

March 6, 2012, 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 7:01 p.m. and led the Pledge of Allegiance.

The invocation was given by Pastor Jessica Richmond of the Seventh Day Adventist Church.

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

Leon Churchill, Jr., City Manager, presented the Employee of the Month award for March 2012, to Cody Dellabitta of the Police Department.

Mayor Ives presented 2011 Certificates of Commendation to Steve Hanlon, Firefighter of the Year; Trevin Freitas, Police Officer of the Year, and Joann Otani, Volunteer of the Year.

Mayor Ives recognized D.A.R.E. graduate students from George Kelly, Wanda Hirsh, and Poet Christian Elementary Schools.

1. CONSENT CALENDAR - 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. Acceptance of the Pond Removal – Greenleaf #1 Project - CIP 76058, Completed by Top Grade Construction Inc., of Livermore, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2012-038 accepted the project.
 - B. Approve a 30-Foot Wide Public Utility Easement (PUE) Within the City Owned Parcel Located on the West Side of Tracy Boulevard North of Larch Road, for the Installation, Operation and Maintenance of Overhead Utility Lines and Poles on Tracy Boulevard along the Frontage of the Holly Sugar Sports Complex, Authorize the Mayor to Execute the Grant of Easement, and Further Authorize the City Clerk to File the Easement Document with the San Joaquin County Recorder – Resolution 2012-039 approved the easement.
 - C. Approve Amendment 3 to the Professional Services Agreement with Schack & Company, Inc., of Tracy, California, to Provide Additional Services for the Corral Hollow Road Widening Project – CIP 73014, from Grant Line Road to the West Valley Mall Entry – Resolution 2012-040 approved the amendment for a not to exceed amount of \$49,080.

- D. Authorization for an Appropriation of \$100,000 for the Acquisition of Alternative Fuel Vehicles Provided through a \$100,000 Grant from the San Joaquin Valley Air Pollution Control District – Resolution 2012-041 authorized the appropriation.
2. ITEMS FROM THE AUDIENCE – Dave Helm addressed Council regarding how fortunate residents are to live in the City and also commented on the high level of volunteerism in the community. Mr. Helm added the City needs to promote the positive actions of individuals.

DEVIATION IN AGENDA

6. AUTHORIZATION TO ENTER INTO NEGOTIATIONS WITH MARY ANN BRIGHAM FOR POTENTIAL LEASE OF A CITY-OWNED BUILDING AT 729/741 CENTRAL AVENUE FOR A BREWPUB/RESTAURANT - Andrew Malik, Development Services Director, presented the staff report. In August 2011, the City purchased the property at 729/741 Central Avenue. The property consists of an approximately 11,017 square foot building on an approximately 10,500 square foot lot. The building has most recently been occupied by the West Side Market and a performing arts studio. Recruitment of select businesses that capture consumer or sales tax leakage and enhance the mix of businesses in the Downtown has long been a strategic priority for Downtown revitalization.

Over the past eight years the City has invested approximately \$57 million in the Downtown area, including reconstruction of the Grand Theatre Center for the Arts, construction of the Tracy Transit Station, construction of Downtown Streetscape and Infrastructure Improvements, renovation of the Fire Department Administrative Headquarters building, construction of Downtown parking lots, and construction (currently underway) of the Downtown Plaza. For the next step in the revitalization of Downtown, the City is seeking to incentivize private investment with this Downtown brewpub/restaurant project.

On December 1, 2011, the City published a Request for Letters of Interest with the aim of attracting a brewpub/restaurant to the property. The Request for Letters of Interest was mailed to approximately 100 brewpubs in Northern California, plus approximately 20 restaurants and 30 developers. In addition to the mailing, staff contacted and provided facility tours to a handful of developers and restaurant owners.

On January 26, 2012, a Letter of Interest was received from Mary Ann Brigham, the current owner of Ruth McGowan's Brewpub in Cloverdale, where she has been operating for the past 10 years. Ms. Brigham indicated she has an interest in establishing a brewpub/restaurant in Downtown Tracy at the subject property.

On February 17, 2012, staff published a Request for Proposals (RFP) for architectural and engineering design services for the interior and exterior remodel and change of occupancy of the building from retail use to brewpub/restaurant. The deadline to submit proposals is March 22, 2012.

The recommended next steps include the following:

- Return to City Council in April 2012 with a request for: (1) appropriation of Residential Area Specific Plan (RSP) funds for the design costs, legal consulting fees, appraisal fees, construction improvements to the shell building, and improvements to the interior in order to allow the building to better function in accordance with the City's desired use, and (2) an award of a Professional Services Agreement (PSA) to an architectural/engineering firm for the design of the building.
- Return to City Council at a future date with a Lease Agreement for Council consideration regarding a proposal from Mary Ann Brigham.

There is no impact to the General Fund as a result of entering into these negotiations, aside from staff time.

Staff recommended that the Council authorize City staff to enter into negotiations with Mary Ann Brigham for the potential lease of a City-owned building at 729/741 Central Avenue for a brewpub/ restaurant and return to Council with a Lease Agreement for consideration.

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

Mary Ann Brigham addressed Council stating she brought a group with her to tour the area and the Grand Theatre, and to show their commitment and interest in the project. Ms. Brigham introduced her team.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2012-042 authorizing negotiations with Mary Ann Brigham for the potential lease of a City-owned building at 729/741 Central Avenue for a brewpub/restaurant. Voice vote found all in favor; passed and so ordered.

3. PUBLIC HEARING TO CONSIDER THE ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME FUNDS FOR FISCAL YEAR 2012-2013 - Scott Claar, Associate Planner, presented the staff report. Andrew Malik, Development Services Director, spoke regarding the \$270,000 Economic Development portion – incubator.

Community Development Block Grant (CDBG) funds are allocated to cities and counties by the U.S. Department of Housing and Urban Development (HUD) for use in projects, programs, and services that demonstrate a benefit to low and moderate income individuals and families. The estimated amount allocated to the City of Tracy, as a sub recipient of San Joaquin County, is \$417,957 for FY 2012-2013.

A public notice announcing the availability of CDBG funds and inviting proposals appeared in the Tri-Valley Herald on December 10, 2011, and January 23, 2012. In addition, the application was made available on the City's website and a public meeting was held on December 15, 2011, at 9:00 a.m. in City Hall to answer questions about the application process. The deadline to submit proposals for CDBG funding was originally January 12, 2012, but was extended to January 23, 2012.

CDBG regulations list several categories for proposal requests, and in some cases, specify spending limitations. The categories include Public Facilities, Public Services,

Economic Development, Planning, Housing and Administration. Public Services requests are limited to 15% of the total CDBG allocation; 15% of this year's estimated allocation is about \$62,693 but was reduced to \$52,465 since HUD allocated \$10,228 for Fair Housing Assistance. Planning and Administration is limited to 14% of the total CDBG allocation; 14% of this year's estimated allocation is approximately \$58,513.

Historically, the City has received the majority of the applications under the Public Services category. In the past, staff reviewed the applications to ensure that they complied with the CDBG eligibility criteria and then distributed the 15% allocation equally among the qualified entities. The remainder of the City's allocation has been applied under the Public Facilities category. Historically, there have not been many applications under this category. If there has been an eligible application, the protocol has been to award the requested amount with the remainder of the money going toward an eligible City CIP project. For example, in 2009 \$310,579.90 of the Public Facilities money went toward improving the accessibility of intersections in Downtown.

During fiscal year 2008-09, Council directed staff to revise the CDBG process so that those qualified agencies that best address the local needs of the Tracy community receive priority for funding. On October 5, 2010, the Council approved the following local priorities: 1) economic development/job creation, 2) emergency food and shelter, 3) domestic violence services, and 4) senior/adult services. In order to encourage meaningful citizen involvement, public examination and appraisal of the process, as well as enhance program accountability, the Council approved staff's recommendation to have the Parks and Community Services Commission participate in the annual establishment of local needs priorities and evaluation of CDBG applications by means of a sub-committee.

At their regular meeting on October 7, 2010, the Parks and Community Services Commission approved staff's recommendation and established a three member sub-committee to assist City staff in evaluating and ranking CDBG applications and making funding allocation recommendations. The sub-committee is composed of three members of the Parks and Community Services Commission, selected annually by the Chair of the Parks and Community Services Commission.

The sub-committee conducted a Special Meeting on Tuesday, January 31, 2012, to evaluate, rank, and make funding allocation recommendations for the CDBG applications in the following categories: Public Services (i.e. programs), Public Facilities, and Planning and Administration. The sub-committee established a criterion requiring an applicant to score better than 60 points during the ranking process in order to receive any funding allocation. Ten applications were received under Public Services and two applications were received under Public Facilities. The maximum score that could be received under all categories was 100 points.

Of the 10 applications received under the Public Services category two scored below 60 points, which meant they were not recommended for funding. For the remaining eight applications, the recommended allocations were calculated as a percentage for each applicant based on their proportionate points divided by the total number of points generated among all remaining applicants. This percentage was then applied to the \$52,465 available under the Public Services category and served as the methodology determining the recommendation as to how much money each entity should receive. The recommended allocations are contained in Exhibit B to the staff report.

Two applications were received under the Public Facilities category; one submitted by the City of Tracy. One request came from The Boys and Girls Club to expand program space for their facility. The request was denied based on not meeting the local priorities approved by the Council on October 5, 2010. Therefore, only one application was recommended for funding in the Public Facilities category. The recommended allocations are contained in Exhibit B to the staff report.

During Fiscal Year 2011-2012 CDBG grant allocations, the Council approved an allocation of \$67,869 for the Tracy City Center Association Landmark Sign in the Downtown Area; however, the project was rejected by HUD and, therefore, never moved forward. As such, \$67,869 was added to the \$296,749 available for Public Facilities, which brings the total to \$364,618 for FY 2012-2013. These funds are not available to be applied to the Program Services Category.

Based on the applications received and the funding available, there will be an approximate amount of \$274,618 remaining, including the unused amount of \$67,869 from the Tracy City Center Association Downtown Landmark Sign. Staff would like to allocate those funds towards Economic Development. The funds would be used to support operating and other eligible costs of the City's Business Incubator, which is currently being developed. The funds would be used to help facilitate Economic Development by providing technical assistance, advice, and business support services to owners of microenterprises and persons developing microenterprises. These services would be provided by staff, contracted employees and/or consultant services all in support of the Small Business Incubator. Additional support received would be from developers by offering below market space for the Incubator.

On February 17, 2012, the Parks and Community Services Commission approved the sub-committee's recommendations for funding allocations for FY 2012-2013. The Commission recommended that the remaining funds be allocated to the Small Business Incubator program, subject to a condition that a complete application be submitted for review by the sub-committee, prior to use of funds.

The funds needed for the Small Business Incubator will likely be less than the \$274,618 remaining, which means there will still be remaining funds. Staff recommended that the Council earmark the entire amount for the Small Business Incubator as a placeholder at this time. Staff would then return to Council for reallocation of any remaining funds prior to July 2012, once the sub-committee has reviewed the application for the Small Business Incubator.

As part of the CDBG program, the City will also receive \$64,127 in HOME funds. Since Redevelopment no longer exists, staff recommended that the entire amount be allocated to the Down Payment Assistance Loan program for low income households which is administered by San Joaquin County on behalf of the City. Currently, there are no other identified eligible projects.

Each applicant that is awarded funds is required to sign an agreement with the City to ensure that the funds are spent in the manner described in the applications as the applications were used as the basis for the awards.

There will be no impact to the General Fund. The City of Tracy will receive an estimated \$417,957 in Community Development Block Grant funds in FY 2012-2013 (plus a carry-over of \$67,869 from FY 2011-2012). The City will also receive \$64,127 in HOME funds.

Staff recommended that City Council allocate \$485,823 (includes carryover amount of \$67,869) in estimated Community Development Block Grant funds and allocate \$64,127 in HOME funds to the Down Payment Loan program for FY 2012-2013 pursuant to the recommendations listed in the resolution and authorize and direct the Development and Engineering Services Director to execute the Form Agreement on behalf of the City.

Mayor Pro Tem Maciel indicated since his wife serves on the board of Tracy Interfaith Ministries he would recuse himself from voting on the public services and the planning and administration portion of the application.

Mayor Ives opened the public hearing.

Christine Frankel asked why the grants were reviewed by the Parks and Community Services Department and not by a separate community organization. Ms. Frankel indicated having some public oversight might expand the knowledge of grant availability. Ms. Frankel indicated she liked the idea of the small business incubator program but was concerned with allocating all of the funds to one project that has not been well defined.

Mr. Malik stated criteria was established to determine how the money could be allocated. Regarding the incubator program, Mr. Malik stated there were \$270,000 of unused funds that Council could earmark for future use and that while staff is exploring the incubator, it would act as a placeholder.

Mayor Ives indicated the history of Tracy has been to allocate as much funding as possible to non-profits in Tracy.

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

Council Member Elliott asked what would happen to any money that was not used or allocated during the year. Mr. Malik indicated the City runs the risk of losing funds which are not allocated.

Council Member Elliott asked staff to elaborate on the type of assistance that would be given to small businesses and micro-enterprises. Mr. Malik indicated staff was looking at how a person can help a home based businesses or entrepreneurs establish businesses by getting them some assistance.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2012-043 allocating Community Development Block Grant (CDBG) and Home Funds for Fiscal Year 2012-2013. Voice vote found all in favor; passed and so ordered.

4. CITY COUNCIL DIRECTION RELATED TO AMENDING A DEVELOPMENT AGREEMENT WITH SURLAND COMMUNITIES, APPLICATION DA11-0002 - Bill Dean, Assistant DES Director, provided the staff report. Mr. Dean stated that initial

direction to staff to negotiate and process a Development Agreement (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 DA 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 the 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 Council approved a DA on December 16, 2008.

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.

Key terms in Article 1 of the DA are as follows, 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. 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.

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.

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

Council Member Abercrombie asked if the request for Council was to give the City Manager authorization to enter into a development agreement and not any specific approvals. Mr. Malik stated yes.

Council Member Elliott asked for the status of the existing development agreement. Mr. Sodergren stated the item has been previously considered by Council and there are existing approvals and a DA in place. Mr. Sodergren added that the DA and approvals are the subject of current litigation in the appellate court and even though they are part of the litigation, they are still valid and still in effect. Mr. Sodergren also stated that if

Council directed staff to begin negotiations on these new applications, the status of the existing applications would have to be addressed at some point in time.

Council Member Elliott asked if it would be appropriate to consider amendments at this time. Mr. Sodergren indicated it may be appropriate if Council wants to consider the new application at this time.

Council Member Elliott asked if this was a new proposal. Mr. Sodergren stated it was a new application that has been submitted.

Council Member Rickman asked if any terms have been set. Mr. Sodergren stated no terms have been set. Mr. Sodergren stated the request is to authorize staff to begin working on a new application.

Council Member Abercrombie asked staff to clarify what Surland submitted in December. Mr. Sodergren indicated the applications were to make modifications to their previously approved project which is still valid; whether they are referred to as amendments or new approvals, will depend on the status of the litigation. Mr. Sodergren summarized that Surland has submitted applications to modify their project that was approved and is in litigation.

Council Member Abercrombie asked if there was any timeframe on the current litigation. Mr. Sodergren stated no.

Council Member Elliott asked if it was appropriate to consider amendments to an agreement that was currently in litigation. Mr. Sodergren stated Surland does have existing approvals and they have submitted modifications to those existing approvals. If Council chooses to give direction to have staff look at modifications, it certainly can do so through this agenda item.

Mayor Pro Tem Maciel stated it seemed like Council keeps returning to whether it is an amended or new development agreement. Mr. Sodergren stated to a large degree it will be a matter of the timing and status of the litigation.

Mayor Pro Tem Maciel asked if all staff time spent on this project would be reimbursed. Mr. Sodergren stated yes, through Surland's existing reimbursement agreement.

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

George Riddle, 1850 Harvest Landing, stated Council should wait until litigation was settled.

Les Serpa, 1024 Central Avenue, stated the request was simply to authorize staff to begin discussions. Mr. Serpa indicated the Tracy City Council has always been progressive in their willingness to move forward and be progressive on projects that other cities are not willing to look at. Surland has taken a lot of risks and spent enormous amounts of capital to bring a world class amenity to Tracy which will increase jobs and the help improve the economy. Mr. Serpa stated he looked forward to working with staff and the Council to bring great opportunities to the City.

Steve Nicolau, 1068 Atherton Drive, addressed Council indicating the staff report states amend/amending throughout the document which may constitute a violation of the Brown Act because of its description. Mr. Nicolau indicated representations have been made that everything seems to be fine and we are just talking about a modification of the Ellis project. Mr. Nicolau urged Council to wait and see how the appeal is settled.

Mark Connolly, 121 E. Eleventh Street, on behalf of TRAQC, addressed Council indicating the request was to enter into some type of hybrid agreement. Mr. Connolly outlined the reasons he believed it was not appropriate for Council to direct staff to enter into unknown negotiations: 1) the DA was ruled invalid because Surland has no interest (ownership) in the property planned for the project; 2) residents of the area would have one less acre per 1000 residents than required by the general plan unless you consider pay for play in the park land.

Les Serpa stated that when Surland built Redbridge they did not own the property but had options to purchase the property. Mr. Serpa indicated Ellis was similar with authorization from all the land owners and options in place. Mr. Serpa added that if Surland did not build the swim center, it would pay a fee for a community park.

Dave Helm, asked for clarification regarding the agreement and if it was valid. Mr. Sodergren stated the court has set aside the agreement, an appeal has been filed and the agreement is still valid and in place. Mr. Helm suggested Council wait until the appeal has been settled and get direction from the Court.

Sandy Taylor, 8721 Julie Lind Circle, stated it was sad when the community can't come together to create something great for the City. Ms. Taylor thanked Council for their commitment to bring the swim center to Tracy, especially given the negative comments. Ms. Taylor indicated she was in favor of staff moving forward to correct what the court indicated was deficient.

Marsha McCray, 560 W. Schulte, addressed Council regarding what can be done when groups work together instead of filing lawsuits. Ms. McCray asked Council for their support in bringing the project to fruition.

Michelle Bazinet, 2105 Mabel Josephine, stated the choices are to let the legal process run its course or begin to look at whether it is possible to address the concerns of the lower courts which may make the appeal process mute.

Sue Rainey, 1328 Hamlet Court, stated she was discouraged that it appeared the project was back to square one. Ms. Rainey indicated the project needs to be pursued and urged Council to continue fighting for the project.

Mayor Ives asked regarding the Brown Act, what does the staff report state relative to the actual scope of work that staff is asking for. Mr. Sodergren stated the Brown Act requires a brief general description of each item of business. Mr. Sodergren stated he believed the notice meets that requirement and was a distinction without a difference.

Mayor Ives asked for an estimate of the needed staff time. Mr. Churchill stated he believed an appropriate amount of time could be devoted to the issue to bring clarity to the Council as to the public's objectives, and some clarity as to the methodology to

achieve those objectives. Mr. Churchill stated there were competing interests, but that this was an important issue.

Mayor Ives asked if staff would address the lower court issues and if it was legal. Mr. Sodergren indicated he could not get into the details of the litigation and explained that what was before the Council was modifications to the existing approvals.

Mayor Pro Tem Maciel indicated he believed it was valuable to talk about where this is going and the only way to find out where this is going is to authorize staff to begin discussions. Mayor Pro Tem Maciel asked if the agenda item could be re-noticed to ensure Council was on firm legal ground. Mr. Sodergren stated Council could direct staff to re-notice the item if desired.

Mayor Pro Tem Maciel indicated one issue may be discussing alternatives to the agreement that would in all likelihood satisfy some of the courts concerns on the initial agreement that it ruled against. Mayor Pro Tem Maciel stated he wanted to be sure that Council was on solid legal ground to do so.

Mayor Ives asked for clarification regarding how the agenda item was noticed. Mr. Sodergren stated it was his opinion that the item was noticed properly.

Council Member Elliott stated he did not believe Council should consider amendments, but should look at new proposals. Council Member Elliott suggested having a new market analysis done to see if the swim center would pay for itself under current market conditions. Council Member Elliott stated he was in favor of considering new proposals that would ensure the fiscal health of the City.

Council Member Abercrombie stated he agreed that everyone wants a swim center, but added everything needs to be in line to prevent future litigation.

Council Member Rickman agreed that there were issues that need to be addressed and suggested Council err on the side of caution by bringing the item back to Council in two weeks.

Mayor Ives asked Mr. Sodergren for appropriate wording to notice the item. Mr. Sodergren suggested wording such as "City Council direction related to the request of Surland dated (date of recent application) relating to the existing Development Agreement".

Council Member Elliott indicated he could not support considering amending an application that was in litigation.

After Council discussion, Mr. Sodergren suggested the following language for the agenda item:

"City Council direction related to proposed modifications to development agreement with Surland Communities Application No. DA11-0002."

The item was remanded to staff to return to Council at the next regular Council meeting.

Mayor Ives called for a recess at 9:07 p.m. The meeting was reconvened at 9:13 p.m.

5. AUTHORIZE A PROFESSIONAL SERVICES AGREEMENT WITH SPILLMAN TECHNOLOGIES, INC. OF SALT LAKE CITY, UTAH FOR AN AMOUNT (INCLUDING ALL OPTIONS) NOT TO EXCEED \$2,736,898 TO PROVIDE THE POLICE DEPARTMENT (TPD) WITH A FULLY INTEGRATED COMPUTER AIDED DISPATCH (CAD)/RECORDS MANAGEMENT (RMS) SYSTEM, AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT - Police Chief Gary Hampton and Sergeant Beukelman presented the staff report. Sgt. Beukelman indicated that on October 4, 2010, the City invited Requests for Proposals from various Computer Aided Dispatch and Records Management systems (CAD/RMS) vendors. The City received five responses from Vision Air Inc., Tiburon, Inc., Tri Tech Software Systems, Intergraph Corporation and Spillman Technologies, Inc. A project team comprised of members of the Police Department and other City staff evaluated the proposals. A scoring system based on numerous factors including, but not limited to risk, software functionality, project management, supportability and price was used to determine which vendor was best suited for the Tracy Police Department's needs. Staff found Spillman Technologies, Inc. (Spillman) to be the preferred vendor based on those factors.

The project team spent many hours reviewing and evaluating Spillman's proposal and base product. This review and evaluation consisted of site visits, contacting current Spillman users, and viewing "live" demonstrations of the Spillman system. Spillman is a solid, proven company with over 30 years of experience nationwide in CAD/RMS installations. Spillman currently serves several hundred clients throughout California and the United States. Spillman has a time tested industry respected product with little or no "down time".

The project team, through negotiations, was able to obtain a total of \$377,000 in overall price reductions off the price of the base System (excluding options). These discounts included, but are not limited to: the overall System, interfaces, hardware/software, maintenance, project management and support. The team also shielded the City against costs related to future updates and negotiated a license fee waiver for any replacement products (a future cost savings far exceeding \$1,000,000). Spillman is acting as the prime contractor for this project and will provide all hardware and software for the System. As prime contractor, Spillman will be responsible for numerous warranties, ownership of source code, and performance guarantees essential for public safety.

The project includes several options included in the overall pricing. These options include, but are not limited to: interfaces, data conversion, supplemental training, additional inventory management, fleet maintenance, equipment maintenance, personnel management, and failover hardware. These options can be individually exercised at the sole and exclusive discretion of the City. If an option is not exercised, the monies will be credited back to the CIP.

The CIP funds allocated towards this project are \$3,301,582. To date a total of \$493,055.24 is encumbered toward the overall budget. Those funds have been encumbered for the following capital or professional services: consulting services (\$370,500), furniture (\$7,056), and software/hardware (\$13,356), of which \$12,731 will

be reimbursed to the City via state 911 grant funds. The funds remaining in the project total of \$2,821,257.76 will be used toward the Professional Services Agreement with Spillman.

The CAD/RMS project (CIP 71063) has been approved as part of the FY08-09 CIP budget. The total price not to exceed for this project is \$2,736,898 which is within the budget of the CIP.

Staff recommended that the Council authorize a Professional Services Agreement with Spillman Technologies, Inc. for an amount not to exceed \$2,736,898 to purchase a multiagency, multijurisdictional CAD/RMS system and authorize the Mayor to execute the Agreement.

Council Member Abercrombie stated doing a joint fire/police department dispatch center had been discussed and asked if the proposed system could handle it. Chief Hampton stated it would be able to handle the expansion. Chief Hampton stated it would solely be used in Tracy but could be used as a multi-jurisdictional system.

Council Member Elliott asked for clarification regarding disadvantages of the current system. Chief Hampton stated the City belongs to a user group that cannot make any custom modifications to the existing program.

Council Member Elliott asked if it would be more efficient then for the City to obtain its own system vs. jerry-rigging another system. Sgt. Beukelman stated absolutely.

Council Member Elliott asked if this was the system staff wanted. Chief Hampton stated Spillman has spent months working to create an off- the-shelf product to specifically serve the City of Tracy.

Council Member Elliott asked if training would be needed for all Police Officers. Sgt. Beukelman stated the entire department would be trained on parts of the system while other parts will be trained via "train the trainer".

Mayor Pro Tem Maciel asked if there would be ongoing maintenance of the system and what was the cost. Sgt. Beukelman indicated there was a maintenance agreement at the end of the contract which the City will pay for that is approximately \$150,000 per year for as long as the City pays the maintenance fee.

Mayor Ives asked if funds were already available. Chief Hampton stated funding was available and that a portion of the funds has been expended through the analysis and specification. Chief Hampton added that he was confident that it will be completed under budget.

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

George Riddle, resident, referred to fail over capabilities and asked how long it would take to get the fail over system in place. Sgt. Beukelman indicated there was a second server that would handle it. Mr. Riddle had various questions about the proposed system which the consultant addressed.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2012-044 approving the Professional Services Agreement with Spillman Technologies, Inc. to provide computer aided dispatch and records management systems and authorizing the Mayor to execute the agreement. Voice vote found all in favor; passed and so ordered.

7. APPOINT TWO APPLICANTS TO THE PLANNING COMMISSION - There are two vacancies on the Planning Commission due to term expirations. To fill the vacancies the City Clerk's office conducted a recruitment which opened on January 19, 2012, and closed on February 9, 2012. Four applications were received. On February 27, 2012, a Council subcommittee consisting of Mayor Pro Tem Maciel and Council Member Abercrombie interviewed the applicants. In accordance with Resolution 2004-152, the Council subcommittee recommended two applicants for appointment. The appointees will serve four year terms, which will begin on March 19, 2012, and end on March 18, 2016. The subcommittee also recommended the Council establish an eligibility list to be used to fill any mid-term vacancy that might occur in the upcoming 12 months.

Council Member Rickman indicated he and Mayor Pro Tem Maciel interviewed the applicants and recommended Jass Sangha and Pete Mitracos be appointed to the Planning Commission. Caesar Alexander and Ameni Alexander were recommended as alternates.

It was moved by Council Member Rickman and seconded by Mayor Pro Tem Maciel to approve the subcommittee's recommendation and appoint Jass Sangha and Peter Mitracos to the Planning Commission to serve four year terms which will begin on March 19, 2012 and end on March 18, 2016, and to appoint Caesar Alexander and Ameni Alexander to the eligibility list. Voice vote found all in favor; passed and so ordered.

8. ITEMS FROM THE AUDIENCE

Mr. Weakland, 901 Saffron Drive, and Mr. Gupta, 881 Saffron Drive, addressed Council regarding crime in their neighborhood and asked if the City could reconstruct a fence between the properties and the trenched area. Mr. Weakland and Mr. Gupta indicated they had spoken with officers regarding forming a Neighborhood Watch Area.

Robert Tanner, 1371 Rusher Street, asked that since the City has increased garbage rates was there a possibility the Spring and Fall Cleanup programs could be reinstated. Mr. Churchill responded that the City was looking into the possibility of bringing one of the events back and that the issue would be part of the budget discussions.

Ricky Hyppa, 210 Arroyo Hondo Circle, commented on the traffic backup at the intersection of Byron Road and Grant Line Road. Mayor Ives responded that the County has jurisdiction over the intersection and that staff was working with the County to speed up the process for installing the planned traffic light.

9. COUNCIL ITEMS

- A. Consider an Item for Discussion on a Future City Council Agenda Related to Reviewing Impact Fees Per Acre on a Proportional Use Basis - At the City

Council meeting held on February 21, 2012, Council Member Rickman requested that the Council consider placing an item on a future City Council agenda to review impact fees per acre on a proportional use basis.

Mayor Ives asked how much staff time was needed to consider the request. Mr. Churchill indicated very little.

Council Member Elliott asked Council Member Rickman to clarify what proportional use means. Council Member Rickman explained how fees are currently calculated per acre.

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 Elliott to direct staff to bring back an agenda item for discussion related to reviewing impact fees per acre on a proportional use basis. Voice vote found all in favor; passed and so ordered.

10. 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 March 1, 2012. The above are summary minutes. A tape recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk