Rendition - Subject to Change



California Highway Patrol, Tracy



Photo Simulation of View Looking
South from North side of Pescadero

Artist Rendition - Subject to Change



View 3

California Highway Patrol, Tracy



Photo Simulation of View Looking Southeast
from N. Side of Pescadero

Artist Rendition - Subject to Change



View 4

California Highway Patrol, Tracy



Photo Simulation of View Looking
South from Highway 205

Artist Rendition - Subject to Change

A. PUBLIC HEARING TO CONSIDER A PRELIMINARY AND FINAL DEVELOPMENT PLAN APPLICATION FOR A CALIFORNIA HIGHWAY PATROL FACILITY AND A CONDITIONAL USE PERMIT APPLICATION FOR A TELECOMMUNICATION FACILITY ON A SITE TOTALING APPROXIMATELY 4.7 ACRES ON PESCADERO AVENUE, APPROXIMATELY 2,100 FEET EAST OF MACARTHUR DRIVE, ASSESSOR'S PARCEL NUMBER 213-070-75 - APPLICANT IS KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS AND PROPERTY OWNER IS PONY UP TRACY, LLC. APPLICATION NUMBERS D11-0007 AND CUP11-0005

The staff report was provided by Kimberly Matlock, Assistant Planner. Mrs. Matlock stated the item was really for two proposals; the first being the Preliminary and Final Development Plan for a California Highway Patrol (CHP) facility, and the second for a Conditional Use Permit (CUP) for a telecommunications tower to serve the facility. Mrs. Matlock further stated the site was on Pescadero Avenue in the North East Industrial Area (NEI). Mrs. Matlock stated the architect had designed the project to meet a number of requirements including the Statewide CHP Manual, the Central Services Seismic Safety Act, City Standards, and LEED Standards. Mrs. Matlock indicated the facility was comprised of an office building, a secured area for vehicle services and storage, and a fueling station. Mrs. Matlock stated in the Telecommunication Ordinance there was a preference for telecommunication towers to be of a monopole design. Mrs. Matlock further stated the applicant had said the monopole design would not work for the CHP's needs, and they needed a four-legged lattice tower. Mrs. Matlock indicated staff had looked at the tower, and analyzed the aesthetic impact to the neighborhood. Mrs. Matlock stated the industrial area was probably the best location in the City for such a tower. Mrs. Matlock further stated Tracy Fire Department would be having discussions with the CHP regarding the co-location of Fire Department needs with this site.

Mrs. Matlock stated on the previous day the Commission had been provided revised Conditions of Approval, which were also available at the meeting. Mrs. Matlock further stated staff was recommending an additional Condition of Approval for the Conditional Use Permit that reads "The telecommunication facility shall be primarily used for public safety telecommunication use."

Mrs. Matlock indicated staff recommended approval of the project, and the Conditional Use Permit for the telecommunication tower.

Commissioner Mitracos asked for clarification on the co-location of the Fire House. Mrs. Matlock stated she meant to say co-location of the telecommunication equipment. Commissioner Mitracos asked if there was a limit to the towers in terms of design or height. Mrs. Matlock answered the Code specified preferences from co-location down to new towers as the last preference and in terms of the new towers it ranked monopoles and guide towers as the preference. Mrs. Matlock further stated that should those types not work for a user, and they could provide evidence to such effect, the City could approve something other than a monopole.

Commissioner Mitracos stated that was typically a cell phone tower and the Code did not reference this kind of tower. Mr. Dean stated it didn't really get into specifics regarding the type of technology for a Public Safety Enterprise. Mr. Dean stated as shown on the plans, the dishes necessary for this type of public safety were huge, more than ten feet in diameter. Commissioner Mitracos stated this tower is a pretty good size and also very wide, and the Holly Sugar towers could be seen by the top of Patterson Pass Road. Mr. Dean stated that is why

Mrs. Matlock wanted to highlight the fact that this was something that would be visible should it get approved.

Vice Chair Ransom asked if there were any alternatives and what alternatives had been discussed. Mrs. Matlock stated staff had asked that a monopole be used, however after analysis it was determined that because of the functional needs of line-of-sight and rigidity, a monopole design would not provide the functionality that they needed. Mr. Dean stated staff was pretty clear about the preference for a monopole, and the applicant was pretty clear that they had specific needs that couldn't be met by a monopole. Mr. Dean further stated that internally, staff had concluded that even with the monopole, once the applicant installed the giant dishes which would stick out over ten feet from the sides; there was not a way to make either option look good.

Commissioner Johnson asked for clarification on the height of the tower. Mrs. Matlock stated that lattice portion of the tower would be 120 feet, with an additional antenna that would rise another 20 feet from the top of the lattice tower.

Mr. Dean stated the CHP had also looked at another site in the I-205 area where staff had many more reservations due to the frequency of visitation to the site by the citizens, and it would be much more noticeable.

Commissioner Johnson asked if the applicant's intention was to vacate the building on Grant Line Road, and move into the new location when it was built. Mrs. Matlock answered yes. Commissioner Johnson asked what the size of the communication tower at the Grant Line location was. Mrs. Matlock answered she did not have that information; however it was nothing like this.

Commissioner Johnson stated he worked for a company that is in direct competition with Kier and Wright, and he should have mentioned this also for the previous item heard, however he could be fair and objective on both items.

Commissioner Johnson asked for information on the storm water collection, Mr. Mina provided a brief description of the system. Commissioner Johnson asked how the water would be treated, because of the fuel and vehicle maintenance system. Mr. Mina answered the applicant would be required to install a filtration system to filter the water before it reaches the temporary basin, and then it would percolate through the ground. Commissioner Johnson asked if this would meet the Regional Water Quality Control Board Standards. Mr. Mina answered there was a storm water regulation that they would have to comply with which would be reviewed by City staff when they submit their grading plans. Commissioner Johnson asked if the City would be the permit holder for the Regional Water Quality Control Board and would be responsible to enforce the regulations. Mr. Mina answered yes.

Chair Manne asked if there would be space on the tower available for co-location by commercial uses, in addition to the co-location for public use on the telecommunication tower. Mr. Dean stated there were no discussions with cell phone companies. Mr. Dean further stated there were no requirements that the tower be made available to other agencies. Chair Manne stated he felt that with the size of the tower, it may reduce the need for other smaller towers and may be beneficial. Mr. Dean answered that was why staff had recommended a condition that it may be limited to public safety telecommunication equipment primarily.

Chris Cammack, a representative of Pony Up, Tracy, addressed the Commission. Mr. Cammack stated that he believed that there would be four microwave dishes, and approximately three or four fiberglass poles. Mr. Cammack stated that the CHP and the State were open to co-location, and one parking space had been reserved for possible location of ground equipment for other public safety entities. Mr. Cammack stated the State would have the option of purchasing the facility after the initial ten years, and they expected the State to exercise that option. Mr. Cammack stated the reason for the type of tower he believed was wind force and rigidity. Mr. Cammack indicated it would be ideal for commercial equipment to locate there, however the State would not want to deal with the security issues of opening their facility to the commercial entities.

Commissioner Mitracos stated he originally thought this was directly for the CHP; however this was a typical development deal. Mr. Cammack stated it was a build-to-suit commissioned by the State, however the State was very specific on their needs and the whole project had to go through the Department of the State Architect. Commissioner Mitracos stated he was interested to know how essential the size of the tower was. Mr. Cammack stated it was very essential, and there were line-of-sight requirements and hilltop requirements. Commissioner Mitracos stated that 140 feet line-of-sight would get you past Sacramento, and did they really need that much? Mr. Cammack answered that was what he has been told. Mr. Cammack added that his understanding this was the prototype for the requirement for the entire state.

Commissioner Alexander asked if the 140 foot lattice tower was the industry standard. Mr. Cammack stated he did not know what the industry standard was, and there were several different types of lattice towers, and then there were guideline towers, and monopole towers. Commissioner Alexander asked if the equipment being located on the tower was standard, and what the range would be. Mr. Cammack answered he believed they would be able to communicate down to Fresno and over to Sacramento.

Vice Chair Ransom asked if this was something Mr. Cammack designed, or if it was the same all over the state. Mr. Cammack stated the tower was a prototype that would be used all over the state, but the buildings would be designed by different architects, and would be built at different sizes.

Commissioner Mitracos stated he was not comfortable with the tower without being able to talk to someone from the State or CHP to find out why it was needed. Commissioner Mitracos indicated he could not support it.

Vice Chair Ransom asked what Commissioner Mitracos had in mind. Commissioner Mitracos stated he wanted to ask why it was needed, what was the purpose, and if it was necessary to be this big and tall?

Mr. Dean stated the Telecommunication Ordinance does provide a clause that should the Commission feel more information is necessary, a third party review could be done at the applicant's expense. Commissioner Mitracos stated it made sense to him, and would satisfy him.

Vice Chair Ransom asked about the difference of the existing 90 foot tower versus the 140 foot tower. Commissioner Mitracos answered it was the width he was concerned with, and it was hard for him to visualize what the tower would look like.

Mr. Cammack stated they had provided elevations which included the tower, and that should help the Commission to envision what it would look like. Mr. Cammack indicated he could try to get a letter from the state.

Commissioner Johnson stated he was concerned with the height of the tower and the appearance; however because of the industrial area in which it would be located it didn't concern him that much. Commissioner Mitracos stated it was a large tower and would be visible from a long way away. Commissioner Johnson stated that didn't concern him because it would be in the industrial area, and so close to existing transmission lines.

Vice Chair Ransom asked how long the process would take if the Commission asked for a third party review for additional information. Mr. Dean stated it would be at least a month, and probably about 2 months before it would be before the Commission again. Vice Chair Ransom asked if it was a situation where the answers could be received from the CHP or the State. Mr. Dean stated that may be more expeditious, and he just wanted to make sure the Commission was aware of different tools at their disposal.

Vice Chair Ransom asked when the applicant wanted to begin construction. Mrs. Matlock answered spring, and they intended to occupy the building by the summer of 2013.

Commissioner Mitracos asked if the plans were finished. Mr. Cammack stated they were about 75% finished.

Mr. Cammack stated if the tower did not get approved, the CHP would abandon this site, and go to another site, most likely in the County and they would still build the tower. Commissioner Mitracos stated he felt the Commission was entitled to an explanation for the need for such a larger tower.

Commissioner Alexander stated he would prefer to ask questions of the CHP and not the Developer.

Mr. Cammack stated there was a letter provided to staff by the CHP which explained the need for the telecommunication tower. Chair Manne asked staff if there was a letter which had not been provided. Mrs. Matlock answered yes, there was a two-page letter from the CHP, which she had summarized in the staff report on pages two and three, under the section titled "Telecommunication Tower".

Commissioner Johnson stated there were a lot of tanks in the City which were visible all over, and those tanks were probably only 80 or 90 feet high.

Chair Manne stated he didn't think the difference between a 90 foot tower and a 120 foot tower would be that noticeable. Chair Manne stated his issue was the width of the tower, and he had no idea what it would look like. Chair Manne stated he was not for or against the tower; however he would like to ask more questions.

Vice Chair Ransom asked if it would be an appropriate motion to table the item until the Commission received more information. Mr. Dean stated that would be appropriate, but he urged the Commission to be very clear with the request so the applicant knew what the Commission was looking for.

Commissioner Mitracos stated he was hearing either a peer review, someone from the CHP to answer questions, or photographs and the CHP representative.

Vice Chair Ransom asked if the Commission was looking for the tower to be reduced to something more reasonable, in which case the Commission would need to determine what was reasonable, or was it looking for a definitive answer by whoever was mandating the tower as to why the tower needed to be this tall and this wide?

Commissioner Mitracos stated he had talked to a consultant and what he gathered that there were a lot of variations to these towers and what you get was not always what was necessary.

Chair Manne asked Commissioner Mitracos if the CHP had come to the meeting and had said this tower was absolutely necessary and this is the reason why, would he vote yes.

Commissioner Mitracos stated he was not technically versed enough to know what was necessary and what was not. Commissioner Mitracos added he would prefer the tower be smaller if at all possible.

Commissioner Johnson stated he would have liked to see computer generated graphics which showed the proposed tower in the site that is was to be on.

Garrett Readler of Kier and Wright addressed the Commission. Mr. Readler asked if short of the peer review, the CHP were to come before the Commission or provide a letter to explain the circumstances of why they needed a tower of this height and width, would that satisfy the Commission. Commissioner Mitracos stated what he had heard was this was a prototype, and this was not necessarily one-size-fits-all. Mr. Readler stated that he felt what the Commission was looking for was a technical letter stating specific requirements such as a 10 foot microwave dish located at 90 feet in height to communicate to Sacramento, rather than a peer review. Commissioner Mitracos stated he disagreed, and would want to see a third party review.

Vice Chair Ransom asked what staff felt would be the ideal tower height and width for the City. Mr. Dean stated this came down to aesthetics as it related to what tower looks like. Mr. Dean further stated he felt that the Ordinance got it right when it specified a preference for a monopole; however there were going to be technical circumstances when that will not work. Mr. Dean added that when the project came in, staff discussed the tower at length and in the end, they were able to make the recommendation because they determined that when you place ten foot wide dishes on the tower, it would not make that much difference if it was a lattice tower, or a monopole with the dishes hanging off. Mr. Dean further stated staff had asked for the minimum height, and the CHP provided the letter trying to explain why.

Vice Chair Ransom asked if there was a way to negotiate down to say 90 feet, and then if in the future the CHP needed to go higher, they could come back before the Commission. Mr. Dean stated there were several different ways to proceed such as pursue third party verification, or photos and other information, or recommend that City Council limit the height to a specific number, and then it becomes their application.

Commissioner Mitracos stated he thought that would complicate things. Commissioner Mitracos stated he would give his approval to a 140 foot tower if he was convinced that was what was necessary.

Chair Manne asked what staff based the recommendation on. Mr. Dean stated staff did not solicit third party review, and had based their recommendation on proximity to residential areas, visibility, dialog with the applicant, previous towers in the City, proximity to power lines, etc.

Vice Chair asked if the CUP could be approved, but work on the tower at a later date. Mr. Dean stated he would not recommend that, and he felt that the Commission should take their action when they were comfortable with the tower. Vice Chair Ransom stated she felt the Commission was comfortable with the project, but had varying degrees of comfort with the tower.

Commissioner Mitracos stated even though this was for the CHP, the City was entitled to information and a fair evaluation before a decision was made.

Commissioner Alexander stated he would like to see a third party review.

Vice Chair Ransom stated she wished there was a way for the Commission to show a commitment to the facility, while showing its concern with the tower.

Chair Manne stated he was all in favor with the CHP project, and he thought it was a great project and the site was a great location for the project; however he would like to continue the discussion and receive more information.

Mr. Dean indicated for the Commission's consideration, the last time a third-party review had been sought; it was for a cell tower, and the need was map-able by coverage areas. Mr. Dean stated that his concern if this project was to go for a third party review would be who would be the arbiter. Mr. Dean added if the CHP stated they need to communicate to Washington D.C., who would question that fact?

Commissioner Mitracos stated his feeling was if they were unable to find the third party, then the Commission would talk to the CHP, however he felt the Commission should try to locate a third party.

It was moved by Commissioner Mitracos that the item be continued until there was further information from a third party peer review, photos, and more information from the CHP. Commissioner Alexander seconded the motion. Vote found Commissioner Mitracos, and Commissioner Alexander in favor, with Commissioner Johnson, Vice Chair Ransom, and Chair Manne apposed; motion failed 2-3-0-0.

Vice Chair Ransom stated she would like to continue the discussion and give the opportunity for a representative from the CHP to come and justify tower, and to see photos, and know exactly how many dishes would be on the tower.

Commissioner Mitracos asked staff who did peer reviews. Mr. Dean answered consultants, and telecommunication firms.

Chair Manne stated he felt the CHP's explanation of the information in layman's terms would suffice. Commissioner Mitracos stated the problem with that was the Commission could hear from the CHP, and still want the peer review. Vice Chair Ransom stated she felt if the Commission requested the peer review, it did not give the CHP the opportunity to negotiate for a smaller tower.

Commissioner Johnson stated he would support Vice Chair Ransom's proposal.

Commissioner Alexander stated he would support Vice Chair Ransom's proposal however he did not feel the CHP would come before the Commission and say they did not really need the tower.

Vice Chair Ransom moved that the discussion be tabled until the Commission could have specifics by the CHP either in person or by letter as to why they need the tower to be so large, and to request that the tower be reduced to whatever the minimum requirement is, and to see pictures of anything close to the proposed tower. Commissioner Johnson seconded the motion. Voice vote found Commissioner Johnson, Commissioner Mitracos, Vice Chair Ransom, and Chair Manne in favor, with Commissioner Alexander apposed; passed 4-1-0-0.

1. OLD BUSINESS

A. PUBLIC HEARING TO CONSIDER A PRELIMINARY AND FINAL DEVELOPMENT PLAN APPLICATION FOR A CALIFORNIA HIGHWAY PATROL FACILITY AND A CONDITIONAL USE PERMIT APPLICATION FOR A TELECOMMUNICATION FACILITY ON A SITE TOTALING APPROXIMATELY 4.7 ACRES ON PESCADERO AVENUE, APPROXIMATELY 2,100 FEET EAST OF MACARTHUR DRIVE, ASSESSOR'S PARCEL NUMBER 213-070-75. APPLICANT IS KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS AND PROPERTY OWNER IS PONY UP TRACY, LLC. APPLICATION NUMBERS D11-0007 AND CUP11-0005

The staff report was provided by Mr. Dean who stated Kimberly Matlock was ill. Mr. Dean stated the California Highway Patrol (CHP) facility item had been heard at the December 7, 2011 meeting and had been continued to allow the Commission to interact with the applicant and CHP staff and receive additional information. Mr. Dean stated Commission was specific with what they were asking for including photo simulations and data regarding the height of the tower. Mr. Dean stated the recommendation provided by staff reflected staff's original recommendation of approval; however the Commission had options. Mr. Dean stated due to the nature of the zoning of the site, the project would go on to City Council based on the Commission's action.

Vice Chair Ransom asked if the device summary was supposed to be considered by the Commission as well. Mr. Dean stated that was additional information which had come in, relating to the telecommunication facility.

Chair Manne asked if the staff's recommendation was still the same as the previous meeting. Mr. Dean answered it was.

Chair Manne opened the public hearing.

Anthony Berzinas, Facilities Project Manager with the CHP addressed the Commission. Mr. Berzinas stated the lattice structure would be 120 feet, with the addition of antennas that would make the total height 140 feet. Mr. Berzinas stated the CHP had worked with Engineers, the Public Safety Radio Group, and the State of California to develop the statewide standard for the necessary rigidity for the microwave transmission, and the necessary separation for the multiple bandwidths for the CHP towers. Mr. Berzinas stated this was a priority and the site would not work for the CHP without the tower.

Vice Chair Ransom asked about the statewide standard, and if there were any towers across the state which did not meet the standard. Mr. Berzinas stated all future towers were being built to this standard. Mr. Berzinas further stated there were currently sites which did not meet this standard; however they are being replaced because they did not allow the separation of bandwidths sufficient enough for their needs.

Commissioner Mitracos asked for information on what guidelines were given. Mr. Berzinas stated they did not give guidelines regarding bandwidths separation, they received guidelines from the engineers. Mr. Berzinas stated they would have multiple communication devices on this tower and the separation was necessary based upon the load from the 911 dispatch centers and the multiple band frequencies that exist

throughout the State. Commissioner Mitracos asked if the communication tower was primarily for communication locally and regionally. Mr. Berzinas stated that was correct, and there would also be opportunity for interagency colocation of communication devices. Commissioner Mitracos asked if that was essentially a courtesy to the other agencies. Mr. Berzinas stated that it was a courtesy however it was also standard operating procedure and is strived for in the State of California. Commissioner Mitracos asked if colocation was part of a greater communication system. Mr. Berzinas stated not at this time however that was a long time goal, and the CHP was primarily the first responder for a statewide emergency, and it does aid in that cycle.

Commissioner Alexander asked how effective the lattice type tower compared to a monopole. Mr. Berzinas deferred to the engineers.

Jim Pratt of the California Technology Agency addressed the commission. Mr. Pratt stated his function at the agency was to manage and design and assist with the maintenance of the statewide public safety microwave network. Mr. Pratt stated that the agencies were all connected together through the public safety microwave network. Mr. Pratt indicated the facility in Tracy would allow the state to install a relay point for the network to enhance its resiliency. Mr. Pratt stated for that reason the tower needed to be strong and sturdy enough to maintain all the microwave antennas. Mr. Pratt further stated the antennas needed to be ten feet in diameter, and a single antenna is not as reliable as two. Mr. Pratt indicated the microwave antennas need to be extremely precise and cannot wobble in the wind, move, or they would lose half of their power. Mr. Pratt stated that is the reason the lattice type tower was necessary as opposed to a monopole was the antennas cannot maintain their bearing on a monopole. Mr. Pratt stated radio waves do not travel visible line of site they must take into consideration to curvature of the earth, and other factors. Mr. Pratt stated the minimum height would be 65 feet, but with the separation requirement the second antenna needed to be 40 feet higher and for convenience they rounded up to 70 and 120 feet. Mr. Pratt added there would also be several other types of antennas that would not function very well next to the drums of the microwave antennas. Mr. Pratt further stated that at the site, there was a trucking company in the direct line of sight, and the height of that building was 30 feet tall.

Commissioner Johnson stated he worked at a civil engineering firm that was in direct competition with the applicant Kier and Wright but he could stay fair on the item. Commissioner Johnson asked if this would be the first tower in CA that would be 120 feet tall with the antennas on top. Mr. Pratt stated there were some forestry towers were being replaced and they were considerable taller than 120 feet and the picture that had been included in the packet was of a tower on Bloomer Mountain which was 180 foot lattice tower. Mr. Pratt further stated there was a tower constructed at the CHP Headquarters in Sacramento which was the prototype for the new standard; however it is painted red and white and has beacon lights on it due to the proximity to their helipad.

Commissioner Johnson stated he had done an internet search and had found one in Inland Empire that he believed was close to the tower proposed. Mr. Pratt stated that was a very comparable tower.

Commissioner Johnson asked who had prepared the photo simulations. Ian Robertson of Henderson Architectural Group addressed the Commission and stated he was the preparer of the photos. Commissioner Johnson stated he was disappointed in the photo

simulations, and the locations that were chosen. Commissioner Johnson stated that the only he felt was any use was photo #2, on Pescadero. Commissioner Johnson state he felt this was a good project, and he felt this site would be a good location for the tower, he just didn't know if it needed to be that big.

Vice Chair Ransom asked if this standard was adopted, as she did not want the applicant to go ahead with the project and at a later date have it come back because it was not tall enough. Mr. Pratt stated that standards are adopted based on the statutes that are in place at the time, however this design had been approved by the State Architects, however the final approval was still pending the evaluation of the mounting bolts and brackets, and was expected any day.

Commissioner Mitracos stated what he knew about microwaves was it is a straight line, and asked for information regarding the microwaves. Mr. Pratt provided pictures of the line of sight and Fresnel clearance zone. Commissioner Mitracos asked if we would see more of these towers in the Central Valley. Mr. Pratt stated he imagined there would be more. Commissioner Mitracos asked if as the older facilities were replaced, they would be receiving this type of tower. Commissioner Mitracos stated he was convinced this was necessary, and his concern was he did not Tracy to become the Rio Vista of San Joaquin County. Mr. Pratt stated coming into town north of the freeway there was a 160 foot tower outside of the City limits.

Commissioner Alexander stated he would like to hear an independent expert on microwave towers, but he would like to have someone from the CHP tell the Commission if the 140 foot tower was really necessary in Tracy. Mr. Pratt stated his organization was created in 1948 to be the independent agency to provide the engineering services to various State agencies.

Lieutenant Jeff James, Commander of the Tracy CHP addressed the Commission. Lieutenant James stated each area communicated independently with dispatch through the towers, and the Tracy CHP needed the tower to communicate. Lieutenant James further stated that from his standpoint, in an emergency situation 280 seconds of downtime was unacceptable. Lieutenant James further stated when his officers were in the field and need to communicate with dispatch he wanted them to be able to do so quickly and effectively.

Zack Arbios, Architect with the CHP addressed the Commission. Mr. Arbios stated that the tower and its height were critical. Mr. Arbios stated he had sat on his local planning agency and he knew the Commission was weighing the increase in regional and local public safety versus the drawbacks of any tower. Commissioner Alexander stated that was what he wanted, for someone to tell him it was absolutely necessary. Mr. Arbios stated it was necessary and would do good things for the City and the region.

Barbara Pulliam, a citizen, addressed the Commission and asked how many cities had a tower of this size in the City limits. Mr. Arbios named several cities, and stated there were several more that have been approved but not build yet. Mrs. Pulliam asked for information regarding the antennas that would be on the tower. Mr. Berzinas stated there were 3 dishes would be at 110 feet and three more at 70 feet.

Chair Manne closed the public hearing.

Vice Chair Ransom thanked the representatives for coming and answering the questions of the Commission to get the item resolved.

Commissioner Alexander stated he believed the Commission needed an independent consultant.

Vice Chair Ransom asked Mr. Pratt if he was with the CHP or a third party. Mr. Pratt stated he worked for the State of California in the Technology Agency, which provided services to all State agencies that require telecommunication services. Vice Chair Ransom asked staff if that would be considered a third party. Mr. Dean stated it was a third party but would not be considered a third party hired by the City.

Chair Manne thanked the representatives for coming before the Commission. Chair Manne indicated he felt the project was important and he welcomed the CHP in the City. Chair Manne stated the photo simulations were terrible in showing the height or depiction of the towers; however he felt that there would not be a better place for the tower. Chair Manne further stated he wanted the CHP to remain in Tracy and thought this was a good area for them.

It was moved by Vice Chair Ransom and seconded by Commissioner Johnson that the Planning Commission recommend the City Council approve the PDP/FDP for the CHP facility and telecommunication tower located in a 4.7 acre site on Pescadero Avenue, Application Number D11-0007, subject to the conditions and based on the findings contained in the Planning Commission Resolution dated January 11, 2012; and approve the CUP application for a two year period, Application Number CUP11-0005, based on the findings contained in the Planning Commission Resolution dated January 11, 2012 and subject to City Council approval of the PDP/FDP of the CHP facility. Voice vote found all in favor; passed 5-0-0-0.

The Planning Commission recessed at 7:55 for a five minute break, to re-adjourn to room 109 for the Downtown Specific Plan Study Session.

RESOLUTION 2012 - _____

APPROVING A PRELIMINARY AND FINAL DEVELOPMENT PLAN APPLICATION FOR A CALIFORNIA HIGHWAY PATROL FACILITY AND A TELECOMMUNICATION FACILITY ON A SITE TOTALING APPROXIMATELY 4.7 ACRES ON PESCADERO AVENUE, APPROXIMATELY 2,100 FEET EAST OF MACARTHUR DRIVE, ASSESSOR'S PARCEL NUMBER 213-070-75. APPLICANT IS KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS AND PROPERTY OWNER IS PONY UP TRACY, LLC. APPLICATION NUMBER D11-0007

WHEREAS, The subject property was annexed to the City of Tracy in 1996, received a zoning designation of Planned Unit Development, is designated Light Industrial in the Northeast Industrial Concept Development Plan, and is consistent with the General Plan designation of Industrial, and

WHEREAS, On August 9, 2011, Kier & Wright Civil Engineers & Surveyors submitted an application for a Planned Unit Development Preliminary and Final Development Plan for a California Highway Patrol facility, which includes an office, automobile service areas, a four-legged, lattice, freestanding telecommunication tower, and associated equipment and storage areas, on an approximately 4.7 acre site on Pescadero Avenue, and

WHEREAS, The Light Industrial land use designation permits office uses and accessory uses and structures, and

WHEREAS, Freestanding telecommunication facilities shall be monopoles or guyed towers, unless evidence is presented that a freestanding facility is necessary for the telecommunication use, and

WHEREAS, The design of the freestanding, four-legged lattice tower provides the medium necessary for the antenna and microwave dish equipment required for the operational needs of the California Highway Patrol office that a monopole or guyed tower do not, and

WHEREAS, The buildings and parking lot improvements are exempt from the California Environmental Quality Act requirements under Guidelines Section 15183 pertaining to projects consistent with an approved General Plan or certified Environmental Impact Report, and

WHEREAS, The telecommunication facility is categorically exempt from the California Environmental Quality Act requirements under Guidelines Section 15332 pertaining to in-fill development projects, and

WHEREAS, The Planning Commission and the City Council shall review all Planned Unit Development Preliminary and Final Development Plans, and

WHEREAS, The Planning Commission conducted a public hearing to review and consider the application on December 7, 2011 and January 11, 2012 and recommended approval of the project to the City Council, and

WHEREAS, The City Council conducted a public hearing to review and consider the application on February 21, 2012;

NOW, THEREFORE BE IT RESOLVED, That the City Council hereby approves the Preliminary and Final Development Plan for a California Highway Patrol Facility and a

telecommunication facility, Application No. D11-0007, subject to the conditions contained in Exhibit "1" to this Resolution and based on the following findings:

1. The establishment, maintenance, and operation of the proposed use and associated improvements are compatible with the land use, design, and operational characteristics of the neighboring properties, because the California Highway Patrol offices and accessory buildings are compatible with the light industrial uses and development in the vicinity. The business operation of the California Highway Patrol, which includes the coming and going of patrol vehicles and the occasional receipt of freight trucks that are required to be inspected while on route, is similar to the vehicular traffic and volume of warehousing facilities in the vicinity. The telecommunication facility is compatible with the land use, design, and operational characteristics of the neighboring properties because the subject site is located in an industrial area primarily occupied by industrial uses, within which a utility tower is aesthetically appropriate.
2. The project will not, under the circumstances of the particular case or as conditioned, be injurious or detrimental to the health, safety, or general welfare of persons or property in the vicinity of the proposed use and its associated structure, or to the general welfare of the City because the project is consistent with the land use, design, and other elements of the Northeast Industrial Concept Development Plan, the City of Tracy General Plan, and applicable requirements of Chapter 10.08 and Chapter 10.25 of the Tracy Municipal Code.
3. The project will not adversely affect or impair the benefits of occupancy, most appropriate development, property value stability, or the desirability of property in the vicinity and will not adversely visually impair the benefits of the properties in the vicinity, because the main and accessory buildings have been designed with high quality material and colors and the parking lot has been landscaped with a variety of trees, shrubs, and groundcover that will complement the existing development in the vicinity of the project site. The ponding basin and dirt stock pile area, which is visible from the public right of way, will be screened from view with security fencing and landscaping. The telecommunication facility will be constructed of a non-reflective material, the cables will run down the center of the tower within an enclosed screen, and other associated equipment will be ground-mounted and screened with a building designed to match the main building on site.

* * * * *

The foregoing Resolution 2012 - _____ was adopted by the City Council on the 21st day of February, 2012, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

City of Tracy
Conditions of Approval
California Highway Patrol Facility
Application Number D11-0007
February 21, 2012

A. General Provisions and Definitions.

A.1. General. These Conditions of Approval apply to:

The Project: A California Highway Patrol facility consisting of six buildings totaling approximately 23,000 square feet and a 140-foot telecommunication facility (Application Number D11-0007)

The Property: South side of Pescadero Avenue, approximately 2,100 feet east of MacArthur Drive, Assessor's Parcel Number 213-070-75

A.2. Definitions.

- a. "Applicant" means any person, or other legal entity, defined as a "Developer."
- b. "City Engineer" means the City Engineer of the City of Tracy, or any other duly licensed Engineer designated by the City Manager, or the Development and Engineering Services Director, or the City Engineer to perform the duties set forth herein.
- c. "City Regulations" means all written laws, rules, and policies established by the City, including those set forth in the City of Tracy General Plan, the Tracy Municipal Code, ordinances, resolutions, policies, procedures, and the City's Design Documents (including the Standard Plans, Standard Specifications, 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 California Highway Patrol facility on Pescadero Avenue, Application Number D11-0007. The Conditions of Approval shall specifically include all Development and Engineering Services Department conditions set forth herein.
- f. "Developer" means any person, or other legal entity, who applies to the City to divide or cause to be divided real property within the Project boundaries, or who applies to the City to develop or improve any portion of the real property within the Project boundaries. The term "Developer" shall include all successors in interest.

A.3. Compliance with submitted plans. Except as otherwise modified herein, the project shall be constructed in substantial compliance with the plans received by the Development and Engineering Services Department on February 16, 2011.

- A.4. Payment of applicable fees. The applicant shall pay all applicable fees for the project, including, but not limited to, development impact fees, building permit fees, plan check fees, grading permit fees, encroachment permit fees, inspection fees, school fees, or any other City or other agency fees or deposits that may be applicable to the project.
- A.5. Compliance with laws. The Developer shall comply with all laws (federal, state, and local) related to the development of real property within the Project, including, but not limited to:
- the Planning and Zoning Law (Government Code sections 65000, et seq.)
 - the California Environmental Quality Act (Public Resources Code sections 21000, et seq., "CEQA"), and
 - the Guidelines for California Environmental Quality Act (California Administrative Code, title 14, sections 1500, et seq., "CEQA Guidelines").
- A.6. Compliance with City regulations. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all City regulations, including, but not limited to, the Tracy Municipal Code (TMC), Standard Plans, and Design Goals and Standards.
- A.7. Protest of fees, dedications, reservations, or other exactions. Pursuant to Government Code section 66020, including section 66020(d)(1), the City HEREBY NOTIFIES the Developer that the 90-day approval period (in which the Developer may protest the imposition of any fees, dedications, reservations, or other exactions imposed on this Project by these Conditions of Approval) has begun on the date of the conditional approval of this Project. If the Developer fails to file a protest within this 90-day period, complying with all of the requirements of Government Code section 66020, the Developer will be legally barred from later challenging any such fees, dedications, reservations or other exactions.

B. Development and Engineering Services Planning Division Conditions

Contact: Kimberly Matlock (209) 831-6430 kimberly.matlock@ci.tracy.ca.us

- B.1. Habitat conservation. Prior to issuance of any permits for ground disturbance, the applicant shall comply with the San Joaquin County Habitat Conservation Division and a signed copy of the Incidental Take Minimization Measures shall be submitted to the City as verification of compliance.
- B.2. Parking lot.
- B.2.1. Before the approval of a building permit, the applicant shall provide site plans and construction details that demonstrate the number, design, and location of bicycle parking spaces will be provided in accordance with TMC Section 10.08.3510. The bicycle parking requirement for this project is 3 spaces.
- B.2.2. Before the approval of a building permit, the applicant shall provide site plans and construction details that demonstrate 12-inch wide concrete curbs along the perimeter of landscape planters where such planters are parallel and adjacent to vehicular parking spaces to provide access to vehicles without stepping into the landscape planters.

- B.2.3. Before the approval of a building permit, the applicant shall provide detailed plans that demonstrate a minimum of one foot candle throughout the parking area as defined in TMC Section 10.08.3450.
- B.2.4. Before final inspection or certificate of occupancy, all exterior and parking area lighting shall be directed downward or shielded, to prevent glare or spray of light into the public rights-of-way and onto any adjacent private property to the satisfaction of the Development and Engineering Services Director.
- B.3. Landscaping & irrigation. Before the approval of a building permit, the applicant shall provide detailed landscape and irrigation plans consistent with the Department of Water Resources' Water Efficient Landscape Ordinance to the satisfaction of the Development and Engineering Services Director.
 - B.3.1. Said plans shall demonstrate no less than 20% of the total parking area, excluding paved areas not defined as part of the parking area for customers and employees, proposed to be developed in landscaping comprised of trees, shrubs, and groundcover and no less than 40% canopy tree coverage of said parking area at tree maturity.
 - B.3.2. Trees shall be a minimum of 24" box size, shrubs shall be a minimum size of 5 gallon, and groundcover shall be a minimum size of 1 gallon.
 - B.3.3. Before the issuance of a building permit, the applicant shall execute an Agreement for Maintenance of Landscape and Irrigation Improvements and submit financial security to the Development and Engineering Services Department. The Agreement shall ensure maintenance of the on-site landscape and irrigation improvements for a period of two years. Said security shall be equal to the actual material and labor costs for installation of the on-site landscape and irrigation improvements or \$2.50 per square foot of on-site landscape area.
 - B.3.4. A landscape screen equal to or taller than the earth stock pile shall be provided to screen views of the ponding basin and stock pile from Pescadero Avenue to the satisfaction of the Development and Engineering Services Director. The landscape screen may use a combination of vines, hedges, shrubs, trees, and groundcover. Redwood slats may be used in combination with the landscape screen but shall not serve as the sole method of screening.
 - B.3.5. Large, decorative boulders or a 12-inch tall curb shall be provided in landscape planters that are adjacent to truck turning areas to prevent the trucks from rolling into the landscape planters. Boulders shall be spaced intermittently along the edge of the planter as appropriate.
- B.4. Landscape & Irrigation Maintenance. Prior to the issuance of a building permit, the Developer shall execute a two-year landscape and irrigation maintenance agreement and submit financial security, such as a performance bond, to ensure the success of all on-site landscaping for the term of the agreement. The security amount shall be equal to \$2.50 per square foot of the landscaped area or equal to the actual labor and material installation cost of all on-site landscaping and irrigation.
- B.5. Fencing. Any fence over 6 feet in height shall obtain a building permit from the Development and Engineering Services Building and Fire Safety Division.
 - B.5.1. No chain-link fencing shall be located so that it is readily visible from any public right-of-way, unless it is screened by buildings or landscaping.

- B.5.2. No slats shall be permitted in chain-link fencing unless it is used in combination with a landscape screen.
- B.6. Screening utilities and equipment.
 - B.6.1. Before final inspection or certificate of occupancy, no roof mounted equipment, including, but not limited to, HVAC units, vents, fans, antennas, sky lights and dishes, whether proposed as part of this application, potential future equipment, or any portion thereof, shall be visible from any public right-of-way to the satisfaction of the Development and Engineering Services Director. Plans to demonstrate such compliance shall be submitted to the City prior to the issuance of a building permit.
 - B.6.2. Before final inspection or certificate of occupancy, all PG&E transformers, phone company boxes, Fire Department connections, backflow preventers, irrigation controllers, and other on-site utilities, shall be vaulted or screened from view from any public right-of-way, behind structures or landscaping, to the satisfaction of the Development and Engineering Services Director.
 - B.6.3. Before final inspection or certificate of occupancy, all vents, gutters, downspouts, flashing, and electrical conduits shall be internal to the structures and bollards and other wall-mounted or building-attached utilities shall be painted to match the color of the adjacent surfaces or otherwise designed in harmony with the building exterior to the satisfaction of the Development and Engineering Services Director.
 - B.6.4. Before approval of a building permit, plans shall be submitted to the City that demonstrates the Healy enhanced vapor recovery equipment will be fully screened from public view. Any vent pipes that are visible shall be painted to match the adjacent building to the satisfaction of the Development and Engineering Services Director.
 - B.6.5. Before final inspection or certificate of occupancy, the fueling island tank shall be painted to match the canopy structure to the satisfaction of the Development and Engineering Services Director.
 - B.6.6. The telecommunication tower shall be constructed of a non-reflective gray material, including all antennas, microwave dishes, and visible cables or wires.
 - B.6.7. All telecommunication cables, wires, and associated equipment shall be interior to the telecommunication tower and substantially screened from view by a solid enclosure colored to match the tower to the extent feasible without interrupting the telecommunication function. All ground-mounted equipment shall be enclosed within the radio vault room.
- B.7. Canopies. Before final inspection or certificate of occupancy, the carports and fueling station canopy shall be textured and painted to match the main buildings to the satisfaction of the Development and Engineering Services Director.
- B.8. Fueling station kiosk. Before the approval of a building permit, the applicant shall submit plans for the design of the fueling station kiosk that includes a cantilever. The fueling station kiosk shall be finished and colored to match the main buildings to the satisfaction of the Development and Engineering Services Director.
- B.9. Signs. Before issuance of a sign permit, the applicant shall submit an application and plans for all business identification signs. All signs shall be on private property and

shall not encroach into the public right-of-way.

C. Development and Engineering Services Engineering Division Conditions

Contact: Criseldo Mina (209) 831-6425 criseldo.mina@ci.tracy.ca.us

- C.1. Before Approval of Grading and Encroachment Permit Applications. No application for grading permit and encroachment permit within the Project boundaries will be accepted by the City as complete until the Developer 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:
- C.1.1. The Developer has completed all requirements set forth in this section.
 - C.1.2. The Developer has obtained the approval of all other local public agencies with jurisdiction over the required public facilities.
 - C.1.3. The Developer has executed improvement agreement, posted improvement security, and provided documentation of insurance, as required by these Conditions of Approval.
 - C.1.4. The Grading and Drainage Plans shall be prepared in accordance with the Subdivision Ordinance, Tracy Municipal Code, the City Design Documents and these Conditions of Approval. The Improvement Plans for all improvements that is required to serve the Project shall be in accordance with the Subdivision Ordinance, the City Design Documents, and these Conditions of Approval. The Improvement Plans shall be prepared to specifically include, but not be limited to, the following:
 - All existing and proposed utilities.
 - All supporting engineering calculations, specifications, cost and technical reports related to the design of the improvements.
 - Design and Improvement Plans for the permanent storm drainage connections to City's storm drainage system for ultimate disposal of storm water. Provide invert elevation at the connection point with the City's storm drainage pipeline.
 - Improvement Plans for a temporary storm drainage retention facility as approved by the City Engineer. Storm drainage calculations, signed and stamped by a registered Civil Engineer, for the sizing of the retention facility. Soils Report that identifies the type of soil and specifies percolation rate at the basin site and includes recommendations related to backfilling, compacting and grading of the basin site.
 - Improvement Plans prepared on a 24" x 36" size mylar. Improvement Plans shall be prepared under the supervision of, and stamped and signed by a Registered Civil, Traffic, Electrical, Mechanical Engineer, and Registered Landscape Architect for the relevant work.
 - C.1.5. 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.
 - C.1.6. Payment of all applicable processing fees, including improvement plan check fees, engineering fees for processing Conditions of Approval, encroachment and grading permits and inspection fees, required by these Conditions of Approval and City Regulations.

- C.1.7. Three (3) sets of the Project's 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, as required on Condition C.4.4., below.
- C.1.8. Tracy's Fire Marshall's signature on the Improvement Plans indicating their approval on the Project's fire service connection, fire and emergency vehicle access and compliance of the City's Fire Department fire protection requirements, as required in Conditions C.9.4, C.9.5, and C.9.6, below. Written approval from the Fire Department required in this section shall be obtained by the Developer, prior to City Engineer's signature on the Improvement Plans.
- C.1.9. Signed and notarized Deferred Improvement Agreement and improvement security in the amounts and forms as approved by the City Engineer and City Attorney and payment of the agreement-processing fee, as required in Conditions C.7.2, C.7.5, and C.7.14, below.
- C.1.10. Letter indemnifying the City and all the necessary attachments to the letter, as required in Conditions C.7.1 and C7.14, below.
- C.1.11. Letter from the Developer informing the City the results of site investigation for presence of irrigation and drainage tile drains as required in Condition C.7.7, C.7.8, C.7.9, C.7.10, and C.7.11, below. If tile drains are found within the Property during construction, the Developer shall notify the City immediately in writing, and shall obtain approval from the City, prior to resuming construction work.
- C.1.12. Letter from the Developer addressed to City's Public Works Department, requesting inclusion of the Property, if applicable, to an existing Landscape Maintenance District, to mitigate the Property's obligation towards the maintenance of public landscaping, as required in Condition C.10.1, below.
- C.1.13. The Developer shall comply with the requirements of Regulation VIII, Fugitive PM 10 Prohibitions of the San Joaquin Valley Air Pollution Control, as required in Condition C.4.7, below.
- C.1.14. Signed and notarized Grant of Easement with the necessary legal description and plat(s), for the dedication of the temporary storm drainage access easement to the City as required in Condition C.7.3, below. The signed and wet-stamped legal description and plat(s) must be submitted as part of a complete grading permit application.
- C.1.15. Signed and notarized Grant Deed with the necessary legal description for the change of ownership of the right-of-way on Pescadero Avenue from roadway easement to fee title ownership, if offer of dedication is not made on the Final Parcel Map, as required in Conditions C.5.1 and C.7.17, below.
- C.2. Before Approval of Building Permit. No building permit within the Project boundaries will be approved by the City until the Developer demonstrates, to the satisfaction of the City Engineer, compliance with all required Conditions of Approval, including, but not limited to, the following:
 - C.2.1. The Developer has completed all requirements set forth in Condition C.1, above.
 - C.2.2. Payment of all applicable Northeast Industrial Area (NEI) – Phase 2 development impact fees (a.k.a. capital in-lieu fees), and participation in Community Facilities Districts, if formed, for construction of infrastructure

- including but not limited to roads, sewer, water, storm, public buildings, public works/safety, parks, reimbursements to other development area(s) for use of reserve capacities, as required by the Northeast Industrial Area – Phase II Finance and Implementation Plan, and all fees required by these Conditions of Approval and City Regulations. Development impact fees are adjusted annually based on the Construction Cost Index (CCI) published in the Engineering News Record (ENR). The final development impact fees to be paid by the Developer are the NEI Phase 2 development impact fees that are in effect at the time of issuance of the building permit.
- C.2.3. The Developer has completed or satisfied the obligations of the Project by executing required agreements and posting appropriate security as required by the City Engineer and per the Conditions of Approval, the Deferred Improvement Agreement, Indemnification Agreement, these Conditions of Approval and City Regulations.
- C.2.4. A signed and stamped letter from the Project's Geo-Technical Engineer certifying that grading work performed by the Developer within the Project meets the requirements of the Project's Soils Report and the recommendations by the Project's Geo-Technical Engineer and that the grading work was performed under the direct supervision of the Project's Geo-technical Engineer, as required in Condition C.4.1, below.
- C.2.5. A signed letter from the Developer acknowledging participation in a benefit district as required by these Conditions of Approval, if necessary as determined by the City. The letter shall state that the Developer 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.
- C.2.6. All phases of the development shall annex into the Tracy Consolidated Landscape Maintenance District (TCLMD) prior to the issuance of the building permit, as required in Condition C.10.1, below.
- C.2.7. Payment of the cost share responsibility of the Developer for the future traffic signal and intersection improvements on Pescadero Avenue and access road to the Home Depot Deployment Center in the amount of \$24,706.50, as required in Condition C.10.3, below.
- C.3. Before the Issuance of Building Certificate of Occupancy. No building certificate of occupancy within the Project boundaries will be approved or issued by the City until the Developer provides documentation which demonstrates, to the satisfaction of the City Engineer, that:
- C.3.1. The Developer has completed all requirements set forth in Condition C.1, C.2, above and this section.
- C.3.2. The Developer has completed construction of other public facilities (non-program) required to serve the Project that are not part of the Northeast Industrial Area program for which a building certificate of occupancy is requested. Unless specifically provided in these Conditions of Approval or other City Regulations, the Developer shall take all actions necessary to construct all public facilities (non-program) required to serve the Project, and the Developer shall bear all costs related to the construction of the public facilities (including all costs of design, construction, construction management,

improvement plans check, inspection, land acquisition, program implementation, and contingency).

C.4. Grading and Erosion Control.

- C.4.1. A Grading Plan prepared by a Registered Civil Engineer and accompanied by Soils Engineering and Engineering Geology reports shall be submitted to the City with the Improvement Plans. 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. Slope easements, if necessary, shall be recorded per City Regulations. Prior to the issuance of the first building permit within the Property, the Developer 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 Developer, 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).
- C.4.2. 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 the 15th of October of that year. Improvement Plans shall designate all erosion control methods and materials to be employed.
- C.4.3. As required by City Standards, the 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. An overland storm drainage release point is a location on the Project's boundary where storm runoff leaves the Property and overland drain to an improved public street with functional storm drainage system in the event the Project's on-site storm drainage system fails to function properly or is clogged. The building finish floor is recommended to be at least 0.70 feet higher than the Project's overland storm drainage release point. The City will not allow overland storm drainage release through private properties without written permission from affected property(s). The Developer shall execute an indemnification agreement if after the Developer has demonstrated a design constraint exists that would cause the Project's overland storm drainage release point to be designed and constructed with storm water draining through private property(s). The indemnification agreement requires approval from the City Council prior to the issuance of the grading permit. The Grading and Drainage Plans shall indicate the location and elevation of the Project's overland storm drainage release point and shall show all improvements that may be necessary to create a functional overland storm drainage release point.
- C.4.4. Prior to the issuance of the Grading Permit, the Developer shall submit three (3) sets of the Storm Water Pollution Prevention Plans (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 Wastewater Discharge Identification Number. After the completion of the Project, the Developer is responsible for filing the Notice of Termination (NOT) required by SWQCB. The Developer shall provide the City, 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 Developer. The Developer shall provide the City with the Waste Water Discharge Identification number, prior to the issuance of the grading permit. The Developer shall comply with all the requirements of the SWPPP and applicable Best Management Practices (BMPs) and the City's Storm Water Management Program.

- C.4.5. 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 the City's storm drainage system shall be used for retaining walls where grade differential is more than 12 inches. Using sloped backfill materials to eliminate grade differential will not be allowed.
- C.4.6. The building finish floor must be set to be one (1) foot higher than the highest 100-year flood plain elevation or contour. The lowest point in the parking area or the Property shall not be more than four (4) feet below the highest 100-year flood plain elevation or contour.
- C.4.7. Prior to start of grading work, Developer shall comply with the requirements of Regulation VIII, Fugitive PM10 Prohibitions of the San Joaquin Valley Air Pollution Control District, pertaining to Fugitive Dust Control at Construction Sites. Compliance to regulations related to Visible Dust Emissions, Soil Stabilization, Carryout and Track-out, Access and Haul Roads, Storage Piles and Materials, Dust Control Plans, Nuisances, Notification and Record Keeping are required.

C.5. Street Improvements.

- C.5.1. The Developer shall submit for review a detailed design of remaining frontage improvements on Pescadero Avenue for the entire frontage of the Project. The frontage improvements on Pescadero Avenue shall include, but are not limited to, parkway landscaping with automatic irrigation system (Motorola Irrigation Controller), removal and replacement of asphalt concrete pavement, concrete curb, gutter, sidewalk, and handicap ramp as a result of the installation of a commercial driveway, pavement signing, striping, and other improvements within the City's right-of-way on Pescadero Avenue as determined by the City Engineer (hereinafter "Pescadero Avenue Improvements"). The Developer shall design and construct Pescadero Avenue Improvements in accordance with City Regulations to the satisfaction of the City and pay for all the cost of these frontage improvements. The Improvement Plans shall be prepared in a 24" x 36" sized mylar, as specified in Condition C.1.4, above. Pescadero Avenue Improvements must be completed by the Developer and accepted by the City Council as complete prior to the issuance of the temporary building certificate of occupancy.

Pescadero Avenue is classified and planned to function as a major industrial street. The ultimate right-of-way width of Pescadero Avenue is 110 feet per the City's Roadway Circulation Master Plan and the NEI Concept Development Plan. The street section for a major industrial street includes two

(2) 12-foot wide travel lanes and an 8-foot wide bike lane on each direction, a 16-foot wide raised median or striped median and 15-foot landscaping strip on both side of the street.

Pursuant to Chapter 12.32.040 of the Tracy Municipal Code, all dedications of property to the City for public purposes shall be made in fee title and shall be free of liens and encumbrances, except for which the City, in its discretion, determines that such liens and encumbrances does not affect or it is not in conflict with the intended ownership and use of the land or property being acquired or dedicated. Considering the 29 foot wide roadway easement dedicated by both the owners of the Vorhees Parcels and the Developer of the Home Depot Deployment Center, there is an approximately 59 feet roadway easement along the frontages of the two properties described above on Pescadero Avenue.

The Developer shall submit signed and stamped legal description and map, including the executed Grant Deed, prior to the issuance of the Grading Permit if right-of-way dedication is not included on the Final Parcel Map. The Grand Deed shall be recorded with San Joaquin County Recorder's Office before the issuance of the building permit. The Developer shall be responsible for the cost of dedication of the land as required in this condition and shall also pay for the cost of preparing the legal description, map and Grant Deed.

C.5.2. Pescadero Avenue is not a STAA truck route and the Project site is not an approved STAA truck terminal access. The Developer is responsible to pay for the street improvements on Pescadero Avenue and MacArthur Drive that are necessary to establish Pescadero Avenue as a STAA truck route and the Project site as a STAA terminal access. Upon receipt of the Developer's share of cost of street improvements, City will construct the street improvements on Pescadero Avenue and MacArthur Drive as part of a roadway capital improvement project. STAA truck drivers that will be using Pescadero Avenue to access the Project site shall assume the risk of being cited for traffic violation(s) associated with using a street that is not an approved STAA truck route. Developer is responsible for any cost(s) and liability(s) that may arise for allowing the use of the Project site as STAA truck turn-around area which is not a designated STAA truck terminal access.

C.6. Undergrounding of Overhead Utilities. The Developer shall, to the satisfaction of the affected utility companies and the City Engineer, underground and/ or relocate all utilities within the Property and along the street frontage of the Property on Pescadero Avenue, if it is necessary to clear the construction of frontage improvements, all at the Developer's cost and expense. The Developer shall underground the Project's electrical service connections from the underground electrical distribution line on the street to the proposed building. The cost of undergrounding the overhead utilities including the individual service connection(s) to the Project will be the sole responsibility of the Developer.

C.7. Storm Drainage.

- C.7.1. In the absence of the downstream facilities, such as the permanent detention basin for NEI and its connection to the City's existing storm drainage channel, the City will allow the use of an on-site temporary storm drainage retention basin as an interim solution for the disposal of storm runoff generated from the Property, provided the property owner and/ or Developer complies with City standards regarding the design and construction of the on-site temporary storm drainage retention basin and agrees to remove the basin and grade the basin site when the basin is no longer needed as determined by the City or when it is taken out of service and that all the costs involved in the design, construction, maintenance and removal of the basin are paid and guaranteed by the property owner and/ or Developer. The on-site temporary storm drainage basin must be located at the downstream portion of the Project's on-site storm drainage system and the Property and must be designed and constructed in accordance with City standards. The basin must be designed with capacity to store storm runoff equivalent to the volume of two (2) ten (10)-year 48-hour storm event generated from the Property. Basin must empty in ten (10) days. Submit the calculations for determining the size of the basin with the soils report that contains information on the site's percolation rate and groundwater elevation. Indicate on the site plan the approximate location and size of the on-site temporary storm drainage retention basin.

Excavated materials shall be kept within the basin site. If the excavated materials are removed from the basin site, the Developer shall post cash security equivalent to the cost of the backfill materials, hauling to the basin site, spreading, compacting and re-grading the basin site. Stockpile of excavated materials shall not be higher than 8 feet and slope should not be steeper than 1:1. A chain link fence with screening as approved by the Development and Engineering Services Director and access gate shall be installed by the Developer to enclose the basin site. The bottom of the temporary on-site storm drainage retention basin shall be 5 feet above the observed highest groundwater elevation at the basin site. The City Engineer may allow a separation of not less than 2 feet, if the Developer signs an indemnification letter. The percolation report shall also indicate the observed highest groundwater elevation at the basin site. The Developer will be responsible for maintenance of the temporary retention facility until downstream storm drainage facilities are available and connection to the permanent system is installed and made operational.

- C.7.2. To guarantee to the City that the basin will be removed and the basin site will be filled and graded accordingly and the project's storm drainage connection to the City's permanent storm drainage facility will be completed and made operational, the Developer shall execute a deferred improvement agreement and post necessary improvement security. The agreement will require approval from the City Council. Developer shall obtain approval from the City Council prior to the issuance of the grading permit. Developer shall submit the signed agreement and improvement security as part of a complete grading permit application. City will allow the removal of the basin when the City's storm drainage facility planned to serve this property are constructed and accepted by the City Council as complete and a written notice from the City Engineer stating that the basin can be removed is issued. Backfilling of the

basin and grading work on the basin site shall be in accordance with the recommendations of the Project's Geo-Technical Engineer or Project's Geo-Technical Report/Soils Report.

- C.7.3. Developer will be required to dedicate a temporary storm drainage easement for the benefit of the City to provide access rights to the basin site for any emergency maintenance work the City may perform on the temporary on-site storm drainage retention basin. The easement shall be granted and recorded prior to the issuance of the grading permit. The easement document shall contain a sunset clause for the termination of the easement upon filing of a notice of completion of the removal of the temporary on-site storm drainage retention basin.
- C.7.4. The Project's on-site storm drainage system must be designed and constructed such that the Project's storm drainage connection functions or drains as gravity system. City will not allow the use of pump-station or lift-station to drain storm runoff to the City's storm drainage facility. The storm drainage connection shall be connected to the storm drainage facility identified in technical Analysis titled "Northeast Industrial Area Phase 2 – Final Storm Drainage Analysis" prepared by Stantec Consulting Inc. on November 1, 2004, which was revised on April 25, 2005.
- C.7.5. The Developer shall remove the temporary on-site storm drainage retention basin and design and construct the permanent connection to the City's storm drainage facility, all at the Developer's sole cost and expense, within sixty calendar (60) days from date of receipt of written notification from the City Engineer that the City's NEI Detention Basin and its connection to the City's downstream storm drain system and the Project's storm drainage connection to the City's storm drainage facility are completed and is ready for final acceptance by the City Council. The Developer shall post improvement security in a form acceptable to the City to cover the Developer's cost responsibilities to maintain the temporary basin, remove the temporary basin, backfill, and grade the basin site, and design and construct the permanent storm drainage connection for the Project. Prior to the issuance of the Grading Permit, the Developer shall execute a Deferred Improvement Agreement with the City and post improvement security in the amounts and form acceptable to the City to guarantee completion of the removal of the temporary storm drainage retention basin, design and construction of the Project's storm drainage connection to the City's storm drainage facility and the backfilling and re-grading of the basin site to its final grades. The Developer shall deliver to the City cash deposit in the amount of \$15,000 to cover City's expenses in performing emergency services related to the maintenance of the temporary on-site storm drainage retention basin and appurtenances that the Developer failed to perform. City shall return any unused portion of the cash deposit within thirty (30) calendar days after the removal of the on-site storm drainage retention basin.
- C.7.6. The Project's storm drainage connection to the City's storm drainage facility shall be designed to function and drain as gravity storm drainage system. No pumping of storm drain water or use of storm drain lift station will be permitted within City's right of way.
- C.7.7. The Developer shall arrange for a site sub-surface investigation for determining presence of irrigation and drainage tile drains within and around

the Property and submit a report prepared and signed by a Geo-Technical Engineer. In the event that tile drains exist within and around the Property, the Developer has the option to either relocate or abandon the on-site tile drains as required to clear the proposed development. All existing tile drains and proposed improvements for the relocation of removal of the tile drains must be shown on the Grading and Drainage Plans. Any tile drains under the proposed buildings shall be abandoned or relocated as required to the satisfaction of the City. The Developer or the property owner(s) will be responsible for maintenance of the tile drains to remain or the relocated tile drains and associated improvements. Additionally, the Developer will be responsible for monitoring the groundwater levels, and for the mitigations, if any, that may be required.

- C.7.8. The Developer shall design and construct off-site improvements within the City's right-of-way and/or on-site private improvements such that any existing drainage ditches or pipelines or tile drain shall remain functional or undisturbed during and after construction, unless the Developer can demonstrate to the satisfaction of the City Engineer that the drainage ditches or tile drains are no longer needed to serve the Project and the neighboring parcels or property(s), if applicable. If tile drains are to remain in-place and will be under a proposed building or structure, it is the responsibility of the Developer to ensure that tile drains are not damaged during and after the construction of the buildings or structures.
- C.7.9. If tile drain system (irrigation system installed decades ago by farmers or irrigation districts) exists within the Project that also runs to the adjacent properties, the Developer shall coordinate with the owners of the neighboring properties for the relocation of affected tile drains, installation of interceptors and reconnecting to the outfall system. The Developer shall be responsible for monitoring groundwater level and for mitigating adverse impacts as a result of high groundwater level, all at Developer's sole cost and expense. The Developer will be responsible for any damages to any improvements within the Property and to adjacent properties for Developer's failure to perform any work related to the use, repair, operation and maintenance of tile drain system within the Property.
- C.7.10. The Developer is fully responsible for any damage, repair and maintenance from the Project's activities, including, but not limited to, all type of construction, the weight of the building and vehicular movements to existing tile drain system within the Project. The Developer shall indemnify, defend, and hold harmless the City (including its elected officials, officers, agents, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of merely the existence of the tile drain system and interceptors or from damaged or undamaged existing underground tile drain system issues by Developer or Developer's agents, representatives, contractors, subcontractors, or employees, adjacent property owner or adjacent property owner's agents, representatives, contractors, subcontractors, or employees. Developer's attention is drawn to the terms and conditions of the Indemnification Agreement.
- C.7.11. If existing tile drain systems require removal or relocation as recommended by the Engineer to be hired by the Developer, a copy of the field report must be

submitted to the City. The Developer shall remove or relocate tile drain system in accordance with the field report. If the tile drain system require connection to the City's storm drainage facility as recommended by the Developer's Engineer, the Developer shall pay for new sub-drainage system analysis by the City's consultant, if necessary, to determine specific impacts and required improvements to the downstream storm drainage facilities and for determination of the Project's fair share of costs for required improvements, prior to the issuance of a Grading Permit. The Developer shall pay the Project's fair share costs for the required improvements, prior to the issuance of the Grading Permit.

- C.7.12. The Developer shall design and install storm drain connection(s) in accordance with City Regulations. The Developer and property owner are hereby notified that the City will maintain the storm drain lines installed within public right-of-way only of a storm drain manhole is installed at the connection point.
- C.7.13. The Developer will make provisions for ultimate connection to permanent City's storm drain after the retention basin is taken out of service or abandoned be the Developer. The Developer shall coordinate the location and invert of the City's Storm Drainage Facility with City's approved storm drain system for NEI Phases 1 and 2 and the City's Storm Drainage Master Plan. The design of storm drainage connections will require approval from the City Engineer.
- C.7.14. The Developer shall enter into an agreement with the City to incorporate the Developer's obligation towards the repair, use, operation, maintenance and removal of the temporary storm drainage retention basin located within the Property. This agreement shall also include the Developer's responsibility towards the repair; operation, use and maintenance of existing and relocated underground tile drain system within the Property, if such private underground improvements are found to exist. As part of a complete grading permit application, the Developer shall execute the agreement and submit the executed agreement for City Council's approval. The Developer shall pay the City the cost of processing the agreement and cost of recording the agreement with the Recorder's Office of San Joaquin County.
- C.7.15. Developer is required to obtain a grading permit for the removal of the on-site temporary storm drainage retention basin and pay grading permit and inspection fees. Prior to the issuance of the permit, the Developer shall submit a geotechnical report that contains recommendations from a Geo-Technical Engineer on the method and information regarding the backfilling or compaction of the basin site.
- C.7.16. After the temporary storm drainage retention basin is removed and if there is no expansion that is planned to be made on the California Highway Patrol (CHP) facility, the Developer is required to submit a lot line adjustment application to move the eastern property line to its original location as shown on the original tentative parcel map. The lot line adjustment must be completed within six (6) months after the basin is removed. The Developer shall pay for the cost of processing the lot line adjustment. After the storm drainage retention basin is removed and the Developer decides to expand the CHP facility using the previous basin site, the Developer or property owner

- shall submit a site development plan for the CHP facility expansion for City's review and approval.
- C.7.17. The required fee title dedication of right-of-way on Pescadero Avenue shall include the right-of-way in front of the temporary storm drainage basin site, which is about 193.98 feet wide, to comply with the requirements of section 12.32.040 of the Tracy Municipal Code.
- C.7.18. The Developer shall pay the NEI Phase 2 Development Impact Fees applicable to the basin site or fees that are in effect at the time of issuance of the building permit of the proposed improvements at the basin site.
- C.8. Sanitary Sewer System. The Developer shall design and install sewer connection for this Project in accordance with City Regulations. The Developer and property owner are hereby notified that the City will not provide maintenance of the sewer lateral within the public right-of-way unless the sewer cleanout is located and constructed in conformance with Standard Plan No. 203.
- C.9. Water System.
- C.9.1. The property owner or Developer will be required to install domestic water service connection with a radio-read water meter within City's right-of-way. Domestic water service and fire service connections shall be installed in accordance with City Standards. City will allow sub-metering which will be installed outside City right-of-way, but the City will not read and inspect the sub-meters. The property owner or Developer shall ensure that size of the domestic water service and fire service line is adequate to meet City's water pressure and flow requirements and the project's water demand. Water looping or two points of connections for fire service will be required by City's Fire Department. Show the location of the water meter and backflow prevention device for the domestic water connection and the double check detector check valve for the fire service line. Show also the point(s) of connection with the existing water distribution main on Pescadero Avenue. Developer and/or property owner shall coordinate with City's Fire Department and obtain their approval for the location, layout and detail of fire protection facilities required of the Project, and for the emergency fire access to and through the Project prior to the issuance of the encroachment permit.
- C.9.2. The Developer shall demonstrate to the satisfaction of the City Engineer that water facilities (capacities at the plant and distribution or transmission lines) are adequate to meet project service demands and are consistent with the City's Water Master Plans. The Developer shall pay the costs of analysis by the City (including cost of consultants) required to demonstrate satisfaction of this condition.
- C.9.3. The Developer shall install and complete the water system connection, including Radio-Read water meter and R/P Type back-flow protection devices prior to issuance of the building certificate of occupancy. City's responsibility to maintain water lines shall be from the water main on the street to the water meter (inclusive) only. Maintenance of all on-site water lines, laterals, sub-meters, valves, fittings, fire hydrant and appurtenances shall be the responsibility of the Developer.
- C.9.4. The Developer shall design and install the fire service line for the Project in accordance with City's Regulations, Standards 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 the issuance of the grading permit, a written approval for the fire service and emergency access will be required from Fire Department.

- C.9.5. The Developer shall design and install fire hydrants at locations approved by the City's Fire Department.
- C.9.6. Prior to the approval of Improvement Plans and the issuance of the Building Permit within the Project, a written determination or approval by the Fire Marshall of the adequacy of the fire service connection to serve the development will be required.

C.10. Special Conditions.

- C.10.1. All phases of the Development shall annex into the Tracy Consolidated Landscape Maintenance District (TCLMD) prior to the issuance of a building permit. When the Property annexes into the TCLMD, the owners of the property will be assessed for assessment district costs related to maintenance, operation, repair and replacement of public landscaping, public walls and any public special amenities as described in the TCLMD. The items to be maintained include, but are not limited to, the following: ground cover, turf, shrubs, trees, irrigation systems, drainage and electrical systems, masonry walls or other fencing, entryway monuments or other ornamental structures, furniture, recreation equipment, hardscape and any associated appurtenances within medians, parkways, dedicated easements, channel-ways, parks or open space areas. Prior to issuance of a building permit, the Developer shall deposit a first year's assessment equivalent to the Maintenance District's first twelve months of estimated costs as determined by the City of Tracy Public Works Director. The Developer shall be responsible for all costs associated with annexation into the TCLMD.
- C.10.2. 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 Developer. The Developer shall provide the City documentation or copy of permit issued by the San Joaquin County, approving the removal or destruction of existing well(s), if applicable, prior to the issuance of the Grading Permit.
- C.10.3. Based on the traffic report prepared by TJKM Transportation Consultants, it was determined that the Vorhees property and Home Depot Deployment Center project's share is sixty-two percent (62%) towards the cost of the traffic signal and associated intersection improvements on Pescadero Avenue. TJKM Transportation Consultants issued a supplemental technical memorandum on July 16, 2008, clarifying Home Depot Deployment Center project's and Vorhees property's proportional share. Per the supplemental technical memorandum, the trip contribution of Home Depot Deployment Center (AMB Corporation) is thirty-two percent (32%) of the total 2025 projected traffic volumes on Pescadero Avenue (or 51.6129% of 62 %) and for Vorhees property is thirty percent (30%) of the total 2025 projected traffic volume on Pescadero Avenue (48.3871% of 62%). The following is the final

calculation of the cost share responsibility of the Home Depot Deployment Center project and Vorhees property for the traffic signal and intersection improvements on Pescadero Avenue.

- a) Home Depot Deployment Center = 51.6129% /100% multiply by \$217,000
(AMB Corporation) = \$111,999.99 or \$112,000
- b) Vorhees property with the (CHP site) = 48.3871% /100% multiply by \$217,000
= \$105,000

The Project site is 3.35 acres of the Vorhees' property of 14.24 acres. Spreading the cost on Item b proportionately, the Project's cost share is determined to be \$24,706.50 or 23.53% of \$105,000 (3.35 acres /14.24 acres multiplied by \$105,000).

D. Public Works Department Conditions

- D.1. Before the approval of a building permit, the applicant shall demonstrate compliance with the Manual of Stormwater Quality Control Standards adopted July 1, 2008, obtain approval of the Project Stormwater Quality Control Plan by the Water Resources Division, and sign a maintenance agreement in accordance with the Manual of Stormwater Quality Control Standards to the satisfaction of the Public Works Director.

E. Building and Fire Safety Division Conditions

- E.1. Fusee. Before approval of a building permit, the applicant shall submit plans that demonstrate that the CMU enclosure walls of the fusee have a minimum two-hour rating and extend a minimum of 30 inches beyond the top and sides of the storage capacity of the flares.
- E.2. Truck turning radius. Before approval of a building permit, the applicant shall submit plans that demonstrate the double turn at the north end of the truck inspection and public parking area meet the City's standard for apparatus turning radius.

AGENDA ITEM 4

REQUEST

PUBLIC HEARING TO ADOPT TAXI RATE FEES EFFECTIVE MARCH 1, 2012 AS RECOMMENDED BY STAFF

EXECUTIVE SUMMARY

On June 21, 2011 Council adopted Ordinance 1160 which updated the existing taxi ordinance. As part of the new ordinance, Council must approve the fees that each company may charge its customers. It is recommended that the same maximum limit be set for all taxicab companies rather than approve separate fees for each individual company.

DISCUSSION

On June 21, 2011, the City Council adopted Ordinance 1160 which updated the City's existing taxi ordinance. As part of the new ordinance, Council must approve the fees that each company may charge its customers. Currently each taxicab company has their own fee that was previously approved by Council. Some existing companies are requesting to be able to increase their fees. Establishing a maximum rate that applies to all taxicab companies provides the flexibility for taxi companies to adjust their fees as necessary in order to remain competitive, without having to go back to Council for approval. In addition, as new companies desire to do business in Tracy, they will also have set limits already approved so they can start their business sooner. Currently, each taxi company doing business in Tracy charges \$2.50 for flag drop, \$2.50 per mile, and charge between \$16 and \$25 for the hourly waiting fee. Staff has researched the various fees charged by other companies in neighboring cities. Below is a summary of what other cities charge and in bold, what is being recommended for Tracy.

FEE TYPE	Pleasanton	Livermore	Stockton	Manteca	Modesto	Tracy
Flag Drop Fee	\$2.50	\$2.50	\$2.50	\$3.50	\$3.75	\$2.50 max
Per Mile Fee	\$2.50	\$2.50	\$2.00	\$2.00	\$2.50	\$2.50 max
Hourly Waiting Fee	\$35	\$20	\$22	\$25	\$25	\$25 max

In order to implement the fees, City Council must first conduct a public hearing. The notice of the public hearing must be published twice, at least five days apart, and the final posting five days prior to the hearing. Notice of this hearing was published twice in the Tri-Valley Herald newspaper. It is recommended that if approved, the proposed fees go into effect March 1, 2012.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no impact to the General Fund for this item. The fees listed are collected solely by the taxicab companies.

RECOMMENDATION

That City Council conduct a public hearing and adopt the Taxi Rate Fees effective March 1, 2012, as recommended by staff.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Rod Buchanan, Director of Parks and Community Services

Approved by: R. Leon Churchill, Jr., City Manager

RESOLUTION _____

ADOPTING MAXIMUM TAXI RATE FEES EFFECTIVE MARCH 1, 2012

WHEREAS, The Tracy City Council adopted Ordinance 1160 on June 21, 2011 updating the existing taxi ordinance; and

WHEREAS, Ordinance 1160 says that City Council will set the fees that can be charged by taxicab companies; and

WHEREAS, The City Council conducted a public hearing to consider adoption of the rates.

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby adopts the following maximum Taxi rate fees that can be charged effective March 1, 2012:

FEE TYPE	RATE
Flag Drop Fee	\$2.50 max
Per Mile Fee	\$2.50 max
Hourly Waiting Fee	\$25 max

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 21st day of February, 2012, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 5

REQUEST

CITY COUNCIL DIRECTION RELATED TO AMENDING A DEVELOPMENT AGREEMENT WITH SURLAND COMMUNITIES, APPLICATION DA11-0002

EXECUTIVE SUMMARY

This agenda requests City Council direction to negotiate amendments to the Development Agreement (DA) between the City of Tracy and Surland Communities.

DISCUSSION

Background on the DA

Initial direction to City staff to negotiate and process a DA with Surland Companies occurred on January 17, 2006, after City Council selected the Ellis Project site as the preferred location for a Swim Center. A Development Agreement was viewed as an appropriate tool to evaluate a potential public-private partnership to fund and construct a Swim Center.

City staff received direction from City Council on July 17, 2007, when parameters were established for the purposes of drafting a DA and finalizing the Environmental Impact Report (EIR) project description under the California Environmental Quality Act (CEQA).

After Planning Commission review, the City Council approved a DA on December 16, 2008. Attachment A to the staff report is the current, existing DA with Surland Communities.

General Overview of the existing DA

A DA between a city and a private developer is authorized under state law. Generally a DA provides certainty, in the form of vesting or “freezing” various approvals, to the developer in exchange for a public benefit to the City that it would not otherwise achieve through the normal approval process, such as extraordinary funds or land dedication. The DA would create a program where the City would receive a dedication of real property as well as financial resources and design assistance to build a Swim Center on land dedicated within the proposed Ellis Specific Plan site, in exchange for eligibility to receive Residential Growth Allotments (“RGAs”), building permits, water and wastewater capacities on a priority basis for Surland, among other rights explained in greater detail below. The RGAs, building permits, and utility capacities would be used by Surland, potentially on Ellis and on future Surland projects when those projects receive necessary City approvals subject to the limitations in the City’s Growth Management Ordinance (“GMO”). All future consideration of future Surland projects would include appropriate CEQA documentation, including, possibly, EIRs for those projects.

The DA is divided into several parts; the Recitals and three “articles”. The Recitals, pages 1 – 7, set out the factual background of the DA and the related applications and

provide the foundation on which the DA is based. Article 1, the “Applicable Development Terms”, contains the heart of the DA. Article 1 spells out the proposed terms of what benefits each party anticipates receiving from the agreement and what is to be done by each party. This is the part of the agreement that contains the specifics of the DA. For example, the proposed amount to be contributed to the Swim Center and the timing of the payment, the proposed schedule for the eligibility for RGAs, etc. Article 2, “Assignment, Default, Annual Review, Termination, Legal Actions”, identifies procedures and remedies if issues arise during the term of the agreement. Article 3, “General Provisions”, contains a variety of legal provisions which are common to many types of transactions.

Summary of Key Terms in Article 1 of the existing DA

Key terms in Article 1 of the DA are outlined below, beginning with the public benefit that the City would receive via the DA.

Public Benefits:

- \$10 million for a Swim Center (payable to City after LAFCo annexation and completion of any litigation in favor of applicant).
- 16-acres of land for a Swim Center at the Ellis site.
- Design assistance for construction of a Swim Center.

Developer Benefits:

- Creation of a program to have rights to 2,250 RGAs and building permits.
- RGAs and building permits set aside in accordance with an annual allocation schedule beginning with 125 per year and ramping up to 225 per year (first 4 years 125 per year, second 5 years 175 per year, remaining years 225 per year).
- Water for 2,250 RGAs.
- Wastewater treatment for 2,250 RGAs.
- Vesting project approvals for the Ellis Specific Plan and related General Plan Amendment, and existing Growth Management Ordinance and Guidelines.
- DA term of 25 years.
- Naming rights to the Swim Center.

Other terms:

- City to contribute all ‘Plan C’ Aquatic Center funds (approximately \$3 million in CIP 7854 toward construction of the Swim Center at Ellis)
- All Building Permits sought under the DA through the year 2013 would be required to be used at Ellis.
- The land for the proposed Swim Center is an offer of dedication provided the Swim Center is located at Ellis. The offer of land dedication has a

duration of two years from the Annexation Effective Date. The DA does not require the Swim Center to be located at Ellis.

- Development at Ellis is required to comply with the City's existing standard of four acres of parkland dedication per every 1000 people generated. If the Ellis site is selected as the Swim Center site, the Swim Center location will satisfy the park dedication requirements up to one acre per thousand, with the residential development of Ellis being required to then develop an additional three acres per 1000 population.

Proposed Amendments to the existing DA

The Surland Companies submitted an application on December 15, 2011, requesting a Development Agreement which is attached to the staff report (Attachment B: Letter from Surland Companies requesting DA).

The letter proposes \$10 million dollars in funding and 16 acres of land for a swim center and a term of 25 years, as well as water and wastewater treatment and capacity in existing treatment plants.

Basically, this request would enable staff to negotiate amending terms of the DA to remove or modify provisions of the existing DA that dealt with RGAs to properties beyond the Ellis Specific Plan, and more generally clarify overall DA provisions.

STRATEGIC PRIORITY

This item is not directly related to the Council's strategic plans.

FISCAL IMPACT

Negotiating modifications to the DA is funded by the applicant in accordance with a City approved Cost Recovery Agreement dated February 12, 2012.

Upon completing a draft DA, City staff will return with an expanded fiscal impact discussion of what the DA represents in terms of constructing a Swim Center.

RECOMMENDATION

Staff recommends that City Council authorize staff to negotiate a DA or amendments to the existing DA with Surland Companies.

Prepared by: Bill Dean, Assistant DES Director

Reviewed by: Andrew Malik, Development and Engineering Services Director

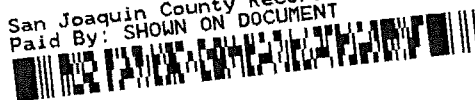
Approved by: Leon Churchill, Jr., City Manager

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Attachments: A: Existing Development Agreement with Surland Companies
B: Letter from Surland Companies requesting a new/amended Development Agreement

Doc #: 2009-022386
Fri Feb 06 12:22:50 PST 2009
Page: 1 of 61 Fee: \$188.00

San Joaquin County Recorders
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Recording Requested By:

City of Tracy
Sandra Edwards, Tracy City Clerk

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City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF TRACY
AND
SURLAND COMMUNITIES**

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

This "**Agreement**," dated for the convenience of the Parties this 28th day of Jan, 2009, is entered into by and between the CITY OF TRACY, a municipal corporation ("**City**"), and SURLAND COMMUNITIES, LLC, a California limited liability company ("**Owner**"), pursuant to Government Code sections 65864 *et seq.* ("**Development Agreement Statute**"), City Resolution No. 2004-368 (establishing rules, regulations, procedures and requirements, including fees, for the processing and approval of a development agreement ("**Enabling Resolution**")), and Article XI, section 7 of the California Constitution ("**Police Powers**"). From time to time, City and Owner are individually referred to in this Agreement as a "**Party**," and are collectively referred to as the "**Parties**."

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

RECITALS

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

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

C. The establishment of a family-oriented swim center is one of the City's priorities, has been contemplated for years, and is overwhelmingly supported by the Tracy community. Yet City funding for such an effort is lacking. Owner, a local developer with a long track record of award-winning development in the City, made a proposal to City whereby Owner would dedicate to City (at no cost to City) up to 21 acres of land, would conceptually design, would assist City with project oversight, and would fund \$20 million toward the construction of the kind of family-oriented Swim Center described in this Agreement for the Tracy community in return for being eligible for a set number of "**Residential Growth Allotments**" (also referred to in this Agreement as "**RGAs**"). This Owner proposal has secured remarkable community support. However, City Planning Commission ("**Planning Commission**") and Staff expressed

reservations regarding the overall number of RGAs being proposed. City Planning Commission and Staff understood that a reduction of RGAs would lead to a reduction of Owner land dedication and money contribution. City Staff recommended a reduced land dedication and a reduced money contribution. The Parties understood that the money contribution should be shared more evenly by the rest of the development community. Therefore, the Parties negotiated a 16-acre land dedication, and a more evenly spread money contribution. All of these Swim Center-related Owner commitments are specifically described in this Agreement and its exhibits and are collectively referred to in this Agreement as the "**Swim Center Commitment.**"

D. Prior to the execution of this Agreement by the Parties, Owner submitted applications to the City regarding the "**Ellis Specific Plan.**" The Ellis Specific Plan is situated on property within the earlier approved and much larger "**South Schulte Specific Plan.**" However, several years ago, City and Owner began discussing the possibility of a smaller, more mixed-use-oriented project than that envisioned in the larger South Schulte Specific Plan. The Parties began processing the Ellis Specific Plan under the City's then existing General Plan which would create a new set of planning and design guidelines for the Ellis project to ensure pedestrian-friendly neighborhood connectivity and overall enhanced community character. That approach envisioned an amendment to the then-existing General Plan as part of the Ellis Specific Plan approval process. Then, City began its update of the then-existing General Plan, and on July 20, 2006, City adopted a General Plan. That new General Plan was further amended as part of the City's approval of the Ellis Specific Plan and project. The updated and amended General Plan as of the adoption and execution of this Agreement is referred to in this Agreement as the "**General Plan.**" The General Plan takes the area originally encompassed by the South Schulte Specific Plan and separates it into several distinct planning areas referred to as "**Urban Reserves.**" Urban Reserves 9, 10 and 11, and parts of Urban Reserves 8 and 16 comprise the area originally encompassed by the original South Schulte Specific Plan.

E. The Ellis Specific Plan lies solely within the area designated as the Urban Reserve 10 planning area in the General Plan. The General Plan envisions that development within Urban Reserve 10 shall be done by Specific Plan, with a corresponding amendment to the General Plan as part of that Specific Plan approval process. Owner submitted applications to City regarding the Ellis Specific Plan (for example, the Ellis Specific Plan, corresponding General Plan Amendment and related zoning, and the Swim Center described in this Agreement – collectively included in any reference to the "Ellis Specific Plan") and Owner submitted an application to City for this Agreement. The General Plan Amendment, done in combination with the Ellis Specific Plan, re-designated the Ellis Specific Plan site into four (4) planning designations: Village Center, Commercial, Public Facilities, and Traditional Residential-Ellis (which includes parks). The Ellis Specific Plan also contains zoning-level regulations for the Ellis Specific Plan site, including regulations relating to the commercial uses (up to approximately 180,000 square feet), residential uses (up to 2,250 residential units of varying type and configuration) and related mixed uses, as well as the Swim Center. From a planning perspective, the goals and ideals of the Ellis Specific Plan exemplify excellence in land planning, architecture, landscape architecture, and urban design, and comply with the General Plan, including its Community Character and Land Use elements. The Ellis Specific Plan encompasses a unique community of a distinct character and type, with well-planned homes, small-scale businesses, major public amenities, including the Swim Center, and an integrated, multi-use village center that promotes businesses that are small, local, and neighborhood-serving.

The Swim Center is to be located adjacent to, and will be complementary with, the village center. The character of development within the Ellis Specific Plan evokes the wonderful historic neighborhoods of Tracy. Traditional planning techniques and architecture true to the local vernacular capture the essence of Tracy and create timeless neighborhoods that fit seamlessly into the City. All these planning goals and ideals have been considered and acted upon by City (in its sole and exclusive discretion) after a public process.

F. The City undertook environmental review of the potential direct and indirect environmental impacts of the Ellis Specific Plan and this Agreement pursuant to the California Environmental Quality Act and Guidelines promulgated there under (collectively, "CEQA") as follows:

(1) As a part of its General Plan efforts, and prior to adopting the General Plan, City undertook environmental review of the potential direct and indirect environmental impacts of the General Plan pursuant to CEQA, certified the Final Environmental Impact Report for the General Plan, State Clearinghouse #1992122069 ("**General Plan EIR**"), and adopted findings, mitigation measures and a statement of overriding considerations in connection therewith. As set forth in greater detail herein, this Agreement is consistent with the General Plan EIR.

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

(3) As part of its review of Owner's pending applications, City caused to be prepared an Environmental Impact Report ("**EIR**") analyzing both the Ellis Specific Plan (including the Swim Center) and this Agreement. An earlier version of this Agreement contained a program (sometimes referred to in the EIR as the Development Agreement Program or DAP) to allow up to 3,850 RGAs, building permits (and hence development), which 3,850 was comprised of the development with the Ellis Specific Plan (at a density within its allowed range of 1200 to 2,250) and development in other parts of the City beyond that development ultimately occurring within the Ellis Specific Plan. At the time of the preparation of the EIR, Owner proposed a \$20 million commitment of money and 21 acres of land toward the Swim Center in return for this Agreement allowing Owner the eligibility to apply for up to 3,850 of RGAs. Therefore, the Parties felt that this Agreement was potentially the first step toward other potential future projects (beyond the Ellis Specific Plan) that could become subject to this Agreement, and hence could become eligible to apply for all or a portion of the remaining RGAs allowed by this Agreement, and therefore the review of this Agreement should be included in the EIR. Therefore, the EIR studies the potential impacts of these potential future projects even though currently no specific development applications have been

submitted and therefore such potential future development (beyond the Ellis Specific Plan) arguably is too speculative at this point and beyond the abilities of the EIR. This is because no development nor physical impact different than the status quo can occur under this Agreement or the program it establishes. Only if, unless, and until full compliance with all controlling California law (including proper CEQA and Planning and Zoning Law compliance) has taken place, the City in reliance on that information (generated by such legal compliance) has taken an "action" (which action is within City's sole and exclusive discretion), and that action is a product of such legal compliance, can any development by Owner occur or an RGA be allocated by City under this Agreement. As a result, this Agreement is subject to the general rule that it can be seen with certainty that this Agreement alone cannot and will not lead to any adverse impact on the environment. See, CEQA Guidelines § 15061(b)(3). CEQA applies to a governmental action only if it is an essential step in a chain of events directly or indirectly leading to a change in the physical environment. *Kaufman & Broad-South Bay Inc. v. Morgan Hill Unified School Dist.*, 9 Cal.App.4th 464, 474 (1992); see also *Citizens to Enforce CEQA v. City of Rohnert Park*, 131 Cal.App.4th 1594 (2005); *Simi Valley Recreation & Park Dist. v. Local Agency Formation Com.*, 51 Cal.App.3d 648 (1975). Likewise, if and when City eventually considers all or any aspect of any other Owner proposed project, such consideration will be prefaced with review under CEQA and all other applicable laws. This Agreement expressly requires such subsequent environmental review and expressly prohibits the limitation of that review by this Agreement or any other agreement.

(4) Nonetheless, City decided to address under CEQA, as early as possible, the potential future projects that could become subject to this Agreement, even though currently no specific development proposals (beyond the Ellis Specific Plan approval) have been proposed by Owner. As a result of this City decision, the EIR was drafted to provide the environmental review and analysis for all of the following: (1) the Ellis Specific Plan (with the Swim Center) and its zoning ("**Ellis Approvals**") at the development level (sometimes referred to under controlling law as the project level, the level where enough specifics are known to be able to conduct such detailed analysis), and (2) the remaining potential development contemplated by this Agreement at the program-level. A program EIR is appropriate for this second component of analysis because this Agreement sets forth a program by which the future properties and projects will be subject to future development approvals and future public and environmental review. Program EIRs under CEQA are intended for such situations that, like this Agreement, set forth "rules, regulations, plans, or other general criteria to govern the conduct of a continuing program" (CEQA Guidelines § 15168(a)(3)), such as a future process for the consideration of project approvals.

(5) Ultimately, despite the thorough environmental review set forth in the EIR, the City decided to approve the Ellis Specific Plan project, but also decided to reduce the size of the "Development Agreement Program" or "DAP" (described in the EIR as the potential development beyond Ellis) than that originally proposed by Owner and analyzed in the EIR's "Project Description." Instead, City reduced that DAP to be one equal to the maximum density allowed on the Ellis Specific Plan property (2,250 residential units). Now, this Agreement contains a program to allow up to 2,250 RGAs

and building permits (and hence development), which 2,250 is comprised of the development with the Ellis Specific Plan (at a density within its allowed range of 1200 to 2,250) and development in other parts of the City beyond that development ultimately occurring within the Ellis Specific Plan. Likewise, the City revised the project to require Owner to provide \$10 million and 16 acres toward the Swim Center, rather than \$20 million and 21 acres, with any balance of funds needed expected to be provided by fees or other assessments imposed on other future development projects. The resulting overall development scenario, consequently, is the same as that studied by the EIR except for a reduction in the potential residential units from 3,850 to 2,250. This 1600 unit reduction in potential residential development means that the approved development scenario will produce qualitatively similar but proportionally lesser environmental impacts. Because CEQA authorizes, even encourages, the adoption of an alternative to a proposed project that will result in lesser environmental impacts, the City's environmental review was more than legally adequate. (Pub. Res. Code §§ 21002, 21002.1; CEQA Guidelines § 15002.)

(6) This Agreement does not impede, impair or otherwise seek to truncate or limit future CEQA review. Future CEQA review shall take place as required by applicable law.

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

- (1) EIR (City Council Resol. No. 2008-260)
- (2) Annexation Agreement (City Council Resol. No. 2008-262)
- (3) TR Ellis General Plan Amendment (City Council Resol. No. 2008-261)
- (4) Ellis Specific Plan (with Zoning) (City Ordinance No. 1130)
- (5) This Agreement (City Ordinance No. 1131)

The above-listed approvals are more particularly described in the EIR and the resolutions adopting those approvals.

H. Given the community character quality of the Ellis Specific Plan, its compliance with CEQA and applicable planning and zoning laws, and its approval by the City, and given Owner's significant land dedication, financial obligations and personnel commitment to the Swim Center (as set forth in this Agreement), the City wishes to allow Owner to be eligible to apply for and potentially receive up to 2,250 RGAs. Again, if, and only if, certain specified prerequisites set forth in this Agreement are first satisfied, then may Owner record this Agreement against properties and become "eligible" to apply for the RGAs provided for in this Agreement. As to all property, as detailed in this Agreement, Owner must have a legal or equitable interest in such property before this Agreement can be recorded against such property. Further, under this Agreement, only after an application for development of such property by Owner is first properly and publicly processed and reviewed in compliance with all controlling planning and

environmental (CEQA) laws, the CEQA compliance work is certified and adopted by City, and then the development proposal and its needed permits and entitlements are adopted and approved by City (which City adoption and approval shall remain within the full and exclusive discretion of City and which adoption and approval is not mandated by this Agreement), will Owner be eligible to make application for RGAs under this Agreement. In other words, only upon acquisition of the requisite interest in a property and then the successful conclusion of this City-controlled and fully discretionary planning/environmental review process will Owner then be "eligible" to apply for a set number of RGAs, and those RGAs will only be used on such property and approved project. This opportunity to be "eligible" for such future RGAs if such compliance requirements are secured is enough of an additional value to Owner for Owner to agree to the full Swim Center Commitment; without such additional value, Owner could not agree to the level of land dedication and financial obligation contained in the Swim Center Commitment. Through the Approvals given for the Ellis Specific Plan, Owner may record this Agreement against that property within the Ellis Specific Plan (shown on *Exhibit A* to this Agreement).

I. City's issuance of RGAs under this Agreement complies with City's Growth Management Ordinance and the City's Growth Management Ordinance Guidelines (collectively, "GMO"), and the maximums they set for annual RGA and building permit issuance for development agreements (referred to in this Agreement as the "GMO Maximums" and further defined below in Section 1.07(c) of this Agreement).

J. The real property that is the immediate subject of this Agreement is that portion of the Ellis Specific Plan property that is depicted and legally described on *Exhibit A* to this Agreement (the "**Immediate Property**"). Owner has a legal and/or equitable interest in the Immediate Property. In addition, all of the Ellis Specific Plan property will be subject to this Agreement, and other properties may become eligible to record this Agreement and thereafter secure its relevant rights, responsibilities, burdens and benefits, if and only if the requirements of this Agreement and applicable law are first satisfied. The additional portions of the Ellis Specific Plan property (beyond the Immediate Property) and other potential properties are collectively referred to in this Agreement as an "**Other Property**" or "**Other Properties.**" Further, the Immediate Property and such Other Properties are collectively referred to in this Agreement as the "**Property.**"

K. It is in this unique setting - - a strong community desire to construct the Swim Center and Owner's willingness to provide such an extraordinary commitment in return for future eligibility to apply for RGAs - - that the Parties must draft this Agreement, ensuring that all of the requirements of controlling law are satisfied. This Agreement meets all of the requirements of law: it meets the contents requirements of the Development Agreement Statute and applicable law; it establishes a protocol for the processing of future approvals; and it establishes a process by which this Agreement can be recorded against future properties if and only if the requirements of law are satisfied. City and Owner are entering into this Agreement now in this fashion because of the unique community interest in the Swim Center and the benefits it will bring to Tracy and the unique opportunity the City presently has with the Owner's willingness to make substantial land dedication, design creation and financial contribution commitments to make the Swim Center a reality, while at the same time establishing a process and protocol that ensures that only after appropriate environmental and planning review will the City determine - -

in the City's sole and exclusive discretion - - whether future Owner projects (beyond the Ellis Specific Plan) should be approved.

L. The consideration by City of the Swim Center, its location, the offer by Owner and this Agreement has been underway for more than seven years. In 2001, a survey of the Tracy community and public workshops were held that identified the need for community aquatic facilities. In 2003, NTD Architects completed the Tracy Aquatic Center Feasibility Study. In July 2005, the City Council directed Tracy Tomorrow and Beyond to make recommendations for the Swim Center. In the summer of 2005, Tracy Tomorrow and Beyond conducted additional public workshops. In October of that year, the City Council received the recommendations of Tracy Tomorrow and Beyond. Also in October 2005, Owner proposed Ellis as a location to be considered for the Swim Center. Between October 2005 and January 2006, the City studied a number of possible sites for the Swim Center including the existing Tracy ballpark. In January 2006, the City Council selected the Ellis Specific Plan as the site for the Swim Center. In April 2006, the City Council authorized City Staff to begin negotiations with Owner for a Development Agreement with provisions for the granting of funds and land by Owner for a Swim Center. In August 2006, the City Council, Planning Commission, and Parks Commission approved the conceptual design for the Swim Center at Ellis. In May 2007, the City Council directed City Staff to prioritize this Agreement for Ellis and the Swim Center. In January 2008, a joint Planning Commission/City Council workshop was held to discuss this Agreement, the Ellis Specific Plan, and the Swim Center. Between April and December of 2008, the Planning Commission held a series of public meetings to discuss the EIR, the General Plan Amendment, the Ellis Specific Plan and this Agreement. The City Council and the Planning Commission provided direction and the public provided comment throughout this process.

M. For all of the reasons stated above, this Agreement is consistent with the General Plan and the Ellis Specific Plan. For example, as required by the General Plan, this Agreement envisions proper environmental analysis and a proper planning process in compliance with controlling law before any approval allowing development can take place. No approvals are granted through, nor guaranteed by, this Agreement, and this Agreement ensures that the City's future consideration and decision shall be in the sole and exclusive discretion of the City. (General Plan Goal LU-1 and Objective LU-1.1 (and its Policy P1); Objective LU-1.2 (and its Policy P3); Goal LU-6; and Goal LU-7.) Further, this Agreement requires that any distribution of RGAs under this Agreement comply with all applicable City regulations, including the General Plan (Objective LU-1.4, Policies P1-P5 and Action A1). This Agreement helps to bring to fruition the kind of family-oriented swim center envisioned by the General Plan (Objective OSC-4.1, Policies P3, P10, Action A3). In fact, the General Plan recognizes this Agreement as the potential vehicle by which the City and Owner could reach agreement relative to such a swim center in a manner that City could not otherwise require Owner to do, that Owner may receive RGAs only if and after all requirements of controlling law have been satisfied, and that such risk shall be placed on Owner alone. Finally, this Agreement is not contrary to nor contradictory of any General Plan text or diagrams.

N. On December 3rd, 2008, following duly noticed and conducted public hearings, the Planning Commission, the hearing body for purposes of the Development Agreement Statute, took appropriate action under CEQA, the Planning and Zoning Law, and the Tracy Municipal Code, and made recommendations regarding this Agreement to the City Council. On December

16th, 2008, following duly noticed and conducted public hearings, the City Council certified the EIR, took appropriate action under the Planning and Zoning Law, and introduced and conducted the first reading of Ordinance No. 1131, an ordinance approving this Agreement, and directing this Agreement's execution by City ("**Approving Ordinance**"). On January 6th, 2009, the City Council conducted the second reading and adopted the Approving Ordinance.

ARTICLE 1
APPLICABLE DEVELOPMENT TERMS

1.01 The Swim Center at Ellis.

(a) Owner hereby commits to provide ten million dollars (\$10,000,000.00) toward the design, construction, operation and maintenance of the Swim Center, with City being responsible for the facility program, and construction, operation and maintenance of the facility. Owner shall deposit into a segregated and interest-bearing City account the "**Owner Swim Center Contribution**," as further defined and described in the "**Swim Center Payment Protocol**" set forth in *Exhibit B* to this Agreement, within thirty (30) days of the "**Annexation Effective Date**" of the annexation of the Ellis Specific Plan area to City (defined below). Once so deposited, the Owner Swim Center Contribution shall be available for use by City, further defined and described in the Swim Center Payment Protocol set forth in *Exhibit B* to this Agreement. City and Owner shall develop the Swim Center pursuant to a public/private partnership. The detailed terms and conditions of that public/private partnership are set forth in *Exhibit B* to this Agreement.

(b) Owner shall make an offer of dedication to City of land not to exceed a total size of sixteen (16) acres (unless Owner in its sole and exclusive discretion determines to provide City with more than 16 acres) for the Swim Center ("**Swim Center Land Dedication**"), subject to the following:

(1) Within thirty (30) days of the Annexation Effective Date, Owner shall make an offer of dedication of the Swim Center Land Dedication to City, which Swim Center Land Dedication shall be of no cost to City. Owner's offer of the Swim Center Land Dedication shall take place in that location and configuration set forth in the Ellis Specific Plan. City shall have two (2) years from the Annexation Effective Date to accept the Swim Center Land Dedication ("**Two-Year Period**"). If City does not accept said Swim Center Land Dedication within the Two-Year Period, then one (1) day after the conclusion of the Two-Year Period, such Owner offer to City of the Swim Center Land Dedication shall be considered rejected by City, shall expire without any further action of the Parties, and thereafter, the land comprising the Swim Center Land Dedication shall be available for development by Owner pursuant to the Ellis Specific Plan. Additionally, at any time prior to said Two-Year Period, City may reject Owner's offer to City of the Swim Center Land Dedication, and upon such City rejection, the land comprising the Swim Center Land Dedication shall be available to Owner for development pursuant to the Ellis Specific Plan.

(2) The minimum on-site park requirements of the Ellis Specific Plan are addressed in Section 1.16 of this Agreement. The Swim Center shall be considered a City "community park," as that term is defined in the General Plan and other City laws. Upon City

acceptance of the Swim Center Land Dedication, Owner shall have satisfied its community or regional park(s) obligation, and shall not be required to pay any additional monies toward the Swim Center or any other community or regional park(s).

(c) City shall contribute toward the Swim Center that amount of money (plus interest earned) that City has already collected (and will continue to collect) from the Plan C FIP designated for an aquatic center ("**City Swim Center Contribution**"). The Owner Swim Center Contribution and the City Swim Center Contribution are collectively referred to in this Agreement as the "**Swim Center Funds.**" Additionally, to the extent legally possible, City should establish and impose against new development a fee, charge, assessment or other financial obligation to be used toward the costs of the design, construction, operation and maintenance of the Swim Center ("**New Development Swim Center Contribution**"). Any and all New Development Swim Center Contributions collected by City should be added to the Swim Center Funds. The requirements of this subdivision (c) are further defined and described in the Swim Center Payment Protocol set forth in *Exhibit B* to this Agreement.

(d) Owner already has provided a design team to City, and Owner has already conducted an outreach program that led to the completion of the "**Conceptual Design**" of the Swim Center. The Conceptual Design provides the detail for the Swim Center project description provided by this Agreement.

(e) The Swim Center shall be named the "**Serpa Swim Center.**" After acceptance of the Swim Center by the City, but prior to the opening of the Swim Center to the public, City shall allow Owner to use and occupy the Swim Center for one (1) day without charge. Owner shall provide adequate insurance coverage for such use and occupancy.

(f) The amenities included in the Conceptual Design for the Swim Center have been selected through a public outreach program, are subject to the constraints of the Swim Center budget and compliance with controlling law, and may include the following:

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

(10) Pool Equipment Room and Storage

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

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

1.02 Other Processing.

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

(b) At its approval and execution, this Agreement does not provide Owner with any right to develop or construct any project or to secure any Owner Approval; instead, it simply provides certain rights and responsibilities regarding approvals already given for the Ellis Specific Plan, provides certain vested rights to laws and approvals already in place, provides a protocol by which later Owner Approvals may be processed by Owner and later included into this Agreement - - if and only if such Owner Approvals are compliant with all controlling California law (including proper Planning and Zoning Law and CEQA compliance), have secured approval of the Parties, and are adopted/approved by the City (who shall retain all discretion in this regard) - - and provides the process by which this Agreement will be recorded against the property that Owner has the statutorily-required interest in. The public review process envisioned by this Agreement is ongoing, and following City's adoption of this Agreement, that public review process shall continue.

(c) City shall inform Owner, upon request, of the necessary submission requirements for a complete application for each Owner Approval. Owner Approval shall include, without limitation, an Owner petition to LAFCO seeking all LAFCO approvals relative to the annexation of Owner property to the City, and/or an Owner request to City that City adopt a resolution of application to LAFCO seeking all LAFCO approvals relative to the annexation of Owner property to the City, and/or all the actions contemplated in Section 1.11 of this Agreement. Provided Owner has paid all appropriate Processing Fees, City shall accept, process, review and act upon all applications for Owner Approvals pursuant to this Agreement and the Applicable Law it describes with "**Good Faith and Fair and Expeditious Dealing.**" Likewise, City shall commence, continue and diligently process any and all initial studies, assessments, EIRs and other relevant CEQA compliance documents regarding the Owner Approvals with Good Faith and Fair and Expeditious Dealing. For the purposes of this Agreement, "Good Faith and Fair and Expeditious Dealing" shall mean that that the Parties shall act toward each other and the tasks necessary or desirous to the processing contemplated by this Agreement pursuant to the Applicable Law and in a fair, diligent, best efforts, expeditious and reasonable manner

(except in those cases where a Party is given sole discretion under this Agreement), and that no Party or Parties shall take any action that will prohibit, impair or impede any other Party's or Parties' exercise or enjoyment of its rights and obligations secured through this Agreement.

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

1.03 Applicable Law.

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

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

(2) The EIR, the General Plan Amendment, the Ellis Specific Plan and its zoning regulations, and all other land use regulations, entitlements, grants, permits, plans and other "**Owner Approvals**" that City has already or will in the future specifically approve, adopt, issue, and/or grant relative to Owner requests relating to the Property, provided such Owner Approvals are:

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

(B) Mutually agreed to by the Parties;

(C) Adopted by the City; and

(D) Take "**Legal Effect.**"

(3) As relates to the development of any or all of the Property, the City rules, regulations, ordinances, policies, standards, specifications, practices and standard

operating procedures of City (whether adopted by the City Council, the Planning Commission, the City staff or the voters of the City) in force and effect on December 1st, 2008 ("**Existing City Laws**"). The City has determined that the Specific Plan Ordinance adopted by City on November 18th, 2008 does not apply to the Property.

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

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

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

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

(8) As relates to the development of any or all of the property contained in a Plan Approval outside the Ellis Specific Plan, those "affordable housing" laws in place at the time of application completion for such Plan Approval.

(b) This Agreement complies with laws regarding Development Agreement Statute (including without limitation section 65865.2), which requires this Agreement to specify the duration (Term) of the Agreement, the permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The duration of this Agreement is set forth in Section 1.06 of this Agreement, and this Agreement sets forth provisions for the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes in the Applicable Law provisions of this Agreement. For example, the Ellis Specific Plan is part of the Applicable Law for the Ellis Specific Plan property, and the Ellis Specific Plan sets forth the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes for that Ellis Specific Plan property. Likewise, as to Other Properties beyond the Ellis Specific Plan property that this Agreement may apply to in the future, upon the recordation of this Agreement against such Property, the Applicable Law will apply, which Applicable Law uses the General Plan and City Laws applicable to such Property, all of which set forth the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes. Further, such General Plan and City

Laws require the processing and City approval of Owner Approvals before any development can take place, which Owner Approvals will likewise set forth the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes. Finally, under this Agreement's own terms and conditions, Owner is not eligible to make application for nor receive an RGA (needed before any residential development can take place in City) unless and until a "**Plan Approval**" (defined in Section 1.07(b) of this Agreement) has first been processed and approved by City pursuant to this Agreement. Under this Agreement, such Plan Approval must set forth the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes. Like the Ellis Specific Plan, that Plan Approval will become part of the Applicable Law provisions of this Agreement. In other words, at no time upon the recordation of this Agreement against a Property (which recordation cannot take place until the requirements of this Agreement and controlling law have been satisfied regarding the recordation of this Agreement against such Property) will there not be applicable, known and understood permitted uses, the density and intensity of those uses, the maximum height and size of proposed buildings, and the dedication of land for public purposes relative to such Property.

(c) The Parties acknowledge that the Ellis Approvals and other Owner Approvals likely will be processed in stages and therefore one or more Ellis Approvals and/or Owner Approvals may take Legal Effect before other Ellis Approvals and/or Owner Approvals.

(d) In the event of any conflict between any of subparts (1), (2), (3), (4), (5), (6) and/or (7) of subdivision (a) of this Section 1.03 (above), the hierarchical order of authority shall be subpart (1) first, then subpart (2), then subpart (3), then subpart (4), then subpart (5), then subpart (6), then subpart (7), then subpart (8).

1.04 Vested Right to Applicable Law.

(a) By this Agreement, the Property against which this Agreement is recorded (such recordation not allowed until the requirements of this Agreement and applicable law have been satisfied) shall have a vested right to the Applicable Law.

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

1.05 New City Law(s).

(a) Any City ordinance, resolution, minute order, rule, motion, policy, standard, specification, or a practice adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not part of the Applicable and that takes effect on or after December 2nd, 2008 is hereby referred to as a "**New City Law(s).**" The Parties recognize that City is currently updating its GMO Guidelines and that the provisions set forth in this Agreement will be incorporated into the GMO Guidelines. Except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with

this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Property would accomplish any of the following results, either by specific reference to the Property or as part of a general enactment which affects or applies to the Property:

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

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

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

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

(5) Limit the processing of Owner Approvals.

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

shall commence upon the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law(s) (at the highest judicial level sought and granted), the reviewing court determines that Owner is not subject to the New City Law(s), such New City Law(s) shall cease to be a part of the Applicable Law, and City shall return Owner to the position Owner was in prior to City's application of such New City Law(s) (e.g., City return fees, return dedications, etc.).

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

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

(e) City shall not be precluded from applying any New City Law(s) to the extent that such New City Law(s) are specifically mandated to be applied to developments such as the development of the Property by changes in State or Federal laws or regulations (and implemented through the Federal, State, regional and/or local level) ("**Mandated New City Law(s)**"). In the event such Mandated New City Law(s) prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by City for the Property, this Agreement shall be modified, extended or suspended as may be necessary to comply with such Mandated New City Law(s). Immediately after enactment of any such Mandated New City Law(s) that will materially affect the terms and conditions of this Agreement, the Parties shall meet and confer in good faith (pursuant to subdivision (e) above) to determine the feasibility of any such modification, extension or suspension based on the effect such modification, extension or suspension would have on the purposes and intent of this Agreement. In the event that an administrative challenge and/or legal challenge (as appropriate) to such Mandated New City Law(s) preventing compliance with this Agreement is brought and is successful in having such Mandated New City Law(s) determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect. To the extent that any such Mandated New City Law(s) (or actions of regional and local agencies, including City, required by such Mandated New City Law(s) or actions of City taken in good faith in order to prevent adverse impacts upon City because of such Mandated New City Law(s)) have the effect of preventing, delaying or modifying Owner's ability to use or develop the Property or any portion thereof, in a material fashion, then Owner shall have the option to terminate (unilaterally) this Agreement.

1.06 Term.

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

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

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

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

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

(f) The term of any Owner Approvals, including without limitation, all development plans, development permits, or other permit, grant, agreement, approval or entitlement for the general development of all or any part of their respective projects and

properties, shall automatically be extended to and until the later of the following: (1) the end of the Term of this Agreement; or (2) the end of the term or life of the Owner Approval otherwise given pursuant to controlling law.

1.07 RGAs.

(a) No RGAs shall be allocated to any Property against which this Agreement is recorded except as provided by this Agreement. If this Agreement is recorded against Other Properties, such Other Properties shall be limited to receipt of RGAs from City pursuant to this Agreement only, and the collective totals of RGAs that can be allocated by City to such Other Properties shall not exceed the RGA totals set forth in this Agreement.

(b) No portion of the Property shall receive any RGAs under this Agreement unless and until any such portion of the Property has first secured City approval of its legislative development approval such as a Specific Plan (Government Code section 65450 *et seq.*), or, in the case where no Specific Plan is required by City, has secured City approval of a legislative approval that provides the detail similar to that otherwise required by the City's new "Traditional Residential" General Plan Land Use Designation (both situations collectively referred to in this Agreement as "**Plan Approval**"), and where such portion of the Property has had this Agreement recorded against it. No such Plan Approval shall be granted by City until complete and legally compliant environmental review and planning process pursuant to controlling law has taken place, and City approval and adoption of the Plan Approval, in City's sole and exclusive discretion, has taken place. Further, such Plan Approval shall set forth the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes. In other words, a legally compliant and City-approved and adopted Plan Approval on a portion of the Property (which Plan Approval must set forth the contents requirements of the Development Agreement Statute (*i.e.*, setting forth the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes)) is a prerequisite to such Property being eligible to receive any RGAs under this Agreement.

(c) The GMO sets maximums regarding City's issuance of RGAs and building permits. The maximums contained in the GMO relative to City's issuance of RGAs and building permits on an annual basis are referred to in this Agreement as the "**GMO Maximums.**" This Agreement conforms to the applicable GMO and its GMO Maximums, and this Agreement only invokes this Agreement's requirements regarding a Plan Approval's eligibility to apply for RGAs if compliance with all other aspects of controlling law has been secured, including without limitation, full CEQA and planning/zoning law compliance, and City's sole and exclusive discretion has been exercised and the Plan Approval has been adopted by City. This Section therefore sets forth the process, terms and conditions relative to a Plan Approval's eligibility to apply for (and applications relating to) RGAs and building permit issuance.

(d) In no event shall the sum total of Owner's Plan Approvals be eligible for more than 2,250 RGAs over the Term of this Agreement ("**Overall RGA Maximum**"). Further, in no event shall any or all of the Plan Approvals be eligible for more than the specific number of RGAs allocated by this Agreement on a yearly basis ("**Annual RGA Eligibility**"). These two numeric limitations, taken together with this Agreement's requirement that no RGA be issued

until at a minimum, a legally compliant Plan Approval is adopted, and this Agreement's requirement that such RGA will only take place during the Term of this Agreement, means that the Properties against which this Agreement is recorded might never secure (reach) the Overall RGA Maximum under this Agreement. For, example, if Plan Approvals amounting to 2,250 units are not secured by Properties during the Term of this Agreement, and/or once Plan Approval has been secured there is not enough time remaining under the Term of this Agreement to allow City to allocate the remaining RGAs to the Plan Approval under the then-applicable Annual RGA Eligibility, then the Properties will not receive the 2,250 Overall RGA Maximum under this Agreement. Despite this possibility, Owner shall nonetheless be obligated to perform the Swim Center Commitment set forth in this Agreement.

(e) Owner shall make application to City for RGAs ("**RGA Application(s)**") pursuant to the RGA Application attached hereto as *Exhibit C* to this Agreement and subject to the following terms and conditions:

(1) RGA Applications may be submitted by Owner to City during the following time periods:

(A) Anytime during normal business days and hours of City before, up to, and including the first (1st) Friday in January of any calendar year ("**January Cycle**") in which Owner meets the requirements for eligibility for RGAs established by this Agreement; and

(B) If Owner has not applied to City for all of Owner's then-applicable (for that calendar year) Annual RGA Eligibility by the close of the January Cycle of that calendar year, then, anytime during normal business days and hours of City after the January Cycle closes and before, up to, and including the first (1st) Friday in July of that same calendar year ("**July Cycle**") Owner may apply to City for the remainder of Owner's then-applicable (for that calendar year) Annual RGA Eligibility. For example, if in a particular calendar year Owner had an Annual RGA Eligibility under this Agreement of 125 RGAs, and Owner only sought 75 of those RGAs during the January Cycle of that calendar year, then Owner may apply to City during the July Cycle of that same calendar year for the remaining 50 RGAs of the Annual RGA Eligibility.

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

(3) Owner RGA Application(s) to City shall provide City with the information requested in the RGA Application form attached hereto as *Exhibit C* to this Agreement.

(4) After an RGA Application is submitted by Owner to City, the RGA Application may be amended by Owner if the amended RGA Application complies with all requirements of this Section 1.07, and is clearly labeled as an amendment.

(5) City shall respond to any and all RGA Application(s) submitted by Owner within sixty (60) days of the date of the close of the application period for the relevant cycle (January Cycle or July Cycle) of that same calendar year.

(f) The schedule below uses the terminology "first year," "second year," and so forth; those phrases are meant to mean that the "first year" is 2009. However, if a Plan Approval builds completely out and therefore secures all of the RGAs it can use for that Plan Approval, RGA allocation will stop until another Plan Approval is secured. That next Plan Approval may take years to secure. Therefore, the then-applicable next year allocation on the schedule would not take place until the year that the Plan Approval would be eligible to apply for RGAs. Or, comparatively, more than one Plan Approval might exist at any time, and yet the combination of Plan Approvals could never secure more than the applicable total Annual RGA Eligibility, nor could the combination of Plan Approvals ever exceed the Overall RGA Maximum. Therefore, subject to all of the requirements of this Agreement, including without limitation the other subdivisions of this Section 1.07, the schedule regarding the Annual RGA Eligibility shall be as follows:

(1) In the first year, City shall allocate any and all remaining RGAs then available, up to a maximum of 125 RGAs.

(2) In the second year, City shall allocate any and all RGAs then available, up to a maximum of 125 RGAs.

(3) In the third year, City shall allocate any and all RGAs then available, up to a maximum of 125 RGAs.

(4) In the fourth year, City shall allocate any and all RGAs then available up to a maximum of 125 RGAs.

(5) In the fifth year, City shall allocate any and all RGAs then available, up to a maximum of 175 RGAs.

(6) In the sixth year, City shall allocate any and all RGAs then available, up to a maximum of 175 RGAs.

(7) In the seventh year, City shall allocate any and all RGAs then available, up to a maximum of 175 RGAs.

(8) In the eighth year, City shall allocate any and all RGAs then available, up to a maximum of 175 RGAs.

(9) In the ninth year, City shall allocate any and all RGAs then available, up to a maximum of 175 RGAs.

(10) In the tenth year, City shall allocate any and all RGAs then available, up to a maximum of 225 RGAs.

(11) In the eleventh year, and for each calendar year thereafter, until such time as Owner has used the entirety of the Overall RGA Maximum, or such time as the Term of this Agreement has lapsed, whichever occurs first, City shall allocate any and all RGAs then available, up to a maximum of 225 RGAs.

(12) In conjunction with each allocation cycle, City shall determine the number of RGAs that City has allocated to Owner as of that date, and therefore the number of RGAs remaining under the Overall RGA Maximum.

(g) Section 1.14(a)(1) of this Agreement requires that City shall make available enough capacity from the existing wastewater treatment plant sufficient to provide the Ellis Specific Plan area development (and only the Ellis Specific Plan area development) with adequate wastewater treatment capacity for five hundred (500) residential units (Section 1.14(a)(1) refers to this as the "Ellis Initial Capacity"). Pursuant to this Section 1.07, the first year, the second year, the third year and the fourth year of Annual RGA Eligibility allocations (as those terms are set forth and defined in this Section 1.07), totaling 500 RGAs, shall only be allocated to, and only used within, the Ellis Specific Plan.

(h) Except as provided in Section 1.07(g) above (*i.e.*, the first 500 RGAs issued by City must go to the Ellis Specific Plan Approval), Owner may use any RGAs allocated under the Annual RGA Eligibility on any portion of the Owner's Property (Immediate Property or Other Properties) upon which Owner has secured a Plan Approval; Owner may not use any RGAs allocated under the Annual RGA Eligibility on any portion of the Owner's Property upon which a Plan Approval does not yet exist. If, when Owner makes an RGA Application for RGAs under the Annual RGA Eligibility, the subject Plan Approval (and related project) for which such RGA Application is made has remaining residential units of a number less than that year's applicable Annual RGA Eligibility, then Owner's RGA Application shall not request RGAs (under the Annual RGA Eligibility) in excess of such remaining residential units. If RGAs have already been allocated by City to a Plan Approval under the Annual RGA Eligibility but such allocated RGAs are not needed or wanted by Owner for that Plan Approval, such un-needed RGAs shall be returned by Owner to City and such returned RGAs shall not be counted toward the Overall RGA Maximum, and may be re-issued by City to any other Owner Plan Approval. Upon such re-issue of RGAs by City to another Plan Approval, such re-issued RGAs shall be counted toward the Overall RGA Maximum. Further, once RGAs have been allocated to a Plan Approval under the Annual RGA Eligibility but are not needed or wanted for that Plan Approval and are therefore returned by Owner to City pursuant to the text above, if no other Plan Approval then currently exists, then such returned RGAs shall not be transferable by Owner to another developer or project that does not qualify under this Agreement (again, such returned RGAs shall not be counted by City against the Overall RGA Maximum and shall be available for future City allocation to Owner consistent with this Section above). Further, if before allocation of RGAs to a Plan Approval (at least ten (10) days prior to the application deadline for second cycle (July), Owner notifies City (in writing) of Owner's willingness (such Owner willingness being Owner's sole and exclusive discretion) to receive less than the full Annual RGA Eligibility that Owner otherwise has a right to receive from City under this Agreement ("**Un-Allocated RGAs**"), City shall have the right to use the Un-Allocated RGAs as City sees fit, including without limitation issuing the Un-Allocated RGAs to other (non-Owner) projects, pursuant to City's sole and

exclusive discretion. Such Un-Allocated RGAs shall not be counted toward the Overall RGA Maximum.

(i) RGAs allocated under the Annual RGA Eligibility shall not expire during the Term of this Agreement. If all or any part of the RGAs allocated to Owner are not used by Owner in any one calendar year, said unused RGAs shall be available for use by Owner in any subsequent years remaining within the Term.

1.08 Building Permits.

(a) Property against which this Agreement is recorded shall receive Building Permits only as provided by this Agreement (and any Memorandum of Assignment applicable to such Property).

(b) Owner shall notify City of the calendar year in which Owner will be ready to commence construction of the development(s) approved in a Plan Approval(s).

(c) Upon confirmation by City that Owner is in fact ready to start such construction, then commencing on January 1st of said calendar year designated by Owner, the following shall apply:

(1) For a Property that has secured Plan Approval and is qualified to receive RGAs under this Agreement, City shall reserve building permits for that Property for that calendar year in the same number and amount as the number and amount of RGAs that Owner has an eligibility right to receive in that same calendar year under this Agreement (*i.e.*, the Annual RGA Eligibility) ("**Reserved Building Permits**"). Owner alone shall distribute such Reserved Building Permits among the applicable Plan Approvals as Owner determines in its sole and exclusive discretion (taking into consideration applicable Memorandums of Assignment). So, for example, if, under the applicable Annual RGA Eligibility, Owner had Property or Properties that had a right to receive 125 RGAs that calendar year, then City would reserve 125 building permits for Owner in that same calendar year, and Owner would then distribute such Reserved Building Permits among the applicable Plan Approvals as Owner determines in its sole and exclusive discretion (taking into consideration applicable Memorandums of Assignment).

(2) Notwithstanding (1) above, in any calendar year in which the Property would receive fewer than 125 building permits that calendar year from City (because fewer than 125 building permits are available), City shall nonetheless reserve 125 building permits for Owner, unless such 125 building permits are not available under the GMO Maximums, in which case City shall reserve for Owner all building permits (fewer than 125) then available under the GMO Maximums.

(3) Notwithstanding any of the foregoing, if at any time, but not less than ten (10) days prior to August 31st, Owner notifies City's Chief Building Official of Owner's decision (in Owner's sole and exclusive discretion) to receive fewer than the building permits that Owner otherwise has a right to receive from City under this Agreement ("**Un-Issued Building Permits**"), City shall have the right to use the Un-Issued Building Permits as City sees fit, including without limitation issuing the Un-Issued Building Permits to other (non-Owner)

projects, pursuant to City's sole and exclusive discretion. Such Un-Issued Building Permits shall not be counted as issued to Owner that year.

(4) In addition to the building permits reserved by this Section, Owner may seek building permits from City on a first come, first served basis.

(5) Owner shall make application to City for all or any part of such Reserved Building Permits by end of business on September 30th of each calendar year; Owner shall lose its rights to those Reserved Building Permits that Owner has not made application to City for by end of business on September 30th of such calendar year. On October 1st of each calendar year such Reserved Building Permits to which Owner has lost its rights shall revert back to City for issuance by City in City's sole and exclusive discretion. Such unclaimed Building Permits shall not be counted as issued to Owner that year.

(6) Notwithstanding any other provision of this Agreement to the contrary, all building permits sought by Owner and issued by City through the calendar year 2013 under this Agreement shall exclusively be issued to, and only used within, the Ellis Specific Plan area. However, upon a request by Owner, the City Council of City may consider a request to waive all or any portion of the foregoing requirement. The City Council's decision regarding such request shall be in the sole and exclusive discretion of the City Council; Owner hereby waives any right to challenge judicially any such City Council decision on such Owner request.

1.09 Significant Actions by Third Parties.

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

(b) At Owner's sole discretion and in accordance with Owner's construction schedule, Owner shall apply for such other permits and approvals as may be required by other private and public and quasi-public entities in connection with the development of, or the provision of services to, the Property. City shall cooperate with Owner in Good Faith and Fair and Expeditious Dealing, at no cost to City, in Owner's efforts to obtain such permits and approvals and City shall, from time to time (at the request of Owner), use its Good Faith and Fair and Expeditious Dealing to enter into binding agreements with any such other entity as may be necessary to ensure the timely availability of such permits and approvals to Owner, provided such permits and approvals are mutually determined by City and Owner to be reasonably necessary or desirable and are consistent with Applicable Law. In the event that any such permit or approval as set forth above is not obtained within three (3) months from the date application is deemed complete by the appropriate entity, and such circumstance materially deprives Owner of the ability to proceed with development of the Property or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the

election of Owner, Owner and City shall meet and confer with the objective of attempting to mutually agree on alternatives, Owner Approvals, and/or an amendment to this Agreement to allow the development of the Property to proceed with each Party substantially realizing its bargained-for benefit there from.

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

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

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

(b) This Agreement anticipates and provides the process and rules governing subsequent Owner Approvals (including without limitation Plan Approvals). No amendment of this Agreement shall be required in connection with City processing and/or approval of any such Owner Approval for the Property. Any such Owner Approval that is approved by City and becomes part of the Applicable Law pursuant to the requirements of this Agreement shall be vested into by Owner and City, and shall become a part of this Agreement as if set forth herein in full. City shall not process or approve any Owner Approval unless Owner requests such process and approval.

1.11 Annexation.

(a) As to the Property or any portion thereof, the following shall apply:

(1) From time to time, during the Term of this Agreement, certain portions of the Property may be outside City's current corporate boundary. Such portions are collectively referred to in the singular as an "**Annexation Property.**"

(2) Within ninety (90) days after a Plan Approval for an Annexation Property, or as soon thereafter as a "**Plan for the Provision of Services**" (as that phrase is defined by the law controlling the San Joaquin County Local Agency Formation Commission ("**LAFCO**")) and all other materials required by controlling law and/or requested by LAFCO can be prepared and completed relating to such Annexation Property, City shall consider a "**Resolution of Application**" to LAFCO requesting annexation of such Annexation Property, and all other relevant property determined by City in its sole and exclusive discretion to be appropriate. City shall submit each such Resolution of Application, Plan for the Provision of Services and other material required by controlling law and/or requested by LAFCO. City may process any such annexation of Annexation Property concurrently with other Owner Approvals.

(3) City shall use Good Faith and Fair and Expeditious Dealing to cause the completion of such annexation of Annexation Property subject to all applicable requirements of law. If such annexation of Annexation Property cannot be accomplished without conditions that are unacceptable to Owner then, at Owner's request, City shall terminate or request termination of the proceedings, as appropriate, with respect to the Annexation Property.

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

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

(b) Owner shall be responsible for the City's processing costs regarding actions taken by City pursuant to this Section 1.11.

1.12 Memorandum of Assignment / Operative.

(a) Provided all of the requirements of this Section and this Agreement have been met, the Property to which this Agreement may be recorded in the future shall include all of the property within the City's then-existing Sphere of Influence. Property against which this Agreement is recorded shall receive RGAs and Building Permits only as provided by this Agreement and the below-described "**Memorandum of Assignment**".

(b) As to any Property, this Agreement may only be recorded against such Property at such time and date as all of the following have occurred:

(1) The Property is known and its legal description prepared ("**Subject Property**").

(2) Owner has acquired a legal or equitable interest in such Subject Property;

(3) Such Subject Property is included within the City's Sphere of Influence; and

(4) The City Council has determined that such Subject Property has satisfied the requirements of subdivisions (1), (2) and (3) above and has authorized its designated agent to sign the "**City Authorization to Record Development Agreement**" set forth in *Exhibit D* of this Agreement. Owner shall record the City Authorization to Record Development Agreement with the Memorandum of Assignment substantially in the form set forth in *Exhibit E* to this Agreement against such Subject Property. The recorded Memorandum of Assignment shall grant to the Subject Property all rights, responsibilities, benefits and burdens of this

Agreement except as this Agreement relates to the Overall RGA Maximum and the Annual RGA Eligibility. As to the Overall RGA Maximum and the Annual RGA Eligibility, the Memorandum of Assignment shall designate the maximum amount of RGAs otherwise available under this Agreement that are being allocated to such Subject Property. Such Subject Property shall not be allowed to use or have any claim under this Agreement to the Overall RGA Maximum or Annual RGA Eligibility in excess of such expressed maximum amounts in such Memorandum of Assignment. Such Memorandum of Assignment may be amended and then re-recorded to reflect any new allocation amount set forth in a new Memorandum of Assignment. Any such RGAs that are so allocated by such Memorandum of Assignment to such Subject Property that are unused by such Subject Property shall be returned to City and City shall add back such unused RGAs into the Overall RGA Maximum. Such Memorandum of Assignment shall likewise set forth the overall total and annual total of building permits that shall be reserved by City for such Subject Property. As set forth in Section 1.07(h) of this Agreement, such Subject Property shall not have a claim to any RGAs or building permits provided by this Agreement (including without limitation the Overall RGA Maximum or Annual RGA Eligibility) beyond that expressly set forth in the Memorandum of Assignment or amended Memorandum of Assignment. As relates to the Ellis Specific Plan Property, the Memorandum of Assignment recorded against said Property shall provide an overall amount of RGAs that is identical to the number of residential lots set forth in the approved subdivision maps(s) for said Ellis Specific Plan Property, although the number of RGAs available on an annual basis from the Annual RGA Eligibility shall be determined by Owner in his sole and exclusive discretion except as provided in Section 1.07(h) of this Agreement.

(c) As used in this Agreement, the term "**Operative**" shall have that meaning set forth in Government Code section 65865.

(1) With respect to the Immediate Property, this Agreement shall become Operative upon the occurrence of the recording of this Agreement against the Immediate Property and the annexation of the Immediate Property to the City within the Term of this Agreement.

(2) With respect to an Other Property, this Agreement shall become Operative upon the occurrence of the recording of this Agreement against the Other Property and the annexation of the Other Property to the City within the Term of this Agreement.

1.13 Adequate Water Supply.

(a) Pursuant to the water supply assessment ("**WSA**") by City relating to the potential development this Agreement addresses (including without limitation the water assessment prepared in the EIR referenced in Recital paragraph F of this Agreement), adequate water supply, capacity and treatment (collectively, "**Water Capacity**") is known and will be available during the Term of this Agreement for the potential maximum development that may occur pursuant to this Agreement. Therefore, City shall make such Water Capacity available to Owner for such potential development during the Term of this Agreement. Neither City nor Owner shall take any actions, including without limitation, approval by City of any new development after the Effective Date of this Agreement, that would impair or impede that Water Capacity nor otherwise make the Water Capacity unavailable during the Term of this Agreement

for the potential maximum development that may occur pursuant to this Agreement. For residential uses, such Water Capacity shall be made available in accordance with Owner's building permit schedule for residential units as listed in this Development Agreement. A water supply verification shall take place at the subdivision map approval stage as required by such law. If for any reason, despite the City's best efforts, such Water Capacity is not available from surface water supplies for Owner's use on such development when needed, then the following shall apply:

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

(2) If for any reason, despite City's best efforts, such interim measures are either not available, or are available but not in quantities necessary to fully satisfy such Water Capacity requirements, then Owner may, at Owner's sole and exclusive discretion, upfront the cost of design, construction, operation and maintenance of ground water well, pump station, piping network and appurtenances to City (collectively, "**Additional Well**") to meet the Owner's water needs until such time as City-provided permanent Water Capacity is available. Owner's development will not be served from the Additional Well until construction of the Additional Well is completed and accepted by the City. Once the City-provided permanent Water Capacity is made available to Owner's Property, Owner's need for the Additional Well may be eliminated. In such a circumstance (where Owner's need for the Additional Well is later eliminated because City-provided permanent Water Capacity is available), City may use the Additional Well for City purposes, provided City reimburses Owner for the costs to Owner of the design, construction, operation and maintenance (of the Additional Well). Additionally, Owner may use such Additional Well to provide irrigation water for the public areas, rights-of-way, parks, special landscape features, open space, and anywhere else where irrigation is required to sustain plant species.

(b) Owner shall pay its pro rata share (fair share) of the costs of providing such Water Capacity to any such potential development of the Immediate Property and the Other Properties. More specifically, the costs related to the treatment aspects of the Water Capacity provided to the development within a particular Plan Approval shall be spread and pro-rated over the number of building permits likely to be issued for the development within such particular Plan Approval, and such pro-rated amount shall be paid upon the issuance of each building permit for such development with such Plan Approval for the full cost of water supply. The costs related to the transmission aspects of the Water Capacity provided to the development within a particular Plan Approval shall be paid by those impact fees (or other municipal financing mechanism mutually acceptable and agreeable to the Parties) that are established in an adopted finance plan such as a Finance Implementation Plan ("**FIP**") relating to such development within a particular Plan Approval.

1.14 Wastewater Treatment and Conveyance Capacity.

(a) Wastewater Treatment Capacity.

(1) Upon the Effective Date of this Agreement, and in accordance with the building permit schedule allocated to Owner by this Agreement, City shall make available

capacity from the existing City wastewater treatment plant sufficient to provide the Ellis Specific Plan area development with adequate wastewater treatment capacity for five hundred (500) single-family detached residential units ("**Ellis Initial Capacity**"). Owner shall pay the prevailing wastewater treatment plant impact fees at the time of such building permit issuance for Ellis Initial Capacity in accordance with the City fees imposed on development for the existing Phase I Wastewater Treatment Plant Expansion. City shall not be obligated to advance funds for Additional Capacity or Expansion, except to the extent that such funds have already been collected by City for such Additional Capacity or Expansion.

(2) Beyond the Ellis Initial Capacity referenced in subdivision (a) of this Section 1.14, upon each Plan Approval within the Overall RGA Maximum, the project contained within such Plan Approval shall receive that wastewater treatment capacity, and treatment and transmission capacity ("**Additional Capacity**") needed to adequately service said Plan Approval, with said Additional Capacity coming from the City's existing capacity at the existing wastewater treatment plant or "**Expansion**" of the existing wastewater treatment plant. For the purposes of this Agreement, "Expansion" shall mean that expansion of the existing treatment capacity of the existing wastewater treatment plant, which Expansion will increase the treatment capacity of the plant from the existing approximately 10.2 million gallons per day of treatment capacity to the approximately 16 million gallons per day of treatment capacity. Such Expansion may be done in incremental phases. Owner shall pay its fair share (pro rata share) of the costs of the Expansion (taking into account all users that will use the Expansion) through a form of municipal financing or other mechanism acceptable and agreeable to the Parties. City shall take such measures as needed to ensure that other public and private development projects proposing to utilize the Expansion shall pay their fair share of the funding needed to construct, maintain and operate the Expansion. Owner's above-described funding obligations shall be coordinated with the other public and private development projects to ensure that such monies are collected from Owner and other public and private development projects at approximately the same time. If the required funding from others (other users, other development projects, etc.) is not available for the phase of Expansion needed to provide the Additional Capacity Owner needs when Owner needs it, or if some funding from others is available but is not adequate to fund the phase of Expansion needed to provide said Additional Capacity Owner needs when Owner needs it, then, at Owner's sole and exclusive discretion, Owner may pay the cost of such phase of Expansion needed to provide such Additional Capacity ("**Owner Funded Phase**"); in such a case, Owner shall be reimbursed for that portion of the Owner Funded Phase that exceeds Owner's Additional Capacity needs. Except for responsibilities provided for in applicable CIPs and/or other developments to pay their fair share, City shall not be obligated to advance funds for Additional Capacity Expansion.

(b) Conveyance Capacity.

(1) Owner shall be allowed to use then existing capacity in then-existing conveyance systems. If either increasing the conveyance capacity in the existing wastewater lines to provide adequate conveyance capacity to such area of development within a Plan Approval is needed, or if constructing new wastewater lines to provide adequate conveyance capacity to such area of development within a Plan Approval is needed (collectively, "**Conveyance Expansion**"), then such development within such Plan Approval shall be responsible for its fair share (proportional) of the costs of the Conveyance Expansion. The

improvements to the existing conveyance system or construction of new wastewater lines (i.e., the Conveyance Expansion) will be completed by City in accordance with City's approved Wastewater Master Plan.

(2) City shall take such measures as needed to ensure that other public or private development projects proposing to use the Conveyance Expansion shall pay their fair share (proportional) of the costs of such Conveyance Expansion. If additional funding from such other development projects is not available prior to Owner's need for the Conveyance Expansion, Owner, in its sole and exclusive discretion, may request City to complete construction of the Conveyance Expansion (in multiple phases if requested by Owner). The construction of, and payment by Owner for, such owner conveyance improvements accomplished in multiple phases shall be in accordance with Owner's needs. In such event, no other development will have right to this new or expanded conveyance capacity available after completion of the particular construction phase. Wastewater conveyance connection will be available to Owner only after the required improvements are completed, or accepted by, City. Wastewater conveyance capacity shall be provided from the Corral Hollow sewer line and other western sewer lines as set forth in the Wastewater Master Plan Corral Hollow Sewer Analysis for the maximum development authorized by this Agreement. Except for responsibilities provided for in applicable CIPs and/or other developments to pay their fair share, City shall not be obligated to advance funds for conveyance improvements.

1.15 Schools.

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

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

1.16 Ellis Specific Plan Parks.

(a) Owner shall provide and dedicate to City parks pursuant to the four (4) acres per thousand formula required by the Ellis Specific Plan and Applicable Law ("**Park Requirements**"). No additional park dedications, in lieu fees or other park-related requirements shall be imposed by City on Owner or the Ellis Specific Plan property beyond the Park Requirements.

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

1.17 Future Impact Fees, Taxes and Assessments; Nexus.

(a) During the Term of this Agreement, only those impact fees, taxes, assessments and other charges that are established in an adopted FIP for the particular Property shall apply to the particular Property.

(b) Except as provided in this Agreement (including without limitation, Sections 1.01), this Agreement is not intended to change or affect either Parties' rights or obligations regarding the over-sizing of improvements, services and/or facilities beyond the impacts of the Property.

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

2.01 Covenants Run With The Land.

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

(b) Additionally, this Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Other Properties or any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns (also, collectively, "Assignee").

(c) Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Owner's rights and interests under this Agreement, Owner shall be released from its obligations with respect to the Property, or any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the date of such assignment. A default by any Assignee shall only affect that portion of the Property owned by such Assignee and shall not cancel or diminish in any way Owner's rights hereunder with respect to the assigned portion of the Property not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property owned by such Assignee.

2.02 Defaults.

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

failure is such that it cannot reasonably be cured within such 60-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period.

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

(c) During any cure period specified under this Section 2.02 and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter and pending its resolution or formal termination of the Agreement as provided herein.

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

(e) In the event either Party is in default under the terms of this Agreement, the non-defaulting Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies, and/or (iii) pursue judicial remedies. In no event shall City modify this Agreement as a result of a default by Owner except in accordance with the provisions of Section 1.10 above.

(f) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by the other Party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder or to seek specific performance. Except for situations or events involving the City's gross negligence or willful misconduct, neither City nor its officers, agents, or employees shall be liable in damages for any breach or violation of this Agreement, except for attorneys' fees as provided in Section 3.05(a), it being expressly understood and agreed that the only legal remedies available to Owner for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, or other injunctive or declaratory relief to enforce the provisions of this Agreement. Nothing in this section shall be deemed to limit either Party's rights under the Tort Claims Act. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement shall be deemed a final agency action.

2.03 Annual Review.

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

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

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

(d) If City fails to either (1) hold the annual review meeting, or (2) notify Owner in writing (following the date the review meeting is to be held) of the City's determination as to compliance or noncompliance with the terms of the Agreement, such failure shall be deemed an approval by City of Owner's current compliance with the terms of this Agreement.

(e) In addition to the annual review provided for in this Section 2.03, City may investigate or evaluate from time to time during the course of any given year, and regardless of whether such investigation or evaluation takes place as part of the annual review, any subject matter that is properly the subject of an annual review.

2.04 Force Majeure Delay, Extension of Times of Performance.

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

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

2.05 Legal Actions.

(a) In the event of any Third Party Challenge, the Parties shall agree to mutually cooperate with each other in the defense of any such challenge.

(b) City shall tender the complete defense of any such Third Party Challenge to Owner ("Tender"), and upon acceptance of such Tender by Owner, Owner shall control all

aspects of the defense and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge.

(c) If City wishes to assist Owner when Owner has accepted the Tender, City may do so if Owner consents to such assistance and if City pays its own attorney fees and costs (including related court costs).

(d) Should Owner refuse to accept such a Tender, City may defend such Third Party Challenge, and if City so defends, Owner shall pay City's attorney fees and costs (including related court costs).

(e) If any part of this Agreement (including, without limitation, any part of the exhibits and attachments thereto) or any Owner Approval is held by a court of competent jurisdiction to be invalid, City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Owner Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Owner Approval as necessary or desirable to permit execution of this Agreement and/or Owner Approval. If despite such efforts such part of this Agreement and/or Owner Approval cannot be cured and/or re-enacted or re-adopted, and such invalidity or unenforceability would have a material adverse impact on the Owner, by depriving Owner of a material benefit of this Agreement, such as the benefit of the Overall RGA Maximum and/or Annual RGA Eligibility, then Owner may terminate this Agreement by providing written notice thereof to the City, and upon such termination, Owner shall no longer be subject to the benefits and burdens of this Agreement, including without limitation the Swim Center Commitment, Swim Center Land Dedication, Overall RGA Maximum and/or Annual RGA Eligibility.

ARTICLE 3 **GENERAL PROVISIONS**

3.01 Definitions.

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

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

(1) "Additional Capacity" shall have that meaning set forth in Section 1.14(a)(2) of this Agreement.

(2) "Additional Well" shall have that meaning set forth in Section 1.13(a)(2) of this Agreement.

(3) "Agreement" shall mean this Development Agreement between City and Owner.

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

(5) "**Annexation Effective Date**" shall mean that date upon which all of the following have occurred: the annexation of the property contained within the Ellis Specific Plan (including the Swim Center) has been approved by LAFCO and the Conducting Authority, the annexation approvals have taken effect under controlling law, the applicable statute of limitations has run on those LAFCO and Conducting Authority annexation approvals without a lawsuit being filed within that statutory limitations period, or if a lawsuit has been filed within that statutory limitations period, that the defendant and real party have prevailed in the lawsuit, or the Annexation is otherwise determined legal and effective.

(6) "**Annexation Property**" shall have the meaning set forth in Section 1.11(a)(1) of this Agreement.

(7) "**Annual RGA Eligibility**" shall have the meaning set forth in Section 1.07(d) of this Agreement.

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

(9) "**Approving Ordinance**" shall have the meaning set forth in Recital paragraph N of this Agreement.

(10) "**Assignee**" shall have the meaning set forth in Section 2.01(a) and (b) of this Agreement.

(11) "**CEQA**" shall have that meaning set forth in Recital paragraph F of this Agreement.

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

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

(14) "**City Authorization to Record Development Agreement**" shall have the meaning set forth in Section 1.12(b)(4) and *Exhibit D* of this Agreement.

(15) "**City Response**" shall have the meaning set forth in Section 1.05(b) of this Agreement.

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

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

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

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

(20) "**Conveyance Expansion**" shall have the meaning set forth in Section 1.14(b)(1) of this Agreement.

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

(22) "**EIR**" shall have the meaning set forth in Recital paragraph F(3) of this Agreement.

(23) "**Ellis Approvals**" shall have the meaning set forth in Recital paragraph F(4) of this Agreement.

(24) "**Ellis Initial Capacity**" shall have the meaning set forth in Section 1.14(a)(1) of this Agreement.

(25) "**Ellis Specific Plan**" shall have the meaning set forth in Recital paragraph D of this Agreement.

(26) "**Enabling Resolution**" shall have the meaning set forth in the preamble of this Agreement.

(27) "**Existing City Laws**" shall have the meaning set forth in Section 1.03(a)(3) of this Agreement.

(28) "**Expansion**" shall have the meaning set forth in Section 1.14(a)(2) of this Agreement.

(29) "**FIP**" shall have the meaning set forth in Section 1.13(b) of this Agreement.

(30) "**Force Majeure Event**" shall have the meaning set forth in Section 2.04(a) of this Agreement.

(31) "**General Plan**" shall have the meaning set forth in Recital paragraph D of this Agreement.

(32) "**General Plan EIR**" shall have the meaning set forth in Recital paragraph F(1) of this Agreement.

(33) "**GMO**" shall have the meaning set forth in Recital paragraph I of this Agreement.

(34) "**GMO Maximums**" shall have the meaning set forth in Recital paragraph I and Section 1.07(c) of this Agreement.

(35) "**Good Faith and Fair and Expeditious Dealing**" shall have the meaning set forth in Section 1.02(c) of this Agreement.

(36) "**Immediate Property**" shall have the meaning set forth in Recital paragraph J of this Agreement.

(37) "**January Cycle**" shall have the meaning set forth in Section 1.07(e)(1)(A) of this Agreement.

(38) "**July Cycle**" shall have the meaning set forth in Section 1.07(e)(1)(B) of this Agreement.

(39) "**LAFCO**" shall have the meaning set forth in Section 1.11(a)(2) of this Agreement.

(40) "**Legal Effect**" shall mean that the ordinance, resolution, permit, license or other grant of approval (collectively, "permit") in question, has been adopted by City and that all applicable administrative appeal periods and statutes of limitations have run and that the permit has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction or other tribunal with final and binding decision authority.

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

(42) "**Meet and Confer Period**" shall have the meaning set forth in Section 1.05(b) of this Agreement.

(43) "**Memorandum of Assignment**" shall have the meaning set forth in Section 1.12(b)(4) and *Exhibit E* of this Agreement.

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

(45) "**New Development Swim Center Contribution**" shall have the meaning set forth in Section 1.01(c) of this Agreement.

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

(47) "**Objection to New City Law(s)**" shall have the meaning set forth in Section 1.05(b) of this Agreement.

(48) "**Operative**" shall have the meaning set forth in Section 1.12(c) of this Agreement.

(49) **"Other Property"** or **"Other Properties"** shall have the meaning set forth in Recital paragraph J of this Agreement.

(50) **"Overall RGA Maximum"** shall have the meaning set forth in Section 1.07(d) of this Agreement.

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

(52) **"Owner Approvals"** shall have the meaning set forth in Section 1.03(a)(2) of this Agreement, and includes without limitation the Plan Approvals and the Ellis Approvals.

(53) **"Owner Swim Center Contribution"** shall have the meaning set forth in Section 1.01(a) and *Exhibit B* of this Agreement.

(54) **"Owner Funded Phase"** shall have that meaning set forth in Section 1.14(a)(2) of this Agreement.

(55) **"Park Requirements"** shall have the meaning set forth in Section 1.16(a) of this Agreement.

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

(57) **"Plan Approval"** is one type of Owner Approval and shall have the meaning set forth in Section 1.07(b) of this Agreement.

(58) **"Plan for the Provision of Services"** shall have that meaning set forth in Section 1.11(a)(2) of this Agreement.

(59) **"Planning Commission"** shall have the meaning set forth in Recital paragraph C of this Agreement.

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

(61) **"Processing Fees"** shall mean fees charged by the City which represent the costs to City for City staff (including consultants) time and resources spent reviewing and processing applications for Owner Approvals, as governed by Government Code section 66014.

(62) **"Property"** shall have the meaning set forth in Recital paragraph J of this Agreement.

(63) **"Reserved Building Permits"** shall have the meaning set forth in Section 1.08(c)(1) of this Agreement.



(64) "**Residential Growth Allotments**" or "**RGAs**" shall have the meaning set forth in the GMO in effect on July 1st, 2008.

(65) "**Resolution of Application**" shall have the meaning set forth in Section 1.11(a)(2) of this Agreement.

(66) "**RGA Application(s)**" shall have the meaning set forth in Section 1.07(e) of this Agreement.

(67) "**Serpa Swim Center**" shall have the meaning set forth in Section 1.01(e) of this Agreement.

(68) "**South Schulte EIR**" shall have the meaning set forth in Recital paragraph F(2) of this Agreement.

(69) "**South Schulte EIR Settlement**" shall have the meaning set forth in Recital paragraph F(2) of this Agreement.

(70) "**South Schulte Specific Plan**" shall have the meaning set forth in Recital paragraph D of this Agreement.

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

(72) "**Subject Property**" shall have the meaning set forth in Section 1.12(b)(1) and *Exhibit E* of this Agreement.

(73) "**Subject Property Annual Building Permit Total**" shall have the meaning set forth in *Exhibit E* of this Agreement.

(74) "**Subject Property Annual RGA Eligibility Total**" shall have the meaning set forth in *Exhibit E* of this Agreement.

(75) "**Subject Property Building Permit Total**" shall have the meaning set forth in *Exhibit E* of this Agreement.

(76) "**Subject Property RGA Total**" shall have the meaning set forth in *Exhibit E* of this Agreement.

(77) "**Swim Center**" shall have the meaning set forth in Section 1.01 of this Agreement.

(78) "**Swim Center Advance Costs**" shall have the meaning set forth in *Exhibit B* of this Agreement.

(79) "**Swim Center Commitment**" shall have the meaning set forth in Recital paragraph C of this Agreement.



(80) "Swim Center Land Dedication" shall have the meaning set forth in Section 1.01(b) of this Agreement.

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

(82) "Swim Center Funds Account" shall have the meaning set forth in *Exhibit B* of this Agreement.

(83) "Swim Center Payment Protocol" shall have the meaning set forth in Section 1.01(a) of this Agreement.

(84) "Tender" shall have the meaning set forth in Section 2.05(b) of this Agreement.

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

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

(87) "Two-Year Period" shall have the meaning set forth in Section 1.01(b)(1) of this Agreement.

(88) "Un-Allocated RGAs" shall have the meaning set forth in Section 1.07(h) of this Agreement.

(89) "Un-Issued Building Permits" shall have the meaning set forth in Section 1.08(c)(3) of this Agreement.

(90) "Urban Reserves" shall have the meaning set forth in Recital paragraph D of this Agreement.

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

(92) "Water Capacity" shall have the meaning set forth in Section 1.13(a) of this Agreement.

(93) "WSA" shall have the meaning set forth in Section 1.13(a) of this Agreement.

3.02 Requirements of Development Agreement Statute.

(a) The permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to any development and construction on the Property shall be those set forth in the General Plan, and all other provisions of the Applicable Law.

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

(c) As stated above, this Agreement complies with laws regarding Development Agreement Statute (including without limitation section 65865.2), which requires this Agreement to specify the duration (Term) of the Agreement, the permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The duration of this Agreement is set forth in Section 1.06 of this Agreement, and this Agreement sets forth provisions for the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes in the Applicable Law provisions of this Agreement. For example, the Ellis Specific Plan is part of the Applicable Law for the Ellis Specific Plan site, and the Ellis Specific Plan sets forth the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes for that Ellis Specific Plan area. Likewise, as to Other Properties that this Agreement may apply to in the future, upon the recordation of this Agreement against such Property, the Applicable Law will apply, which Applicable Law uses the General Plan and City Laws applicable to such Property, all of which set forth the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes. Further, such General Plan and City Laws require the processing and approval of Owner Approvals before any development can take place, which Owner Approvals will likewise set forth the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes. Finally, under this Agreement's own terms and conditions, Owner is not eligible to make application for nor receive an RGA (needed before any residential development can take place) unless and until a "Plan Approval" (defined in Section 1.07(b) of this Agreement) has first been processed and approved by City pursuant to this Agreement, and this Agreement is thereafter recorded against such property. Under this Agreement, such Plan Approval must set forth the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes. Like the Ellis Approvals, that Plan Approval will become part of the Applicable Law provisions of this Agreement. In other words, at no time upon the recordation of this Agreement against a Property (which recordation cannot take place until the requirements of this Agreement and controlling law have been satisfied regarding the recordation of this Agreement against such Property) will there not be applicable, know and understood the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the dedication of land for public purposes relative to such Property.

3.03 Development Timing.

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

expressly provide for the timing of the development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement.

3.04 Hold Harmless and Indemnification.

Owner shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) (collectively, "**Claims**") resulting from or arising out of the development contemplated by this Agreement by Owner or Owner's agents, representatives, contractors, subcontractors, or employees, other than a liability or claim based upon City's gross negligence or willful misconduct. The indemnity obligations of this Agreement shall not extend to Claims arising from activities associated with the maintenance or repair by the City or any other public agency of improvements that have been accepted for dedication by the City or such other public agency. From time to time the City and Owner may enter into subdivision improvement agreements, as authorized by the Subdivision Map Act, and those subdivision improvement agreements may have language that is different from the language contained in this Agreement. In the event of any conflict between the provisions of this section and the indemnification provisions in such subdivision improvement agreements, the indemnification provisions in this Agreement shall prevail.

3.05 Miscellaneous.

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

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

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

(d) Notices.

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

If to the City:

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

With a copy to:

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

If to Owner:

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

With a copy to:

Michael Patrick Durkee
Allen Matkins Leck Gamble Mallory & Natsis LLP
200 Pringle Avenue, Suite 300
Walnut Creek, CA 94596
Telephone: (925) 943-5551
Facsimile: (925) 943-5553

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

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

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

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

(h) Execution/Entire Agreement. This Agreement may be executed in duplicate originals, each of which is deemed to be an original. This Agreement also may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument. This Agreement, including these pages and all the exhibits inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

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

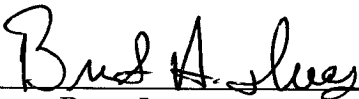
(j) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

<i>Exhibit A</i>	<i>Immediate Property Legal Description</i>
<i>Exhibit B</i>	<i>Swim Center Payment Protocol</i>
<i>Exhibit C</i>	<i>RGA Transmittal and Application Forms</i>
<i>Exhibit D</i>	<i>City Authorization to Record Development Agreement</i>
<i>Exhibit E</i>	<i>Memorandum of Assignment</i>

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

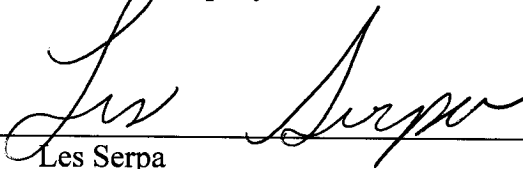
"City"

CITY OF TRACY, a municipal corporation


By: Brent Ives
Title: Mayor
Date: 2/5/09

"Owner"

SURLAND COMMUNITIES, LLC, a California limited liability company


By: Les Serpa
Title: Managing Member
Date: Jan. 28, 2009

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Joaquin

On 2/15/09 before me, Sharon K. Davis Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Brent H. Ives
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature Sharon K. Davis
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

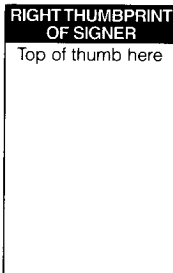
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

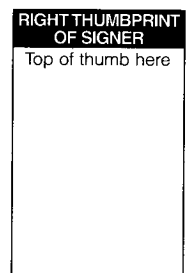
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

ACKNOWLEDGMENT

State of California
County of San Joaquin)

On January 28, 2009 before me, Kirstie L. McKenzie, Notary Public
(insert name and title of the officer)

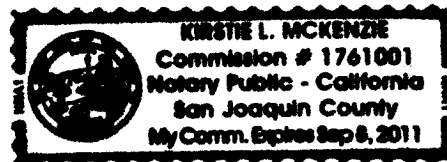
personally appeared Les J. Serpa,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s)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

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

WITNESS my hand and official seal.

Signature

 (Seal)



Attest:

Sandra Edwards

By: Sandra Edwards

Title: City Clerk

Date: 2.5.09

Approved As To Form:

Debra E. Corbett

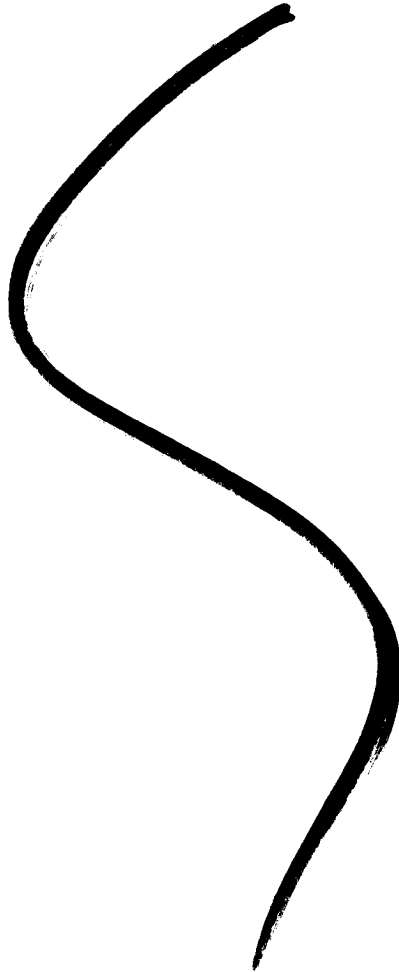
By: Debra E. Corbett

Title: City Attorney

Date: 2/3/09

Exhibit A

Immediate Property Legal Description



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

DESCRIPTION

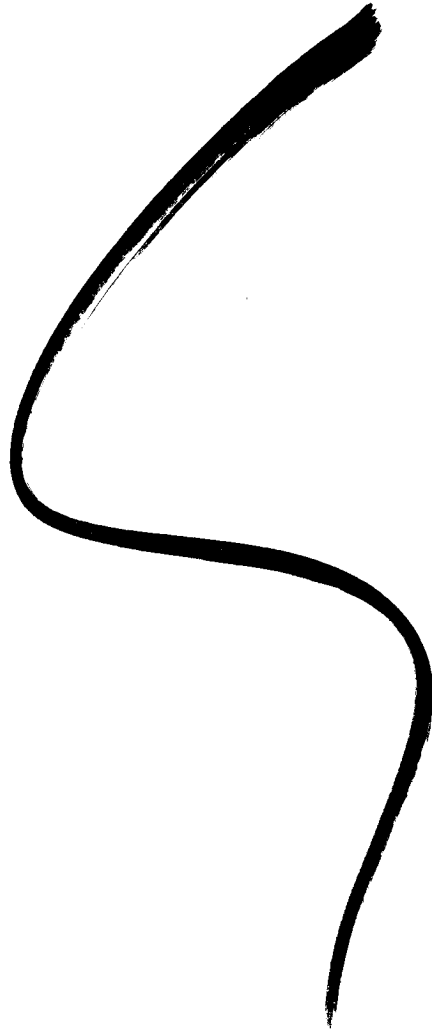
All that certain real property situate in Section 6, Township 3 South, Range 5 East, Mount Diablo Base and Meridian, County of San Joaquin, State of California, and described as follows:

Parcel 1 as said parcel is shown on that certain map entitled "PA-0800181, PARCEL MAP", filed January 27, 2009, in Book 25 of Parcel Maps at Page 33 in the Office of the Recorder of San Joaquin County.



Exhibit B

Swim Center Payment Protocol



Handwritten signature or initials in the bottom right corner.

SWIM CENTER PAYMENT PROTOCOL

EX.B-1. The purpose of this *Exhibit B* is to memorialize the terms, conditions, and parameters by which City and Owner shall implement the design and construction of the Swim Center, as well as to set forth a protocol for the funding of the design and construction costs of the Swim Center. This *Exhibit B* shall not be construed as a preliminary or final approval of the Swim Center or any other land use decision and/or other discretionary process or approval not yet given by City.

EX.B-2. The Swim Center is a public project that will be owned and operated by City. As a result, City shall enter into contracts with all consultants and construction contractors necessary for the design, construction, operation, and maintenance of the Swim Center.

EX.B-3. During the design and construction phases, Owner representatives may participate in design decisions, design modifications and other design-related decisions. Owner representatives shall be invited by City to attend construction progress meetings with City representatives, consultants, and the general contractor to allow for such Owner participation.

EX.B-4. Section 2.20.140 of the Tracy Municipal Code requires that a formal Request for Proposal ("RFP") procedure be followed for consulting services costing \$50,000 or more. This procedure is not required, however, if the City Council determines that compliance with this procedure would not be in the best interest of City. Because RJM Design Group, Inc. ("RJM") and Gates Associates ("Gates") have been responsible for preliminary design to date and are highly qualified to continue to provide design services for the Swim Center, the City Council may determine that it is in the best interest of City not to follow the RFP procedure for the design services for the Swim Center.

EX.B-5. Urban Design Associates ("UDA"), the consultant that prepared the Ellis Specific Plan, drafted the Schematic Design and Design Development concepts for the Swim Center. If desired by City, City may hire UDA to assist in the further refinement of the Schematic Design and Design Development for the Swim Center, with the costs for any such assistance of UDA to be paid by City from the Swim Center Funds.

EX.B-6. Within thirty (30) days following the Annexation Effective Date, Owner shall deposit the Owner Swim Center Contribution, and City shall deposit the City Swim Center Contribution, into a segregated and interest-bearing City account ("**Swim Center Funds Account**"). City should likewise deposit any New Development Swim Center Contribution funds it collects from new development into said Swim Center Funds Account on a quarterly basis. Any and all interest earned relative to the funds in the Swim Center Funds Account shall be kept with, added to and become part of the Swim Center Funds Account. Within thirty (30) days of the Owner deposit into such Swim Center Funds Account, City shall remit to Owner monies totaling \$324,000 ("**Swim Center Advance Costs**"). The rationale for the Swim Center Advance Costs is as follows:

(a) Concept Master Plan Development:

(1) RJM Design Group	\$173,000
(2) Urban Design Associates	\$40,000
(3) BKF Engineering	\$3,000
(4) Gates and Associates	\$20,000

(b) Feasibility and Demographic Study and Analysis

(1) RJM Design Group	\$32,000
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(c) Budget Review and Analysis

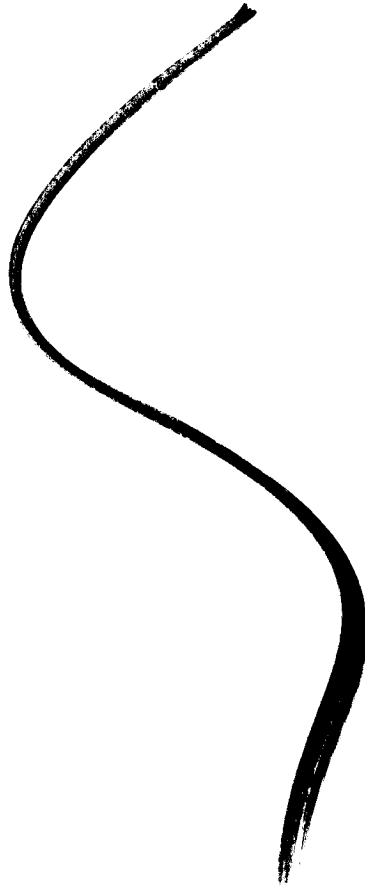
(1) RJM Design Group	\$56,000
----------------------	----------

EX.B-7. Monies withdrawn from the Swim Center Funds Account shall be for the sole purpose of funding the design, construction, operation, and/or maintenance costs of the Swim Center. City shall make withdrawals from the Swim Center Fund Account in the amounts and at the times it deems necessary in order to pay those costs authorized by this Ex.B-7.

EX.B-8. Notwithstanding the foregoing, in the event that an Annexation Effective Date never occurs due to the failure to successfully annex the Ellis Specific Plan Property, Owner shall bear the sole responsibility for the applicable Swim Center costs incurred by Owner, except that in the event any such work funded by Owner is subsequently used by City then City shall pay to Owner the actual cost of such work within thirty (30) days of demand by Owner.

Exhibit C

RGA Transmittal and Application Forms



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RGAs Transmittal Form

SURLAND DEVELOPMENT AGREEMENT RESIDENTIAL GROWTH ALLOTMENT APPLICATION

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

Submitted by: _____
Date: _____

Received by: _____
Date: _____



APPLICATION FOR RESIDENTIAL GROWTH ALLOTMENTS

Purpose Of Application

RGA's: _____ Exception (For Affordable Housing Units): _____

Applicant's Information

Name: _____ Telephone No.: _____

Company: _____ Fax No.: _____

Mailing Address: _____

City/State/Zip Code: _____

Property Owner's Information

Name: _____ Telephone No.: _____

Company: _____ Fax No.: _____

Mailing Address: _____

City/State/Zip Code: _____

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

Project Information

Recorded Subdivision Name: _____

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

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

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

Project Area name (if different from above): _____

Project Area ownership: _____

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

Assessor's Parcel No(s): _____



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

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

Total number of building permits issued: _____

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

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

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

Area: _____

Applicant's Signature

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

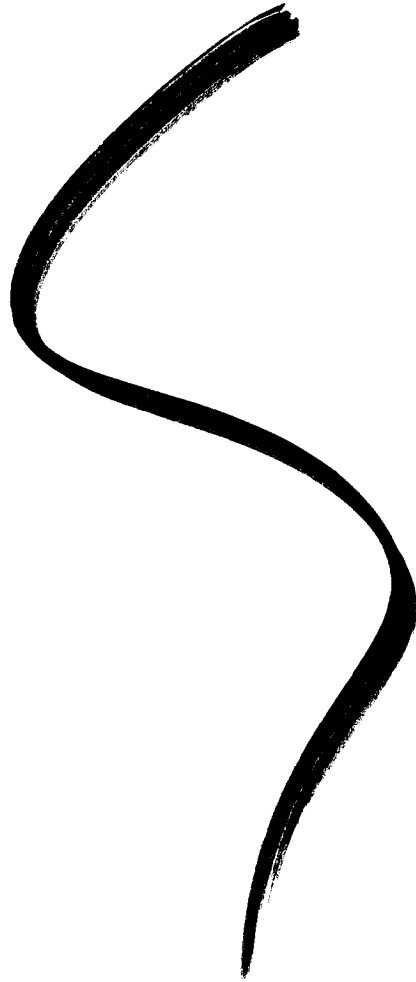
Applicant's Signature

Date



Exhibit D

City Authorization to Record Development Agreement



City Authorization to Record Development Agreement

EX.D-1. Pursuant to Section 1.12 of the Development Agreement by and between the CITY OF TRACY, a municipal corporation ("City"), and SURLAND COMMUNITIES, LLC a California limited liability company ("Owner"), dated _____, 2009, this Agreement may be recorded against a Subject property when all of the following has occurred:

- (a) The Subject Property is known and its legal description prepared;
- (b) Owner has acquired a legal or equitable interest in the Subject Property;
- (c) The Subject Property is included within the City's Sphere of Influence; and

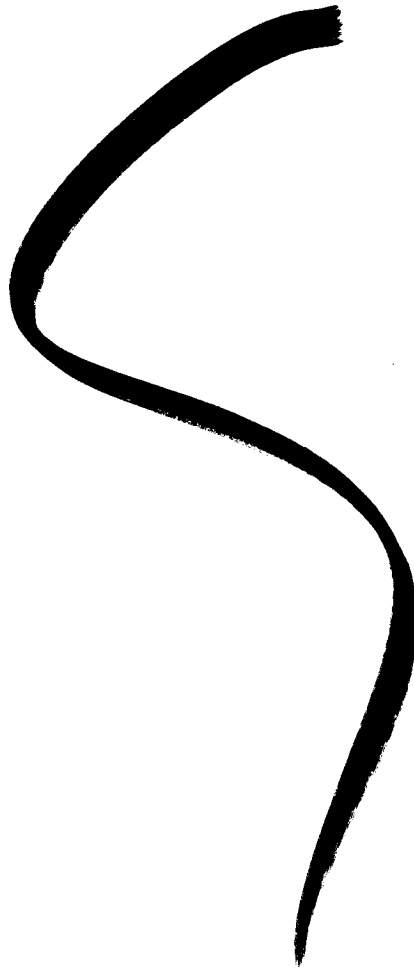
(d) The City Council has determined that the Subject Property has satisfied the requirements of subdivisions (a), (b) and (c) above and has authorized its designated agent to sign the "City Authorization to Record Development Agreement."

EX.D-2. On _____ 2____, the City Council determined that such Subject Property has satisfied the requirements of subdivisions (a), (b) and (c) above. The City Council hereby authorizes the City Manager to sign this City Authorization to Record Development Agreement and have it recorded against such Subject Property.



Exhibit E

Memorandum of Assignment



NO FEE DOCUMENT per Government Code § 6103
RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

Memorandum Of Assignment

This "**Memorandum of Assignment**" relates to that Development Agreement by and between the City of Tracy and Surland Communities, LLC dated January __, 2009 ("Agreement") (the form of this Memorandum of Assignment was *Exhibit E* to the Agreement), and the recording and use of the Agreement on that certain real property ("Subject Property"). This Memorandum of Assignment is entered into by SURLAND COMMUNITIES, LLC a California limited liability company ("Owner") and _____ [owner of Subject Property] ("Assignee").

1. The Subject Property is more particularly described in *Exhibit 1*, attached hereto and incorporated herein by this reference as if set forth in full.

2. The Subject Property is hereby burdened and benefitted by and otherwise bound and subject to each and every term and condition of the Agreement , including the following additional details/requirements:

(a) The Subject Property shall have a right to an overall total of only ___ RGAs ("**Subject Property RGA Total**"). The Subject Property shall not have any right to any RGAs given under the Agreement beyond the Subject Property RGA Total.

(b) The Subject Property shall have a right to only ___ RGAs from the Annual RGA Eligibility ("**Subject Property Annual RGA Eligibility Total**"). The Subject Property shall not have any right to any RGAs from the Annual RGA Eligibility given under the Agreement beyond the Subject Property Annual RGA Eligibility Total.

(c) The Subject Property is subject to the following additional RGA terms and conditions [list].

(d) The Subject Property shall have a right to a total of only ___ Building Permits ("**Subject Property Building Permit Total**"). The Subject Property shall not have any right to any Building Permits beyond the Subject Property Building Permit Total

(e) Additionally, the Subject Property shall have a right to only ___ Building Permits per year from the Building Permits otherwise available under the Agreement ("**Subject Property Annual Building Permit Total**"). The Subject Property shall not have any right to any Building Permits beyond the Subject Property Annual Building Permit Total.

(f) The Subject Property is subject to the following additional Building Permit terms and conditions [list].

Executed this _____ day of _____, _____, at _____, California.

SURLAND COMMUNITIES, LLC a
California limited liability company

By: _____

Its: _____

[SUBJECT PROPERTY OWNER]:

By: _____

Its: _____



THE SURLAND COMPANIES

RECEIVED

December 14, 2011

DEC 15 2011

CITY OF TRACY
D.E.S.

Residential

Commercial

Mr. Bill Dean
Assistant Director-Department of Engineering Services
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

RE: Request for Development Agreement - Ellis Specific Plan

1024 CENTRAL AVE.

Dear Mr. Dean:

TRACY

With this letter, and attached development application, the Surland Companies requests that the City enter into formal discussions with the Surland Companies for the purpose of reaching mutually agreeable terms for a Development Agreement with the City of Tracy.

CALIFORNIA

95376

TELEPHONE

The proposed Development Agreement would seek mutually beneficial terms addressing infrastructure, residential growth allotments, land dedications, and funding for a proposed City owned family swim center, over a term of twenty five years.

(209)832-7000

FACSIMILE

More specifically, the City of Tracy would benefit from the Agreement by receiving up to \$10 Million dollars of funding toward the design and construction of a family swim center, as well as up to 16 acres of dedicated land within the Ellis Specific Plan for the proposed family swim center site. In return, the project would receive from the City 2,250 RGAs to be used within the Ellis Specific Plan over the term of the Agreement, as well as water and wastewater treatment and capacity in the existing treatment plants; the costs of which are paid for by the Project Proponent.

(209)833-9700

WEBSITE

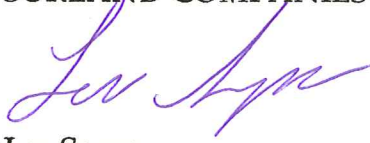
www.surlandcompanies.com

Mr. Bill Dean, City of Tracy
December 14, 2011
Page 2 of 2

We look forward to working together with the City of Tracy in making good things happen in our community for all to enjoy and be proud of.

Sincerely,

SURLAND COMPANIES



Les Serpa
CEO

AGENDA ITEM 6

REQUEST

ACCEPT THE GENERAL FUND FY 11-12 MID-YEAR FINANCIAL REPORT

EXECUTIVE SUMMARY

The mid-year General Fund budget analysis indicates that some revenues have improved and some have decreased resulting in total revenues remaining virtually unchanged from the adopted budget. Expenses however might be slightly higher due to a number of factors. As such, the FY 11-12 budget deficit remains in the \$1.5 to \$1.8 million range. No additional budget action is required by the Council at this time.

DISCUSSION

Purpose of Mid-Year Review. The purpose of the mid-year review is to determine if after 6 months of actual experience, whether General Fund budget assumptions related to revenues are holding firm or whether budget assumptions have eroded to the point that the City Council would need to take budget cutting actions to return the budget to its originally adopted status. The mid-year analysis is limited to this sole purpose and by nature is more conservative and less comprehensive than the annual budget setting process.

A Brief Background. The FY 10-11 adopted budget anticipated revenues of \$42,465,470 and expenditures of \$47,277,540 thereby resulting in a budget deficit of \$4,813,000. The actual budget deficit (to the General Fund) was \$2,548,958. At first glance this appears to be that the budget deficit was considerably overestimated. However, upon further examination the actual deficit (expenditures over revenues without Measure E) for FY 10-11 was \$4,545,000 – a difference to budget of just \$268,000. The following paragraph explains this computation.

The FY 10-11 budget was adopted in May 2010 prior to any decision to place a tax revenue measure on the ballot. As such, the budget never anticipated any revenue from such a measure. Subsequent to budget adoption, Tracy voters in November 2010 approved Measure E (a half cent temporary sales tax increase for 5 years for General Fund purposes). This tax began April 1, 2011 and therefore provided \$896,551 in additional unanticipated revenue for FY 10-11. This additional revenue helped cut into the projected deficit. In order to do an “apples to apples” comparison of the FY 10-11 adopted budget to actual, Measure E revenue has to be excluded. In addition, the City drew down internal service funds (self-insurance) by about \$1.1 million. Self-insurance receives most of its funding through charges to the General Fund for general liability and workers compensation (especially public safety employees). This additional expenditure of \$1.1 million must also be added to the deficit.

Prior to Measure E – and after having cut 90 positions and reduced expenditures by approximately \$5 million – the City was clearly operating in the range of \$4.5 million annual deficits. The first year estimate for Measure E revenue was \$4.6 million thereby stabilizing the City’s fiscal situation and avoiding further cuts or substantial additional annual (and unsustainable) draws on reserves.

FY 11-12 General Fund Budget. The adopted budget anticipated \$47,025,920 in revenue including \$4,650,000 in temporary taxes (Measure E) and \$48,581,150 in total “net” (more about that later in this report) expenditures. This would result in a budget deficit of \$1,555,230. After 6 months, the following line by line revenue and total expenses can be reported in this mid-year budget analysis.

REVENUE	FY 11-12 BUDGET	MID-YEAR ESTIMATE	DIFFERENCE
Property Tax	\$14,350,600	\$14,054,330	(\$296,270)
Sales Tax	\$10,927,000	\$11,733,770	\$806,770
Temporary Sales Tax	\$4,650,000	\$5,530,170	\$880,170
Other Taxes	\$1,570,000	\$1,581,200	\$11,200
Operating Assessments	\$345,000	\$352,340	\$7,340
License & Permits	\$696,130	\$620,900	(\$75,230)
Franchise Fees	\$2,471,000	\$2,481,000	\$10,000
State Shared Taxes	\$641,000	\$498,940	(\$142,060)
Other Grants	\$482,370	\$617,690	\$135,320
Current Charges	\$7,974,300	\$7,208,790	(\$765,510)
Fines & Forfeitures	\$1,709,000	\$1,463,000	(\$246,000)
Use of Money & Property	\$990,000	\$660,200	(\$329,800)
Other Revenue	\$219,520	\$200,200	(\$19,320)
TOTAL REVENUE	\$47,025,920	\$47,002,530	(\$23,390)
TOTAL EXPENSES	\$48,581,150	\$48,839,080	
DEFICIT	(\$1,555,230)	(\$1,836,600)	

Property Taxes. The budget anticipated yet another year of declining assessed value and the resulting loss to property taxes. This was projected to be a decline of about 2.5% but it actually will be closer to 5% thereby resulting in nearly \$300,000 less in property tax revenue than the FY 11-12 adopted budget. In the past four years property tax revenue to the City has declined a total of 32%. Property tax revenue has historically been the primary source of revenue to pay for public safety services.

Sales Taxes. Although the FY 11-12 budget was fairly aggressive in anticipating a 6.3% increase to sales tax resulting in anticipated revenues of \$10,927,000, sales taxes have substantially rebounded. It is now estimated that the City will receive \$11,733,770 in sales tax this fiscal year, an increase of \$806,000 over budget. Sales tax data by merchant is confidential data. However, the City may release the top 25 sales tax producers in alphabetical order. Here is the list as of the 3rd quarter 2011.

American Truck & Trailer	Arco AM/PM	Best Buy
Chevron Service Stations	Costco	Crate & Barrel
Home Depot	Macy's	Nixon-Egli Equipment
Safeway Service Stations	Safeway Stores	Save Mart Supermarket
Shell Service Station	Southwest School Supply	Target
Tracy Chevrolet	Tracy Chrysler/Jeep/Dodge	Tracy Ford
Tracy Honda	Tracy Hyundai	Tracy Mazda
Tracy Nissan	Tracy Toyota	Tracy Truck & Auto
Wal-Mart		

There are several factors to the increased sales tax. First auto sales have rebounded. The average vehicle on U.S. roads is now 11 years old - a record - and that is helping boost new-car sales as owners trade in the old vehicles that they had hung on to during the economic downturn. The low interest rate environment has also helped auto sales. There are 8 new car dealers among the City's top 25 sales tax producers.

Secondly, gas prices have remained high (\$3.50 per gallon and up) for a substantial period of time. There is a general sales tax on gasoline which is in addition to gasoline taxes which are restricted to transportation related expenses. Many motorists and travelers stop in Tracy to take advantage of the relatively affordable gas prices as compared to bay area locations. From the above it can be seen that 6 of the top 25 sales tax producers are gas stations (unlike Safeway, Costco does not break out fuel sales separate but is safe to assume that if it were separate fuel sales at Costco would be in the top 25).

A final leading cause to increased sales tax results from distribution. Although the vast majority of Tracy's many distribution centers do not have an accompanying sales desk, one such facility does and is in the City's top 25. The Crate and Barrel Distribution Center processes on-line orders for one of its catalog departments through the Tracy center and as such, Tracy receives the one-cent share of the tax that goes to point of sale from any California customer ordering such product through this on-line catalog. This center is new within the past 18 months.

The City of Tracy's sales tax per capita now stands at \$124 as compared to Manteca's much lower \$109 and the statewide average of just \$99.

Temporary Sales Taxes – Measure E. The original first year revenue resulting from Measure E was estimated by the City's sales tax consultant/auditor to be \$4.65 million. After 6 months of data and extrapolating through the Christmas quarter, FY 11-12 Measure E revenue can be estimated at \$5.53 million, an increase of \$880,000. The original estimate was difficult to compute due to the fact that not all sales transactions occurring in Tracy are subject to Measure E and data did not exist to make other important projections about this tax. One cannot simply take the sales tax coming to the City through the standard local one-cent point of sale share and multiply this by 50% to get the estimate for the City's temporary half-cent sales tax (Measure E).

The half cent temporary sales tax levied by Measure E is not applicable to all auto sales sold by Tracy auto dealers, only for those sales in which the car will be registered in Tracy. No data was available prior to Measure E which identified what percentage of overall car sales were attributable to a car subsequently registered to an address within the City of Tracy. Conversely, an auto dealer outside of Tracy selling a car to be registered within the City of Tracy must also collect the half cent tax. Again, no data was available prior to Measure E which provided information as to where or how many vehicles Tracy residents purchased.

The City's half-cent temporary sales tax is considered a "district" tax and as such, is not applicable when a distribution center is collecting sales tax for an on-line catalog sale from a California customer (unless that customer is a City of Tracy resident).

Because of these two major differences between the application of the standard one-cent sales tax and the City's temporary half-cent sales tax, it was difficult to project such revenue. After receiving actual data from two quarters of the Measure E tax, it appears such tax will result in higher annual revenue than originally estimated. However, it is recommended the City receive four quarters of data before further refining this estimate on an ongoing basis. While greater than projected temporary tax revenue from Measure E is welcome, it is also that much more revenue the City must do without upon the expiration of Measure E just four years from now (3/31/16).

Use of Money and Property. The combination of investment earnings and lease of the City owner property on Schulte Road (the old "antenna farm" was expected to bring in \$990,000 in the fiscal year). Unfortunately, congressional action necessary for the City to lease this land has not been secured. The budget anticipated \$250,000 as revenue from such a lease. In addition, investment rates have been very low for a prolonged period of time. Much of the higher earning securities in the City's investment pool have matured and the new securities purchased have very low interest rates. This has reduced the City's income from investment. As such it is anticipated the City will have only \$660,200 from these income sources – a reduction in revenue of \$329,800 from the adopted budget.

State Shared Revenue. This revenue will be \$142,000 less than budget due to the State taking the City's portion of vehicle license fees as part of eleventh hour State budget actions. The League of California Cities notes this action is illegal under Proposition 22 but will likely have to sue the State in order to see a return of these funds.

Current Charges. Engineering and building charges as well as Parks and Recreation charges and Capital Improvement Program (CIP) program management charges are all projected to be lower than the FY 11-12 budgeted amounts. In total, these charges could be \$765,000 less in revenue.

Fines & Forfeitures. Late penalty revenue is less than expected. This could be from an improvement or stabilization of personal household income.

Expenditure Savings. The City spends about 98% to 99% of its General Fund Operating Budget, as such it is recognized that not every penny of every line item throughout the budget will be spent. Typically this is just a normal budgeting and fiscal process that will always result in the City not spending its full budget. If the budget was balanced this means there would be some funds left as residual at the end of the year with such funds returning to the General Fund balance. When the budget is not balanced and expenditures exceed revenues resulting in an anticipated draw on reserves, any unspent funds help reduce this projected deficit. In order to try to more accurately predict an actual budget deficit, the City has added a City-wide budget savings to the adopted budget.

In FY 11-12 total department expenditures are budgeted at \$50,581,150 but the City expects that actual expenditures will be \$2,000,000 less than this figure. As such, the City has a "net" expenditure budget of \$48,581,150. Using this \$48.5 million figure, the City's FY 11-12 General Fund budget anticipated a budget deficit of \$1,555,230. If the City had used normal budgeting practices the budgeted deficit would have been \$3,555,230.

There is a degree of risk associated with counting on budget savings. In FY 10-11 the City used a figure of \$1,400,000 as City-wide budget savings. This was increased to \$2,000,000 in FY 11-12 because the City anticipated some additional savings in this fiscal year due to the first wave of early retirements. When the budget was adopted the first wave was going to conclude by December 31, 2011. When adopted in the fall of 2011 however, it was necessary to change this to February 29, 2012. In addition, some employees who initially indicated retiring in the first phase have now amended plans to the second or third phase. Although the overall savings from the early retirement program are expected at full implementation of the program (Phase 3 concludes January 31, 2013), the savings realized in FY 11-12 likely will be less.

As such, to be conservative at this time, projected City-wide savings in the mid-year budget analysis are being lowered to \$1,742,070.

Potential Tracy Rural Fire Expense Shortage. Actual Fire Department expenditures in FY 10-11 were \$14,058,389 and of this amount \$3,705,230 was the responsibility of Tracy Rural Fire District. The District had just enough revenue to pay for its share. Revenues to the District however will fall slightly in FY 11-12. As such, the District will not have enough revenue to pay for any increase in the cost of services from what was actually spent in FY 10-11.

The City of Tracy adopted Fire Department budget for FY 11-12 was set at \$15,277,710. This was necessary because of increasing labor costs associated with a substantial increase in the PERS employer rate, the expiration of 3% employee contribution to retirement costs, increased health insurance costs and 5% pay increases for employees not yet at "E" step.

Since Tracy Rural would be unable to afford cost increases in FY 11-12 over FY 10-11, the South County Fire Authority Board adopted a FY 11-12 Fire budget "not to exceed costs of FY 10-11". In doing so it was anticipated that the costs could be controlled through a new labor contract. The previous labor contract expired June 30, 2011 however a new contract has not been reached.

The City of Tracy's budget for the Fire Department and the South County Fire Authority's budget for Fire are in conflict with each other. The Department expenditures are on target to spend the full amount of the City budget (\$15.2 million) in FY 11-12 because labor costs have not been controlled as necessary. The end result will likely be \$200,000 to \$250,000 in costs that are the responsibility of Tracy Rural but exceed their available revenue for the fiscal year. Previous debt of the District (approximately \$6 million) was converted to a pre-paid service agreement between the City and the District.

General Fund Impact of Redevelopment. In a scheme to raid local government revenue to help balance the State budget, the State ordered the elimination of all redevelopment agencies as of February 1, 2012. For Tracy there will be four impacts of varying degrees as described as follows:

1. Projects. Many agencies had funds on hand awaiting future projects. They will likely see the loss of these funds and be forced to abandon and scrap projects for which there is no third party contract. Fortunately, the City of Tracy was able to enter into a

third party contract for the construction of the 6th Street Plaza two days before the Governor signed the legislation to end redevelopment. This obligated most of the remaining construction funds of the City's agency.

2. **Housing.** The City has approximately \$5.2 million in low/moderate income housing set-aside funds from redevelopment. The fate of these funds is not yet know. There is some legislative effort to allow some portion of housing funds to be used for housing projects in the future. Without this, the City is likely to lose these funds.
3. **Future Revenue Stream.** The City's redevelopment agency would have received tax increment revenue in FY 11-12 in the amount of \$8,055,254. From this amount the Agency would have to set aside 20% for low/moderate income housing leaving approximately \$6.4 million for the Agency. Between direct allocations to taxing entities and pass through agreements, plus existing debt service and administrative expenses, the Agency had already tapped out this amount. All of these expenses are enforceable obligations of the Agency and must be paid on an annual basis going forward. As such, other than the housing revenue stream, there will not be any future stream of revenue to be split to taxing agencies until there is significant growth in property values/taxes in the Agency boundaries. This will likely be 5 to 10 years away.
4. **Administrative Expenses.** The State legislation only allocates \$250,000 a year for administrative expenses (associated with the City serving as the successor agency). In FY 11-12 the Agency had a budget of \$585,000 for all activities including housing. The following City positions were funded by redevelopment:

Position	Regular Redevelopment	Redevelopment Housing	Total FTE
Economic Development Analyst	0.4	0.1	0.5
Housing Program Inspector		0.5	0.5
Housing Program Specialist		1.0	1.0
Administrative Assistant	0.3	0.7	1.0
Building Inspector (code enforcement)		1.0	1.0
Associate Planner	0.2	0.1	0.3
TOTAL			4.3

From the above it can be noted that currently 4.3 full time equivalent (FTE) employees are being funded from redevelopment. Unfortunately, the Housing Program Specialist will need to be laid off. The Housing Program Inspector will be retiring. There is a current City opening for Administrative Assistant which will absorb this person. The remaining positions are needed to continue, including code enforcement, despite there no longer being redevelopment funding to cover these expenses. For FY 11-12 it is estimated the General Fund will take a hit of \$200,000. With reduced staff going forward it is estimated this can be reduced to \$100,000 annually thereafter.

Conclusion. The mid-year budget analysis indicates that the assumptions for overall revenue and expenses in the FY 11-12 City's General Fund budget have not changed significantly to necessitate any additional budget actions by the City Council at this time.

Total revenues remain virtually unchanged as significant increases in sales tax and temporary sales tax have been offset by decreases in a variety of other revenues. It remains a challenge to control expenditures to reach the overall targeted budget savings of \$2 million. In addition impacts to the City's General Fund from the State's termination of redevelopment agencies and unresolved fire services expenses may actually add to the budget deficit.

Even with a full year of temporary sales tax revenue from Measure E, the City will once again experience a General Fund deficit in FY 11-2 as expenses will likely exceed revenues. Albeit smaller than in years past, this would be the fifth consecutive year of deficit spending. It is not possible at this time to make further refinements to the FY 11-12 budget projections as the bulk of expenses are associated with the City's cost of labor. New labor agreements to replace those that expired on June 30, 2011 have not been secured.

STRATEGIC PLAN

Acceptance of this report is a routing matter and does not relate to one of the City Council's Strategic Plans.

FISCAL IMPACT

There is no fiscal impact associated with acceptance of this report. The financial position of the City's General Fund has been described fully in this report.

RECOMMENDATION

It is recommended the City Council by motion action accept the mid-year financial report.

Prepared by: Zane Johnston, Finance & Administrative Services Director

Approved by: Leon Churchill, Jr., City Manager

AGENDA ITEM 7

REQUEST

**HEAR REPORT AND PROVIDE DIRECTION REGARDING ASSUMPTIONS
CONSIDERED IN COMPILING A FIVE YEAR GENERAL FUND BUDGET FORECAST**

EXECUTIVE SUMMARY

A 5-year general fund budget forecast will be presented to City Council in May 2012. This report outlines the assumptions that will be included in the 5-year general fund budget forecast. Staff seeks City Council concurrence/direction in this regard. The 5-year forecast is critical in establishing financial policy, monitoring policies already adopted by the City Council, and establishing the need for changes in operations and labor policy. The City has produced a 5-year forecast for over 20 years, but it deserves more visibility in light of these pressing public policy issues. Financial forecasting is not intended as a predictor of the future. Its level of confidence diminishes over time. It is instead a snapshot of current financial policy and trends, and assumptions based on best available information. Thus, the 5-year Forecast is a policy setting aid, which can be altered as new information becomes available.

DISCUSSION

A five year general fund budget forecast will be presented to Council as part of the FY 12-13 budget adoption process. In preparation for this report, certain assumptions about both revenue and future expenses are included and are outlined in this report. The five year general fund budget forecast includes Fiscal Years 12-13 through 16-17. These assumptions are based on empirical data, established policy, or trend analysis. It is highly recommend that alternatives to these assumptions be accompanied with compelling information and justification.

REVENUES:

Property tax. Based on the (1) the continued decline in property taxes, as confirmed in the actual decline in property tax revenue in the current fiscal year, (2) remaining foreclosure activity, and (3) typical two year lag in property tax revenue as compared to current economic conditions, it is expected that property taxes will decline by 3% in FY 12-13. Because of an anticipated stabilization in home prices the year after, no growth in property taxes are projected for FY 13-14, an increase of 1% is included in FY 14-15 followed by a 2% increase projected in FY 15-16 and another 2% increase projected in FY 16-17.

Sales tax. The City uses MuniServices as its sales tax consulting and auditing firm. MuniServices has provided a 5-year sales forecast for the City's regular sales tax (1 cent) based upon recent trends. This forecast reflects increases of 4.9% in FY 12-13, 4.5% in FY 13-14, 5.9% in FY 14-15, 6.1% in FY 15-16 and 5.7% in FY 16-17.

Temporary half-cent Sales Tax: Measure E. MuniServices also audits Measure E sales tax data and has prepared a 5-year forecast for this temporary half-cent sales tax. Not all sales transactions subject to the standard 1 cent sales tax are applicable to the City's half-cent temporary sales tax. The most notable exceptions are auto sales in Tracy

where the auto is not registered to an owner with a City of Tracy address and internet catalog sales to customers outside of the City of Tracy. MuniServices five year forecast for the temporary half-cent sales tax Measure E estimates include a 7.8% increase in FY 12-13, 5% increase in FY 13-14, 5.6% increase in FY 14-15 and a decline of 20.8% in FY15-16, due to the temporary sales tax Measure E's sunset period, which ends on March 31, 2016. As such, only $\frac{3}{4}$ of one year's worth of taxes is included in that FY 15/16. Because the temporary sales tax Measure E ends in the later part of FY 15/16, no Measure E revenue is included in FY 16-17. These estimates are subject to further review as such estimates have been derived from only 2 quarters of actual data from Measure E (quarter ending 6/30/12 and quarter ending 9/30/12).

These three revenue sources (*Property taxes, sales taxes and temporary half-cent sales tax Measure E*) are the major General Fund revenue sources. All other revenue sources are assumed to have modest growth ranging in the 2% to 3% range. Some of these other revenue sources are reflective of population and it is not anticipated the City's population will increase substantially during this 5-year forecast.

EXPENSES:

General Fund expenses are primarily associated with labor cost. For example, Police personnel expenses make up 87% of the Police Department's budget and Fire personnel expenses about 90% of the total Fire Department budget.

Given the current status of labor costs, the assumptions that will be included in the five year general fund budget forecast are as follows:

Labor related expenses: It is assumed that:

- No cost of living adjustments will be included during this five year period thru FY 16-17;
- 100% of the costs associated with the increase to the City's PERS employer rate will be included as an expense absorbed by the City for each of the five years;
- City continues to pay cost of employee's share of PERS
- The costs associated with increases to the employees' health insurance will reflect the current respective labor contract agreements;
- The costs associated with step increases for employees not currently at Step E will be included in this five year forecast;
- The expenses associated with any certifications (i.e. POST), Master Patrol Officer, educational achievements, and others will be included in this five year forecast;
- The savings associated with the current unpaid furloughs for non-safety employees as of 6/30/12 will be eliminated and that costs will be reinstated in each of the five year budget forecast;

This five year general fund budget forecast will also reflect the organizational changes taken to date to address the City's structural budget deficit. These steps include (1) a reduction in staff due to the early retirement incentive program, and (2) the compaction of nine City departments into six with the resulting reduction in three department director positions. No other staff reductions will be included in this five year general fund budget forecast.

Operational Expenses: Considering the above, Police and Fire as well as other General Fund expenses would average an increase of about 3% per year during the forecast period.

If Council concurs with these assumptions, Finance staff will prepare a 5-year forecast which will be presented to City Council in May 2012. This forecast would then indicate the status of future budgets through FY 16-17 which would be the first full year without Measure E revenue. Such a forecast would then indicate what additional expense reductions would be necessary to reach both the City's current budget goal of a balanced budget starting with the adoption of the FY 14-15 budget, the maintenance of a 20% General Fund balance, and the additional budgetary impacts necessary to sustain a fiscally sound position without the temporary taxes associated with Measure E.

STRATEGIC PLAN

Acceptance of this report is a routine matter and does not relate to one of the City Council's Strategic Plans.

FISCAL IMPACT

There is no fiscal impact associated with acceptance of this report. However, the 5-year Forecast is critical in establishing financial policy.

RECOMMENDATION

It is recommended that the City Council by motion action hear this report and provide direction regarding assumptions to be considered in compiling a five year general fund budget forecast.

Prepared by: Zane Johnston, Finance & Administrative Services Director

Reviewed by: Maria A. Hurtado, Assistant City Manager

Approved by: Leon Churchill, Jr., City Manager

AGENDA ITEM 9.A

REQUEST

CITY COUNCIL REVIEW AND PROVIDE DIRECTION REGARDING STAFF'S PROPOSAL TO EXPAND THE PROVISIONS OF THE EXISTING BOARDING OF BUILDINGS WITH UNSECURED OPENINGS ORDINANCE

EXECUTIVE SUMMARY

On November 1, 2011, staff presented Council with a response to Council Member Rickman's request for information regarding the City's process for dealing with vacant, foreclosed properties. After discussion, staff was directed to return to Council with information on the City's current board-up standards and recommendations on possible ordinance amendments. The purpose of this report is to provide Council with code amendment recommendations that could more effectively address the enforcement of vacant buildings. Recommendations have been based on best practices used in the industry for addressing long-standing boarded up buildings and the inherent problems these buildings cause the community. This report also discusses the possible role of receivership as a Code Enforcement tool.

DISCUSSION

November 1, 2011, staff provided Council with a discussion item on vacant and abandoned properties in the City of Tracy. That report addressed current code enforcement efforts relative to vacant residential properties. In addition, the report outlined the scope of vacant building problems, organizational efforts used in addressing vacant, blighted buildings, and innovative approaches used in other cities to address vacant buildings. At that time, staff requested policy direction from Council regarding potential code revisions that would accomplish the following:

1. Amend the existing Boarding of Buildings Ordinance, further limiting the amount of a time a building can remain in a boarded state.
2. Establish a Vacant Building Registry requiring property owners register foreclosures with the City. Such a plan would also require the submittal of a property maintenance plan that outlines a security and maintenance schedule to ensure that vacant buildings are secure and maintained in accordance with applicable state and local codes.
3. Review relevant Tracy Municipal Code sections that deal with property maintenance and consider revamping those sections to better address community values and standards that reflect Tracy's quality of livable neighborhoods.

Following staff's presentation of the report, Council expressed its concerns regarding the process for abating nuisance properties and the amount of time involved in the abatement process. Council's direction was to move forward with Item No. 1, with future review of Items 2 and 3 incrementally and at a future time. Additionally, Council requested information on the City's current Boarding of Buildings Ordinance, information

on receivership, and best practices currently used by local agencies to combat the nuisances often found on these properties, all of which are addressed below.

Vacant and Unsecured Property Impacts

Local governments have long standing authority to abate public nuisances. Current City ordinances and state laws allow court actions or administrative hearings to compel the clean-up of property. If the owner ignores these administrative or judicial orders, the local government can abate the nuisance with City crews or private contractors and assess/lien the cleanup costs against the property.

Nuisance abatement powers are critical when addressing the community impacts caused by vacant and abandoned properties – the long term, unoccupied structures that pose threats to the public's general health, safety and welfare. Buildings that remain open, unsecured or boarded for long periods of time pose threats to the public's general health, safety and welfare. Historically, in Tracy, vacant, unattended buildings that are either open and unsecure or easily breached pose the following problems as attractive nuisances adversely impacting the quality of life of nearby residents:

- provide habitat for rodents and vermin;
- become a magnet for trash, debris, and illegal dumping; become accessible for squatters and criminal activity, resulting in sanitization concerns;
- become fire hazards due to the use of open flame for lighting, cooking and smoking;
- contribute to blight, depressed market values and drain local agency resources, such as Police, Fire, and Code Enforcement.

Vacant and unsecured properties can have the effect of dis-incentivizing investment and maintenance, which can have a deteriorating effect throughout a neighborhood if they are not effectively addressed. The City has the authority to abate these conditions, which can include removing all trash and debris, repairing, boarding and even demolition of the building (in severe cases), which also has a financial impact on the City.

Current Enforcement Standards Relating to Existing Boarded-Up Buildings

In 2006, City Council added Chapter 9.60, Boarding of Buildings with Unsecure Openings to the Tracy Municipal Code (Attachment A), requiring temporary boarding of unsecured buildings in accordance with specific standards. This ordinance was adopted to address buildings with unsecured windows and doors and/or inadequately secured through the use insufficient materials. The Tracy Municipal Code maintains protocols for clearing and boarding vacant properties to ensure that buildings – both City and privately owned – are cleaned and boarded as necessary to minimize nuisances, and preserve the health and safety of the community. The provisions of the ordinance apply to all vacant, unsecured properties in the City and complement other requirements of state and local laws. The main provisions of the current Board-Up Ordinance are as follows:

- Windows – ¾” plywood bolted on
- Exterior doors – ¾” plywood bolted on
- Garages – secured doors by nailing them shut
- Painting of boarded surfaces – 1 coat of paint
- Alternate methods – one allows alternate methods to secure buildings

Fees associated with the boarding up of unsecured buildings were established by Council resolution with compliance inspections performed by Code Enforcement staff. This ordinance has been an effective tool in protecting the environment and the public health, safety and welfare by providing staff with the enforcement of the means by which such nuisance conditions may be prevented. Since enacting the Ordinance in 2006, approximately 17 buildings have been brought through the boarding up process.

Vacant, foreclosed properties are also addressed through the requirements of SB 1137, adopted by City Council in October 2008 and effective through January 1, 2013. This bill requires property owners that obtain their property through a foreclosure sale (including financial institutions) to maintain the properties to certain minimum standards to avoid depreciation in surrounding property values (Attachment B lists the minimum standards). SB 1137 authorizes local agencies to impose fines on these property owners if they fail to adequately maintain the foreclosed properties, providing staff with an additional tool for addressing community impacts caused by these vacant properties.

On average, nuisance violations with voluntary compliance are resolved within 30 days. Building code violations and dangerous building cases can take anywhere from 45 days to several months, depending on the property owner’s willingness to comply.

Best Practices and Suggested Amendments to the Existing Boarded Buildings Ordinance

In response to Council’s concerns regarding the length of time involved in resolving egregious nuisance cases, staff is establishing internal control processes that would schedule regular, proactive inspections of recidivist properties that consistently become health and safety issues.

The following best practices have been incorporated into code enforcement activities:

- The adoption of nuisance abatement codes for boarded structures;
- Continue use of the City’s anti-bligh strike team known as the Inter-Departmental Enforcement Alliance, and
- Greater focus on case management of boarded buildings.

The attached Boarded Buildings Report provides an inventory of existing structures in the City of Tracy that are vacant and boarded (Attachment C: Boarded Buildings Report). In addition to photographs, locations, zoning, and property ownership, the report provides an approximate length of time the building has been in a boarded condition. Because the current Boarding Ordinance does not impose timeframes for

which boarded up properties can remain boarded up, amendments to the ordinance could strengthen the City's enforcement tools pertaining to vacant, boarded up properties. These amendments can be comprehensive in scope to include new provisions in the following areas:

- Property maintenance schedules;
- Posting of emergency contact information;
- Establishing time limits that a building can remain in a boarded up condition, and
- An affirmative accountability plan to return the property to productive use.

Such code provisions would only apply to those properties that are currently or at some point become open, unsecured nuisances. Code Enforcement staff would implement the new code provisions through current case management systems and software, possibly grouping these cases under a Boarded-Up Buildings Monitoring Program.

Receiverships as a tool to address severe cases

The City of Tracy has the authority to abate nuisances under existing code standards. If the owner fails to voluntarily abate a nuisance after being provided with notice and an opportunity to contest the nuisance determination and/or the costs of abatement, the City can abate the nuisance with City crews or private contractors and then hold the property owner responsible for its abatement costs. Along with this tool, the City also has authority to use the receivership process to address boarded, derelict properties when property owners fail to comply with other enforcement measures. Receivership is a specialized civil remedy that allows a judge to appoint a special agent of the court or a non-profit corporation as the receiver of the property to correct the code violations and manage the property. California Health and Safety Code sections 17980.6 and 17980.7 set forth criteria as to whether a property qualifies for the receivership option. Copies of those code sections are attached to this staff report.

Properties eligible for receivership are properties that show evidence of the following:

- The building is residential;
- The building is deemed unsafe or dangerous;
- The building is an attractive nuisance (e.g. drug or gang house, transients people are squatting in the building and engaging in unsafe practices, minors are using the building and engaging in unsafe practices, etc.).

City Council adopted Resolution 2008-226 (Attachment D), authorizing the City Attorneys to file receivership actions. The use of receivership is a powerful tool in the abatement of public nuisances. The initial appointment of a receiver by a court does not change the ownership of the property. A receiver's primary goal is to merely abate those nuisance conditions caused by derelict, abandoned and vacant properties. Under close supervision of the court, the receiver can incur costs to repair, board, or in rare cases, demolish the abandoned structure. Throughout the entire receivership process, owners are encouraged to participate in court decisions to minimize costs and even take their own abatement actions with guidance from the court. If the owner fails to repay the abatement costs, state law permits the filing of a nuisance lien that could result in

foreclosure and eventual sale of the vacant property. The receivership process also allows, under certain circumstances, the receiver to obtain priority liens on the property, through a court order, to pay for the receiver's services and the costs of abatement. This priority lien ability is especially critical for properties that do not have sufficient equity remaining to conduct necessary repairs. Staff expects that cases requiring receivership would be uncommon and staff's ultimate goal will continue to be to seek voluntary compliance.

FISCAL IMPACT

A boarded building fee would be reviewed and approved by City Council as part of the ordinance amendment. This fee would be based on staff costs of one Code Enforcement Officer for the time spent on the initial inspection of the building. At this time, staff anticipates one hour of staff time would be spent inspecting the boarded structure to ensure it meets the standards of the Boarding Ordinance. Unsecured openings that are not sealed according to City code would be required to obtain the appropriate building permits for re-inspection to ensure compliance with code standards.

RECOMMENDATION

Council review and comment on staff's proposal to expand the provisions of the existing Boarding of Buildings with Unsecured Openings Ordinance to control abandoned properties, to minimize the length of time properties remain boarded, and minimize the harm they do to communities.

If Council is amenable to the areas where the ordinance would be expanded, staff will move forward with community workshops to include the owners of boarded up buildings, surrounding residents impacted by these buildings and the real estate community to discuss the proposed ordinance changes and receive input. Upon completion of these workshops, staff will return to Council with information obtain from these workshops for further direction on an ordinance modification for Council consideration.

Prepared by: Ana Contreras, Community Preservation Manager

Reviewed by: Bill Dean, Assistant DES Director

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

Attachments: A - TMC Chapter 9.60, Boarding of Buildings
B - SB 1137 – Minimum Maintenance Standards
C - Boarded Buildings Report
D - Resolution 2008-226
E - Enforcement Process for Nuisance Abatement

Chapter 9.60**BOARDING OF BUILDINGS WITH UNSECURED OPENINGS****Sections:**

9.60.010	Findings and intent.
9.60.020	Application.
9.60.030	Unsecured building a public nuisance—Boarding permit required.
9.60.040	Standards for securing building.

9.60.010 Findings and intent.

(a) The Council finds and declares that vacant buildings which have unsecured windows and doors or other openings allowing entry become an attractive nuisance to children, a harborage for rodents, an invitation to vagrants and criminals as a temporary abode and as a place to engage in illegal conduct, frequently including illegal drug-related activity, and an increased fire hazard; that such buildings contribute to the growth of blight within the City, depress market values of surrounding properties, thereby reducing tax revenues, necessitate additional governmental services, significantly interfere with the use and enjoyment of neighboring properties, create an unsafe condition affecting the public and constitute an unreasonable use of property and a public nuisance.

(b) Protection of the environment, and the public health, safety and welfare requires the establishment and enforcement of the means by which such nuisance conditions may be prevented. (Ord. 1090 § 1 (part), 2006)

9.60.020 Application.

(a) The provisions of this chapter shall apply generally to all property throughout the City in which any of the conditions, hereinafter specified, are found to exist; provided, however, that the provisions of this chapter shall not apply to buildings or structures in which a person resides or otherwise occupies in such a manner that unauthorized entries to the structure can be promptly observed and reported to the City of Tracy Police Department.

(b) The provisions of this chapter are to be supplementary and complementary to all of the provisions of the Tracy Municipal Code, state law, and any law cognizable at common law or in equity, and nothing in this chapter shall be read, interpreted or construed in any manner so as to limit any existing right or power of the City to abate any and all nuisances. Any public nuisance set forth in this chapter may be abated by the City under the procedures set forth in chapter 1.32 of this Code.

(c) Property owners with buildings located within the City that are boarded as of the date of adoption of this chapter will be given a six (6) month grace period to comply with the provisions of this chapter. The grace period will be considered the same as if an initial boarding permit was granted by the Building Official. At the end of the six (6) month period, any such boarded building will be considered a public nuisance unless the property owner has applied for and received a renewal boarding permit. Property owners with boarded buildings which fall under the provisions of this subsection will be notified by mail of the conditions and requirements of this chapter.

(d) Notwithstanding any provision of this chapter to the contrary, the Building Official shall have the discretion to grant a property owner a grace period of five (5) working days to apply for a permit in emergency situations such as natural disasters or other unforeseen circumstances.

(e) The applicant shall specify, on the application for the permit, the number and location of each window, door, or other opening to be boarded. Only doors, windows or other openings that are broken or missing, so as to allow access to the interior, must be temporarily boarded and secured. However, should the applicant decide to use boarding for an opening that is not yet broken or missing, such boarding must be shown on the application for the permit and installed in compliance with the standards set forth in section 9.60.040 of this chapter.

(f) The applicant shall submit a new application, and pay another permit fee, for any additional windows, doors, or other openings to be boarded after the final inspection on the original permit occurs. (Ord. 1090 § 1 (part), 2006)

9.60.030 Unsecured building a public nuisance—Boarding permit required.

(a) It shall be unlawful and a public nuisance for any owner of property in this City to allow to exist on such property any building or structure whose doors, windows or other openings are broken or missing, so as to allow access to the interior; or which is not temporarily boarded and secured in compliance with section 9.60.040 of this chapter within the time set forth by the Building Official in the permit; or which is left in such temporary boarded-up condition after the expiration of any initial or renewed boarding permit.

(b) It shall be unlawful and a public nuisance for any person, firm, association or corporation to erect, install, place or maintain boards over the doors, windows or other openings of any building or structure or otherwise secure such openings by a means other than the conventional method used in the original construction and design of the

building or structure without a valid, current and unexpired boarding permit therefor from the Building Official. No boarding permit shall be issued for a period of greater than six (6) months. Upon an application and a showing of good cause, the Building Official may issue renewals of such permits.

(c) The fees for the issuance or renewal of a boarding permit shall be set by Council resolution and may be amended from time to time to adjust for the personnel costs upon which the fee is based rising or falling. Upon payment of the required fee, the Building Official shall issue or renew a boarding permit upon the submission of a written application by the property owner or his/her authorized representative or contractor and upon the confirmation by a city building inspector that the boarding or other method of securing the building will or has been done in compliance with this chapter.

(d) Any person violating or causing the violation of this chapter shall be guilty of an infraction as provided for in section 1.04.030 of this Code, in addition to any other remedies provided for in this Code, including those set forth in section 1.04.010 of this Code, or under other applicable law. (Ord. 1090 § 1 (part), 2006)

9.60.040 Standards for securing building.

(a) The temporary boarding of the doors, windows or other openings of any building or structure or any means of securing such openings, other than by the conventional method used in the original construction and design of the building or structure, shall comply with the following minimum standards:

(1) Windows. Windows and similar openings shall be boarded with exterior grade plywood of minimum thickness three-fourths (3/4") (to be consistent with door security standards) inch or its equivalent. Vent holes may be required, as deemed necessary by the Building Official. The plywood shall be secured in place, as a minimum standard, by a set of two (2) Grade No. 2 Douglas Fir two (2) by four (4) or four (4) by four (4) cross members set at two (2') foot on center vertically, secured to the plywood by three-eighths (3/8") inch plated carriage bolts with large washers at each end and with the cross member turned so that the carriage bolt goes through the larger dimension. Bolts used to secure the cross member shall be threaded to the correct length. A minimum of two (2) sets of such cross members shall be used on each window. Each cross member shall be a continuous piece of lumber, and each must extend at least one foot past the window opening in each direction. Bolts and nuts used to secure the cross members to the plywood must be tightened enough to slightly deflect the wood. Bolt heads must fit tightly

against the wood and not give a purchase for pliers or pry bars. The nuts are to be located on the interior side of the structure.

(2) Exterior doors. The main exterior (required) residential exit door(s) and all commercial exterior exit doors shall be boarded with exterior grade plywood of a minimum thickness of three-fourths (3/4") inch or its equivalent, fitted to the entry door jamb with maximum one-eighth inch clearance each edge from the door jambs and threshold. The existing door should be removed. The plywood shall, as a minimum standard, be attached to three (3) Grade No. 2 Douglas Fir horizontal two (2) by four (4) wooden crossbars with two (2) each three-eighths (3/8") inch carriage bolts and matching hardware with nuts located on the interior side of the structure. The plywood shall be attached to the door entry with three (3) case hardened strap hinges located at quarter points and the plywood shall be secured by two (2) case hardened steel hasps located at third points on the strike side of the door and minimum two (2) inch case hardened padlock. Fasteners used to attach the door hasp and hinges shall be the non-reversible type that do not give a purchase for pliers or pry bars. All other unsecured residential doors providing exterior access shall be removed and be secured in the same fashion as windows noted above.

(3) Painting of boarded openings. All boarded openings shall be painted with a minimum of one coat of exterior paint which is of a dark gray or similar earth color or a color compatible with the exterior color of the building or structure.

(4) Garages. Overhead garage doors shall be secured. Nailing the door to the jamb or nailing pieces of two (2) by four (4) to the jamb is not acceptable. The overhead door shall be padlocked with the existing garage lock or a newly installed one. In an attached garage it is acceptable, as a minimum standard, to insert a piece of Grade No. 2 Douglas Fir two (2) by four (4) lumber through the overhead mechanism on the inside of the door. The two (2) by four (4) shall be long enough to go through both sides of the mechanism or shall be nailed in place on the inside so that it cannot fall out. Secondary garage entrances to the outside of the garage shall be secured with strong-backed plywood as described for windows above. Access doors between the house and attached garage need not be boarded. Detached garages shall be secured as a separate structure. Access shall be provided by padlock as described for doors above.

(b) Alternative methods of securing a building. Notwithstanding subsection (a) of this section, the Building Official may approve alternative methods of securing doors, windows or other openings of any building or struc-

ture. In making the determination to approve any alternative method, the Building Official shall consider the aesthetic and other impacts of such method on the immediate neighborhood and the extent to which such method provides adequate and long-term security against the unauthorized entry to the property.

(c) During all times that persons are inside a boarded structure, all exits and entries under title 9 of this Code shall be made accessible provided that the structure must be again secured when such persons are no longer inside. (Ord. 1090 § 1 (part), 2006)

Chapter 9.64

ENERGY CODE

Sections:

- 9.64.010** **Reference to chapter.**
- 9.64.020** **Purpose of chapter.**
- 9.64.030** **Adoption by reference of the California Energy Code.**
- 9.64.040** **Penalty provisions.**

9.64.010 **Reference to chapter.**

This chapter 9.64 of the Tracy Municipal Code may be referred to as the "City Energy Code," and is adopted pursuant to Government Code 50022.2. For purpose of clarity, the term "Code," when used alone, shall refer to the Tracy Municipal Code. (Ord. 1103 § 4 (part), 2007)

9.64.020 **Purpose of chapter.**

The purpose of this chapter is to provide minimum standards to sustain energy reliability, reduce electrical and gas demand, contribute to a more stable economy as energy costs increase and reduce pollution and greenhouse emissions by way of regulating building construction activity for maximum energy efficiency. The purpose of this chapter is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter. (Ord. 1103 § 4 (part), 2007)

9.64.030 **Adoption by reference of the California Energy Code.**

The City hereby adopts by reference the code entitled "2005 California Energy Code," including all appendices attached thereto, published by the International Code Council and copyrighted by the California Building Standards Commission (hereinafter "California Energy Code"), as amended by this chapter. The California Energy Code is on file with the City Clerk, and is available for inspection and copying in accordance with Government Code section 50022.6. (Ord. 1103 § 4 (part), 2007)

9.64.040 **Penalty provisions.**

The City in accordance with Tracy Municipal Code section 9.02.040 shall enforce violations of this chapter. (Ord. 1103 § 4 (part), 2007)

AMENDED IN SENATE APRIL 16, 2008
AMENDED IN SENATE APRIL 9, 2008
AMENDED IN SENATE MARCH 27, 2008
AMENDED IN SENATE MARCH 13, 2008

SENATE BILL

No. 1137

Introduced by Senators Perata, Corbett, and Machado
(Principal coauthor: Assembly Member Lieu)
**(Coauthors: Senators ~~Cedillo~~, Calderon, Cedillo, Ducheny, Migden,
Romero, Scott, and Wiggins)**
(Coauthors: Assembly Members Hernandez, Nava, and Wolk)

January 31, 2008

An act to add and repeal Sections 2923.5, 2923.6, 2924.8, and 2929.3 of the Civil Code, and to add and repeal Section 1161b of the Code of Civil Procedure, relating to mortgages, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1137, as amended, Perata. Residential mortgage loans: foreclosure procedures.

(1) Upon a breach of the obligation of a mortgage or transfer of an interest in property, existing law requires the trustee, mortgagee, or beneficiary to record in the office of the county recorder wherein the mortgaged or trust property is situated, a notice of default, and to mail the notice of default to the mortgagor or trustor. Existing law requires the notice to contain specified statements, including, but not limited to, those related to the mortgagor's or trustor's legal rights, as specified. Existing law also requires that the notice of sale in the case of default be posted on the property, as specified.

Until January 1, 2013, and as applied to residential mortgage loans made from January 1, 2003, to December 31, 2007, inclusive, that are for owner-occupied residences, this bill would, among other things, require a mortgagee, trustee, beneficiary, or authorized agent to wait 30 days after contact is made with the borrower, or 30 days after satisfying due diligence requirements to contact the borrower, as specified, before filing a notice of default. The bill would require contact with the borrower, as defined, in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. The bill would require the mortgagee, ~~trustee~~, beneficiary, or authorized agent to advise the borrower that he or she has the right to request a subsequent meeting within 14 days, and to provide the borrower the toll-free number made available by the United States Department of Housing and Urban Development to find a HUD-certified housing counseling agency. ~~As part of filing the notice of default, the~~ *The* bill would require the mortgagee, ~~trustee, beneficiary, or authorized agent~~ *notice of default* to include a specified declaration *from the mortgagee, beneficiary, or authorized agent* regarding ~~the~~ *its* contact with the borrower or that the borrower has surrendered the property. If a notice of default had already been filed prior to the enactment of this act, the bill would instead require the mortgagee, trustee, beneficiary, or authorized agent, as part of the notice of sale, to include a specified declaration regarding contact with the borrower. The bill would authorize a borrower to designate a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgagee, ~~trustee~~, beneficiary, or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure. The contact and meeting requirements of these provisions would not apply if a borrower has surrendered the property or the borrower has contracted with an organization, as specified. The bill would also require specified mailings to the resident of a property that is the subject of a notice of sale, as specified. In addition, the bill would make it a crime to tear down the notice of sale posted on a property within 72 hours of posting, thereby imposing a state-mandated local program.

Until January 1, 2013, this bill would require a legal owner to maintain vacant residential property purchased at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. The bill would authorize a governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per day for a violation. The bill would require a governmental entity that

seeks to impose those fines and penalties to give notice of the claimed violation and an opportunity to correct the violation at least 14 days prior to imposing the fines and penalties, and to allow a hearing for contesting those fines and penalties.

(2) Existing law governs the termination of tenancies and generally requires 30 days' notice of the termination thereof, except under specified circumstances. Existing law also establishes the criteria for determining when a tenant is guilty of unlawful detainer.

Until January 1, 2013, this bill would give a tenant or subtenant in possession of a rental housing unit ~~that has been sold due to~~ *at the time the property is sold in foreclosure*, 60 days to remove himself or herself from the property, as specified.

(3) This bill would set forth specified findings and declarations and intent provisions with regard to the above, and would provide that its provisions are severable.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California is facing an unprecedented threat to its state
- 4 economy and local economies because of skyrocketing residential
- 5 property foreclosure rates in California. Residential property
- 6 foreclosures increased sevenfold from 2006 to 2007. In 2007, more
- 7 than 84,375 properties were lost to foreclosure in California, and
- 8 254,824 loans went into default, the first step in the foreclosure
- 9 process.
- 10 (b) High foreclosure rates have adversely affected property
- 11 values in California, and will have greater adverse consequences
- 12 as foreclosure rates continue to rise. According to statistics released
- 13 by the HOPE NOW Alliance, the number of completed California

1 foreclosure sales in 2007 increased almost threefold from 1,902
2 in the first quarter to 5,574 in the fourth quarter of that year. Those
3 same statistics report that 10,556 foreclosure sales, almost double
4 the number for the prior quarter, were completed just in the month
5 of January 2008. More foreclosures means less money for schools,
6 public safety, and other key services.

7 (c) Under specified circumstances, mortgage lenders and
8 servicers are authorized under their pooling and servicing
9 agreements to modify mortgage loans when the modification is in
10 the best interest of investors. Generally, that modification may be
11 deemed to be in the best interest of investors when the net present
12 value of the income stream of the modified loan is greater than the
13 amount that would be recovered through the disposition of the real
14 property security through a foreclosure sale.

15 (d) It is essential to the economic health of California for the
16 state to ameliorate the deleterious effects on the state economy
17 and local economies and the California housing market that will
18 result from the continued foreclosures of residential properties in
19 unprecedented numbers by modifying the foreclosure process to
20 require mortgagees, ~~trustees~~, beneficiaries, or authorized agents
21 to contact borrowers and explore options that could avoid
22 foreclosure. These changes in accessing the state's foreclosure
23 process are essential to ensure that the process does not exacerbate
24 the current crisis by adding more foreclosures to the glut of
25 foreclosed properties already on the market when a foreclosure
26 could have been avoided. Those additional foreclosures will further
27 destabilize the housing market with significant, corresponding
28 deleterious effects on the local and state economy.

29 (e) According to a survey released by the Federal Home Loan
30 Mortgage Corporation (Freddie Mac) on January 31, 2008, 57
31 percent of the nation's late-paying borrowers do not know their
32 lenders may offer alternatives to help them avoid foreclosure.

33 (f) As reflected in recent government and industry-led efforts
34 to help troubled borrowers, the mortgage foreclosure crisis impacts
35 borrowers not only in nontraditional loans, but also many borrowers
36 in conventional loans.

37 (g) This act is necessary to avoid unnecessary foreclosures of
38 residential properties and thereby provide stability to California's
39 statewide and regional economies and housing market by requiring
40 early contact and communications between mortgagees, ~~trustees~~,

1 beneficiaries, or authorized agents and specified borrowers to
2 explore options that could avoid foreclosure and by facilitating
3 the modification or restructuring of loans in appropriate
4 circumstances.

5 SEC. 2. Section 2923.5 is added to the Civil Code, to read:

6 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
7 agent may not file a notice of default pursuant to Section 2924
8 until 30 days after contact is made as required by paragraph (2) or
9 30 days after satisfying the due diligence requirements as described
10 in subdivision (g).

11 (2) A mortgagee, ~~trustee~~, beneficiary, or authorized agent shall
12 contact the borrower in person or by telephone in order to assess
13 the borrower's financial situation and explore options for the
14 borrower to avoid foreclosure. During the initial contact, the
15 mortgagee, ~~trustee~~, beneficiary, or authorized agent shall advise
16 the borrower that he or she has the right to request a subsequent
17 meeting and, if requested, the mortgagee, ~~trustee~~, beneficiary, or
18 authorized agent shall schedule the meeting to occur within 14
19 days. The assessment of the borrower's financial situation and
20 discussion of options may occur during the first contact, or at the
21 subsequent meeting scheduled for that purpose. In either case, the
22 borrower shall be provided the toll-free telephone number made
23 available by the United States Department of Housing and Urban
24 Development (HUD) to find a HUD-certified housing counseling
25 agency. Any meeting may occur telephonically.

26 (b) ~~As part of the~~ notice of default filed pursuant to Section
27 2924, *shall include a declaration from* the mortgagee, ~~trustee~~,
28 beneficiary, or authorized agent ~~shall include a declaration~~ that it
29 has contacted the borrower, tried with due diligence to contact the
30 borrower as required by this section, or the borrower has
31 surrendered the property to the mortgagee, trustee, beneficiary, or
32 authorized agent.

33 (c) If a mortgagee, trustee, beneficiary, or authorized agent had
34 already filed the notice of default prior to the enactment of this
35 section and did not subsequently file a notice of rescission, then
36 the mortgagee, trustee, beneficiary, or authorized agent shall, as
37 part of the notice of sale filed pursuant to Section 2924f, include
38 a declaration that either:

1 (1) States that the borrower was contacted to assess the
2 borrower's financial situation and to explore options for the
3 borrower to avoid foreclosure.

4 (2) Lists the efforts made, if any, to contact the borrower in the
5 event no contact was made.

6 (d) A mortgagee's, ~~trustee's~~, beneficiary's, or authorized agent's
7 loss mitigation personnel may participate by telephone during any
8 contact required by this section.

9 (e) For purposes of this section, a "borrower" shall include a
10 mortgagor or trustor.

11 (f) A borrower may designate a HUD-certified housing
12 counseling agency, attorney, or other advisor to discuss with the
13 mortgagee, ~~trustee~~, beneficiary, or authorized agent, on the
14 borrower's behalf, options for the borrower to avoid foreclosure.
15 That contact made at the ~~discretion~~ *direction* of the borrower shall
16 satisfy the contact requirements of paragraph (2) of subdivision
17 (a). Any loan modification or workout plan offered at the meeting
18 by the mortgagee, ~~trustee~~, beneficiary, or authorized agent is
19 subject to approval by the borrower.

20 (g) *A notice of default may be filed pursuant to Section 2924*
21 *when a mortgagee, ~~trustee~~, beneficiary, or authorized agent who*
22 *has not contacted a borrower as required by paragraph (2) of*
23 *subdivision (a) ~~may file a notice of default pursuant to Section~~*
24 *2924 if provided that the failure to contact the borrower occurred*
25 *despite the due diligence of the mortgagee, ~~trustee~~, beneficiary,*
26 *or authorized agent. For purposes of this section, "due diligence"*
27 *shall require and mean all of the following:*

28 (1) A mortgagee, ~~trustee~~, beneficiary, or authorized agent shall
29 first attempt to contact a borrower by sending a first-class letter
30 that includes the toll-free number made available by HUD to find
31 a HUD-certified housing counseling agency.

32 (2) (A) After the letter has been sent, the mortgagee, ~~trustee~~,
33 beneficiary, or authorized agent shall attempt to contact the
34 borrower by telephone at least three times at different hours and
35 on different days. Telephone calls shall be made to the primary
36 telephone number on file.

37 (B) A mortgagee, ~~trustee~~, beneficiary, or authorized agent may
38 attempt to contact a borrower using an automated system to dial
39 borrowers, provided that, if the telephone call is answered, the call

1 is connected to a live representative of the mortgagee, ~~trustee~~,
2 beneficiary, or authorized agent.

3 (C) A mortgagee, ~~trustee~~, beneficiary, or authorized agent
4 satisfies the telephone contact requirements of this paragraph if it
5 determines, after attempting contact pursuant to this paragraph,
6 that the borrower's *primary* telephone number ~~has~~ *and secondary*
7 *number or numbers on file, if any, have* been disconnected.

8 (3) If the borrower does not respond within two weeks after the
9 telephone call requirements of paragraph (2) have been satisfied,
10 the mortgagee, ~~trustee~~, beneficiary, or authorized agent shall then
11 send a certified letter, with return receipt requested.

12 (4) The mortgagee, ~~trustee~~, beneficiary, or authorized agent
13 shall provide a means for the borrower to contact it in a timely
14 manner, including a toll-free telephone number that will provide
15 access to a live representative during business hours.

16 (5) The mortgagee, ~~trustee~~, beneficiary, or authorized agent has
17 posted a prominent link on the homepage of its Internet Web site,
18 if any, to the following information:

19 (A) Options that may be available to borrowers who are unable
20 to afford their mortgage payments and who wish to avoid
21 foreclosure, and instructions to borrowers advising them on steps
22 to take to explore those options.

23 (B) A list of financial documents borrowers should collect and
24 be prepared to present to the mortgagee, ~~trustee~~, beneficiary, or
25 authorized agent when discussing options for avoiding foreclosure.

26 (C) A toll-free telephone number for borrowers who wish to
27 discuss options for avoiding foreclosure with their mortgagee,
28 ~~trustee~~, beneficiary, or authorized agent.

29 (D) The toll-free telephone number made available by HUD to
30 find a HUD-certified housing counseling agency.

31 (h) Subdivisions (a), (c), and (g) shall not apply if any of the
32 following occurs:

33 (1) The borrower has surrendered the property as evidenced by
34 either a letter confirming the surrender or delivery of the keys to
35 the property to the mortgagee, trustee, beneficiary, or authorized
36 agent.

37 (2) The borrower has contracted with an organization, person,
38 or entity whose primary business is advising people who have
39 decided to leave their homes on how to extend the foreclosure

1 process and avoid their contractual obligations to mortgagees,
2 ~~trustees, beneficiaries, or authorized agents.~~ *or beneficiaries.*

3 (3) The borrower has filed for bankruptcy, and the proceedings
4 have not been finalized.

5 (i) This section shall apply only to loans made from January 1,
6 2003, to December 31, 2007, inclusive, that are secured by
7 residential real property and are for owner-occupied residences.

8 (j) This section shall remain in effect only until January 1, 2013,
9 and as of that date is repealed, unless a later enacted statute, that
10 is enacted before January 1, 2013, deletes or extends that date.

11 SEC. 3. Section 2923.6 is added to the Civil Code, to read:

12 2923.6. (a) The Legislature finds and declares that any duty
13 servicers may have to maximize net present value under their
14 pooling and servicing agreements is owed to all parties in a loan
15 pool, not to any particular parties, and that a servicer acts in the
16 best interests of all parties if it agrees to or implements a loan
17 modification or workout plan for which both of the following
18 apply:

19 (1) The loan is in payment default, or payment default is
20 reasonably foreseeable.

21 (2) Anticipated recovery under the loan modification or workout
22 plan exceeds the anticipated recovery through foreclosure on a net
23 present value basis.

24 (b) It is the intent of the Legislature that the mortgagee, ~~trustee,~~
25 beneficiary, or authorized agent offer the borrower a loan
26 modification or workout plan if such a modification or plan is
27 consistent with its contractual or other authority.

28 (c) This section shall remain in effect only until January 1, 2013,
29 and as of that date is repealed, unless a later enacted statute, that
30 is enacted before January 1, 2013, deletes or extends that date.

31 SEC. 4. Section 2924.8 is added to the Civil Code, to read:

32 2924.8. (a) Upon posting a notice of sale pursuant to Section
33 2924f, ~~a mortgagee, trustee, beneficiary,~~ or authorized agent shall
34 also post the following notice, in the manner required for posting
35 the notice of sale on the property to be sold, and *a mortgagee,*
36 *trustee, beneficiary, or authorized agent shall* mail, at the same
37 time in an envelope addressed to *the* "Resident of property subject
38 to foreclosure sale" ~~containing~~ the following notice in English and
39 the languages described in Section 1632: "Foreclosure process has
40 begun on this property, which may affect your right to continue

1 to live in this property. Twenty days or more after the date of this
2 notice, this property may be sold at foreclosure. If you are renting
3 this property, the new property owner may either give you a new
4 lease or rental agreement or provide you with a 60-day eviction
5 notice. However, other laws may prohibit an eviction in this
6 circumstance or provide you with a longer notice before eviction.
7 You may wish to contact a lawyer or your local legal aid or housing
8 counseling agency to discuss any rights you may have.”

9 (b) It shall be an infraction to tear down the notice described in
10 subdivision (a) within 72 hours of posting. Violators shall be
11 subject to a fine of one hundred dollars (\$100).

12 (c) A state government entity shall make available translations
13 of the notice described in subdivision (a) which may be used by a
14 mortgagee, trustee, beneficiary, or authorized agent to satisfy the
15 requirements of this section.

16 (d) This section shall only apply to loans secured by residential
17 real property, and if the billing address for the mortgage note is
18 different than the property address.

19 (e) This section shall remain in effect only until January 1, 2013,
20 and as of that date is repealed, unless a later enacted statute, that
21 is enacted before January 1, 2013, deletes or extends that date.

22 SEC. 5. Section 2929.3 is added to the Civil Code, to read:

23 2929.3. (a) (1) A legal owner shall maintain vacant residential
24 property purchased by that owner at a foreclosure sale, or acquired
25 by that owner through foreclosure under a mortgage or deed of
26 trust. A governmental entity may impose a civil fine of up to one
27 thousand dollars (\$1,000) per day for a violation. If the
28 governmental entity chooses to impose a fine pursuant to this
29 section, it shall give notice of the alleged violation, including a
30 description of the conditions that gave rise to the allegation, and
31 notice of the entity’s intent to assess a civil fine if action to correct
32 the violation is not commenced within a period of not less than 14
33 days and completed within a period of not less than 30 days. The
34 notice shall be mailed to the address provided in the deed or other
35 instrument as specified in subdivision (a) of Section 27321.5 of
36 the Government Code, or, if none, to the return address provided
37 on the deed or other instrument.

38 (2) The governmental entity shall provide a period of not less
39 than 30 days for the legal owner to remedy the violation prior to
40 imposing a civil fine and shall allow for a hearing and opportunity

1 to contest any fine imposed. In determining the amount of the fine,
2 the governmental entity shall take into consideration any timely
3 and good faith efforts by the legal owner to remedy the violation.
4 The maximum civil fine authorized by this section is one thousand
5 dollars (\$1,000) for each day that the owner fails to maintain the
6 property, commencing on the day following the expiration of the
7 period to remedy the violation established by the governmental
8 entity.

9 (3) Subject to the provisions of this section, a governmental
10 entity may establish different compliance periods for different
11 conditions on the same property in the notice of alleged violation
12 mailed to the *legal* owner.

13 (b) For purposes of this section, “failure to maintain” means
14 failure to care for the exterior of the property, including, but not
15 limited to, permitting excessive foliage growth that diminishes the
16 value of surrounding properties, failing to take action to prevent
17 trespassers or squatters from remaining on the property, or failing
18 to take action to prevent mosquito larvae from growing in standing
19 water or other conditions that create a public nuisance.

20 (c) Notwithstanding subdivisions (a) and (b), a governmental
21 entity may provide less than 30 days notice to remedy a condition
22 before imposing a civil fine if the entity determines that a specific
23 condition of the property threatens public health or safety and
24 provided that notice of that determination and time for compliance
25 is given.

26 (d) Fines and penalties collected pursuant to this section shall
27 be directed to local nuisance abatement programs.

28 (e) A governmental entity may not impose fines on a legal owner
29 under both this section and a local ordinance.

30 (f) These provisions shall not preempt any local ordinance.

31 (g) This section shall only apply to residential real property.

32 (h) The rights and remedies provided in this section are
33 cumulative and in addition to any other rights and remedies
34 provided by law.

35 (i) This section shall remain in effect only until January 1, 2013,
36 and as of that date is repealed, unless a later enacted statute, that
37 is enacted before January 1, 2013, deletes or extends that date.

38 SEC. 6. Section 1161b is added to the Code of Civil Procedure,
39 to read:

1 1161b. (a) Notwithstanding Section 1161a, a tenant or
2 subtenant in possession of a rental housing unit ~~that has been sold~~
3 ~~due to~~ *at the time the property is sold in* foreclosure shall be given
4 60 days' written notice to quit pursuant to Section 1162 before the
5 tenant or subtenant may be removed from the property as
6 prescribed in this chapter.

7 (b) This section shall not apply if any party to the note remains
8 in the property as a tenant, subtenant, or occupant.

9 (c) This section shall remain in effect only until January 1, 2013,
10 and as of that date is repealed, unless a later enacted statute, that
11 is enacted before January 1, 2013, deletes or extends that date.

12 SEC. 7. Nothing in this act is intended to affect any local
13 just-cause eviction ordinance. This act does not, and shall not be
14 construed to, affect the authority of a public entity that otherwise
15 exists to regulate or monitor the basis for eviction.

16 SEC. 8. The provisions of this act are severable. If any
17 provision of this act or its application is held invalid, that invalidity
18 shall not affect other provisions or applications that can be given
19 effect without the invalid provision or application.

20 SEC. 9. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.

29 SEC. 10. (a) This act is an urgency statute necessary for the
30 immediate preservation of the public peace, health, or safety within
31 the meaning of Article IV of the Constitution and shall go into
32 immediate effect. The facts constituting the necessity are:

33 In order to stabilize and protect the state and local economies
34 and housing market at the earliest possible time, it is necessary for
35 this act to take effect immediately.

36 (b) However, the provisions of Section 2 of this act, which adds
37 Section 2923.5 to the Civil Code, and Section 4 of this act, which

- 1 adds Section 2924.8 to the Civil Code, shall become operative 60
- 2 days after the effective date of this act.

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**BOARDED BUILDINGS REPORT
FEBRUARY 2012**

	ADDRESS	USE OF PROPERTY	ESTIMATED TIME BOARDED
1.	27 West 3rd Street	Commercial	15 Years
2.	29 West 3rd Street	Residential	15 Years
3.	31 West 3rd Street	Residential	15 Years
4.	48 East 9th Street	Residential	5 Years
5.	49 West 6th Street	Commercial	15 Years
6.	64 West 4th Street	Commercial/Residential	5 Years
7.	79 East 9th Street	Residential	13 Years
8.	91 West First Street	Commercial	15 Years
9.	90 W. Mt. Diablo Avenue	Residential	20 Years
10.	104 East 10th Street	Residential	5 Years
11.	153 North "C" Street	Commercial	20 Years
12.	243 East 3rd Street	Residential	15 Years
13.	301 Falcon Court	Residential	6 Months
14.	317 North "C" Street	Residential	1 Year
15.	424 West Eaton Avenue	Commercial	12 Years
16.	775 West Clover Road	Commercial	5 Years
17.	951 "A" Street	Residential	7 Years
18.	1311 North Tracy Boulevard	Residential	12 Years
19.	1550 Parker Avenue	Residential	7 Years
20.	2302.5 Holly Drive	Residential	3 Years
21.	2304.5 Holly Drive	Residential	3 Years
22.	3140 West Grantline Road	Residential	7 Years
23.	3379 North Tracy Boulevard	Commercial	5 Years

RESOLUTION 2008-226

AUTHORIZING A \$1,000 DAILY FINE FOR VIOLATIONS OF CALIFORNIA CIVIL CODE SECTION 2929.3; AUTHORIZING USE OF THE PROCEDURES SET FORTH IN TRACY MUNICIPAL CODE CHAPTER 1.32 TITLED PUBLIC NUISANCE ABATEMENT TO ENFORCE CIVIL CODE SECTION 2929.3; AND AUTHORIZING THE CITY ATTORNEY'S OFFICE TO FILE RECEIVERSHIP ACTIONS TO ABATE VACANT PROPERTIES THAT MEET CRITERIA SET FORTH IN CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 17980.6 AND 17980.7

WHEREAS, A significant number of foreclosure actions have recently occurred, and continue to occur nationwide, and

WHEREAS, California Senate Bill 1137 (SB 1137) recently passed as an urgency measure that provides immediate relief to homeowners and tenants whose properties are in foreclosure, and

WHEREAS, SB 1137 authorizes local agencies to impose fines on property owners if they fail to adequately maintain the foreclosed properties, and

WHEREAS, Including the terms of SB 1137 into the City's existing enforcement efforts will provide staff with an additional tool for addressing the community impacts caused by these vacant properties, and

WHEREAS, Receivership is another powerful tool in the abatement of public nuisances, and

WHEREAS, A receiver's primary goal is to merely abate those nuisance conditions caused by derelict, abandoned and vacant properties, and

WHEREAS, The receivership process also allows the receiver to obtain priority liens on the property, through a court order, to pay for the receiver's services and the costs of abatement, and


WHEREAS, This action will not result in any immediate fiscal impact. The City may recognize some revenues through fines allowed under SB 1137 and may incur staff time costs regarding implementation of the SB 1137 provisions and receivership actions;

NOW, THEREFORE, BE IT RESOLVED, that City Council authorizes a fine in the amount of \$1,000 per day for failing to maintain a property purchased or otherwise obtained through the foreclosure process; authorizes the use of the City's order to abate or show cause process for SB 1137 enforcement provided the notice periods and deadlines of SB 1137 are used; and authorizes the City Attorney's Office to file receivership actions for the purposes of abating vacant properties that meet the criteria set forth in California Health and Safety Code sections 17980.6 and 17980.7.

Resolution 2008-226
October 21, 2008
Page 2

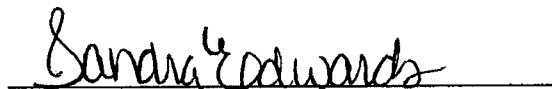
The foregoing Resolution 2008-226 of the City Council was adopted by the City Council on the 21st day of October 2008, by the following vote:

AYES: COUNCIL MEMBERS: ABERCROMBIE, SUNDBERG, TOLBERT, TUCKER
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: IVES
ABSTAIN: COUNCIL MEMBERS: NONE



MAYOR PRO TEM

ATTEST:



CITY CLERK

Code Enforcement ENFORCING NUISANCE PROPERTIES

The City's involvement in dealing with nuisance abatement begins when a complaint is filed with Code Enforcement. The complaint is then entered into the department's database, a case is opened, and a site inspection is performed to validate the complaint. Violations found on these properties often cross departmental and agency lines. For instance, overgrown weeds are referred to the Fire Department and abandoned vehicles, vandalized property and abandoned animals are referred to the Police Department. Unkempt swimming pools (which can become a breeding ground for West Nile Virus) are referred to the San Joaquin County Mosquito Abatement District for abatement of mosquito larvae.

Depending on staff's caseload and the type of complaint received, new cases are inspected within 72 to 96 hours of receipt; however, health and life safety situations are inspected within 24 hours or sooner depending upon the severity of the circumstances. Once the complaint has been confirmed, staff notifies the property owner by phone, in person, or by mailing a Violation Notice, with a specified time frame for correcting the violation(s). A follow-up investigation is conducted shortly after the deadline contained in the Violation Notice to verify whether or not corrective action has been taken. If the violation(s) still exist at the time of the follow-up inspection, the City will move forward with a Notice and Order or Order to Abate or Show Cause, including a deadline for compliance and appeal dates. If the violations are still not corrected, the City can move forward with more punitive action, such as administrative citations, and/or criminal or civil injunctions. Upon correction of all cited violations, the case is closed and no further action is required. A typical case takes anywhere from seven days and up to 30 days for issues such as garbage and junk accumulation and one week to a year for building code violations. Buildings that fall under the Abatement of Dangerous Buildings code take significantly longer.

In situations where property owners fall short of complying, the City may seek Council approval to abate the violations at the City's cost, with cost recovery (plus administrative charges) in the form of a lien against the property. However, in situations of imminent danger to the public and immediate action is necessary, the City can hire contractors to abate the nuisance and attempt to recover the cost for said abatement through small claims judgments.

Community partnerships with service clubs, realtors and residents affected by nuisance properties have and continue to be established through existing Neighborhood Watch Meetings and speaking engagements. Code Enforcement attends these meetings as workload allows to educate residents of affected nuisance on current nuisance codes, information on how to report violations, and providing tips on how they can help keep the property from negatively impacting their neighborhoods. Collaboration and assistance has previously been requested from local realtors to help address the problems often encountered on vacant homes for sale under a deed of trust. Staff anticipates these alliances will have a positive impact on the condition of the community's property stock and will demonstrate a united commitment on the part of all stakeholders in the community, both public and private alike.

AC:ac