

TRACY CITY COUNCIL

REGULAR MEETING AGENDA

Tuesday, March 5, 2013, 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 – Employee of the Month

Recognition of Police and Fire Officers, Volunteer and Staff Employee of the Year

Certificate of Appointment – Measure E Residents Oversight Committee

Certificate of Appointment – Planning Commission

D.A.R.E. Graduates

1. CONSENT CALENDAR

A. Approval of Minutes

B. Approval of Permit for the Consumption of Alcoholic Beverages on City Streets for the Following Events: Tracy Noon Rotary and City of Tracy “It’s Derby Time!” Event on May 4, 2013, City of Tracy Downtown Block Parties on May 5, June 21, July 12, August 2, August 16, 2013; City of Tracy “Girls Night Out – Pink Party” Event on May 10, 2013, Chamber of Commerce “Fourth of July Celebration” on July 4, 2013, Tracy City Center Association “Then and Now Car Show” on July 20, 2013, Chamber of Commerce “Dry Bean Festival” on September 7 & 8, 2013 and City of Tracy “Girls Night Out – Witches and Broomsticks” Event on October 25, 2013

C. Authorization to Amend the City’s Conflict of Interest Code

D. Approval of Amendment Number Three to Professional Services Agreement with Design, Community and Environment, Inc. for the Preparation of an Environmental Impact Report, Assistance with the Preparation of a Specific Plan and Annexation for the Cordes Ranch Specific Plan Project

E. Supplemental Appropriation to the Insurance Program Budget for Fiscal Year 2012/13 in the Amount of \$307,320 from the Self Insurance Fund to Pay Retrospective Adjustments for the Pooled Workers’ Compensation Program with Central San Joaquin Valley Risk Management Authority (CSJVRMA)

F. Consider Adoption of the “Healthy Eating Active Living” Resolution Proposed by The League of California Cities

2. ITEMS FROM THE AUDIENCE

3. CONDUCT A PUBLIC HEARING AND INTRODUCE ORDINANCE 1182 - AN ORDINANCE OF THE CITY OF TRACY APPROVING AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH THE SURLAND COMMUNITIES, LLC APPLICATION DA11-0002 THE PROPERTY IDENTIFIED IN THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT IS APPROXIMATELY 321-ACRES LOCATED AT THE NORTHWEST CORNER OF CORRAL HOLLOW ROAD AND LINNE ROAD, ASSESSOR’S PARCEL NUMBERS 240-140-23, 240-140-30, 240-140-31, 240-140-16, 240-140-18, 240-140-22.

4. CONDUCT A PUBLIC HEARING TO HEAR OBJECTIONS TO AND APPROVE THE FINAL COSTS OF WEED ABATEMENT AND AUTHORIZE A LIEN ON THE LISTED PROPERTIES IN THE COSTS OF ABATEMENT AMOUNT PLUS 25 PERCENT
5. COUNCIL MEMBER MACIEL SPONSORED DISCUSSION REGARDING A REQUEST TO HAVE THE CITY FUND CERTAIN INFRASTRUCTURE IMPROVEMENTS ASSOCIATED WITH A PROPOSED NEW MONTESSORI SCHOOL IN THE CITY OF TRACY
6. FISCAL YEAR 2012/13 GENERAL FUND MID-YEAR BUDGET PERFORMANCE REPORT AND FIVE-YEAR FINANCIAL PLAN UPDATE
7. RECEIVE REPORT ON THE TRACER TRANSIT SYSTEM
8. RECEIVE UPDATE AND PROVIDE INPUT ON AIRPORT IMPROVEMENT OPTIONS
9. SECOND READING AND ADOPTION OF ORDINANCE 1183 AN ORDINANCE OF THE CITY OF TRACY, CALIFORNIA AMENDING CHAPTER 11.30 OF THE TRACY MUNICIPAL CODE, "RECYCLED AND NON-POTABLE WATER"
10. ITEMS FROM THE AUDIENCE
11. COUNCIL ITEMS
12. ADJOURNMENT

November 26, 2012, 4:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

1. Call to Order – Mayor Ives called the meeting to order at 4:00 p.m.
2. Roll Call – Roll call found Council Members Abercrombie, Maciel, Rickman, and Mayor Ives present. Council Member Elliott absent.
3. Items from the Audience - None
4. CERTIFICATION OF THE CITYWIDE ROADWAY AND TRANSPORTATION MASTER PLAN FINAL ENVIRONMENTAL IMPACT REPORT (FEIR), APPROVAL OF THE MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) AND APPROVAL OF THE CITYWIDE ROADWAY AND TRANSPORTATION MASTER PLAN – Kuldeep Sharma, City Engineer and Assistant Director of Development Services, presented the staff report. Mr. Sharma stated the item is divided in two areas 1) Citywide Roadway and Transportation Master Plan 2) Environmental Impact Report (EIR) and Mitigation Monitoring and Reporting Program (MMRP)

1. Citywide Roadway and Transportation Master Plan

The City's existing Roadway Master Plan was approved in 1994. The Master Plan was based on the City's 1991 General Plan. Since then various areas in the City have either fully or partially developed including Plan C, South MacArthur, I-205, Northeast Industrial, Presidio and Infill.

The City adopted its new General Plan on February 1, 2011. The new General Plan identifies existing and new areas of development within and around the existing City limits which will be annexed into the City. It includes areas east of the City up to Chrisman Road and to the west up to the Altamont Pass, south of I-205. The new General Plan also includes the Larch Clover area both north and south of I-205.

Due to increased development interest in the General Plan area, various property owners requested in 2009, that the City finalize the Infrastructure Master Plans to serve the new developments. The City acquired the services of various consultants to finalize the Infrastructure Master Plans and complete the environmental documents for a total cost of \$3.1 million. A majority of the cost of these services was funded by the property owners.

Since then, staff and the development community have been working together with the consultants to finalize the Infrastructure Master Plans. The Roadway and Transportation Master Plan is generally completed first and the other plans follow to take advantage of the roadway alignments to locate major infrastructure elements.

RBF Consulting is the City's consultant responsible for completion of the Citywide Roadway and Transportation Master Plan. The work to complete this Master Plan involved traffic and transportation studies for various land uses proposed in the General Plan. The Master Plan addresses a wide range of traffic and transportation issues varying from local impacts to regional impacts, traffic controls, bicycle and pedestrian

controls, Park and Ride facilities, truck traffic and routes, railroad, bridges, transit needs and smart growth requirements. The Draft Master Plan was reviewed by staff and the development community. The Draft Master Plan was also the subject of a Transportation Commission meeting on December 9, 2010, where Commission input was used to shape the initial document.

The Citywide Roadway and Transportation Master Plan is based on the year 2035 and buildout scenarios. The Master Plan addresses the impacts of areas that could develop until the year 2035, assuming the existing development constraints of Measure A. This Master Plan will be updated every five years to verify the development assumptions and their impacts.

2. Final Environmental Impact Report (EIR)

- 1) The Citywide Roadway and Transportation Master Plan was determined by staff to be a "project" under the California Environmental Quality Act (CEQA) requiring an Environmental Impact Report (EIR). CEQA requires California public agencies to consider the environmental effects of projects for which they have discretionary authority. From January 12 to February 13, 2012 an Initial Study and Notice of Preparation was circulated for public review and local, State, and federal agency review and comment.
- 2) A Draft EIR was circulated from March 30 to May 14, 2012 for public review. All interested persons and organizations had an opportunity during this time to submit their written comments to the City. Subsequent to publishing the EIR, significant new information was added to the Initial Study clarifying the purpose and intent of the Roadway and Transportation Master Plan and the scope and nature of its potential environmental impacts.
- 3) The Draft EIR was recirculated for additional public review from June 14 to July 30, 2012.
- 4) A Final EIR was prepared which includes errata to the Recirculated Draft EIR as well as responses to comments received on the Recirculated Draft EIR. The FEIR was made available to the public and commenting parties on November 15, 2012.

The significant and unavoidable impacts that were identified in the EIR process include impacts related to greenhouse gas emissions, increases in pollution as a result of vehicle travel, and conflicts with local air pollution control district management plans. Certification of the EIR involves making findings related to significant impacts, alternatives, a Statement of Overriding Considerations, and adopting a Mitigation Monitoring and Reporting Program (MMRP).

There is no impact to the General Fund from approval of the Citywide Roadway and Transportation Master Plan. The cost of completion of the Master Plan, its EIR and MMRP was funded from the development community. The City fronted \$820,855 as its fair share cost of certain areas such as the Larch Clover area, Chrisman property, gap properties, and east side developments. This cost will be reimbursed to the City by property owners as a condition of development of such areas in the future. The cost of construction of the physical infrastructure listed in the Master plan will be borne by the developers through development impact fees and there will be no impact to the City's General Fund.

Kul Sharma introduced Frederik Venter, Project Manager, and Laura Worthington-Forbes, Senior Vice President, RBF Consulting. Mr. Venter provided a presentation.

The goal of the Tracy Citywide Transportation Master Plan is to promote development and manage funding and implementation of the multimodal transportation infrastructure to support the City of Tracy's General Plan.

The approach to development of the Citywide Transportation Master Plan is:

- Determine the transportation infrastructure needs for 2035 (needed to use the base model that San Joaquin Council of Governments (SJCOC) uses, which is 2035)
- Develop traffic volumes and roadway plan lines for City Buildout
- Include Smart Growth principles in all transportation infrastructure elements
- Determine costs of the required transportation improvements
- Develop a Fee and Implementation Program

The General Plan map comes from the 2030 General Plan. It shows how the City will be built out, the Sphere of Influence boundaries, and associated land use designations. The Planning Area map shows where all future and some infill development will take place.

Scenario	Dwelling Units	Employment
Existing (2006)	26,789	24,104
2030 GP SOI	38,926	48,553
Horizon Year (2035)	40,506	64,182
Buildout	43,557	184,033

Mr. Venter stated the growth in the table incorporates the growth ordinance for dwelling units that can develop in the City and was based on historic and anticipated future growth. Input from that General Plan and from that growth forms the basis of the modeling and the transportation growth.

Mr. Venter explained the evolution of the Road Network and the difference between the grid and the cul-de-sac patterns. Mr. Venter added the grid network makes better and shorter connections between origins and destinations, whereas the cul-de-sac pattern requires going around the block to connect to arterials.

The 2035 Roadway Network includes an expressway system. The expressway system is intended to be high capacity facilities for four lanes to six lanes accommodating heavy through traffic. The function of the arterials is to move vehicles, but not at the same rate as the expressways. The collective streets compliment the grid system. The details of the roadways will be determined once a specific plan is submitted and evaluated by staff.

New improvements include connection of the Pavilion extension north to south across I-205. The connection runs parallel to Mountain House Parkway, Hansen and Lammers Roads. The connection does not have access to the freeway, but it alleviates the new interchange on the Lammers Road extension that will be built on I-205. Mr. Venter stated that if that connection does not occur within the next 20 years, there will be tremendous gridlock at the Lammers Road extension interchange at I-205.

City Buildout: The right of ways that would be required to establish some form of mobility within the City has been reviewed. Lammers Road would increase from a four lane to six lane facility. Mountain House Parkway would increase from a four lane and two lane to a six lane and four lane facility. Some of the other roadways would also increase. For a majority of the City Road Network buildout, many of the lanes, and right of ways assigned to them, would remain as is in the 2035 conditions.

Cross Sections: There will not be single 12 foot lanes built in the City if the Master Plan is followed. That is a step toward slowing down speed and having a more sustainable transportation network, but still accommodating trucks and traffic flow. There is various researches that supports 11 foot lanes as being acceptable.

The 1994 TMP included a right of way of 116 feet with no bicycle facilities. The current TMP added ten feet of bike lanes by reducing the right of way to 115 feet. Similarly for arterials, there was 110 feet previously but under the new TMP, there is 99 feet. For collector roads it was 76 feet, reduced to 66 feet. This provides developers with more land to build on, which means more taxes and jobs and less street maintenance for the City.

Approximately 64 intersections were studied. The study showed that the majority would operate at Level of Service D or better, which is City standard. Mr. Venter stated service levels decline closer to interchanges, but Level of Service D is acceptable in terms of the General Plan policies.

The Congestion Management Program (CMP) Road Network is identified by San Joaquin Council of Governments (SJCOG), who also helps fund these networks. Mr. Venter stated it is important to maintain a Level of Service D on the street network. Pavilion extension and Old Schulte were included as new roads that were not previously CMP roads in the TMP. Portions of Lammers Road and Corral Hollow Road will not stay as CMP roads because some of the intersections have a Level of Service lower than D. SJCOG will not fund those roads in the future.

Mr. Venter stated it is important to make sure bicycle mobility is highlighted significantly in the new TMP. Every arterial, collector, parkway or expressway will have wide plans which include a Class I bike lane on the side or a trail, or a Class II bike lane, which is striped. That is significant because it provides the connection between the origin and destinations for cyclists.

Every new road in the City will have sidewalks. Many existing streets do not have sidewalks. With the sidewalks, trails and the Bike Master Plan, there will be connectivity to allow people to get where they need to go.

ITS Infrastructure is where signals are coordinated and CCTV cameras are used. Mr. Venter explained ITS Infrastructure is a modern way of managing traffic without widening roads. Hubs allow developments to develop separately. It is set up to accommodate in any manner in which future development occurs. Mr. Venter added the ITS Infrastructure has tremendous advantage because capacity is increased relatively cheaply without providing additional right of way, requiring widening of roads or increasing capacity in a manner that would be more expensive.

Truck Routes are important for the City. Because of the high truck activity and the industrial uses accommodated in the General Plan, several routes have been identified as star routes. The truck routes are planned to use Mountain House Parkway, keeping them off Lammers Road. This will protect the neighborhoods while making sure trucks can get to their destinations depending on the land uses and origins either within the City or from the City to Interstates I-205, I-580 and I-5.

New locations have been identified for Park and Ride facilities closer to the freeways for carpooling.

Mr. Venter stated the City has the advantage with the future high speed rail plan showing some alignment through the City to alternatives. There is a whole connection of very important transit facilities within the City that will distribute people to and from Tracy. The original components and the local components have been incorporated into the Master Plan. Every arterial, parkway, and expressway can be a transit route, which will include bus stops.

Transportation Demand Management is a program that provides new tools used to reduce trips and the demand for people to travel in cars. Transit, carpooling, bicycle routes are typical aspects that SJCOG will look to fund future roads.

The Sustainability Action Plan, Goals and Policies and Smart Growth Principles result in a reduction in vehicle trips (6%), vehicle miles traveled (137,267 per day in 2020), and Greenhouse Gas Emissions (104 tons of CO₂).

The Sustainability Action Plan, Goals and Policies and Smart Growth Principles promote Road Network Connectivity, Bicycle and Pedestrian Connections, Park and Ride Facilities Transit Infrastructure, Land Use Integration, Mixed Use Development, Roundabouts, ITS.

The estimate of the Transportation Infrastructure improvements that are required including bridges, bike lanes, roads, railway crossings, ITS systems and the full cost to provide this infrastructure plan by 2035, is approximately \$861 million. New development will help pay for those costs of improving the roadway network. A principle for how the Traffic Impact Fee will be funded has been established. The developers will pay for the outside lane and the work lane from the shoulder. The inside lane and the medium is included in the Traffic Impact Fee program. On some of the major expressways, the full curb to curb cost is included in the cost estimates.

The 2020 Sphere of Influence Road Network at 34.78 vehicle miles per person goes down to 34.02 with the Sustainability Action Plan implementation. The 2035 Master Plan projection is 33.83 in 2035, and if extrapolated back to 2020, it would be 30.86 vehicle miles per person per day. That is a significant reduction of 57% in Vehicle Miles Traveled (VMT) Growth. It is also approximately a 10% reduction in air quality and gas consumption.

Laura Worthington-Forbes, Senior Vice President RBF Consulting, outlined the EIR process that was followed to environmentally clear the recirculation draft for the TMP.

The project purpose was to perform a comprehensive update of the 1994 Roadway Master Plan. TMP builds upon the goals/objectives in the Circulation Element of the General Plan and Sustainability Action Plan.

Objective CIR-1.1, Action A1 of the Circulation Element of the City of Tracy General Plan, which states, "Update the Roadway Master Plan upon adoption of the General Plan". Importantly, it is a tool to implement the objectives of the circulation element that has a directive that indicates you must update the Roadway Master Plan upon adoption of the General Plan.

Ms. Worthington-Forbes outlined the new information added to the environmental process/overview:

- Clarified the TMP does not propose any new growth
- Clarified that improvements and expansions identified in TMP are necessary to accommodate growth based on densities and intensities allowed by the General Plan up to Year 2035
- Clarified that TMP is a policy document; does not propose construction and operation of improvements
- Because specific project details are not currently available, additional future environmental review may be required on a project-by-project basis
- Future environmental review – analyze and disclose any site specific impacts triggered by construction of improvements and expansions identified by the TMP

Recirculated Draft EIR

- New information triggered City decision to recirculate a Revised Initial Study, CEQA Guidelines 15183 Analysis, and Draft EIR
- Section 15183 Analysis highlighted to emphasize TMP consistency with General Plan Development Density and validated the limited scope
- Recirculated Draft EIR made available for public review from June 13, 2012 to July 27, 2012
- Recirculated EIR and Recirculated IS/CEQA Guidelines Section 15183 Analysis fully replaced the January 2012 Initial Study and March 2012 EIR

Scope of Recirculated Draft EIR concentrated on the assessments of impacts on:

- Air Quality (AQ)
- Greenhouse Gas Emissions (GHG)
- Cumulative impacts of Air Quality and Greenhouse Gas Impacts
- Three Project Alternatives
 - No Project/No Updated TMP
 - TMP limited to General Plan 2030 Horizon Year
 - Increased residential component and reduced the commercial development near I-205 expansion area

Recirculated Draft EIR Conclusions - Significant and unavoidable Impacts

- Two Air Quality impacts and one Greenhouse Gas Emission impact

Air Quality

- Exceedances of established thresholds for Reactive Organic Gases (ROG), Nitrogen Oxides (NO_x), and particulate matter (PM)₁₀ as a result of long-term mobile source emissions (Project and cumulative level); and
- Conflicts with applicable air quality plans (Project and cumulative level).

Significant and Unavoidable Greenhouse Gas Emission Impacts

- Generation of Greenhouse Gas Emissions, either directly or indirectly, that may have a significant impact on the environment (Project and cumulative level)

Ms. Worthington-Forbes stated the City cannot approve a project with significant environment effects unless the written findings are made with respect to each impact. Those findings for Unavoidable Significant Impacts require a Statement of Overriding Considerations (SOC).

Mr. Sharma thanked Ms. Worthington-Forbes for her presentation.

Staff recommended that the City Council adopt two resolutions: 1) Certify the Final Environmental Impact Report and adopt Findings of Fact, a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program for the Citywide Roadways and Transportation Master Plan 2) Approve the Citywide Roadway and Transportation Master Plan.

Council Member Abercrombie asked if the responses to the comment letters had been sent to the people who had submitted the comments. Council Member Abercrombie asked if there had been any further communication from the people who had received the City's response. Ms. Worthington-Forbes responded yes. Both comments and responses were sent to the people who submitted the comments.

Bill Dean, Assistant Development Services Director, stated that periodically staff will follow up directly with a phone call or send a letter. Mr. Dean indicated staff did meet with one person who had concerns after they had received comments.

Council Member Abercrombie asked if staff remembered exploring the possibility of a bikeway along the railroad tracks from the Bowtie to Corral Hollow Road. Andrew Malik, Development Services Director, responded that the Master Plan looks at new areas of Tracy for bikeways, and staff is also looking at other land along the railroad tracks.

Council Member Abercrombie stated with the expansion of Linne Road from two lanes to six lanes between Corral Hollow Road and Tracy Boulevard, there would be a need for negotiations with Union Pacific. Mr. Malik responded the Union Pacific may be difficult to work with, but staff will have to look at all options.

Mayor Ives asked for clarity regarding the existing Levels of Service for intersection 39 - Schulte/MacArthur. In one diagram it showed Intersection 39 as Level of Service F, and in another diagram it showed Intersection 39 as Level of Service B and C. Mr. Venter responded Level of Service F is correct.

Mayor Ives stated there had been previous discussion regarding whether Lammers Road could extend due to the railroad. Mayor Ives added that if the at-grade crossing at Grant Line Road was abandoned and Union Pacific would allow Lammers Road extension, Pavilion Parkway would be grade separated, which Union Pacific would allow. Mr. Sharma responded that is correct.

Mayor Ives asked if the cost of the Transportation Infrastructure improvements included grade separations. Mr. Sharma responded yes. Mayor Ives asked if the cost included grade separations that would mitigate the Macoco line if it was activated at Lammers, Corral Hollow, Central Roads and Tracy Boulevard. Mr. Sharma responded only for new developments. The existing roads such as Corral Hollow Road will be using traffic from the new areas.

Mayor Ives invited public comment.

Gary Dobler stated he had met with Mr. Sharma to discuss the Lammers Road extension. Mr. Dobler stated they had agreed the extension of Lammers Road is program funded and will include a signal entry and exit at Byron Road. Mr. Dobler stated he had been informed by RBF Consulting that in the future the pumping plant he owns could be moved. Mr. Dobler stated it is not a shared burden so he would have to bear the full burden of the road. Mr. Dobler added there should be acknowledgement in written form for development of the Lammers Road extension.

Mayor Ives closed public comment.

Mr. Sharma confirmed he had met with Mr. Dobler and discussed the alignment issues and impacts to his property. The alignment on Mr. Dobler's property for the Lammers Road extension and Pavilion Parkway is at concept level. The alignments will be determined when the City gets closer to construction. Mr. Sharma stated there is plenty of time and staff will work with Mr. Dobler and family to make sure the impact to their site is minimal. Any issues will be resolved when maps are submitted for development.

Mayor Ives asked about the map for future truck routes. Mr. Venter responded the truck routes are assigned and applies through 2035 and buildout because the routes were not assigned to a specific year.

Mayor Ives stated the City's development community has spent a lot of money widening parts of Chrisman Road in preparation to meet future traffic needs. Mr. Sharma responded SJCOG has identified Chrisman Road as an expressway. Eventually it will jog to the east north of Grant Line Road and there will be an interchange at Paradise. We are expecting a majority of the funding sources from regional fees. This will become a regional project not only the responsibility of Tracy, but also from Lathrop and other areas. Once it becomes an expressway then trucks will be allowed on Chrisman.

Council Member Rickman asked if truck traffic from future unknown businesses such as warehouses is being addressed. Mr. Venter responded that the General Plan, Master Plan and the Traffic Impact Fee program need to be updated periodically. If a substantial new project comes to Tracy that is lot different than what is in the Master Plan, then the Master Plan can be updated to include new costs and impact fees.

Council Member Rickman asked as an example, if the high speed rail does eventuate, is there the possibility for change to that part of the Transportation Master Plan. Mr. Venter responded yes.

Council Member Rickman asked if future volumes were taken into account. Mr. Venter stated the model is based on 2006, for the General Plan. After looking at future projections of where land use, jobs and housing are going to occur, the volumes are

assigned to the roadway network. The future scenario will take into consideration transit, bicycle lanes and land use development.

It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Maciel to adopt Resolution 2012-239 certifying the Environmental Impact Report for the Citywide Roadway and Transportation Master Plan and approving the Mitigation Monitoring and Reporting Program. Voice Vote found all in favor; passed and so ordered.

Council Member Rickman stated with air quality having a significant impact, depending on the types of businesses and traffic volume, the impacts could be considerably less. Ms. Worthington-Forbes responded it could be considerably less in the future. It is based on vehicle mix and the fleet as well as vehicle miles traveled.

It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Maciel to adopt Resolution 2012-240 approving the Citywide Roadway and Transportation Master Plan. Voice vote found all in favor; passed and so ordered.

5. It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adjourn. Voice vote found all in favor; passed and so ordered. Time: 4:57 p.m.

The above agenda was posted at the Tracy City Hall on November 23, 2012. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk

January 15, 2013, 5:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

1. Call to Order - Mayor Ives called the meeting to order at 5:03 p.m.
2. Roll Call - Roll call found Council Members Rickman and Young, Mayor Pro Tem Maciel and Mayor Ives present.
3. Items from the Audience – Roger Birdsall withdrew his name from the list of applicants to be interviewed to fill the vacant City Council seat.
4. REVIEW, DISCUSS AND FINALIZE CANDIDATE INTERVIEW QUESTIONS AND INTERVIEW PROCESS TO FILL THE VACANT CITY COUNCIL SEAT – At the City Council meeting held on December 18, 2012, the Council reviewed options for selecting a candidate to fill the vacant Council seat. The seat became vacant on December 17, 2012, when Council Member Elliott resigned following his election to the County Board of Supervisors. The Council determined the process should include an interview with the three candidates who ran in the November 2012 election, Roger Birdsall (who withdrew from the process earlier in the meeting), Charles Manne and Ray Morelos.

At the December 18, 2012 Council meeting, the Council appointed a subcommittee consisting of Mayor Pro Tem Maciel and Council Member Rickman to compile a list of questions to be used during the interview process. The following questions were presented for Council consideration:

1. What prompts you to want to be a Council Member?
2. Do you have any specific area or areas of interest that prompt you to apply for consideration?
 - a. What distinguishes you from other applicants?
 - b. What has been your level of community involvement and how does that relate to council service?
3. What do you consider to be the four (4) most significant issues currently facing the Council and the City?
4. What is your understanding of the role of a Council Member in a Council-Manager form of government?
 - a. What is a council member's role regarding operational issues?
 - b. What is a council member's role regarding personnel issues?
 - c. If a council member receives a request or complaint from a citizen regarding city services, how should the council member deal with the matter?
5. What is your opinion regarding the city's economic development practices?
 - a. Do you agree with the practice of creating incentives to encourage some businesses to come to Tracy?
 - b. Would you want to change the practice and if so how?

- c. How should the city fund such incentives?
 - d. What else should the city be doing to promote economic development?
6. What position, if any, should the City take in regard to downtown development?
7. Could you give us your awareness and understanding of the City's General Plan?
 - a. Are you familiar with the growth management ordinance (GMO)?
 - b. What are your feelings regarding development agreements?
 - c. What changes, if any, would you like to see regarding how Tracy deals with growth?
8. What is your opinion regarding public safety in Tracy?
 - a. How should public safety staffing levels be determined?
 - b. Are you familiar with the police department's strategy to combat gang activity in Tracy and what, if any, changes would you like to see made to that strategy?
 - c. If fiscal restrictions forced a reduction to public safety budgets, what should be the council's role in resolving the problem?
9. What is your opinion regarding how the city manages its budget?
 - a. Have you reviewed the city budget?
 - b. What do you feel is an appropriate level of fiscal reserves?
 - c. If the city sees a budget surplus over the next few years as a result of Measure E, what should be done with the funds?
 - d. When Measure E expires what should be done if annual expenses continue to exceed revenues?
10. What is your opinion regarding how the city handles capital improvement projects (CIP)?
 - a. How do you feel CIP priorities should be determined?
 - b. Do you feel there is adequate public input in establishing CIP priorities?
 - c. Should the process be changed and if so, how?
 - d. What are your thoughts regarding CIP funding?

Mayor Pro Tem Maciel stated he and Council Member Rickman had put together the 10 questions. The questions were attached to the staff report and published as part of the Council agenda. Mayor Pro Tem Maciel added that if candidates did not address certain aspects of the initial question, the supplemental questions could be asked.

Mayor Ives invited Council comment.

Council Member Young stated that in order to avoid answering "yes" or "no" to Question 2 the candidates should explain their answers.

Mayor Ives suggested that following the word issues, "and opportunities" should be added to Question 3.

Following a brief discussion, the following process was agreed upon by the Council:

- There would be no limit on the amount of time allowed for candidates' answers.
- Mayor Ives would read all the questions including the supplemental questions.
- Ray Morelos would be interviewed first; Charles Manne would be interviewed second.
- Each candidate would be given the opportunity to present a closing statement.
- Mr. Manne would remain in Room 109 until Mr. Morelos had completed his interview.
- At the end of the interview process, each Council Member would be given the opportunity to comment, after which the Mayor would call for a nomination.

Mayor Ives invited Ray Morelos to approach the podium.

5. INTERVIEW PROCESS AND VOTING PROCEDURE – In response to Question 1, Mr. Morelos referred to his passion for Tracy, his experience as a former Council Member, and his ability to be an independent thinker, and team player. In the 1980s, Mr. Morelos stated he had worked with other Council Members on a number of important projects, including the Residential Specific Plan, the Outlet Mall and bringing in Yellow Freight. Mr. Morelos added he is a team player who can work with others to determine what is good for the City. In the future, the recession will end and new and exciting things will happen, and Mr. Morelos stated he wanted to be a part of that.

In response to Question 2, Mr. Morelos stated he has a business in the Downtown, and had seen what could happen when more business was brought in. Mr. Morelos stated he did not see additional business as competition, but as a benefit to the entire area. Mr. Morelos stated his 40 years of community involvement began as a substitute elementary teacher, and an employee of the South Tracy Improvement Association. He was a Counselor at Tracy High where he also coached cross-country and track. Mr. Morelos was employed for seven years by a company that offered counseling for substance abuse, was a Council Member for six years, and is a past member of Breakfast Lions, and Tracy Rotary. Mr. Morelos has served on Tracy Unified School Budget Committees, the Sutter Tracy Hospital Board, and is the 2012 past Chair of the Chamber of Commerce. Mr. Morelos founded the Tracy Latin Athletic Club and Tracy Hispanic Business Group. He is past president of the Southside Community Organization, and a board member of the Tracy City Center Association. Mr. Morelos also served on the Mayor's Gang Task Force, and the San Joaquin Council of Governments. Mr. Morelos pointed out that when a person leaves the Council, they usually retire or seek higher office. Mr. Morelos added that he has stayed in Tracy, which shows his passion for the community.

In response to Question 3, Mr. Morelos stated the number one issue is the budget, followed by education, public safety and quality of life issues. Mr. Morelos added bringing more businesses into the City and more restaurants into the Downtown will revitalize the entire community and provide additional opportunities for Tracy residents.

In response to Question 4, Mr. Morelos stated the Council is responsible for hiring the City Manager to manage the City. The City Manager is in charge of operations and personnel, and the Council should not be involved. Mr. Morelos added the Council has a responsibility to refer any complaint it hears to the attention of the City Manager. If the complaint is not resolved by staff it can be brought back to the Council.

In response to Question 5, Mr. Morelos stated the City is doing a good job promoting economic development, and agreed with offering incentives such as those that helped bring Macy's to Tracy. However, Mr. Morelos added that changing the practice to increase incentives cannot be done without hurting the budget. Mr. Morelos referred to the City of Manteca, which he felt had "given the ranch away," and added he did not want the City to do something that would hurt Tracy down the road.

In response to Question 6, Mr. Morelos stated he agreed with the position the City has taken with regard to the Downtown. Creating the Tracy City Center Association has helped the area and relieved the City of its responsibility for Downtown. With regard to the City taking the lead on the Transit Station, the Grand Theatre, and the Sixth Street Plaza, Mr. Morelos added that also helped the Downtown, but it is now up to the landowners and merchants to take over the responsibility.

In response to Question 7, Mr. Morelos stated he agreed with how the City deals with growth. The City's General Plan is the roadmap to future growth. It is a planning and policy document which addresses housing, transportation, economic development, public facilities, infrastructure, and open space. The General Plan was updated in 2011 and runs through 2025 when it will be updated again. The Growth Management Ordinance was put into place in 1987 by the City Manager and staff. It deals with all aspects of concentric growth, housing, infill, public facilities, and infrastructure that is already in place, but does not take away from public services, including police, fire and public works.

In response to Question 8, Mr. Morelos stated public safety staffing levels are related to the number of police officers per 1,000 population. The Chief of Police makes recommendations to the City Manager, who brings the recommendations to the Council. Mr. Morelos added he was familiar with the City's strategy to combat gang activity and added he believed there should be zero tolerance for gangs. D.A.R.E. is a good program, which provides prevention measures to school children at an early age. Regarding public safety budgets, Mr. Morelos stated that Measure E, the half-cent sales tax, has helped to put more money towards the Police Department, the Fire Department and Public Works. If a reduction in public safety budgets is necessary, Mr. Morelos stated he believed Council's role would be to continue Measure E.

In response to Question 9, Mr. Morelos stated the City had done a great job of managing its budget, and commended Zane Johnston on the excellent job he had done as the City's Financial Officer. Mr. Morelos added he had reviewed the budget and believed the reserve should be higher than 20 percent. The City needs to be conservative. Any budget surplus should be put towards "rainy day" funds. If annual expenses continue to exceed revenues when Measure E expires, Mr. Morelos stated he believed Measure E should be extended. However, the City has to be transparent, and let residents know where the money will be spent. If that is done, Mr. Morelos stated he believed the community would vote to extend Measure E.

In response to Question 10, Mr. Morelos stated the Capital Improvement Process (CIP) works and does not need to be changed. Mr. Morelos stated he had attended a number of public hearings and had seen the public give input. Staff should continue to provide financial breakdowns on how much projects cost. Mr. Morelos stated funding for the CIP

process is working well, and pointed out that money from developers was put aside to pay for City Hall. Taxpayers did not put out the money for City Hall.

In his closing statement, Mr. Morelos stated he would bring history to the Council, his knowledge of the City, and his 40 years of involvement with the community. Mr. Morelos added he loves Tracy and wants to be involved, and no matter what the decision is he will remain involved. Mr. Morelos stated he is a fourth generation Tracyite, who has a sixth generation grandchild, and he is not going anywhere.

Mayor Ives welcomed Charles Manne to the podium.

In response to Question 1, Mr. Manne stated God has given him the ability to work, and a willingness to serve the community. Mr. Manne commented on his long record of service with the Pregnancy Resource Center, Breakfast Lions, Grace Church, San Joaquin Council of Governments, and his four years as a Planning Commissioner. Mr. Manne added he had been encouraged to serve by community leaders who want to see "young blood" on the Council.

In response to Question 2, Mr. Manne stated he had lived in the community since 1989, and had worked with many community service groups, including nonprofits. Mr. Manne added he is in touch with the community, knows why people move here, what they like, and why they stay. Most residents want to get away from the fast pace of the Bay Area to raise their families and build upon a better community. Mr. Manne stated he was accessible to everyone including strangers who have reached out and asked him how to get things done in the City.

In response to Question 3, Mr. Manne stated the City has done a fantastic job with regard to financial stability, and should be commended. The Council stepped up with Measure E, although work still needs to be done to make sure revenues are in place to allow Measure E to sunset. Mr. Manne stated living in a safe community, equipping police and fire, and reassuring the community our schools are safe, as well as quality of life or livability concerns are significant issues. Residents want more amenities including ball fields and parks, not only for kids but for residents of all ages. Tracy is seen as a place to build a better community. Mr. Manne commented on Cordes Ranch and the opportunity it presents. The City can build more warehousing that reflects an image of San Leandro and Hayward, or be more selective and use a layering approach, which includes retail and light industry, to build a community that reflects a Dublin, Pleasanton, or Walnut Creek. Image is important. The City has to give visitors the impression that Tracy is a place where they want to live.

In response to Question 4, Mr. Manne stated the textbook definition of a Council Member is to create policy and give direction to staff. The City Manager gets direction and is responsible for seeing the policy through. The City Council is responsible for hiring the City Manager and the City Attorney. Council Members have a responsibility to be the "first men and women" of the City and to uphold themselves as professionals, not only behind the Council dais but also in the community. The City Manager is responsible for handling operational items and reporting to the Council. Working for Fortune 500 companies, Mr. Manne stated he had learned to respect the chain of command.

In response to Question 5, Mr. Manne stated as a Planning Commissioner he had received great reviews regarding economic development practices, and commended the City Manager on significant changes which have been made. The City has become more business friendly, and Mr. Manne referred to a number of new businesses in the City including BevMo, Macy's and Amazon. Mr. Manne stated the City has an opportunity to pick up some peripheral businesses in the next few years. Incentives are appropriate and should be used to help Tracy compete with other cities and to recruit new businesses which would benefit the City and its residents. Mr. Manne added he would not change the practice, but would continue to use incentives.

In response to Question 6, Mr. Manne stated the City has made its position clear through the General Plan, and the Downtown Specific Plan. The General Plan calls for infill development as a high priority and the City has spent tens of millions of dollars on Downtown over the last decade. The City's position should be to recruit businesses, in particular an anchor store or additional restaurant, or two, for the Downtown. Mr. Manne added a strong downtown core benefits the entire Downtown. The next step should be to follow the General Plan guidelines regarding infill, and to attract anchors to the town.

In response to Question 7, Mr. Manne stated as a Planning Commissioner he has had experience with the General Plan. It is the City's principal policy planning document, which is vetted publicly by the Planning Commission and the Council, as well as end users and stake holders. Mr. Manne added he was part of the process to update the Plan in February of 2011. Part of the document includes the Growth Management Ordinance which details how, when and where future development will occur. Mr. Manne stated Developer Agreements could be used on some projects, but not on others. Mr. Manne stated today's banking systems want to see Developer Agreements to ensure development can move ahead. Developer Agreements have to be mutually beneficial to the City and the developer, and as long as they are used appropriately Mr. Manne stated he was in favor of Developer Agreements. Future growth needs to be market based and focused on jobs and amenities which will improve the City.

In response to Question 8, Mr. Manne stated he felt safe in his home but added his expertise is in finance. The City's focus is on maintaining a safe place to raise children and conduct business. Mr. Manne added he had spoken with Chief Hampton and has confidence in his strategy. The Council is blessed to have two Council Members with experience in public safety. Mr. Manne stated he would rely on Mr. Hampton's 29+ years of experience in law enforcement to fill staffing levels, combat gangs and to fulfill public safety responsibilities. Mr. Manne stated he was familiar with the process of prevention/intervention/suppression which is a great tool. As a Council Member he will receive updates to make sure the process is doing its job. If fiscal restraints impact public safety in the future, Mr. Manne added he would rely on the City Manager and the Police Chief to determine the best options so that the level of safety that he and the residents of Tracy have come to expect would not be jeopardized.

In response to Question 9, Mr. Manne stated he had reviewed the budget. The City's 2012/13 budget totals just over \$112.8 million, and the General Fund balance at the end of March was approximately \$23 million. As a Financial Advisor he believed fiscal reserves of 20 per cent for fiscal year 2012/13 were reasonable and add a buffer of protection. As Measure E expires the City will need to forecast and plan accordingly to

make sure it has the revenues to make up for Measure E. Mr. Manne added any surplus should be added to the reserves for economic uncertainty, and used to incentivize and attract new businesses and job makers to Tracy.

In response to Question 10, Mr. Manne stated he has had more experience than most with Capital Improvement Projects (CIPs). CIPs include all future improvements such as widening Grant Line Road, repaving Bessie Avenue, and the addition of a sports complex or an animal shelter. A shortage of funds extends the timeframe for CIPs to come to fruition. If an item is listed as a CIP it means the City had foresight in putting the project together and the project is more apt to get funding. Staff provides updates on the CIP process to the Planning Commission, and Mr. Manne stated he had seen priorities change over the last three years due to the lack of funds to complete a project. Mr. Manne added the City does a great job of informing the public and receiving public input, but added he would encourage even more public input on how the City prioritizes its CIPs.

In his closing statement, Mr. Manne stated the Council had heard from two capable and qualified applicants, and he thanked Mr. Morelos for his service to the community and for running a clean campaign. Mr. Manne asked Council for their nomination and their vote. Mr. Manne stated his appointment as a Planning Commissioner, his experience on San Joaquin Council of Governments and his Master's degree in finance will benefit the City during budget and finance discussions. Mr. Manne stated he understood the role of a Council Member and would not be beholden to any special interest group but would keep the best interests of Tracy in mind. Mr. Manne added that no matter who was selected he would support the Council's decision and work with everyone to make Tracy a special place. He thanked Council for their consideration and added he looked forward to the outcome.

Dan Sodergren, City Attorney, suggested that in order not to violate the Brown Act, the meeting should be opened up for public comment. Mayor Ives invited public comment.

Dave Helm stated the City was fortunate to have qualified Council Members and encouraged the Council to make an appointment so the City would have a full Council. Following the Council's decision, Mr. Helm asked for an explanation of why one candidate was chosen over the other candidate.

Mr. Morelos' daughter expressed support for her father, Ray Morelos.

Matthew Palomino expressed support for Ray Morelos and asked for feedback following the Council's decision.

Alma Morley, 4262 Middlefield Drive, expressed support for Charles Manne, and added she would like to see new people with different ideas appointed to the Council.

Linda Jimenez, P.O. Box 1065, stated the City has two qualified candidates; both are businessmen with financial backgrounds. Mr. Morelos has served the City as a former Council Member; Mr. Manne currently serves as a Planning Commissioner. Ms. Jimenez also commended Mayor Ives on his many successful elections and for the leadership that he has brought to the City.

John Morley, 4262 Middlefield Drive, expressed support for Charles Manne. Mr. Morley added that although both candidates have financial backgrounds Mr. Manne's degree and his experience as a Planning Commissioner are more recent.

Margaret Edwards, Gomes Court, Tracy resident for 23 years, agreed with Ms. Morley and expressed her support for Charles Manne.

Mayor Ives invited Council comment.

Mayor Pro Tem Maciel thanked all three candidates and commented on the high quality of their campaigns. The City is fortunate to have two exceptional individuals. Mr. Morelos is a gentleman who has a long history with the City and is deeply involved with the community. Mayor Pro Tem Maciel added he agreed with Mr. Morelos' comment that the Downtown should now stand up for itself, but disagreed with his comment regarding continuing Measure E. Mr. Manne's experience is more recent; he has experience with the Council of Governments, and specific expertise in budgets, growth and the CIP process. Mayor Pro Tem Maciel expressed support for Mr. Manne, and congratulated both candidates on having done an excellent job.

Mayor Ives stated he was looking for the best candidate for the City. Mayor Ives added that person needs to:

- understand issues and opportunities, especially fiscal issues;
- have a great view of economic development;
- recognize the opportunities related to the 580 corridor;
- have a good grasp of the current General Plan and Downtown Specific Plan;
- understand and be passionate about economic development, budget issues and Measure E.

Mayor Ives expressed his support for Mr. Manne, for his relevant current experience, his views on the 580 corridor, his knowledge of fiscal issues, including the budget, and his position on Measure E.

Council Member Rickman stated both candidates recognize the importance of public safety, improving the quality of life in Tracy, budgeting, and bringing more jobs to town. However, regarding community involvement Council Member Rickman stated that after leaving the Council in the 1980s, Mr. Morelos stayed in town, worked and became involved in the community. Council Member Rickman expressed his support for Mr. Morelos.

Council Member Young stated both candidates are smart men, business people with different experiences. Both have their own businesses, although Mr. Manne has more financial expertise. Council Member Young added it was important to have fresh ideas as the City moves forward, although she did not believe that an older candidate would not have fresh ideas. Council Member Young stated both men are involved in various civic organizations in Tracy and pointed out that Mr. Morelos had remained in the community since he left the City Council. However, as a Planning Commissioner Mr. Manne's experience is more current, and Council Member Young added she agreed with Mr. Manne's opposition to extending Measure E. Council Member Young commented

on how much experience she had gained during the past two years, and pointed out there would be another election in 2014. Council Member Young expressed her support for Mr. Morelos for his experience, forward thinking and for his value to the Downtown.

Mayor Ives requested a motion. Mayor Pro Tem Maciel motioned to appoint Charles Manne to fill the vacant seat on the City Council. Mayor Ives seconded the motion. Roll call vote found Mayor Pro Tem Maciel, and Mayor Ives in favor; Council Member Rickman and Council Member Young opposed. The motion failed due to a tie vote 2:2.

Council Member Young motioned to nominate Ray Morelos for City Council. Council Member Rickman seconded the motion. Roll call vote found Council Member Young and Council Member Rickman in favor; Mayor Pro Tem Maciel and Mayor Ives opposed. The motion failed due to a tie vote 2:2.

Mayor Ives stated the Council was deadlocked and asked Dan Sodergren, City Attorney for other options. Mr. Sodergren stated if Council fails to make an appointment within 60 days of the vacancy, it will automatically go to a special election. The 60-day period will run until February 15, 2013.

Mayor Pro Tem Maciel motioned to direct staff to prepare for a special election. The motion failed due to the lack of a second.

Mayor Ives asked Maria Hurtado, Assistant City Manager, to comment on how other cities handled similar situations.

Ms. Hurtado referred to a memo which had been distributed to Council prior to the meeting. Ms. Hurtado stated the Council determines the process to fill a vacant Council seat. However, the research showed there is no specific uniform procedure. Most cities utilize an open application process to avoid a special election. The City of Pleasanton has a local ordinance that requires a special election be conducted, by mail, to fill a vacant Council seat. Ms. Hurtado stated the Council could conduct another round of discussions or hold a special election, but emphasized the decision is up to the Council.

Mayor Ives summed up the options which included hearing more from the candidates this evening, continuing the process to another Council meeting, a candidate could bow out, or a special election could be held.

In response to a question from Council Member Young, Mr. Sodergren stated a special election would be open to all candidates and could be conducted through an all mail ballot. The timing would be the same; the cost may be different.

Maria Hurtado, Assistant City Manager, added the Council also has the option to conduct an open application process before February 15, 2013, which would allow any Tracy resident to apply for the position prior to a special election being held. Council Member Young stated she was not in favor of opening up the process to more candidates.

Mayor Ives suggested the interview process could be repeated with the two candidates or it could be opened up to more applicants; the Council could continue to hear more

from the two candidates tonight; or, if a decision cannot be made a special election would be held in June 2013. Continuing the process would give the Council the basis for another round of nominations. However, if the end result is the same then the process would be futile. Mayor Ives added that unless there are any other ideas on furthering the process between these two candidates or opening up the process to include other applicants, then the only other option is a special election.

Council Member Rickman stated another session could possibly result in the same vote. A special election could cost the City \$250,000, would not be fiscally responsible and could not take place until June 2013. The possibility of more deadlocked decisions could jeopardize the economic development gains the City has made. Council Member Rickman stated the City is on the right track and he did not want to jeopardize any future possibilities. The Council has two great candidates, and needs to come together for the common good. Council Member Rickman stated he believed the strength of a City Council is determined by the difficulty it is able to overcome. Council Member Rickman added it is not possible to please everyone, but whoever is appointed will be welcome and the Council will work hard to make Tracy a better place. The City has two great candidates, both with strong support. Council Member Rickman suggested taking the candidates out of it, and considering what would be best for the City. Tracy is a unique City with a small town atmosphere and Council needs to put this aside and work together. Council Member Rickman stated that for the sake of the town he would change his nomination.

6. Appointment of Successful Candidate - Council Member Rickman motioned to appoint Charles Manne to the City Council. Mayor Pro Tem Maciel seconded the motion. Roll call vote found Council Member Rickman, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Young opposed. Motion carried 3:1.
7. Swearing In Ceremony – Mayor Ives congratulated Mr. Manne and administered the Oath of Office. Council Member Manne took his seat on the dais.
8. Adjournment – Mayor Pro Tem Maciel motioned to adjourn the meeting. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered. Time: 7:04 p.m.

The agenda was posted at the Tracy City Hall on January 10, 2013. The above are summary minutes. A recording is available from the City Clerk's office.

Mayor

Attest:

City Clerk

January 15, 2013, 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.

ROLL CALL – Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.

Council Member Manne commented on his 10-month experience toward becoming a Council Member and thanked members of the community who had supported him and his wife during the process. Council Member Manne verbally announced his resignation as a member of the Planning Commission. Mayor Ives welcomed Council Member Manne to the Council.

Leon Churchill, Jr., City Manager, introduced Margie Goulart, Public Works, City of Tracy's 2012 Employee of the Year.

Leon Churchill, Jr. City Manager, presented the Employee of the Month award for January 2013, to Ralph Martinez, Public Works.

The Youth Advisory Commission's Annual Report was presented by Commissioners Arashpreet Gill and Rebecca Fuller.

Mayor Ives presented Certificates of Appointment to new Youth Advisory Commissioners: Valarie Amador, Bridgette Hall, and Savannah Salaymeh.

Mayor Ives and Police Chief Hampton swore in Sergeant Dean Hicks and Lieutenant Mike Vieira.

Zane Johnston, Administrative Services Director, presented the Distinguished Budget Award to the City of Tracy and Allan Borwick, Budget Officer.

Mayor Ives recognized Zane Johnston, outgoing Administrative Services Director for his 27 years of service to the City and Council. Mr. Johnston thanked his staff and peers for their years of support.

Mayor Ives recognized Kevin Tobeck, outgoing Public Works Director, for his 24 years of service. Mr. Tobeck thanked City staff and his family for their support and encouragement during the years.

Mayor Ives recognized Carole Fleischmann, Interim City Clerk, for her support of the City Council and years of dedicated service. Ms. Fleischmann thanked the City Attorney's office and her current and former supervisors for their support along with her co-workers for their friendship.

1. CONSENT CALENDAR – It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt the consent calendar. Roll call vote found all in favor; passed and so ordered.

- A. Approval of Minutes – Regular meeting minutes of October 2, 2012, October 16, 2012, November 7, 2012, November 20, 2012, and Closed Session minutes of December 18, 2012, were approved.
 - B. Authorization of Amendment No. 3 to Professional Services Agreement with CH2M Hill for Preparation of an Update to the Wastewater Revenue and Rate Program and Authorize the Mayor to Execute the Agreement – Resolution 2013-001 authorized the amendment.
 - C. Approve a Professional Services Agreement (PSA) With Stantec Consulting Services, Inc. (Stantec) of Modesto, California, to Provide Professional Design Services Related to the Widening of Valpico Road East of Tracy Boulevard and West of Macarthur Drive Project - CIPs 73061 And 73095, and Authorize the Mayor to Execute the Agreement – Resolution 2013-002 approved the Professional Services Agreement.
 - D. Authorize Amendment of the City's Classification and Compensation Plan and Position Control Roster by Approving the Establishment of a Classification Specification/Job Description for the Reserve Firefighter Position – Resolution 2013-003 authorized amendment of the City's Classification and Compensation Plan.
2. ITEMS FROM THE AUDIENCE – Pamela Rigg, School Administrator Montessori Elementary School, requested help with the development fees for a new school site on West Mount Diablo Boulevard. Ms. Rigg distributed a letter to the Council and requested an agenda item be scheduled for a future Council meeting.
- Paul Miles, 1397 Mansfield Street, stated he had had direct contact with a Police Officer who was promoted earlier in the evening.
- Leroy Ornellas, former Tracy representative on the San Joaquin County Board of Supervisors, commended Council on reaching a decision to fill the vacant seat on the City Council. Mr. Ornellas also gave an overview of projects he had been involved in during his time as County Supervisor.
3. APPROVE NAME OF THE YOUTH SPORTS FIELDS LOCATED ON NORTH TRACY BOULEVARD - Vanessa Carrera, Management Analyst II, presented the staff report. Ms. Carrera stated a Parks and Community Services Commission subcommittee was formed on October 4, 2012 to evaluate suggested names from the community for the naming of the Youth Sports Fields. Naming nominations were solicited from the community through press releases, newspaper advertisements, direct mail, email, and on the City website. Over 25 nominations were received. The Commission has selected five names to be presented to Council for consideration; however Council can select and approve any name they choose.
- At full build-out, the Youth Sports Fields are planned to consist of approximately 166-acres of active sports areas. Phase 1 of approximately 70.2 acres, includes 12 baseball fields, 8 soccer fields and four parking lots. The Youth Sports Fields will ultimately serve as the largest multi-sport facility in Tracy and will help accommodate the growing need for sports facilities in the community. The full conceptual plan for the Youth Sports Fields also includes a passive and active recreational area located on the southern and western ends of the Youth Sports Fields. At final build out, additional recreational

activities may be made available (i.e. – extreme sports, walking trails, biking and fishing) for people of all ages.

On September 4, 2012, Council provided direction to staff on the naming of the Youth Sports Fields, previously referred to as Holly Sugar Sports Fields. Three naming options were presented for Council consideration, and staff was directed to pursue both the Parks Naming Policy (2004-096) and a For-Profit Naming Rights Agreement for the naming of the Youth Sports Fields. This will eventually result in a name with community and business sponsorship significance. Staff is first pursuing the Parks Naming Policy process for naming, as additional time and resources are needed to solicit and secure sponsorship for a For-Profit Naming Rights Agreement.

Per Resolution 2004-096, a subcommittee of the Parks and Community Services Commission evaluated and prioritized naming nominations submitted by the community and presented priority nominations to the full Commission for review and consensus.

The Parks Naming Subcommittee met on November 20, 2012, and performed an initial screening of the nominations, as well as past park nominations submitted by the public. The subcommittee selected five nominations to be brought before the Parks and Community Services Commission during a special meeting held on November 26, 2012. The nominations included:

1. Tracy's Great Park
2. Tracy Promise Park
3. Tracy's Great Promise Park
4. Tracy Acres Park
5. Tracy Celebration Park

The full Commission evaluated and discussed the subcommittee's nominations, the list of community nominations, and suggested additional names for consideration. The Commission narrowed down the nomination selections and recommended the following names to be brought before Council for consideration:

1. Tracy Sports Center
2. Tracy Community Park
3. Greater Tracy Sports Park
4. Tracy Celebration Park
5. Larch-Clover Sports Complex

Council may also propose additional park names that were not included on the list of community and Commission nominations. Council may select and approve any name they choose.

Staff recommended that Council approve the name of the Youth Sports Fields located on North Tracy Boulevard.

Mayor Ives asked why the word "youth" was not mentioned on either list. Rod Buchanan, Interim Public Works Director, stated he believed the reason was because the Park would be more than a youth sports park at build out.

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

Mayor Pro Tem Maciel suggested the name "Tracy Legacy Park" or "Fields", since it is intended to be a destination park for regional tournaments.

Council Member Manne asked if marketing agencies were recruited or contacted. Ms. Carrera stated no funds were designated to pursue outside marketing efforts. Council Member Manne indicated the name should spark the attention of those visiting the park.

Council Member Young stated there was only one name on both lists - Tracy Celebration Park, but indicated she liked Tracy Legacy Park or Fields. Council Member Young suggested "Brent Ives Youth Sports Center", due to the Mayor's commitment to get the fields built.

Council Member Rickman indicated he liked Mayor Pro Tem Maciel's suggestion of Legacy Fields or Park or Tracy Legacy Fields. Council Member Manne stated he liked Legacy Fields. Leon Churchill Jr., City Manager, added this park would be one of the largest in northern California.

Council Member Young stated there were other parks with the word Legacy in their name.

Mayor Pro Tem Maciel made a motion to adopt Resolution 2013-004 naming the North Tracy Boulevard park site as Legacy Fields. Council Member Manne seconded the motion. Voice vote found all in favor; passed and so ordered.

4. DISCUSS AND PROVIDE DIRECTION TO STAFF ON OPTIONS TO FURTHER PROTECT PARK USES AT TRACY BALL PARK – Dan Sodergren, City Attorney, presented the staff report. On September 18, 2012 and October 16, 2012, City Council discussed the disposition of certain properties in the City including the Tracy Ball Park. Tracy Ball Park is an 11.27 acre sports field located on the east side of Tracy Boulevard just south of Grant Line Road.

At the Council meeting on October 16, 2012, Council decided against relocating the Tracy Ball Park complex to the Youth Sports Complex and the City-owned Holly Sugar property. Council also requested that staff explore various options to further protect park uses at the Tracy Ball Park.

State law contains strict requirements for discontinuing, abandoning and disposing of land that has been used as a public park. These requirements are contained in Government Code sections 38440 to 38462. Before discontinuing and abandoning the use as a public park or any land that has been dedicated as a park, or placed in park use by the City (such as the Tracy Ball Park property), the City must first take the following steps:

1. The Council must adopt a Resolution declaring that public interest or convenience requires the discontinuance of the use of such land as a public park, and that the Council intends to call a special election to submit the question of discontinuance to the City electors. The Resolution must be published twice in the newspaper and posted along the boundaries of the park.
2. The Council must hold a hearing on the proposed abandonment and discontinuance.
3. Written protests are deemed sustained unless overruled by two-thirds vote of the Council.

4. If protests are overruled, the Council may adopt an ordinance calling, and fixing the date of, a special election to submit to the City electors the question of discontinuance and abandonment of the use of the park.
5. If a majority of the electors voting on the proposition are in favor of it, the Council must adopt an ordinance declaring that the use of the property for park purposes is discontinued and abandoned.
6. If less than a majority of electors vote for it, Council may not initiate proceedings (using the same process as set forth above) for discontinuance of the park use for one year after the election.
7. If a majority of the electors vote to discontinue and abandon the park use, the land is deemed to be held by the City in fee and the City may sell or otherwise dispose of the property in the same manner as it may dispose of other City property.

The Council expressed an interest in making sure that the Tracy Ball Park would remain in use as a public park, and requested that staff explore various options to further protect park uses on the property. The following are some options for Council to consider:

A. Designating the Tracy Ball Park as a Historical Site.

Several national, state and local programs are available to protect historic resources. These include the National Register of Historic Places administered by the U.S. Department of Interior's National Park Service. The California Department of Parks and Recreation's Office of Historic Preservation also has several programs including: The California Historic Landmark Program; the California Points of Historical Interest Program; and the California Register of Historical Resources.

It is unclear whether the Tracy Ball Park would qualify for protection under any of these programs. However, if it did, these programs would provide little additional legal protection. The main effects of designation under most of these programs include: allowing building code alternatives; property tax reductions; and limited protection under the California Environmental Quality Act ("CEQA"). These national and state programs impose no legal restraints on the use of the property and do not require preservation in any particular form.

The City of Tracy also has certain designated Historical Landmarks. In 1978, the City recognized several structures in the City as "architecturally and historically significant to Tracy's early history." The City did not designate any sites without structures, nor has the City adopted a historic preservation ordinance.

Council could adopt a Resolution designating the Tracy Ball Park as a City of Tracy historical resource. However, this also would have little legal effect other than limited protection under CEQA.

Because of the limited legal protections of designating the Tracy Ball Park as a historical site, staff is not recommending this alternative.

B. Recording a Land Conservation Easement.

State law authorizes the recordation of a "conservation easement" or an "open space easement." Those types of easements can be recorded against a property and would remain as restrictions on the title. Staff considered whether the recording of such an easement on the Tracy Ball Park property might be appropriate as an additional measure to secure its protection as a park. The purpose of the conservation and

open space easements do not reflect the intention to use property for active park purposes, but only for maintaining property in its natural, open-space or scenic condition. Therefore, staff did not recommend this alternative.

C. Rezoning the Property from Low Density Residential to Parks.

The Tracy Ball Park property is designated in the General Plan as Parks. The property is designated in the Zoning Ordinance as Low Density Residential (LDR), which allows parks, among other uses. (Tracy Municipal Code ("TMC"), § 10.08.1200 (a)(4).) Council could direct staff to bring back a zoning amendment to rezone the Tracy Ballpark property to Parks, thus precluding other uses. (The Park (P) Zone is relatively recent, having been added to the Zoning Ordinance in 2012.)

D. Recording a Declaration of Restrictions.

The City could record a Declaration of Restrictions on the Tracy Ball Park property, specifying its use as a public park, identifying that it is subject to the restrictions contained in Government Code sections 38440 to 38462. This may provide a useful reference in the future.

Some minimal fiscal impact would result due to staff resources to rezone the property and record a Declaration of Restrictions.

Staff recommended that Council direct staff to: initiate a rezoning of the Tracy Ball Park property from Low Density Residential to Parks; and record a Declaration of Restrictions on the property.

Mayor Pro Tem Maciel indicated he was unclear what the long term use of the site would be recognizing that some of the uses would migrate to Legacy Fields. Mr. Sodergren indicated there were minor exceptions to the state law restrictions and he would need to review those restrictions further.

Mayor Pro Tem Maciel suggested looking at what the future will hold for that site. Council Member Rickman stated he would like to have a Declaration of Restrictions included.

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

Robert Tanner, 1371 Rusher Street, asked if any other park had been rezoned since the new Ordinance came into effect in 2012. Mr. Sodergren stated he did not believe they had conformed zoning on other park sites yet. Bill Dean, Assistant Development Services Director, stated staff had initiated the Park Zone as part of the Municipal Code update to establish Legacy Fields as a park. In the past, parks were part of the Residential Zone. Mr. Tanner urged Council to rezone Tracy Ballpark to protect it as a park.

Linda Jimenez, P.O. Box 1065, concurred with the previous speaker indicating it was in the best interest of the community to rezone this site as a park. Ms. Jimenez suggested a portion of the park could be converted to additional parking.

Council Member Rickman asked if Council had discretion to adopt a Resolution designating the park as a historical resource. Mr. Sodergren stated if a project is considered a historical resource, it is treated differently under CEQA.

Mayor Ives asked if the addition of parking would be subject to CEQA. Mr. Sodergren explained the CEQA process regarding historical sites.

Mayor Pro Tem Maciel asked if a portion of the park was named after an individual. A member of the audience stated Tom Albano.

Mayor Pro Tem Maciel motioned to direct staff to initiate a rezoning of the Tracy Ball Park property from Low Density Residential to Parks and record a Deed of Restrictions on the park. Council Member Rickman seconded the motion.

Council Member Rickman proposed including Option A – designating the site as a historical resource.

Voice vote found all in favor; passed and so ordered.

Mayor Pro Tem Maciel stated he believed by taking the previous action they have protected the park.

Council Member Rickman offered a brief history of the park, and suggested that because there are no buildings on the site, it should not be eliminated as a potential historical site.

Mr. Sodergren stated historical sites were included in a Resolution from 1978 which includes 50 structures. Mayor Ives asked if there were restrictions on the current historic properties. Mr. Sodergren stated under CEQA the property, if changed, could trigger a limited scope Environmental Impact Report to determine if the changes would substantially affect the historical site. Mr. Sodergren added that if designated as a historical site, staff would have to analyze and make findings to determine whether the changes would take away from the historical nature of the property. A brief Council discussion occurred regarding possible future changes to the park.

Mayor Ives summarized that the action Council has taken will preserve the park for its intended use and that funds should be found to renovate the park.

5. APPROVAL OF AN AGREEMENT WITH THE CITY OF STOCKTON TO PARTICIPATE IN THE COMMUNITY CORRECTIONS TASK FORCE AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT; ACCEPT ASSEMBLY BILL 109 (AB 109) PRISON REALIGNMENT FUNDING TO HIRE ONE TEMPORARY FULL-TIME POLICE OFFICER; AND APPROPRIATE FUNDING FOR ONE FULL-TIME POLICE OFFICER AND RELATED EQUIPMENT FOR FISCAL YEAR 2012-13 – Police Chief Hampton presented the staff report. The purpose of California Assembly Bill 109 (Prison Realignment) is to reduce the State's prison population by shifting responsibility of certain felons to local government.

Implementation of this bill began in October 2011, and has resulted in an increased number of offenders returning to local communities. Although programming is provided to help reduce recidivism, Tracy and other cities within San Joaquin County have experienced an increase in crimes committed by previous offenders. Local law enforcement is challenged to adequately maintain public safety services given reduced revenue, budgets, and staffing. It was recommended that a Community Corrections Partnership Task Force be established and funded through AB 109 to assist with local implementation efforts.

By law, realignment is administered at the county level by a seven-member policy body known as the Community Corrections Partnership (CCP). San Joaquin County's CCP is chaired by the Chief Probation Officer and comprised of the Sheriff, District Attorney, Public Defender, Director of Behavioral Health, a representative of the Superior Court, and a Police Chief. The CCP determines how Realignment funds allocated from the State of California are utilized for local programs, with final approval by the Board of Supervisors. For Fiscal Year 2012-13, the CCP and the Board of Supervisors approved \$500,000 to fund a regional law enforcement task force that will focus on Realignment offenders in the communities of San Joaquin County.

The mission of this Task Force is to reduce crimes committed by AB 109 offenders, promote the work of the CCP, and support the premise of prison realignment. To accomplish this mission, the Task Force will implement a specific Problem Oriented Policing (POP) model and focus on those reoffenders who are wanted for a new crime or compliance violation, have a history of violence, are a repeat offender or are at high risk of becoming a repeat offender.

The Stockton Police Department will act as the host agency, responsible for the day-to-day operation of the Task Force and its members. Additional agency members are expected to include one Police Officer from the cities of Tracy, Manteca and Lodi, all of whom will be supported with realignment funding. In addition, but separate from realignment funding, the San Joaquin County Probation Department will be providing one or more Probation Officers to the Task Force. The blend of Police Officers working in partnership with officers from Probation will strengthen and enhance the effectiveness of the Community Corrections Partnership Task Force.

To participate in the Task Force, the City of Tracy will hire one additional temporary fulltime Police Officer after January 1, 2013, as agreed in the Memorandum of Understanding with the City of Stockton.

A proposal was submitted and included in Memorandum of Understanding with the City of Stockton to provide \$500,000 to fund a Community Corrections Partnership Task Force for one year. Subsequent years of funding will be dependent on the State's budget as well as the priorities of San Joaquin County. The funding is intended to cover the salary and benefits of the staff assigned to the Task Force (\$101,250 for nine months calculated at \$11,250 per month or \$135,000 annually), and equipment costs, to include a marked vehicle (\$27,115) and safety equipment (\$6,124) for a total of \$134,489.

Staff requested expanding the current Police Department by one additional Police Officer. The new position will be hired as a temporary full-time Police Officer. The funding for this position for the second year Fiscal Year 2013-14, is contingent on the State's budget as well as the priorities of San Joaquin County. If the funding is not renewed, the temporary position will be left unfunded. It has been projected, over the next year, there will be several vacancies created through upcoming retirements. A vacant position would allow the temporary position to be moved to the full-time permanent position. This would then leave the temporary unfunded position vacant reducing the staffing levels from 86 back to 85 positions.

The Board of Supervisors of San Joaquin County met and approved the San Joaquin County Public Safety Realignment Year 2 Budget on September 25, 2012, as well as a contract with the City of Stockton.

The agreement is not budgeted for Fiscal Year 2012-13 and will require a budget authorization of \$101,250 in Fund No. 101-51210-111-00000 for salary and benefits. A one-time allocation of \$27,115 for the marked car, and \$6,124 for the safety equipment is also needed. The total allocation will be \$135,000. A new account number within the Police Department's AB109 Prison Alignment Fund will be set up to monitor and maintain a record of the costs associated with the Task Force.

The San Joaquin County Public Safety Realignment Year 2 budget includes \$500,000 to be allocated for this Task Force. Those funds will be monitored and maintained by the Stockton Police Department and actual costs of the participating agencies will be reimbursed on a quarterly basis. Funding of \$135,000 will be provided by the City of Stockton from the AB109 Prison Realignment allocation from the State of California.

If funds are not approved by the State, the Council will have the following alternatives:

- Council may recommend absorbing the position into an anticipated vacancy.
- In the event there is no vacancy, the position will be eliminated.

Staff recommended that Council approve the Agreement with the City of Stockton to participate in the Community Correction Task Force; authorize the Mayor to execute the agreement; Accept Assembly Bill 109 (AB109) Prison Realignment Funding to hire one full-time Police Officer; and appropriate funding for one full-time Police Officer and related equipment for Fiscal Year 2012-13.

Mayor Pro Tem Maciel asked if the Community Correction Board makes the recommendations. Chief Hampton stated yes. Mayor Pro Tem Maciel asked if funding evaporated would the vehicle become City property. Chief Hampton stated the City would be responsible for maintenance and it would become part of the regular fleet.

Mr. Rusher asked if the Task Force had to be approved by the Bankruptcy Judge. Chief Hampton stated no, the City of Stockton is a recipient of the program.

Mayor Pro Tem Maciel moved to adopt Resolution 2013-005 approving the agreement with the City of Stockton to Participate in the Community Correction Task Force; authorizing the Mayor to execute the agreement; accepting Assembly Bill 109 (AB109) Prison Realignment Funding to hire one full-time Police Officer; and appropriating funding for one full-time Police Officer and related equipment for Fiscal Year 2012-13. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

6. AUTHORIZATION TO NEGOTIATE A DEVELOPMENT AGREEMENT WITH THE TRACY HILLS PROJECT OWNER, LLC, RELATED TO LANDS OWNED BY THE TRACY HILLS PROJECT OWNER, LLC, WITHIN THE TRACY HILLS SPECIFIC PLAN LOCATED AT CORRAL HOLLOW ROAD AND I-580, APPLICATION DA13-0001 - Bill Dean, Assistant Development Services Director presented the staff report. Recent Council direction to pursue a Development Agreement (DA) related to the Tracy Hills project dates back to April 18, 2006, related to application number 1-06-DA. At that time, staff was directed to pursue negotiations. At the request of the owners, however, those negotiations never concluded and did not result in Planning Commission review or Council action. It has been approximately five years since staff and Tracy Hills representatives discussed DA terms.

Currently, the Tracy Hills project has a new ownership makeup with new owners interested in building the project. An application (DA13-0001) was filed on January 7, 2013, for a DA.

In 2004, per Resolution 2004-368, Council adopted DA procedures. These procedures establish a two-step process for evaluating DA applications. The first step requires an application for a DA to include information such as property owner signatures, proposed term of the agreement, proposed public benefit, a description of the property and proposed land uses, among other information related to the property.

The DA procedures also require Council authorization to negotiate prior to staff entering into negotiations. The second step involves Planning Commission review and Council review and consideration of the DA at public hearings. This step occurs after staff and the applicants have negotiated draft terms and have returned to Council for review and direction. Staff received a letter from The Tracy Hills Project Owner, LLC requesting a DA and outlining the initial public benefit and generally requested terms for a DA. Given the location and size of the Tracy Hills project, initial infrastructure investments will be costly. A DA is an appropriate mechanism to provide clarity and certainty to the developers of the phasing of infrastructure. Therefore, it is not surprising that the majority of the requested DA items relate to infrastructure, timing of necessary improvements, and infrastructure financing. While still requiring negotiation, the list generally includes the following:

Developer Benefits:

- Vesting Rights
- Long term Community Facilities District to finance project infrastructure
- Timing of program infrastructure funding
- Phasing of infrastructure
- Use of interim infrastructure
- Timing of development impact fee payment of Public Benefits
- An integrated parks and open space system open to the community
- Up to \$5 million dollars for additional community recreational facilities, programs, or improvements or other recreational needs as determined by Council at a future date.

Subject to Council authorization, staff would begin negotiating a DA with The Tracy Hills Project Owner, LLC. Prior to completing a Draft DA, a summary of the proposed terms and DA status will be brought to Council for consideration and direction. Once DA terms are finalized, the DA will be drafted and environmental review under the California Environmental Quality Act (CEQA) will be conducted. The applicant has expressed a desire to complete these processes by the end of 2013.

There will be no impact to the General Fund as a result of this request. Staff time will be funded by the applicant in accordance with a City approved Reimbursement Agreement dated August 7, 2001.

Staff recommended that Council authorize staff to negotiate a DA with The Tracy Hills Project Owner, LLC.

Mayor Ives asked for confirmation that staff was looking for authorization to negotiate. Mr. Dean stated that was correct.

George Riddle, 1850 Harvest Landing Lane, asked Council to be mindful of the airport runway located opposite the proposed development.

Jim Howell, 340 Hunter Trail, suggested giving Tracy Hills 25 years of vested rights was too much considering things change rapidly. Mr. Howell suggested five years might be appropriate. Mr. Howell voiced concerns with the wording "up to \$5 million" and the lack of job generation from the project.

John Palmer, Tracy Hills, 672 W. Eleventh Street, stated he was excited about embarking on the entitlement process of Phase 1 for Tracy Hills. Mr. Palmer urged Council to provide direction to staff to negotiate for the next 6-9 months.

Council Member Rickman motioned to approve Resolution 2013-006 authorizing staff to negotiate a DA with The Tracy Hills Project Owner, LLC. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

7. ADOPT A RESOLUTION APPROVING A PROPERTY TAX SHARING AGREEMENT BETWEEN THE COUNTY OF SAN JOAQUIN AND THE CITY OF TRACY - Andrew Malik, Development Services Director, presented the staff report. Before land can be annexed to a city, there must be a Tax Sharing Agreement in place between the City and the County. Such agreement concerns the sharing of approximately 35 cents of every property tax dollar. This 35 cents is known as the "local portion" of property tax as the remaining 65 cents goes to schools and the State of California. Historically, all of the cities in San Joaquin County have had the same agreement with the County. Following is a history of the previous tax sharing agreements.

Prior to 1995

County 65% (of the 35 cents) and City 35%

1995 to 6/15/2003

County 90% City 10% if any relevant Fire District also detaches

County 95% City 5% if any relevant Fire District does not detach (This applies to Tracy since Tracy Rural Fire did not detach) The Gateway annexation fell under the 95% / 5%

10/1/03 – 9/30/10

County 80% City 20% for detached Fire Districts

County 85% City 15% for Fire Districts that do not detach.

In this agreement the County increased the percentage going to a City from the previous agreement (1995 to 2003) if the City would adopt a County facilities fee. All cities in San Joaquin County have adopted and collect a development impact fee for County facilities and remit these fees to the County.

The County's proposed Tax Sharing Agreement was a continuation of the most recent Tax Sharing Agreement:

- County 80% City 20% for detached Fire Districts
- County 85% City 15% for Fire Districts that do not detach

This formula would be for all new annexations. Previous formulas would remain in place as described above. Since the City of Tracy and all other cities in San Joaquin County, have already adopted the County Facilities Fee, staff requested that all areas of the City of Tracy be subject to the new property tax sharing formula. For example, staff

requested that the Gateway development area not be subject to the current (95%/5%) tax sharing formula, but instead be consistent with the current 85% County, 15% City since the Fire District was not detached.

Other cities in San Joaquin County are also negotiating new Tax Sharing Agreements with the County. The City of Tracy will likely be the first city to adopt a new tax sharing agreement with the County. There are a number of proposed annexations being contemplated for the City of Tracy, which is why there has been a push to complete this Tax Sharing Agreement as quickly as possible.

In order to have consistent Tax Sharing Agreements throughout the County, staff has requested that a clause be inserted within this agreement stating that should uniform terms be established for other cities in the County, this agreement would be amended to conform to those standards. San Joaquin County has agreed with this request and has included language in the agreement addressing this point.

Discussions continue with San Joaquin County about modifying the tax sharing split for Tracy Hills, which would currently have the County receiving all the property taxes. Although no change could be achieved at this time, there is commitment to work on the issue and resolve with a mutually agreeable outcome in the future.

If an annexation of land to the City were to be approved during the term of this agreement, the property tax split (of the 35 cent local portion) would be County 85% and City 15%. This means the City would receive just 5.25 cents of every property tax dollar paid by land owners in the annexed area (15% x 35 cents). There would be additional property tax dollars collected as part of the Gateway project with the proposed new tax formula.

Staff recommended that Council approve the 2012 Property Tax Sharing Agreement between the County of San Joaquin and the City of Tracy.

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

Council Member Rickman motioned to adopt Resolution 2013-007 approving the 2012 Property Tax Sharing Agreement between the County of San Joaquin and the City of Tracy. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

8. ADOPTION OF A MITIGATED NEGATIVE DECLARATION AND APPROVAL OF THE CITYWIDE WATER MASTER PLAN AND WASTEWATER MASTER PLAN - Kuldeep Sharma, City Engineer, presented the staff report. The City's existing Master Plans were approved in 1994. These Master Plans were based on the City's 1991 General Plan. The City adopted its new General Plan on February 1, 2011. The new General Plan identifies existing and new areas of development within and around the existing City limits. It includes areas east of the City up to Chrisman Road and to the west up to the Altamont Pass south of I-205. The new General Plan also includes the Larch Clover area both north and south of I-205.

Due to the increased development interest in the General Plan area, various property owners requested in 2009, that the City finalize the Infrastructure Master Plans to serve the new developments. The City acquired the services of various consultants to finalize the Infrastructure Master Plans and complete the environmental documents for a total

cost of \$3.1 million. A majority of the cost of these services was funded by the developers/property owners. The City funded \$820,855 to pay for the Larch Clover area, Chrisman property, gap properties, and east side developments. This cost will be recovered by the City when these properties develop.

Since then, staff and the development community have been working together with the consultants to finalize the Infrastructure Master Plans.

The Roadways and Transportation Master Plan is generally completed ahead of the other Master Plans since it identifies the location and alignments roadway network; which is essentially used for the layout of the other infrastructure elements. Council adopted the Citywide Roadway and Transportation Master Plan at its November 26, 2012, special Council meeting.

West Yost is the City's consultant responsible for completion of the Citywide Water Master Plan. The Master Plan identifies the potable water and recycled water network with associated appurtenances. Both potable and recycled water are pressure distribution network systems. The Master Plan also identifies reservoirs, pump stations, booster stations, pressure reducing valves (PRV's) and treatment facilities. The Master Plan further identifies various sources of water for the City's future uses.

The use of recycled water is essential to meet the state-mandated requirements for a 20% reduction of its potable water demand by 2020. The City's tertiary treated effluent from the Wastewater Treatment Plant will be used for irrigation of roadway medians, parks and on-site landscaping of commercial and industrial properties.

The Citywide Wastewater Master Plan was completed by CH2MHill consultants. The Master Plan identifies the wastewater collection system and expansion of the existing Wastewater Treatment Plant to 20 mgd capacity.

New wastewater collection mains will be required on both the east and west sides of the City spanning north south up to the existing treatment plant. The Wastewater Treatment Plant will be expanded from its existing 9 mgd usable capacity to 20 mgd in multiple phases.

In accordance with the California Environmental Quality Act (CEQA) Guidelines, an Initial Study/California Environmental Quality Act Guidelines Section 15183 Analysis and Mitigated Negative Declaration (IS/MND) were prepared to evaluate potential environmental effects of the project.

There is no impact to the General Fund from approval of the Citywide Water and Wastewater Master Plans. The cost of completion of the Master Plans, its Mitigated Negative Declaration was funded from the development community. The City fronted \$820,855 as its fair share cost for certain areas such as Larch Clover, Chrisman property, gap properties and east side developments. This cost will be reimbursed to the City by those property owners as a condition of development. The cost of construction of the physical infrastructure listed in the Master Plans will be borne by the developments through development impact fees or other funding mechanisms without any impact to the City's General Fund.

Staff recommended that Council adopt the Mitigated Negative Declaration and approve the Citywide Water Master Plan and Wastewater Master Plan.

Mayor Ives asked how the 9,000 acre feet of ground water related to the aquifer storage and recovery program. Mr. Sharma invited Jerry Nakano, West Yost, to respond. Mr. Nakano indicated the City was about to embark on year three of the plan. The first two years' of data is proceeding satisfactorily. Last year the City was able to inject almost 700 acre feet of water, and has been a successful program so far.

Mayor Ives asked about the Semitropic program. Mr. Nakano stated the City sent additional supplies to increase the City's storage of water at Semitropic and that the City has not taken any water out so far.

Mayor Ives referred to the 7,500 acre feet proposed for recycled water out of the water treatment plant asking how long that would be put to use. Mr. Nakano stated it was several years into the future. Mr. Sharma indicated water use has to be reduced by 20% by 2020, and the City has a program for recycled water.

Mayor Ives stated other cities in the state are envious of the City of Tracy's water.

Mayor Pro Tem Maciel motioned to adopt Resolution 2013-008 approving the Mitigated Negative Declaration and approving the Citywide Water Master Plan and Wastewater Master Plan. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

9. ACCEPT A PRESENTATION ON THE SOUTH COUNTY FIRE AUTHORITY FISCAL YEAR 2011-2012 ANNUAL REPORT - Al Nero, Fire Chief presented the staff report. Chief Nero provided a background of the organization which includes three City and four rural fire stations, a service area of 167 square miles, 73 full-time and 12 part-time employees. Chief Nero outlined the department's accomplishments including grants received and relocation of Fire Stations 92 and 96, along with the annual inspection of all stations, successful administration of the second year of the Safe and Sane Fireworks program.

Chief Nero also discussed training and participation of staff with emergency medical services/advanced life support, hazardous materials, and communication requirements, as well as the number and type of service calls made. Chief Nero listed the many community services that Fire Department staff participates in.

Mayor Pro Tem Maciel thanked the Chief Nero for a thorough report. Mayor Pro Tem Maciel motioned to accept the report. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

10. APPOINT ONE APPLICANT TO THE SAN JOAQUIN COUNTY MOSQUITO ABATEMENT DISTRICT BOARD FOR A TERM OF TWO OR FOUR YEARS – Mayor Pro Tem Maciel stated he and Council Member Rickman interviewed the applicant and found him to be very knowledgeable and willing to serve in this capacity.

Mayor Pro Tem Maciel motioned to appoint Mr. Chet Miller to the San Joaquin County Mosquito Abatement District Board for a four year term. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

11. SECOND READING AND ADOPTION OF ORDINANCE 1177 AN ORDINANCE OF THE CITY OF TRACY ADDING NEW SECTIONS 1.08.075, 10.08.295, 10.08.305, AND 10.08.3105, AND AMENDING SECTIONS 1.08.130, 1.16.010, 10.08.1050, 10.08.1080, 10.08.2100, 10.08.2380, 10.08.2510, 10.08.2880 AND 10.08.4320 OF THE TRACY

MUNICIPAL CODE RELATING TO EATING AND/OR DRINKING ESTABLISHMENTS WITH ENTERTAINMENT – The Clerk read the title of proposed Ordinance 1177. Mayor Pro Tem Maciel motioned to waive the reading of the text. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

Mayor Pro Tem Maciel motioned to adopt Ordinance 1177. Council Member Rickman seconded the motion. Roll call vote found Council Members Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Manne abstained.

12. SECOND READING AND ADOPTION OF ORDINANCE 1178 AN ORDINANCE OF THE CITY OF TRACY AMENDING THE ZONING MAP OF THE CITY OF TRACY BY RECLASSIFYING PROPERTY LOCATED AT THE NORTHEAST CORNER OF VALPICO ROAD AND GLENBRIAR DRIVE APPLICATION NUMBER R12-0001 - The Clerk read the title of proposed Ordinance 1178. Mayor Pro Tem Maciel motioned to waive reading of the text. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

Mayor Pro Tem Maciel motioned to adopt Ordinance 1178. Council Member Rickman seconded the motion. Roll call vote found Council Members Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Manne abstained.

13. SECOND READING AND ADOPTION OF ORDINANCE 1179 AN ORDINANCE AMENDING SECTION 10.08.1610 OF THE TRACY MUNICIPAL CODE REGARDING THE MINIMUM DISTANCE ALLOWED BETWEEN MAIN BUILDINGS IN THE HIGH DENSITY RESIDENTIAL ZONE - The Clerk read the title of proposed Ordinance 1179. Mayor Pro Tem Maciel motioned to waive reading of the text. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

Mayor Pro Tem Maciel motioned to adopt Ordinance 1179. Council Member Rickman seconded the motion. Roll call vote found Council Members Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Manne abstained.

14. SECOND READING AND ADOPTION OF ORDINANCE 1180 AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF TRACY BY RECLASSIFYING PROPERTY LOCATED AT THE NORTHWEST CORNER OF VALPICO ROAD AND GLENBRIAR DRIVE APPLICATION NUMBER R12-0002 0001 - The Clerk read the title of proposed Ordinance 1180. Mayor Pro Tem Maciel motioned to waive reading of the text. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

Council Member Manne stated he was a member of the Planning Commission when these items were considered, and therefore was abstaining from these actions.

Mayor Pro Tem Maciel motioned to adopt Ordinance 1180. Council Member Rickman seconded the motion. Roll call vote found Council Members Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Manne abstained.

15. SECOND READING AND ADOPTION OF ORDINANCE 1181 AN ORDINANCE ADDING SECTION 10.08.3470(e) TO THE TRACY MUNICIPAL CODE REGARDING OFF-STREET PARKING SPACE REDUCTION - The Clerk read the title of proposed Ordinance 1181. Mayor Pro Tem Maciel motioned to waive reading of the text. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

Mayor Pro Tem Maciel motioned to adopt Ordinance 1181. Council Member Rickman seconded the motion. Roll call vote found all in favor; passed and so ordered.

16. ITEMS FROM THE AUDIENCE - None

17. COUNCIL ITEMS

- A. Review Appointments to Council Committees – Maria Hurtado, Assistant City Manager, provided the staff report. Appointments to Council subcommittees are reviewed on an annual basis. The appointments were last reviewed on January 4, 2012.

The following table represents the changes made to the committees:

Committee/Commission	Council Members
City/Chamber Liaison	Mayor Ives Council Member Young
City/Schools Liaison	Council Member Rickman Mayor Pro Tem Maciel
Investment Review Committee	Council Member Manne Mayor Pro Tem Maciel
South County Fire Authority	Mayor Pro Tem Maciel Council Member Rickman
*Tracy Area Public Facilities Financing Agency	Council Member Manne Council Member Young
**City Selection Committee	Mayor Ives Mayor Pro Tem Maciel - Alternate
**Community Development Block Grant Policy Advisory Committee	As needed
**Council of Governments	Mayor Ives Mayor Pro Tem Maciel, Alternate
**Duel Vocational Institution, Advisory Committee	Mayor Pro Tem Maciel
**San Joaquin County Water Advisory Commission	Mayor Ives, Alternate
**San Joaquin Partnership	Mayor Ives Mayor Pro Tem Maciel, Alternate
**San Joaquin Regional Rail Commission	Mayor Ives

**Solid Waste Management Plan Advisory Task Force	Council Member Young
**Special City Selection Committee, SJVAPCD	Council Member Manne Mayor Pro Tem Maciel, Alternate
**League of California Cities, Central Valley Division Executive Committee	Mayor Pro Tem Maciel
***Oversight Board of the Successor Agency to the City of Tracy Community Development Agency	Mayor Pro Tem Maciel Mayor Ives – Alternate

Mayor Pro Tem Maciel motioned to accept the Council Committee/Commission changes as outlined at the meeting. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

Mayor Pro Tem Maciel requested a Council item to determine whether to place an item on the agenda related to the Tracy Ballpark. Council concurred.

Council Member Young invited everyone to the 17th Annual Martin Luther King Jr. Breakfast on Monday at 8:30 a.m., at the Tracy Community Center.

Council Member Manne stated he was waiting for his first opportunity to support West High since he was a former member of the Wolfpack.

18. ADJOURNMENT – Council Member Rickman motioned to adjourn. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered. Time: 10:37 p.m.

The above agenda was posted at the Tracy City Hall on January 10, 2013. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk

March 5, 2013

AGENDA ITEM 1.B

REQUEST

APPROVAL OF PERMIT FOR THE CONSUMPTION OF ALCOHOLIC BEVERAGES ON CITY STREETS FOR THE FOLLOWING EVENTS: TRACY NOON ROTARY AND CITY OF TRACY "IT'S DERBY TIME!" EVENT ON MAY 4, 2013, CITY OF TRACY DOWNTOWN BLOCK PARTIES ON MAY 5, JUNE 21, JULY 12, AUGUST 2, AUGUST 16, 2013; CITY OF TRACY "GIRLS NIGHT OUT – PINK PARTY" EVENT ON MAY 10, 2013, CHAMBER OF COMMERCE "FOURTH OF JULY CELEBRATION" ON JULY 4, 2013, TRACY CITY CENTER ASSOCIATION "THEN AND NOW CAR SHOW" ON JULY 20, 2013, CHAMBER OF COMMERCE "DRY BEAN FESTIVAL" ON SEPTEMBER 7 & 8, 2013 AND CITY OF TRACY "GIRLS NIGHT OUT – WITCHES AND BROOMSTICKS" EVENT ON OCTOBER 25, 2013

EXECUTIVE SUMMARY

Tracy Municipal Code states Council may, by resolution, issue a permit allowing the consumption of alcohol on public streets and the like at an organized event of community-wide interest. The Public Works Department is coordinating several requests for an alcohol permit in conjunction with community events and is seeking Council approval.

DISCUSSION

Tracy Municipal Code Section 4.12.190(d) states, "The Council, by resolution, may issue a permit allowing the consumption of alcohol on public streets and the like at an organized event of community-wide interest. The consumption of intoxicating beverages shall be restricted to the perimeters of the community event as described in the permit." Additionally, Tracy Municipal Code Chapter 4.40 governs Special Event permits occurring on or within the public right-of-way.

For many years, the City of Tracy has successfully coordinated special community events that have community-wide interest with various local non-profit organizations, including the Tracy Noon Rotary, the Tracy Chamber of Commerce and the Tracy City Center Association (TCCA). Many of these events have received City approval for the consumption of alcoholic beverages within the boundary of the events. Most of these functions were conducted within the Downtown Tracy Business District.

At the present time, the Public Works Department is coordinating several requests for alcohol permits to allow alcoholic beverages to be served as a component of the following community events: "It's Derby Time" held by the Tracy Noon Rotary in conjunction with the City of Tracy, "Fourth of July Celebration" and "Dry Bean Festival" conducted by the Tracy Chamber of Commerce; "Then and Now Car Show" held by the Tracy City Center Association; and two "Girls Night Out" events and a series of five "Block Parties" hosted by the City of Tracy.

It's Derby Time: The Tracy Noon Rotary in conjunction with the City of Tracy is requesting a permit to serve alcoholic beverages at its event on May 4, 2013, from 1:00 p.m. to 5:00 p.m., at Civic Center Plaza and East Avenue.

Block Parties: The Tracy City Center Association is requesting a permit to serve alcoholic beverages at five block party events on May 5, June 21, July 12, August 2 and August 16, 2013, from 6:00 p.m. to 9:00 p.m. along 6th Street between Central Avenue and D Street. This event is hosted by the City of Tracy.

Girls Night Out – Pink Party: The Tracy City Center Association is requesting a permit to serve alcoholic beverages at its event on May 10, 2013, from 6:00 p.m. to 10:00 p.m. on East bound and West bound 6th Street and the Downtown Plaza. This event is hosted by the City of Tracy.

Fourth of July Celebration: The Tracy Chamber of Commerce is requesting a permit to serve alcoholic beverages at its event on July 4, 2013, from 10:00 a.m. to 6:00 p.m., at Lincoln Park located on Eaton Avenue between Holly Drive and East Street.

Then and Now Car Show: The Tracy City Center Association is requesting a permit to serve alcoholic beverages at its event on July 20, 2013 from 10:00 a.m. to 3:00 p.m., along Central Avenue from 11th Street to 6th Street (including side streets).

Dry Bean Festival: The Tracy Chamber of Commerce is requesting a permit to serve alcoholic beverages at its event on September 7-8, 2013, from 10:00 a.m. to 7:00 p.m., along Central Avenue between 6th and 11th Streets, and along 10th Street between A Street and D Street, and along 9th Street between C Street and D Street, and along 6th Street between C Street and D Street.

Girls Night Out – Witches and Broomsticks: The Tracy City Center Association is requesting a permit to serve alcoholic beverages at its event on October 25, 2013, from 6:00 p.m. to 10:00 p.m. along 7th Street between Central Avenue and D Street and west bound 6th Street and the Downtown Plaza. This event is hosted by the City of Tracy.

STRATEGIC PLAN

This agenda item supports the Communication and Marketing Strategic Plan and specifically implements the following goal and objective:

Goal 2: Provide the community of Tracy with basic and extended services that offer opportunities for individuals, families and businesses to prosper as they live, work and play in Tracy

Objective 2e: Promote the high "quality of life" attributes and recreation opportunities of the City

FISCAL IMPACT

There is no impact on the General Fund.

RECOMMENDATION

It is recommended that City Council, by resolution, authorize and approve the permits described above for consumption of alcoholic beverages within the above-described designated areas for the following events: Tracy Noon Rotary "It's Derby Time" on May 4, 2013; Tracy Chamber of Commerce "Fourth of July Celebration" on July 4, 2013; TCCA's "Then and Now Car Show" on July 20, 2013; and City of Tracy's "Block Parties" on May 5, June 21, July 12, August 2, and August 16, 2013, "Girls Night Out – Pink Party" on May 10, 2013, Tracy Chamber of Commerce "Dry Bean Festival" on September 7 & 8, 2013, and "Girls Night Out – Witches and Broomsticks" on October 25, 2013.

Prepared by: Vanessa Carrera, Management Analyst II

Reviewed by: Kim Scarlata, Recreation Program Manager
Rod Buchanan, Interim Director of Public Works

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

RESOLUTION _____

APPROVING A PERMIT FOR THE CONSUMPTION OF ALCOHOLIC BEVERAGES ON CITY STREETS FOR THE FOLLOWING EVENTS: TRACY NOON ROTARY AND CITY OF TRACY "IT'S DERBY TIME!" EVENT ON MAY 4, 2013, CITY OF TRACY DOWNTOWN BLOCK PARTIES ON MAY 5, JUNE 21, JULY 12, AUGUST 2, AUGUST 16, 2013; CITY OF TRACY "GIRLS NIGHT OUT – PINK PARTY" EVENT ON MAY 10, 2013, CHAMBER OF COMMERCE "FOURTH OF JULY CELEBRATION" ON JULY 4, 2013, TRACY CITY CENTER ASSOCIATION "THEN AND NOW CAR SHOW" ON JULY 20, 2013, CHAMBER OF COMMERCE "DRY BEAN FESTIVAL" ON SEPTEMBER 7 & 8, 2013 AND CITY OF TRACY "GIRLS NIGHT OUT – WITCHES AND BROOMSTICKS" EVENT ON OCTOBER 25, 2013

WHEREAS, The Tracy Noon Rotary and City of Tracy have requested a permit to conduct a special event in the City of Tracy on May 4, 2013 that requires the authorization of the City Council to permit the consumption of alcoholic beverages in public places; and

WHEREAS, The Tracy Chamber of Commerce has requested a permit to conduct a special event in the City of Tracy on July 4, 2013 and September 7-8, 2013 that requires the authorization of the City Council to permit the consumption of alcoholic beverages in public places; and

WHEREAS, The Tracy City Center Association (TCCA) has requested a permit to conduct a special event in the City of Tracy on July 20, 2013, that requires the authorization of the City Council to permit the consumption of alcoholic beverages in public places; and

WHEREAS, The City of Tracy has requested a permit to conduct special events on May 5, May 10, June 21, July 12, August 2, August 16, and October 25, 2013, that requires the authorization of the City Council to permit the consumption of alcoholic beverages in public places; and

WHEREAS, Subject to City Council approval, the Tracy Municipal Code allows such activities and permits under Section 4.12.190(d) and Chapter 4.40.

NOW, THEREFORE, BE IT RESOLVED, That the City Council does hereby authorize the issuance of a permit to the Tracy Noon Rotary, Tracy Chamber of Commerce, TCCA and the City of Tracy for the possession and consumption of alcoholic beverages within the boundary and timeframes of the above-described special events, as further described in the staff report accompanying this resolution, to be conducted in the Downtown Area of Tracy.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 5th day of March, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

March 5, 2013

AGENDA ITEM 1.C

REQUEST

AUTHORIZATION TO AMEND THE CITY'S CONFLICT OF INTEREST CODE

EXECUTIVE SUMMARY

This item updates the City's Conflict of Interest Code in accordance with the Political Reform Act.

DISCUSSION

Pursuant to the State Political Reform Act, the City's Conflict of Interest Code is required to be amended on a regular basis, and whenever changes to the Code are made. The Code was last updated by Resolution 2012-059, adopted on April 3, 2012.

Appendix 1 includes an explanation of the disclosure category. Appendix II, the Conflict of Interest Code, lists designated positions and the required category of disclosure. Each designated position included in Appendix II is required by Government Code 87302, to file the Fair Political Practices Statement of Economic Interests, Form 700, annually. A redlined version of Appendix II is attached showing the revisions.

FISCAL IMPACT

There is no impact to the General Fund.

RECOMMENDATION

That the City Council approve, by resolution, the amendments to the City's Conflict of Interest Code.

Prepared by: Sandra Edwards, City Clerk
Reviewed by: Maria Hurtado, Assistant City Manager
Approved by: Leon Churchill, Jr., City Manager

Attachments: Appendix I
Appendix II
Resolution

Appendix I

CONFLICT OF INTEREST STATEMENTS

Disclosure Categories

Category 1 - All designated employees in this category shall disclose all sources of income, investments, interests in real property, and business positions required to be disclosed of those public officials named in Government Code section 87200.

Category 2 - All designated employees in this category shall disclose all sources of income, investments and business entities in which the designated employee holds a management position if the business entity engages in land development; construction; the provision of architectural, engineering or other services in connection with construction; the manufacture or sale of electrical, plumbing and other products used in construction; the acquisition or sale of real property or financing of land acquisition, development or construction.

Category 3 - All designated employees in this category shall disclose all sources of income, investments, and business entities in which the designated employee holds a management position if the business entity is of the type which contracts with the City of Tracy to provide services, supplies, materials, machinery or equipment.

Category 4 - All designated employees in this category shall disclose all sources of income, investments, and business entities in which the designated employee holds a management position if the business entity is of the type which contracts with the designated employee's department.

Appendix II

CITY OF TRACY CONFLICT OF INTEREST CODE DESIGNATED POSITIONS AND ASSIGNED DISCLOSURE CATEGORIES

Government Code section 87200 requires certain City officials and employees to file "Statements of Economic Interests." In addition, these designated City officials, employees, and consultants are required, pursuant Government Code section 87302 and this Code, to file Statements of Economic Interests:

City Employees

Disclosure Categories

Accounting Officer	3, 4
Animal Services Supervisor	3, 4
Assistant City Attorney	1
Assistant City Clerk	3, 4
Assistant City Manager	1
Assistant City Engineer - VACANT	1
Assistant Civil Engineer	2, 3, 4
Assistant Director of DES/City Engineer	1
Associate Civil Engineer	2, 3, 4
Associate Planner	1
Budget Officer	3, 4
Chief Building Official	1
Community Access Coordinator – (part-time)	4
Community Preservation Manager	1
Cultural Arts Manager – Visual Arts	1
Cultural Arts Manager – Performing Arts	1
Deputy City Attorney I/II	1
Deputy Director of Public Works (Utilities)	1
Development and Engineering Services Director	1
Economic Development Management Analyst	3, 4
Facilities Maintenance Superintendent	3, 4
Finance and Administration Director	1
Fire Chief	1
Fire Division Chief	2, 3, 4
Human Resources Analyst	3, 4
Human Resources Director	3, 4
Information Technology Specialist	3, 4
Information Technology Manager	3, 4
Laboratory Supervisor	3, 4
Landscape District Maintenance Superintendent	3, 4
Management Analyst I/II	3, 4
Parks and Community Services Director	1
Police Captain	3, 4
Police Chief	1
Police Lieutenant	3, 4

Appendix II
Page Two

Professional Standards Officer – VACANT (part-time)	3, 4
Police Support Operations Manager	1
Public Works Director	1
Public Works Maintenance and Operations Superintendent	3, 4
Recreation Coordinator	3, 4
Recreation Supervisor - VACANT	3, 4
Senior Civil Engineer	1
Senior Human Resources Analyst	3, 4
Senior Planner	1
Special Counsel	1
Supervising Building and Fire Inspector	1
Utilities Line Maintenance Superintendent	3, 4
Wastewater Operations Superintendent	3, 4
Water Plant Superintendent - VACANT	3, 4

Elected Officials

City Treasurer	1
City Clerk	1

Consultants

Disclosure requirements will be determined on a case-by-case basis using the criteria contained in the Regulations of the FPPC.

Legal Consultant	3, 4
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Boards and Commissions

Building Board of Appeals	1
Tracy Arts Commission	1
Parks and Community Services Commission	1
Transportation Advisory Commission	1
Measure E Resident Oversight Committee	1

Appendix II

CITY OF TRACY CONFLICT OF INTEREST CODE DESIGNATED POSITIONS AND ASSIGNED DISCLOSURE CATEGORIES

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Assistant City Manager	1
Assistant City Engineer - VACANT	1
Assistant Civil Engineer	2, 3, 4
Assistant Director of DES/City Engineer	1
Associate Civil Engineer	2, 3, 4
Associate Planner	1
Budget Officer	3, 4
Chief Building Official	1
City Clerk	3, 4
Community Access Coordinator – (part-time)	4
Community Preservation Manager	1
Cultural Arts Manager – Visual Arts	1
Cultural Arts Manager – Performing Arts	1
Deputy City Attorney I/II	1
Deputy Director of Public Works (Utilities)	1
Development and Engineering Services Director	1
Economic Development Management Analyst	3, 4
Facilities Maintenance Superintendent	3, 4
Finance and Administration Director	1
Fire Chief	1
Fire Division Chief	2, 3, 4
Human Resources Analyst	3, 4
Human Resources Director	3, 4
Information Technology Specialist	3, 4
Information Technology Manager	3, 4
Laboratory Supervisor	3, 4
Landscape District Maintenance Superintendent	3, 4
Management Analyst I/II	3, 4
Parks and Community Services Director	1
Police Captain	3, 4
Police Chief	1
Police Lieutenant	3, 4

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Public Works Director	1
Public Works Maintenance and Operations Superintendent	3, 4
Recreation Coordinator	3, 4
Recreation Services Program Manager	3, 4
Recreation Supervisor - VACANT	3, 4
Senior Accountant	3, 4
Senior Civil Engineer	1
Senior Human Resources Analyst	3, 4
Senior Planner	1
Special Counsel	1
Supervising Building and Fire Inspector	1
Utilities Line Maintenance Superintendent	3, 4
Wastewater Operations Superintendent- VACANT	3, 4
Water Plant Superintendent	3, 4

Elected Officials

City Treasurer	1
----------------	---

Consultants

Disclosure requirements will be determined on a case-by-case basis using the criteria contained in the Regulations of the FPPC.

Legal Consultant	3, 4
------------------	------

Boards and Commissions

Building Board of Appeals	1
Tracy Arts Commission	1
Parks and Community Services Commission	1
Transportation Advisory Commission	1
Measure E Resident Oversight Committee	1

RESOLUTION

AUTHORIZING AMENDMENTS TO THE CITY'S CONFLICT OF INTEREST CODE

WHEREAS, Pursuant to the State Political Reform Act, the City's Conflict of Interest Code is required to be updated on a regular basis, and whenever changes to the Code are made, and

WHEREAS, The Code was last updated by Resolution 2012-059, adopted on April 3, 2012, and

WHEREAS, The City Council is the Code Reviewing Board for processing the City's Conflict of Interest Code, and

WHEREAS, Government Code Sections 87306 and 87307 provide that a City Council may amend its Conflict of Interest Code whenever there are changed circumstances, including recognition of new positions within the City.

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby authorizes amendments to the City's Conflict of Interest Code as indicated on the attached Appendix II.

The foregoing Resolution 2013-____ was passed and adopted by the Tracy City Council on the 5th day of March 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

Appendix II

CITY OF TRACY CONFLICT OF INTEREST CODE DESIGNATED POSITIONS AND ASSIGNED DISCLOSURE CATEGORIES

Government Code section 87200 requires certain City officials and employees to file "Statements of Economic Interests." In addition, these designated City officials, employees, and consultants are required, pursuant Government Code section 87302 and this Code, to file Statements of Economic Interests:

City Employees

Disclosure Categories

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Assistant Civil Engineer	2, 3, 4
Assistant Director of DES/City Engineer	1
Associate Civil Engineer	2, 3, 4
Associate Planner	1
Budget Officer	3, 4
Chief Building Official	1
Community Access Coordinator – (part-time)	4
Community Preservation Manager	1
Cultural Arts Manager – Visual Arts	1
Cultural Arts Manager – Performing Arts	1
Deputy City Attorney I/II	1
Deputy Director of Public Works (Utilities)	1
Development and Engineering Services Director	1
Economic Development Management Analyst	3, 4
Facilities Maintenance Superintendent	3, 4
Finance and Administration Director	1
Fire Chief	1
Fire Division Chief	2, 3, 4
Human Resources Analyst	3, 4
Human Resources Director	3, 4
Information Technology Specialist	3, 4
Information Technology Manager	3, 4
Laboratory Supervisor	3, 4
Landscape District Maintenance Superintendent	3, 4
Management Analyst I/II	3, 4
Parks and Community Services Director	1
Police Captain	3, 4
Police Chief	1
Police Lieutenant	3, 4

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Professional Standards Officer – VACANT (part-time)	3, 4
Police Support Operations Manager	1
Public Works Director	1
Public Works Maintenance and Operations Superintendent	3, 4
Recreation Coordinator	3, 4
Recreation Supervisor - VACANT	3, 4
Senior Civil Engineer	1
Senior Human Resources Analyst	3, 4
Senior Planner	1
Special Counsel	1
Supervising Building and Fire Inspector	1
Utilities Line Maintenance Superintendent	3, 4
Wastewater Operations Superintendent	3, 4
Water Plant Superintendent - VACANT	3, 4

Elected Officials

City Treasurer	1
City Clerk	1

Consultants

Disclosure requirements will be determined on a case-by-case basis using the criteria contained in the Regulations of the FPPC.

Legal Consultant	3, 4
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Boards and Commissions

Building Board of Appeals	1
Tracy Arts Commission	1
Parks and Community Services Commission	1
Transportation Advisory Commission	1
Measure E Resident Oversight Committee	1

AGENDA ITEM 1.D

REQUEST

APPROVAL OF AMENDMENT NUMBER THREE TO PROFESSIONAL SERVICES AGREEMENT WITH DESIGN, COMMUNITY AND ENVIRONMENT, INC FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT, ASSISTANCE WITH THE PREPARATION OF A SPECIFIC PLAN AND ANNEXATION FOR THE CORDES RANCH SPECIFIC PLAN PROJECT

EXECUTIVE SUMMARY

This request is to approve amendment number three to a Professional Services Agreement with Design, Community, and Environment, Inc (DC&E) to complete the environmental review for the proposed Cordes Ranch Specific Plan, and assist with the review of the Specific Plan and annexation process through the Local Agency Formation Commission (LAFCo).

DISCUSSION

Background on the Cordes Ranch Project

The City's General Plan identifies new growth areas, including Urban Reserve 6 which is known as the approximately 1,700 acre Cordes Ranch project. Property owners approached the City with plans to develop their site and participated in the update of the City's General Plan to refine the basic concepts for development. Over the last three-years, the property owners have participated in the technical analyses related to infrastructure delivery to this and other sites identified in the City's General Plan. Over the past two years property owners began the process to create a Specific Plan for the site and complete environmental review in accordance with the California Environmental Quality Act (CEQA). A Specific Plan is a comprehensive planning document that establishes the infrastructure requirements for a particular development as well as the development standards (and zoning) that will guide development as the project is phased. The City is actively working on the Cordes Ranch Specific Plan and Environmental Impact Report, as well as negotiating a Development Agreement.

Background on the Professional Services Agreement with DC&E and the Current Request for an Amendment

After a formal Request for Proposal process, City Council approved a Professional Services Agreement with DC&E on January 18, 2011 (Resolution Number 2011-017). The contract was approved for the amount of \$353,402. Subsequently, the ownership group requested adjustments to the land use pattern and distribution of land uses throughout the Specific Plan area that came after significant work had been completed to model traffic impacts. The owner-requested changes required additional work related to traffic modeling at a cost of \$32,780. Additionally, given the complexity of the project staff and the project owners requested an additional \$15,000 to be added to the contingency to cover unforeseen costs associated with completing the environmental

review and annexation work. These augmentations to the scope of work were approved with amendment number one to the PSA, approved by City Council on June 19, 2012 in the amount of \$47,780.

Amendment number two included additional work related to changes in the Draft Specific Plan resulting from recent City Council direction on land uses along the freeway, and owner requested changes to phase one of the project. Specifically, the work included a Health Risk Assessment focused on the potential for the project to result in impacts associated with proximity of employment located along the I-205 corridor and arterial roadways in the project area. This work included identifying mitigation measures to reduce potential air quality impacts of the project. The results of such analyses are to be incorporated into the EIR and modeling included as an Appendix to the EIR. The work under amendment two also involved additional traffic analysis including revising Phase 1 and Build out trip generation totals and allocations to TAZs, revising 2035 Plus Phase 1 intersection turn movements, revising 2035 plus Phase 1 Level of Service analysis, including revisions to land configurations where appropriate, and revising Build out roadway segment volumes and calculate v/c ratios, pivoting off the Transportation Master Plan Build out case. Such work is to be incorporated into the EIR and included in the EIR appendix.

The costs of the work for amendment number two was an additional \$67,549 which included additional contingency for the consultants to address unanticipated issues as they arise in the analyses.

Amendment Number three, the current request, is required to address completing environmental review, including work related to Air Quality modeling of full build-out of the Specific Plan, anticipated time to respond to comments and revise the Air Quality chapter of the EIR. Work is also required in the areas of Noise, Hazards and Hazardous Materials, Geology, Soils, and Seismicity, including work related to on-site soil conditions. Cultural Resources portions of the EIR will include additional information about the project site and records review to complete the Cultural Resources section of the EIR. Biological Resources work will be augmented to include additional review and discussion of special-status species in the project area. The traffic and transportation section of the EIR will include additional screening analyses, inclusion of an Existing-Plus-Project roadway segment analysis, and a 2035-Plus-Project roadway analysis. The work also includes adding an alternative mitigation strategy, adding an AM peak hour freeway analysis, a 2035-Plus-Phase 1 intersection analysis, and additional analysis for trigger points and alternative intersection configurations. A Phase 1 environmental analysis will be completed under this Amendment, as well as additional meetings, and additional time in anticipation of responding to comments on the EIR. The cost for Amendment Number three is estimated not to exceed \$54,000.

STRATEGIC PLAN

The Cordes Ranch project is planned to be a significant jobs center for the City as it develops over time. The City's Economic Development Strategy establishes Goal 1 to

“Increase the Jobs Opportunities in Tracy.” Objectives 1 and 2 under that Goal are to “Increase the Quantity and Quality of jobs in Tracy” and to “Diversity Tracy’s Economic Base.” As a 1,700 acre industrial, commercial and office project with elements of mixed-use, the Cordes Ranch project at build out over many years will accommodate tens of thousands of new jobs in Tracy.

FISCAL IMPACT

There will be no impact to the General Fund. On March 3, 2011 the project proponents entered into a Cost Recovery Agreement with the City to cover all costs associated with processing and consultant costs. To date, the total estimated project cost, including Amendments 1-3 is \$522,731.

RECOMMENDATION

Staff recommends that City Council, by resolution, approve amendment number three to the Professional Services Agreement with DC&E in the amount not-to-exceed \$54,000 and authorize the Mayor to execute the Amendment.

Prepared by: Bill Dean, Assistant Development Services Director

Reviewed by: Andrew Malik, Development Services Director

Approved by: Leon Churchill Jr., City Manager

RESOLUTION 2013-_____

APPROVING AMENDMENT NUMBER THREE TO PROFESSIONAL SERVICES AGREEMENT WITH DESIGN, COMMUNITY AND ENVIRONMENT, INC. FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT, ASSISTANCE WITH THE PREPARATION OF A SPECIFIC PLAN AND ANNEXATION FOR THE CORDES RANCH SPECIFIC PLAN PROJECT

WHEREAS, The City of Tracy's General Plan establishes areas for future growth, and identifies one of those areas as Urban Reserve 6, otherwise known as the Cordes Ranch site; and

WHEREAS, An application was submitted to the City of Tracy for preparation of a General Plan amendment, creation of a Specific Plan, and annexation to the City of Tracy; and

WHEREAS, An Environmental Impact Report completed in accordance with the California Environmental Quality Act will be required for the project; and

WHEREAS, Consultant assistance and review of the Specific Plan and circulation patterns for the proposed development are necessary in order to timely process the applications; and

WHEREAS, In accordance with Tracy Municipal Code Section 2.20.140 a formal Request for Proposals process was conducted and the proposal submitted by Design, Community and Environment (DC&E) best meets the City's needs by demonstrating the competence and professional qualifications necessary for the satisfactory performance of the project; and

WHEREAS, On March 3, 2011 the City entered into a Cost Recovery Agreement with the proponents of the Cordes Ranch project to cover the costs of staff time and consultant work related to the Cordes Ranch Specific Plan Project; and

WHEREAS, City Council approved a Professional Services Agreement with DC&E on January 18, 2011 by Resolution Number 2011-017 in the amount of \$353,402; and

WHEREAS, City Council approved amendment number one to the Professional Services Agreement with DC&E in the amount of \$47,780 on June 19, 2012 by Resolution Number 2012-117; and

WHEREAS, City Council approved amendment number two on November 20, 2012 in the amount of \$67,549; and

WHEREAS, additional work is required to complete the environmental analysis and documentation, which requires work in the amount of \$54,000;

NOW, THEREFORE, BE IT RESOLVED, That City Council approve Amendment Number Three to the Professional Services Agreement with Design, Community and

Environment, attached to this Resolution as Exhibit 1 in the amount not-to-exceed \$54,000 for the preparation of an Environmental Impact Report, assistance with the preparation of a Specific Plan, and annexation for the Cordes Ranch Specific Plan project, and authorizes the Mayor to execute the Agreement.

* * * * *

The foregoing Resolution was adopted by the Tracy City Council on the 5th day of March, 2013 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. 3 TO
PROFESSIONAL SERVICES AGREEMENT
FOR THE CORDES RANCH SPECIFIC PLAN REVIEW, ANNEXATION, AND
ENVIRONMENTAL IMPACT REPORT PROJECT**

This Amendment No. 3 (hereinafter "Amendment") to the Professional Services Agreement is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "CITY"), and DESIGN, COMMUNITY & ENVIRONMENT (hereinafter "CONSULTANT").

RECITALS

- A. The CITY and CONSULTANT entered into a Professional Services Agreement (hereinafter "Agreement") for the Cordes Ranch Specific Plan Review, Annexation, and Environmental Impact Report project which was approved by the City Council on January 18, 2011, pursuant to Resolution No. 2011-017.
- B. WHEREAS, the areas of traffic modeling, air quality modeling, noise analysis, cultural resources analysis, hazardous materials, geology, and other topical areas of California Environmental Quality Act are in need of additional analysis, some of which requires technical work from a variety of sub-consultants.
- C. WHEREAS, the CITY has requested services by the CONSULTANT to complete the additional work.

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 of the Agreement is amended to include additional project analysis and work (Task C of Exhibit A of Agreement) related to changes in the Draft Specific Plan and additional technical work required to analyze the Specific Plan; such work shall include written changes to several sections of the CEQA document, three additional all-day meetings and six half-day meetings with City staff, and additional coordination with sub consultants, as more fully described in Exhibit 1 to this Amendment Number 3. Additional work under Task C shall include additional air quality modeling to address revised traffic figures, including revisions to the Health Risk Assessment. This work shall include identifying mitigation measures to reduce potential air quality impacts of the project. The results of such analyses shall be incorporated into the EIR and modeling included as an Appendix to the EIR. Section 1 of the Agreement is amended to include additional traffic analysis under Task C. The additional work shall include revised screening

CITY OF TRACY
Amendment No. 3 to Professional Services Agreement
Cordes Ranch Specific Plan Review, Annexation, and Environmental Impact
Report Project
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analysis comparing Phase 1 traffic and Full Project traffic on roadways north and east of the study area, and on I-580 to the west of the I-205 to the 2025 Plus Phase 1 and Project volumes, and additional work as described in Exhibit 1 to this Amendment Number 3. Such work shall be incorporated into the EIR and included in the EIR appendix. Section 1 of the Agreement is amended to include additional Task C work related to environmental analysis and includes updates to the Noise, Hazardous Materials, Geology/Soils, Cultural Resources and Biological Resources chapters of the EIR as more fully described in Exhibit 1 to this Amendment Number 3. Section 5.1 is amended to include a new Not to Exceed limit of \$522,731 which is an increase of \$54,000.

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.

INTENTIONALLY LEFT BLANK


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 Subdivider 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


CONSULTANT

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

By:  _____
Steve Noack, AICP
Title: Principal
Date: 2/27/13

Attest:

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

By:  _____
Keith McCann
Title: Chief Executive Officer
Date: 2/27/13

Approved as to form

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

Exhibit 1
Scope of Services

Task C. Environmental Review

Following completion of the Administrative Draft EIR, City of Tracy staff has directed The Planning Center | DC&E to complete work that is not within the scope of the existing contract. The tasks described below will be completed and included within the Screencheck Draft EIR.

Air Quality

Illingworth & Rodkin has prepared the Air Quality analysis and Health Risk Assessment and additional work would be needed to address additional traffic concerns.

1. Additional effort to analyze traffic data to develop daily traffic volumes, traffic mix for various roadway segments and hour of the day distribution.
2. Additional cost to predict emissions from new roadway construction, involving modeling using the RoadMod emissions model.
3. Risk modeling of full build-out of the Specific Plan, requiring TAZ construction and additional roadways.
4. Anticipated time to respond to applicant comments, participate in conference calls and revise air quality section.

Noise

The Planning Center | DC&E will revise the Noise chapter of the EIR, initially prepared by Illingworth & Rodkin. Note: There is no charge associated with this work; however it changes the master contract which assigns this work to Illingworth & Rodkin.

Hazards and Hazardous Materials

The Planning Center | DC&E will modify the Hazards and Hazardous Materials chapter of the EIR to provide a comprehensive analysis of risk associated with known contaminant release to soil and groundwater from pipelines located and formally located within the Specific Plan area. As a part of this analysis, The Planning Center | DC&E will prepare a standalone report that will assess and analyze the risk associated with the existing transmission pipelines.

Geology, Soils and Seismicity

The Planning Center | DC&E will update the Geology, Soils and Seismicity chapter of the EIR to reflect site specific soil conditions not previously provided.

CITY OF TRACY

Amendment No. 3 to Professional Services Agreement

Cordes Ranch Specific Plan Review, Annexation, and Environmental Impact

Report Project

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Cultural Resources

Tom Origer & Associates will provide background information to provide additional background support for the Cultural Resources chapter of the EIR. Tom Origer & Associates will complete the following subtasks:

1. Review of the archaeological base maps, records, and reports on file at the Central California Information Center, as well as the library and files of Tom Origer & Associates.
2. Acquisition of a record search from the University of California Museum of Paleontology.
3. Consultation with the Native American Heritage Commission and local Native American groups.
4. Review of existing reports regarding archaeological sites and historical buildings and structures within the Specific Plan Area
5. Windshield survey of the Specific Plan Area to identify potentially important buildings, structures, and districts.
6. Preparation of a brief report outlining study methods and findings.

Biological Resources

Environmental Collaborative will prepare a standalone Biological Resource Assessment (BRA) and expand the previously completed discussion related to special-status species.

Traffic and Transportation

Fehr & Peers will complete the following subtasks:

1. Screening Analysis

To strengthen the basis for the selection of the study area, Fehr & Peers will prepare the following screening analysis:

- Compare the Phase 1 traffic assignment on roadways to the north and east of the defined study area, and on I-580 to the west of I-205, to the 2035 Plus Phase 1 total roadway/freeway traffic volumes. The screening test will be consistent with that used in the Ellis Specific Plan EIR: 1% of total volume for freeways, and 5% of total volume for roadways.
- Compare the Full Project (Cordes Ranch Build-Out) traffic assignment on roadways to the north and east of the defined study area, and on I-580 to the west of I-205, to the 2035 Plus Project (Cordes Ranch Build-Out) total roadway/freeway traffic volumes. The screening test will be consistent with that used in the Ellis Specific Plan EIR: 1% of total volume for freeways, and 5% of total volume for roadways.

If any of these tests indicate additional freeway segments or intersections should be studied, Fehr & Peers will notify the City and discuss next steps.

CITY OF TRACY

Amendment No. 3 to Professional Services Agreement

Cordes Ranch Specific Plan Review, Annexation, and Environmental Impact Report Project

Page 6 of 8

2. Add an Existing Plus Project (Cordes Ranch Build-Out) Roadway Segment Analysis

Fehr & Peers will add the Cordes Ranch Build Out traffic to the existing City of Tracy roadway network, using the Specific Plan roadway plan but assuming no TMP roadways are constructed. AM and PM peak hour roadway segment volumes for the existing roadways in the study area will be summarized in a table. The impacts will be described in an impact statement, but no mitigation measures will be developed. The impact discussion will describe the improbable nature of this analysis scenario, and further describe the likelihood of the development of the TMP network in parallel with build-out of the Specific Plan.

3. Add a 2035 Plus Project (Cordes Ranch Build-Out) Roadway Segment Analysis

This case will replace the Citywide Build-Out Plus Cordes Ranch Build-Out case that is currently in the chapter. Fehr & Peers will add the Cordes Ranch Build-Out traffic to the 2035 network, including the complete TMP roadway network and the Cordes Ranch Build-Out roadway network.

4. Add an Alternative Mitigation Analysis Scenario for the Existing Plus Phase 1 Case

Fehr & Peers will assess intersection operations at the Existing Plus Phase 1 study intersections with a revised traffic network that includes the extension of New Schulte Road east to Lammers Road, as a two-lane road. Fehr & Peers will identify the intersection lane geometry necessary to serve the revised traffic assignment at all study intersections, in an alternative set of mitigation measures. Note that the extension of New Schulte Road will assign more traffic onto Lammers Road and Eleventh Street, possibly creating new mitigations at the intersections along those roadways.

5. Add AM Peak Hour Freeway Analysis

Fehr & Peers will update all cases to include AM peak hour freeway volumes and density/LOS.

6. 2035 Plus Phase 1 Intersection Analysis Adjustments

Fehr & Peers will make the following adjustments to this analysis case:

- Adjust the baseline (pre-mitigation) case to include the exact TMP lane configuration at all intersections (in the original analysis, intersections 3, 8, 10, 11 and 12 had adjustments to match the Cordes Ranch Phase 1 traffic assignment). Then, pull the adjusted lane geometries into the mitigation list, and describe the differences from the TMP configurations.
- Review and adjust the 2035 Plus Phase 1 traffic assignment at intersections 16 and 17 to eliminate, if possible, the need for triple left turns as mitigation.

CITY OF TRACY

Amendment No. 3 to Professional Services Agreement

Cordes Ranch Specific Plan Review, Annexation, and Environmental Impact Report Project

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7. Chapter Revisions

Fehr & Peers will revise the Transportation & Traffic chapter of the EIR to include the above information, as well as to include the editorial comments made by the applicant team, RBF, and City staff. Some of these edits will be made directly by the applicant's attorney and The Planning Center | DC&E; Fehr & Peers will complete the revision after those edits have been made.

8. Trigger Analysis

Fehr & Peers will provide a trigger analysis estimating the percent of Phase 1 construction and corresponding number of total trips that can be generated prior to requiring each Phase 1 project mitigation, for the Existing Plus Phase 1 Project case. The budget for this task includes analysis, documentation (text, tables and appendix materials), and one round of City review.

9. Roundabout Analysis

Fehr & Peers will provide a quantitative analysis of an alternative configuration for the I-580/Patterson Pass interchange, incorporating traffic signals and a widened bridge over I-580, for the 2035 + Phase 1 project. The budget for this task includes analysis, documentation (text, tables, graphics and appendix materials), and one round of City review.

Phase I Environmental Site Assessment

The Planning Center | DC&E will conduct a Phase I Environmental Site Assessment (ESA) of the roughly 1,800 acres of land comprising the Cordes Ranch Specific Plan area. The scope of the Phase I ESA will be in accordance with the ASTM Standards on Environmental Site Assessment for Commercial Real Estate (ASTM Designation E-1527-05), published November 2005. More specifically, The Planning Center | DC&E will review agency lists used to identify "hazardous waste" properties, contact regulatory agencies, research sources of historical information (e.g., fire insurance maps, city directories), procure and evaluate historical aerial photographs, and conduct an inspection of the project site. The Planning Center | DC&E will obtain a report from Environmental Data Resources (EDR) for the site that will include governmentally listed facilities in the vicinity of the site, Sanborn fire insurance maps (if available), historical aerial photographs, and a City Directory search. The results of the Phase I ESA will be documented in a stand-alone report that will feature a site location map, properties and surrounding land use map, site inspection photographs, regulatory records documentation, and appropriate conclusions and recommendations regarding any identified "recognized environmental conditions." The report will be signed and stamped by a state-certified Professional Engineer or Professional Geologist.

Meetings

This contract modification includes The Planning Center | DC&E attendance at three all-day work sessions, and six, half-day work sessions with City of Tracy staff. In addition, this contract modification includes Fehr & Peers attendance at one all-day work session, and one, half-day work session.

CITY OF TRACY
Amendment No. 3 to Professional Services Agreement
Cordes Ranch Specific Plan Review, Annexation, and Environmental Impact
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FEIR Preparation

Per direction of the City, The Planning Center | DC&E has added additional hours to respond to comments on the DEIR by 60 hours to ensure adequate budget to avoid the need for a future budget augmentation request, in light of the anticipated level of controversy on the project.

AGENDA ITEM 1.E

REQUEST

SUPPLEMENTAL APPROPRIATION TO THE INSURANCE PROGRAM BUDGET FOR FISCAL YEAR 2012/13 IN THE AMOUNT OF \$307,320 FROM THE SELF INSURANCE FUND TO PAY RETROSPECTIVE ADJUSTMENTS FOR THE POOLED WORKERS' COMPENSATION PROGRAM WITH CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY (CSJVRMA)

EXECUTIVE SUMMARY

The City of Tracy is a member of the Central San Joaquin Valley Risk Management Authority's Pooled Liability and Workers' Compensation Programs. The CSJVRMA recently completed a retrospective adjustment of the Pooled Workers Compensation program for program years 1991/92 through 2006/07 and the funds currently on deposit are inadequate to cover the actual expenses for these program years. A supplemental appropriation to the insurance program budget for fiscal year 2012/13, in the amount of \$307,320 is requested to pay for retrospective adjustments to the Pooled Workers Compensation Program.

DISCUSSION

The City participates in a pooled Workers' Compensation and Liability Program with the Central San Joaquin Valley Risk Management Authority (CSJVRMA). Every fiscal year the City is required to submit payment to CSJVRMA to establish a reserve for potential claims for that program year. As each program year matures and claims are closed, the year is actuarially assessed to determine if the funds on deposit are sufficient to cover actual claims expense for that program year. If the funds on deposit are not sufficient, the City is required to pay additional funds. These funds are then applied to each program year that has insufficient funds. If the funds on deposit are greater than the actual claims expense, the City receives a refund. This process is referred to as a retrospective adjustment.

Recently, the CSJVRMA completed a retrospective adjustment for the Pooled Workers' Compensation Program for program years 1991/92 through 2006/07. The City has been notified that the funds on deposit for these program years are inadequate to cover the actual expenses. This insufficiency is primarily due to overall increased claims experience. To ensure proper financing due to this retrospective adjustment, the City is required to submit payment in the amount of \$307,320.

The Pooled Liability Program was also retrospectively adjusted for programs years 2000/01 through 2006/07. This adjustment resulted in a refund to the City in the amount of \$174,539. This refund has been deposited into the Self-Insurance fund.

For at least the last three years the City has not had to request a supplemental appropriation as it has received refunds from both the Liability and Workers' Compensation programs. Per the City's financial records, the total amount of refunds received since 2000 is approximately \$2 million.

FISCAL IMPACT

This action will result in the appropriation and expenditure of \$307,320 from the Self-Insurance Fund. There are sufficient reserves in this fund to support this request. With the receipt of the refund from the Liability Program in the amount of \$174,539, the net cost to the city is \$132,781.

RECOMMENDATION

Staff recommends that the City Council, by resolution, approve a supplemental appropriation from the Self-Insurance Fund in the amount of \$307,320 for the purpose of providing payment to the CSJVRMA as determined by the recent retrospective adjustment.

Prepared by: Eileen Solario, Senior Accounting Assistant

Approved by: Jenny Haruyama, Administrative Services Director

Approved by: Maria Hurtado, Assistant City Manager

RESOLUTION _____

SUPPLEMENTAL APPROPRIATION TO THE INSURANCE PROGRAM BUDGET FOR FISCAL YEAR 2012/13 IN THE AMOUNT OF \$307,320 FOR THE SELF INSURANCE FUND FOR THE PURPOSE OF PROVIDING ADEQUATE FUNDS TO PAY RETROSPECTIVE ADJUSTMENTS FOR THE POOLED WORKERS' COMPENSATION PROGRAM WITH CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY (CSJVRMA)

WHEREAS, The City Council adopted the City's budget for FY 2012-2013 and supplemental appropriations beyond the adopted budget require Council approval, and

WHEREAS, The CSJVRMA has provided information to the City that current funds on deposit for the Pooled Workers' Compensation Program for prior program years 1991/92 through 2006/07 are insufficient, and

WHEREAS, Additional payment to the CSJVRMA will be required as a result of the retrospective adjustment, and

NOW, THEREFORE, BE IT RESOLVED, That the City Council approve a supplemental appropriation of \$307,320 amending the FY 2012-2013 Insurance Program Budget to cover the additional expense.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the ____ day of _____, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.F

REQUEST

**CONSIDER ADOPTION OF THE “HEALTHY EATING ACTIVE LIVING”
RESOLUTION PROPOSED BY THE LEAGUE OF CALIFORNIA CITIES**

EXECUTIVE SUMMARY

The League of California Cities is encouraging cities to adopt policies which support healthier lifestyles. Those cities that encourage physical activity and healthy nutrition are entitled to be “Healthy Eating Active Living” cities and upon review and approval, become eligible for public relations and marketing resources including use of the HEAL Cities logo.

DISCUSSION

Cities face increased health care costs and residents face a diminished quality of life due to the obesity epidemic. City leaders across California are addressing the crisis by implementing land use and employee policies which encourage physical activity and nutritious eating.

In 2004 the League of California Cities led the way with a resolution which encouraged cities to embrace policies that promote healthier lifestyles and communities. Two years later, the League adopted a resolution to work together with the Institute for Local Government, and the Cities Counties and Schools Partnership to develop a clearinghouse of information that could be used to promote wellness policies and healthier cities. The Healthy Eating Active Living Cities campaign grew out of these resolutions and is a partnership of the California Center for Public Health Advocacy and the League of California Cities.

All California cities which support policies encouraging physical activity and good nutrition are eligible to be Healthy Eating Active Living Cities and upon review and approval, become eligible for public relations and marketing resources including use of the HEAL Cities logo.

The City of Tracy already embraces a number of strategies contained in the Healthy Eating Active Living Cities campaign including:

- Constructing a built environment that facilitates walking, biking and other forms of physical activity where possible;
- Addressing walking and biking connectivity between residential neighborhoods and schools, parks, recreational resources, and retail;
- Expanding community access to indoor and outdoor public facilities through joint use agreements with schools and/or other partners;

- Ensuring comprehensive plans and zoning ordinances include increased opportunities for physical activity and access to health foods for those who choose to partake in them, including compact, mixed-use and transit-oriented development;
- Encouraging walking meetings and the use of stairways among those employees who choose to partake in them.

FISCAL IMPACT

None.

STRATEGIC PLAN

This initiative directly supports the Livability Strategic Priority, whose purpose is to improve the quality of life in Tracy by providing an environment that promotes active and healthy lifestyles and related to:

Goal 3: A city balanced with sustainability

Objective 3a: Implement the Sustainability Action Plan, where public health is an element of our Sustainability Action Plan, and

Objective 3b: Increase environmental awareness in the community, where public health is a community-wide issue.

RECOMMENDATION

Staff recommends that the City Council adopt the attached resolution to enable the City to become part of the 143 other California Cities currently part of the Healthy Eating Active Living Cities campaign.

Prepared by: Sandra Edwards, City Clerk

Reviewed by: Maria A. Hurtado, Assistant City Manager

Approved by: Leon Churchill, Jr., City Manager

RESOLUTION _____

ADOPTING THE "HEALTHY EATING ACTIVE LIVING" PRINCIPLES

WHEREAS, In 2004, the League of California Cities adopted an Annual Conference resolution to encourage cities to embrace policies and facilitate activities that promote healthier lifestyles, including healthy diets and planning principles that encourage citizens of all ages and abilities to undertake exercise, and

WHEREAS, More than half of California's adults are overweight and at risk for many chronic conditions including diabetes, heart disease, cancer, arthritis, hypertension and stroke, and

WHEREAS, More children are being diagnosed with diseases linked to obesity such as Type 2 diabetes and heart disease which were previously seen only in adults, and

WHEREAS, The life expectancy of the current generation is expected to be less than that of their parents due to the consequences of obesity, and

WHEREAS, The annual cost to California, in medical bills, workers compensation and lost productivity related to overweight, obesity, and physical inactivity exceeds \$41 billion; and

WHEREAS, Supporting the health of residents and the local workforce would decrease chronic disease and health care costs and increase productivity, and

WHEREAS, Tracy embraces a number of strategies to promote healthy lifestyles including building an environment that encourages walking, and other forms of physical activity; expanding community access to public facilities through joint use agreements; ensuring plans and zoning ordinances provide increased opportunities for physical activity, including compact, mixed-use and transit-oriented development; addressing walking and biking connectivity between residential neighborhoods and schools, parks, recreational resources, and retail.

NOW, THEREFORE, BE IT RESOLVED, That the Tracy City Council hereby supports the principles of the "Healthy Eating Active Living" campaign.

* * * * *

The foregoing Resolution 2013-_____ was passed and adopted by the Tracy City Council on the 5th day of March, 2013, by the following vote:

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

Mayor

ATTEST:

City Clerk

AGENDA ITEM 3

REQUEST

CONDUCT A PUBLIC HEARING AND INTRODUCE ORDINANCE 1182 - AN ORDINANCE OF THE CITY OF TRACY APPROVING AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH THE SURLAND COMMUNITIES, LLC APPLICATION DA11-0002 THE PROPERTY IDENTIFIED IN THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT IS APPROXIMATELY 321-ACRES LOCATED AT THE NORTHWEST CORNER OF CORRAL HOLLOW ROAD AND LINNE ROAD, ASSESSOR'S PARCEL NUMBERS 240-140-23, 240-140-30, 240-140-31, 240-140-16, 240-140-18, 240-140-22.

EXECUTIVE SUMMARY

Ordinance 1182 was introduced at the special Council meeting held on January 22, 2013. Since that time, various typographical or clerical errors and omissions have been corrected in the Ordinance. Therefore, Ordinance 1182 is being introduced again.

DISCUSSION

On January 22, 2013, City Council approved applications submitted by Surland Communities, LLC., for an amended and restated Development Agreement (DA11-0002), General Plan Amendment (GPA11-0005), and annexation and approval of the Modified Ellis Specific Plan (Applications A/P11-0002, SPA11-0002), all of which are necessary for, and allow for development of a mix of residential, commercial, office/professional, institutional, and recreational uses, parklands, and a swim center at the 321-acre Ellis Project site. The Ellis Project site is located at the Northwest Corner of Corral Hollow Road and Linne Road. Ordinance 1182 was introduced at the January 22, 2013, Council meeting to approve the Amended and Restated Development Agreement with the Surland Communities, LLC.

Since that time, the following typographical or clerical errors and omissions have been corrected in Ordinance 1182:

- The title of the ordinance has been corrected to read: "An ordinance of the City of Tracy approving an Amended and Restated Development Agreement with the Surland Communities, LLC – Application DA11-0002";
- The enacting clause of the ordinance has been corrected to read: "The city council of the City of Tracy does ordain as follows:";
- The first sentence of section 3 of the ordinance has been corrected to read: "The City Council finds that the proposed Amended and Restated Development Agreement, for those reasons more specifically set forth in the Recitals of the proposed Development Agreement:";

- Section 4 of the ordinance has been corrected to read: “Development Agreement Approval. The City Council approves the Amended and Restated Development Agreement with Surland Communities, LLC attached hereto as Exhibit “1”.”;
- An extra (.) has been removed from section 5 of the ordinance;
- Section 6 of the ordinance has been corrected to read: “Publication. This Ordinance shall be published once in the Tri-Valley Herald, a newspaper of general circulation, within fifteen days from and after its final passage and adoption.”; and
- The ordinance has been clarified to reflect that it was introduced on March 5, 2013.

A redlined version of the ordinance as corrected is attached.

Exhibit “1” to the ordinance has been corrected as follows:

- Reference numbers to City Council ordinances, resolutions, and hearing dates have been included in Exhibit “1” to the ordinance on pages 4, 6, and 27; and
- The legal description of the property has been included in Exhibit A to Exhibit “1” to the ordinance (which is consistent with the property description and maps contained in the Draft Revised Environmental Impact Report, the Modified Ellis Specific Plan, and the presentation materials before the Planning Commission and City Council.)

Because of these corrections, Ordinance 1182 is before Council again for introduction.

FISCAL IMPACT

None.

RECOMMENDATION

That Council introduce Ordinance 1182.

Attachments: Redlined version of Ordinance 1182
Ordinance 1182 (Including Development Agreement)

Prepared by: Adrienne Richardson, Deputy City Clerk
Reviewed by: Carole Fleischmann, Assistant City Clerk
Approved by: Leon Churchill, Jr., City Manager

ORDINANCE 1182

AN ORDINANCE OF THE CITY OF TRACY APPROVING ~~AN AMENDED-MODIFIED~~ AND RESTATED DEVELOPMENT AGREEMENT WITH THE SURLAND COMMUNITIES, LLC APPLICATION DA11-0002

WHEREAS, In December 2011, the Surland Communities applied for a development agreement (DA11-0002) which would provide real property and funding towards the creation of a swim center; and

WHEREAS, In May 1, 2012, the City Council, in accordance with Resolution No. 2012-074, directed staff to enter into negotiations with the Surland Communities for a modified and restated development agreement; and

WHEREAS, A Final Environmental Impact Report ("FEIR") for the Surland Communities Amended and Restated Development Agreement and Ellis Specific Plan Applications (SCH No. 2012022023), was prepared in compliance with the requirements of the California Environmental Quality Act ("CEQA"), and

WHEREAS, Pursuant to California Government Code Section 65867, the Planning Commission reviewed the Development Agreement, in conjunction with other Surland Communities applications, including the Ellis Specific Plan and General Plan Amendment, including consistency with the General Plan, and

WHEREAS, On December 5, 2012, the Planning Commission, following duly noticed and conducted public hearing, in accordance with state law, recommended approval of the Amended and Restated Development Agreement to the City Council and hereby transmits the Resolution, including the proposed findings, to the City Council; and

WHEREAS, The proposed Development Agreement is consistent with the General Plan, and the Ellis Specific Plan, for the reasons set forth in the Recitals in the proposed Amended and Restated Development Agreement dated November, 2012; and

WHEREAS, The Planning Commission conducted a public hearing on December 19, 2012, and recommended that the City Council approve the Modified and Restated Development Agreement with The Surland Communities, LLC.

The city council of the City of Tracy ~~City Council hereby does~~ ordains as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein as findings.
2. Compliance with CEQA. The Final Environmental Impact Report ("FEIR") for the Modified Ellis Project, approved by Resolution No. PC 2012-026, and incorporated herein by reference, was prepared in compliance with the requirements of the CEQA. 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 (hereinafter "CEQA") analyzing both the Ellis Specific Plan (including the Swim Center), and the proposed Amended and Restated Development Agreement.

3. Findings regarding Development Agreement. ~~Pursuant to Resolution No. 2006-368, the Planning Commission recommends that I~~the City Council finds that the proposed Amended and Restated Development Agreement, for those reasons more specifically set forth in the Recitals of the proposed Development Agreement:
 - a. is consistent with the objectives, policies, general land uses and programs specified in the City General Plan and any applicable community and specific plan;
 - b. is in conformity with public convenience, general welfare, and good land use practices;
 - c. will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area, nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole;
 - d. will not adversely affect the orderly development of property or the preservation of property values; and
 - e. is consistent with the provisions of Government Code Sections 65864 *et seq.*
4. Development Agreement Approval. The ~~Planning Commission recommends that~~the City Council approves the Amended and Restated Development Agreement with Surland Communities, LLC attached hereto as Exhibit "1".
5. Effective Date. This Ordinance takes effect 30 days after its final passage and adoption.
6. Publication. This Ordinance shall be published once in the Tri-Valley TimesHerald, a newspaper of general circulation, within fifteen days from and after its final passage and adoption.

* * * * *

The foregoing Ordinance _____ was introduced at a regular meeting of the Tracy City Council on the 5th 22nd day of ~~January~~March, 20123, and finally adopted on the _____ day of _____, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

ORDINANCE 1182

AN ORDINANCE OF THE CITY OF TRACY APPROVING AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH THE SURLAND COMMUNITIES, LLC APPLICATION DA11-0002

WHEREAS, In December 2011, the Surland Communities applied for a development agreement (DA11-0002) which would provide real property and funding towards the creation of a swim center; and

WHEREAS, In May 1, 2012, the City Council, in accordance with Resolution No. 2012-074, directed staff to enter into negotiations with the Surland Communities for a modified and restated development agreement; and

WHEREAS, A Final Environmental Impact Report ("FEIR") for the Surland Communities Amended and Restated Development Agreement and Ellis Specific Plan Applications (SCH No. 2012022023), was prepared in compliance with the requirements of the California Environmental Quality Act ("CEQA"), and

WHEREAS, Pursuant to California Government Code Section 65867, the Planning Commission reviewed the Development Agreement, in conjunction with other Surland Communities applications, including the Ellis Specific Plan and General Plan Amendment, including consistency with the General Plan, and

WHEREAS, On December 5, 2012, the Planning Commission, following duly noticed and conducted public hearing, in accordance with state law, recommended approval of the Amended and Restated Development Agreement to the City Council and hereby transmits the Resolution, including the proposed findings, to the City Council; and

WHEREAS, The proposed Development Agreement is consistent with the General Plan, and the Ellis Specific Plan, for the reasons set forth in the Recitals in the proposed Amended and Restated Development Agreement dated November, 2012; and

WHEREAS, The Planning Commission conducted a public hearing on December 19, 2012, and recommended that the City Council approve the Modified and Restated Development Agreement with The Surland Communities, LLC.

The city council of the City of Tracy does ordain as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein as findings.
2. Compliance with CEQA. The Final Environmental Impact Report ("FEIR") for the Modified Ellis Project, approved by Resolution No. PC 2012-026, and incorporated herein by reference, was prepared in compliance with the requirements of the CEQA. 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 (hereinafter "CEQA") analyzing both the Ellis Specific Plan (including the Swim Center), and the proposed Amended and Restated Development Agreement.

3. Findings regarding Development Agreement. The City Council finds that the proposed Amended and Restated Development Agreement, for those reasons more specifically set forth in the Recitals of the proposed Development Agreement:
 - a. is consistent with the objectives, policies, general land uses and programs specified in the City General Plan and any applicable community and specific plan;
 - b. is in conformity with public convenience, general welfare, and good land use practices;
 - c. will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area, nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole;
 - d. will not adversely affect the orderly development of property or the preservation of property values; and
 - e. is consistent with the provisions of Government Code Sections 65864 *et seq.*
4. Development Agreement Approval. The City Council approves the Amended and Restated Development Agreement with Surland Communities, LLC attached hereto as Exhibit "1".
5. Effective Date. This Ordinance takes effect 30 days after its final passage and adoption.
6. Publication. This Ordinance shall be published once in the Tri-Valley Herald, a newspaper of general circulation, within fifteen days from and after its final passage and adoption.

* * * * *

Ordinance 1182

Page 3

The foregoing Ordinance _____ was introduced at a regular meeting of the Tracy City Council on the 5th day of March, 2013, and finally adopted on the _____ day of _____, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

EXHIBIT 1

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

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

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

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

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1
APPLICABLE DEVELOPMENT TERMS

1.01 The Swim Center Obligations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.02 Other Processing.

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

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

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

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

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

1.03 Applicable Law.

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

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

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

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

(B) Mutually agreed to by the Parties;

(C) Adopted by the City; and

(D) Take "Legal Effect."

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

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

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

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

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

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

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

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

1.04 Vested Right to Applicable Law.

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

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

1.05 New City Law(s).

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

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

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

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

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

(5) Limit the processing of Owner Approvals.

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

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

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

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

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

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

1.06 Term.

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

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

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

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

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

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

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

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

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

1.07 Residential Growth Allotments.

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

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

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

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

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

1.08 Significant Actions by Third Parties.

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

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

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

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

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

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

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

1.10 Annexation.

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

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

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

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

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

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

1.11 Adequate Water Supply.

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

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

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

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

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

1.12 Recycled Water Program.

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

1.13 Wastewater Treatment and Conveyance Capacity.

(a) Wastewater Treatment Capacity.

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

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

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

(b) Conveyance Capacity.

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

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

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

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

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

1.14 Schools.

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

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

1.15 Ellis Specific Plan Parks.

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

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

1.16 Future Impact Fees; Nexus.

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

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

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

2.01 Covenants Run With The Land.

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

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

2.02 Defaults.

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

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

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

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

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

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

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

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

(1) Money damages are excluded as provided above;

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

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

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

2.03 Annual Review.

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

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

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

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

2.04 Force Majeure Delay, Extension of Times of Performance.

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

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

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

2.05 Third Party Legal Actions.

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

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

ARTICLE 3 GENERAL PROVISIONS

3.01 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) **"Ellis FIP"** shall have the meaning set forth in Section 1.03(a)(2) of this Agreement.

(17) **"Ellis Initial Capacity"** shall have the meaning set forth in Section 1.14(a) (1) of this Agreement.

(18) **"Ellis Project"** shall have the meaning set forth in Recital paragraph I of this Agreement.

(19) **"Ellis Project Approvals"** shall have the meaning set forth in Recital paragraph I of this Agreement.

(20) **"Ellis Swim Center Site"** shall have the meaning set forth in Section 1.01(b) of this Agreement.

(21) **"Enabling Resolution"** shall have the meaning set forth in the preamble of this Agreement.

(22) **"Existing City Laws"** shall have the meaning set forth in Section 1.03(a) (3) of this Agreement.

(23) **"Force Majeure Event"** shall have the meaning set forth in Section 2.04(a) of this Agreement.

(24) **"General Plan"** shall mean the City of Tracy General Plan as amended by the City Council on January 22, 2013, by Resolution No. 2013-012, as described in Recital paragraph I of this Agreement.

(25) **"GMO"** shall mean the City of Tracy Residential Growth Management Plan set forth in Chapter 10.12 of Title 10 of the City of Tracy Code of Ordinances, as may be amended from time to time.

(26) **"GMO Guidelines"** shall mean the GMO Guidelines adopted by the City Council of the City of Tracy pursuant to Title 10, Chapter 10.12, Section 10.12.050 of the City of Tracy Code of Ordinances, that are in effect on the Agreement Effective Date.

(27) **"Good Faith and Fair and Expeditious Dealing"** shall have the meaning set forth in Section 1.02(c) of this Agreement.

(28) **"LAFCO"** shall have the meaning set forth in Section 1.02(c) of this Agreement.

(29) **"Land Dedication Offer"** shall have the meaning set forth in Section 1.01(b) (1) of this Agreement.

(30) **"Legal Effect"** shall mean that the ordinance, resolution, permit, license or other grant of approval (collectively, "permit") in question, has been adopted by City and that all applicable administrative appeal periods and statutes of limitations have run and that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.02 Requirements of Development Agreement Statute.

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

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

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

3.03 Development Timing.

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

3.04 Hold Harmless and Indemnification.

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

3.05 Miscellaneous.

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

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

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

(d) Notices.

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

If to the City:

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

With a copy to:

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

If to Owner:

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

With a copy to:

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

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

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

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

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

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

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

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

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

Exhibit A Property Legal Description

Exhibit B RGA Transmittal and Application Form

[SIGNATURES ON FOLLOWING PAGE]

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

"City"
CITY OF TRACY, a municipal corporation

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

By: Brent Ives
Title: Mayor
Date: _____

By: _____
By: _____
Les Serpa
Title: _____
Date: _____

Attest:

By:
Title: CITY CLERK
Date: _____

Approved As To Form:

By: Daniel Sodergren
Title: City Attorney
Date: _____

Exhibit A

Property Description

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

PARCEL NO. 1:

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

APN: 240-140-18

PARCEL NO. 2:

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

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

APN: 240-140-22

PARCEL NO. 3:

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

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

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

APN: 240-140-16

PARCEL NO. 4:

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

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

APN: 240-140-23

PARCEL NO. 5:

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

APN: 240-140-30

PARCEL NO. 6:

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

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

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

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

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

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

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

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

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

APN: 240-140-31

Exhibit B

RGA Application

RGA Transmittal Form

SURLAND DEVELOPMENT AGREEMENT RESIDENTIAL GROWTH ALLOTMENT APPLICATION

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

Submitted by: _____
Date: _____

Received by: _____
Date: _____

APPLICATION FOR RESIDENTIAL GROWTH ALLOTMENTS

Purpose Of Application

RGA's: _____

Exception (For Affordable Housing Units): _____

Applicant's Information

Name: _____ Telephone No.: _____

Company: _____ Fax No.: _____

Mailing Address: _____

City/State/Zip Code: _____

Property Owner's Information

Name: _____ Telephone No.: _____

Company: _____ Fax No.: _____

Mailing Address: _____

City/State/Zip Code: _____

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

Project Information

Recorded Subdivision Name: _____

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

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

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

Project Area name (if different from above): _____

Project Area ownership: _____

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

Assessor's Parcel No(s): _____

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

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

Total number of building permits issued: _____

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

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

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

Applicant's Signature

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

Applicant's Signature

Date

AGENDA ITEM 4

REQUEST

CONDUCT A PUBLIC HEARING TO HEAR OBJECTIONS TO AND APPROVE THE FINAL COSTS OF WEED ABATEMENT AND AUTHORIZE A LIEN ON THE LISTED PROPERTIES IN THE COSTS OF ABATEMENT AMOUNT PLUS 25 PERCENT

EXECUTIVE SUMMARY

The Fire Department's weed abatement contractor has completed the abatement of all fire hazards on designated properties. Since the properties have been abated the contractor has submitted invoices to be paid. A public hearing is scheduled for appropriation for payment of abatement services.

DISCUSSION

Pursuant to Tracy Municipal Code Section 4.12.260, properties were identified by the Fire Department that required weed abatement. The property owners were given notice to abate and a public hearing was conducted November 7, 2012 to hear any objections to abatement. The Tracy Municipal Code provides that upon failure of the owner, or authorized agent, to abate within 20 days from the date of notice, the City will perform the necessary work by private contractor and the cost of such work will be made a personal obligation of the owner, or become a tax lien against the property. The City Council authorized the abatement.

The Fire Department designated 2 parcels (Exhibit A) that required abatement by Baylor Services, the contractor for the City of Tracy. The abatement was completed at a cost to the City of \$1,028.50. The cost of abatement assessed to the property owner is the actual cost of the City contractor plus a 25% overhead charge, per Resolution 2011-101. The total cost, including the 25% overhead charge is \$1,285.62.

Fire Department staff notified the affected property owners of this public hearing where Council will consider the report of costs for abatement and any objections of the property owners liable for the cost of abatement.

STRATEGIC PLAN

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

FISCAL IMPACT

The Fire Department's FY 2012-2013 operating budget reflects \$12,100 for weed abatement services. The abatement cost of \$1,028.50 is within the identified budget. The total cost expended to date in FY 2012-2013 on weed abatement for work performed by Baylor Services is \$2,257.25.

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March 5, 2013
Page 2

RECOMMENDATION

That the City Council conduct a public hearing to hear objections to the costs of abatement and authorize, by resolution, approval of the final abatement costs, and authorization of a lien on the listed properties in the cost of abatement amount plus 25 percent.

Prepared by: Gina Rodriguez, Administrative Assistant II

Approved by: Steve Hanlon, Division Chief

Approved by: Alford Nero, Fire Chief

Attachment: Exhibit A - 2013 Weed Abatement Costs

**TRACY FIRE DEPARTMENT
FINAL COST OF NOVEMBER 7, 2012
WEED ABATEMENT**

APN	Property Owner	Site Address	Abatement Cost	Administrative Fee	Total Cost
235-082-08	Resham Singh	235 W. South Street	\$ 378.50	\$ 94.62	\$ 473.12
212-170-31	Chevron USA Inc.	3733 N. Tracy Blvd	\$ 650.00	\$ 162.50	\$ 812.50
		TOTAL	\$ 1,028.50	\$ 257.12	\$ 1,285.62

RESOLUTION _____

APPROVING THE FINAL COSTS OF WEED ABATEMENT

WHEREAS, Pursuant to Tracy Municipal Code, Title 4, Article 6, Section 4.12.260, property was identified that required weed abatement, and

WHEREAS, The property owners were given notice to abate and a public hearing was conducted on November 7, 2012 and

WHEREAS, The Tracy Municipal Code provides that upon failure of the owner, or authorized agent, to abate within 20 days from the date of notice, the City will perform the necessary work by private contractor and the cost of such work will be made a personal obligation of the owner, or become a tax lien against the property, and

WHEREAS, The City Council authorized the abatement by resolution and the Fire Department designated two parcels that would require the City contractor Baylor Services, to abate, and

WHEREAS, The abatement was completed at a cost to the City of \$1,028.50 and

WHEREAS, Fire Department staff notified property owners of this public hearing where Council considered the reports of costs for abatement and any objections of the property owners liable for the cost of abatement, and

WHEREAS, The cost of abatement assessed to the property owner is the actual cost of the City contractor plus a 25% administrative charge, per the Tracy Municipal Code, and

NOW, THEREFORE, BE IT RESOLVED, That the City Council approves the final abatement costs in the amounts set forth in Exhibit A to the staff report accompanying this item and authorizes a lien on each of the properties shown on said Exhibit A in those amounts.

The foregoing Resolution _____ was adopted by the Tracy City Council on the _____ day of _____, 2013, by the following vote:

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

Mayor

ATTEST:

City Clerk

AGENDA ITEM 5

REQUEST

MAYOR PRO TEM MACIEL SPONSORED DISCUSSION REGARDING A REQUEST TO HAVE THE CITY FUND CERTAIN INFRASTRUCTURE IMPROVEMENTS ASSOCIATED WITH A PROPOSED NEW MONTESSORI SCHOOL IN THE CITY OF TRACY

EXECUTIVE SUMMARY

On February 19, 2013, City Council discussed a report from Mayor Pro Tem Maciel in which Council directed staff to bring a regular agenda item to City Council related to the Montessori school's request to have the City fund certain infrastructure items. The proposed new school would be developed in the Mount Diablo / Mount Oso area, near the existing Montessori school on Tracy Blvd. In order to address the Montessori request, staff has identified 2 options for Council consideration. Depending on Council's direction, the option selected may have an impact on the City's General Fund and may conflict with current City policy. Staff recommends that Council select Option 2, which would limit the City's financial exposure and is consistent with current City policy.

DISCUSSION

On February 19, 2013, City Council discussed a report from Mayor Pro Tem Maciel to schedule an agenda item related to City funding certain infrastructure items for a proposed new Montessori school. The initial request was made by Pamela Rigg representing Montessori School. The City Council directed staff to bring this as a regular agenda item to City Council.

Site Information / Background

City staff has processed numerous applications to build or expand private schools in the community over the past decade. The City currently has one Montessori school located on the southeast corner of Tracy Blvd. and Fourth Street. (See Attachment A - Vicinity Map for Current Montessori Location.) The current Montessori school was developed in 2004, and has since undertaken several expansions to their existing location. According to Ms. Pamela Riggs, owner of the Tracy Montessori School, they have outgrown their current location and would like to expand their school facilities to an additional nearby site. Ms. Riggs has preliminarily selected a site located on three parcels (APN #'s 235-430-13, 235-430-14, 235-430-16) approximately three blocks west of their current location (See Attachment A - Vicinity Map for Proposed Montessori Location).

New Site Infrastructure and Impact Fees

The proposed site is located within the Infill Area of the City. The Impact Fees associated with the Infill Area are fair share costs toward major backbone infrastructure. The construction of major backbone infrastructure is the collective responsibility of the property owners within the particular fee area. Major backbone infrastructure items

include water lines, sewer lines, storm drainage and street improvements. It is important to note that in order to stimulate development, the Infill Area Fees were reduced by approximately 35% in early 2012. Impact Fees in the Infill Area are the lowest fees in the City. Attachment B to this staff report is a copy of the Development Impact Fee Sheet for this new site.

In addition to paying impact fees for the major backbone infrastructure, there are certain infrastructure costs that are typically site related and are paid for by the development community. These include frontage costs (curb, gutter, sidewalk, landscaping) and other infrastructure including water distribution lines, sewer collection, and storm drainage collection lines that may be necessary for the site to develop.

Pavillion Parkway in the I-205 Specific Plan Area is an example of these more site related and developer funded infrastructure costs. The costs for constructing Pavillion Parkway, including water and sewer lines within the street, was the responsibility of the properties primarily fronting that roadway segment and was not included as part of the backbone Impact Fees. In this example, the roadway and other infrastructure was completed by a small group of property owners. As development has occurred over the years, the City has collected fees for this private construction project and has reimbursed the property owners that contributed the roadway improvements by incurring continuation costs more than their fair share for the improvements. This type of reimbursement is called a "Benefit District" reimbursement and is currently part of the existing Tracy Municipal Code (TMC). It is commonly used by the development community.

The proposed new site for the Montessori school includes both backbone Development Impact Fees as well as some site specific infrastructure requirements. More specifically, there are water and sewer lines that need to be extended to the site for service as well as the typical frontage improvements. It was explained to Ms. Pamela Rigg that if there are infrastructure items that will be used by other property owners in the future, then the City can establish a Benefit District reimbursement as a means of providing reimbursement in the future. The estimated cost for site related infrastructure that may benefit other property owners in the area is approximately \$235,200. This includes the extension of water and sewer lines as well as connecting a sidewalk. In addition, there is approximately \$127,000 associated with the construction of this property's frontage improvement. The frontage improvements would not be reimbursed by others in the future. Attachment C to this staff report is a map showing the infrastructure items for this site.

Montessori Request

Ms. Pamela Rigg, Montessori representative, is requesting that the City pay for \$235,200 worth of infrastructure items and that the City would get reimbursed as future development occurs over time as well as frontage improvements to the site estimated at approximately \$127,000. A copy of her December 17, 2012 request letter is attached as Attachment D to this staff report. She also states that if this is not plausible, then she would pay for these improvements with the monies collected by the City as part of the Development Impact Fees. It was explained to Ms. Riggs that both scenarios result in an impact to the City's General Fund by the same dollar amount. This request has been

elevated to a Council discussion because our existing Tracy Municipal Code does not currently allow for this to occur.

Options for Council Consideration

Option 1: Use General Fund monies to pay for the \$362,200 (\$225,000 offsite, \$10,200 sidewalk connection, \$127,000 frontage) site costs for this development and City would receive partial reimbursement from the Montessori School in the future. The remaining cost incurred by the City will be recouped when other adjacent properties develop.

If the Council directs staff to pursue this option, it would be a deviation from existing City policy with regard to new development paying for their own infrastructure. It would also impact the City's General Fund and put financial stress on the organization.

Option 2: Do not use General Fund monies to pay for these site related costs and continue to provide assistance to Montessori as outlined in the City's letter dated September 19, 2012 as attached.

This option would be consistent with current City policy. It would also not have a negative impact on the City's General Fund.

FISCAL IMPACT

There will be an impact to the City's General Fund of \$362,200 if the Council selects Option 1 as it would further increase the City's FY 12/13 deficit. There would be no impact to the City's General Fund under Option 2.

RECOMMENDATION

It is recommended that the City Council direct staff to pursue Option 2 as it will not result in an impact to the City's General Fund and is consistent with current City Policy.

Prepared by: Andrew Malik, Development Services Director

Approved by: Leon Churchill Jr., City Manager

- Attachment A: Vicinity Map of Existing and Proposed Site Locations
- Attachment B: Development Impact Fee Schedule
- Attachment C: Utility Map
- Attachment D: Letter from Pamela Rigg
- Attachment E: City letter to Pamela Rigg

Montessori Existing and Requested Site Locations



**CITY OF TRACY
DEVELOPMENT IMPACT FEES**

aka CAPITAL-IN-LIEU FEE WORKSHEET
THIS WORKSHEET IS FOR ESTIMATING PURPOSES ONLY

COMMERCIAL / OFFICE (INSTITUTION)

INFILL PLANNING AREA

DRAFT

APNs 205-430-13, 14 & 16, THE GROSS AREA IS USED AS ONE LOT COMBINING ALL APNS' AREA
TABLE D - EASTSIDE SEWER & EASTSIDE & WESTSIDE DRAINAGE ZONE

DEVELOPMENT IMPACT FEES	ACCOUNT #	FEE PER ACRE (a)	GROSS ACRES (b)	TOTAL FEES (a) x (b)
Water Supply and Treatment	511-42360-402-00000	\$ 18,251.00	1.382	\$ 25,222.88
Water Distribution Upgrade	511-42360-402-00000	-	1.382	\$ -
WWTP - Upgrade	521-42370-402-00000	39,960.00	1.382	\$ 55,224.72
WWTP - Conveyance Upgrade	521-42370-402-00000	-	1.382	\$ -
AD 84-1 Reimbursement	521-42370-402-00000	-	1.382	\$ -
Storm Drainage - Upgrade	312-42320-402-00000	22,141.00	1.382	\$ 30,598.86
Storm Drainage - Westside Outfall	312-42320-402-00000	-	1.382	\$ -
Storm Drainage - CFD 89-1 Reimb	312-42320-402-00000	-	1.382	\$ -
Roadways	313-42310-402-00000	35,230.00	1.382	\$ 48,687.86
Parks	311-42330-402-00000	N/A	N/A	N/A
SUB TOTAL ESTIMATED DEVELOPMENT IMPACT FEES		\$ 115,582.00		\$ 159,734.32
Other Fees To Be Determined - Collected at Building Permit Issuance				
Public Buildings	314-4234-402	\$781/1,000 Bldg Sq Ft	27,088.94 # of Bldg Sq Ft	\$ 21,165.46 *
County Facilities Fee	391-2719-027	\$.37 per Bldg Sq Ft	27,088.94 # of Bldg Sq Ft	\$ 10,022.91 *
Regional Transportation Impact Fee	808-2720-027	\$1.50 per Bldg Sq Ft	27,088.94 # of Bldg Sq Ft	\$ 40,633.41 *
New Address Mapping Fees	211-4522-405-R365	\$64 per Address	1 # of Address	\$ 64.00
Water Meter Radio Read MXV Fee	511-4617-406-R017	\$11 per Meter	1 # of Meter	\$ 11.00
Water Connection Fee - Domestic	511-46171-406-00000	1" Meter Size = \$4,716, 1.5" Meter size = \$10,601		\$ 10,601.00
Water Connection Fee - Irrigation	511-46171-406-00000	Fee Based On Meter Size		\$ N/A
Habitat Mitigation Fee	391-24161-024-XIN45	\$13,262 Per Acre	___ # of Acres	\$ N/A
Agricultural Mitigation Fee	116-24161-024-D6006	\$2,638.14 Per Acre	___ # of Acres	\$ N/A
TOTAL ESTIMATED DEVELOPMENT IMPACT FEES			DRAFT	

FEES BASED ON MAXIMUM BUILDING SIZE OF 27,088.94 SF.

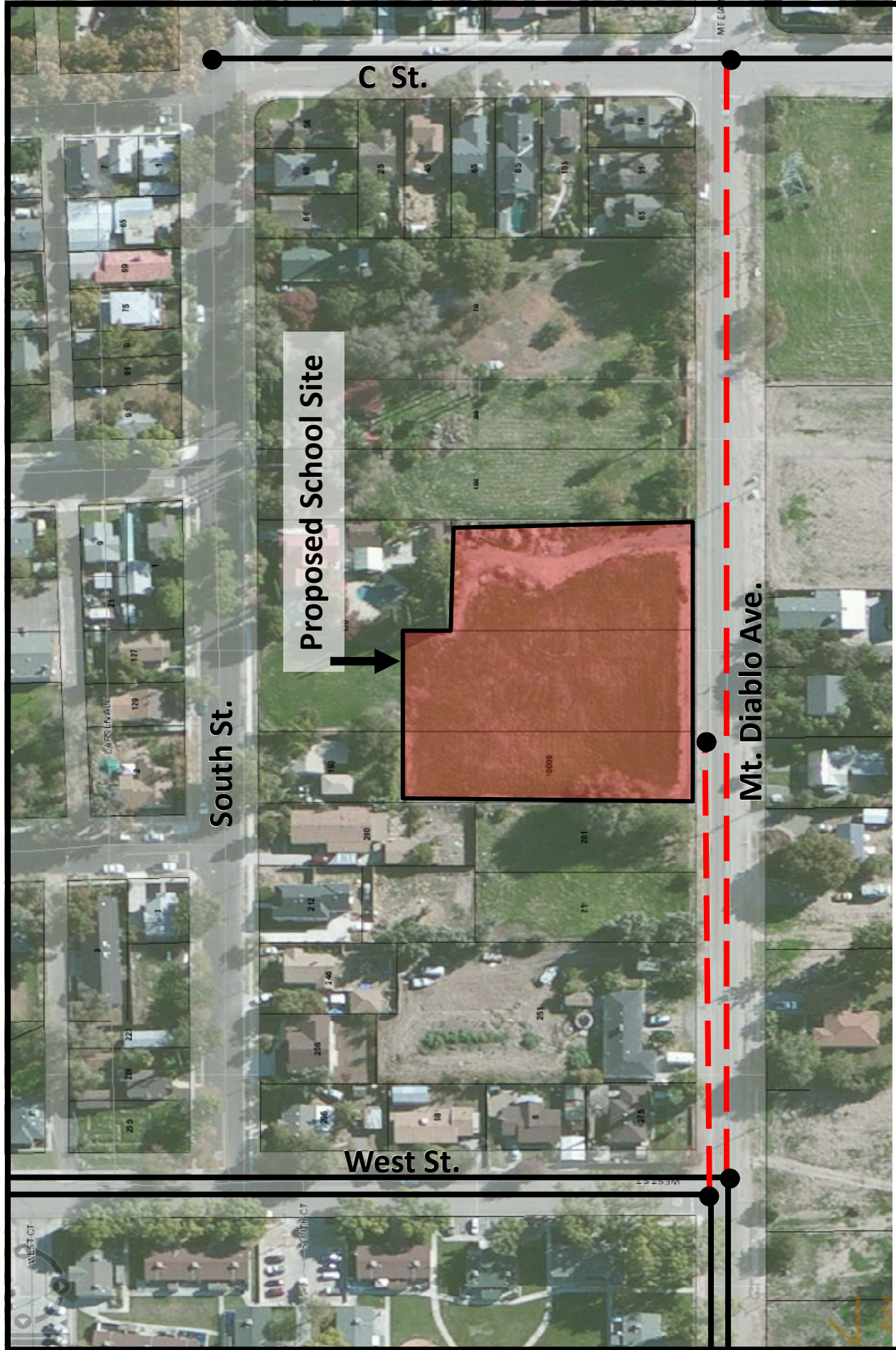
Updated JAN 2013 by ENR

Depending on the geographic location of the proposed project, additional technical studies may be required to serve the infrastructure needs of the project. The Developer or Subdivider will be responsible for the costs of the studies and required improvements. These costs will be in addition to Development Impact Fees (aka Capital-In-Lieu Fees).

This table does not include school fees or other impact fees that may be levied.

Capital-In-Lieu Fees are adjusted twice per year in accordance with ENR index and as otherwise directed by City Council. These are Capital-In-Lieu Fees only, determined by specific, identified assumptions about a project. They do not include building permit, plan check, inspection, school, encroachment permit, engineering fees, or any other applicable fees.

Montessori - Existing / Extended Water/Sewer Locations



— Existing Water/Sewer Lines

- - - Extension of Water/Sewer Lines Needed



Montessori School of Tracy

100 South Tracy Boulevard, Tracy, CA 95376-4692

December 17, 2012

Andrew Malik
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

RECEIVED
DEC 19 2012
CITY OF TRACY

Dear Mr. Malik,

I would like to invite you to visit the parcel of land at 10009 West Mount Diablo Boulevard. This is the proposed site for the Montessori Elementary School of Tracy. We would like to meet you at the site to explain our plans for the School and for the development of this area. Please call Kathy McIntosh, Project Manager & School Director, at 209 833-3458.

The block does not have water or sewer lines, or sidewalk. There are quite a number of undeveloped parcels along this block. The block does not reflect the vitality and the care for which the rest of the City of Tracy is respected. The proposed site of the Montessori Elementary School of Tracy would radically change this blighted area.

I believe that development along this block has been delayed primarily because of the cost of the sewer and water lines, and the sidewalk development along this block. The City's estimate of the cost of this infrastructure is:

The sewer and water lines to the property.	
Estimated cost by the City:	\$225,000.
Frontage development at the street.	
Estimated cost by the City:	\$127,000.
Total	\$352,000.

Certainly we would be happy to have the City undertake the above infrastructure cost of \$352,000.

If that scenario is not plausible then the Montessori Elementary School of Tracy will undertake the infrastructure costs, with the Impact Fees that the City collects from us going directly toward our costs of infrastructure.:

Development Impact Fees: Calculated as *Commercial Office* by the City: **\$159,734.**

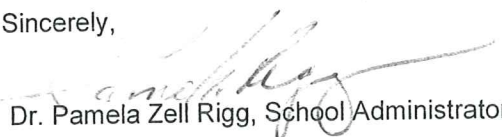
The financial advantage to the City is:

1. \$352,000.00 of infrastructure development.
2. Building and permit fees from building the Montessori School.
3. Construction jobs in the community.
4. Property taxes
5. School staff employment

The above economic stimulation is repeated for each additional parcel along the block which is developed.

Your consideration in designating the Development Impact Fees toward the infrastructure costs is appreciated.

Sincerely,


Dr. Pamela Zell Rigg, School Administrator





City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

DEVELOPMENT &
ENGINEERING SERVICES

MAIN 209.831.6400

FAX 209.831.6439

www.ci.tracy.ca.us

September 19, 2012

Pamela Zell Rigg
School Administrator
Montessori School of Tracy
100 South Tracy Boulevard
Tracy, CA 95376

Dear Mrs. Zell Rigg:

This letter is to summarize our recent discussions with you regarding your school expansion plans for a new location on Mt. Diablo Avenue. As we stated in our meetings with you on September 12 and 19, our goal is to help facilitate your expansion plans to the best of our ability and to provide options for you that conform to our current Tracy Municipal Code. With that goal in mind, we presented three options for you to consider:

Option 1: Reduce and or Defer Impact Fees

- *Reduce Fees:* The location you have selected on Mt. Diablo Avenue is within the City's Infill fee area. Over the past several years, the City has taken steps to reduce Impact Fees (wastewater, water, roadway, storm drainage) in many areas of the City where possible. The Infill area was one of those areas; the impact fees for Infill were reduced by 35% on May 1, 2012. Given recent construction bids, we do not believe there is additional room to further reduce these fees without creating funding shortfalls or general fund obligations in the future.
- *Defer Impact Fees:* As we discussed, there is a possible method where the City may be able to defer the payment of the City impact fees for your project. This method corresponds to a phased development approach to your project. For example, the City's fee program is based on the number of acres, or portion thereof, to develop. If you had plans to phase in your development or have areas of your site temporarily dedicated to storm drainage facilities, we would recalculate your fees based on only the areas you intended to develop within the first phase. We would defer the remaining impact fees to a time when you intended to build the remaining phases.

Option 2: Grow Tracy Fund Loan (Fee payment over extended period of time)

- The City has developed an incentive loan program for which your project would qualify. The Grow Tracy Fund is a loan program, underwritten by the Small Business Administration (SBA), that could be used to pay for construction costs, land purchase, impact fees, etc. Our more recent loans have had interest rates in the 3 – 4 percent range with terms of up to 20 years. We have already had preliminary



discussions with our loan underwriter and we would be willing to meet with you if you are interested.

Option 3: Less Expensive Infrastructure Solutions

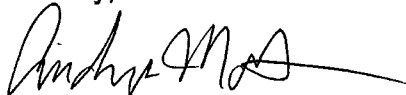
- As you know, this and neighboring parcels in the Mt. Diablo/Mt. Oso area, have certain infrastructure requirements that are the sole responsibility of this area. They include such items as extending sewer lines, water lines, and storm drainage improvements for the benefit of this area. For property owners that have to extend infrastructure that may benefit other properties in the area, the Tracy Municipal Code provides a mechanism for reimbursement. If you extend infrastructure to serve your property that benefits others, you may request a Benefit District be established so you can be reimbursed once the benefiting properties develop.

In addition, our engineering staff will work with you to find the least expensive options to provide infrastructure services to your site.

The three options presented above represent the best approach we can offer to help facilitate your expansion plans. Your August 30, 2012, letter to the Mayor requests that we waive the impact fees for your project. As we discussed at our September 12 and 19 meeting, we cannot recommend that the City waive the adopted impact fees for your project as such an action would have a negative impact on the City's General Fund.

I appreciate you taking the time to meet with me and my staff regarding your expansion plans. Your project will be a welcome addition to our community. Please let me know if you would like to take advantage of any of the options presented to assist you with your project. I look forward to working with you on your expansion plans.

Sincerely,



Andrew Malik
Development Services Director

cc: Mayor and Council Members
Leon Churchill, Jr., City Manager
Maria Hurtado, Assistant City Manager
Kuldeep Sharma, City Engineer

AGENDA ITEM 6

REQUEST

FISCAL YEAR 2012/13 GENERAL FUND MID-YEAR BUDGET PERFORMANCE REPORT AND FIVE-YEAR FINANCIAL PLAN UPDATE

EXECUTIVE SUMMARY

Overall, second quarter General Fund revenues are trending positively, particularly property and general sales tax. Property tax is demonstrating mild growth and revenues should exceed the adopted budget amount. Sales tax revenue is projected to increase significantly due to steep fuel prices and a rise in new auto and retail purchases. Other economically sensitive revenue, including franchise fees, licenses and permits, transient occupancy tax, and interest income are stable.

Department expenditures for the second quarter are trending as expected. While year-end expenses are anticipated to be slightly higher, the FY 12/13 deficit, which was projected to be \$2.18 million, is anticipated to be approximately \$907,510 due to increases in revenue.

PURPOSE:

The purpose of this report is to provide the City Council with a status of the FY 12/13 adopted operating budget at the mid-year point, including an overview of revenue and expenditure trends and financial projections for the current fiscal year. This report also includes a brief discussion about the status of the General Fund Reserve and an update of the Five-Year Financial Plan (FY 13/14 – FY 17/18) to provide a context for the FY 13/14 budget development process and recommended budget approach.

DISCUSSION

FY 12/13 MID-YEAR BUDGET PERFORMANCE REPORT

FY 12/13 General Fund Budget

The FY 12/13 adopted budget assumed \$47.7 million in General Fund revenue. Of that amount, approximately \$5.8 million was temporary taxes (Measure E sales tax). Total adopted expenditures equaled \$49.9 million, which included an assumed budget savings of \$1 million as the City typically spends about 98% of its General Fund operating budget. The remaining 2% equals approximately \$1 million. The budget deficit anticipated for FY 12/13 was \$2.2 million.

The FY 12/13 General Fund Operating Revenues and Expenditures Chart as depicted on page 2 of this report, reflects the adopted budget, year-to-date actuals through December 2012, and year-end projections. Mid-year trends indicate that General Fund operating revenue and expenditures will exceed adopted budget levels. Projected increases in FY 12/13 revenue are based on continued economic growth and recovery. Current operating expense projections anticipate that the City will expend 100% of its

adopted expenditure budget rather than the assumed 98% as discussed earlier in this report. Taking in consideration of the changes in revenues and expenditures, the projected deficit is expected to be approximately \$907,510, which is \$1.3 million lower than the adopted deficit of \$2.2 million.

FY 12/13 General Fund Operating Revenues and Expenditures

GENERAL FUND SUMMARY	FY 12/13 ADOPTED BUDGET	FY 12/13 ACTUALS THRU DECEMBER 2012	FY 12/13 YEAR-END PROJECTIONS
REVENUE			
Property Taxes	\$13,638,300	\$5,110,718	\$13,872,450
Sales Taxes - General	\$12,511,000	\$3,521,191	\$13,411,200
Temporary Taxes (Measure E)	\$5,759,300	\$2,089,772	\$6,100,000
Franchise Fees	\$2,501,000	\$974,341	\$2,472,800
Other Taxes	\$1,610,000	\$1,113,546	\$1,600,000
Use of Money & Property	\$645,000	\$299,754	\$965,000
<i>Subtotal</i>	<i>\$36,664,600</i>	<i>\$13,109,322</i>	<i>\$38,421,450</i>
Other General Fund Revenue	11,034,120	\$6,152,232	\$11,562,870
Total Revenues	47,698,720	\$19,261,554	\$49,984,320
EXPENDITURES			
Total Expenditures	\$49,878,820	\$23,224,219	\$50,891,830
BUDGET DEFICIT	(\$2,180,100)		(\$907,510)

FY 12/13 General Fund Revenue Trends

The following section discusses revenue trends, with particular emphasis on key economically sensitive revenue, including Property Tax, Sales Tax, Temporary Taxes (Measure E), Franchise Fees, Other Taxes (Transient Occupancy Tax, Business Licenses), and Use of Money and Property (Interest Income).

Property Tax

Based on projections from the County Assessor's Office, the FY 12/13 adopted budget assumed another year of decreased assessed value, resulting in less property tax revenue. This was projected to be a decline of 1.2% compared to the prior year.

However, property tax trends for FY 12/13 are beginning to show signs of mild recovery. For the City of Tracy, property tax revenue is transitioning from a negative decline to flat to mild growth. This is due to a reduction in foreclosures and turnover in homes and/or property reassessments. Property tax revenue projections for year-end anticipate .1% growth compared to FY 12/13 adopted levels.

Sales Tax (General)

Like property tax, general sales tax is showing signs of economic recovery, albeit at a much faster rate. The FY 12/13 adopted budget for sales tax was \$12.5 million; however, based on 2012 third quarter projections from the City's sales tax consultant, Muni-Services, FY 12/13 year-end sales tax revenue is expected to be approximately \$900,000 higher than adopted levels.

This significant increase in sales tax is due to changes in the City's top three key economic categories: Transportation, General Retail, and Food Products. According to Muni-Services' 2012 Third Quarter Sales Tax Report, the transportation category currently generates approximately 36% of the City's sales tax revenue; recent revenue spikes in this category are due to high fuel prices and increases in new auto sales. The general retail category, which produces 34% of sales tax, is comprised of department stores, apparel, furniture, recreation products, drug stores, and miscellaneous retail. Department stores and miscellaneous retail, which includes wireless telephone providers and fulfillment centers (e.g. Crate & Barrel) are doing very well and generating a significant amount of sales tax this year. With the addition of Amazon in FY 13/14 (Fall 2013), it is anticipated that general retail sales will become the City's strongest economic category. Last, the food product category generates 15% of sales tax, and includes restaurants, food markets, and liquor stores. Restaurants are currently the strongest food product sales tax generator.

Temporary Taxes (Measure E)

In November 2010, Tracy voters approved Measure E, a new half-cent temporary sales tax applicable to physical purchases made in the City of Tracy and online sales to Tracy customers. The tax began in April 2011 and will expire in March 2016. The new, half-cent temporary sales tax, after its first year of full implementation in FY 11/12, generated approximately \$4.6 million in general fund revenue. While the FY 12/13 adopted budget assumed \$5.7 million in Measure E taxes, current projections indicate that the amount will be near \$6.1 million.

Franchise Fees

Franchise fees are collected by the City as a privilege of operating a utility service in Tracy, and as a fee in lieu of a business license tax. Franchise fees are currently received from gas and electric, cable television, and solid waste collection service providers. Franchise fees are economically sensitive revenue and fluctuate based on the fiscal health of the nation, state, and/or local region. Franchise fee revenue currently represents approximately 5% of the General Fund budget.

Historically, franchise fee payments are not remitted equally throughout the year; therefore, second quarter receipts are not necessarily predictive. The FY 12/13 adopted budget assumed \$2.5 million in franchise fee revenue based on the prior year's estimated year-end figures. Conservative projections anticipate that revenue collected for FY 12/13 will be \$2.47 million, or \$30,000 less than the adopted budget.

Other Taxes

The Other Taxes revenue category includes several tax sources, the most significant of which are Transient Occupancy Tax (TOT) and Business License Tax. The City levies TOT tax on all hotel and motel rooms within Tracy city limits. The current TOT rate is 10%. The City also requires all businesses located within the City of Tracy, or those that operate within Tracy to obtain a business license. The amount of business license tax paid by each business is typically based on the number of employees.

Revenue received from the Other Taxes category is on target and is expected to be in alignment with adopted levels of \$1.6 million at the end of FY 12/13.

Use of Money/Property

Revenue received from the Use of Money & Property category includes investment earnings and rental income from City property. The City earns interest income by investing monies not immediately required for daily operations in a number of money market instruments. Interest income revenue is dependent on two factors: first, the cash balance in the City's investment portfolio; and second, the yield on those funds. Given that general fund reserve and capital fund balances are not declining as fast as originally anticipated, FY 12/13 year-end projections are estimated to be approximately \$965,000, or \$320,000 higher than adopted levels.

FY 12/13 General Fund Expenditure Trends

Department expenditures are trending below the expected 50% budget level; approximately 45.8% of the general fund budget has been expended. However, operating expense projections anticipate that the City may expend 100% of its adopted expenditure budget rather than the assumed 98%, which was expected to generate approximately \$1 million in savings. Given the conservative nature and timing of these projections, there is still an opportunity to capture some or a significant portion of the anticipated budget savings.

STATE BUDGET IMPACTS

On January 10, 2013, the Governor released his FY 13/14 budget package. The Governor's budget reflects a significant improvement in the state's finances due to the economic recovery, prior budgetary reductions, and voter approval of temporary tax increases. Specifically, the Governor proposes \$138.6 billion in General Fund and special fund spending in FY 13/14, which is up 4.5 percent from FY 12/13. The administration forecasts that the state's General Fund budgetary balance to be \$1 billion at the end of FY 13/14 under the Governor's plan.

However, according to the Legislative Analyst's Office (LAO) November 2012 forecast publication, "*The FY 2013/14 Budget: California's Fiscal Outlook*," the Legislature and Governor would need to address a \$1.9 billion budget problem by June 2013. The Governor's budget, on the other hand, produces a \$1 billion reserve at the end of FY 13/14. The \$2.9 billion difference is explained by higher tax revenues and estimates of savings by the state administration, lower repayments of special fund loans, and additional revenues from health taxes and fees. While the LAO differs about the budget situation for FY 13/14, it supports a forecast of future surpluses, albeit smaller than projected by the Governor's administration.

The Governor's FY 13/14 budget does not propose any fiscal or legislative changes that would impact local government or local control.

Redevelopment Dissolution

On February 1, 2012, the State of California dissolved redevelopment agencies through the passage of ABX1 26 and replaced them with Successor Agencies. The City of Tracy City Council elected to serve as the Successor Agency for the former City of Tracy Community Development Agency (CDA). The State also established Oversight Boards to assist in the winding-down of redevelopment activities. In June 2012, the State legislature adopted Assembly Bill 1484 to facilitate the dissolution of the many redevelopment agencies across the state. One provision of AB1484 requires the Successor Agency to obtain Due Diligence Reviews (DDR) of the all Successor Agency accounts as of June 30, 2012. The purpose of which is to determine the available cash that can be transferred to other taxing entities.

Two DDRs were required in the past six months; both have been completed, approved, and sent to the state. Following the first DDR, the Successor Agency remitted \$3.4 million in low and moderate income housing funds to the County for disbursement to other taxing agencies. The second DDR has been completed and submitted to the state. The Successor Agency is awaiting state approval and instructions for remitting \$2.28 million in non-housing funds to the County. Approval is expected by April 1, 2013. The total of \$5.68 million in former CDA cash was previously restricted for certain approved uses. The remittance of the funds to the County has no general fund impact.

As discussed earlier, funding remitted to the County as a result of the DDR process will be redistributed to other taxing entities. The City of Tracy is considered one of those taxing entities and is scheduled to receive one-time funding. To date, the City has received \$570,510 and will receive another one-time payment of \$380,000 in FY 12/13. While the dissolution of redevelopment will increase the City's property tax revenue, it will be substantially less than the share of increment formally received through redevelopment. It is anticipated that the City's will receive an additional \$237,084 in property tax revenue for FY 12/13. These funds, however, have not been budgeted in the current fiscal year.

The CDA's bond obligations are being met through the Recognized Obligation Payment Schedule (ROPS) process created by the state. The Successor Agency submits a list of obligations due in six-month increments to the Oversight Board and State Department of Finance. Once approved, the County releases the funds held in the Redevelopment

Property Tax Trust Fund (RPTTF). To date, all requested bond payments have been approved by the state and funded by the County in a timely manner.

The unwinding of the CDA has been time intensive and staff continues to work diligently on this process. The state has approved an annual administrative allowance of \$250,000 to cover these staffing costs, thus eliminating the need for any general fund subsidy.

GENERAL FUND RESERVE STATUS

General Fund reserves closed at a balance of \$26.9 million as of June 30, 2012. Of that amount, approximately \$25.6 million is designated as unrestricted. The total unrestricted fund balance represented over 52% of total general fund expenditures for FY 11/12. Of the \$25.6 million in reserves, approximately \$7.95 million is allocated to the Reserve for Economic Uncertainty.

FY 13/14 BUDGET DEVELOPMENT PROCESS

In January 2013, staff began strategic budget development discussions anticipating the need to maintain service levels and minimize ongoing expenditure increases given the anticipated expiration of Measure E in FY 15/16. To date, the City has implemented nearly \$5 million in budget reductions due to targeted early retirements, vacancy eliminations, and consolidation of departments and executive management positions. Another \$3 million in savings will occur incrementally over the next 3 fiscal years (starting in FY 12/13) as employees begin to pay their share of PERS costs. Employees will pay their full share of employee PERS by FY 15/16.

Also included in the FY 13/14 budget development process is the Capital Improvement Program (CIP) budget. A workshop is scheduled for April 2, 2013 to review recommended capital projects for FY 13/14.

The FY 13/14 proposed operating budget will be presented to Council in May 2013.

FIVE-YEAR GENERAL FUND FINANCIAL PLAN UPDATE

The Five-Year Financial Plan is an independent financial tool used to forecast general fund current and future revenue and expenses. This tool is designed to be fluid in nature to build various funding scenarios, providing a range of budget strategies for consideration.

Forecast Assumptions

The updated financial plan, which covers FY 13/14 through FY 17/18 is based on several key general fund revenue and expenditures assumptions, many of which are determined by established policy, trend analysis, and/or empirical data provided by consulting and auditing firms. Attached for Council information is a detailed explanation of the forecast assumptions in the Five-Year Financial Plan. The following is a summary of key general fund revenue and expenditure assumptions:

Revenues

General Fund revenue is comprised of several economically sensitive revenue sources, including Property Tax, Sales Tax, Temporary Taxes (Measure E), Franchise Fees, Other Taxes (Transient Occupancy Tax and Business Licenses), and Use of Money/Property (Interest and Rental Income). Nearly 65% of general fund revenue is derived from Property Tax, Sales Tax, and Temporary Taxes. The assumptions for these key revenues are described in further detail below:

- *Property Tax* – Slow, but positive property tax revenue trends are anticipated for FY 13/14. An increase of less than 1% is assumed in FY 13/14 with mild growth projected for future years. Preliminary discussions with the County Property Tax Assessor's Office suggest stronger county-wide valuation trends for FY 13/14; however, data confirming how this will impact the City of Tracy will not be available until late Spring. Although not reflected in the forecast at this time, the City will receive additional property tax revenue due to the dissolution of redevelopment, but it will be substantially less than the share of increment formally received by the CDA.
- *Sales Tax* – The City's sales tax consultant, Muni-Services projects increased revenue over the next five years as the economic continues to recover. The forecast also reflects additional revenue from Amazon, which is expected to generate sales tax beginning late Fall 2013.
- *Temporary Taxes (Measure E)* – Muni-Services also provides projections for Measure E, a temporary half-cent sales tax on purchases made within the City of Tracy, with some notable exceptions. These include Tracy auto sales where the vehicle registration is not in the City of Tracy, and internet sales made to customers outside of the City of Tracy. Like general sales tax, Measure E revenue is expected to grow moderately over the next several fiscal years. Measure E will sunset in March 2016; therefore, the forecast reflects anticipated revenue up to that point with assumed declines in FY 15/16 and the elimination of the revenue altogether in FY 16/17.

Operating Expenses

General Fund expenses are primarily associated with the cost of providing services. These expenses are mostly labor (personnel) costs, which typically range between 70-80% of the General Fund expenditures. Below is a summary of forecast assumptions for operating expenses. These include salary and benefits and operational expenses.

- *Salary and Benefits* – The forecast reflects no changes in salaries, other than for annual merit increases and the inclusion of temporary personnel costs for two additional firefighters for the new Fire Station No. 92 until the Tracy Rural prepayment agreement begins in FY 15/16. Specifically, 3 months of personnel expenses have been included for FY 13/14 and a full year for FY 14/15. The forecast also reflects savings assumed from the net loss of 7 full-time equivalents (FTE) due to retirements and full implementation of the elimination of the Master Officer Pay (in exchange for the Police Corporal Program) and city-wide

organizational restructuring, which included the consolidation of departments and reduction in executive management.

The forecast also reflects annual adjustments in health benefits and projected employer-paid Public Employees Retirement System (PERS) rate increases. However, savings are assumed as employees agreed to incrementally pay their share of employee PERS costs effective FY 12/13 in exchange for additional flex-leave hours. Full payment of employee PERS costs will occur in FY 15/16. The net savings over a 3-year period is anticipated to be \$3 million.

- Operating Expenses* - Overall, operating expenses, including costs for contractual services and commodities are anticipated to adjust modestly for necessary increases and inflation. However, FY 13/14 assumes a slight reduction in operating expenses due to the elimination of redevelopment and discontinuation of election funding which was a part of the prior year's base budget. The forecast also reflects moderate adjustments for internal service charges (e.g. information technology, risk management, building maintenance) with the exception of significant increases in FY 13/14 to restore equipment/vehicle cost reductions made 3 years ago as a budget savings measure.

SUMMARY OF FIVE-YEAR FINANCIAL PROJECTIONS

Due to projected increases in revenues and minimal expenditure adjustments, the five-year financial projections below reflect excess revenue over expenditures for FY 13/14 through FY 15/16. If these projections continue after the FY 13/14 budget development process is complete, the Council's direction to have a balanced budget without the use of reserves by FY 14/15 may be realized in FY 13/14.

Five-Year Financial Plan

GENERAL FUND FORECAST	FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
REVENUES	\$50.3M	\$52M	\$52.7M	\$47.5M	\$48.4M
EXPENDITURES	\$49.8M	\$50.7M	\$49.9M	\$51.1M	\$52.0M
REVENUES LESS EXPENDITURES	\$ 500K	\$1.3M	\$2.8M	(\$3.6M)	(\$3.6M)

For FY 16/17 and beyond, deficits are projected to be \$3.6 million given the expiration of Measure E. When Measure E took effect in April 2011, the City developed plans to identify reductions and/or revenue enhancements that equaled or exceeded the revenue produced by Measure E. Current projections anticipate that peak revenue generated by Measure E will be approximately \$6.3 million. Due to revenue shifts and strategic operating expenditure reductions implemented over the past 2 years, the anticipated deficit has been reduced by nearly one-half. Staff will continue to develop additional cost-containment approaches to eliminate the deficit by FY 16/17.

Forecast Vulnerabilities

As with any financial projection, there are vulnerabilities. The forecast does not take in consideration hypothetical situations that could impact the City's revenues or expenditures, such as potential legislation or changes in key sales tax generators' business models. For instance, informal discussions are taking place at the State Legislature regarding the reallocation of either all California sales tax revenue or online sales tax on a per capita basis. While no specific legislation has been introduced at this time, the City's sales tax consultant, Muni-Services through its state lobbyist, is closely monitoring this issue.

Another potential vulnerability is related to Amazon sales tax revenue. Under the current law, online sales tax is allocated based on one of two scenarios:

1. Physical location of the sales order desk – if a sales order desk that receives online sales orders is located in the City of Tracy and the product is shipped to the California customer from a location inside the state, then Tracy will receive the sales tax revenue, as in the case of Crate & Barrel. If the order is placed in Tracy but the product is shipped from out of state then the local tax would be allocated to the countywide pool based on customer destination.
2. Location of where the product is distributed or shipped from – If the sales order desk that receives online sales orders is located outside of California, then the sales tax revenue is allocated to the City where the product is distributed or shipped from. This scenario currently applies to anticipated revenue from Amazon.

Should Amazon choose to relocate its sales order desk to California, it must be located in City of Tracy in order to capture the sales tax revenue. This vulnerability could be addressed through the negotiation of a sales tax agreement with Amazon. While Amazon has indicated that it is interested in negotiating an agreement, neither of the cities where their California fulfillment centers are located (San Bernardino and Patterson) have sales tax agreements in place.

With respect to expenditure vulnerabilities, the City is swimming against the current when it comes to uncontrollable costs, including employer PERS rates, health care, utilities, fuel, and general inflation expenses. Another challenge is limited property tax revenue from future annexations to fund additional public safety services.

Staff continues to plan for these contingencies and is currently developing mitigation measures to reduce future expenditure increases.

Policy Considerations

The forecast raises several policy issues for Council consideration given the likelihood of excess revenue over expenditures for FY 13/14 – FY 15/16 coupled with projected deficits upon the expiration of Measure E. While the Council's budget principles adopted in FY 10/11 provide general policy guidance about general fund reserve levels and use of one-time resources, additional direction will be needed regarding reserve designation/allocation to existing reserves or funds (e.g. Economic Uncertainty Reserve,

Capital Projects Fund 301) and the potential development of new reserves for specific future uses.

Upon Council direction, staff will develop policy options for Council consideration by early Summer 2013. Staff recommends that the policy development process include obtaining feedback from the Measure E Committee.

CONCLUSION

The mid-year budget analysis indicates that overall, assumptions for revenues and expenditures have not changed significantly, with exception of sales tax revenue. Due to the anticipated increase in sales tax revenue, it is recommended that Council authorize a budget adjustment in the amount of \$900,000. It is expected that the change in sales tax revenue coupled with smaller revenue increases will reduce the FY 12/13 adopted deficit of \$2.2 million to approximately \$907,510.

The update of the Five-Year Financial Plan reflects excess revenue over expenditures for FY 13/14 – FY 15/16 and deficits in FY 16/17 and beyond due to the expiration of Measure E. This forecast situation raises several policy issues with respect to reserve utilization, designation, and development.

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

The FY 12/13 adopted budget reflects \$12,511,000 in general sales tax revenue. Based on current economic trends and projections provided by the City's sales tax advisor, Muni-Services, sales tax revenue is expected to be approximately \$900,000 higher than the FY 12/13 adopted amount. Authorization of a budget adjustment in the amount of \$900,000 would increase the FY 12/13 adopted sales tax revenue from \$12,511,000 to \$13,411,000.

RECOMMENDATION

It is recommended that the City Council, by resolution:

- Accept the FY 12/13 General Fund Mid-Year Performance Report
- Authorize a FY 12/13 Budget Adjustment, increasing Sales Tax Revenue by \$900,000
- Direct Staff to Explore General Fund Reserve Policy Options, including the Designation/Allocation of Excess Revenue and Development of New Reserves

Prepared by: Jenny Haruyama, Administrative Services Director

Approved by: Leon Churchill, Jr., City Manager

Attachment 1 – Five-Year Financial Projection Update

REVENUE ASSUMPTIONS

Property Tax: The City anticipates a slight increase in property tax revenue in FY13-14, and then modest increases over the next five years assuming continued economic recovery and growth in residential/commercial development. Preliminary discussions with the County Assessor's Office indicates a rise in county-wide valuations; details confirming this will be available in Spring 2013. The forecast will be adjusted accordingly based on information provided by the County.

Although not reflected in the forecast at this time, the City will receive additional property tax revenue due to the dissolution of redevelopment, but it will be substantially less than the share of increment formally received by the City of Tracy Community Development Agency (CDA).

Conservatively, the 5-year forecast of the annual growth rate for property tax revenue is:

FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
0.1%	1.1%	2.0%	2.0%	2.0%

Sales Tax: The City anticipates moderate increases in sales tax revenue over the next five years due to slight improvements in the economy. Forecast revenue for FY 13/14 reflects a *portion* of Amazon sales tax. FY 14/15 and beyond includes the first full projected annual amount of Amazon sales tax. FY 15/16 declines slightly due to the discontinuation of a practice in state sales tax revenue distribution known as the "Triple Flip." The state borrows local sales tax from cities to finance State Economic Recovery Bonds and provides the reimbursement in the next fiscal year. Since this practice is schedule to end in FY 15/16, the subsequent fiscal year will show a slight decline and return to a steady, but moderate sales tax growth in future years.

The 5-year forecast of the annual growth rate for Sales Tax revenue is:

FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
4.3%	8.6%	7.6%	-3.2%	2.3%

Measure E Sales Tax: The City anticipates a slight increase in Measure E tax revenue in the next year. As the economy improves, tax revenue is expected to grow moderately. FY15/16 reflects a decline in Measure E revenue due to the tax sun-setting nine months into the fiscal year, with the complete elimination occurring in FY16/17. Peak Measure E revenue is anticipated to be approximately \$6.3 million in FY 14/15.

The forecast of the annual growth rate for Measure E tax revenue is:

FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
1.9%	2.0%	-15.5%	-100%	N/A

Franchise Fees: Franchise fees are collected by the City as a privilege of operating a utility service in Tracy, and as a fee in lieu of a business license tax. Franchise fees are currently received from gas and electric, cable television, and solid waste collection service providers. The City levies a .5% rate for electricity, 1% rate for natural gas, 5% rate on cable television, and 10% rate on solid waste. Franchise fees tend to fluctuate based on the economy and population growth.

The forecast for the annual growth rate for Franchise Fee revenue is:

FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
1.5%	1.8%	1.8%	1.7%	2.1%

Other Taxes: Other Taxes include economically sensitive revenue, such as Transient Occupancy Tax (TOT) and business license taxes. The other taxes revenue category also includes documentary transfer and intergovernmental taxes. The forecast reflects slight increases for FY 13/14 and FY 14/15, and a conservative leveling-off in subsequent years.

The 5-year forecast of the annual growth rate for Other Tax revenue is:

FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
1.9%	1.8%	1.5%	1.5%	1.5%

License & Permit Fees: License and Permit revenue are comprised of building and construction permit fees, and animal and bicycle license fees. FY 13/14 reflects a decline due to significant permit revenue received from the Amazon project in FY 12/13. Growth is expected in the 2%-3% range for subsequent years, assuming there is no dramatic change in development.

The 5-year forecast of the annual growth rate for License & Permit Fee revenue is:

FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
-12.1%	2.9%	2.9%	2.9%	3.0%

Current Charges: Current Charges are fees collected in exchange for a particular service of a limited and specific benefit, such as a development application and plan review. FY 13/14 reflects a decrease due to significant revenue collected in FY 12/13 to process the Amazon project. Subsequent years anticipate conservative growth. Future increases are expected as the economy continues to recover.

The 5-year forecast annual growth rate for Current Charges revenue is:

FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
-6.6%	2.2%	2.3%	2.3%	2.3%

Fines and Forfeitures: Fine and Forfeiture revenue is comprised of punitive assessments levied by courts or government agencies as a result of violating laws/regulations. FY 13/14 reflects increases in fines and forfeitures due to uncollectable fines and forfeitures being written off in FY 12/13, lowering the prior year's revenue base.

The forecast of the annual growth rate for Fine and Forfeiture revenue is:

FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
51.4%	1.3%	1.3%	1.4%	1.4%

Other Grants: The Other Grants category is comprised of federal, state, county, and other local agency grants received by the City. The receipt of grant revenue has declined over the past several years and is heavily dependent on demand and the State's financial situation. However, given that the State projects future surpluses, the City may experience some growth in this area.

Conservatively, the forecast of the annual growth rate for Other Grants is:

FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
24.1%	-21.5%	2.6%	2.6%	2.5%

Use of Money & Property: The Use of Money and Property category is comprised of investment earnings and rental income. Historically, the largest portion of this revenue is from interest earned. As reserves and funds are drawn down, there is less cash available to earn interest, albeit rates are currently at an all-time low. Based on the anticipated use of reserves and capital funds for FY 12/13, the forecast reflects a decline in interest earnings for FY 13/14. Conservative growth is projected for future years, assuming reserve levels increase, with an assumed decline in FY 17/18 should reserves be drawn down.

The forecast of the annual growth rate is:

FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
-20.2%	1.9%	1.9%	5.6%	-11.2%

EXPENDITURE ASSUMPTIONS

Salary & Benefits: The forecast reflects no changes in salaries, other than for annual merit increases and the inclusion of temporary personnel costs for two additional firefighters for the new Fire Station No. 92 until the Tracy Rural prepayment agreement begins in FY 15/16. Specifically, 3 months of personnel expenses have been included for FY 13/14 and a full year for FY 14/15. The forecast also reflects savings assumed from the net loss of 7 full-time equivalents (FTE) due to retirements and full implementation of the elimination of the Master Officer Pay (in exchange for the Police Corporal Program) and City-wide organizational restructuring, which included the consolidation of departments and reduction in executive management.

Additionally, the forecast reflects annual adjustments in health benefits, approximately a 6.6%-7.4% increase in FY 13/14 and a 10% increase for subsequent years. Also included in the forecast are projected employer-paid Public Employees Retirement System (PERS) rate increases, which are based on total payroll. However, savings are assumed as employees agreed to incrementally pay their share of employee PERS costs effective FY 12/13 in exchange for additional flex-leave hours. Full payment of employee PERS costs will occur in FY 15/16. The net savings over a 3-year period is anticipated to be \$3 million.

The 5-year projections for the PERS rates are:

PERS Rates	FY 13/14	Projected FY 14/15	Projected FY 15/16	Projected FY 16/17	Projected FY 17/18
PERS Safety	27.7	28.7	29.2	29.5	29.8
PERS Miscellaneous	15.3	16	16.3	16.6	16.9

The 5-year projections for personnel expenses are:

Personnel Expenses	FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
Personnel – Police	-0.013%	1.54%	-2.0%	2.1%	2.2%
Personnel – Fire	-0.21%	1.5%	-0.94%	2.1%	2.2%
Personnel – Others	0.62%	1.6%	-2.0%	2.0%	2.0%

Non-Personnel Operating Expenses: Overall, operating expenses, including costs for contractual services and commodities are anticipated to be modestly adjusted for necessary increases and inflation. However, FY 13/14 assumes a slight reduction in operating expenses due to the elimination of redevelopment and discontinuation of election funding which was a part of the prior year's base budget.

The 5-year projections for non-personnel operating expenses are:

Non-Personnel Operating Expenses	FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
Contracted Services	-0.4%	2.0%	2.0%	2.0%	2.0%
Commodities	-0.1%	2.0%	2.0%	2.0%	2.0%

Internal Service Charges: The forecast also reflects moderate adjustments for internal service charges, with the exception of significant increases in FY 13/14. This adjustment restores equipment/vehicle cost reductions made 3 years ago as a budget savings measure. Internal Service Charges include: Workers Compensation, General Liability, Information Technology, Building Maintenance, Vehicle Maintenance, Vehicle Fuel, Equipment Replacement, and Vehicle Replacement.

The 5-year projection for Internal Service Charges is:

Service Charges	FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18
Internal Service Charges	14.3%	2.0%	2.0%	2.0%	2.0%

RESOLUTION _____

AUTHORIZING A FISCAL YEAR 2012/13 GENERAL FUND BUDGET ADJUSTMENT IN THE AMOUNT OF \$900,000, INCREASING GENERAL FUND SALES TAX REVENUE

WHEREAS, The City Council adopted the FY 2012/13 General Fund budget in June 2012, and subsequent budget adjustments and/or supplemental appropriations beyond the adopted budget require Council approval, and

WHEREAS, The adopted FY 2012/13 General Fund sales tax revenue was \$12,511,000, and

WHEREAS, General Fund sales tax revenue is anticipated to be significantly higher than FY 2012/13 adopted levels, and therefore, requires a budget adjustment of \$900,000;

NOW, THEREFORE, BE IT RESOLVED, That the City Council approve a budget adjustment of \$900,000 in sales tax revenue, amending the adopted FY 2012/13 General Fund budget.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the ____ day of _____, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 7

REQUEST

RECEIVE REPORT ON THE TRACER TRANSIT SYSTEM

EXECUTIVE SUMMARY

TRACER is the transit system run by the City of Tracy. It is currently operated by MV Transportation. The TRACER consists of a fixed route operation and a paratransit service. The basic format of the current system has been in operation since 2001. The TRACER is funded through grants from the Federal Transit Administration and Transportation Development Act funds.

DISCUSSION

The City of Tracy owns the TRACER transit system and contracts out the operation of the vehicles. The current contractor is MV Transportation. The TRACER consists of both fixed route and paratransit service with a fleet of 13 buses and 2 minivans. Transit operations occur from 7 a.m. to 7 p.m. Monday through Friday and from 9 a.m. to 5 p.m. on Saturday. In FY11/12, the TRACER transit system overall had 109,645 passengers, averaging approximately 350 passengers per day of operation.

Fixed route service provides service to passengers along designated routes that travel through various parts of the City. Most major destinations are served by one or more fixed routes including Wal-Mart, the West Valley Mall, the Tracy Outlets, all major supermarkets, and all high and middle schools. The fixed route service operates three core routes during all hours of operation, and three commuter routes with service limited to one morning run and two afternoon runs. The three core routes operate on an hourly headway, with 30 minute service available on two of the routes during peak periods in the afternoon. In FY11/12, the fixed route service alone carried 91,703 passengers, averaging approximately 293 passengers per day of operation.

Paratransit service is provided to ADA eligible persons and those who are 65 and older. This service provides door to door service and operates during the same hours as the fixed route service. Additionally, after hours service is available to paratransit passengers through a subsidized taxi program. In FY11/12, the paratransit service provided rides to 17,942 passengers, averaging approximately 57 passengers per day of operation.

Below are the yearly ridership figures for the past 5 years. Ridership on the fixed route has remained steady and is continuing to grow, while paratransit ridership has been decreasing as more certified paratransit passengers are taking advantage of the lower fares on the fixed route. A spike in gas prices during FY 08/09 was the cause of the huge ridership increase that year, while a fare increase in July 2010 was the cause of the noticeable drop in ridership in FY 10/11.

RIDERSHIP	FY 07/08	FY 08/09	FY 09/10	FY 10/11	FY 11/12	FY 12/13
Fixed Route	93,395	97,424	92,536	74,006	91,703	101,000
Paratransit	24,187	25,514	23,265	20,593	17,942	16,300
TOTAL	117,582	122,938 ¹	115,801	94,599 ²	109,645	117,300 ³

As part of the bus system, the City operates the Tracy Transit Station. This is the main hub for all the fixed routes. It also serves as a connection to regional transit options including San Joaquin RTD and Greyhound. In addition to the transportation services, there are also three conference rooms available for rent. In FY11/12, the Transit Station brought in over \$32,000 of rental revenue to the Transit Fund.

RECENT PROJECTS

Most recently, the City has been finalizing the construction of the Bus Stop Improvements, Phase 2 project. This included improvements at 77 bus stop locations throughout Tracy. This included a bench a trash can at each site, with 23 of the sites receiving a bus shelter. This project was completed using ARRA grant funding from the FTA with a project cost of approximately \$1.7 million dollars.

The City has also recently purchased three low-floor hybrid cutaway buses and two ADA accessible minivans. These acquisitions allow for easier loading of ADA passengers and the minivans allow for greater access to areas that a bus would normally not be able to travel.

In December 2012, the City purchased and installed Routematch software which is used to increase the efficiency in scheduling and dispatching the paratransit buses. This has allowed the TRACER dispatchers to better organize the routes for each paratransit driver and be more efficient in scheduling by being able to see all trips at once and combine trips where necessary.

FUTURE PROJECTS

Final design for cameras to be installed at the Transit Station is under way. Security cameras will be installed on both the interior and exterior parts of the building including the main parking lot. In conjunction with that design for a fiber optic cable to run from City Hall to the Transit Station is also being worked on. The fiber optic cable will allow for faster transmission of the video from the cameras back to the servers at City Hall for storage. These two projects are being paid for completely by a Proposition 1B grant specifically for transit security purposes.

Within the next year, the City hopes to also be able to add a module to the recently purchased Routematch software allowing for a type of mobile data terminal (MDT) to be installed on the paratransit buses. This would enable the drivers to receive real-time updates regarding additional passengers to pick up, any cancellations, and would allow for more automated recording of pick up and drop off data.

¹ Increase in passengers due to abnormally high gas prices that year
² Drop in ridership due to a fare increase which took effect July 1, 2010
³ Projected ridership based on current year to date figures

This next year, the City also plans on purchasing additional fixed route buses. These buses would be at least 30 feet in length and are considered heavy duty with a life span of 10 years. Emphasis would be put on finding a low-floor model to allow for easier access for ADA passengers.

TRANSIT FUNDING

The Transit Fund is an enterprise fund with revenue sources coming from the FTA and TDA monies. Operating expenses are split 50/50 between FTA and TDA, while capital projects are split 80/20.

Additionally, when available, the City applies for additional grants for projects which are used to lower the amount of TDA funds needed for operating assistance and capital projects. Any TDA funds not used by transit can be used for streets and roads purposes.

STRATEGIC PLAN

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

FISCAL IMPACT

There are no impacts to the General Fund for this item.

RECOMMENDATION

That City Council accept this report on the Tracer Transit System.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Rod Buchanan, Interim Director of Public Works

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

AGENDA ITEM 8

REQUEST

RECEIVE UPDATE AND PROVIDE INPUT ON AIRPORT IMPROVEMENT OPTIONS

EXECUTIVE SUMMARY

On October 18, 2011, the City Council and Transportation Advisory Commission held a joint meeting to discuss future improvements for the Tracy Municipal Airport. Twenty five items were identified as the top priorities in the short term list and all of the items on the Short Term list and two items from the Medium Term list were to be brought back to Council for further vetting and approvals as necessary. The goal of the projects listed as airport improvement options is to help the airport become self-sustaining. As staff proceeds to bring back updates to Council on the status of the various projects, only the items that are being worked on in the current quarter will be reported. Because each of the projects has many segments, current status, immediate next steps, and timelines are included in the update. An update and status of the following projects are being reported to Council: (S-1) Installation of T-hangars, (S-12) Construction of a Restaurant/Café, (S-14) Runway Repairs and Fencing at New Jerusalem Airport, (S-17) Seal coat on Runways and Taxiways, (S-21) Confirm Runway Lengths on Runway 12/30 and (S-22) Balance Airport Operating Budget.

DISCUSSION

On October 18, 2011, the City Council and Transportation Advisory Commission held a joint meeting to discuss future improvements for the Tracy Municipal Airport. During that meeting, a list of items was presented to Council for consideration to address various issues at the airport. Many of the Airport Improvement Options on the Short Term list were presented with the Airport Fund as the potential funding source. In its present state, the Airport Fund would not be able to support any of the options listed without having a negative impact on the operating budget.

Attachment A shows an update of the current projected timeline of each of the Short Term projects and the two Medium Term projects that Council asked to be brought back to them for further vetting and approvals as necessary. Each item shows a range of time that the project may be started and completed depending on other factors that may or may not occur such as funding availability or the completion of other projects.

S-1: Install T-hangars: On Hold – Design Completed

Working with the Federal Aviation Administration (FAA), staff has been able to complete the design work for the hangar project using funds in an existing grant. Since the pavement at the airport is a high priority, the construction of this project will be put on hold until after the pavement project is complete and additional funding is secured. Concurrently, staff will continue to seek alternative funding options for construction.

S-12: Construction of a Restaurant/Café: Lease Negotiation in Progress

Staff has met with Tracy Air Center (TAC), the current fuel operator at the airport, and discussed a preliminary design concept for a restaurant at the Tracy Municipal Airport.

Staff is currently negotiating with TAC to develop a suitable lease agreement which will require consideration of approval by Council. This will be in conjunction with a separate corporate hangar lease agreement.

S-14: Runway Repairs and Fencing at New Jerusalem Airport: Complete

Construction for this project has been completed. The project is schedule to be accepted by Council on February 19th, 2013.

S-15: FAA to Survey Runway Ends on Runway 8/26: Complete

Runway 8/26 has relocated thresholds at both ends of the runway. The City has asked the FAA for clarification as to why the runway ends must be marked as relocated. On May 15, 2012, the staff received a letter from the FAA stating that the relocated runway thresholds were needed to meet FAA design standards for the Runway Safety Area (RSA), due to the close proximity of the Delta Mendota Canal and Tracy Blvd. This item is now complete.

S-17: Seal Coat on Runways and Taxiways

On June 28, 2012, staff issued a Request for Qualifications (RFQ) for an airport consultant. Council approved, R.W. Brandley, Consulting Airport Engineer as the City's airport consultant. On October 2, 2012, City Council approved Task Order 1 to a Professional Services Agreement with R.W. Brandley, Consulting Airport Engineer. Task Order 1 is to create a Pavement Maintenance/Management Plan (PMMP). This will include a detailed geotechnical study, a pavement condition survey, and a deep-seated distress fatigue analysis. This is necessary so that there is a complete understanding of any underlying issues with the pavement.

Preliminary data from the PMMP showed the need to do a complete overlay on the runways, taxiways, and apron area. This was submitted as a project to the FAA as part of the City's Airport Capital Improvement Program (ACIP). A grant application was submitted to the FAA on January 31, 2013 requesting that all phases of the pavement project be funded this year. A categorical exclusion for environmental work on the project has already been submitted to and approved by the FAA. The timeframe for the project will depend on the ability to obtain funding.

The following is a very tentative schedule for the pavement repair. This schedule is subject to FAA funding, however, the PMMP will allow the City to be more competitive as funds become available.

Pavement Evaluation Management Study:	Start: October 2012 Done: December 2012 (Completed, awaiting final report)
Airport Capital Improvement Plan:	Submit: January 2013 (Completed)
FAA Approval to Design Pavement Rehab Project:	February 2013 (Completed)
Design Pavement Rehab Project:	Start: February 2013 Done: April 2013
FAA Approval to Bid Project:	April/May 2013

Bid Project:	May 2013
FAA Approval to Award Project:	June 2013
Start Project	June/July 2013
Project Completed	July/August 2013

S-22: Balance Airport Operating Budget by FY15/16

This item is key to realizing any future growth and sustainability at the airport. When this item was first presented at the January 17th, 2012 Council meeting, Council gave approval to move forward with a five step financial strategy to help the airport achieve financial stability. Updates to each of the five strategies are outlined below.

STEP 1: Debt Service Reconciliation: Completed

At the January 17, 2012 City Council meeting, Council approved the consolidation of four loans from the Water Fund to the Airport Fund. This action allows the Water Fund to be made whole and for the Airport Fund to make reasonable payments in order to do so.

STEP 2: FTE Evaluation: Ongoing

The Airport Operating Budget consists of the following positions: Airport Coordinator (1 FTE), Senior Maintenance Worker (0.5 FTE), Management Analyst II (0.1 FTE), and Transportation Commissioners (0.12 FTE). A total of 1.72 FTEs are currently in the Airport Operating Budget. This is down from 1.92 FTEs in FY11/12. A continual analysis of FTEs within the Airport Operating Budget will occur annually during budget preparation.

STEP 3: Hangar Development: On Hold

As mentioned earlier in the report, the construction of 42 new T-hangars will be temporarily postponed. Once the pavement issues are addressed, the Airport can then again utilize saved entitlement funds to assist with the construction of the T-hangars.

STEP 4: Capital Improvements: In Progress

Staff is currently working with Tracy Air Center on negotiating a ground lease for the construction of corporate hangars and a restaurant at the Tracy Airport.

STEP 5: Future Planning: Not Started

The medium term items M-1 and M-2 (as described on page 5) are being considered to be combined to conduct a comprehensive study that will identify the optimal runway length that will maximize economic opportunities for the Airport as well as locations that could accommodate an airport with such a runway length. Subsequent actions may include evaluating the feasibility of airport development opportunities and creating a business plan for the airport. The first step in this process was to identify current runway lengths (See S-21) which has been completed. Staff is currently working with the FAA to further define the study that would be appropriate for Tracy to conduct to achieve this purpose.

OTHER PROJECTS

FBO Repairs: Under Construction

Roof repairs on the FBO building have been completed. The drainage issues along the office side of the FBO building have also been addressed. An RFP is currently being prepared for release to address the drainage issues in front of the hangar doors of the FBO building.

FUTURE PROJECTS

The following projects are scheduled to be worked on by staff during FY 12/13. Completion of these items will be dependent on the availability of funding.

S-5: Install Taxiway reflectors or lights

During the latest inspection by Caltrans, it was suggested to install either reflectors or lights on the taxiways in order to increase visibility at night. The estimated cost for this item is \$6,000 and the potential funding source is Caltrans. This will be looked at to be addressed during the pavement project.

S-7: Investigate LED Test Beacon

Determine if there is an LED manufacturer who would be willing to provide an airport beacon which utilizes LED lights for testing purposes at the Tracy Airport. This would be funded by the private company should one be found who would be willing to design such a beacon.

S-8: Remote Control to Open the Gates: Completed

Installation of a device which would allow for the opening of the airport gate from inside the airport. This would allow pilots who are landing after business hours to open the gates and allow those who may be coming to meet them to get into the airport. Estimated cost is \$750 and the potential funding source is the Airport Fund.

As an alternate solution to this item, and in an effort to retain the security around the airport, staff has programmed the keypads with a code that is a variation of a published airport frequency, which is generally known to pilots and users of the airport. This solution did not cost any additional funds and allows for access to the airport after normal business hours.

S-9: Shorten 3 and Remove 1 Obstruction Light

As part of the latest inspection by Caltrans, it was suggested to shorten 3 and remove one of the obstruction lights in the south hangar area. Estimated cost is \$2,000 and the potential funding source is Caltrans.

S-10: Investigate Advertising on Hangars

As a means of generating revenue for the airport, staff will investigate options to solicit advertising space on the hangars at the airport. There is no cost for staff to investigate this item.

S-13: Install a Speaker to Listen to Pilots Over the Radio

Installation of a device that allow for visitors to listen to what pilots say over their radios. The estimated cost for this is approximately \$300. The Tracy Airport Association (TAA) has agreed to pay for the installation of this.

S-16: Relocate Taxilane Adjacent to Fuel Farm

Caltrans recommendation. This would give larger aircraft a wider taxilane around the fuel farm. Estimated cost is \$3,000 and the potential funding source is Caltrans. This will be looked at to be addressed during the pavement project.

S-18: Additional Security Fencing North of Runway 26

There is a gap in the fencing of approximately 600 feet which needs to be closed off for security purposes. Estimated cost is \$9,000 and the potential funding source is Caltrans.

S-19: Removal of Aligned Taxiway

The FAA has required that the aligned taxiways at both ends of runway 08/26 be eliminated. The estimated cost for this is \$100,000 and the potential funding source is the FAA. It is anticipated that this work will be completed in conjunction with the runway paving project.

S-25: Investigate Installation of a Water Connection from the Water Treatment Plant to the South Side of the Airport

There is currently no water access on the south side of the airport. It is recommended that staff investigate the cost to install a water connection from the Water Treatment Plant in order to provide water to the south side of the airport. There is no cost to investigate this item.

M-1: Update Airport Master Plan (including a Business Plan and Minimum Standards Document)

See Step 5 under item S-22 above. The City Council approved the Airport Master Plan in 1998. The Airport Master Plan projects aviation activities and facility requirements through 2016. This would result in the hiring of a consultant to update the Airport Master Plan, including a Business Plan for future airport investment strategies. Additionally, adoption of standards for design, rates, and private and general ground lease structure, would assist in setting standards for future development at the airport. The estimated cost for this item is \$400,000 and the potential funding source is from an FAA grant, State grant and the Airport Enterprise Fund.

M-2: Airport Site Study

See Step 5 under item S-22 above. The current airport is somewhat limited in its growth due to the surrounding development. A site study would take into consideration an ideal location for a new airport which could grow much larger and accommodate larger airplanes than the current one. The estimated cost for this item is \$200,000 and the potential funding source is the FAA.

STRATEGIC PLAN

This agenda item supports the Organizational Efficiency strategic priority and specifically contributes to the following goal:

Goal 1: Advance City Council's fiscal policies

FISCAL IMPACT

There are no impacts to the General Fund for this item. Any project that has the Airport Fund identified as the funding source will be carefully evaluated to determine its overall fiscal impact, including any associated ongoing operational costs.

RECOMMENDATION

That City Council accept this report and provide input on Airport Improvement Options.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Rod Buchanan, Interim Director of Public Works

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

Attachment "A" – Airport Improvement Options Timeline

		FY 11/12		FY 12/13				FY 13/14				FY 14/15			
		Jan - Mar	Apr - Jun	Jul - Sep	Oct - Dec	Jan - Mar	Apr - Jun	Jul - Sep	Oct - Dec	Jan - Mar	Apr - Jun	Jul - Sep	Oct - Dec	Jan - Mar	Apr - Jun
S-1	Install T-hangars	ON HOLD													
S-2	Remove vegetation from open areas to cease burning														
S-3	Solar Lights for Tetrahedron														
S-4	Airport Open House														
S-5	Taxiway reflectors or lights														
S-6	Investigate declared distances on runway 30														
S-7	Investigate LED test beacon														
S-8	Remote control to open gates	COMPLETED													
S-9	Shorten 3 and Remove 1 obstruction light														
S-10	Investigate Advertising on hangars														
S-11	Build an observation area														
S-12	Construction of a restaurant/café														
S-13	Install a speaker to listen to pilots over the radio														
S-14	Runway Repairs and Fencing at NJ	COMPLETED													
S-15	FAA to survey runway ends	COMPLETED													
S-16	Relocate taxiway adjacent to fuel farm														
S-17*	Seal coat on runways and taxiways														
S-18	Additional security fencing north of Rwy 26														
S-19	Removal of Aligned Taxiway														
S-20	Investigate Potential Airport Intern Opportunity														
S-21	Confirm Runway Lengths	COMPLETED													
S-22	Balance Airport Operating Budget by FY15/16														
S-23	Update Airport Rules and Regulations														
S-24	Create Emergency Management Plan														
S-25	Investigate Installation of a Water Connection from Water Treatment Plant to South Side of the Airport														
M-1	Update Airport Master Plan														
M-2	Alternate Airport Site Study														
Other	FBO Repairs														

PAVEMENT PROJECT ACTION STEPS	TIMELINE
Hire Airport Consultant	COMPLETED
Pavement Evaluation Management Study	COMPLETED
Categorical Exclusion for Environmental Approved	COMPLETED
Submit ACIP to FAA	COMPLETED
Submit Grant Application for Pavement to FAA	COMPLETED
FAA Approval to Design Pavement Project	COMPLETED
Design Pavement Project	Mar/Apr. 2013
FAA Approval to Bid Pavement Project	May. 2013
Bid Pavement Project	May. 2013
FAA Approval to Award Project	Jun. 2013
Start Project	Jun/Jul 2013
Project Completed	Aug. 2013

March 5, 2013

AGENDA ITEM 9

REQUEST

SECOND READING AND ADOPTION OF ORDINANCE 1183 AN ORDINANCE OF THE CITY OF TRACY, CALIFORNIA AMENDING CHAPTER 11.30 OF THE TRACY MUNICIPAL CODE, "RECYCLED AND NON-POTABLE WATER"

EXECUTIVE SUMMARY

Ordinance 1183 was introduced at the Council meeting held on February 5, 2013. Ordinance 1183 is before Council for a second reading and adoption.

DISCUSSION

Ordinance 1183 was introduced at the Council meeting held on February 5, 2013, to amend Chapter 11.30 of the Tracy Municipal Code (TMC), Recycled and Non-Potable Water. The proposed amendment to the TMC will enable the City to include and conform to the changes that have occurred in State, regional and local laws and policies, since the adoption of Chapter 11.30, in 2002.

Ordinance 1183 is before Council for a second reading and adoption.

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That Council adopts Ordinance 1183 following its second reading.

Attachment

Prepared by: Adrienne Richardson, Deputy City Clerk

Reviewed by: Sandra Edwards, City Clerk

Approved by: Leon Churchill, Jr., City Manager

ORDINANCE 1183

AN ORDINANCE OF THE CITY OF TRACY, CALIFORNIA AMENDING CHAPTER 11.30 OF THE TRACY MUNICIPAL CODE, "RECYCLED AND NON-POTABLE WATER"

WHEREAS, Article X, section 2, of the California Constitution declares that the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, that the waste or unreasonable use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use, in the interest of the people and for the public welfare; and

WHEREAS, Under Water Code section 13510, the people of the State of California have a primary interest in the development of facilities to recycle water to supplement existing surface and underground water supplies and to assist in meeting the future water requirements of the State; and

WHEREAS, Under Water Code section 461, the people of the State of California have a primary interest in the conservation of all available water resources requiring the maximum reuse of recycled water for beneficial uses; and

WHEREAS, In 2002, the City Council adopted Chapter 11.30, Recycled and Non-potable Water (Ordinance No. 1035); and

WHEREAS, Since that adoption in 2002, State, regional and local standards have changed, including the following:

1. California Water Conservation Act of 2009 (SBx7-7) was passed in November 2009 and was incorporated into Division 6 of the California Water Code, commencing with Section 10608 of Part 2.55. SBx7-7 requires water suppliers to adopt and comply with per capita water use targets for 2015 and 2020. The City adopted SBx7-7 per capita water use targets for 2015 and 2020 on May 17, 2011 (Resolution No. 2011-099). Per SBx7-7, a water supplier's gross water use excludes recycled water. Thus, the use of recycled water to meet non-potable water demands such as landscape irrigation offsets a water supplier's potable water use, reduces the water supplier's SBx7-7 gross water use, and reduces the water supplier's per capita water use.
2. State Water Resources Control Board Resolution No. 2009-0011, Adoption of Recycled Water Policy. The State Water Resources Control Board has established a mandate to increase the use of recycled water in California by 200,000 acre-feet per year by 2020 and by an additional 300,000 acre-feet per year by 2030. The State Water Resources Control Board has declared that, pursuant to Water Code sections 13550 et seq., it is a waste and unreasonable use of water for water agencies not to use recycled water when recycled water of adequate quality is available and is not being put to beneficial use.
3. 2010 California Green Building Standards Code (CALGreen) established mandatory and voluntary CALGreen provisions for residential and non-residential construction with an effective date of July 1, 2011 and included mandatory and voluntary provisions for the reduction of indoor and outdoor water use.

4. The Model Water Efficient Landscape Ordinance (MWELo) was adopted by the California Department of Water Resources as of January 1, 2010. One of the key components of the MWELo is the use of recycled water for landscape irrigation systems and decorative water features (MWELo Section 492.14).

5. The City of Tracy Sustainability Action Plan was adopted on February 1, 2011 (Resolution No. 2011-030). The Sustainability Action Plan contains a roadmap for reducing consumption of non-renewable resources, improving public health, promoting economic vitality, implementing the General Plan, and engaging Tracy residents.

WHEREAS, The City wishes to update Chapter 11.30 to conform to changes in State, regional and local law and policy.

NOW, THEREFORE, The City Council of the City of Tracy hereby ordains as follows:

SECTION 1: The Tracy Municipal Code, Title 11, Chapter 11.30 is hereby amended in its entirety to read as follows:

**“Chapter 11.30
Recycled and Non-potable Water**

11.30.010 Purpose; Regulatory authority.

(a) Purpose. It is the City’s policy that recycled water determined to be available under Water Code section 13550 be used for non-potable uses within the designated recycled water use areas set forth in this chapter and as permitted by Title 22 of the California Code of Regulations (Division 1, Chapter 5; Division 5, Chapters 1-3).

(b) Regulatory authority. This chapter is adopted under the authority of the California Water Conservation Act of 2009 (SBx7-7; Water Code section 10608 and following); State Water Resources Control Board Resolution No. 2009-0011 (Adoption of Recycled Water Policy); the 2010 California Green Building Standards Code; the California Department of Water Resources Model Water Efficient Landscape Ordinance; and the City’s Sustainability Action Plan.

11.30.020 Definitions.

In this chapter, unless the context in which they are used clearly indicates otherwise:

(a) "Common areas" means, but is not limited to, golf courses, parks, greenbelts, landscaped streets, landscaped medians.

(b) "Development project" means any development as defined in Government Code section 65927 (the Permit Streamlining Act) and includes a project requiring subdivision approval, a use permit, grading permit or building permit.

(c) "Director" means the City’s Director of Public Works or his or her designee.

(d) "Industrial cooling or processing purposes" means evaporative or heat exchange cooling serving industrial processing, or power production, as accomplished by cooling towers, enclosed heat exchange systems, washdown systems, and other similar equipment and devices.

(e) "Non-potable groundwater" means any groundwater that does not conform to federal, state, and local agency standards for human consumption.

(f) "Non-potable water" means water which does not conform to federal, state, and local agency standards for human consumption. It includes recycled water, non-potable groundwater, untreated surface water, and other subsurface or surface water which may be used for a beneficial purpose in compliance with applicable local, state, and federal laws defining standards for non-potable uses.

(g) "Potable water" means water which conforms to federal, state, and local agency standards for human consumption.

(h) "Premises" shall mean any lot or any piece or parcel of land comprising two or more lots of record in one ownership, or any building or other structure, or any part of any building or structure, used or useful for human habitation or gathering or for carrying on a business or occupation or any commercial or industrial activity.

(i) "Person" means an individual and any domestic and foreign corporation, association, syndicate, joint stock corporation, partnership of every kind, club.

(j) "Recycled water" means tertiary treated water which results from the treatment of wastewater, is suitable for direct beneficial use, and conforms to the definition of disinfected tertiary recycled water in accordance with State law.

(k) "Recycled water area" or "designated recycled water use area" means all geographic areas located within the City limits.

(l) "Recycled water distribution system" means a system intended for the delivery of recycled water, including, but not limited to, pipelines, pumps, and reservoirs. The recycled water distribution system is separate from any potable water distribution system. The system controls the recycled water distribution from the source of supply to the point of connection with a building or structural lateral supply pipeline.

(m) "Recycled water use" means irrigation of landscaped common areas which are professionally maintained by a licensed landscape contractor, and use for industrial cooling or processing purposes and other approved industrial uses.

(n) "Recycled water use permit" means a permit given by the City to the customer which grants permission to use recycled water and requires the user to use recycled water in accordance with the rules, regulations and standards of the Recycled Water User's Guide and all applicable state and local rules and regulations.

(o) "Recycled Water User's Guide" means the City's document which details the requirements of the state and local rules and regulations that apply to the design, installation, and operations and maintenance of the on-site recycled water system, including but not limited to the requirements of the California Code of Regulations, Title 22.

(p) "Untreated surface water" means surface water that has not received the required treatment necessary to conform to federal, state, and local agency standards for human consumption.

(q) "User" means a person or entity having a connection into the City's recycled water system or potable water system.

11.30.030 Use and distribution of recycled water.

(a) The City reserves the right to require all users who connect to the City water system to use recycled water for approved recycled water uses.

(b) Each subdivision for which a tentative map or parcel map is required under Government Code section 66426 and located within designated recycled water use areas is required to install a recycled water distribution system to provide recycled water to the common areas of the subdivision and for any industrial cooling or processing uses in the subdivision.

(c) The water distribution system shall be constructed in conformance with Title 22 of the California Code of Regulations.

(d) The recycled water distribution system shall be independent of the plumbing system provided to serve domestic, residential, or other potable water uses within the subdivision.

(e) Recycled water service shall not commence within a designated recycled water use area:

(1) in any service area of a private utility as defined in Public Utilities Code section 1502; or

(2) to any service area of a public agency retail water supplier that is not a local agency as defined in Government Code section 65603(b), except in accordance with a written agreement between the recycled water producer and the private utility or public agency retail water supplier.

11.30.040 Duty to connect to recycled water distribution system; Recycled water use permit.

(a) Duty to connect. Unless an exception applies under Section 11.30.080, each person owning or using any premises within the City limits and upon or in which any recycled water supply is produced or used is required to make an application to connect to the recycled water distribution system. If the application is approved, the City will issue a recycled water use permit and the user shall connect the premises to the City recycled water system within 60 days after the date when a City recycled water main located within 200 feet is completed and available for connection to the premises. Thereafter, all recycled water supplied to such premises shall be obtained from the City system.

(b) Recycled water use permit. The City will issue to each recycled water user a recycled water use permit for each site. The permit grants permission to use recycled water and requires the user to use recycled water in accordance with the rules, regulations and standards of the Recycled Water User's Guide and all applicable state and local rules and regulations.

(c) Prohibition. No person owning or using any premises within the City limits shall maintain on the premises a non-potable water supply other than a recycled water supply from the City water system, or an untreated surface water supply as described in 11.30.080(b), when the premises are located within 200 feet from the point at which a connection can be made to the City recycled water mains. The further maintenance or use of another non-potable water supply on any premises constitutes a public nuisance.

11.30.050 Recycled Water User's Guide.

The City Director of Public Works will prepare, maintain and update a Recycled Water User's Guide. The purpose of the Recycled Water User's Guide is to detail the following requirements as they apply to the City's recycled water system: this chapter; the California Code of Regulations Title 22; and other state and local rules and regulations related to the use of recycled water.

11.30.060 Operation and maintenance of user equipment; Site supervisor; Backflow prevention; Entry on premises.

(a) Operation and maintenance. Each user is required to operate and maintain the on-site recycled water system in accordance with the Recycled Water User's Guide and recycled water use permit.

(b) Site supervisor. Each user will be required to designate a site supervisor for each site covered by a recycled water use permit. The site supervisor serves as a liaison with the City, and must have the authority to carry out the requirements of the Recycled Water User's Guide and recycled water use permit, including the operations and maintenance of the on-site recycled water system and prevention of potential hazards.

(c) Backflow prevention. The City reserves the right to require a backflow prevention device on the user's recycled water system if it is determined that there is a backflow hazard on site. If a backflow device is required, it must be properly maintained by the user, inspected quarterly and tested at least annually. All required tests must be submitted to the City in accordance with the City backflow prevention program in the Recycled Water User's Guide.

(d) Entry on premises. As a condition of the recycled water use permit, the user will permit the City to enter upon the user's property during the City's normal working hours, or in case of emergency at any time, to inspect the user's on-site recycled water system for compliance with this chapter and the terms of the permit. The City reserves the right to take any action necessary with respect to the operation of the user's recycled water system to safeguard public health.

11.30.070 Enforcement.

The Director may immediately terminate recycled water service to a user who violates this chapter or the terms of the permit. In the alternative, the Director may issue a written warning. If a user does not correct the violation within 15 days of notification, or such other time as specified, the Director may terminate recycled water service without further notice.

11.30.080 Exemptions.

(a) Exemptions. This chapter does not apply if:

- (1) The tentative map or development was approved by the City before February 6, 2002.
- (2) The subdivision map application was deemed complete under Government Code section 65943 before February 2, 2002.
- (3) A person establishes to the satisfaction of the Director that any of the following circumstances apply:
 - i. There is a higher or better use for the recycled water consistent with the regulatory authorities described in 11.30.010(b);
 - ii. Use of recycled water is not economically justified; or
 - iii. Use of recycled water is not technically feasible.

(b) Recycled water supplies not readily available. Upon approval from the Director, if recycled water supplies are not readily available, untreated surface water supplies may be used in lieu of recycled water supplies to meet non-potable water demands on an interim basis, until December 31, 2020. Such untreated surface water supplies shall be distributed using the recycled water distribution system. The use of untreated surface water supplies in lieu of recycled water supplies is not permitted after December 31, 2020.

11.30.090 Appeal.

A person may appeal to the City Manager a staff determination that the exemptions of section 11.30.080(a) are inapplicable, in accordance with section 1.12.010 of the Tracy Municipal Code.”

SECTION 2: CEQA Determination. This ordinance is statutorily exempt from the California Environmental Quality Act. California Water Code sections 13552.4(c), 13552.8(c) and 13554(c) provide a statutory exemption from CEQA for any project which only involves the re-piping, redesign, or use of recycled water for non-potable water uses necessary to comply with a requirement prescribed by a public agency under California Water Code sections 13550 through 13554. CEQA Guidelines section 15307 provides a statutory exemption for actions by regulatory agencies for the protection of natural resources. CEQA Guidelines section 15308 provides a statutory exemption of actions by regulatory agencies for the protection of the environment.

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

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

The foregoing Ordinance 1183 was introduced at a regular meeting of the Tracy City Council on the 5th day of February 2013, and finally adopted on the _____ day of _____, 2013, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK