

Tuesday, December 3, 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
– Holiday Fire Safety

1. CONSENT CALENDAR

- A. Approval of Minutes
- B. Adopt a Resolution Approving the Annual Report on Development Impact Fee Revenues, Expenditures, and Findings Regarding Unexpended Funds
- C. Approve a Lease Agreement with Holman Capital Corporation, and Related Documents, for the Purchase of Two Triple Combination Fire Pumpers from Hi-Tech Emergency Vehicle Service, Incorporated
- D. Approve Amendment Three to the Professional Services Agreement (PSA) with Drake Haglan and Associates of Sacramento, California, for Additional Design Services for the Eleventh Street – East Tracy Overhead, Bridge Number 29C-0126 – CIP 73063, Federal Project Number BHLS-5192(020), and Authorize the City Manager to Execute the Amendment
- E. Authorization for Exercise of Option to Purchase from the West Side Irrigation District the Contract Right to 2,500 Acre-Feet of Central Valley Project Water Supply for \$2.5 Million and Authorization for the Mayor to Execute the Assignment Agreement
- F. Acceptance of the Twelfth Street Sidewalk Improvements – CIPs 73132 and 73134, Completed by Knife River Construction of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion
- G. Authorize Interim Renewal Contracts Between the United States Bureau of Reclamation and the City for Providing Central Valley Project Water Service and Authorize the City Manager to Execute the Agreements

2. ITEMS FROM THE AUDIENCE

3. CONTINUED PUBLIC HEARING TO ADOPT AMENDMENTS TO THE CITYWIDE ROADWAY AND TRANSPORTATION, AND STORM DRAINAGE MASTER PLANS, THE ESTABLISHMENT OF ROADWAY AND TRAFFIC, WATER, RECYCLED WATER, WASTEWATER, STORM DRAINAGE, PUBLIC SAFETY, PUBLIC FACILITIES, AND PARK DEVELOPMENT IMPACT FEES AND THE ASSOCIATED AB1600 FEE STUDIES FOR ALL NEW DEVELOPMENTS WITHIN THE CITY
4. PUBLIC HEARING TO CONSIDER APPLICATIONS TO AMEND THE EASTLAKE AND ELISSAGARAY RANCH PLANNED UNIT DEVELOPMENTS TO REMOVE A TEN ACRE SITE PREVIOUSLY DESIGNATED FOR A SCHOOL; TO APPROVE THE CONCEPT, PRELIMINARY AND FINAL DEVELOPMENT PLANS FOR THE ELISSAGARAY INFILL PLANNED UNIT DEVELOPMENT; TO APPROVE A VESTING TENTATIVE SUBDIVISION

MAP TO SUBDIVIDE THE TEN ACRE SITE INTO 47 RESIDENTIAL LOTS; AND TO INTRODUCE THE ORDINANCE AND ADOPT THE RESOLUTION. THE PROJECT IS LOCATED ON DOMINIQUE DRIVE BETWEEN EASTLAKE CIRCLE AND BASQUE DRIVE, ASSESSOR'S PARCEL NUMBERS 252-050-24 AND 252-260-01. THE APPLICANT AND PROPERTY OWNER IS TVC TRACY HOLDCO, LLC. APPLICATION NUMBERS PUD12-0003 AND TSM12-0002

5. PUBLIC HEARING TO CONSIDER AN APPROPRIATION OF \$25,245 IN CITIZENS' OPTIONS FOR PUBLIC SAFETY "COPS" GRANT FUNDING TO PURCHASE POLICE SAFETY EQUIPMENT
6. ACCEPT UPDATE ON THE TRACY HILLS PROJECT AND PROVIDE DIRECTION ON THE PROPOSED DEVELOPMENT AGREEMENT
7. ITEMS FROM THE AUDIENCE
8. STAFF ITEMS
9. COUNCIL ITEMS
 - A. Determine Whether to Direct Staff to Place an Item on a Future Council Agenda Regarding Initiating an Investigation of the City's Actions Regarding the Agreement the Surland Companies Proposed to the City Related to Airport Fuel Sales
 - B. Appoint An Applicant To The Transportation Advisory Commission From The Commission's Eligibility List
10. ADJOURNMENT

October 1, 2013, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

The invocation was provided by Deacon Jack Ryan.

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

Leon Churchill, Jr., City Manager, presented the Employee of the Month award for October to Steven Blair, Police Department.

Mayor Ives presented a proclamation to Joelle Gomez, CEO - Women's Center - Youth & Family Services, in recognition of Domestic Violence Awareness Month.

Mayor Ives presented a proclamation to Brian Pekari, Tracy United to Make a Difference Community Project, in recognition of Make a Difference Day.

Mayor Ives presented a proclamation to Paul Hall, Director of Student Services, Tracy Unified School District, in recognition of Anti-Bullying Month.

Mayor Ives presented a proclamation to Steve Hanlon, Fire Division Chief, in recognition of Fire Prevention Week.

Mayor Ives presented Certificates of Appointment to new Youth Advisory Commissioners Althea Elmore, Gianna Oliveri, Kyle Hall, Cristian Gonzaleaz, Serena Cho, and Bill Yang.

Council Member Rickman and Assistant Principal Wendell Hawkins, Tracy High School, presented Tracy High School jerseys for Council Members Manne and Young.

1. CONSENT CALENDAR - Following the removal of item 1-L by Council Member Rickman, it was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Approval of Minutes – Closed session minutes of August 20, 2013, and September 3, 2013, were approved.
 - B. Authorize the Appointment of Three Adult Commissioners to the Youth Advisory Commission – Resolution 2013-149 authorized the appointment.
 - C. Authorization of Contract Laboratory Services for Fiscal Year 2013 – 2014 – Resolution 2013-150 authorized the contract.

- D. Acceptance of the East Paradise Road Extension Project - CIP 73128 & 75046, Completed by Knife River Construction of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2013-151 accepted the project.
- E. Acceptance of the Corral Hollow Road Widening Between Grant Line Road and the West Valley Mall Entry - CIP 73014, Federal Project Number STPL 5192(030), Completed by Knife River Construction of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2013-152 accepted the project.
- F. Approve a Professional Services Agreement with 4 Leaf, Inc., to Provide Temporary Staffing of Construction Inspectors and Plan Checking Engineers for Capital Improvement and Development Projects on an as-needed Basis for Fiscal Years 2013-2014 and 2014-2015, Authorization for an Option to Extend Inspection Services for Fiscal Years 2015-2016 and 2016-2017, Authorization for the City Manager to Execute the Extensions and Any Minor Amendments, and Authorization for the Mayor to Execute the Agreement – Resolution 2013-153 approved the agreement.
- G. Approve Amendment 1 to the Offsite Improvement Agreement with McDonald's USA, LLC, for the Construction of Street and Utility Improvements on Eleventh Street and "F" Street, and Authorize the Mayor to Execute the Agreement – Resolution 2013-154 approved the amendment.
- H. Rescind Resolution 2011-077 Authorizing a Cooperative Agreement Between the City of Tracy and Various Agencies, Authorization to Enter Into a New Cooperative Agreement Between the City of Tracy, Contra Costa Transportation Authority, Contra Costa County, San Joaquin County, the City of Brentwood, and the Mountain House Community Services District for the Partial Reimbursement of City of Tracy Staff Expenses Related to Phase I Planning of Future State Route 239, and Authorization for the City Manager to Execute the Agreement – Resolution 2013-155 rescinded Resolution 2011-077 and authorized entering into a new Cooperative Agreement.
- I. Approve a Real Property Purchase Agreement with Earl R. Breitstein and Carole Breitstein, Trustees of the Breitstein Family Living Trust for Acquisition of Right-Of-Way for the Roadway Widening of Eleventh Street West of MacArthur Drive, and Authorize the Mayor to Execute the Agreement – Resolution 2013-156 approved the agreement.
- J. Authorize the City Manager and Public Works Director to Approve Amendments to the Landscape, Parks, and Channelways Maintenance Agreement with Sycamore Landscaping Corporation – Resolution 2013-157 authorized the City Manager and Public Works Director to approve the amendments.
- K. Authorization for the Chief of Police to Execute a Memorandum of Understanding (MOU) with the Sacramento Valley Hi-Tech Crimes Task Force and Sacramento Internet Crimes Against Children Task Force to Jointly Combat Financial Crimes, Computer Crimes and Crimes Against Children – Resolution 2013-158 authorized the Chief of Police to execute the MOU.

- L. Approve an Agreement to Extend the 60-Day Cure Period Under the Amended and Restated Development Agreement by and Between the City of Tracy and Surland Communities, LLC and Authorize the Mayor to Execute the Agreement – Council Member Rickman stated there was a question that arose regarding an airport agreement memorandum from Surland Communities (Surland) to the City dated April 26, 2013, that surfaced last week as a result of a public records request regarding airport fuel flowage fee and runway length. Council Member Rickman asked Council to move consideration of this agenda item to the next City Council meeting when the airport item is scheduled to return to Council. Council Member Rickman further stated there were questions regarding the City's involvement in the agreement. Council Member Rickman stated he had never been notified that the agreement was in place. Council Member Rickman stated Leon Churchill Jr., City Manager, informed him that the City never entered into this agreement. Council Member Rickman indicated additional questions remain, such as: 1) why wasn't the Council notified; 2) was there a formal notice of denial; and 3) were any conditions of the agreement in place. Council Member Rickman indicated if Council did not wish to move consideration of the agenda item, he would abstain from voting until his questions were answered.

Mayor Pro Tem Maciel stated if Council Member Rickman has questions then those questions should be answered. Mayor Pro Tem Maciel indicated the nexus between the airport issue and the agenda item was not evident. Mayor Pro Tem Maciel stated he was in favor of having the questions answered but was unclear what would be gained by delaying the item.

Council Member Manne asked what impacts would be realized on the Development Agreement (DA) if consideration was delayed two weeks. Dan Sodergren, City Attorney, stated according to the DA, the first swim center payment of \$2 million was due on September 15, 2013. Mr. Sodergren stated the City notified Surland on September 17, 2013, that the payment had not been received. Mr. Sodergren indicated this notice provides Surland with a 60-cure period from September 17, 2013, where they are not considered in default under the agreement.

Mayor Ives asked if approval of the agenda item would extend the time period. Mr. Sodergren stated the approval sought would extend the time period 30 days after Council takes final action on Surland's recent request to amend the DA.

Council Member Young stated she was not clear on how the items were related.

Council Member Rickman stated it is related to the DA and if one part of the agreement is compromised, the entire agreement needs to be looked at before it goes forward. Council Member Rickman further stated if there are allegations of misconduct, it needs to be investigated as soon as possible.

Mayor Ives asked staff for a response regarding the nexus of the agenda item, the DA and the impact of the extension.

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

Mark Connolly provided Council with a letter dated October 1, 2013, demanding that an agreement between Surland and the City of Tracy be rescinded at a public hearing. Mr. Connolly stated there was an illegal contract entered into between Surland and the City of Tracy, undisclosed to the public, unapproved by the Council and in violation of the

Department Head and City Manager authority. Mr. Connolly asked that Council support the direction by Council Member Rickman.

Dave Helm provided Council with a copy of a memorandum dated May 25, 2012, along with miscellaneous documents obtained through a public records request. Mr. Helm urged Council to look at the agreement, let Surland build their homes, and build the swim center. Mr. Helm stated the situation did not look good and needed to be investigated.

Michel Bazinet addressed Council stating the documents are public documents and fly in the face of any secret negotiations. Mr. Bazinet stated the documents have nothing to do with the item for consideration and urged Council to approve modification of the terms of the DA.

Richard Ortenheim, Skyview Aviation, addressed Council stating he did not believe he had been treated very well.

Les Serpa, Surland Communities, stated these were two separate issues and unrelated to the DA. Mr. Serpa stated a DA should benefit three parties; the community, the City and the developer. Mr. Serpa stated their intentions with the airport were to reach out to the businesses and the people to make it a better place. Mr. Serpa stated all they are asking is to extend the cure period to allow them time to talk with staff to extend the \$2 million payment for 24 months. Mr. Serpa further stated they were still obligated to pay \$8 million within 36 months. Mr. Serpa stated the main reason for the extension is because they are looking at purchasing the antenna farm at a cost of approximately \$2 million.

Mr. Serpa stated the City and airport personnel approached them to help out at the airport on various projects which never came to fruition. Mr. Serpa stated they did have discussions with city staff and if those discussions had become fruitful or become anything more than a discussion it would have come before Council. Mr. Serpa stated there is no agreement with the City. Mr. Serpa added that they have given money to the Tracy Airport Association for their events with no agreement and had been approached to fund a number of other events or projects. Mr. Serpa asked Council to consider the item before them and allow Surland the ability to have discussions with staff.

Wilson Wynn, an attorney representing Surland, stated that the DA has nothing to do with the airport. Mr. Wynn further stated it would take longer than 60 days to negotiate the first amendment and the request is to allow Surland time to get through the DA amendment and not be in default. Mr. Wynn stated there is no impropriety, no effort by Surland to avoid their obligation, and urged Council to approve the extension of the cure period.

Steve Stuhmer, Tracy Air Center, stated no agreement exists. Mr. Stuhmer stated the efforts of staff, Surland, himself, and a large group at the airport have all been coming together to make the airport better, which was supported by Council. Mr. Stuhmer urged Council to continue on the path of obtaining improvements for the airport.

Mayor Pro Tem Maciel asked if there is any agreement based on the memorandum provided to Council. Mr. Sodergren indicated that type of agreement would have to be approved by Council and signed by the Mayor, and to his knowledge, no such agreement exists.

Mayor Pro Tem Maciel stated while it may be appropriate to ask questions about the issue, it has nothing to do with the item before Council. Mayor Pro Tem Maciel stated Council should move forward with discussions for the cure period.

Council Member Manne stated he received a copy of the memorandum last week by various members of the community. Council Member Rickman asked that he not be contacted at home and provided his cell phone number. Council Member Manne stated Council Member Rickman had valid questions that needed answers and did not believe two weeks was enough time to obtain those answers. Council Member Manne stated 60 days would give Council an appropriate amount of time to investigate the accusations. Council Member Manne stated he was in favor of the City negotiating with Surland the shortest time frame in which the City can receive the \$2 million in order to avoid any delay with development of a swim center.

Council Member Young stated the agenda item has opened a door for discussion on other issues, but the item before Council is to consider extending the cure period which she was in favor of. Council Member Young indicated she understands the concerns raised and was in favor of separating the issues.

Council Member Rickman asked why Council was not notified. Leon Churchill Jr., City Manager, stated there was no agreement and no notification to be made.

Council Member Rickman stated he did not see how a hot topic like the airport and something of this magnitude could not have been brought to the Council's attention. Council Member Rickman stated that on September 26, 2013, he and Council Member Young requested that a special meeting be called, but that he could not get a third Council Member to agree to a special meeting. Council Member Rickman stated he would like to know the outcome of his questions before he votes on the item before Council. Council Member Rickman stated he wanted to make sure he has all the facts, before he makes a decision.

Mayor Ives stated he could find no nexus between the two items and was in favor of moving the item forward.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to approve an Agreement to Extend the 60-Day Cure Period Under the Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC and authorize the Mayor to execute the Agreement. Roll call vote found Council Members Manne, Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Rickman abstained.

2. ITEMS FROM THE AUDIENCE – Mark Connolly asked that Council take action outlined in his letter provided under Item 1.L. Mr. Connolly stated the documents would convince any court that there is an agreement funded in the amount of \$50,000 as outlined in the memorandum dated April 26, 2013.

Dave Anderson, Tracy Airport Association, stated the airport never agreed to decrease the size of the airport or safety zones, and will never support placing a swim center at the end of the airport.

Les Serpa, Surland Communities, LLC, (Surland) stated he has invited Mr. Connolly and Mr. Anderson on various occasions to his office to talk; they have always

declined. Mr. Serpa stated discussions Surland had with Rod Buchanan, former Interim Public Works Director, were at staff level and never went any further; there was no agreement. Mr. Serpa invited Council Member Rickman to his office to explain the facts.

3. THAT COUNCIL CONDUCT A PUBLIC HEARING DECLARING THE EXISTENCE OF WEEDS, RUBBISH, REFUSE AND FLAMMABLE MATERIAL ON EACH OF THE PARCELS LISTED IN EXHIBIT "A" TO THIS AGENDA ITEM A NUISANCE; CONSIDER OBJECTIONS TO ABATEMENT OF SAID NUISANCE, AND ADOPT A RESOLUTION AUTHORIZING FIRE DEPARTMENT STAFF TO ORDER CONTRACTOR TO ABATE SAID NUISANCES – Steve Hanlon, Fire Division Chief, provided the staff report. On September 5, 2013, pursuant to Tracy Municipal Code, Section 4.12.280, the Fire Department sent a notice to the property owner(s). That notice required the owner(s) to abate weeds, rubbish, refuse and flammable material on his/her parcel within 20 days, and informed the property owner(s) that a public hearing would be conducted on October 1, 2013, where any protests regarding the notice to abate would be heard. 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.

Under the provisions of Tracy Municipal Code, Section 4.12.290, the Fire Department will proceed at Council's direction with instructing the City's contractor to perform weed, rubbish, refuse and flammable material abatement on the parcels. Per Tracy Municipal Code, property owners are liable for the cost of abatement and will be billed for the actual cost of the City contractor's services, plus a 25% administrative charge. After the abatement is complete, staff will return to have Council authorize all unpaid assessments to be filed with the San Joaquin County Auditor Controller's office to establish a lien on the property.

There is \$8,096 remaining in the budget for Fiscal Year 2013-2014, that can be used for contracting the abatement of weeds, rubbish, refuse and flammable material. There are sufficient funds to accomplish abatement services.

Staff recommended that Council conduct a public hearing to hear and consider any and all objections to the proposed abatement, and by resolution, declare the weeds, rubbish, refuse, and flammable material located at the parcels to be a nuisance, and authorize the Fire Department to direct the City's contractor to abate such nuisance.

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

Council Member Rickman thanked Fire Division Chief Hanlon for the Fire Department's hard work.

Council Member Young asked how much it might cost to conduct the weed abatement. Division Chief Hanlon stated approximately \$250 per parcel.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2013-160 declaring the existence of weeds, rubbish, refuse and flammable material on the parcels listed in Exhibit "A" of the staff report a nuisance and

authorizing the Fire Department staff to order the contractor to abate. Voice vote found all in favor; passed and so ordered.

4. AUTHORIZATION FOR CITY STAFF TO NEGOTIATE A MEMORANDUM OF UNDERSTANDING (MOU) WITH SURLAND COMMUNITIES, LLC FOR THE POTENTIAL DEVELOPMENT AND OPERATION OF AN AQUATICS CENTER IN THE CITY OF TRACY – Andrew Malik, Development Services Director, provided the staff report. On October 1 and 2, 2012, City Council directed staff to acquire information on the potential of a privately developed and operated aquatic center project. Staff conducted outreach to three separate waterpark owner/operators in California: Palace Entertainment; Golfland Sunsplash; and Wild Rivers Waterpark. Of the three, Wild Rivers Irvine, LLC submitted a letter of interest to explore a public-private partnership with the City of Tracy for the development of an Aquatic Center.

On September 17, 2013, Council directed staff to begin negotiations with Wild Rivers Irvine, LLC for the potential development and operation of an Aquatics Center in the City of Tracy. During the public comment period for the Wild Rivers agenda item, Surland Communities (Surland) presented Council with an alternative proposal to construct, develop, and operate a Swim Center for the community.

The Surland proposal states that Surland would alleviate the construction, ownership and operational risk for the City to construct, own, and operate a Swim Center. Surland requests that an agreement be negotiated with the City to include the following points:

- The Swim Center would be built on the Swim Center site identified in the Ellis Development Agreement.
- Surland would form a separate entity, which would utilize the approximately \$4 million of funding, which the City currently has available and the \$10 million obligation from Surland along with any other funds that could be raised from grants, local developers, or other sources to construct the Swim Center.
- The Swim Center would include as many of the features as discussed in the conceptual design as possible and would be designed in a way which would address the long term needs of the Tracy community and provide as many of the desired services as possible given financial constraints.
- Surland would enlist the help of community groups and entities, such as USA Swim, to assist in operating and maintaining the Swim Center once it is constructed. The intent of the agreement would be to provide the same level of services to the community as envisioned through the many years of conceptual design discussion and consensus approval. The operations and ownership of the Swim Center would be undertaken by the entity established by agreement between Surland and the City.
- The City would be able to program swim lessons and other related activities through the agreement between Surland and the City.

Should Council direct staff to negotiate a Memorandum of Understanding (MOU) with Surland, staff will come back to Council with details of the MOU at a subsequent Council meeting. Staff understands that there are a number of outstanding issues related to aquatics facilities that need to be addressed such as: location; refinement of amenities; and operations. Staff would work with both Wild Rivers, LLC and Surland concurrently to negotiate these deal points. Staff proposes an MOU with a six month duration in order to work through these issues with Surland, Wild Rivers, and Council.

There is no impact to the General Fund as a result of preparing this MOU, aside from staff time. The City has \$4 million budgeted for the Aquatics Center CIP, with additional funding (\$10 million) coming from Surland Communities as part of their Development Agreement with the City.

Staff recommended that Council authorize staff to prepare a MOU with Surland for the potential development and operation of a Swim Center in the City of Tracy.

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

Dave Anderson, Tracy Airport Association, submitted a saber jet accident report, a copy of a SJR3 report, and the airport deed. Mr. Anderson stated they supported a swim center, but not at the end of a runway.

Robert Tanner stated the City does need the swim center, the operations and ownership to be agreed upon. Mr. Tanner stated the City should not operate a swim center and needed a third party to run it.

Michel Bazinet, a swim center supporter, stated he does not want to see any further delays, and does recognize the City's efforts to fund a swim center and find the best option for the community. Mr. Bazinet provided a short presentation regarding the planning efforts for a swim center.

Les Serpa, Surland Communities, stated the proposal is to allow Surland to have discussions with staff.

Council Member Young stated competition was healthy and that she was in favor of moving forward.

Council Member Rickman stated he has always supported a swim center. However, as stated earlier, he would abstain from voting until he receives answers to his questions. Council Member Rickman further stated he was troubled by Leon Churchill Jr., City Manager's statement that there was no need to divulge an agreement that was not accepted.

Council Member Manne stated he was in support of a swim center.

Mayor Pro Tem Maciel stated this item was a result of Council direction to staff to find a private partner and that he wanted to give Surland the same opportunity as Wild River. Mayor Pro Tem Maciel referred to funding stating that to him it did not mean that all funds from other sources would be exclusively used for the swim center. Mayor Pro Tem Maciel stated it was important that the process move forward.

Mayor Ives stated a swim center was overdue, was going to be expensive to maintain and operate and the proposal provides additional options.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to direct staff to prepare a Memorandum of Understanding with Surland Communities, LLC for the potential development and operation of an Aquatics Center in the City of Tracy. Voice vote found Council Members Manne, Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Rickman abstained.

5. ITEMS FROM THE AUDIENCE – John Favors stated the airport does not exist by itself; it is development around the community and the city that will bring people to the airport. Mr. Favors further stated the runways need to be fixed and to the extent the Council is making things better at the airport, it is appreciated. Mr. Favors indicated they would like to see more activity at the airport and that activity will come when amenities are added to the airport.

6. COUNCIL ITEMS

- A. Appoint Applicants to the Tracy Senior Steering Committee - Maria Hurtado, Assistant City Manager, provided the staff report. On August 20, 2013, City Council approved the formation of a Senior Steering Committee to facilitate two community conversations that would provide the local senior population a forum to identify and discuss current and future service needs, and provide feedback to City Council and the Parks and Community Services Commission. The Senior Steering Committee will consist of seven members including one appointed Commissioner from each of the following City of Tracy Commissions: Walter Gouveia (Parks and Community Services Commission), Jass Sangha (Planning Commission), Mercedes Silveira (Tracy Arts Commission), and Daniel Ramey (Transportation Commission). Additionally, three residents from the Tracy community will be appointed to the Senior Steering Committee by City Council.

A recruitment to fill the three vacancies on the Senior Steering Committee was opened on August 28, 2013, and ended at 6:00 p.m. on September 18, 2013. On September 24, 2013, a Council subcommittee consisting of Council Member Young and Council Member Manne interviewed six applicants. In accordance with Resolution 2004-152, the Council subcommittee will recommend applicants for appointment to the Tracy Senior Steering Committee.

Council Member Young stated she and Council Member Manne interviewed very energetic individuals who wanted to serve on the Committee. Council Member Young stated the Council Subcommittee recommended appointing Cynthia Gustafson, Bill Aragon and Brent Riddle to serve on the Tracy Senior Steering Committee.

It was moved by Council Member Young and seconded by Council Member Manne to approve the Council Subcommittee's recommendation and appoint Cynthia Gustafson, Bill Aragon and Brent Riddle to serve on the Tracy Senior Steering Committee. Voice vote found all in favor; passed and so ordered.

- B. Consider Whether an Item to Discuss the Timeliness of Staff Responses to Council Requests Should be Placed on a Future City Council Agenda - Council Member Rickman indicated the item stemmed from the issue regarding program management fees which took almost two years to bring to Council. Council Member Rickman stated there has to accountability.

Council Member Manne seconded the motion. Council Member Manne stated he believed there have been items requested by the Council and at times he was not sure where the request stood. Council Member Manne stated he would like to see something regarding a timeline.

Mayor Pro Tem Maciel asked if Council was talking about establishing a procedure. Council Member Rickman stated yes, some type of policy.

Council Member Young stated it would be good to have clarity, or at least a time frame established.

Maria Hurtado, Assistant City Manager, stated the intent is to write down what the current process is for tracking items from Council; identify any potential gaps; and give Council the opportunity to provide input as to when feedback should be provided to Council. Ms. Hurtado stated at the next Council meeting Council can discuss a procedure and establish a timeline.

Mayor Ives asked if the agenda item would have options on how items are tracked. Mayor Ives stated he wanted it to be very clear that unilaterally a Council Member cannot direct staff without specific direction of the entire Council.

Mayor Ives asked when staff expected to have the item return to Council. Ms. Hurtado stated staff could be prepared by the first meeting in November.

It was Council consensus to have an item placed on the November 5, 2013, agenda for discussion.

Council Member Rickman asked if the airport item was coming back to Council in two weeks. Leon Churchill, Jr., City Manager, stated an item could be ready as soon as October 15, 2013.

Mr. Churchill added that Amazon opened business on October 1, 2013, with 300 employees. Mr. Churchill stated Amazon plans to add 300 employees per week until 1,000 employees are reached. Mr. Churchill added that 130 Amazonians came from other locations; 70 of which are managers; 60 were hourly employees. Mr. Churchill stated temporary access points have been made to the site while Grant Line Road is being completed. Mr. Churchill added that Amazon opened ahead of schedule.

Council Member Rickman asked if there were any updates on retail efforts. Mr. Churchill stated more information would be provided at the October 15, 2013, Council meeting.

Council Member Manne thanked all students who participate in sports in Tracy.

Council Member Young reminded everyone that the Fire Department's Annual Pancake Breakfast would be held Saturday, October 5, 2013, in Tracy and the annual Gala for the Tracy Boys and Girls Club would be held the same day.

7. ADJOURNMENT- It was moved by Council Member Rickman and seconded by Council Member Young to adjourn. Voice vote found all in favor; passed and so ordered. Time: 9:06 p.m.

The above agenda was posted at the Tracy City Hall on September 26, 2013. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk

October 15, 2013, 6:30 p.m.

City Council Chamber, 333 Civic Center Plaza

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

1. CALL TO ORDER - Mayor Ives called the meeting to order at 6:30 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL - Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE – None.
4. REQUEST TO CONDUCT CLOSED SESSION -
 - I. Threat to Public Services or Facilities (Gov. Code, § 54957(a))
 - Consultation with the Chief of Police.
5. MOTION TO RECESS TO CLOSED SESSION – Mayor Pro Tem Maciel motioned to recess the meeting to closed session at 6:31 p.m. It was seconded by Council Member Manne. Voice vote found all in favor; passed and so ordered.
6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 6:57 p.m.
7. REPORT OF FINAL ACTION – None.
8. ADJOURNMENT – It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adjourn the meeting. Voice vote found all in favor; passed and so ordered. Time: 6:58 p.m.

The above agenda was posted at City Hall on October 10, 2013. The above are action minutes.

Mayor

ATTEST:

City Clerk

November 5, 2013, 6:00 p.m.

City Council Chamber, 333 Civic Center Plaza

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

1. CALL TO ORDER - Mayor Ives called the meeting to order at 6:00 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL - Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE – Paul Miles voiced concern regarding Leon Churchill, Jr., City Manager’s and Dan Sodergren, City Attorney’s conduct, the City’s compliance with the Public Records Act, and indicated he would be filing a grand jury complaint on the matter.
4. REQUEST TO CONDUCT CLOSED SESSION -
 - I. Personnel Matter (Gov. Code, § 54957)
 - Public Employee Appointment, Employment, Evaluation of Performance, Discipline, or Dismissal. Position Titles: City Attorney and City Manager
5. MOTION TO RECESS TO CLOSED SESSION – Mayor Pro Tem Maciel motioned to recess the meeting to closed session at 6:05 p.m. It was seconded by Council Member Manne. Voice vote found all in favor; passed and so ordered.
6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 7:02 p.m.
7. REPORT OF FINAL ACTION – None.
8. ADJOURNMENT – It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adjourn the meeting. Voice vote found all in favor; passed and so ordered. Time: 7:02 p.m.

The above agenda was posted at City Hall on October 31, 2013. The above are action minutes.

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.B

REQUEST

**ADOPT A RESOLUTION APPROVING THE ANNUAL REPORT ON
DEVELOPMENT IMPACT FEE REVENUES, EXPENDITURES, AND FINDINGS
REGARDING UNEXPENDED FUNDS**

EXECUTIVE SUMMARY

The City is required by law to issue an annual fiscal report identifying the development impact fees collected and expended during the prior fiscal year.

The City has 69 different development impact fees through 28 different funds, with combined collected revenues of \$13,073,909 in Fiscal Year 2012-2013. For Council consideration is the annual report on development impact fee revenues and expenditures, and the report of findings for unexpended development fees.

DISCUSSION

California Government Code sections 66000-66006 impose requirements for the collection and expenditure of development impact fees. Those requirements include the City issuing an annual report pertaining to its development fee revenues and expenditures. Required at least every five years is the reporting of certain findings with respect to that portion of each development fee account that remains unexpended.

This report and the information attached to the proposed Resolution satisfy the statutory requirements for the accounting of development impact fees.

The Building Industry Association of the Delta, and Seecon Finance and Construction Company have requested a copy of this report and it was provided to each of them at least 15 days prior to the Council meeting, as required by law.

STRATEGIC PLAN

This item is mandated by Government Code and does not have bearing on the City Council's Strategic Plans.

FISCAL IMPACT

There is no fiscal impact to the City associated with this agenda item.

RECOMMENDATION

Adopt the attached resolution approving the annual report on development impact fee revenues, expenditures, and findings as to unexpended funds.

Agenda Item 1.B
December 3, 2013
Page 2

Prepared by: Anne Bell, Management Analyst II
Kul Sharma, City Engineer

Reviewed by: Jenny Haruyama, Administrative Services Director
Andrew Malik, Development Services Department Director
Maria A. Hurtado, Assistant City Manager

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

RESOLUTION _____

APPROVING THE ANNUAL REPORT ON DEVELOPMENT IMPACT FEE REVENUES, EXPENDITURES, AND FINDINGS REGARDING UNEXPENDED FUNDS

WHEREAS, California Government Code Sections 66000-66006 impose requirements for the collection and expenditure of development impact fees, and

WHEREAS, Pursuant to Government Code Sections 66006(b), the City must issue an annual report relating to the development impact fees it imposes, and

WHEREAS, Pursuant to Government Code Sections 66001(d), the City must make certain findings, at least every five years, with respect to that portion of each development fee account remaining unexpended, and

WHEREAS, Pursuant to Government Code Sections 66006(b)(2), notice of the City Council meeting at which this report was considered was mailed at least 15 days before the meeting to interested parties who requested notice;

NOW, THEREFORE, BE IT RESOLVED, The Tracy City Council hereby resolves, declares, determines, and orders as follows:

1. Annual Report of Development Impact Fees. The City Council approves the attached annual report of development impact fee revenues and expenditures for the fiscal year ending June 30, 2013, as set forth in Exhibits A, B, and C.
2. Findings. The City Council hereby adopts the findings contained in the attached report of findings for the fiscal year ending June 30, 2013, as set forth in Exhibit D.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the 3rd day of December, 2013 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK



Think Inside the Triangle

City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

ADMINISTRATIVE SERVICES DEPARTMENT
& DEVELOPMENT SERVICES DEPARTMENT

Main 209.831.6800
FAX 209.831.6848
www.ci.tracy.ca.us

CITY OF TRACY
DEVELOPMENT IMPACT FEES
ANNUAL REPORT
FOR FISCAL YEAR JULY 1, 2012 -JUNE 30, 2013

Adopted by City Council Resolution _____
December 3, 2013

This Annual Report is adopted pursuant to Government Code sections 66006(b) and 66001(d). The report consists of the following four sections:

- Exhibit A Summary of Fund Balances, Fees Collected, Interest Earned and Project Expenditures
- Exhibit B Brief Description of Fees and Amounts of Fees, Including Exhibits B-1 Through B-15 and Supplementary Data
- Exhibit C Fee-funded Capital Improvement Projects
- Exhibit D Report of Findings for Development Fee Funds

EXHIBIT A

Fund Balances, Fees Collected, Interest Earned and Project Expenditures
For Fiscal Year Ended June 30, 2013
(Government Code §66006(b)(1)(C) and (D).)

		Source: Quick Report - Revenue Statement by Fund					MS Govern Quick Reports, Expenditure Statement by Fund			
Fund	Fund Description	Beginning Fund Balance 07/01/12	Capital Development Fees Collected ¹	Interest / Investment Earnings ²	Fiscal Agent Earnings ³	Other Revenues ⁴	CIP Expenditures ⁵	Prijt Reimbs &/or Interfund Transfers ⁶	Other Expenditures ⁴	Ending Fund Balance 06/30/13
311	Infill, Parks	\$ 832,702	\$ -	\$ 1,852	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 834,554
312	Infill, Strm Drn	637,225	14,730	1,751			-			653,707
313	Infill, Arterials	604,519	33,820	1,731			123,281			763,351
314	Infill, Bldg & Eqpt	723,037	3,047	1,752			-			727,836
395	Infill, Prgm Mgmt	165,387	40,000	24,520			(12,063'			217,844
316	Infill, Parking	81,485	3,212	597			-			85,294
511	Infill, Water	-	16,189	-			(16,189)			-
525	Infill, Wastewater	-	32,499	-			(32,499'			-
321	Plan C, Parks	3,777,072	-	5,000			(1,648,000'			2,134,072
322	Plan C, Strm Drn	5,806,888	-	13,093			-			5,819,981
323	Plan C, Arterials	2,670,337	-	6,192			(12,306'			2,664,223
324	Plan C, Gen Fac	6,096,466	-	13,514			(854,034'			5,255,946
325	Plan C, Utilities	2,410,008	-	5,450			(25,129'			2,390,329
391	Plan C, PM	1,413,431	1,223,021	7,215			(11'178'			2,632,489
391K	Kagihiro	1,074,806	-	-	2,826		-			1,077,632
345	RSP, PM	5,483,810	-	12,644			(459,775'			5,036,680
351	NEI, Ph 1	1,941,861	277,330	37,360			(2,570,659'	16,400,000		16,085,892
352	SMPA	8,985,759	1,879,920	22,200			(1,260,454'			9,627,425
353	1-205 Corridor	4,679,604	67,572	10,205			(1,100,389'			3,656,992
354	ISP, So	3,351,274	6,084	6,058			(390,737'			2,972,678
355	Presidio	5,045,866	-	13,113			69,147			5,128,126
356	Gateway	3,478,983	-	6,260			(274,649'			3,210,594
357	NEI, Ph 2	16,337,956	8,066,638	25,840	26		(1,645,954'	(16,400,000)		6,384,506
808	RTIF	1,781'149		1,251		955,540		(373,602'		2,364,338
N/A	Hab Mit Fees	0								-
N/A	Ag Mit Fees	108,284				3,447		(3,447'		108,284
N/A	County Fac Fees	(182)				230,406		(230,224		0
TOTALS		\$ 77,487,727	\$ 11,664,063	\$ 217,600	\$ 2,852	\$ 1'189,393	\$ (10,121,587'	\$ -	\$ (607,273'	\$ 79,832,775

Footnotes:

¹ No development fees collected were refunded during FY12-13.

² Investment Earnings total includes cash-fair market value offsets.

³ Fiscal Agent Earnings are cash reserves held by bond Trustees.

⁴ These are "pass-through fees" for Habitat Mitigation, Agricultural Mitigation and County Facilities; County, SJCG- all collected on behalf of other agencies.

⁵ Capita/Improvement Project (CIP) Expenditures: See Exhibit C for more detail.

⁶ Adjustments are made when projects are funded by multiple funds.

EXHIBITS B-1 THROUGH B-15
Amounts and Descriptions of Fees For
Fiscal Year Ended June 30, 2013
(Government Code §66006(b)(1)(A) and (B).)

EXHIBIT B-1: INFILL AREA - WASTEWATER FEES							
Public Facilities	Residential Fees Per Unit			Non-Residential Fee Per Gross Acre			
	SFD	2-4	2:5	Industrial	Institutional	Office	Retail
Wastewater Conveyance-Corral Hollow	\$9,394	\$7,609	\$6,294	\$37,576	\$37,576	\$40,394	\$48,849
Wastewater Conveyance-Eastside	\$9,293	\$7,527	\$6,226	\$37,172	\$37,172	\$39,960	\$48,324
Wastewater Conveyance-City Core	\$10,125	\$8,201	\$6,784	\$40,500	\$40,500	\$43,538	\$52,650
Wastewater Conveyance-MacArthur	\$9,816	\$7,951	\$6,577	\$39,264	\$39,264	\$42,209	\$51,043

EXHIBIT B-2: INFILL AREA-DOWNTOWN INCENTIVE AREA PARKING FEE	
Parking Fee	(\$500 + [\$0.19 x the number of square feet within the building]) x 5

EXHIBIT B-3: PLAN C AREA - WATER, WASTEWATER, ROADWAYS, STORM DRAINAGE, PARKS							
Public Facilities	Residential Fees Per Unit			Non-Residential (Edgewood Subd Only) Fee Per Gross Acre			
	SFD	2 - 4	2:5	Industrial	Institutional	Office	Retail
Mini/Neighborhood Parks	\$4,693	\$3,911	\$3,129	N/A	N/A	N/A	N/A
Community Parks	\$1,549	\$1,290	\$1,033	N/A	N/A	N/A	N/A
Storm Drainage-Upgrade-Purple/Yellow Zone	\$2,780	\$1,723	\$1,418	N/A	N/A	N/A	N/A
Storm Drainage-Upgrade-Pink Zone	\$4,766	\$2,955	\$2,431	N/A	N/A	N/A	N/A
Storm Drainage-Upgrade-Orange Zone	\$2,086	\$1,293	\$1,064	N/A	N/A	N/A	\$26,469
Storm Drainage-Upgrade-Yellow Zone	\$2,897	\$1,796	\$1,477	N/A	N/A	N/A	N/A
Storm Drainage-Upgrade-Blue Zone	\$3,899	\$2,417	\$1,988	N/A	N/A	N/A	N/A
Storm Drainage-Upgrade-Byron Zone	\$2,078	\$1,288	\$1,060	N/A	N/A	N/A	N/A
Storm Drainage-Upgrade-Purple Zone	\$2,546	\$1,578	\$1,298	N/A	N/A	N/A	N/A
Storm Drainage-CFD89-1 Reimb-Pink Zone	\$110	\$69	\$55	N/A	N/A	N/A	N/A
Storm Drainage-RSP Reimb-Purple/Yellow Zn	\$3,029	\$1,877	\$1,535	N/A	N/A	N/A	N/A
Storm Drainage-RSP Reimb-Orange Zone	\$2,060	\$1,277	\$1,045	N/A	N/A	N/A	\$26,106
Storm Drainage-RSP Reimb-Yellow Zone	\$2,495	\$1,547	\$1,265	N/A	N/A	N/A	N/A
Storm Drainage-RSP Reimb-Blue Zone	\$2,695	\$1,670	\$2,205	N/A	N/A	N/A	N/A
Storm Drainage-RSP Reimb-Byron Zone	\$1,876	\$1,163	\$951	N/A	N/A	N/A	N/A
Storm Drainage-RSP Reimb-Purple Zone	\$4,096	\$2,539	\$2,076	N/A	N/A	N/A	N/A
Storm Drn-Subdrains-Byron Zn-Huntington Park	\$138	N/A	N/A	N/A	N/A	N/A	N/A
Storm Drn-Subdrains-Byron Zone-Westgate	\$334	\$0	\$97	N/A	N/A	N/A	N/A
Arterials-Upgrade-Northwest	N/A	N/A	\$9,429	N/A	N/A	N/A	N/A
Arterials-Upgrade-Southwest	\$4,389	\$4,389	N/A	N/A	N/A	N/A	\$68,683
Arterials-Upgrade-Southeast	\$9,608	\$9,608	N/A	N/A	N/A	N/A	N/A
Water Supply-Edgewood	\$1,363	\$1,131	\$913	N/A	N/A	N/A	\$982
Water SSJID-Edgewood	\$746	\$621	\$497	N/A	N/A	N/A	\$1,123
WW Collection Systems	\$328	\$272	\$220	N/A	N/A	N/A	\$1,749

EXHIBITS B-1 THROUGH B-15
Amounts and Descriptions of Fees For
Fiscal Year Ended June 30, 2013
(Government Code §66006(b)(1)(A) and (B).)

EXHIBIT B-3: PLAN C AREA - WATER, WASTEWATER, ROADWAYS, STORM DRAINAGE, PARKS (continued)							
Public Facilities	Residential Fees Per Unit			Non-Residential (Edgewood Subd Only) Fee Per Gross Acre			
	SFD	2 - 4	? : 5	Industrial	Institutional	Office	Retail
WW AD-84-1 Reimb-West	\$774	\$645	\$516	N/A	N/A	N/A	N/A
WW AD-84-1 Reimb-East	\$570	\$475	\$379	N/A	N/A	N/A	\$2,610
WW Treatment Plant Expansion	\$12,807	\$10,677	\$8,539	N/A	N/A	N/A	\$29,280

EXHIBIT 8-4: RESIDENTIAL SPECIFIC PLAN AREA - STORM DRAINAGE, PUBLIC BUILDINGS, PAF KS		
Public Facilities	Fees based on number of Project Equivalent Consumer Units	
	All Residential Projects	All Non-Residential Projects
Parks	\$523	N/A
Storm Drainage	\$9,105	\$9,105
Public Buildings	\$19,672	N/A

EXHIBIT B-5: NORTHEAST INDUSTRIAL AREA, PH 1 - WASTEWATER, ARTERIALS, STORM DRAINAGE							
Public Facilities	Residential Fees Per Unit			Non-Residential (Industrial Only) Fee Per Gross Acre			
	SFD	2 - 4	? : 5	Industrial	Institutional	Office	Retail
Arterials Upgrades	N/A	N/A	N/A	\$65,609	N/A	N/A	N/A
Arterials CFD 89-1 Reimb	N/A	N/A	N/A	\$382	N/A	N/A	N/A
Arterials RSP Reimb	N/A	N/A	N/A	\$1,483	N/A	N/A	N/A
Storm Drainage Upgrade	N/A	N/A	N/A	\$31,763	N/A	N/A	N/A
Storm Drainage CFD 89-1 Reimb	N/A	N/A	N/A	\$176	N/A	N/A	N/A
Wastewater Conveyance Upgrade	N/A	N/A	N/A	\$8,428	N/A	N/A	N/A
Wastewater Treatment Plant Upgrade	N/A	N/A	N/A	\$28,617	N/A	N/A	N/A
Wastewater CFD 89-1 Reimb	N/A	N/A	N/A	\$1,405	N/A	N/A	N/A

EXHIBIT B-6: SOUTH MACARTHUR PLAN AREA- ALL FEES						
Public Facilities (Residential Projects Only)	Yosemite Vista Subdivision			Elissagaray Ranch Subdivision		
	Fees Per Unit			Fees Per Unit		
	SFD	2-4	? : 5	SFD	2 - 4	? : 5
Arterials - Upgrades	\$8,611	\$8,611	\$4,098	\$8,611	\$8,611	\$4,098
Arterials - CFD 89-1 Reimb	\$89	\$89	\$89	\$74	\$74	\$74
Arterials - RSP Reimb	\$664	\$664	\$664	\$554	\$554	\$554
Storm Drainage - Upgrade	\$4,442	\$2,843	\$2,337	\$149	\$94	\$77
Storm Drainage - CFD89-1 Reimb	\$181	\$115	\$94	\$150	\$96	\$79
Mini/Neighborhood Parks	\$4,414	\$3,678	\$2,943	\$3,682	\$3,069	\$2,455
Community Parks	\$2,342	\$1,952	\$1,561	\$1,477	\$1,225	\$989
Wastewater-Eastside Sewer System Connection	\$650	\$541	\$436	\$27	\$23	\$18

EXHIBITS B-1 THROUGH B-15
Amounts and Descriptions of Fees For
Fiscal Year Ended June 30, 2013
(Government Code §66006(b)(1)(A) and (B).)

EXHIBIT B-6: SOUTH MACARTHUR PLAN AREA - ALL FEES (continued)						
Public Facilities (Residential Projects Only)	Yosemite Vista Subdivision			Elissagaray Ranch Subdivision		
	Fees Per Unit			Fees Per Unit		
	SFD	2-4	2:5	SFD	2-4	2:5
Wastewater-Gravity Sewer Improvements	\$423	\$404	\$326	\$58	\$48	\$39
Wastewater Treatment Plant Upgrade	\$12,510	\$10,384	\$8,382	\$7,405	\$6,150	\$4,953

EXHIBIT B-7: INDUSTRIAL SPECIFIC PLAN SOUTH AREA - STORM DRAINAGE, WASTEWATER							
Public Facilities	Residential			Non-Residential			
	Fees Per Unit			Fee Per Gross Acre			
	SFD	2-4	2:5	Industrial	Institutional	Office	Retail
Storm Drainage - Upgrades - Zone 1	\$3,654	\$2,265	\$1,847	\$46,037	N/A	\$46,037	\$46,037
Storm Drainage - Westside Outfall - Zone 1	\$449	\$220	\$227	\$5,662	N/A	\$5,662	\$5,662
Storm Drainage - Upgrades - Zone 2	\$1,311	\$642	\$526	\$16,519	N/A	\$16,519	\$16,519
Storm Drainage - Westside Outfall - Zone 2	\$449	\$220	\$227	\$5,662	N/A	\$5,662	\$5,662
Wastewater Treatment Plant Upgrade	\$1,943	\$1,620	\$1,295	\$10,356	N/A	\$8,938	\$8,938
Wastewater - Sewer Collection Conveyance	\$3,237	\$2,676	\$2,158	\$1,995	N/A	\$1,995	\$1,995
Wastewater- Cheng Diversion Reimb	\$208	\$173	\$139	\$1,108	N/A	\$970	\$970

EXHIBIT B-8: PRESIDIO AREA- STORM DRAINAGE							
Public Facilities Residential Only Single Family Dwelling Units	Fees Per Unit			Non-Residential			
	Pink Zone	Purple Zone	Yellow Zone	Fee Per Gross Acre			
				Industrial	Institutional	Office	Retail
Storm Drainage - Westside Channel Reimb	\$963	N/A	N/A	N/A	N/A	N/A	N/A
Storm Drainage - Upgrades	N/A	\$333	\$717	N/A	N/A	N/A	N/A
Storm Drainage - RSP Reimb	N/A	\$1'145	\$1'145	N/A	N/A	N/A	N/A

EXHIBIT B-9: TRACY GATEWAY AREA- ALL FEES						
Public Facilities	Residential			Non-Residential		
	Fees Per Unit			Fee Per Gross Acre		
	SFD	2-4	2:5	Retail	Ofc w/ Def	Hotel (200 Room)
Arterials - Streets & Highways	N/A	N/A	N/A	\$45,286	\$1,993	\$42,411
Storm Drainage	N/A	N/A	N/A	\$10,299	\$4,692	\$5,607
Public Buildings	N/A	N/A	N/A	\$7,695	\$18,480	\$16,218
Water	N/A	N/A	N/A	\$48,943	\$70,708	\$214,640
Wastewater-Conveyance & WRF	N/A	N/A	N/A	\$30,388	\$1'193	\$133,264
Non-Potable Water Improvements	N/A	N/A	N/A	\$37,829	\$7,268	\$165,900

EXHIBITS B-1 THROUGH B-15
Amounts and Descriptions of Fees For
Fiscal Year Ended June 30, 2013
(Government Code §66006(b)(1)(A) and (B).)

EXHIBIT B-10: NORTHEAST INDUSTRIAL AREA, PH 2-WASTEWATER, ARTERIALS, STORM DRAINAGE							
Public Facilities	Residential Fees Per Unit			Non-Residential (Industrial Only) Fee Per Gross Acre			
	SFD	2-4	2:5	Industrial	Institutional	Office	Retail
Arterials - Upgrades	N/A	N/A	N/A	\$44,059	N/A	N/A	N/A
Arterials - RSP Reimb	N/A	N/A	N/A	\$416	N/A	N/A	N/A
Arterials - Traffic Signals	N/A	N/A	N/A	\$1,412	N/A	N/A	N/A
Arterials - Land/Easement Acquisitions	N/A	N/A	N/A	\$18,721	N/A	N/A	N/A
Storm Drainage - Watershed Improvements	N/A	N/A	N/A	\$6,593	N/A	N/A	N/A
Storm Drainage - Land/Easement Acquisitions	N/A	N/A	N/A	\$29,233	N/A	N/A	N/A
Storm Drainage - CFD 89-1 Reimb	N/A	N/A	N/A	\$271	N/A	N/A	N/A
Wastewater - Collections System Improvements	N/A	N/A	N/A	\$16,494	N/A	N/A	N/A
Wastewater- Treatment Plant Upgrade	N/A	N/A	N/A	\$16,786	N/A	N/A	N/A
Wastewater- CFD 89-1 Reimb	N/A	N/A	N/A	\$1,431	N/A	N/A	N/A

EXHIBIT B-12: HABITAT MITIGATION FEES				
Land Use	Multi-Purpose Open Space	Natural and Agricultural Lands	Vernal Pool - Uplands	Vernal Pool - Wetted
Fee Per Gross Acre	\$7,195	\$14,372	\$41,534	\$81,989

EXHIBIT B-13: AGRICULTURAL MITIGATION FEES			
Land Use	Land Purchase	Land Mitigation - Effluent	Land Mitigation - Non-Effluent
Fee Per Gross Acre	\$2,638	\$1,978	\$660

EXHIBIT B-14: COUNTY FACILITIES FEES							
Fee Category	Fee Per Dwelling Unit			Fee Per Building Square Foot			
	SFDU	2-4	2:5	Industrial	Institution	Office	Retail
Fees	\$ 1,789	\$ 1,532	\$ 1,532	\$ 0.20	\$ 0.37	\$ 0.37	\$ 0.41

EXHIBIT B-15: REGIONAL TRANSPORTATION IMPACT FEES								
Fee Category	Fee Per Dwelling Unit			Fee Per Building Square Foot				
	SFDU	2-4	2:5	Warehouse	Industrial	Institution	Office	Retail
Fees	\$2,987	\$ 1,792	\$ 1,792	\$ 0.38	\$ 0.90	\$ 1.50	\$ 1.50	\$ 1.19

EXHIBIT B-16: I-205 CORRIDOR AREA								
SEE ATTACHED EXHIBIT E, CURRENT APPROVED FINANCE PLANS, PAGES 1 THROUGH 3								

**EXHIBIT B
SUPPLEMENTAL DATA
CURRENT APPROVED FINANCE PLANS**

I-205 Corridor Specific Plan
Commercial / Industrial Area
Spreadsheet No. 47
June 2007

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	GL-2A	GL-2b	GL-3A	GL-3b	GL-4	GL-5a East	GL-5a West	GL-5B	GL-7	Interest Income	GL-9	GL-12/14/15	GL-13 1a	GL-13 1b	GL-17A	GL-17B	GL-17B	GL-27	Bond	TOTAL	
	AD 94-1	(4)	AD 94-1		AD 94-1	AD 84-1 & 87-3	AD 84-1 & 87-3	AD 84-1 & 87-3	COP	from GL-7	AD 84-1 & 87-3	COP			CFD 93-1	CFD 93-1	CFD 93-1		Refinance	Com/Ind	
Cost Allocations:																					
1. Road Circulation:	\$326,375	\$135,776	\$283,244	\$675,726	\$184,511	\$188,575	\$371,723	\$136,940	\$865,776	\$156,777	\$150,411	\$2,776,485	\$50,915	\$20,829	\$303,349	\$702,666	\$368,470	\$332,818			\$8,031,366
2. Freeway Interchange:	\$0		\$0		\$0			\$0	\$0	\$0		\$0	\$0	\$0	\$0	\$0	\$0				\$0
3. Intersection & Signals:	\$64,627	\$6,051	\$56,085	\$30,112	\$36,536	\$8,403	\$17,903	\$6,103	\$21,375	\$15,038	\$6,703	\$549,780	\$1,256	\$514	\$53,646	\$124,262	\$65,162	\$14,684			\$1,078,240
3a. Intersection Modifications	\$0	\$0	\$0	\$3,021,691	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$ -	\$0	\$0	\$0			\$3,021,691
																					\$0
4. Sub-Total Road Costs:	\$391,002	\$141,826	\$339,329	\$3,727,529	\$221,047	\$196,978	\$389,626	\$143,043	\$887,151	\$171,815	\$157,114	\$3,326,265	\$52,171	\$21,343	\$356,995	\$826,928	\$433,632	\$347,502	\$0		\$12,131,297
																					\$0
5. A. Sanitary Sewer Treatment:	\$242,420	\$74,109	\$173,325	\$308,781	\$54,234		\$0		\$586,382	(\$2,156)		\$538,192	\$20,215	\$8,663	\$162,792	\$377,085	\$197,740	\$108,349			\$2,850,130
B. Sanitary Sewer Collection:	\$127,428	\$14,976	\$91,109	\$62,400	\$28,508	\$7,511	\$23,917	\$3,467	\$120,529	(\$683)	\$12,133	\$282,902	\$4,154	\$1,780	\$85,559	\$198,186	\$103,927	\$21,763			\$1,189,566
6. A. Water Distribution (on-site):	\$65,231	\$430	\$47,065	\$1,786	\$15,541				\$3,778	\$226		\$177,054	\$136	\$61	\$43,026	\$99,663	\$52,262	\$13,835			\$520,094
B. Water Distribution (off-site):	\$66,913	\$92,454	\$48,280	\$384,094	\$15,941				\$316,678	\$257,393		\$181,620	\$11,490	\$5,107	\$44,135	\$102,233	\$53,610	\$122,593			\$1,702,541
C. Water Supply	\$138,338	(\$52,250)	\$99,814	(\$217,068)	\$32,958				\$169,102	(\$567,336)		\$375,484	\$6,137	\$2,727	\$91,472	\$211,883	\$111,110	(\$69,361)			\$333,010
D. Water Treatment / Storage:	\$44,497	\$106,591	\$38,616	\$442,825	\$25,155				\$648,478	\$184,399		\$378,533	\$23,528	\$10,457	\$52,470	\$121,538	\$63,734	\$141,255			\$2,282,076
7. Storm Drains:	\$390,669	\$2,452	\$285,125	\$10,011	\$99,083	\$1,477	\$5,067	\$1,220	\$20,335	(\$1,176)	\$835	\$1,607,342	\$938	\$391	\$78,396	\$181,593	\$95,225	\$1,404			\$2,780,386
8. Irrigation (NBID):	\$61,750	\$17,483	\$45,067	\$71,379	\$15,661	\$10,531	\$31,851	\$8,699	\$120,592	(\$333)	\$5,952	\$390,534	\$5,586	\$2,328	\$0	\$0	\$0	\$10,663			\$797,742
9. Entries & Gateways: (1)													\$0	0							\$0
10. Parks & Mini-Parks:	\$0		\$0		\$0					\$0		\$0	\$0	\$0	\$0	\$0	\$0				\$0
11. Downtown Assistance:	\$18,261	\$2,543	\$13,327	\$10,382	\$4,631	\$1,532	\$4,596	\$1,265	\$17,352	(\$4)	\$866	\$75,131	\$804	\$335	\$10,367	\$24,015	\$12,593	\$1,547			\$199,542
12. Park & Ride:	\$13,091	\$3,815	\$11,361	\$15,577	\$7,401	\$2,298	\$6,980	\$1,898	\$26,486	(\$128)	\$1,299	\$111,362	\$1,227	\$511	\$15,390	\$35,650	\$18,694	\$2,322			\$275,235
13. Air Quality:	\$790	\$217	\$686	\$884	\$447	\$130	\$391	\$108	\$1,478	\$0	\$74	\$6,725	\$68	\$29	\$930	\$2,153	\$1,129	\$132			\$16,370
14. Swainson Hawk:	\$44,672	\$7,427	\$32,604	\$30,324	\$11,330	\$4,474	\$13,423	\$3,696	\$50,671	\$0	\$2,529	\$183,796	\$2,348	\$978	\$25,362	\$58,748	\$30,808	\$4,517			\$507,707
15. Fire / Public Works Capital:	\$31,612	\$23,722	\$23,072	\$96,856	\$8,018	\$14,289	\$52,951	\$11,804	\$41,336	(\$229)	\$8,076	\$130,062	\$1,914	\$798	\$17,947	\$41,573	\$21,800	\$25,214	\$300,000		\$850,816
15. A. Agricultural Conversion Fee:	\$3,726	\$708	\$2,719	\$2,891	\$945	\$427	\$1,280	\$352	\$4,831	\$0	\$241	\$15,330	\$224	\$93	\$0	\$0	\$0	\$431			\$34,198
																					\$0
16. Total Distribution Direct Costs:	\$1,249,398	\$294,677	\$912,170	\$1,221,122	\$319,853	\$42,669	\$140,456	\$32,509	\$2,128,028	(\$130,027)	\$32,005	\$4,454,067	\$78,769	\$34,258	\$627,846	\$1,454,320	\$762,632	\$384,663	\$300,000		\$14,339,415
																					\$0
17. Contingency Fee (15%): (2)	\$215,192	\$71,679	\$165,352	\$314,932	\$73,588	\$34,963	\$76,559	\$25,520	\$415,762	\$91,369	\$27,811	\$1,068,580	\$18,204	\$7,716	\$128,506	\$297,669	\$156,093	\$119,235			\$3,308,729
18. Design & Construction Fees: (15%): (2)	\$215,192	\$71,679	\$165,352	\$314,932	\$73,588	\$34,963	\$76,559	\$25,520	\$415,762	\$91,369	\$27,811	\$1,068,580	\$18,204	\$7,716	\$128,506	\$297,669	\$156,093	\$119,235			\$3,308,729
																					\$0
19. Total Construction, Design & Contingency:	\$430,384	\$143,357	\$330,704	\$629,864	\$147,176	\$69,926	\$153,118	\$51,040	\$831,524	\$182,738	\$55,622	\$2,137,160	\$36,408	\$15,432	\$257,012	\$595,338	\$312,186	\$238,469	\$0		\$6,617,459
																					\$0
20. Credit From CFD 91-1 Overlap	(\$49,743)	(\$8,461)	(\$40,564)	(\$21,074)	(\$19,833)	(\$7,088)	(\$26,663)	(\$5,855)	(\$66,050)	\$0		(\$196,406)	\$0	\$0	(\$27,406)	(\$63,481)	(\$33,289)	\$0			(\$565,913)
21. Program Management		\$28,503		\$116,375		\$17,169	\$51,515	\$14,183	\$38,646	\$33,688	\$9,704		\$1,791	\$746				\$17,336			\$329,656
																					\$0
23. Total Net Costs:	\$2,021,041	\$599,902	\$1,541,639	\$5,673,816	\$668,243	\$319,654	\$708,052	\$234,920	\$3,819,299	\$258,214	\$254,445	\$9,721,086	\$169,139	\$71,779	\$1,214,447	\$2,813,105	\$1,475,161	\$987,971	\$300,000		\$32,851,913

- (1) These funds will be used to assist in the financing of water treatment / storage facilities.
- (2) Applied to construction items only.
- (3) General Growth , GL12/14/15: \$2,150,982 cash & \$7,570,104 COP.
- (4) 3.64 acres has paid fees. The remaining parcel is subject to the latest spreadsheet update.

EXHIBIT B
SUPPLEMENTAL DATA
CURRENT APPROVED FINANCE PLANS

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	GL-23A Phases 1 & 2 123	GL-23B Phase 3 285	GL-23B Phase 4 285	GL-24A Phases 1 & 2 108	GL-24B Phases 3 & 4 171	GL-25A McBall 109	GL-25B Morrison 166	GL-25B 11	TOTAL 177	Seecon 515	TOTAL RESIDENTIAL
Bond Method:	AD 97-1	AD 99-??	AD 99-??	AD 96-1	AD 97-2	AD 95-1	AD-98-4	Fixed Finance Plan		AD 93-2	
Cost Allocations:											
1. Road Circulation:	\$95,197	\$48,371	\$89,832	\$80,674	\$134,434	\$96,663	\$116,653	\$7,730	\$124,383	\$226,931	\$896,485
2. Additional Corral Hollow Road R/W:		\$0	\$0			\$13,878	\$16,632	\$1,102	\$17,734	(\$31,612)	\$0
3. Intersection & Signals:	\$3,159	\$1,076	\$1,999	\$2,676	\$4,460	\$19,140	\$2,596	\$172	\$2,768	\$40,132	\$75,410
3a. Intersection Modifications	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4. Sub-Total Road Costs:	\$98,356	\$49,447	\$91,831	\$83,350	\$138,894	\$129,681	\$135,881	\$9,004	\$144,885	\$235,451	\$971,895
5. A. Sanitary Sewer Treatment:	\$81,356	\$236,602	\$439,405	\$62,524	\$104,189	\$199,545	\$451,651	\$29,929	\$481,580	\$789,664	\$2,394,865
B. Sanitary Sewer Collection:	\$116,730	\$47,724	\$88,629	\$89,710	\$149,491						\$492,284
6. A. Water Distribution (on-site):	\$79,657	\$19,975	\$37,096	\$58,617	\$97,678						\$293,023
B. Water Distribution (off-site):	\$132,144	\$120,239	\$223,301	\$97,240	\$162,041						\$734,965
C. Water Supply	\$147,597	\$73,119	\$135,792	\$108,612	\$180,989	\$144,727	\$171,865	\$11,389	\$183,254	\$503,529	\$1,477,619
D. Water Treatment / Storage:	\$474,274	\$275,413	\$511,482	\$349,002	\$581,575	\$20,373	\$647,361	\$42,897	\$690,258	\$58,913	\$2,961,290
7. Storm Drains:	\$192,182	\$7,398	\$13,738	\$158,974	\$264,912						\$637,204
8. Entries & Gateways: (1)		\$0	\$0								\$0
9. A. Park Land:	\$82,323	\$52,273	\$97,078	\$63,269	\$105,430	\$113,021	\$58,606	\$0	\$58,606		\$572,000
B. Park Land Credit:	(\$203,259)	(\$129,059)	(\$239,682)								(\$572,000)
C. Park Construction:	\$165,273	\$104,940	\$194,889	\$127,016	\$211,659	\$146,927	\$181,282	\$12,013	\$193,295		\$1,143,999
10. A. Master Landscape Plan:	\$2,118	\$641	\$1,190	\$1,751	\$2,918	\$1,924	\$2,306	\$153	\$2,459		\$13,001
B. Master Landscape Plan Credit:		\$0	\$0			(\$5,707)	(\$6,840)	(\$453)	(\$7,293)		(\$13,000)
C. Agricultural Conversion Fee:	\$4,110	\$1,759	\$3,266	\$4,461	\$7,434	\$4,096	\$5,234	\$0	\$5,234		\$30,360
11. Contingency (15%): (2)	\$128,147	\$129,261	\$240,056	\$106,539	\$264,771	\$72,397	\$209,931	\$13,911	\$223,843	\$167,346	\$1,332,359
12. Design & Construction Fees (15%): (2)	\$128,147	\$129,261	\$240,056	\$106,539	\$264,771	\$72,397	\$209,931	\$13,911	\$223,843	\$167,346	\$1,332,359
13. Total Distribution Direct Costs:	\$1,530,799	\$1,069,545	\$1,986,295	\$1,334,254	\$2,397,858	\$769,700	\$1,931,328	\$123,750	\$2,055,078	\$1,686,798	\$12,830,328
14. Total Construction, Design & Contingency:	\$1,629,155	\$1,118,992	\$2,078,126	\$1,417,604	\$2,536,752	\$899,381	\$2,067,209	\$132,754	\$2,199,963	\$1,922,249	\$13,802,223
15. Credit From CFD 91-1 Overlap:	(\$49,714)	(\$15,064)	(\$27,975)			(\$40,377)	(\$48,391)	(\$3,207)	(\$51,598)	(\$127,864)	(\$312,592)
Subtotal Costs:	\$1,579,441	\$1,103,928	\$2,050,151	\$1,417,604	\$2,536,752	\$859,004	\$2,018,818	\$129,547	\$2,148,365	\$1,794,385	\$13,489,631
16 Soundwall - CHR @ Greenleaf		\$6,418	\$11,918				\$20,355	\$1,349	\$21,704		\$40,040
17 Program Management		\$11,550	\$21,450				\$36,634	\$2,428	\$39,062		\$72,062
18 Park & Ride:	\$3,940	\$1,927	\$3,579	\$3,236	\$5,392	\$3,877	\$4,955	\$0	\$4,955	\$11,513	\$38,419
19 Air Quality:	\$238	\$122	\$226	\$195	\$326	\$234	\$313	\$0	\$313	\$695	\$2,349
20 Swainson Hawk:	\$42,442	\$17,325	\$32,176	\$41,817	\$69,683	\$45,949	\$58,593	\$0	\$58,593	\$147,289	\$455,274
21 Fire / Public Works Capital:	\$35,774	\$12,944	\$24,042	\$29,591	\$49,311	\$32,515	\$41,061	\$2,721	\$43,782	\$104,228	\$332,187
22 Public Buildings:	\$148,830	\$120,698	\$224,153	\$130,693	\$217,787	\$164,642	\$198,440	\$0	\$198,440		\$1,205,243
23 RSP Storm Drainage:		\$0	\$0			\$178,148	\$699,150	\$0	\$699,150	\$713,275	\$1,590,573
24 I-205 Entry:		\$0	\$0			\$20,036				\$108,067	\$128,103
25 I-205 Mini-Park Construction:	\$0	\$0	\$0	\$0	\$0	\$0	(3)	(3)	(3)		\$0
26 AD 84-1 Collection:		\$0	\$0			\$132,669	\$169,557	\$0	\$169,557	\$535,074	\$837,300
27 AD 87-3 Distribution:		\$0	\$0			\$106,268	\$135,839	\$0	\$135,839	\$428,593	\$670,700
28 Contingency (15%): (2)	\$90,356	\$2,231	\$4,143	\$59,360	\$11,681	\$16,436	\$6,902	\$408	\$7,311	\$33,571	\$225,088
29 Design & Construction Fees (15%): (2)	\$90,356	\$2,231	\$4,143	\$59,360	\$11,681	\$16,436	\$6,902	\$408	\$7,311	\$33,571	\$225,088
30 Subtotal Development Fees:	\$411,936	\$175,445	\$325,830	\$324,252	\$365,861	\$717,210	\$1,378,702	\$7,314	\$1,386,016	\$2,115,876	\$5,822,427
31 TOTAL NET COSTS:	\$1,991,377	\$1,279,374	\$2,375,982	\$1,741,856	\$2,902,613	\$1,576,214	\$3,397,520	\$136,861	\$3,534,381	\$3,910,261	\$19,312,058

- (1) These funds will be used to assist in the financing of water treatment/water storage facilities.
(2) Applied to construction items only.
(3) Developer will build and dedicate the Mini-Park. Credit of 71,119(plus 30% markup) has been credited.

EXHIBIT B
SUPPLEMENTAL DATA
CURRENT APPROVED FINANCE PLANS

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	M-3	M-4-1a	M-4-1b	M-4-2	M4-3	M4-4	TOTAL
Bond Method:	CFD 89-1	CFD 89-1	CFD 89-1	CFD 89-1	CFD 89-1	CFD 89-1	MacArthur
1. Road Circulation	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2. Intersection & Signals	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3a. Intersection Mitigations	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3. Sanitary Sewer Treatment	\$30,673	\$82,826	\$101,233	\$4,744	\$3,683	\$3,612	\$226,771
4. Sanitary Sewer Collection	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5. Water Distribution (on-site)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
6. Water Distribution (Off-site)	\$2,794	\$32,436	\$39,644	\$1,858	\$1,442	\$1,414	\$79,588
7. Water Supply	\$15,703	\$64,750	\$79,139	\$3,708	\$2,879	\$2,824	\$169,003
8. Water Treatment/Storage	\$0	\$0	\$0	\$0	\$0	\$0	\$0
9. Storm Drains	\$0	\$0	\$0	\$0	\$0	\$0	\$0
10. Irrigation	\$0	\$0	\$0	\$0	\$0	\$0	\$0
11. Entries & Gateways							
12. Parks and Mini-Parks	\$0	\$0	\$0	\$0	\$0	\$0	\$0
13. Downtown Assistance	\$961	\$16,398	\$20,042	\$939	\$729	\$715	\$39,784
14. Park and Ride	\$24,452	\$0	\$0	\$0	\$0	\$0	\$24,452
15. Air Quality	\$135	\$1,566	\$1,914	\$90	\$70	\$68	\$3,843
16. Swainson Hawk	\$2,350	\$40,115	\$49,029	\$2,298	\$1,784	\$1,749	\$97,325
17. Fire/Public Works Capital	\$1,663	\$28,387	\$34,695	\$1,626	\$1,262	\$1,238	\$68,871
18. Contingency (15%)	\$6,576	\$0	\$0	\$504	\$391	\$384	\$7,855
19. Design/Construction Fees (15%)	\$11,039	\$0	\$0	\$522	\$406	\$393	\$12,360
20. Agricultural Mitigation Fee	\$185	\$2,779	\$3,397	\$159	\$124	\$121	\$6,765
21. East Sewer Trunk Buy-in	\$7,128	\$15,555	\$19,012	\$891	\$692	\$678	\$43,956
Total Net Costs	\$103,659	\$284,812	\$348,105	\$17,339	\$13,462	\$13,196	\$780,573
Sub total without item #21							\$736,617

**EXHIBIT B
SUPPLEMENTAL DATA
CURRENT APPROVED FINANCE PLANS**

I-205 Corridor Specific Plan

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Combined Total of
Commercial/Industrial,
Residential & MacArthur Areas
Spreadsheet No. 47
June 2007

	TOTAL RESIDENTIAL	TOTAL Comm/Indust.	TOTAL MacArthur	GRAND TOTAL
Cost Allocations:				
1. Road Circulation:	\$896,485	\$8,031,366	\$0	\$8,927,851
2. Additional Corral Hollow Road R/W:	\$0	\$0	\$0	\$0
3. Intersection & Signals:	\$75,410	\$1,078,240	\$0	\$1,153,650
3a. Intersection Mitigations	\$0	\$3,021,691	\$0	\$3,021,691
4. Sub-Total Road Costs:	\$971,895	\$12,131,297	\$0	\$13,103,192
5. A. Sanitary Sewer Treatment:	\$2,394,865	\$2,850,130	\$226,771	\$5,471,766
B. Sanitary Sewer Collection:	\$492,284	\$1,189,566	\$0	\$1,681,850
6. A. Water Distribution (on-site):	\$293,023	\$520,094	\$0	\$813,117
B. Water Distribution (off-site):	\$734,965	\$1,702,541	\$0	\$2,437,506
C. Water Supply	\$1,477,619	\$333,010	\$169,003	\$1,979,632
D. Water Treatment / Storage:	\$2,961,290	\$2,282,076	\$79,588	\$5,322,954
7. A. Storm Drains:	\$637,204	\$2,780,386	\$0	\$3,417,590
B. Irrigation Relocation (NBID)	\$0	\$797,742	\$0	\$797,742
8. Entries & Gateways: (1)	\$0	\$0	\$0	\$0
9. A. Park Land:	\$572,000	\$0	\$0	\$572,000
B. Park Land Credit:	(\$572,000)	\$0	\$0	(\$572,000)
C. Park Construction:	\$1,143,999	\$0	\$0	\$1,143,999
10. A. Master Landscape Plan:	\$13,001	\$0	\$0	\$13,001
B. Master Landscape Plan Credit:	(\$13,000)	\$0	\$0	(\$13,000)
C. Agricultural Conversion Fee:	\$30,360	\$34,198	\$6,765	\$71,323
11. Contingency (15%): (2)	\$1,332,359	\$3,139,822	\$7,855	\$4,480,036
12. Design & Construction Fees (15%): (2)	\$1,332,359	\$3,139,822	\$12,360	\$4,484,541
13. Total Distribution Direct Costs:	\$12,830,328	\$16,769,389	\$502,342	\$32,102,059
14. Total Construction, Design & Contingency:	\$13,802,223	\$30,900,686	\$502,342	\$45,205,251
15. Credit From CFD 91-1 Overlap:	(\$312,592)	(\$565,913)	\$0	(\$878,505)
Subtotal Costs:	\$13,489,631	\$30,334,772	\$502,342	\$44,326,745
16. Downtown Assistance	\$0	\$199,542	\$39,784	\$239,326
17. Soundwall - CHR @ Greenleaf	\$40,040	\$0	\$0	\$40,040
18. Program Management	\$72,062	\$329,656	\$0	\$401,718
19. Park & Ride:	\$38,419	\$275,235	\$24,452	\$338,106
20. Air Quality:	\$2,349	\$16,370	\$3,843	\$22,562
21. Swainson Hawk:	\$455,274	\$507,707	\$97,325	\$1,060,306
22. Fire / Public Works Capital:	\$332,187	\$850,816	\$68,871	\$1,251,874
23. Public Buildings:	\$1,205,243	\$0	\$0	\$1,205,243
24. RSP Storm Drainage:	\$1,590,573	\$0	\$0	\$1,590,573
25. I-205 Entry:	\$128,103	\$0	\$0	\$128,103
26. I-205 Mini-Park Construction:	\$0	\$0	\$0	\$0
27. AD 84-1 Collection:	\$837,300	\$0	\$0	\$837,300
28. AD 87-3 Distribution:	\$670,700	\$0	\$0	\$670,700
29. Contingency (15%): (2)	\$225,088	\$168,908	\$0	\$393,996
30. Design & Construction Fees (15%): (2)	\$225,088	\$168,908	\$0	\$393,996
31. Subtotal Development Fees:	\$5,822,427	\$2,517,141	\$234,275	\$8,573,843
30. TOTAL NET COSTS:	\$19,312,058	\$32,851,913	\$736,617	\$52,900,588

(1) These funds will be used to assist in the financing of water treatment/water storage facilities.

(2) Applied to construction items only.

EXHIBIT C
Summary of Expenses and Anticipated Construction Dates
for Fiscal Year Ended June 30, 2013
(Government Code §66006(b)(1)(C) and (D).)

Fee Funded Capital Improvement Projects							Five Year Plan - FY13-14 through FY17-18					July 1, 2013	
CIP	Project Title	Project \$ Total	Funding Sources	Prior Years Expenditures	FY12-13 Actual Exp's	Total	< - - - - New Appropriations Required - - - - >					Anticipated Completion Date & Comments	% Fee Funded
							FY13-14	FY14-15	FY15-16	FY16-17	FY17-18		
71035	City Hall Vehicles New Development	97,503	F324-Pian C Area, Gen Fac F352-SMP Area F354-ISP South Area F355-Presidio Area	23,773 0 0 0	0 0 0 0	44,730 7,000 16,200 5,800	0 0 0 0	0 0 0 0	44,730 7,000 16,200 5,800	0 0 0 0	0 0 0 0	0 Jun 15 0 New Equipment 0 Insufficient Funds ¹ 0	100%
71054	Expansion, Public Works Facility	2,229,720	F301-General Projects F324-Pian C Area, Gen Fac F351-NEI Area, Ph 1 F352-SMP Area F354-ISP South Area F355-Presidio Area F357-NEI Area, Ph 2	433,807 3,344 0 0 0 0 0	70,477 829,000 62,220 143,000 334,600 96,900 60,000	195,716 656 0 0 0 0 0	195,716 656 0 0 0 0 0	0 0 0 0 0 0 0	0 0 0 0 0 0 0	0 0 0 0 0 0 0	0 Jul 13 0 Work Completed 0 0 0 0 0	69%	
71061	New Fire Station Relocate Station #96, West Grant Line Road	4,000,000	F353-1205 Corridor Area F314-Infill Area, Buildings F345-RSP Area, Prgm Mgt	375,525 0 0	715,208 0 0	1,366,667 714,600 828,000	1,366,667 714,600 828,000	0 0 0	0 0 0	0 0 0	0 0 0	0 Apr 14 0 Work Underway 0	100%
71062	New Fire Station Relocate Station #92, Banta, E Grant Line Rd	5,355,000	F301-General Projects F351-NEI Area, Ph 1 F357-NEI Area, Ph 2 Tracy Rural Fire District	639,528 0 0 0	727,537 0 0 0	2,469,735 322,000 271,200 925,000	2,469,735 322,000 271,200 925,000	0 0 0 0	0 0 0 0	0 0 0 0	0 0 0 0	0 Apr 14 0 Work Underway 0 0	11%
72014	Traffic Signal Upgrades 1205 Area, East	1,531,776	F353-1205 Corridor Area F323-Pian C Area, Arterials F313-Infill Area, Arterials Developer's Contributions	100 0 0 105,076	0 0 0 0	261,300 573,600 273,900 317,800	0 0 0 0	0 0 0 0	0 573,600 273,900 317,800	261,300 0 0 0	0 0 0 0	0 Jun 16 0 Insufficient Funds ¹ 0 0	100%
72038	Traffic Signal Tracy Blvd & Valpico	344,466	F354-ISP South Area Developer's Contributions	2,936 327,498	0 0	341,530 -341,530	341,530 -341,530	0 0	0 0	0 0	0 0	0 Dec 04-Work Completed 0 Reimbursements Due	100%
72062	Intersection Improves 1205 & MacArthur Dr	21,525,805	F352-SMP Area F355-Presidio Area F357-NEI Area, Ph 2 Future Developments	0 0 3,035 0	0 0 0 0	1,081,000 814,800 13,922,570 5,704,400	0 0 0 0	0 0 0 0	0 0 1,496,970 0	0 260,000 0 0	1,081,000 554,800 12,425,600 5,704,400	Jun 17 Insufficient Funds ¹ 0 0	100%
72068	Traffic Signal Lammers & W Schulte Rd	705,870	F323-Pian C Area, Arterials F313-Infill Area, Arterials	0 40,832	0 33,761	361,800 269,477	361,800 269,477	0 0	0 0	0 0	0 0	0 Jun 13 0 Design Underway	100%
72073	Intersection Improves MacArthur Blvd & Valpico Rd	310,000	F354-ISP South Area	3,910	0	306,090	0	306,090	0	0	0	0 Jun 13 Design Complete	100%
72074	Intersection Improves Tracy Blvd & Valpico Rd	200,000	F354-ISP South Area	3,910	0	196,090	0	196,090	0	0	0	0 Jun 13 Design Complete	100%

EXHIBIT C
Summary of Expenses and Anticipated Construction Dates
for Fiscal Year Ended June 30, 2013
(Government Code §66006(b)(1)(C) and (D).)

Fee Funded Capital Improvement Projects						Five Year Plan - FY13-14 through FY17-18					July 1, 2013		
CIP	Project Title	Project \$Total	Funding Sources	Prior Years Expenditures	FY12-13 Actual Exp's	Total	<----- New Appropriations Required ----->					Anticipated Completion Date & Comments	% Fee Funded
							FY13-14	FY14-15	FY15-16	FY16-17	FY17-18		
73002	Extension, MacArthur Dr 11th to Mt Diablo, Ph 1	12,195,519	F343-RSP Area, Arterials Highway Grants F242-Transp Sales Tax	750,549 0 0	0 0 0	98,770 7,650,800 3,695,000	0 0 0	98,770 500,000 0	0 7,150,800 3,695,400	0 0 0	0 0 0	0 Jun 16 0 ROW/Design Underway 0 Insufficient Funds ¹	7%
73014	Widening, Corral Hollow Rd, Grant Line Rd to Mall Entry	7,777,410	F345-RSP Area, Prgm Mgt F353-1205 Corridor Area Developer Contributions F242-Transp Sales Tax Highway Grants	164,186 1,979,191 641,700 951,819 115,187	257,436 323,119 98,000 2,112,399 676,657	-36 -1,292 0 350,888 108,156	-36 -1,292 0 350,888 108,156	0 0 0 0 0	0 0 0 0 0	0 0 0 0 0	0 Jun 13-Partial Completion 0 Work Underway	36%	
73035	Widening, Grant Line Rd, Naglee to Lammers Rd	3,502,412	F353-1205 Corridor Area Developer Contributions	1,376,642 266,170	0 0	1,859,600 0	0 0	0 0	1,859,600 0	0 0	0 0	0 Jun 15-Partial Complete 0 Insufficient Funds ¹	100%
73048	Widening, Grant Line MacArthur to City Limits	18,148,780	F351-NEI Area, Ph 1	3,931,933	2,460,160	11,756,687	11,756,687	0	0	0	0	0 Nov 16 0 Work Underway	100%
73061	Extension, Valpico Rd Pebblebrook to MacArthur	3,575,332	F354-ISP South Area	1,036,741	18,220	2,520,371	1,071	300,000	2,219,300	0	0	0 Jun 16-Partial Complete 0 Insufficient Funds ¹	100%
73084	New Interchange 1205 & Lammers Rd	93,640,161	F356-Tracy Gateway Area Federal TEA Grant F242-Transp Sales Tax F301-General Projects Future Developments	54,340 858,613 6,910 144,045 0	0 70 0 62,018 0	18,035,660 5,789,257 2,672,127 293,900 33,607,000	25,660 5,789,257 93,127 293,900 0	0 0 0 0 0	0 0 0 0 0	0 0 0 0 0	18,010,000 Jun 18-EIR Underway 0 Insufficient Funds ¹	84%	
73090	Extension, Chrisman Grant Line Rd to 1205	3,985,891	F357-NEI Area, Ph 2	270,391	0	3,715,500	0	297,400	3,418,100	0	0	0 Jun 16-Prelim Pin Compl 0 Insufficient Funds ¹	100%
73092	Widening, Lammers Rd 3,000 feet south of 11th St	10,976,000	F356-Tracy Gateway Area	1,498,630	0	9,477,370	0	9,477,370	0	0	0	0 Jun 14	100%
73095	Widening, Valpico Tracy Blvd to Pebblebrook Dr	11,005,000	F354-ISP South Area F313-Infill Area, Arterials F242-Transp Sales Tax	0 0 36,236	0 0 124,749	10,201,500 203,500 439,015	1,000,000 0 339,015	1,344,800 0 100,000	7,856,700 203,500 0	0 0 0	0 0 0	0 Jun 16 0 Insufficient Funds ¹	95%
73102	Widening, Corral Hollow Byron to Grant Line, Ph II	1,299,730	F353-1205 Corridor Area Future Developments	273,740 0	61,955 0	964,035 0	964,035 0	0 0	0 0	0 0	0 0	0 Jun 13 0 Insufficient Funds ¹	100%
73103	Widening, Corral Hollow Rd, 11th to Schulte	4,849,600	F323-Pian C Area, Arterials F245-Gas Tax	697,030 3,888	12,306 0	1,613,764 2,522,612	1,613,764 188,112	0 0	0 2,334,500	0 0	0 0	0 Dec 15-Design Underway 0 Insufficient Funds ¹	48%

EXHIBIT C
Summary of Expenses and Anticipated Construction Dates
for Fiscal Year Ended June 30, 2013
(Government Code §66006(b)(1)(C) and (D).)

Fee Funded Capital Improvement Projects							Five Year Plan • FY13-14through FY17-18					July 1, 2013	
CIP	Project Title	Project \$ Total	Funding Sources	Prior Years Expenditures	FY12-13 Actual Exp's	Total	< - - - - • New Appropriations Required - - - - • >					Anticipated Completion Date & Comments	% Fee Funded
							FY13-14	FY14-15	FY15-16	FY16-17	FY17-18		
73126	Widening, MacArthur Dr Schulte to Valpico, Ph II	5,843,900	F313-Infill Area, Arterials Federal TEA Grant RSTP Grant	106,125 118,631 0	44,520 24,413 0	810,355 1,545,856 3,194,000	-75,645 399,856 0	346,000 0 3,194,000	540,000 1,146,000 0	0 0 0	0 0 0	Jun 16 Insufficient Funds ¹	16%
73128	Construction, Paradise Rd Through Parcel31	777,251	F357-NEI Area, Ph 2 Future Developments	108,861 0	665,977 0	2,413 0	2,413 0	0 0	0 0	0 0	0 0	Mar13 Work Completed	100%
74083	WW Treatment Plant Expansion - Ph 2A	25,000,000	F357-NEI Area, Ph 2 Debt Proceeds Developer Contribution	1,881,472 0 0	886,117 0 0	2,232,411 14,000,000 6,000,000	2,232,411 14,000,000 6,000,000	0 0 0	0 0 0	0 0 0	0 0 0	Jun 16-Design Underway	20%
74084	WW Upgrades, East Side	2,115,200	F354-ISP South Area	10,639	34,763	2,069,798	210,298	1,859,500	0	0	0	Jun 15-Design Underway Insufficient Funds ¹	100%
74097	Upgrade WW Collection System - Hansen Road	1,580,000	F356-Tracy Gateway Area Future Developments	224,424 0	249,924 0	-14,348 1,120,000	-14,348 1,120,000	0 0	0 0	0 0	0 0	Jun 14 Planning Underway	100%
75046	Water Distribution Sytem - NEI Area	3,154,500	F351-NEI Area, Ph 1	2,412,989	44,552	696,959	55,448	0	641,511	0	0	Jun 15 Insufficient Funds ¹	100%
75061	Water Supply Purchases from WSID & BCID	11,397,496	F513-Water Capital F317-Infill Water	7,003,147 1,769,349	125,000 0	2,500,000 0	2,500,000 0	0 0	0 0	0 0	0 0	Feb 14 Insufficient Funds ¹	18%
75085	Water Distribution System - Tracy Gateway Area	5,338,000	F356-Tracy Gateway Area	53,572	0	5,284,428	5,284,428	0	0	0	0	Jun 13 Design Underway	100%
75108	Water Lines, MacArthur Drive, Linne to Valpico	1,562,600	F513-Water Capital F325-Pian C Area, Utilities F352-SMP Area F354-ISP South Area	0 146,595 0 0	0 25,129 0 0	0 60,776 409,900 920,200	0 980,976 409,900 0	0 -920,200 0 920,200	0 0 0 0	0 0 0 0	0 0 0 0	Dec 15 Design Underway	100%
75116	Interfund Reimbursement	-	F513-Water Capital F352-SMP Area F355-Presidio Area	0 0 0	-42,000 220,900 -178,900	0 0 0	0 0 0	0 0 0	0 0 0	0 0 0	0 0 0	Jan 13	100%
76028	Storm Drain Line Grant Line, W of Paradise	1,346,761	F351-NEI Area, Ph 1	52,461	3,689	1,290,611	1,290,611	0	0	0	0	Nov 13 Work Underway	100%
76045	Detention Basin 2A ISP South, Zone 2	5,236,507	F354-ISP South Area F322-Pian C Drainage F312-Infill Area, Storm Drain Developes Contribution	703,285 839,222 0 3,694,000	0 0 0 0	2,214,760 263,470 182,900 -2,661,130	0 0 0 0	2,214,760 263,470 182,900 -2,661,130	0 0 0 0	0 0 0 0	0 0 0 0	Apr 07 Reimbursement Due	100%

EXHIBIT C
Summary of Expenses and Anticipated Construction Dates
for Fiscal Year Ended June 30, 2013
(Government Code §66006(b)(1)(C) and (D).)

Fee Funded Capital Improvement Projects						Five Year Plan - FY13-14 through FY17-18					July1,2013		
CIP	Project Title	Project \$ Total	Funding Sources	Prior Years Expenditures	FY12-13 Actual Exp's	Total	< - - - - New Appropriations Required - - - - >					Anticipated Completion Date & Comments	% Fee Funded
							FY13-14	FY14-15	FY15-16	FY16-17	FY17-18		
76028	Storm Drain Line Grant Line, W of Paradise	1,346,761	F351-NEI Area, Ph 1	52,461	3,689	1,290,611	1,290,611	0	0	0	0	Nov 13 Work Underway	100%
76045	Detention Basin 2A ISP South, Zone 2	5,236,507	F354-ISP South Area F322-Plan C Drainage F312-Infill Area, Storm Drain Developer's Contribution	703,285 839,222 0 3,694,000	0 0 0 0	2,214,760 263,470 182,900 -2,661,130	0 0 0 0	2,214,760 263,470 182,900 -2,661,130	0 0 0 0	0 0 0 0	Apr 07 Reimbursement Due	100%	
76053	Basin Upgrade, Placencia Fields	50,000	F345-RSP Area, Prgm Mgt F541-Drainage Enterprise	22,026 19,315	0 0	27,974 -19,315	27,974 -19,315	0 0	0 0	0 0	Dec 12 Work Completed	100%	
76059	Drainage Improvements South MacArthur, Ph 2	875,600	F322-Plan C Drainage F352-SMP Area Developer Contribution	0 0 0	0 6,021 0	621,600 47,979 200,000	621,600 47,979 200,000	0 0 0	0 0 0	0 0 0	Dec 13 Work Underway	100%	
78054	Aquatics Center	15,460,000	F324-Plan C Area, Gen Fac F352-SMP Area F354-ISP South Area F355-Presidio Area F391-Kagehiro Parks F301-General Projects Developer Contribution	1,068,501 0 0 0 0 0 0	25,034 0 0 0 0 0 0	1,662,465 138,800 231,500 114,700 310,000 1,909,000 10,000,000	1,662,465 138,800 231,500 114,700 310,000 1,909,000 10,000,000	0 0 0 0 0 0 0	0 0 0 0 0 0 0	0 0 0 0 0 0 0	Jun 15 Design Underway	23%	
78093	Park Expansion Tracy Press Park	131,500	F341-RSP Area, Parks Developers Contribution	0 131,500	0 0	131,500 -131,500	0 0	131,500 -131,500	0 0	0 0	Dec 09 Reimbursement Due	100%	
78115	Youth Sports Facilities, Holly Sugar Site	11,069,630	F301-General Projects F321-Plan C Area, Parks F352-SMP Area	6,372,864 0 0	1,587,754 1,648,000 878,000	583,012 0 0	583,012 0 0	0 0 0	0 0 0	0 0 0	Mar 13 Work Completed	23%	
78124	Dog Park Site, Gretchen Talley Park	310,000	F391-Kagehiro Parks F301-General Projects	0 0	0 0	147,000 163,000	0 0	0 0	147,000 163,000	0 0	Jun 15 Planning Underway	100%	
79201	Infill Area Program Management	1,994,002	F395-Infill Area, Prgm Mgt	379,141	12,063	1,602,798	94,798	80,000	80,000	80,000	1,268,000	Jun 20 Annual Contingency ¹	100%
79202	Residential Spec Plan Program Management	86,216	F345-RSP Area, Prgm Mgt	78,092	8,124	0	0	0	0	0	0	Jan 13 Annual Contingency ¹	100%
79203	1205 Area Program Management	802,217	F353-1205 Corridor Area	781,733	106	20,378	20,378	0	0	0	0	Jun 12 Annual Contingency ¹	100%
79204	Plan C Area Program Management	5,092,511	F391-Plan C Area, Prgm Mgt	4,471,270	11,178	610,063	114,004	100,000	100,000	100,000	196,059	Jun 17 Annual Contingency ¹	100%

EXHIBIT C
Summary of Expenses and Anticipated Construction Dates
for Fiscal Year Ended June 30, 2013
(Government Code §66006(b)(1)(C) and (D).)

Fee Funded Capital Improvement Projects						Five Year Plan - FY13-14 through FY17-18					July 1, 2013		
CIP	Project Title	Project \$Total	Funding Sources	Prior Years Expenditures	FY12-13 Actual Exp's	Total	< - - - - New Appropriations Required - - - - >					Anticipated Completion Date & Comments	% Fee Funded
							FY13-14	FY14-15	FY15-16	FY16-17	FY17-18		
79205	ISP South Area Program Management	1,805,040	Developer Contributions F354-ISP South Area	236,980 473,694	0 3,155	0 1,091,211	0 63,783	0 75,000	0 75,000	0 75,000	0 802,428	Jun 17 Annual Contingency ¹	100%
79206	NEI Area, Ph 1 Program Management	2,342,326	F351-NEI Area, Ph 1 Developer Contribution	2,111,371 63,505	39 0	167,411 0	49,817 0	50,000 0	50,000 0	17,594 0	0 0	Jun 16 Annual Contingency ¹	100%
79207	South MacArthur Area Program Management	383,989	F352-SMP Area	229,953	12,533	141,503	44,868	50,000	46,635	0	0	Jun 16 Annual Contingency ¹	100%
79208	NEI Area, Ph 2 Program Management	2,300,760	F357-NEI Area, Ph 2	433,361	33,860	1,833,539	161,273	280,200	280,200	280,200	831,666	Jun 17 Annual Contingency ¹	100%
79209	Tracy Gateway Area Program Management	1,889,250	F356-Tracy Gateway Area	34,238	24,724	1,830,288	340,548	242,300	242,300	292,300	712,840	Jun 17 Annual Contingency ¹	100%
79210	Presidio Area Program Management	437,608	F355-Presidio Area	337,798	12,853	86,957	86,957	0	0	0	0	Jun 14 Annual Contingency ¹	100%
79355	Infrastructure Master Plan	3,322,510	Developer Contributions F345-RSP Area, Prgm Mgt	2,228,945 796,216	297,349 0	0 0	0 0	0 0	0 0	0 0	0 0	Sep 11 Work Underway	24%
79364	Downtown Brew Pub/ Property Acquisition	1,637,126	F318-Comm Dev Ag F345-RSP Area, Prgm Mgt	637,126 0	0 39,658	0 960,342	0 960,342	0 0	0 0	0 0	0 0	Jun 13 Work Underway	61%
79365	Business Incubator	300,000	F345-RSP Area, Prgm Mgt	0	53,530	246,470	246,470	0	0	0	0	Jun 15	100%
79366	Retail Incentives - Office/Industrial	35,000	F345-RSP Area, Prgm Mgt	2,398	347	32,255	32,255	0	0	0	0	Jun 15 Work Underway	100%
79367	Property Acquisition - West Schulte & Lammers	1,195,250	F345-RSP Area, Prgm Mgt	0	100,679	1,094,571	1,094,571	0	0	0	0	Jun 15 Work Underway	100%
TOTALS		<u>\$328,711,993</u>		<u>\$62,344,982</u>	<u>\$16,142,572</u>	<u>\$218,094,186</u>	<u>\$85,071,933</u>	<u>\$18,897,520</u>	<u>\$33,820,246</u>	<u>\$2,531,694</u>	<u>\$77,772,793</u>		

Footnotes:

- ¹ Sufficient funds have not been collected to complete this project.
- ² Program Management fees are annual contingencies for Program Plan Areas not yet built out.

EXHIBIT C
Summary of Expenses and Anticipated Construction Dates
for Fiscal Year Ended June 30, 2013
(Government Code §66006(b)(1)(C) and (D).)

Fee Funded Capital Improvement Projects						Five Year Plan - FY13-14 through FY17-18					July 1, 2013		
CIP	Project Title	Project \$ Total	Funding Sources	Prior Years Expenditures	FY12-13 Actual Exp's	Total	<----- New Appropriations Required ----->					Anticipated Completion Date & Comments	% Fee Funded
							FY13-14	FY14-15	FY15-16	FY16-17	FY17-18		
				Total FY12-13 Actual Exp's	\$16,142,572								
				Other Funding Sources	(5,864,423)								
				Net CIP Expenditures- Capital Development Funds	<u>\$ 10,278,149</u>								
				Other Funding Sources		Fee Funded Sources							
				F241-Transp Devel Tax		F312-Infill Area, Storm Drain							
				F242-Transp Sales Tax	2,237,148.00	F313-Infill Area, Arterials		78,281.00	xx				
				F245-Gas Tax		F314-Infill Area, Buildings				F513			
				F301-General Projects	\$2,447,786.00	F315-Infill Area, Prgm Mgt				F523			
				F318-Comm Dev Ag		F321-Pian C Area, Parks	1,648,000.00	xx					
				F513-Water Capital	83,000.00	F323-Pian C Area, Arterials	12,306.00	xx					
				Federal TEA Grant	24,483.00	F324-Pian C Area, Gen Fac	854,034.00	xx					
				Developer Contributions	395,349.00	F325-Pian C Area, Utilities	25,129.00	xx					
				Highway Grants	<u>676,657.00</u>	F345-RSP Area, Prgm Mgt	459,774.00	xx					
				Total - Other Funding Sources	<u>5,864,423.00</u>	F351-NEI Area, Ph 1	2,574,349.00	xx					
						F352-SMP Area	1,260,454.00	xx					
						F353-1205 Corridor Area	1,100,388.00	xx					
						F354-ISP South Area	390,738.00	xx					
						F355-Presidio Area	(69,147.00)	xx					
						F356-Tracy Gateway Area	274,648.00	xx					
						F357-NEI Area, Ph 2	1,645,954.00)(
						F395-Infill Area, Prgm Mgt	12,063.00)(
						F391-Pian C Area, Prgm Mgt	11,178.00	x					
							10,278,149.00						
						F314-Infill Area, Buildings							

EXHIBIT D
 Report of Findings for Development Fee Funds
 Collected for the Fiscal Year Ended June 30, 2013
 (Government Code §66001(d).)

<p>INFILL AREA, PARK FEE- FUND 311</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Infill April 2012 Update Finance and Implementation Plan and dated April 3, 2012, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>INFILL AREA, STORM DRAINAGE FEE- FUND 312</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Infill April 2012 Update Finance and Implementation Plan and dated April 3, 2012, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>INFILL AREA, ARTERIALS FEE - FUND 313</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Infill April 2012 Update Finance and Implementation Plan and dated April 3, 2012, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>INFILL AREA, PUBLIC BUILDINGS AND EQUIPMENT FEE- FUND 314</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Infill April 2012 Update Finance and Implementation Plan and dated April 3, 2012, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>INFILL AREA, DOWNTOWN IMPROVEMENTS PARKING FEE - FUND 316</p> <p>In conjunction with the adoption of Tracy Municipal Code chapter 6.20 regarding the Downtown Incentive Program, and TMC section 10.08.3470(d)(3), regarding off-street parking requirements within the Downtown Incentive Area, development impact fees were established to offset a portion of the City's costs in upgrading parking and streetscape improvements in the Downtown Incentive Area.</p>
<p>INFILL AREA, WATER FEE- FUND 317</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Infill April 2012 Update Finance and Implementation Plan and dated April 3, 2012, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>INFILL AREA, WASTEWATER FEE- FUND 318</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Infill April 2012 Update Finance and Implementation Plan and dated April 3, 2012, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>INFILL AREA, PROGRAM MANAGEMENT FEE- FUND 31x</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Infill April 2012 Update Finance and Implementation Plan and dated April 3, 2012, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>PLAN C AREA, PARKS FEE- FUND 321</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Plan C June 2007 Update Finance and Implementation Plan and dated June 19, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>PLAN C AREA, STORM DRAINAGE FEE- FUND 322</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Plan C June 2007 Update Finance and Implementation Plan and dated June 19, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>PLAN C AREA, ARTERIALS FEE - FUND 323</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Plan C June 2007 Update Finance and Implementation Plan and dated June 19, 2007, and (2) in the latest Roadway Development Impact Fee update, date December 6, 2011, Resolution 2011-227, and (3) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>

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<p>PLAN C AREA, GENERAL FACILITIES FEE- FUND 324</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Plan C June 2007 Update Finance and Implementation Plan and dated June 19, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>PLAN C AREA, UTILITIES FEE - FUND 325</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Plan C June 2007 Update Finance and Implementation Plan and dated June 19, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>PLAN C AREA, PROGRAM MANAGEMENT FEE - FUND 391</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Plan C June 2007 Update Finance and Implementation Plan and dated June 19, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>RESIDENTIAL SPECIFIC PLAN AREA, PARKS FEE- FUND 341</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Residential Specific Plan (RSP) 2003 Update Finance and Implementation Plan and dated July 15, 2003, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>RESIDENTIAL SPECIFIC PLAN AREA, STORM DRAINAGE FEE- FUND 342</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Residential Specific Plan (RSP) 2003 Update Finance and Implementation Plan and dated July 15, 2003, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>RESIDENTIAL SPECIFIC PLAN AREA, ARTERIALS FEE- FUND 343</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Residential Specific Plan (RSP) 2003 Update Finance and Implementation Plan and dated July 15, 2003, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>RESIDENTIAL SPECIFIC PLAN AREA, PUBLIC BUILDINGS FEE- FUND 344</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Residential Specific Plan (RSP) 2003 Update Finance and Implementation Plan and dated July 15, 2003, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>RESIDENTIAL SPECIFIC PLAN AREA, PROGRAM MANAGEMENT FEE- FUND 345</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Residential Specific Plan (RSP) 2003 Update Finance and Implementation Plan and dated July 15, 2003, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>NORTHEAST INDUSTRIAL AREA, PHASE 1, ARTERIALS FEE- FUND 351</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Northeast Industrial Area - Phase 1 Update Finance and Implementation Plan and dated May 1, 2012, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>NORTHEAST INDUSTRIAL AREA, PHASE 1, STORM DRAINAGE FEE- FUND 351</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Northeast Industrial Area Phase 1 Update Finance and Implementation Plan and dated May 1, 2012, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>NORTHEAST INDUSTRIAL AREA, PHASE 1, WATER FEE- FUND 351</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Northeast Industrial Area Phase 1 Update Finance and Implementation Plan and dated April 15, 2008, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>

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<p>NORTHEAST INDUSTRIAL AREA, PHASE 1, WASTEWATER FEE- FUND 351</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Northeast Industrial Area-Phase 1 Update Finance and Implementation Plan and dated April 15, 2008, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>NORTHEAST INDUSTRIAL AREA, PHASE 1, PUBLIC BUILDINGS FEE- FUND 351</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Northeast Industrial Area Phase 1 Update Finance and Implementation Plan and dated April 15, 2008, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>NORTHEAST INDUSTRIAL AREA, PHASE 1, PROGRAM MANAGEMENT FEE- FUND 351</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Northeast Industrial Area -Phase 1 Update Finance and Implementation Plan and dated April 15, 2008, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>SOUTH MACARTHUR PLAN AREA, ARTERIALS FEE- FUND 352</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called South MacArthur Plan Area Finance and Implementation Plan 2005 Update and dated September 20, 2005, and (2) in the latest Roadway Development Impact Fee update, dated December 6, 2011, Resolution 2011-227, and (3) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>SOUTH MACARTHUR PLAN AREA, STORM DRAINAGE FEE- FUND 352</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called South MacArthur Plan Area Finance and Implementation Plan 2005 Update and dated September 20, 2005, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>SOUTH MACARTHUR PLAN AREA, PARKS FEE- FUND 352</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called South MacArthur Plan Area Finance and Implementation Plan 2005 Update and dated September 20, 2005, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>SOUTH MACARTHUR PLAN AREA, WATER FEE- FUND 352</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called South MacArthur Plan Area Finance and Implementation Plan 2005 Update and dated September 20, 2005, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>SOUTH MACARTHUR PLAN AREA, WASTEWATER FEE- FUND 352</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called South MacArthur Plan Area Finance and Implementation Plan 2005 Update and dated September 20, 2005, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>SOUTH MACARTHUR PLAN AREA, PUBLIC BUILDINGS AND SERVICES FEE- FUND 352</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called South MacArthur Plan Area Finance and Implementation Plan 2005 Update and dated September 20, 2005, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>INDUSTRIAL SPECIFIC PLAN SOUTH AREA, ARTERIALS FEE- FUND 354</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Updated ISP South Finance and Implementation Plan and dated March 17, 2009, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>INDUSTRIAL SPECIFIC PLAN SOUTH AREA, STORM DRAINAGE FEE- FUND 354</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Updated ISP South Finance and Implementation Plan and dated March 17, 2009, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>

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<p>INDUSTRIAL SPECIFIC PLAN SOUTH AREA, PARKS FEE-FUND 354</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Updated ISP South Finance and Implementation Plan and dated March 17, 2009, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>INDUSTRIAL SPECIFIC PLAN SOUTH AREA, PUBLIC BUILDINGS FEE- FUND 354</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Updated ISP South Finance and Implementation Plan and dated March 17, 2009, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>INDUSTRIAL SPECIFIC PLAN SOUTH AREA, WATER FEE-FUND 354</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Updated ISP South Finance and Implementation Plan and dated March 17, 2009, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>INDUSTRIAL SPECIFIC PLAN SOUTH AREA, WASTEWATER FEE- FUND 354</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Updated ISP South Finance and Implementation Plan and dated March 17, 2009, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>INDUSTRIAL SPECIFIC PLAN SOUTH AREA, PROGRAM MANAGEMENT FEE- FUND 354</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Updated ISP South Finance and Implementation Plan and dated March 17, 2009, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>PRESIDIO <u>AREA</u>, ARTERIALS FEE - FUND 355</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Presidio Planning Area Finance and Implementation Plan and dated June 30, 2000, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>PRESIDIO <u>AREA</u>, ARTERIALS- REGIONAL FEE- FUND 355</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Presidio Planning Area Finance and Implementation Plan and dated June 30, 2000, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>PRESIDIO <u>AREA</u>, STORM DRAINAGE FEE- FUND 355</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Presidio Planning Area Finance and Implementation Plan and dated June 30, 2000, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>PRESIDIO <u>AREA</u>, PUBLIC BUILDINGS FEE-FUND 355</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Presidio Planning Area Finance and Implementation Plan and dated June 30, 2000, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>PRESIDIO <u>AREA</u>, WATER FEE-FUND 355</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Presidio Planning Area Finance and Implementation Plan and dated June 30, 2000, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>PRESIDIO <u>AREA</u>, WASTEWATER FEE-FUND 355</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Presidio Planning Area Finance and Implementation Plan and dated June 30, 2000, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>

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<p>PRESIDIO AREA, PROGRAM MANAGEMENT FEE - FUND 355</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Presidio Planning Area Finance and Implementation Plan and dated June 30, 2000, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>TRACY GATEWAY AREA, ARTERIALS FEE- FUND 356</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Tracy Gateway Project Infrastructure Cost Obligations and Phase 1 Finance and Implementation Plan Update and dated July 17, 2007, and (2) in the latest Roadway Development Impact Fee update, dated December 6, 2011, Resolution 2011-227, and (3) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>TRACY GATEWAY AREA, STORM DRAINAGE FEE- FUND 356</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Tracy Gateway Project Infrastructure Cost Obligations and Phase 1 Finance and Implementation Plan Update and dated July 17, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>TRACY GATEWAY AREA, PUBLIC BUILDINGS FEE- FUND 356</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Tracy Gateway Project Infrastructure Cost Obligations and Phase 1 Finance and Implementation Plan Update and dated July 17, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>TRACY GATEWAY AREA, WATER FEE- FUND 356</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Tracy Gateway Project Infrastructure Cost Obligations and Phase 1 Finance and Implementation Plan Update and dated July 17, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>TRACY GATEWAY AREA, WASTEWATER FEE- FUND 356</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Tracy Gateway Project Infrastructure Cost Obligations and Phase 1 Finance and Implementation Plan Update and dated July 17, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>TRACY GATEWAY AREA, PROGRAM MANAGEMENT FEE- FUND 356</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Tracy Gateway Project Infrastructure Cost Obligations and Phase 1 Finance and Implementation Plan Update and dated July 17, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>NORTHEAST INDUSTRIAL AREA, PHASE 2, ARTERIALS FEE- FUND 357</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Northeast Industrial Area-Phase 2 Finance and Implementation Plan and dated May 1, 2012, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>NORTHEAST INDUSTRIAL AREA, PHASE 2, STORM DRAINAGE FEE- FUND 357</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Northeast Industrial Area Phase 2 Finance and Implementation Plan and dated May 1, 2012, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>NORTHEAST INDUSTRIAL AREA, PHASE 2, WATER FEE- FUND 357</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Northeast Industrial Area-Phase 2 Finance and Implementation Plan and dated January 15, 2008, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>NORTHEAST INDUSTRIAL AREA, PHASE 2, WASTEWATER FEE- FUND 357</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Northeast Industrial Area-Phase 2 Finance and Implementation Plan and dated January 15, 2008, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>

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<p>NORTHEAST INDUSTRIAL AREA, PHASE 2, PUBLIC BUILDINGS FEE- FUND 357</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Northeast Industrial Area-Phase 2 Finance and Implementation Plan and dated January 15, 2008, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>NORTHEAST INDUSTRIAL AREA, PHASE 2, PROGRAM MANAGEMENT FEE- FUND 357</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest financing and implementation plan (FIP), called Northeast Industrial Area-Phase 2 Finance and Implementation Plan and dated January 15, 2008, and (2) in the extrapolation of the City's most recent Capital Improvement Plan, dated July 1, 2013, which is incorporated here by reference.</p>
<p>1-205 CORRIDOR <u>AREA</u>, ARTERIALS FEE -FUND 353</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest Cost Allocation Distribution Spreadsheet, called 1-205 Corridor Specific Plan Spreadsheet #47 and dated June 19, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan dated July 1, 2013, which is incorporated here by reference.</p>
<p>1-205 CORRIDOR <u>AREA</u>, STORM DRAINAGE FEE- FUND 353</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest Cost Allocation Distribution Spreadsheet, called 1-205 Corridor Specific Plan Spreadsheet #47 and dated June 19, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan dated July 1, 2013, which is incorporated here by reference.</p>
<p>1-205 CORRIDOR <u>AREA</u>, PARKS FEE - FUND 353</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest Cost Allocation Distribution Spreadsheet, called 1-205 Corridor Specific Plan Spreadsheet #47 and dated June 19, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan dated July 1, 2013, which is incorporated here by reference.</p>
<p>1-205 CORRIDOR <u>AREA</u>, PUBLIC BUILDINGS FEE- FUND 353</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest Cost Allocation Distribution Spreadsheet, called 1-205 Corridor Specific Plan Spreadsheet #47 and dated June 19, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan dated July 1, 2013, which is incorporated here by reference.</p>
<p>1-205 CORRIDOR <u>AREA</u>, WATER FEE- FUND 353</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate dates on which funding is expected are set forth (1) in the latest Cost Allocation Distribution Spreadsheet, called 1-205 Corridor Specific Plan Spreadsheet #47 and dated June 19, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan dated July 1, 2013, which is incorporated here by reference.</p>
<p>1-205 CORRIDOR AREA, SEWER TREATMENT FEE- FUND 353</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest Cost Allocation Distribution Spreadsheet, called 1-205 Corridor Specific Plan Spreadsheet #47 and dated June 19, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan dated July 1, 2013, which is incorporated here by reference.</p>
<p>1-205 CORRIDOR AREA, PROGRAM MANAGEMENT FEE - FUND 353</p> <p>The purpose of the fee, relationship between the fee and the purpose, the sources of anticipated funding and the approximate date on which funding is expected are set forth (1) in the latest Cost Allocation Distribution Spreadsheet, called 1-205 Corridor Specific Plan Spreadsheet #47 and dated June 19, 2007, and (2) in the extrapolation of the City's most recent Capital Improvement Plan dated July 1, 2013, which is incorporated here by reference.</p>
<p>HABITAT MITIGATION FEES- FUND XXX</p> <p>The purpose of the fee is to mitigate the cumulative impacts to threatened, endangered, rare, and unlisted SJMSCP covered species and other wildlife and other impacts to recreation, agriculture, scenic values, and other beneficial open space uses of new development on undeveloped lands. The relationship between the fee and the purpose for which the fee is imposed is set forth in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan, dated July 25, 2001 prepared by San Joaquin Council of Governments (SJCOG). The fees collected are remitted to SJCOG pursuant to the Plan.</p>
<p>AGRICULTURAL MITIGATION FEES- FUND 116</p> <p>The purpose of the fee is to mitigate the loss of productive agricultural lands converted for urban uses within the City by permanently protecting agricultural lands planned for agricultural use and by working with farmers who voluntarily wish to sell or restrict their land in exchange for fair compensation. The relationship between the fee and the purpose is set forth in Tracy Municipal Code Chapter 13.28 and in the South San Joaquin County Farmland Conversion Fee Nexus Study, dated July 18, 2005 and prepared by ESA including any amendments to it. Pursuant to Tracy Municipal Code section 13.28.080(b) and an agreement entered into, the monies in the fund are forwarded to the Central Valley Farmland Trust, Inc., a California non-profit public benefit corporation, a qualified entry under Chapter 13.28.</p>

AGENDA ITEM 1.C

REQUEST

APPROVE A LEASE AGREEMENT WITH HOLMAN CAPITAL CORPORATION, AND RELATED DOCUMENTS, FOR THE PURCHASE OF TWO TRIPLE COMBINATION FIRE PUMPERS FROM HI-TECH EMERGENCY VEHICLE SERVICE, INCORPORATED

EXECUTIVE SUMMARY

On November 5, 2013, City Council approved Resolution 2013-170, authorizing staff to negotiate a lease purchase agreement for the purchase of two triple combination fire pumpers from HI-TECH Emergency Vehicle Service, Incorporated.

Staff has negotiated a ten year lease purchase agreement with Holman Capital Corporation for \$948,743 for the purchase of two units. Staff is requesting City Council approve the agreement and authorize staff to proceed with the purchase.

DISCUSSION

On November 5, 2013, City Council approved Resolution 2013-170, authorizing staff to negotiate a lease purchase agreement for the purchase of two triple combination fire pumpers from HI-TECH Emergency Vehicle Service, Incorporated. As a condition of the bid package, staff required bidders to provide options offering municipal financing/lease purchase options. All bidding fire apparatus manufacturers provided a municipal financing/lease purchase option with associated interest rates. Staff was able to negotiate a more competitive rate, 3.4%, with Holman Capital Corporation than the rate provided by the successful bidder which was 3.95%. Staff negotiated a lease purchase agreement with Holman Capital Corporation for a period of ten years and a total purchase amount of \$1,127,117 for the equipment.

Lease Provider	Rate &Term	Principal (2 units)	Interest (2 units)	Total Lease Purchase Payments
Holman Capital Corporation	3.40% @ 10 years	\$948,743.20	\$178,373.60	\$1,127,116.80

If approved, the lease would commence December 6, 2013. Twenty payments of \$56,356 each are scheduled to be paid at six month intervals throughout the life of the agreement. A “concluding payment” or prepayment amount is indicated at each payment interval indicating the cost of purchasing the equipment. The City could at a later date elect to pay the concluding payment of the lease at any scheduled payment during the 10 year term without penalty.

STRATEGIC PLAN

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

FISCAL IMPACT

The Fiscal Year 2013/14 adopted budget includes \$500,000 for the outright purchase of a single new triple combination fire pumper (fire engine). As approved per resolution 2013-170, staff will purchase two units from HI-TECH via lease-purchase with principal and interest totaling \$1,127,117 in payments. Should Council approve the agreement with Holman Capital as requested, the fire department vehicle replacement fund would be expensed an annual obligation of \$112,712 for ten years.

The fire department vehicle replacement fund is funded annually by a deposit of \$191,200. Approving the agreement would allow the City to meet the lease purchase payment obligation and continue to deposit approximately \$80,000 per year into the fund. Further, by entering into a lease purchase agreement, the City would maintain the existing fund balance less the first payment, approximately \$657,000 as a base for future vehicle needs.

RECOMMENDATION

Staff recommends that Council approve the attached lease purchase agreement with Holman Capital Corporation, and related documents, and appropriate lease funds for the purpose of purchasing two triple combination fire pumpers.

Prepared by: David A. Bramell, Fire Division Chief

Reviewed by: Alford Nero, Fire Chief
Jenny Haruyama, Administrative Services Director
Maria A. Hurtado, Assistant City Manager

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

Attachment: Equipment Lease-Purchase Agreement

INDEX TO LEGAL DOCUMENTS
BANK-QUALIFIED, APPROPRIATION-BASED, ESCROW FUNDED
TAX-EXEMPT EQUIPMENT LEASE-PURCHASE AGREEMENT

DATED DECEMBER 6, 2013 BY AND BETWEEN

HOLMAN CAPITAL CORPORATION
And
CITY OF TRACY

Lease Documents:

- | | |
|---------|------------------------------------------------------------------------------|
| Tab 1: | Equipment Lease-Purchase Agreement; |
| Tab 2: | Exhibit A - Equipment Schedule; |
| Tab 3: | Exhibit B – Notice and Acknowledgment of Assignment; |
| Tab 4: | Exhibit C-1 – Insurance Coverage Request; |
| Tab 5: | Exhibit C-2 – Self-Insurance Rider (if applicable); |
| Tab 6: | Exhibit D - Essential Use Certificate; |
| Tab 7: | Exhibit E - Incumbency Certificate; |
| Tab 8: | Exhibit F - Opinion of Lessee’s Counsel; |
| Tab 9: | Exhibit G – Bank Qualified Designation |
| Tab 10: | Exhibit H - Post Issuance Tax Compliance Procedures |
| Tab 11: | Exhibit I- Escrow Agreement |
| Tab 12: | Resolution of Lessee; |
| Tab 13: | UCC-1 Financing Statement with attached Schedule A; |
| Tab 14: | Form 8038-G; |
| Tab 15: | Closing Memorandum/Payment Proceeds Direction; and |
| Tab 16: | Vendor Contract, MSO’s/Certificates of Title, & Payment Bond (if applicable) |

Assignment Documents (Lessor and Investor Only):

- | | |
|---------|-----------------------------------------------|
| Tab 17: | Assignment Agreement with Schedule A thereto. |
|---------|-----------------------------------------------|
-



HOLMAN CAPITAL

CORPORATION

EQUIPMENT LEASE-PURCHASE AGREEMENT

1. **Agreement.** Subject to the terms and conditions contained in this Equipment Lease-Purchase Agreement dated December 6, 2013 (this "Lease Agreement"), HOLMAN CAPITAL CORPORATION, as lessor ("Lessor"), whose mailing address is 29883 Santa Margarita Parkway, Suite 100, Rancho Santa Margarita, CA 92688, hereby purchases from and agrees to sell, transfer and lease back to the CITY OF TRACY, as lessee ("Lessee"), whose mailing address is 333 Civic Center Plaza, Tracy, CA 95376, and Lessee hereby sells to and agrees to acquire, purchase and lease back from Lessor, the items of personal property (together with any replacement parts, additions, substitutions, repairs or accessories now or hereafter incorporated in or affixed to it, hereinafter referred to collectively as the "Equipment") described in Exhibit A attached hereto.

2. **Term.** The term of this Lease Agreement (the "Lease Term") begins as of the Commencement Date stated in Exhibit A and shall continue so long as any amounts remain unpaid hereunder. The Lease Term will terminate upon the first to occur of: (a) the exercise by Lessee of the option to purchase the Equipment pursuant to Paragraph 10, (b) Lessor's election to terminate this Lease Agreement pursuant to Paragraph 16, (c) Lessee's option to terminate this Lease Agreement pursuant to Section 3, and (d) the payment by Lessee of all sums required to be paid by Lessee hereunder.

2.5. **Escrow Agreement.** On the Commencement Date, Lessor and Lessee shall enter into an escrow agreement (an "Escrow Agreement") dated the Commencement Date, between Lessor, Lessee, and Deutsche Bank National Trust Company, as escrow agent, relating to the escrow fund (an "Escrow Fund") created thereunder. On the Commencement Date, Lessor shall deposit: \$948,743.20 into the Escrow Fund to be held in escrow and applied upon the express terms and conditions of the Escrow Agreement which shall be disbursed as provided for in the Closing Memorandum of even date herewith.

3. **Rental Payments.** Lessee agrees to pay the rental payments hereunder for the Lease Term in the amounts and on the dates identified in Exhibit A. Payment of all rental payments and other amounts payable hereunder shall be made to Lessor at its above-stated address or as it shall otherwise designate in writing. As set forth in Exhibit A, a portion of each rental payment is paid as, and represents payment of, interest, and the balance of each rental payment is paid as, and represents payment of, principal.

Notwithstanding any provision to the contrary in this Lease Agreement, Lessee may terminate this Lease Agreement at the end of any fiscal year of Lessee as identified in Exhibit A (a "Fiscal Year") if sufficient funds are not appropriated by Lessee's governing body to pay rental payments and other amounts due hereunder during the next succeeding Fiscal Year (an "Event of Nonappropriation"). Lessee hereby agrees to notify Lessor at least 30 days prior to the last day of its then current Fiscal Year of the occurrence of an Event of Nonappropriation or, if nonappropriation has not occurred by that date, promptly upon the occurrence of an Event of Nonappropriation.

Lessee represents and warrants that: (a) it has made sufficient appropriations or has other legally available funds to pay all rental payments hereunder due during the first Fiscal Year hereunder; (b) the officer of Lessee responsible for budget preparation will do all things lawfully within his/her power to obtain appropriated funds for the payment of rental payments and other amounts required to be paid hereunder in each next succeeding Fiscal Year for the Lease Term; and (c) Lessee acknowledges that Lessor has relied upon these representations as an inducement to enter into this Lease Agreement. If an Event of Nonappropriation hereunder shall occur, Lessee agrees, at Lessee's sole cost and expense, peaceably to deliver the corresponding Equipment to Lessor at such location in the continental United States as is specified by Lessor, in the condition required by Paragraph 7 of this Lease Agreement, on or before the effective date of termination.

Lessee's obligation to pay rental payments and any additional amounts payable hereunder constitutes a current obligation payable exclusively from legally available funds and shall not be construed

to be an indebtedness within the meaning of any applicable constitutional or statutory limitation or requirement.

4. **Essentiality.** Subject to Paragraph 3 of this Lease Agreement, Lessee's present intention is to make rental payments for the Lease Term as long as it has sufficient appropriations or other legally available funds. Lessee represents that, with respect hereto, (a) the use and operation of the Equipment is essential to its proper, efficient, and economic governmental operation and (b) the functions performed by the Equipment could not be transferred to other equipment available for its use. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last rental payment scheduled to be paid hereunder. On the Commencement Date, Lessee shall complete and provide Lessor a certificate in the form of Exhibit D.

5. **Disclaimer of Warranties.** LESSEE REPRESENTS THAT IT HAS SELECTED THE EQUIPMENT PRIOR TO HAVING REQUESTED LESSOR TO REFINANCE THE SAME. LESSEE AGREES THAT LESSOR HAS NOT MADE ANY, AND MAKES NO, REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING (WITHOUT LIMITATION) THE SUITABILITY OF THE EQUIPMENT, ITS DURABILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, ITS MERCHANTABILITY, ITS CONDITION, ITS CAPACITY, ITS OPERATION, ITS PERFORMANCE, ITS DESIGN, ITS MATERIALS, ITS WORKMANSHIP AND/OR ITS QUALITY. AS BETWEEN LESSEE AND LESSOR, LESSEE LEASES, PURCHASES AND ACQUIRES THE EQUIPMENT "AS IS" "WHERE IS" AND "WITH ALL FAULTS." Lessor hereby assigns to Lessee, to the extent that it may lawfully do so, so long as no Event of Default and no Event of Nonappropriation shall have occurred and be continuing hereunder, all rights and benefits that Lessor may have under any warranty, guaranty or the like that may be made with respect to the Equipment by the manufacturer, seller and/or supplier (collectively, the "Vendor") thereof. Lessor shall not be liable to Lessee or any third party for any loss, damage, injury or expense of any kind or nature caused directly or indirectly by any of the Equipment or the use or maintenance thereof or any defect therein, the failure of operation thereof or by any interruption of service or loss of use thereof or for any loss of business or damage whatsoever and howsoever caused. Lessor makes no warranty as to the treatment of this Lease Agreement for tax or accounting purposes or as to the compliance of the Equipment with applicable government regulations or requirements. Lessee agrees to look solely to the Vendor for any claim arising from any defect, breach of warranty, failure or delay in delivery, mis-delivery or inability to use the Equipment for any reason whatsoever and Lessee's obligations to Lessor hereunder shall not in any manner be affected thereby, including (without limitation) Lessee's obligations to pay Lessor all rental payments and other amounts payable hereunder. Lessee has selected both the Equipment and the Vendor and acknowledges that Lessor has not participated in any way in Lessee's selection of the Equipment or the Vendor. Lessor has no obligation to install, erect, test, adjust, service or maintain the Equipment.

6. **Delivery and Acceptance; Quiet Enjoyment.** Lessee shall accept the Equipment for which disbursement is requested from the Escrow Fund upon its delivery and authorizes Lessor to insert on Exhibit A the serial numbers and any additional description of the items of Equipment so delivered. As evidence of that acceptance, Lessee shall execute and deliver to Lessor a Certificate of Acceptance in the form attached as Exhibit A to the Escrow Agreement. Regardless of whether Lessee has furnished a Certificate of Acceptance pursuant to this Paragraph 6, by making a rental payment after its receipt of the Equipment, Lessee shall be deemed to have accepted the Equipment on the date of such rental payment for purposes hereof. During the Lease Term, Lessee shall be entitled to quiet enjoyment of the Equipment, subject to the terms of this Lease Agreement.

7. **Use of Equipment; Maintenance and Repairs.** Lessee shall keep the Equipment within the State at the "Equipment Location" stated in Exhibit A and Lessee shall not remove any of the Equipment therefrom without Lessor's prior written consent. Lessee shall use the Equipment in a careful manner and

shall at all times, at its sole expense, keep the Equipment in good operating condition, repair and appearance and comply with all laws, ordinances, regulations or requirements of any governmental authority, official, board or department relating to its installation, possession, use or maintenance. Lessee shall not make any alterations, additions, or improvements to the Equipment that are not readily removable without causing damage to or reducing the value of the Equipment. All alterations, additions, or improvements not readily removable shall become property of Lessor.

8. Security Interest; Title to Equipment. (a) The provisions of this Section 8(a) apply generally to all Equipment, regardless of the type, and the Escrow Fund (if any/applicable): To secure the performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor, and Lessor shall have and retain, a security interest constituting a first priority and perfected lien and security interest on the Equipment delivered hereunder and on any attachments, proceeds therefrom. Lessee agrees to execute and deliver such additional documents, including, without limitation, opinions of counsel, financing statements, landlord-tenant or mortgagee waivers, notices and similar instruments, in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment or for the confirmation or perfection of Lessor's rights hereunder. As further security therefor, Lessee hereby grants to Lessor a first priority security interest in the cash and negotiable instruments from time to time in the Escrow Fund and all proceeds (cash and non-cash) thereof, and agrees with respect thereto that Lessor shall have all the rights and remedies of a secured party under the applicable Uniform Commercial Code. Lessee, at its expense, will protect and defend Lessee's rights in the Equipment and Lessor's rights and interests therein and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons. Lessor shall have the right during normal hours, upon reasonable prior notice to Lessee, to enter upon the premises where the Equipment is located in order to inspect the Equipment.

(b) Solely with respect to Equipment that is *not* comprised of vehicles and during the Lease Term, ownership and legal title of all of the Equipment and all substitutions, repairs, modifications, and replacements shall be in Lessee, and Lessee shall take all necessary action to vest such ownership and title in Lessee. Lessor does not own the Equipment, and, by this Lease Agreement, Lessor is merely financing the acquisition of the Equipment for the Lessee. Lessor has not been in the chain of title, does not operate, control or have possession or control over the Equipment, or Lessee's use, maintenance, operation, storage, or maintenance of the Equipment. Lessee is entitled to use and possession of the Equipment, subject to the rights of Lessor hereunder (including its interest in the Equipment as the lessor hereunder). If Lessor terminates this Lease Agreement pursuant to Paragraph 16 hereof or an Event of Nonappropriation occurs hereunder, all rights, title, and interests in the Equipment shall immediately vest in Lessor free and clear of any right, title or interest of Lessee. Lessee, at its expense, will protect and defend Lessee's rights in the Equipment and Lessor's rights and interests therein and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons. Lessor shall have the right during normal hours, upon reasonable prior notice to Lessee, to enter upon the premises where the Equipment is located in order to inspect the Equipment.

(c) Solely with respect to Equipment consisting of vehicles, the provisions of this Section 8(c) shall apply: Lessee agrees to either cause the original registration of Lessor or its assignee as legal owner of the Equipment or endorse the certificate of ownership showing Lessor or its assignee as legal owner (as required by Section 6301 of the California Vehicle Code). Prior to funding (if a Vendor or Lessee is being paid/reimbursed directly at Closing) or (if Escrow Funded) prior to any draw being paid from the Escrow Account, Lessee agrees to execute and deliver such additional documents, including, without limitation, opinions of counsel, MSOs/Certificates of Origin, Title Applications, notices and similar instruments, in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment or for the confirmation or perfection of Lessor's rights hereunder. During the Lease Term, Lessee shall be the owner (as defined in Section 460 of the California Vehicle Code) of the Equipment entitled to use and possession of the Equipment, subject to the rights of Lessor

hereunder, which is the legal owner (as defined in Section 370 of the California Vehicle Code) of the Equipment. If Lessor terminates this Lease Agreement pursuant to Paragraph 16 hereof or an Event of Nonappropriation occurs hereunder, all rights, title, and interests in the Equipment shall immediately vest in Lessor free and clear of any right, title or interest of Lessee.

9. **Personal Property.** The Equipment shall be and remain personal property notwithstanding the manner in which it may be attached or affixed to realty. Lessee covenants that, unless Lessee owns the premises in which the Equipment is to be located and such premises are not subject to any mortgage or lease, at Lessor's request, Lessee shall provide Lessor with a waiver from each landlord and/or mortgagee of the premises in which the Equipment is to be located of any rights that such landlord and/or mortgagee may have in respect of any of the Equipment.

10. **Purchase of Equipment by Lessee; Prepayment.** At the option of Lessee, and provided that no Event of Default has occurred and is continuing hereunder, Lessor's interest in all, but not less than all, of the Equipment will be transferred, conveyed and assigned to Lessee, and this Lease Agreement shall terminate: (a) upon payment in full of the rental payments and all other payments then due hereunder or (b) on any rental payment date hereunder, provided Lessee shall have delivered written notice at least 30 days prior to such date of Lessee's intention to purchase the Equipment pursuant to this provision, by paying to Lessor, in addition to the rental payment due on such date, an amount equal to the concluding payment (the "Concluding Payment") shown for such rental payment date in the rental payment schedule in Exhibit A. Lessee shall not have the option to purchase the Equipment hereunder as provided in the foregoing clause (b) on any rental payment date hereunder for which a Concluding Payment is not stated in the rental payment schedule.

11. **Risk of Loss.** Lessee shall bear the entire risk of loss, theft, destruction of or damage to the Equipment or any part thereof from any cause whatsoever during the Lease Term and thereafter until redelivery to a location designated by Lessor, and shall not be relieved of the obligation to pay rental payments or any other obligation hereunder because of any such occurrence. If (a) the Equipment or any portion thereof hereunder is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof hereunder is taken under the exercise of the power of eminent domain, Lessee shall immediately notify Lessor. Lessee and Lessor shall cause the net proceeds of any insurance claim (including self-insurance) or condemnation award to be applied, at Lessor's option, to (i) the prompt repair, restoration, modification or replacement of the Equipment so affected or (ii) the payment in full of the then applicable Concluding Payment. Any balance of net proceeds remaining after completion of such work or payment of such Concluding Payment shall be paid promptly to Lessee. If the net proceeds are insufficient to pay the costs of such repair, restoration, modification or replacement or to pay such Concluding Payment in full, Lessee shall, at Lessor's direction, either complete the work or pay the then applicable Concluding Payment in full and in either case pay any cost in excess of the amount of net proceeds, but only from legally available funds.

12. **Insurance.** (a) Insurance Policies. If Lessee is not self-insured (as hereafter provided), Lessee shall, at its expense, keep the Equipment fully insured against loss, fire, theft, damage or destruction from any cause whatsoever in an amount not less than the greater of (a) the total rental payments for the Lease Term, and (b) the full replacement cost of the Equipment without consideration for depreciation. Lessee shall also provide such additional insurance against injury, loss or damage to persons or property arising out of the use or operation of the Equipment as is customarily maintained by the owners of like property, with companies satisfactory to Lessor. Each policy shall provide that, as to the interest or coverage of Lessor or Lessor's assignee, the insurance afforded thereby shall not be suspended, forfeited or in any manner prejudiced by any default or by any breach of warranty, condition or covenant on the part of Lessee. If Lessee shall fail to provide any such insurance required hereunder or, within ten (10) days after Lessor's request therefor, shall fail to deliver the policies or certificates thereof to Lessor, then Lessor, at its option, shall have the right to procure such insurance and to add the full cost thereof to the rental payment

next becoming due, which Lessee agrees to pay as additional rent. All such insurance shall be in form, issued by such insurance companies and be in such amounts as shall be satisfactory to Lessor, and shall provide that losses, if any, shall be payable to Lessor as "loss payee," and all such liability insurance shall include Lessor as an "additional insured." Lessee shall pay the premiums for such insurance and deliver to Lessor a certification in the form of Exhibit C-1 and satisfactory evidence of the insurance coverage required hereunder. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payments of and execute and endorse all documents, checks or drafts received in payment for loss or damage under any such insurance policy.

(b) Self-Insurance. If Lessee is self-insured with respect to equipment such as the Equipment under an actuarially sound self-insurance program that is acceptable to Lessor, Lessee shall maintain during the Lease Term such actuarially sound self-insurance program and shall provide Lessor a certification in the form of Exhibit C-2 together with evidence of the self-insurance program in form and substance satisfactory to Lessor.

13. Fees; Taxes and Other Governmental Charges; Liens. Lessee covenants and agrees at all times to keep the Equipment free and clear of all levies, liens (other than those created hereunder) and encumbrances, and to pay all charges, taxes and fees (including any recording or stamp fees or taxes) that may now or hereafter be imposed upon the ownership, leasing, rental, sale, purchase, possession or use of the Equipment and shall give Lessor immediate written notice of any of the foregoing. If any of same shall remain unpaid when due, Lessor may pay same and add such payment to the rental payment next becoming due, as additional rent. Lessee shall execute and deliver to Lessor upon Lessor's request such further instruments and documents containing such other assurances as Lessor deems necessary or advisable for the confirmation or perfection of Lessor's rights hereunder or to otherwise effectuate the intent of this Lease Agreement.

14. Indemnification. Lessee's Indemnification of Lessor. To the extent authorized by law, Lessee shall indemnify and save Lessor, its officers, employees, agents, servants, successors and assigns, harmless from any and all liabilities (including, without limitation, negligence, tort and strict liability), damages, expenses, claims, actions, proceedings, judgments, settlements, losses, liens and obligations, including (without limitation) attorneys' fees and costs ("Claims"), arising out of the ordering, purchase, delivery, rejection, non-delivery, ownership, selection, possession, operation, control, use, condition, maintenance, transportation, storage, repair, return or other disposition of the Equipment, any claims arising under federal, state or local environmental protection and hazardous substance clean up laws and regulations and any claims of patent, trademark or copyright infringement or, if Lessee shall be in default hereunder, arising out of the condition of any item of Equipment sold or disposed of after use by Lessee, including (without limitation) claims for injury to or death of persons and for damage to property. The indemnities, assumption of liabilities and obligations herein provided shall be payable solely from funds legally available for such purpose and shall continue in full force and effect notwithstanding the expiration, termination or cancellation of this Lease Agreement for any reason whatsoever. However, Lessee shall not be obligated to indemnify Lessor from Claims arising from the sole or active gross negligence or willful misconduct of Lessor.

15. Assignment; Subleasing. LESSEE SHALL NOT ASSIGN, PLEDGE, MORTGAGE, SUBLET OR OTHERWISE TRANSFER OR ENCUMBER ANY OF ITS RIGHTS UNDER THIS LEASE AGREEMENT, THE ESCROW AGREEMENT (INCLUDING THE ESCROW FUND CREATED THEREUNDER) OR IN THE EQUIPMENT OR ANY PART THEREOF, NOR PERMIT ITS USE BY ANYONE OTHER THAN LESSEE AND ITS REGULAR EMPLOYEES, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT. ANY SUCH PURPORTED TRANSFER, ASSIGNMENT OR OTHER ACTION WITHOUT LESSOR'S PRIOR WRITTEN CONSENT SHALL BE VOID.

Lessor may, at any time and from time to time, assign, transfer or otherwise convey all or any part of its interest in the Equipment, this Lease Agreement, and the Escrow Agreement (including the Escrow Fund created thereunder), including, but not limited to, Lessor's rights to receive the rental payments hereunder or any part thereof (in which event Lessee agrees to make all rental payments thereafter to the assignee designated by Lessor) without the necessity of obtaining Lessee's consent, *provided, however*, Lessor will deliver to Lessee prior written notice of an assignment. No such assignment, transfer or conveyance shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee. During the term of this Lease Agreement, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments with respect hereto in form necessary to comply with Section 149 of the Internal Revenue Code of 1986, as amended (the "Code"). Lessee agrees (unless otherwise stated), if so requested, to acknowledge any such assignment in writing within 15 days after request therefor in the form attached as Exhibit B hereto, including, but not limited to any and all documents (including those necessary to reflect a security interest), and take all steps necessary to effect such assignment. Lessee further agrees that any moneys or other property received by Lessor as a result of any such assignment, transfer or conveyance shall not inure to Lessee's benefit.

16. Events of Default; Remedies. Each of the following events constitutes an "Event of Default" hereunder: (a) Lessee fails to pay in full the rental payment due hereunder on any date upon which such rental payment is due; (b) Lessee fails to comply with any other agreement or covenant of Lessee hereunder for a period of 30 days following receipt of written notice of violation of such agreement or covenant and demand that such violation be remedied; (c) Lessee institutes any proceedings under any bankruptcy, insolvency, reorganization or similar law or a receiver or similar officer is appointed for Lessee or any of its property; (d) any warranty, representation or statement made in writing by or on behalf of Lessee in connection herewith is found to be incorrect or misleading in any material respect on the date made; (e) actual or attempted sale, lease or encumbrance of any of the Equipment or the making of any levy, seizure or attachment thereof or thereon; or (f) Lessee defaults in its obligations under any other agreement for borrowing money, lease financing of property, or otherwise receiving credit and the obligee thereunder (or trustee on its behalf) is permitted to exercise any remedies under the agreement.

Immediately upon the occurrence of an Event of Default hereunder, Lessor may terminate this Lease Agreement or Lessee's rights hereunder and in any such event repossess the Equipment, which Lessee hereby agrees, at its expense, to surrender promptly to Lessor at such location in the continental United States as Lessor shall direct. Such right of repossession and other rights as specifically provided in this Paragraph 16 shall constitute the sole remedies for Lessee's failure to make payments or otherwise perform its obligations when required hereunder. If Lessor is entitled to repossess the Equipment under any provision of this Lease Agreement, Lessee shall permit Lessor or its agents to enter the premises where the Equipment is then located. In the event of any such repossession, Lessee shall execute and deliver such documents as may reasonably be required to restore title to and possession of the Equipment to Lessor, free and clear of all liens and security interests to which the Equipment may have become subject. Upon repossession, if the Equipment is damaged or otherwise made less suitable for the purposes for which it was manufactured than when delivered to Lessee, Lessee agrees, at its option, to (a) repair and restore the Equipment to the same condition in which it was received by Lessee (reasonable wear and tear excepted) or (b) pay to Lessor the reasonable costs of such repair and restoration. If Lessor sells or otherwise liquidates the Equipment following an Event of Default or an Event of Nonappropriation as herein provided and realizes net proceeds (after payment of costs) in excess of total rental payments that would have been paid during the Lease Term plus any other amounts then due hereunder, Lessor shall immediately pay the amount of any such excess to Lessee.

If Lessor terminates this Lease Agreement under this Paragraph 16 or an Event of Nonappropriation occurs hereunder and in either case Lessee continues to use the Equipment or if Lessee otherwise refuses to pay rental payments hereunder due during a Fiscal Year for which Lessee's governing body has appropriated sufficient legally available funds to pay such rental payments due hereunder, Lessor

(i) may declare the rental payments due and owing for the Fiscal Year for which such appropriations have been made to be immediately due and payable and (ii) shall be entitled to bring such action at law or in equity to recover money and other damages attributable to such holdover period for the Equipment.

Lessor shall also be entitled to exercise any or all remedies available to a secured party under the applicable Uniform Commercial Code and all other rights and remedies that Lessor may have at law or in equity. All rights and remedies of Lessor shall be cumulative and not alternative. Lessor's failure to exercise or delay in exercising any right or remedy shall not be construed as a waiver thereof, nor shall a waiver on one occasion be construed to bar the exercise of any right or remedy on a future occasion. Lessee agrees to reimburse Lessor for any expenses, including, without limitation, attorneys' fees, reasonably incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor, but only from legally available funds.

17. Late Payments. Whenever any rental payment or other amount payable to Lessor by Lessee hereunder is not paid within ten (10) days after such due date, Lessee agrees to pay Lessor a late charge on the delinquent amount at the rate of one percent (1%) per month, or the maximum amount permitted under applicable law, whichever is less. Such amount(s) shall be payable solely from legally available funds in addition to all amounts payable by Lessee as a result of the exercise of any of the remedies herein provided.

18. Rental Payments to Be Unconditional. Except as expressly set forth in this Lease Agreement (including Paragraph 3), Lessee agrees that as of the Commencement Date, Lessee's obligations hereunder are absolute and unconditional and shall continue without set-off, deduction, counterclaim, abatement, recoupment, or reduction and regardless of any disability of Lessee to use the Equipment or any part thereof because of any reason including, but not limited to, war, act of God, governmental regulations, strike, loss, damage, destruction, obsolescence, failure of or delay in delivery or failure of the Equipment to operate properly.

19. Tax Covenants. Lessee agrees that it will not take any action that would cause the interest component of rental payments hereunder to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action which omission would cause the interest component of rental payments hereunder to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes. Lessee agrees to (a) execute and deliver to Lessor, upon Lessor's request, a tax certificate and agreement in form and content acceptable to Lessor and Lessee, relating to the establishment and maintenance of the excludability from gross income of the interest component of rental payments hereunder for federal income tax purposes; (b) complete and file in a timely manner an information reporting return as required by the Code; and (c) rebate an amount equal to excess earnings on the Escrow Fund to the federal government if required by, and in accordance with, Section 148(f) of the Code, and make the determinations and maintain the records required by the Code.

Lessee represents that neither Lessee nor any agency or unit of Lessee has on hand any property, including cash and securities, that is legally required or otherwise restricted (no matter where held or the source thereof) to be used directly or indirectly to purchase the Equipment. Lessee has not and will not establish any funds or accounts (no matter where held or the source thereof) the use of which is legally required or otherwise restricted to pay directly or indirectly rental payments hereunder. Lessor and Lessee certify that, so long as any rental payments hereunder remain unpaid, moneys on deposit in the Escrow Fund will not be used in a manner that will cause this Lease Agreement to be classified as an "arbitrage bond" within the meaning of Section 148(a) of the Code.

If Lessee breaches the covenants contained in this Paragraph 19, the interest component of rental payments hereunder may become includible in gross income of the owner or owners thereof for federal income tax purposes. In such event, Lessee agrees to pay promptly after any such determination of

taxability and on each rental payment date thereafter to Lessor an additional amount determined by Lessor to compensate such owner or owners for the loss of such excludability (including without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error).

It is Lessor's and Lessee's intention that this Lease Agreement not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment hereunder for federal income tax purposes.

20. Lessee Representations and Warranties. Lessee hereby represents and warrants to and agrees with Lessor that:

(a) Lessee is a duly created and validly existing municipal corporation of the State of California and, therefore, qualifies as a political subdivision, within the meaning of Section 103(c) of the Code, and the Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as such.

(b) Lessee has the power and authority under applicable law to enter into the transactions contemplated by this Lease Agreement and the Escrow Agreement and has been duly authorized to execute and deliver this Lease Agreement and the Escrow Agreement and to carry out its obligations hereunder and thereunder. Lessee has provided to Lessor a full, true and correct copy of a resolution or other appropriate official action of Lessee's governing body specifically authorizing Lessee to execute and deliver this Lease Agreement and the Escrow Agreement and all documents contemplated hereby and thereby. Lessee has provided to Lessor a full, true, and correct copy of an Incumbency Certificate in substantially the form attached as Exhibit F hereto relating to the authority of the officers who have executed and delivered this Lease Agreement and who will execute and deliver this Lease Agreement and the Escrow Agreement and all documents in connection herewith and therewith on behalf of Lessee.

(c) All requirements have been met and procedures have occurred in order to ensure the enforceability of this Lease Agreement and the Escrow Agreement, and Lessee has complied with such public bidding requirements, if any, as may be applicable to the transactions contemplated by this Lease Agreement and the Escrow Agreement.

(d) Lessee is not subject to any legal or contractual limitation or provision of any nature whatsoever that in any way limits, restricts or prevents Lessee from entering into this Lease Agreement and the Escrow Agreement, or performing any of its obligations hereunder or thereunder, except to the extent that such performance may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, known to be pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Lease Agreement or the Escrow Agreement, or any other agreement or instrument to which Lessee is a party and that is used or contemplated for use in the consummation of the transactions contemplated by this Lease Agreement or the Escrow Agreement. All authorizations, consents, and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Lease Agreement and the Escrow Agreement or in connection with the carrying out by Lessee of its obligations hereunder and thereunder have been obtained.

(f) The payment of the rental payments or any portion thereof hereunder is not (under the terms of this Lease Agreement) directly or indirectly (i) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (ii) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other

than a state or local governmental unit. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local government unit. No portion of the purchase price for the Equipment will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Notwithstanding the foregoing, the Lessee has entered into an agreement to provide fire services to the South County Fire Authority jurisdictional area, which includes the City of Tracy and which agreement also includes provision of fire services to the Mountain House Community Services District and various automatic mutual aid agreements with other jurisdictions. The parties agree and confirm that the usage contemplated under the mutual aid agreements referenced in the preceding sentence is permitted uses of the Equipment. Lessee has not entered into any management or other service contract with respect to the use and operation of the Equipment.

(g) The entering into and performance of this Lease Agreement and the Escrow Agreement will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of Lessee or on the Equipment pursuant to an indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.

(h) Lessee's name as indicated on the first page of this Lease Agreement is its true, correct, and complete legal name.

(i) The useful life of the Equipment will not be less than the Lease Term hereof.

(j) Lessee has entered into this Lease Agreement for the purpose of purchasing, acquiring, and leasing the Equipment and not for the purpose of refinancing any outstanding obligation of Lessee more than 90 days in advance of its payment or prepayment date. The purchase price for the Equipment has been or will be paid directly by Lessor from the Escrow Fund to the Vendor, and no portion of the purchase price for the Equipment has been or will be paid to Lessee as reimbursement for any expenditure paid by Lessee more than 60 days prior to the execution and delivery hereof.

(k) The application, statements, and credit or financial information submitted by it to Lessor are true and correct and made to induce Lessor to enter into this Lease Agreement and the Escrow Agreement.

(l) During the term of this Lease Agreement, Lessee shall (i) provide Lessor, no later than ten days prior to the end of each Fiscal Year (commencing with the current Fiscal Year), with current budgets or other proof of appropriation for the ensuing Fiscal Year and such other information relating to Lessee's ability to continue the Lease Term for the next succeeding Fiscal Year as may be reasonably requested by Lessor and (ii) furnish or cause to be furnished to Lessor, at Lessee's expense, as soon as available and in any event not later than 180 days after the close of each Fiscal Year, the audited financial statements of Lessee at the close of and for such Fiscal Year, all in reasonable detail, audited by and with the report of Lessee's auditor.

(m) On the Commencement Date, Lessee shall cause to be executed and delivered to Lessor an Opinion of Lessee's Counsel in substantially the form attached as Exhibit G hereto.

(n) Lessee shall pay the excess (if any) of the actual costs of acquiring the Equipment hereunder over the amount deposited by Lessor in the Escrow Fund and interest earnings thereon.

(o) Lessee has experienced no material change in its financial condition since June 30, 2013.

(p) Lessee acknowledges that: (a) Lessor is acting solely for its own account and not as a fiduciary for Lessee or in the capacity of broker, dealer, municipal securities underwriter or municipal advisor; (b) Lessor has not provided, and will not provide, financial, legal, tax, accounting or other advice to or on behalf of Lessee with respect to its acquisition of the Equipment; and (c) Lessee has sought and obtained financial, legal, tax, accounting and other advice (including as it relates to structure, timing, terms

and similar matters) with respect to this Lease Agreement from its financial, legal and other advisors (and not Lessor) to the extent that Lessee desired to obtain such advice.

21. **Execution in Counterparts; Chattel Paper.** This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; *provided, however*, that only Counterpart No. 1 hereof shall constitute chattel paper for purposes of the applicable Uniform Commercial Code.

22. **Applicable Law.** This Lease Agreement shall be construed under the laws of the State of California.

23. **Binding Effect; Severability; Survival.** This Lease Agreement shall not become effective until accepted by Lessor at its herein-described office, and upon such acceptance shall inure to and bind the parties, their successors, legal representatives, and assigns. No provision of this Lease Agreement that may be construed as unenforceable shall in any way invalidate any other provision hereof, all of which shall remain in full force and effect.

24. **Miscellaneous Provisions.** Any notice to a party hereunder shall be deemed given when mailed to that party by certified mail, return receipt requested, at its address set forth herein or such other address as either may designate for itself in such notice to the other. This Lease Agreement and the Escrow Agreement constitute the entire mutual understanding of the parties regarding the subject matter hereof and thereof and may not be modified except in writing, signed by the party against whom such modification is asserted. Upon the request of Lessor, Lessee shall at any time and from time to time execute and deliver such further documents and do such further acts as Lessor may reasonably request in order fully to effect the purposes hereof and any assignment hereof. If a court with competent jurisdiction rules that the interest rate charged hereunder exceeds the maximum rate of interest allowed by applicable law, then the effective rate of interest hereunder shall be automatically reduced to the maximum lawful rate allowable under the applicable laws.

[Remainder of page intentionally left blank]

THE UNDERSIGNED HEREBY AGREE TO ALL OF THE TERMS AND CONDITIONS AS SET FORTH IN THIS EQUIPMENT LEASE-PURCHASE AGREEMENT.

HOLMAN CAPITAL CORPORATION, Lessor

CITY OF TRACY, Lessee

By: x _____
Lance S. Holman
President & CEO

By: x _____
Name: Brent H. Ives
Title: Mayor

Counterpart No. _____ of three manually executed and serially numbered counterparts. To the extent that this Lease Agreement constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

EXHIBIT A
EQUIPMENT SCHEDULE TO EQUIPMENT LEASE-PURCHASE AGREEMENT
DATED DECEMBER 6, 2013

1. DESCRIPTION OF THE EQUIPMENT:

A Pumper Fire Truck Replacement Project between HI-TECH Emergency Vehicle Service, Inc. (the "Vendors") and City of Tracy and financed by this Equipment Schedule dated December 6, 2013 to that Equipment Lease-Purchase Agreement dated December 6, 2013 by and between Holman Capital Corporation and the City of Tracy, including, without limitation, the following:

Technology Equipment Replacement Costs 2013-14				
Department	Description	Unit Cost	Quantity	Total Cost
Fire Department	Spartan Metro Star Type I Pumper Truck	\$474,371.60	2	\$948,743.20
Total Financing Amount				\$948,743.20

together with all accessories, attachments, substitutions and accessions.

2. EQUIPMENT LOCATION: 333 Civic Center Plaza, Tracy, CA 95376

3. RENTAL PAYMENT SCHEDULE: The rental payments shall be made for the Equipment as follows:

PAYMENT NUMBER	DATE DUE	TOTAL RENTAL PAYMENT DUE	INTEREST COMPONENT	PRINCIPAL COMPONENT	CONCLUDING PAYMENT*
0	12/06/2013				\$ 977,205.50
1	4/30/2014	\$ 56,355.84	\$ 16,128.63	\$ 40,227.21	\$ 935,771.47
2	10/31/2014	\$ 56,355.84	\$ 15,444.77	\$ 40,911.07	\$ 893,633.07
3	4/30/2015	\$ 56,355.84	\$ 14,749.28	\$ 41,606.56	\$ 850,778.31
4	10/31/2015	\$ 56,355.84	\$ 14,041.97	\$ 42,313.87	\$ 807,195.02
5	4/30/2016	\$ 56,355.84	\$ 13,322.64	\$ 43,033.20	\$ 762,870.83
6	10/31/2016	\$ 56,355.84	\$ 12,591.07	\$ 43,764.77	\$ 717,793.12
7	4/30/2017	\$ 56,355.84	\$ 11,847.07	\$ 44,508.77	\$ 671,949.08
8	10/31/2017	\$ 56,355.84	\$ 11,090.42	\$ 45,265.42	\$ 625,325.70
9	4/30/2018	\$ 56,355.84	\$ 10,320.91	\$ 46,034.93	\$ 577,909.72
10	10/31/2018	\$ 56,355.84	\$ 9,538.32	\$ 46,817.52	\$ 529,687.68
11	4/30/2019	\$ 56,355.84	\$ 8,742.42	\$ 47,613.42	\$ 480,645.85
12	10/31/2019	\$ 56,355.84	\$ 7,932.99	\$ 48,422.85	\$ 430,770.32
13	4/30/2020	\$ 56,355.84	\$ 7,109.80	\$ 49,246.04	\$ 380,046.90
14	10/31/2020	\$ 56,355.84	\$ 6,272.62	\$ 50,083.22	\$ 328,461.18
15	4/30/2021	\$ 56,355.84	\$ 5,421.20	\$ 50,934.64	\$ 275,998.50
16	10/31/2021	\$ 56,355.84	\$ 4,555.32	\$ 51,800.52	\$ 222,643.97
17	4/30/2022	\$ 56,355.84	\$ 3,674.71	\$ 52,681.13	\$ 168,382.40
18	10/31/2022	\$ 56,355.84	\$ 2,779.13	\$ 53,576.71	\$ 113,198.39
19	4/30/2023	\$ 56,355.84	\$ 1,868.32	\$ 54,487.52	\$ 57,076.24
20	10/31/2023	\$ 56,355.84	\$ 942.01	\$ 55,413.83	\$ -
GRAND TOTALS		\$ 1,127,116.80	\$ 178,373.60	\$ 948,743.20	

* Assumes that all rental payments and additional rentals due on and prior to that date have been paid.

4. INTEREST RATE: 3.4000 %

5. COMMENCEMENT DATE: December 6, 2013

6. SCHEDULED LEASE TERM: 10 Years
7. Lessee's current Fiscal Year extends from July 1, 2013.
8. The terms and provisions of the Equipment Lease-Purchase Agreement described above (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.
9. Lessee hereby represents, warrants, and covenants that (i) its representations, warranties, and covenants set forth in the Equipment Lease-Purchase Agreement (particularly Paragraph 20 thereof) are true and correct as though made on the date of execution of this Schedule, and (ii) sufficient funds have been appropriated by Lessee for the payment of all rental payments due under this Schedule during Lessee's current Fiscal Year.
10. Interest, if any, accruing from the Commencement Date to the actual date of funding shall be retained by Lessor as additional consideration for entering into this Schedule No. 01.

CITY OF TRACY,
as Lessee

HOLMAN CAPITAL CORPORATION,
as Lessor

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

By: _____
Name: Lance S. Holman
Title: President & CEO

Counterpart No. ____ of three manually executed and serially numbered counterparts. To the extent that this Schedule constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

EXHIBIT B-1

**NOTICE AND ACKNOWLEDGEMENT OF SALE OF RENTAL PAYMENTS AND
ASSIGNMENT OF LEASE AGREEMENT AND ESCROW AGREEMENT**

Holman Capital Corporation ("*Lessor*") and the City of Tracy ("*Lessee*") have entered into an Equipment Lease-Purchase Agreement and Equipment Schedule thereto both dated December 6, 2013 (the "*Lease Agreement*"), under which Lessee has, or will have prior to its execution hereof, leased equipment (the "*Equipment*") described therein.

Lessee is hereby notified that Lessor has assigned its right, title, and interest in and to the Lease Agreement, the leased Equipment, and the rental payments as permitted by the Lease Agreement.

Lessee is hereby directed to pay any and all rental payments and other amounts due under the Lease Agreement to Santander Bank, N.A., and/or its affiliates (the "Assignee"), as directed by the Assignee or a paying agent acting on behalf of Assignee, pursuant to the instructions contained in any invoice or notice.

By signing this Notice and Acknowledgment, Lessee agrees that it will pay all amounts due under the Lease Agreement as directed in the invoice without any set-off or deduction whatsoever notwithstanding any defect in, damage to or requisition of any of the Equipment leased under the Lease Agreement, any other similar or dissimilar event, any defense, set-off, counterclaim or recoupment arising out of any claim against Lessor or Assignee.

Lessee further acknowledges and agrees that Assignee has not assumed any of Lessor's obligations or duties under the Lease Agreement or made any warranties whatsoever as to the Lease Agreement or the Equipment. Lessee agrees that no change may be made to the Lease Agreement without the prior written consent of Assignee.

By signing this Notice and Acknowledgment, Lessee warrants that its representations and warranties under the Lease Agreement are true and correct on the date hereof.

Date: December 6, 2013

CITY OF TRACY, as Lessee

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

EXHIBIT C-1

INSURANCE CERTIFICATION

Holman Capital Corporation
29883 Santa Margarita Parkway, Suite 100
Rancho Santa Margarita, CA 92688

December 6, 2013

Re: Equipment Lease-Purchase Agreement dated December 6, 2013

In connection with the above-referenced Lease Agreement, City of Tracy, as lessee (the "Lessee") certifies that it has instructed the insurance agent named below (please fill in name, address, and telephone number):

Name of Agent: Central San Joaquin Valley Risk Management Authority
Address: 1750 Creekside Oaks Drive, Suite 200, Sacramento, CA 95833
Phone: (916) 244-1100
to issue:

Liability Insurance. Lessee is required to maintain public liability insurance, personal injury and property damage with policy limits of \$3,000,000. The policy
X should be endorsed to name Santander Bank, N.A. (the assignee of Holman Capital Corporation) as an additional insured.

Casualty Insurance. Lessee is required to maintain all risk extended coverage, malicious mischief and vandalism insurance for the Equipment described in the
X above-referenced Equipment Schedule in an amount not less than the greater of \$977,205.50 or the full replacement cost of the Equipment. Such insurance shall be endorsed to name Santander Bank, N.A. as a co-loss payee with respect to such Equipment.

The required insurance should also be endorsed to give Santander Bank, N.A. at least 30 days prior written notice of the effective date of any material alteration or cancellation of coverage, and an endorsement confirming that the interest of Santander Bank, N.A. shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of Lessee.

Proof of insurance coverage will be provided to Santander Bank, N.A. prior to and/or commensurate with the Commencement Date of the Lease.

Very truly yours,

CITY OF TRACY, as Lessee

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

EXHIBIT C-2

[complete **only** if Lessee **is** self-insured]

Holman Capital Corporation
29883 Santa Margarita Parkway, Suite 100
Rancho Santa Margarita, CA 92688

December 6, 2013

Re: Equipment Lease-Purchase Agreement dated December 6, 2013

In connection with the above-referenced Lease Agreement, City of Tracy, as lessee (the "*Lessee*") certifies that it participates in an actuarially sound self-insurance program for property damage and public liability risks.

The following is attached (check all that apply):

- Letter from risk manager describing self-insurance program
- Other evidence of Lessee's participation in self-insurance program

Very truly yours,

CITY OF TRACY, as Lessee

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

EXHIBIT D

ESSENTIAL USE CERTIFICATE

Holman Capital Corporation
29883 Santa Margarita Parkway, Suite 100
Rancho Santa Margarita, CA 92688

December 6, 2013

Re: Equipment Lease-Purchase Agreement dated December 6, 2013

I, Brent H. Ives, the duly elected Mayor of the City of Tracy, as lessee (the "*Lessee*"), is qualified to answer the questions set forth below regarding the Equipment to be acquired by Lessee in connection with the above-referenced Lease Agreement:

1. *What is the specific use of the Equipment?*
This equipment is a Type I Triple Combination Fire Pumper(s) used by the City's fire department to transport personnel, tools and equipment to the scene of all-hazards emergencies. Including but not limited to, fires of all types, emergency medical aids, vehicle accidents, fire alarms and public service calls.
2. *What increased capabilities will the Equipment provide?*
The equipment will allow the fire department to respond to fire emergencies equipped with fire fighting tools and equipment (e.g. hose, extrication equipment, emergency medical equipment, etc.). It will also provide the fire department with the most current NFPA compliant fire apparatus.
3. *Why is the Equipment essential to your ability to deliver governmental services?*
The equipment is standard fire apparatus used primarily for structural fire fighting. A Type I Triple Combination Fire Pumper is the industry wide standard for providing municipal fire service.
4. *Does the Equipment replace existing equipment?*
(If so, please explain why you are replacing the existing equipment)
The equipment will replace existing equipment from front-line service. The existing equipment is over 12 years old and is experiencing increased maintenance costs with decreased reliability.
5. *Why did you choose this specific Equipment?*
This specific equipment was chosen because it meets the fire department's needs and will be built to fire department specifications. The manufacturer of the equipment is located locally, has provided similar equipment to the department in the past and can service the equipment within our region.
6. *For how many years do you expect to utilize the Equipment?*
The equipment is expected to have a front-line "first-out" service life of 10 years or greater. However its useful service life in years (first-out and reserve) is typically 20 years.

[Signature Page to Follow]

Very truly yours,
CITY OF TRACY, as Lessee

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

[Signature Page to Essential Use Certificate]

EXHIBIT E

INCUMBENCY CERTIFICATE

I, Sandra Edwards, do hereby certify that I am the City Clerk of the City of Tracy, duly established and validly existing City and as a political subdivision of the State of California under the Constitution and laws of the State of California, and that I have custody of the records of such entity.

I hereby certify that, as of the date hereof, the individuals named below are the duly elected or appointed officers of the District holding the offices set forth opposite their respective names. I further certify that:

- (i) The signatures set opposite their respective names and titles are their true and authentic signatures, and
- (ii) Such officers have the authority on behalf of such entity to:
 - a. Enter into that certain Equipment Lease-Purchase Agreement and Equipment Schedule both dated December 6, 2013 (the "*Lease Agreement*"), between the City of Tracy and Holman Capital Corporation, as lessor, and
 - b. Execute Certificates of Acceptance and other certificate, documents, and agreements relating to the Lease Agreement.

NAME	TITLE	SIGNATURE
Brent H. Ives	Mayor	_____

IN WITNESS WHEREOF, I have duly executed this Certificate on behalf of the City of Tracy.

December 6, 2013

Sandra Edwards, City Clerk

EXHIBIT F

OPINION OF LESSEE'S COUNSEL

December 6, 2013

Holman Capital Corporation
29883 Santa Margarita Parkway
Suite 100
Rancho Santa Margarita, CA 92688

Re: Equipment Lease-Purchase Agreement and Equipment Schedule both dated December 6, 2013

Ladies and Gentlemen:

As counsel to the City of Tracy (the "*Lessee*"), I have examined the Equipment Lease-Purchase Agreement and Equipment Schedule both dated December 6, 2013 (collectively, the "*Lease Agreement*"), between the Lessee and Holman Capital Corporation, as lessor ("*Lessor*"), the Escrow Agreement of even date therewith ("*Escrow Agreement*"), and form of the Certificate of Acceptance (the "*Certificate of Acceptance*"), and the proceedings taken by the Governing Body of the Lessee to authorize on behalf of the Lessee the execution and delivery of the Lease Agreement, and the Certificate of Acceptance. The Lease Agreement, Escrow Agreement and the Certificate of Acceptance are herein collectively referred to as the "*Transaction Documents*." Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

1. The Lessee is a duly established and validly existing as City and a political subdivision of the State of California under the Constitution and laws of the State of California with full power and authority to enter into the Transaction Documents.
2. The Transaction Documents have each been duly authorized, executed, and delivered by the Lessee. Assuming due authorization, execution and delivery thereof by Lessor, the Transaction Documents constitute legal, valid, and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.
3. The Equipment to be leased pursuant to the Lease Agreement constitutes personal property and, when subjected to use by the Lessee, will not be a fixture under applicable law.
4. The Lessee has complied with any applicable public bidding requirements in connection with the Transaction Documents and the transactions contemplated thereby. The resolution adopted by the Governing Body of the Lessee authorizing the execution and delivery of the Transaction Documents and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.
5. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery, or performance by the Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of the Lessee or the Governing Body of the Lessee or the authority or ability of the Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. There is no

litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin the Lessee from annually appropriating sufficient funds to pay the rental payments or other amounts contemplated by the Lease Agreement. The entering into and performance of the Transaction Documents do not and will not violate any judgment, order, law, or regulation applicable to the Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of the Lessee or on the Equipment (as such term is defined in the Lease Agreement) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which the Lessee is a party or by which it or its assets may be bound.

This opinion may be relied upon by purchasers and assignees of Lessor's interests in the Lease Agreement.

Respectfully submitted,

EXHIBIT G

BANK-QUALIFIED DESIGNATION

The CITY OF TRACY, as lessee, (the "*Lessee*") under that certain Equipment Lease-Purchase Agreement and Equipment Schedule (collectively, the "*Lease*") both dated as of December 6, 2013 to which this Designation is attached, hereby designates the Lease as a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The Lessee hereby represents that the Lessee reasonably anticipates that the Lessee and other entities that the Lessee controls will not issue tax-exempt obligations (including the Lease) the aggregate principal amount of which exceed \$10,000,000 during the calendar year in which the Lease is executed and delivered and interest commences to accrue thereunder.

This Designation is attached to and made a part of the Lease and inures to the benefit of the Lessor and its successors and/or assigned.

EXECUTED as of this 6th day of December, 2013.

CITY OF TRACY, as Lessee

By: _____

Name: Brent H. Ives

Title: Mayor

EXHIBIT H

POST-ISSUANCE TAX COMPLIANCE PROCEDURES

Dated: December 6, 2013

The following certificate is delivered in connection with the execution and delivery of the Equipment Lease-Purchase Agreement dated December 6, 2013 (the "Lease Agreement"), entered into between the City of Tracy (the "Lessee") and Holman Capital Corporation (the "Corporation"). Capitalized terms used herein have the meanings defined in the Lease Agreement.

Section 1. In General.

1.1. This Certificate is executed for the purpose of establishing the reasonable expectations of Lessee as to future events regarding the financing of certain equipment (the "Equipment") to be acquired by Lessor and leased to Lessee pursuant to and in accordance with the Equipment Schedule executed under the Agreement (together with all related documents executed pursuant thereto and contemporaneously herewith, the "Financing Documents"). As described in the Financing Documents, Lessor shall apply **948,743.20** (the "Principal Amount") toward the acquisition of the Equipment and closing costs, and Lessee shall make Rental Payments under the terms and conditions as set forth in the Financing Documents.

1.2. The individual executing this Certificate on behalf of Lessee is an officer of Lessee delegated with the responsibility of reviewing and executing the Financing Documents, pursuant to the resolution or other official action of Lessee adopted with respect to the Financing Documents, a copy of which has been delivered to Lessor.

1.3. The Financing Documents are being entered into for the purpose of providing funds for financing the cost of acquiring, equipping and installing the Equipment which is essential to the governmental functions of Lessee, which Equipment is described in the Equipment Schedule. The Principal Amount will be deposited in escrow by Lessor on the date of issuance of the Financing Documents and held by **Deutsche Bank National Trust**, as escrow agent (the "Escrow Agent") pending acquisition of the Equipment under the terms of that certain Escrow Agreement dated as of December 6, 2013 (the "Escrow Agreement"), by and between Lessor and Escrow Agent.

1.4 Lessee will timely file for each payment schedule issued under the Lease a Form 8038-G (or, if the invoice price of the Equipment under such schedule is less than \$100,000, a Form 8038-GC) relating to such Lease with the Internal Revenue Service in accordance with Section 149(e) of the Internal Revenue Code of 1986, as amended (the "Code").

1.5 The Equipment Schedule No. is a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. As such, the Lessee hereby represents that the Lessee reasonably anticipates that the Lessee and other entities that the Lessee controls will not issue tax-exempt obligations (including the Equipment Schedule) the aggregate principal amount of which exceed \$10,000,000 during the calendar year in which Equipment Schedule is executed and delivered and interest commences to accrue thereunder.

Section 2. Non-Arbitrage Certifications.

2.1. The Rental Payments due under the Financing Documents will be made with monies retained in Lessee's general operating fund (or an account or subaccount therein). No sinking, debt service, reserve or similar fund or account will be created or maintained for the payment of the Rental Payments due under the Financing Documents or pledged as security therefor.

2.2. There have been and will be issued no obligations by or on behalf of Lessee that would be deemed to be (i) issued or sold within fifteen (15) days before or after the date of issuance of the Financing Documents, (ii)

issued or sold pursuant to a common plan of financing with the Financing Documents and (iii) paid out of substantially the same source of funds as, or deemed to have substantially the same claim to be paid out of substantially the same source of funds as, the Financing Documents.

2.3. Lessee does not and will not have on hand any funds that are or will be restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, as a substitute, replacement or separate source of financing for the Equipment.

2.4. No portion of the Principal Amount is being used by Lessee to acquire investments which produce a yield materially higher than the yield realized by Lessor from Rental Payments received under the Financing Documents.

2.5. The Principal Amount does not exceed the amount necessary for the governmental purpose for which the Financing Documents were entered into. Such funds are expected to be needed and fully expended for payment of the costs of acquiring, equipping and installing the Equipment.

2.6. Lessee does not expect to convey, sublease or otherwise dispose of the Equipment, in whole or in part, at a date which is earlier than the final Payment Date under the Financing Documents.

Section 3. Disbursement of Funds; Reimbursement to Lessee.

3.1 It is contemplated that the entire Principal Amount will be used to pay the acquisition cost of Equipment to the vendors or manufacturers thereof or for any financial advisory or closing costs, provided that, if applicable, a portion of the principal amount may be paid to Lessee as reimbursement for acquisition cost payments already made by it so long as the conditions set forth in Section 3.2 below are satisfied.

3.2. Lessee shall not request that it be reimbursed for Equipment acquisition cost payments already made by it unless each of the following conditions have been satisfied:

(a) Lessee adopted a resolution or otherwise declared its official intent in accordance with Treasury Regulation § 1.150-2 (the "Declaration of Official Intent"), wherein Lessee expressed its intent to be reimbursed from the proceeds of a borrowing for all or a portion of the cost of the Equipment, which expenditure was paid to the Vendor not earlier than sixty (60) days before Lessee adopted the Declaration of Official Intent;

(b) The reimbursement being requested will be made by a written allocation before the later of eighteen (18) months after the expenditure was paid or eighteen (18) months after the items of Equipment to which such payment relates were placed in service;

(c) The entire payment with respect to which reimbursement is being sought is a capital expenditure, being a cost of a type properly chargeable to a capital account under general federal income tax principles; and

(d) Lessee will use any reimbursement payment for general operating expenses and not in a manner which could be construed as an artifice or device under Treasury Regulation § 1.148-10 to avoid, in whole or in part, arbitrage yield restrictions or arbitrage rebate requirements.

Section 4. Use and Investment of Funds; Temporary Period.

4.1. Lessee has incurred or will incur, within six (6) months from the date of issuance of the Financing Documents, binding obligations to pay an amount equal to at least five percent (5%) of the Principal Amount toward the costs of the Equipment. An obligation is not binding if it is subject to contingencies within Lessee's control. The ordering and acceptance of the items of Equipment will proceed with due diligence to the date of final acceptance of the Equipment.

4.2. An amount equal to at least eighty-five percent (85%) of the Principal Amount will be expended to pay the cost of the Equipment by the end of the three-year period commencing on the date of this Certificate. No portion of the Principal Amount will be used to acquire investments that do not carry out the governmental purpose of the Financing Documents and that have a substantially guaranteed yield of four (4) years or more.

4.3. (a) Lessee covenants and agrees that it will rebate an amount equal to excess earnings on the Principal Amount deposited under the Escrow Agreement to the Internal Revenue Service if required by, and in accordance with, Section 148(f) of the Code, and make the annual determinations and maintain the records

required by and otherwise comply with the regulations applicable thereto. Lessee reasonably expects to cause the Equipment to be acquired by June 6, 2015, but not later than December 6, 2016. (b) Lessee will provide evidence to Lessor that the rebate amount has been calculated and paid to the Internal Revenue Service in accordance with Section 148(f) of the Code unless (i) the entire Principal Amount is expended on the Equipment by the date that is the six-month anniversary of the Financing Documents or (ii) the Principal Amount is expended on the Equipment in accordance with the following schedule: At least fifteen percent (15%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within six months from the date of issuance of the Financing Documents; at least sixty percent (60%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within 12 months from the date of issuance of the Financing Documents; and one hundred percent (100%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment prior to eighteen (18) months from the date of issuance of the Financing Documents. (c) Lessee hereby covenants that (i) Lessee is a governmental unit with general tax powers; (ii) the Lease is not a "private activity bond" under Section 141 of the Code; (iii) at least ninety-five percent (95%) of the Principal Amount is used for the governmental activities of Lessee; and (iv) the aggregate principal amount of all tax-exempt obligations (including the Lease) issued by Lessee and its subordinate entities, if any, during the current calendar year is not reasonably expected to exceed \$5,000,000. Accordingly, the rebate requirements of Section 148(f) of the Code are treated as being met, in lieu of the spending exceptions set forth in paragraph (b) above.

Section 5. Escrow Account.

The Financing Documents provide that the monies deposited in escrow shall be invested until payments to the vendor(s) or manufacturer(s) of the Equipment are due. Lessee will ensure that such investment will not result in Lessee's obligations under the Financing Documents being treated as an "arbitrage bond" within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended (the "Code"), respectively. Any monies which are earned from the investment of these funds shall be labeled as interest earned. All such monies will be disbursed on or promptly after the date that Lessee accepts the Equipment.

Section 6. No Private Use; No Consumer Loan.

6.1. Lessee will not exceed the private use restrictions set forth in Section 141 of the Code. Specifically, Lessee will not permit more than 10% of the Principal Amount to be used for a Private Business Use (as defined herein) if, in addition, the payment of more than ten percent (10%) of the Principal Amount plus interest earned thereon is, directly or indirectly, secured by (i) any interest in property used or to be used for a Private Business Use or (ii) any interest in payments in respect of such property or derived from any payment in respect of property or borrowed money used or to be used for a Private Business Use.

In addition, if both (A) more than five percent (5%) of the Principal Amount is used as described above with respect to Private Business Use and (B) more than five percent (5%) of the Principal Amount plus interest earned thereon is secured by Private Business Use property or payments as described above, then the excess over such five percent (5%) (the "Excess Private Use Portion") will be used for a Private Business Use related to the governmental use of the Equipment. Any such Excess Private Use Portion of the Principal Amount will not exceed the portion of the Principal Amount used for the governmental use of the particular project to which such Excess Private Use Portion is related. For purposes of this paragraph 6.2. "Private Business Use" means use of bond proceeds or bond financed-property directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and excluding use as a member of the general public.

6.3. No part of the Principal Amount or interest earned thereon will be used, directly or indirectly, to make or finance any loans to non-governmental entities or to any governmental agencies other than Lessee.

Section 7. No Federal Guarantee.

7.1. Payment of the principal or interest due under the Financing Documents is not directly or indirectly guaranteed, in whole or in part, by the United States or an agency or instrumentality thereof.

7.2. No portion of the Principal Amount or interest earned thereon shall be (i) used in making loans the payment of principal or interest of which are to be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof, or (ii) invested, directly or indirectly, in federally insured deposits or accounts if such investment would cause the financing under the Financing Documents to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

Section 8. Miscellaneous.

8.1. Lessee shall keep a complete and accurate record of all owners or assignees of the Financing Documents in form and substance satisfactory to comply with the registration requirements of Section 149(a) of the Code unless Lessor or its assignee agrees to act as Lessee's agent for such purpose.

8.2. Lessee shall maintain complete and accurate records establishing the expenditure of the Principal Amount and interest earnings thereon for a period of five (5) years after payment in full under the Financing Documents.

8.3. To the best of the undersigned's knowledge, information and belief, the above expectations are reasonable and there are no other facts, estimates or circumstances that would materially change the expectations expressed herein.

8.4. The Lessee's Tax Identification Number is: 94-6000442.

IN WITNESS WHEREOF, this Post-Issuance Tax Compliance Procedures Certificate has been executed on behalf of Lessee as of December 6, 2013.

CITY OF TRACY

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

EXHIBIT I:

ESCROW AGREEMENT

LESSOR:

Holman Capital Corporation
29883 Santa Margarita Parkway
Suite 100
Rancho Santa Margarita, CA 92688

ESCROW AGENT:

Deutsche Bank National Trust Company
Trust and Security Services
1761 E. Saint Andrew Place
Santa Ana, CA 92705

LESSEE:

City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

THIS ESCROW AGREEMENT (this "*Escrow Agreement*") is made as of December 6, 2013, between Holman Capital Corporation ("*Lessor*"), the City of Tracy ("*Lessee*"), and Deutsche Bank National Trust Company (the "*Escrow Agent*").

Lessor and Lessee have heretofore entered into that certain Equipment Lease-Purchase Agreement and Equipment Schedule both dated December 6, 2013 (the "*Lease Agreement*"). The Lease Agreement contemplates that certain Equipment described therein (the "*Equipment*") is to be acquired from the vendor(s) or manufacturer(s) thereof.

After acceptance of the Equipment by Lessee, the Equipment is to be leased by Lessor to Lessee pursuant to the terms of the Lease Agreement.

The Lease Agreement contemplates that Lessor will deposit with the Escrow Agent cash in the amount of \$948,743.20 (the "*Deposit Amount*"), for deposit into the escrow fund (the "*Escrow Fund*"), to be held in escrow by the Escrow Agent and applied on the express terms and conditions set forth herein. Such deposit into the Escrow Fund, together with all interest and additions received with respect thereto, is to be applied from time to time to pay the vendor(s) or manufacturer(s) of the Equipment its invoice cost (a portion of which may, if required, be paid prior to final acceptance of the Equipment by Lessee). The Escrow Fund is to be held for the account and benefit of Lessee, and Lessee has granted to Lessor a first, priority security interest in the Escrow Fund.

The parties desire to set forth the terms on which the escrow is to be created and to establish the rights and responsibilities of the parties hereto.

NOW, THEREFORE, the parties agree as follows:

1. The Escrow Agent hereby agrees to serve as escrow agent upon the terms and conditions set forth herein. The Escrow Agent agrees that the Escrow Fund shall be held irrevocably in trust for the account and benefit of Lessee and all interest earned with respect to the Escrow Fund shall accrue to the benefit of Lessee and shall be applied as expressly set forth herein.

To the limited extent required to perfect the first, priority security interest hereby granted by Lessee to Lessor in the cash and negotiable instruments from time to time held in the Escrow Fund, Lessor hereby appoints the Escrow Agent as its security agent, and the Escrow Agent hereby accepts the appointment as security agent, and agrees to hold physical possession of such cash and negotiable instruments on behalf of Lessor.

2. On such day as determined to the mutual satisfaction of the parties (the “Commencement Date”), Lessor shall deposit with the Escrow Agent cash in the amount of the Deposit Amount to be held by the Escrow Agent on the express terms and conditions set forth herein. The Escrow Agent agrees to accept the deposit of the Deposit Amount by Lessor with the Escrow Agent, and further agrees to hold the amount so deposited together with all interest and other additions received with respect thereto in escrow on the express terms and conditions set forth herein.
3. The Escrow Agent shall at all times segregate the Escrow Fund into an account maintained for that express purpose, which shall be clearly identified on the books and records of the Escrow Agent as being held in its capacity as Escrow Agent. Securities and other negotiable instruments held in the Escrow Fund from time to time shall be held or registered in the name of the Escrow Agent (or its nominee). The Escrow Fund shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of any of the parties hereto (except with respect to the security interest therein held by Lessor).
4. Lessee hereby directs the Escrow Agent to invest the cash held in the Escrow Fund from time to time in the Federated Prime Value Obligation Fund #856 or, in the event such fund is not at the time available, such other investments as Lessee may specify in writing, to the extent the same are at the time legal for investment of the funds being invested. Interest or other amounts earned and received by the Escrow Agent with respect to the Escrow Fund shall be deposited in and become a part of the Escrow Fund. No investment shall be made that would cause the Lease Agreement to be deemed to be an arbitrage bond within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended.
5. Lessor and Lessee hereby authorize the Escrow Agent to take the following actions with respect to the Escrow Fund:
 - a. From time to time, the Escrow Agent shall pay the vendor or manufacturer of the Equipment payments then due and payable, or reimburse Lessee for amounts that it has paid to the vendor or manufacturer of the Equipment, upon receipt of the following: (a) a duly executed Certificate of Acceptance and Payment Request in the form attached as Exhibit A hereto, (b) the vendor(s) or manufacturer(s) invoice(s) specifying the acquisition price of the Equipment described in the requisition request, and (c) any additional documentation required by Lessor.
 - b. Following the Commencement Date, the Escrow Agent will earn a one-time escrow fee in the amount of \$500.00, which shall be payable solely from interest earnings on the Escrow Fund to the extent the same accrue.

- c. If Lessor provides to the Escrow Agent written notice of the occurrence of an Event of Default or an Event of Nonappropriation by Lessee under the Lease Agreement, the Escrow Agent shall thereupon promptly remit to Lessor the entire balance of the Escrow Fund.
 - d. Upon receipt by the Escrow Agent of a duly executed Certificate of Acceptance and Payment Request identified as the final such request, the Escrow Agent shall transfer the then remaining balance of the Escrow Fund to Lessee, upon the express condition that Lessee hereby agrees to use such excess amount solely for capital expenditures as shall be approved by Lessee or, at the written direction of Lessee, for application against the interest component of the Lessee's payment obligation under the Lease Agreement, as provided therein, unless otherwise agreed by Lessor.
6. The Escrow Agent shall have no liability for acting upon any written instruction presented by Lessee and Lessor in connection with this Escrow Agreement that the Escrow Agent in good faith believes to be genuine. Furthermore, the Escrow Agent shall not be liable for any act or omission in connection with this Escrow Agreement except for its own gross negligence, willful misconduct, or bad faith. The Escrow Agent shall not be liable for any loss or diminution in value of the Escrow Fund as a result of the investments made pursuant to Section 4.
7. To the extent authorized by law, Lessee hereby agrees to indemnify and save the Escrow Agent harmless against any liabilities that it may incur in the exercise and performance of its powers and duties hereunder and that are not due to the Escrow Agent's gross negligence or willful misconduct. No indemnification will be made under this Section or elsewhere in this Escrow Agreement for damages arising solely out of gross negligence, willful misconduct, or bad faith by the Escrow Agent, its officers, agents, employees, successors or assigns.
8. The Escrow Agent may at any time resign by giving at least 30 days' prior written notice to Lessee and Lessor, but such resignation shall not take effect until the appointment of the successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, the Escrow Agent may be removed at any time, with or without cause, by instrument in writing executed by Lessor and Lessee. Such notice shall set forth the effective date of the removal. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Escrow Agent.

Upon the effective date of resignation or removal, the Escrow Agent will transfer the Escrow Fund then held by it to the successor Escrow Agent selected by Lessor and Lessee.

9. This Escrow Agreement shall terminate upon receipt by the Escrow Agent of the written notice from Lessor specified in Section 5(c) or Section 5(d) hereof.
10. All notices hereunder shall be in writing, sent by certified mail, return receipt requested, or by mutually recognized overnight carrier addressed to the other party at its respective address shown on page 1 of this Escrow Agreement or at such other address as such party shall from time to time designate in writing to the other parties; and shall be effective on the date of receipt.
11. This Escrow Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. No rights or obligations of the Escrow Agent under this Escrow Agreement may be assigned without the prior written consent of Lessor and Lessee.
12. This Escrow Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no waiver, consent, modification, or change of terms hereof shall bind any party unless in writing signed by all parties.
13. The Escrow Agent may employ agents, attorneys and accountants in connection with its duties hereunder and shall not be liable for any action taken or omitted in good faith in accordance with the advice of counsel, accountants, or other skilled persons.
14. This Escrow Agreement shall be governed by and be construed and interpreted in accordance with the internal laws of the State of California.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the day and year first above set forth.

LESSOR: HOLMAN CAPITAL CORPORATION

LESSEE: CITY OF TRACY

By: _____
Lance S. Holman
President & CEO

By: _____
Brent H. Ives
Mayor

ESCROW AGENT: DEUTSCHE BANK NATIONAL TRUST COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT A TO ESCROW AGREEMENT

CERTIFICATE OF ACCEPTANCE AND PAYMENT REQUEST

The following payment request is directed to Deutsche Bank National Trust Company (the “Escrow Agent”), as escrow agent under that certain Escrow Agreement dated [Closing Date] (the “Escrow Agreement”), between the City of Tracy (“Lessee”), Holman Capital Corporation (“Lessor”), and the Escrow Agent. Because Holman Capital Corporation has assigned all of its right, title, and interest in and to the Escrow Agreement to Santander Bank, N.A., all references herein to “Lessor” shall mean Santander Bank, N.A..

The Escrow Agent is hereby requested to pay from the Escrow Fund established and maintained under the Escrow Agreement the amount set forth below to the named payee(s). The amount shown is due and payable under a purchase order or contract (or has been paid by and not previously reimbursed to Lessee). The equipment described below is part or all of the Equipment leased pursuant to that certain Equipment Lease-Purchase Agreement and Equipment Schedule both dated December 6, 2013 (the “Lease Agreement”), between Lessor and Lessee:

QUANTITY	DESCRIPTION OF UNITS OF EQUIPMENT	AMOUNT	PAYEE
----------	--------------------------------------	--------	-------

Lessee hereby certifies and represents to and agrees with Lessor as follows with respect to the Equipment described above: (i) the Equipment has been delivered to the location(s) set forth in the Lease Agreement; (ii) a present need exists for the Equipment, which need is not temporary or expected to diminish in the near future; (iii) the Equipment is essential to and will be used by Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee’s authority; (iv) the estimated useful life of the Equipment based upon the manufacturer’s representations and Lessee’s projected needs is not less than the term of the Lease Agreement; (v) Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes as of the date of this Certificate; (vi) the Equipment is covered by insurance in the types and amounts required by the Lease Agreement; (vii) no Event of Default or Event of Nonappropriation, as those terms are defined in the Lease Agreement, and no event that with the giving of notice or lapse of time or both, would become an Event of Default or an Event of Nonappropriation, has occurred and is continuing on the date hereof; and (viii) sufficient funds have been appropriated by Lessee for the payment of all rental payments due under the Lease Agreement during Lessee’s current Fiscal Year.

Based on the foregoing, the Escrow Agent is hereby authorized and directed to fund the acquisition of the Equipment set forth above by paying, or causing to be paid, the manufacturer(s)/vendor(s) the amounts set forth on the attached invoices from the Escrow Fund held under the Escrow Agreement in accordance with its terms.

The following documents are attached hereto and made a part hereof: (a) Original Invoice(s) and (b) Copies of Certificate(s) of Ownership, designating Lessor as legal owner, and evidence of filing.

IF REQUEST IS FINAL REQUEST, CHECK HERE . The undersigned hereby certifies that the items of Equipment described above, together with the items of Equipment described in and accepted by Certificates of Acceptance and Payment Requests previously filed by Lessee with Lessor constitute all of the Equipment subject to the Lease Agreement.

Date: _____

Approved:

SANTANDER BANK, N.A., as Lessor

CITY OF TRACY, as Lessee

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

SCHEDULE A TO ESCROW AGREEMENT:

NOTICE AND ACKNOWLEDGEMENT OF
ASSIGNMENT OF ESCROW AGREEMENT

Holman Capital Corporation ("Lessor"), City of Tracy ("Lessee"), and Deutsche Bank National Trust Company ("Escrow Agent") have entered into an Escrow Agreement dated December 6, 2013 (the "Escrow Agreement"), pursuant to which Lessor, or its Assignee (as defined below), has deposited cash into the Escrow Fund established thereunder, which funds are to be used by Lessee to acquire certain Equipment.

Escrow Agent is hereby notified that Lessor has assigned all of its right, title, and interest in and to, but not its obligations under, the Escrow Agreement to Santander Bank, N.A. ("Assignee"), including, in particular, but without limitation, Lessor's security interest in the Escrow Fund and Lessor's right to approve all payment requests submitted by Lessee.

Date: December 6, 2013

LESSOR: HOLMAN CAPITAL
CORPORATION

LESSEE: CITY OF TRACY

By: _____
Lance S. Holman
President & CEO

By: _____
Brent H. Ives
Mayor

ESCROW AGENT: DEUTSCHE BANK NATIONAL TRUST COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

AUTHORIZING RESOLUTION

RESOLUTION NO. [REDACTED] OF THE GOVERNING BODY OF THE CITY OF TRACY, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE-PURCHASE AGREEMENT, AN ESCROW AGREEMENT AND EQUIPMENT SCHEDULE WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING, AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the City of Tracy (the “Lessee”), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation, or similar public entity of the State of California, is authorized by the laws of the State of California to purchase, acquire, and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto;

WHEREAS, the Lessee desires to purchase, acquire and lease certain equipment constituting personal property necessary for the Lessee to perform essential governmental functions; including without limitation various fire trucks, related other apparatus, and all other equipment (the “Equipment”) as the Designated Officers may deem to be necessary and/or desirable;

WHEREAS, in order to acquire such equipment, the Lessee proposes to enter into that certain Equipment Lease-Purchase Agreement (together with the Equipment Schedule and all related exhibits, schedules, and certificates attached thereto, the “Agreement”) with Holman Capital Corporation (the “Lessor”) and that certain Escrow Agreement with the Lessor and Deutsche Bank National Trust Company, as escrow agent, the forms of which have been presented to the governing body of the Lessee at this meeting;

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the separate Equipment Schedules as provided in the Agreement for the purchase, acquisition, and leasing of the equipment to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT RESOLVED by the governing body of the City of Tracy as follows:

Section 1. Approval of Documents. The governing body of the Lessee hereby approves the form, terms and provisions of the Agreement and the Escrow Agreement in substantially the forms presented to this meeting and authorizes and directs [Insert Individual Name], the [Insert Individual Title] [Insert other names and titles as desired and/or necessary] of City of Tracy, and such other persons as he/she/they may delegate (the “Designated Officers”), and each of them individually, for and in the name of and on behalf of the Lessee, to execute and deliver the Agreement, the Escrow Agreement, and any related Certificate, Exhibits, or other documents attached thereto in such forms with such changes, insertions, revisions, corrections, or amendments as shall be approved by the officer executing them. The execution of the foregoing by a Designated Officer shall constitute conclusive evidence of such officer’s and the governing body’s approval of any such changes, insertions, revisions, corrections, or amendments to the respective forms of agreements presented to this meeting.

Section 2. Other Actions Authorized. The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Agreement, the Escrow Agreement, and the Equipment Schedule to carry out, give effect to, and consummate the transactions contemplated thereby (including the execution and delivery of Certificates of Acceptance and Payment Requests, Notice and Acknowledgements of Assignments, and any tax certificate and agreement, each with respect to and as contemplated in the Agreement and/or Escrow Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement, the Escrow Agreement, and the Equipment Schedule. The Designated Officers and all other officers and employees of the Lessee are hereby directed and authorized to take and shall take all action necessary or reasonably required in order to select, purchase, and take delivery of the Equipment. All actions heretofore taken by officers, employees, and agents of the Lessee that are in conformity with the purposes and intent of this resolution are hereby approved, confirmed, and ratified.

Section 3. No General Liability. Nothing contained in this Resolution No. [REDACTED], the Agreement, the Escrow Agreement, any Equipment Schedule, nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution No. [REDACTED], the Agreement, the Escrow Agreement, Equipment Schedule, or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its

general credit or against its taxing power, except to the extent that the rental payments payable under the Agreement and Equipment Schedule are special limited obligations of the Lessee as provided therein.

Section 4. Appointment of Authorized Lessee Representatives. The Designated Officers are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement, the Escrow Agreement, and Equipment Schedule until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement, the Escrow Agreement, and Equipment Schedule.

Section 5. Severability. If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution No. [REDACTED].

Section 6. Repealer. All bylaws, orders, and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution, or ordinance or part thereof.

Section 7. Effective Date. This Resolution [REDACTED] shall be effective immediately upon its approval and adoption.

The foregoing Resolution was duly passed and adopted at a meeting of the governing body of the City of Tracy held on October [REDACTED], 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Presiding Officer

ATTEST:

By: _____
Secretary/Clerk

[form to be replaced with actual resolution, which will contain language tracking the form language contained herein]

CLOSING MEMORANDUM

**\$948,743.20 LEASE OF REPLACEMENT PUMPER FIRE TRUCKS
PURSUANT TO THAT EQUIPMENT LEASE-PURCHASE AGREEMENT AND EQUIPMENT SCHEDULE THERETO
DATED DECEMBER 6, 2013
BETWEEN CITY OF TRACY, AS LESSEE, AND
HOLMAN CAPITAL CORPORATION, AS LESSOR**

Pre-Closing: Pre-Closing will be held at the Lessee's convenience, on or before **December 5, 2013**. All documents will be executed and **three (3) blue ink** originals will be overnighted to Womble Carlyle Sandridge & Rice, Attn: Donald Keough, 250 W. Pratt Street, 13th Floor, Baltimore, Maryland 21201, for delivery no later than 9:00 am on the morning of December 5, 2013 and held in trust until such time as the wires and original documents are released by the Parties.

Closing: By wire transfer and pending receipt of original, executed Lease Documents, on the morning of Santander Bank, N.A., the Investor is authorized by Lessee to wire the Principal Amount of Lease to Escrow Agent, an amount equal to the Total Lease Proceeds, as defined below, pursuant to the Wire Instructions as follows:

Bank Name: Deutsche Bank Trust Company Americas
ABA No: 021001033
Account No: 01419647
Account Name: NYLTD FDS CTRL NY NY
F/B/O: HCC- City of Tracy CCD # [REDACTED]
Attn: Ms. Jane Snyder

and Counsel for each of the Parties will confirm by e-mail receipt of funds and then the release of all original documents held in trust, when such funds and/or documents are in the possession of each of the Parties.

Sources and Uses of Funds:

Principal Amount of Lease	\$948,743.20
TOTAL SOURCES	\$948,743.20
Total Equipment Cost:	\$948,743.20
Issuance Costs:	\$ 0.00
Legal/Doc Costs:	<i>Paid by Lessor</i>
TOTAL LEASE PROCEEDS	\$948,743.20

Attest:
CITY OF TRACY

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

RESOLUTION _____

AUTHORIZING THE EXECUTION AND EQUIPMENT LEASE PURCHASE AGREEMENT WITH HOLMAN CAPITAL CORPORATION, AND RELATED DOCUMENTS, AND APROPRIATING LEASE FUNDS TO PURCHASE TWO TRIPLE COMBINATION FIRE PUMPERS FROM HI-TECH EMERGENCY VEHICLE SERVICE, INC.

WHEREAS, The Fiscal Year 2013/14 adopted budget contains funding for the Fire Department to purchase a triple combination fire pumper, and

WHEREAS, On November 5, 2013, City Council approved Resolution 2013-170, authorizing the purchase of two triple combination fire pumpers and staff to negotiate a municipal lease for the purchase, and

WHEREAS, Staff was able to negotiate an equipment lease purchase agreement with Holman Capital Corporation at a more competitive rate, and

WHEREAS, The City of Tracy (the "*Lessee*"), a body politic and corporate duly organized and existing as a municipal corporation of the State of California, is authorized by the laws of the State of California to purchase, acquire, and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto, and

WHEREAS, The Lessee desires to purchase, acquire and lease certain equipment constituting personal property necessary for the Lessee to perform essential governmental functions; including without limitation various fire trucks, related other apparatus, and all other equipment (the "*Equipment*") as the Designated Officers may deem to be necessary and/or desirable, and

WHEREAS, In order to acquire such equipment, the Lessee proposes to enter into that certain Equipment Lease-Purchase Agreement (together with the Equipment Schedule and all related exhibits, schedules, and certificates attached thereto, the "*Agreement*") with Holman Capital Corporation (the "*Lessor*") and that certain Escrow Agreement with the Lessor and Deutsche Bank National Trust Company, as escrow agent and assignee, respectively, the forms of which have been presented to the governing body of the Lessee at this meeting, and

WHEREAS, The governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the separate Equipment Schedules as provided in the Agreement for the purchase, acquisition, and leasing of the equipment to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT RESOLVED, The City Council of the City of Tracy hereby approves the following:

SECTION 1. Approval of Documents. The governing body of the Lessee hereby approves the form, terms and provisions of the Agreement and the Escrow Agreement in substantially the forms presented to this meeting and authorizes and directs the Mayor, Brent H. Ives, and such other persons as he/she/they may delegate (the "*Designated Officers*"), and

each of them individually, for and in the name of and on behalf of the Lessee, to execute and deliver the Agreement, the Escrow Agreement, and any related Certificate, Exhibits, or other documents attached thereto in such forms with such changes, insertions, revisions, corrections, or amendments as shall be approved by the officer executing them. The execution of the foregoing by a Designated Officer shall constitute conclusive evidence of such officer's and the governing body's approval of any such changes, insertions, revisions, corrections, or amendments to the respective forms of agreements presented to this meeting.

SECTION 2. Other Actions Authorized. The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Agreement, the Escrow Agreement, and the Equipment Schedule to carry out, give effect to, and consummate the transactions contemplated thereby (including the execution and delivery of Certificates of Acceptance and Payment Requests, Notice and Acknowledgements of Assignments, and any tax certificate and agreement, each with respect to and as contemplated in the Agreement and/or Escrow Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement, the Escrow Agreement, and the Equipment Schedule. The Designated Officers and all other officers and employees of the Lessee are hereby directed and authorized to take and shall take all action necessary or reasonably required in order to select, purchase, and take delivery of the Equipment. All actions heretofore taken by officers, employees, and agents of the Lessee that are in conformity with the purposes and intent of this resolution are hereby approved, confirmed, and ratified.

SECTION 3. No General Liability. Nothing contained in this Resolution 2013- , the Agreement, the Escrow Agreement, any Equipment Schedule, nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution 2013- [REDACTED] the Agreement, the Escrow Agreement, Equipment Schedule, or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the rental payments payable under the Agreement and Equipment Schedule are special limited obligations of the Lessee as provided therein.

SECTION 4. Appointment of Authorized Lessee Representatives. The Designated Officers are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement, the Escrow Agreement, and Equipment Schedule until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement, the Escrow Agreement, and Equipment Schedule.

SECTION 5. Severability. If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution 2013- [REDACTED]

SECTION 6. Repealer. All bylaws, orders, and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution, or ordinance or part thereof.

Resolution _____
Page 3

SECTION 7. Effective Date. This Resolution 2013-____ shall be effective immediately upon its approval and adoption.

SECTION 8. Appropriation. The City Council hereby appropriates the lease funds, in the amount of \$948,743.20 for the purchase of two triple combination fire pumps.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the 3rd day of December, 2013 by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

December 3, 2013

AGENDA ITEM 1.D

REQUEST

APPROVE AMENDMENT THREE TO THE PROFESSIONAL SERVICES AGREEMENT (PSA) WITH DRAKE HAGLAN AND ASSOCIATES OF SACRAMENTO, CALIFORNIA, FOR ADDITIONAL DESIGN SERVICES FOR THE ELEVENTH STREET – EAST TRACY OVERHEAD, BRIDGE NUMBER 29C-0126 – CIP 73063, FEDERAL PROJECT NUMBER BHLS-5192(020), AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AMENDMENT

EXECUTIVE SUMMARY

The replacement of the existing Eleventh Street East Tracy Overhead Bridge #29C-0126, is an approved Capital Improvement Project from Caltrans. Caltrans, in previous years, has released a total of \$2.772 million toward the design and environmental services for this project and recently released \$260,000 for additional design services. Approval of Amendment 3 to the PSA with Drake Haglan and Associates will expedite the completion of the project design.

DISCUSSION

A majority of the design work for the Eleventh Street Overhead Bridge is complete and the project is scheduled for commencement of construction in Federal fiscal year 2014 – 2015, with most of the funding from State and Federal grants through Caltrans.

Due to the new guidelines from Caltrans for the design of new bridges, it is required to re-evaluate the foundation design and modify project design and specifications. In addition, Union Pacific Railroad (UPRR) requested further geotechnical studies regarding location of their tracks related to the foundation of the new bridge.

Furthermore, during the final surveying of the project boundary for acquisition of right-of-ways, it was noticed that acquisition of the land in fee, instead of obtaining permanent easements from the West Side Irrigation District (WSID) for construction of sidewalk along the northern boundary of Eleventh Street between North MacArthur Drive and South MacArthur Drive, is of greater benefit to the City.

Additional services are needed from the consultant to complete the required design, geotechnical information plat and legal descriptions to acquire additional right-of-ways from the WSID.

On July 20, 2013, at the City's request, the consultant submitted a proposal to complete the required services for an amount not to exceed \$198,503. Staff then submitted a request to Caltrans for their authorization. Caltrans approved the changes in the scope of services and released the requested dollar amount of \$260,000. However, it is necessary to amend the design consultant Professional Services Agreement and cover staff time.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact to the General Fund. The cost of this amendment has been secured from the bridge replacement grant.

RECOMMENDATION

Staff recommends that City Council approve Amendment 3 to the Professional Services Agreement (PSA) with Drake Haglan and Associates of Sacramento, California, to provide additional services for the Eleventh Street – East Tracy Overhead Bridge – CIP 73063, Federal Project Number BHLS-5192(020) for a not to exceed amount of \$198,503, and authorize the City Manager to execute the amendment.

Prepared by: Zabih Zaca, Senior Civil Engineer

Reviewed by: Kul Sharma, City Engineer
Andrew Malik, Development Services Director
Maria A. Hurtado, Assistant City Manager

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

ATTACHMENTS

Attachment A – Amendment 3 to Drake Haglan PSA

CITY OF TRACY
AMENDMENT NO. 3 TO
PROFESSIONAL SERVICES AGREEMENT
FOR DESIGN PROFESSIONALS FOR
11TH STREET – EAST TRACY OVERHEAD BRIDGE#29C-0126
CIP 73063
FEDERAL PROJECT NO. BHLS-5192(020)

This Amendment No. 3 (hereinafter "Amendment") to the Professional Services Agreement for project management, project study report, Environmental Analysis and preparation of design alternatives, for the 11th Street – East Tracy Overhead Bridge is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "City"), and Drake Haglan & Associates, Inc. (Hereinafter "CONSULTANT").

RECITALS

- A. The City and Consultant entered into a Professional Services Agreement for project management, project study report, Environmental Analysis and preparation of design alternatives, for the 11th Street – East Tracy Overhead Bridge (hereinafter "Agreement"), CIP 73063 which was approved by the City Council on October 20, 2009, pursuant to Resolution No. 2009-184.
- B. On MAY 10, 2011, pursuant to resolution 2009-184, the Development and Engineering Services Director has executed Amendment No. 1 to Agreement to provide additional services.
- C. On November 20, 2012, pursuant to resolution 2012-231 the Development Services Director has executed Amendment No. 2 to the Agreement to provide additional services.
- D. At the request of the City and in compliance with the terms of the Agreement, on July 25, 2013, CONSULTANT submitted a proposal to perform the additional services as described in this Amendment 3 to the referenced Professional Service Agreement. In October 2013, after negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of the additional services in accordance with the terms set forth in this Amendment.
- E. Pursuant to Resolution No. 2013-____, the Mayor has authorization to execute this Amendment.

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.

The following language shall be added as sub-item 2.4 to Paragraph 2 of the Agreement.

CONSULTANT shall perform the tasks described in Exhibit "A" attached hereto and incorporated herein by reference.

The services shall be performed by, or under the direct supervision of, CONSULTANT's Authorized Representative: **Dennis M. Haglan**. CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT replace any of the personnel listed in Exhibit "A," of the Agreement, nor shall CONSULTANT use any subcontractors or subconsultants, without the prior written consent of the CITY.

The following language shall be added to Section 5.1 of paragraph 5 of the Agreement.

In addition, for services performed by CONSULTANT in accordance with Amendment No. 3, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "B," of the Agreement incorporated herein by reference. CONSULTANT's fee for this Amendment No.3 is Not to Exceed ONE HUNDRED NINETY EIGHT THOUSAND, FIVE HUNDRED AND THREE DOLLARS (\$198,503). CONSULTANT's billing rates shall cover all costs and expenses of every kind and nature for CONSULTANT's performance of this Amendment No. 3 to the Agreement as outlined in Exhibit "A". No work shall be performed by CONSULTANT in excess of the Not To Exceed amount without the prior written approval of the CITY. Compensation for the extra services to be done by the CONSULTANT under this Amendment No. 3 shall be as described in Exhibit "A".

- 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.

City of Tracy

Amendment No.3 to Professional Services Agreement for Project Management, Project study Report, Environmental Analysis and Design alternatives for 11th street – East Tracy Overhead Bridge, CIP 73063, Federal Project no. BHLS-5192(020)

Page 3 of 6


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

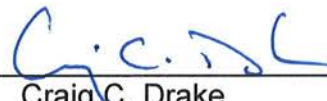
CONSULTANT

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

By:  _____
Dennis M. Haglan
Title: President
Date: 10-28-13

Federal Tax ID 26-0747074

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

By:  _____
Craig C. Drake
Title: Chief Financial Officer
Date: 10/29/13

Approved as to form

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

City of Tracy

Amendment No.3 to Professional Services Agreement for Project Management, Project study Report, Environmental Analysis and Design alternatives for 11th street – East Tracy Overhead Bridge, CIP 73063, Federal Project no. BHLS-5192(020)

Page 4 of 6

EXHIBIT A

SCOPE OF SERVICES

As discussed previously, we are requesting an amendment for additional services as outlined in this letter. The amount of the requested amendment for the additional scope of work is **\$198,503**, which revises the current contract amount from **\$3,149,245** to a total of **\$3,347,748**. The fee estimate for this additional work is included in Attachment A.

On February 7, 2013 UPRR requested that the design be modified to accommodate a second future track for the 11th Street East Tracy Overhead Bridge Replacement Project. As requested by the City, Drake Haglan and Associates (DHA) evaluated the redesign efforts and impacts that would occur from needing to meet the request by UPRR. After a substantial amount of coordination with UPRR, we recently received good news from UPRR that they are dropping their request and will accept the original design which still accommodates a future track. A portion of this amendment request is for the out-of-scope work of fully evaluating the request from UPRR.

As a result of the UPRR request, DHA spent additional project management time than originally scoped to coordinate with Caltrans and prepare revised federal funding exhibits to obtain additional Preliminary Engineering and Construction funding that would be needed to redesign the bridge and change bridge types to allow for a second future track. After UPRR recently dropped their request and sent notification that they are accepting the original design, DHA prepared revised federal funding exhibits and attachments and is in the process of assisting the City with coordinating with Caltrans.

Typical right of way activities are based on settlement by about the third contact with the owner. In all but one of the five acquisitions for this project, contacts have gone well over three contacts. In particular, additional negotiations have been extended for coordinating with UPRR, the Alvarez family, and West Side Irrigation District. Included in this amendment request are the additional acquisition services.

FHWA recently provided clarification that all utility agreements involving federal funds need to invoke the Buy America requirements. Right of Way certification cannot be obtained until all utility work is compliant with the Buy America requirements. This amendment request includes the additional services required to coordinate with the utility agencies to revise the utility agreements to include the Buy America clauses.

The other item included in this amendment is the lateral spreading analysis of the proposed bridge foundations. During the design phase, Caltrans issued "Guidelines on Foundation Loading and Deformation Due to Liquefaction Induced Lateral Spreading". Due to the liquefaction potential at the project site, additional engineering analyses have been performed in accordance with the published guidelines. This analysis is beyond the original scope of work.

Below is the scope of work for the additional effort. The project scope of work denoted as Exhibit A in the Professional Service Agreement shall be amended to include additional work items for:

Task 4 Geotechnical Evaluation and Report **\$13,305.21**

- The existing scope is modified to include the evaluation of the foundation loading and deformation due to liquefaction induced lateral spreading. Additional engineering analyses was performed in accordance with February 2011 and January 2012 Caltrans published guidelines that are beyond the original scope of work.

Task 7 Railroad and PUC Coordination **\$13,789.92**

- As a result of the February 2013 request by UPRR that the design be changed, DHA spent a considerable amount of time assisting the City in opposing this request and coordinating with UPRR. The existing scope is modified to include the additional coordination time including phone conversations, emails, and letters.

Task 15 Project Management **\$28,578.90**

- The existing scope is modified to include the preparation of additional federal funding exhibits and attachments that resulted from the UPRR request and subsequent notification that they are accepting the original design. The scope is also revised to include the required additional coordination with the City, Caltrans and the project team that has resulted from the delay caused by UPRR.

Task 16 Plans, Specifications, and Estimate

Subtask 16.6 Right of Way Acquisition Maps and Descriptions **\$26,849.59**

- The existing scope is modified to include the additional acquisition services that are required for this project. Four of the five acquisitions for this project have exceeded the originally anticipated settlement time which is based on assumption of settlement by about the third contact with the owner.

Subtask 16.9 UPRR and CPUC Coordination **\$47,734.46**

- DHA fully investigated the costs and impacts of redesigning the bridge to allow for a second future track in response to the UPRR notification that they were rescinding the approvals for the original design and requesting that the design be changed. This work consisted of preparing preliminary cost estimates, design exhibits, and evaluating all of the impacts to items such as utility relocations and right of way.

Subtask 16.10 Final Design Utility Coordination and Potholing **\$18,245.64**

- DHA previously obtained utility agreements with the various utility agencies. Recently FHWA clarified that all utility agreements for projects involving federally funded relocations now need to include the Buy America clauses. Utility agencies such as

City of Tracy

Amendment No.3 to Professional Services Agreement for Project Management, Project study Report, Environmental Analysis and Design alternatives for 11th street – East Tracy Overhead Bridge, CIP 73063, Federal Project no. BHLS-5192(020)

Page 6 of 6

PG&E and AT&T are currently refusing to comply with these requirements on numerous projects. This task includes the additional work of coordinating with the utility agencies, preparing revised utility agreements that comply with the new requirements, and obtaining agreements. This task also involves preparing new Notice to Owner (NTO) letters since the previous NTO letters are outdated due to the delay in the project caused by UPRR.

Subtask 16.16 Additional Coordination (Optional) (New Subtask)

\$49,998.70

- This task covers any unforeseen additional coordination with Caltrans, UPRR, San Joaquin County, and utility agencies that will be necessary to complete the design and to obtain agency approvals so that project is ready to be advertised for construction. DHA will be required to obtain written notice to proceed from the City of Tracy prior to performing any work under this subtask.

Total Estimates fees for Tasks 4, 7, 15 and 16 Services = \$198,503

RESOLUTION 2013-_____

APPROVING AMENDMENT 3 TO THE PROFESSIONAL SERVICES AGREEMENT (PSA) WITH DRAKE HAGLAN AND ASSOCIATES OF SACRAMENTO, CALIFORNIA, FOR ADDITIONAL DESIGN SERVICES FOR THE ELEVENTH STREET – EAST TRACY OVERHEAD, BRIDGE #29C-0126 – CIP 73063, FEDERAL PROJECT NO. BHLS-5192(020), AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AMENDMENT

WHEREAS, In 2008, CalTrans approved replacement of the existing Eleventh Street East Tracy Overhead Bridge #29C0126, and

WHEREAS, The City acquired the services of Drake Haglan and Associates in 2009 to complete project environmental document, design and PSE, and

WHEREAS, The scope of work of the consultant was increased through Amendment 1 and 2 to include value analysis of the project along with various alternate alignments of the project required by CalTrans, including completion of detour design, and utility relocation, and

WHEREAS, During final design, Caltrans is requesting re-evaluation of the foundation design based on their new guidelines for new bridges, and

WHEREAS, UPRR has requested more geotechnical studies regarding location of their tracks related to the bridge foundation, and

WHEREAS, Additional land will be obtained from WSID for construction of a new sidewalk along the north boundary of Eleventh Street and need to prepare plats and legal descriptions, and

WHEREAS, Additional services are needed from the consultant to complete required services as mentioned above, and

WHEREAS, The consultant submitted a proposal to complete the required services for a not to exceed amount of \$198,503, on a time and material basis, and

WHEREAS, There is no impact to the General Fund. The cost of this amendment has been secured from the bridge replacement grant from Caltrans;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves Amendment 3 to the Professional Services Agreement (PSA) with Drake Haglan and Associates of Sacramento, California, to provide additional services for the Eleventh Street – East Tracy Overhead Bridge – CIP 73063, Federal Project # BHLS-5192(020) for a not to exceed amount of \$198,503, and authorizes the City Manager to execute the current Amendment 3 and future amendments if necessary for additional required services.

* * * * *

The foregoing Resolution 2013 _____ was adopted by the Tracy City Council on the 3rd day of December 2013 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.E

REQUEST

AUTHORIZATION FOR EXERCISE OF OPTION TO PURCHASE FROM THE WEST SIDE IRRIGATION DISTRICT THE CONTRACT RIGHT TO 2,500 ACRE-FEET OF CENTRAL VALLEY PROJECT WATER SUPPLY FOR \$2.5 MILLION AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE ASSIGNMENT AGREEMENT

EXECUTIVE SUMMARY

The West Side Irrigation District (WSID) and the City entered into an agreement in 2001 for the City to purchase the contract right to 5,000 acre-feet of WSID's Central Valley Project (CVP) water entitlement. This purchase of the 5,000 acre-feet is in two installments. The initial amount of 2,500 acre-feet was obtained in 2004 upon the Bureau of Reclamation's approval of the 2001 agreement, and assignment to the City of the first 2,500 acre-foot increment. The City has an option to purchase the remaining 2,500 acre-feet of contract right. The option must be exercised prior to February 28, 2014, or the option will terminate. It is appropriate to execute the option agreement at this time so that the option will not be lost, the water supply will be available to the City for use, and the assigned water can be incorporated into the City's US Bureau of Reclamation renewed contracts.

DISCUSSION

This CVP contract water entitlement has historically been used for irrigation on lands that have been converted to urban uses in the City, or will convert to urban uses in the future. The water entitlement is designated as agricultural. When it is converted to urban use it will retain the agricultural shortage provisions. Therefore, during a normal year about 50% of water entitlement will be available to the City from this entitlement. In wet years, greater amounts of water will be available. During dry years the water available may be decreased to zero, but historically it has never been lower than 10%. The City has planned for this variability in annual water supply by banking water in the Semitropic Water Storage District and in the City's Aquifer Storage and Recovery program. Use of Central Valley Project water is a component of the City's diverse water supply portfolio. Acquisition of this water supply has been planned for and incorporated into the City's Urban Water Management Plan. The City has been making annual option payments in light of the potential benefits to the City of this additional increment of water supply. Upon exercise of the option, execution of the associated agreement and payment by the City, water will be available for the City's use starting March 1, 2014. When the agreement was originally entered into, a negative declaration was prepared. Since that time, there have been no subsequent changes in the project, no substantial changes with respect to the circumstances under which the project is undertaken, and no new information relating to the effects of the project. Therefore, pursuant to section 15162 of the CEQA Guidelines, no further environmental review is required.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no impact to the General Fund. This item was budgeted for FY 13-14 as CIP 75061 with funding from the Water Fund. The purchase price of the initial 2,500 acre-feet of entitlement was \$2.5 million. The second 2,500 acre-feet which is subject to the option agreement has a purchase price of \$2.5 million. The City has been making annual option payments of \$125,000 per year since 2004.

RECOMMENDATION

That the City Council, by resolution, authorize exercise of the option, payment of \$2.5 million for the contract right to 2,500 acre-feet of CVP water supply, and authorize the Mayor to execute the Agreement for Additional Assignment of Entitlement to CVP Water Between the City of Tracy and the West Side Irrigation District.

Prepared by: Steve Bayley, Project Specialist

Reviewed by: David Ferguson, Director of Public Works
Maria A. Hurtado, Assistant City Manager

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

ATTACHMENT

Attachment A – Agreement for Additional Assignment of Entitlement to CVP Water
Between the City of Tracy and the West Side Irrigation District

ATTACHMENT A

**AGREEMENT FOR ADDITIONAL ASSIGNMENT
OF ENTITLEMENT TO CVP WATER
BETWEEN THE CITY OF TRACY AND
THE WEST SIDE IRRIGATION DISTRICT**

This AGREEMENT FOR ADDITIONAL ASSIGNMENT OF ENTITLEMENT TO CVP WATER (“Agreement”) is made this ____ day of _____, 200_ by and between the CITY OF TRACY (“Tracy”), a California municipal corporation, and THE WEST SIDE IRRIGATION DISTRICT (“WSID”) an Irrigation District formed pursuant to Division 11 of the California Water Code.

RECITALS

WHEREAS, WSID is an irrigation district providing water for irrigation purposes to landowners within its service area; and

WHEREAS, WSID has an entitlement of 7,500 acre-feet of water pursuant to its water supply contract with the United States Bureau of Reclamation (“USBR”) through an agreement entitled “Interim Renewal Contract between the United States and The West Side Irrigation District Providing for Project Water Service” dated February 28, 2001, Contract No. 7-07-20-W0045-IR5 (“WSID Contract”), less 2,500 acre-feet of water (“Initial Assignment” or “Initial Assignment Right”) pursuant to an Agreement for Assignment of Entitlement of CVP Water Between Tracy and WSID dated (“Initial Assignment Agreement”); and

WHEREAS, Tracy provides municipal and industrial water to customers within its boundaries; and

WHEREAS, Tracy has an entitlement to 10,000 acre-feet of water pursuant to its water supply contract with the USBR through an agreement entitled “CONTRACT BETWEEN THE UNITED STATES AND CITY OF TRACY” dated July 22, 1974, Contract No. 14-06-200-7858A (“Tracy Contract”); and

WHEREAS, on _____, Tracy tendered notice of exercise of the option granted in the Initial Assignment Agreement for the assignment of an additional 2,500 acre-feet of water under the WSID Contract to Tracy (“Additional Assignment” or “Additional Assignment Right”).

NOW, THEREFORE, the Parties, on the terms and conditions herein set forth, agree as follows:

AGREEMENT

1. EFFECTIVE DATE

This Agreement shall become effective the date stated above immediately upon execution by all parties.

2. ASSIGNMENT OF ENTITLEMENT

A. Tracy hereby agrees to purchase from WSID, and WSID hereby agrees to assign and sell to Tracy, the permanent right to two thousand five hundred (2,500) acre-feet of the WSID Contract entitlement to water (“Additional Assignment Right” or “additional assignment”) pursuant to the terms and conditions of this Agreement, and contingent upon the parties’ compliance with applicable environmental laws, including the California Environmental Quality Act (CEQA).

B. Upon completion of Final Approval of the Additional Assignment Right, WSID’s assignment of a portion (2,500 acre-feet) of its WSID Contract shall immediately become effective and WSID shall have no further interest in the Additional Assignment Right or water provided thereunder except as specifically provided in Section 17 hereof.

3. ASSUMPTION OF RIGHTS AND OBLIGATIONS

A. Upon Final Approval of the Additional Assignment, Tracy shall assume all of the rights and obligations associated with the Additional Assignment Right, including any adjustment of costs for water service pursuant to the Additional Assignment Right made by the USBR upon and after the date approvals set forth in Section 13 are complete, and any other costs the USBR may require to be paid as a condition of approval of the Additional Assignment, provided that excepting the capital repayment obligation, costs thus due are cumulatively less than a one time charge of Five Thousand Dollars (\$5,000.00). WSID agrees that it will timely make all payments required pursuant to the WSID Contract excepting the capital repayment obligation to the extent it is not included in the applicable CVP water rates, until the date the Additional Assignment becomes effective or this Agreement terminates.

B. The parties understand and agree that the obligations to be assumed by Tracy pursuant to this Section 3 will be proportionate, on a per acre foot of entitlement basis, to the obligations of the WSID Contract (i.e., 33.3% of the obligation based upon assignment of 2,500 acre-feet of a 7,500 acre-feet contract). This Agreement shall at the option of Tracy terminate if the obligations it is required to assume exceed the foregoing, excepting the one-time charge of up to \$5,000 set forth in subsection 3A above and any increase in the CVP cost of service rate per acre-foot of water due to the change in purpose of use from agricultural to municipal and industrial.

4. **PAYMENT FOR ADDITIONAL ASSIGNMENT RIGHT**

A. Consideration. Tracy shall pay WSID Two Million Five Hundred Thousand Dollars (\$2,500,000), in the manner and as set forth in the terms and conditions of this Agreement, as full and complete payment for the Additional Assignment Right.

B. Method of Payment. Within five business days of Tracy's receipt of the approved documentation demonstrating Final Approval of the Additional Assignment Right, and upon execution by WSID of the appropriate assignment agreements, Tracy shall deliver to WSID cash or a cashier's check issued by a California bank in the amount of \$2,500,000.

C. Reimbursement. In the event that the Additional Assignment is rendered invalid for any reason, including but not limited to resolution of any challenge in a manner adverse to the Additional Assignment or termination of the Agreement, Tracy's obligations to make payment pursuant to this Section shall be suspended pending the parties' diligent efforts to cure and reinstate or otherwise cause the Additional Assignment to become valid. In the event that the cure is not effected within a reasonable period as determined by Tracy after consultation with WSID, this Agreement shall terminate. In the event of termination of this Agreement, due to invalidity or otherwise, and after the foregoing cure period if any, WSID shall be obligated to promptly (within 30 days) refund Tracy in full for any and all Consideration paid by Tracy in consideration for the Additional Assignment Right.

D. Effect of Challenge on Payment Rights and Obligations. If a judicial or administrative challenge related to this Agreement or the Additional Assignment is filed, Tracy at its sole discretion shall have the right to suspend performance under Subsections 4A and 4B while the challenge is pending, provided that Tracy makes a good faith effort to put to beneficial use the water to which Tracy is entitled pursuant to the Additional Assignment. Tracy shall exercise its rights under this subsection 4D by giving notice to WSID of the pendency of the challenge and of Tracy's exercise of its right under this subsection 4D. Once Tracy gives WSID notice pursuant to this subsection, Tracy's obligations to pay Consideration under Subsection 4B shall be suspended until two business days after resolution of the challenge in favor of the validity of the Agreement and the Additional Assignment

E. Injunctive Relief. If injunctive relief related to this Agreement or the Additional Assignment is obtained, which injunctive relief prevents Tracy from obtaining or from exercising the Additional Assignment Right, Tracy's obligation to pay Consideration under Subsections 4A and 4B shall be suspended until two business days after the injunction is dissolved, unless Tracy has previously notified WSID of Tracy's exercise of its right to suspend pursuant to Subsection 4D, in which case the provisions of Subsection 4D shall control.

5. **PRIORITY OF ASSIGNMENT WATER**

A. The parties acknowledge that the water provided pursuant to the Additional Assignment Right is currently considered by the USBR to be agricultural water, subject to agricultural priority. The USBR is in the process of finalizing its Draft Urban Water Supply

Reliability Policy (date), which will formalize a policy of priority to be granted to agricultural water that is converted to municipal and industrial (“M&I”) use. The parties further acknowledge that the draft policy provides that such water will retain its agricultural priority, and the price for the Additional Assignment Right has been established upon that basis. WSID has represented that, without input from Tracy, WSID has been and may continue to seek approval of an M&I priority for the Additional Assignment Right, thereby increasing its reliability. If WSID is successful in obtaining the USBR’s final approval in writing that a M&I priority will be afforded to the Additional Assignment Right on a permanent basis, the purchase price for the Additional Assignment Right will be increased by that percentage increase, if any, in reliability of the Additional Assignment Right as a result of the conversion to M&I priority, not to exceed twelve and one half per cent (12.5%). This Section 5A shall apply for ten (10) years following the Effective Date of this Agreement, whereupon Section 5A shall terminate and be of no further force or effect.

B. The parties agree that neither this agreement nor this Section B in any way represent or indicate Tracy’s position with respect to the CVP M&I Water Shortage Policy and that Tracy expressly reserves the right to take any position or action with respect to that Policy, including without limitation opposition to WSID’s position.

6. JOINT DEFENSE; SHARING OF REGULATORY AND LITIGATION COSTS

A. The parties mutually agree to vigorously defend any litigation or regulatory challenge to the Additional Assignment contemplated in this Agreement, including any Final Approval necessary thereto, except as provided herein. The parties agree to cooperate fully in the defense of such action in furtherance of Final Approval of the Additional Assignment. The parties agree to share the costs of such defense equally, unless the challenge is to the water entitlement under the WSID Contract, before or after the Additional Assignment becomes effective, in which case WSID shall be solely responsible for the defense. Except as provided herein, to the extent that the parties undertake joint defense, any attorney fees or costs recovered shall be equally shared between the parties.

B. Tracy shall have the right to reasonably approve the choice of defense counsel and participate equally in strategic and other decision-making. The parties shall attempt to coordinate their respective defense in response to such litigation upon terms mutually agreed upon, provided that Tracy’s exercise of discretion with respect to such litigation shall not be restricted or impaired. WSID and Tracy shall communicate promptly to the other party any offers for the settlement of the litigation and each party shall secure the other’s consent to any settlement, which consent shall not unreasonably be withheld or delayed. The parties agree that it is in their best interests to avoid unnecessary duplication of work with respect to maintaining the action, thereby reducing fees and expenses and promoting efficiency during pretrial and trial proceedings.

C. The parties agree that, in the event of a challenge to the Additional Assignment pursuant to this Agreement, they have interests in common and shall litigate common claims and have legal theories in common, and each party may benefit from open communication with one another about all matters relating to the litigation. The parties agree that such disclosures and

communications are wholly consistent with the purpose of the attorney work product privilege, which is to safeguard mental impressions, opinions, strategies, work product and trial preparation. The parties agree that, from time to time, the mutual interests of the parties can best be served by sharing documents, factual material, mental impressions, memoranda, interview reports, legal research, expert data and other information hereinafter referred to as "confidential materials." These confidential materials are privileged from disclosure to adverse parties or other third parties as a result of the attorney-client privilege, the attorney work product privilege, and other applicable privileges. All information, which is provided by a party to the other or to litigation counsel in furtherance of this Agreement, shall be considered confidential in nature and may not be used for any other purpose.

D. The parties recognize that much of the information required to be provided to assist in defense of any challenge may be provided by or under the supervision of a party's counsel. As such the information may be protected by the work product or the attorney-client privilege. When providing information to one of the other parties, or to special counsel, a party is intending to fulfill its obligations to cooperate in defense of challenges, and such communications are not intended to constitute a waiver of the applicable privileges. Similarly, information provided by, or to the other party, is not intended to waive any applicable privilege, but to further the common interests of the parties.

E. In addition to the foregoing, and not in derogation thereof, the parties are each entitled to defend their interests in any litigation or regulatory action challenging the validity of any aspect of the Additional Assignment, including but not limited to the USBR's actions, and environmental compliance at its own cost. The parties shall be separately responsible financially and otherwise to defend and/or advocate their interests with respect to matters related to the parties' respective underlying contract entitlements, which matters are not caused by and exist independent of the Additional Assignment.

7. RELATIONSHIP TO OTHER CONTRACTS

This Agreement shall be implemented in a manner consistent with the terms of the WSID Contract and the Tracy Contract and is not intended to be inconsistent with those contracts. This Agreement modifies the Initial Assignment Agreement as expressly provided herein, but is not intended to be inconsistent with the Initial Assignment Agreement. The parties anticipate that the assignment contemplated herein shall be effected through the execution and delivery of a new or amended contract(s) between the USBR and each party.

8. QUALITY OF WATER

WSID makes no warranty or representations as to the quality or fitness for use of the water delivered to Tracy by the USBR pursuant to the Additional Assignment Right. The parties acknowledge that Tracy is familiar with the quality of water received from the USBR, and that Tracy shall be responsible for all necessary measures at its own expense for any testing, treatment, and other steps required for the intended uses of water delivered to Tracy pursuant to the Additional Assignment Right.

9. POINT OF DELIVERY

Additional Assignment Right water shall be delivered by the USBR pursuant to the terms of any new or amended contract between each of the parties and the USBR. The parties acknowledge that Tracy anticipates the possibility of taking delivery of water by the USBR pursuant to the Additional Assignment Right from a new delivery point on the State Water Project California Aqueduct, and that this, among other things, may be a term of the new or amended contract between Tracy and the USBR, however, success in obtaining a new delivery point is not a condition precedent to assignment.

10. USE WITHIN HISTORICAL BOUNDARIES OF WSID

Tracy hereby agrees that the Initial Assignment water is intended primarily for use within the original historic boundaries of WSID, much of which is now within Tracy's city limits. Notwithstanding the foregoing, the parties agree that Tracy is acquiring all rights to the Initial Assignment Right now held by WSID, and can commingle, store, exchange, transfer, and otherwise use the Initial Assignment Right water in any manner and location allowed by law, and can require reasonable charges, terms and conditions, without limitation, in connection with all uses of such water.

11. ENVIRONMENTAL REVIEW

A. The parties acknowledge that they attempted to obtain all regulatory and environmental approvals at one time for the Initial and Additional Assignments (5,000 acre-feet of water) when approvals for the Initial Assignment were obtained. To the extent further approvals are required in connection with this Additional Assignment, the parties will use their best good faith efforts to prevent duplication of regulatory and environmental approvals obtained with respect to the Initial Assignment. WSID will be the lead agency for purposes of the California Environmental Quality Act ("CEQA") for any environmental documentation and other regulatory requirements needing to be completed to obtain final approval of the Additional Assignment. Tracy shall be a responsible agency for that portion of the CEQA environmental review completed for the water supply provided under this Agreement. The parties also acknowledge that the USBR may be required to comply with the requirements of the National Environmental Policy Act ("NEPA") in order to provide the approvals required by this Agreement if acceptable to the USBR. If so, the parties agree to coordinate the CEQA process and documentation with the NEPA process and documentation in order to facilitate completion of the approvals required by this Agreement.

B. The parties will jointly approve the choice of consultant(s), all work product and billings, including any draft CEQA documents before they are made public. WSID and Tracy will form a subcommittee to efficiently and cooperatively address such issues. The same procedures shall apply to NEPA and any other required environmental compliance to the extent possible.

12. PAYMENT OF COSTS

Any and all costs and expenses for all environmental review and documentation for which either WSID or Tracy would be responsible for purposes of obtaining Final Approval of the Additional Assignment shall be paid by Tracy. If the assignments contemplated by this Agreement fail to occur due to termination by WSID, failure of the USBR or any other governmental agency to provide any necessary approval, or order of any state or federal court, or any combination thereof, WSID shall reimburse Tracy for fifty percent (50%) of the costs of any additional environmental review and documentation required for this Additional Assignment, or Ten Thousand Dollars (\$10,000.00), whichever is less. Costs shall not include costs associated with time spent by WSID or Tracy staff, or legal counsel, or elected officials.

13. APPROVAL OF THE BUREAU OF RECLAMATION

The parties acknowledge that the approval of the USBR, and other governmental approvals, will be required before the Additional Assignment contemplated by this Agreement can be completed. Consequently, the obligations of the parties under this Agreement are subject to the occurrence of all of the following conditions, which are for their joint benefit:

A. The approval by the USBR of the permanent assignment of the Additional Assignment Right to Tracy pursuant to this Agreement, and the due execution of the appropriate contracts, agreements or amendments with the USBR.

B. WSID's compliance with CEQA as lead agency and Tracy's compliance with CEQA as responsible agency.

C. "Final Approval" has been obtained, meaning that all governmental approvals, consents, and other requirements necessary to complete and finalize the Additional Assignment provided for herein have been obtained, including but not limited to (i) approval by the USBR, WSID and Tracy, and (ii) compliance with applicable environmental laws, including but not limited to NEPA, CEQA, and the ESA, has occurred, and (iii) Tracy is fully entitled to order and receive water from the USBR pursuant to this Additional Assignment. A validation action judgment pursuant to Section 33 shall not be required for Final Approval.

14. TERMINATION

The parties to this Agreement shall have the right of termination for cause as set forth in this Section:

A. Failure of Conditions. If any condition set forth in Section 13 above is not satisfied within three (3) years from the effective date of this Agreement, either party may terminate this Agreement; provided, however, that said three (3) year period shall be extended during the pendency of any litigation filed in any way challenging or seeking to validate or invalidate the Additional Assignment, including but not limited to any approval, consent or other action necessary thereto.

B. Conditions Imposed. Should the USBR, or any other state or federal agency or any state or federal court, exercising jurisdiction over this Agreement and/or the operations of the parties or their water rights, impose any requirements, limitations, operations restrictions, fees, charges, costs, water rights restrictions or operating criteria (collectively “Requirements”) upon either or both of the parties in whole or in part as a result of the assignment of entitlement under this Agreement, which Requirements (individually or collectively) actually and substantially reduce the value of this transaction for either party, then the party burdened by such Requirements or any of them may reasonably determine that compliance with such Requirements, or any of them, would be overly burdensome for that party, and terminate this Agreement.

C. Litigation. If the costs required to be paid by either party of litigation, regulatory review, compliance with regulatory conditions, including but not limited to CEQA or NEPA compliance and/or mitigation, or relief afforded to plaintiffs in an action brought in State or Federal court involving this Agreement exceeds \$200,000 and, in the reasonable judgment of that party, are too costly for that party in relation to the benefits to be received, then that party may terminate this Agreement.

D. Notice. A party shall give thirty (30) days’ advance written notice to the other party prior to terminating this Agreement pursuant to this Section. Prior to giving such notice, the party electing to terminate pursuant to this Section shall have met and conferred with representatives of the other party to discuss the concerns.

In the event of termination under this Section, the parties shall thereafter be under no further obligation or responsibility hereunder except as specified in this Agreement, including but not limited to Section 4C, and will release each other from further obligations under this Agreement, except for their respective share of costs incurred prior to the effective date of termination. Any costs required or liabilities incurred due to the termination itself shall be paid or otherwise borne by the party terminating the Agreement.

15. **REPRESENTATIONS AND WARRANTIES**

The parties represent and warrant, each to the other, that as of the Effective Date and as of the date of the Additional Assignment:

A. Each party is validly organized and existing under and by virtue of the laws of the State of California.

B. Each party has authority to execute and perform this Agreement, and has authorized the execution and performance of this Agreement.

C. Neither party’s execution and performance of this Agreement will result in the breach of any other agreement to which that party is a party or to which that party is otherwise subject or bound.

16. USE OF WATER

Consistent with the provisions of Water Code Section 475 and 1244, the parties agree that neither the Additional Assignment nor this Agreement is evidence of the availability of surplus water beyond the terms of this Agreement or the lack of beneficial use of the water involved in this Agreement, and they shall not contend otherwise.

17. EMERGENCY WATER

The parties acknowledge that the water available under the WSID Contract has been available to be used as a primary water supply in the event that WSID's primary water supply source failed. Completion of the assignment contemplated by this Agreement will reduce the volume of water available to WSID pursuant to the WSID Contract for that purpose. In consideration of that:

A. Emergency Supply. Tracy hereby agrees to provide WSID with an emergency supply of water, subject to USBR approval and compliance with all applicable laws, in the event that two or more of WSID's pumps from Old River concurrently fail, which emergency supply will be available for a thirty (30) day period after failure of the second pump.

B. Limit. The emergency water provided pursuant to this Section shall not exceed five hundred (500) acre-feet or the amount provided from the USBR pursuant to the annual allocation pursuant to the Additional Assignment Right, whichever is less. The availability of emergency water expires ten (10) years from the effective date of the Initial Assignment Agreement.

C. Repayment. WSID shall use its best good faith efforts to reimburse Tracy with one acre foot of water for each acre foot of water used by WSID pursuant to this Section within the same water year in which it is provided by Tracy, unless Tracy requests otherwise. If WSID determines that such repayment cannot be paid, Tracy shall have the right to elect whether to be (1) repaid with water available to WSID in the next water year; or (2) reimbursed for the water at the contract rate that Tracy paid to the USBR for such water, plus administrative, carrying, and other costs reasonably and directly attributable to that water with payment made within 60 days of receipt of an invoice from Tracy. If the water can be obtained at lower cost due to its agricultural purpose of use, without any inconvenience, cost or other burden to Tracy, then the costs paid by WSID shall be appropriately reduced.

18. RECIPROCAL INDEMNIFICATION

A. Tracy shall hold harmless, indemnify, and defend WSID (with counsel of WSID's choice) and its members, directors, officers, employees, agents, and contractors (collectively "WSID's Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of actions, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or connected with this Agreement and caused by the negligence, gross negligence, or intentional misconduct of Tracy, except to the extent

caused by the negligence, gross negligence or intentional misconduct of any of WSID's Indemnified Parties.

B. WSID shall hold harmless, indemnify, and defend Tracy (with counsel of Tracy's choice) and its members, directors, officers, employees, agents, and contractors (collectively "Tracy's Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of actions, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or connected with this Agreement and caused by the negligence, gross negligence, or intentional misconduct of WSID, except to the extent caused by the negligence, gross negligence or intentional misconduct of any of Tracy's Indemnified Parties. WSID shall further hold harmless, indemnify and defend Tracy's Indemnified Parties (with counsel of Tracy's choice) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of actions, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or connected with WSID's acquisition and use of water pursuant to Section 17 hereof.

19. NO LIABILITY

The parties acknowledge that Tracy is familiar with the risks associated with delivery of CVP water due to its position as a CVP contractor. The parties further acknowledge that WSID is providing Tracy only with whatever rights it has pursuant to the portion of the WSID Contract to be assigned (the Additional Assignment Right), and that the right to receive water pursuant to the Additional Assignment right may be restricted or reduced by the United States in the future as allowed by law. Tracy shall hold WSID, its officers, agents, servants, employees, and consultants harmless from and against any and all losses, claims, liens, demands and causes of action of every kind and character and, without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, connected with, or arising directly or indirectly out of, the availability of water under that portion of the WSID Contract assigned to Tracy pursuant to this Agreement.

20. ATTORNEY'S FEES

If it shall be necessary for any party hereto to commence legal action or arbitration to enforce the terms and provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys fees, expenses and costs incurred. The expenses and costs incurred shall include, without limitation to other reasonable types of outlay directly caused by or reasonably required by the litigation or dispute, the costs of any experts employed in either the preparation or presentation of any evidence in such proceedings incurred in preparing for or participating in such litigation.

21. COOPERATION

To the extent reasonably required, each party to this Agreement shall, in good faith, execute such further agreements or documents and take such further actions as are needed to consummate this Additional Assignment. The parties agree to cooperate and assist each other in

good faith in meeting such requirements of regulatory agencies as may be applicable to performance of any terms of this Agreement.

22. NOTICES

All notices that are required, either expressly or by implication, to be given by any party to the other under this Agreement shall be delivered, sent by facsimile, or mailed, United States first-class postage prepaid, addressed as follows:

THE WEST SIDE IRRIGATION DISTRICT
Post Office Box 177
Tracy, California 95378-0177
Phone: (209) 835-0503
Fax: (209) 835-2702

CITY OF TRACY
Director of Public Works
520 Tracy Boulevard
Tracy, California 95376
Phone: (209) 831-6300
Fax: (209) 831-4472

Notice shall be deemed given (a) two (2) calendar days following mailing via regular or certified mail, return receipt requested, (b) one (1) business day after deposit with any one day delivery service assuring "next day" delivery, (c) upon actual receipt of notice, or (d) upon transmission, if by facsimile to the correct number, whichever is earlier. The parties shall promptly give written notice to each other of any change of address and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

23. OTHER AGREEMENTS

Nothing contained herein restricts WSID from providing water services and sales to others as authorized by law, which do not interfere with WSID's obligations to Tracy or Tracy's rights pursuant to this Agreement.

24. SURVIVAL

Each of the provisions of and covenants contained in this Agreement, to the extent applicable, shall survive the performance of the executory provisions of this Agreement, and the transfer of entitlements.

25. ASSIGNABILITY

Until completion of the approvals set forth in Section 13 of this Agreement, neither party shall sell, assign, transfer, convey or encumber this Agreement or any right or interest herein or

thereunder, or suffer or permit any such assignment, transfer or encumbrance to occur by operation of law without the prior written consent of the other party, and such consent shall not be unreasonably withheld.

Subject to the provisions of this Section, this Agreement shall be binding upon the successors and assigns of the parties hereto.

26. NO BENEFIT TO THIRD PARTIES

This Agreement is made for the sole benefit of the parties hereto and their respective successors and assigns and no other person or persons shall have any right of action hereon.

27. TIME

Time is of the essence in the performance of the parties' respective obligations contained in this Agreement.

28. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between WSID and Tracy and supersedes any oral agreement, statement or promise between them relating to the subject matter of the Agreement, other than the Initial Assignment Agreement except as expressly set forth herein. Any amendment, including oral modification, must be reduced to writing and signed by both parties to be effective.

29. CONTROLLING LAW

The interpretation and performance of this Agreement shall be governed by the laws of the State of California.

30. CONSTRUCTION

Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed in favor of the assignments contemplated herein, which is the purpose of this Agreement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with that purpose that would render the provision valid shall be favored over any interpretation that would render it invalid.

The parties agree that this Agreement is the product of mutual full and fair negotiation, and that both parties were represented by counsel. This Agreement shall therefore be interpreted as drafted equally by both parties.

The captions contained in this Agreement are for convenience only and shall not be interpreted so as to change or affect the meaning of the provisions of this Agreement.

31. **SEVERABILITY**

If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

32. **COUNTERPARTS**

The parties may execute this Agreement in two counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

33. **VALIDATION ACTION**

Tracy shall have the right to conduct a validation action with respect to this Agreement, the Additional Assignment, revision to the Tracy Contract as a result of the Additional Assignment, or any new Contract between Tracy and the Bureau which results from the Additional Assignment, or any of them, pursuant to the provisions of California Code of Civil Procedure section 860 et seq., or other authority, at Tracy’s own cost. WSID shall cooperate therewith.

THE WEST SIDE IRRIGATION
DISTRICT, a political subdivision of the State of
California

Date: _____

By _____
Jack Alvarez, President

ATTEST:

APPROVED AS TO FORM:

Secretary

Counsel for The West Side Irrigation District

Date: _____

CITY OF TRACY, a California municipal corporation

Date: _____

By _____
Brent H. Ives, Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney of the City of Tracy

Date: _____

RESOLUTION _____

AUTHORIZING EXERCISE OF OPTION TO PURCHASE FROM THE WEST SIDE IRRIGATION DISTRICT THE CONTRACT RIGHT TO 2,500 ACRE-FEET OF CENTRAL VALLEY PROJECT WATER SUPPLY FOR \$2.5 MILLION AND AUTHORIZING THE MAYOR TO EXECUTE THE ASSIGNMENT AGREEMENT

WHEREAS, The West Side Irrigation District (WSID) and the City entered into an agreement in 2001, for the City to purchase the contract right to 5,000 acre-feet of WSID's Central Valley Project (CVP) water entitlement, and

WHEREAS, It is appropriate to execute the option agreement at this time so that the option will not be lost, the water supply will be available to the City's US Bureau of Reclamation renewed contracts, and

WHEREAS, The City has planned for this variability in annual water supply by banking water in the Semitropic Water Storage District and in the City's Aquifer Storage and Recovery program, and

WHEREAS, Acquisition of this water supply has been planned for and incorporated into the City's Urban Water Management Plan;

NOW, THEREFORE, BE IT RESOLVED, That the City Council, authorizes exercise of option to purchase from the West Side Irrigation District the contract right to 2,500 acre-feet of Central Valley Project Water Supply for \$2.5 million and authorizes the Mayor to execute the Assignment Agreement.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 3rd day of December, 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

ACCEPTANCE OF THE TWELFTH STREET SIDEWALK IMPROVEMENTS – CIPs 73132 AND 73134, COMPLETED BY KNIFE RIVER CONSTRUCTION OF STOCKTON, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

Knife River Construction, the contractor, has completed construction of the Twelfth Street Sidewalk Improvements – CIPs 73132 and 73134, in accordance with project plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends Council accept the project to enable the City to release the contractor's bond and retention.

DISCUSSION

On May 7, 2013, City Council awarded a construction contract for the Twelfth Street Sidewalk Improvements – CIPs 73132 and 73134, in an amount not-to-exceed \$123,787.

The scope of work for this project included 360 feet of sidewalk, curb and gutter; including demolition, saw-cutting, grinding and overlay of concrete and asphalt pavement, storm drain, catch basins, curb ramps, and tree removal. The project location is along Twelfth Street between Wilson Avenue and Harding Avenue.

One change order was issued in the amount of \$5,741.69 for this project which consisted of installation of sidewalk drains, relocation of two feet of water service and other miscellaneous items to pay for unforeseen conditions.

Status of budget and project costs is as follows:

A. Construction Contract Amount	\$ 123,787.00
B. Change orders	\$ 5,741.69
C. Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 7,528.46
D. Project Management Charges (Estimated)	<u>\$ 11,293.00</u>
Total Project Costs	\$ 148,350.15
Budgeted Amount	\$ 189,000.00

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

STRATEGIC PLAN

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

FISCAL IMPACT

CIPs 73132 and 73134 are approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund. All remaining unused funds will be transferred back into the CIPs for future sidewalk construction.

RECOMMENDATION

That City Council by resolution accept construction of the Twelfth Street Sidewalk Improvements – CIPs 73132 and 73134 completed by Knife River Construction of Stockton, California and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bond and retention payment.

Prepared by: Paul Verma, Senior Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer
Andrew Malik, Development Services Director
Maria A. Hurtado, Assistant City Manager

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

RESOLUTION 2013- _____

ACCEPTING THE TWELFTH STREET SIDEWALK IMPROVEMENTS – CIPs 73132 AND 73134, COMPLETED BY KNIFE RIVER CONSTRUCTION OF STOCKTON, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS On May 7, 2013, City Council awarded a construction contract for the Twelfth Street Sidewalk Improvements, CIP 73132 and 73134, in an amount not-to-exceed \$123,787, and

WHEREAS, The contractor has completed construction of the Twelfth Street Sidewalk Improvements – CIPs 73132 and 73134, in accordance with project plans, specifications, and contract documents, and

WHEREAS, One change order was issued in the net amount of \$5,741.69, and

WHEREAS, Status of budget and project costs are estimated to be as follows:

A. Construction Contract Amount	\$ 123,787.00
B. Change orders	\$ 5,741.69
C. Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 7,528.46
D. Project Management Charges (Estimated)	<u>\$ 11,293.00</u>
Total Project Costs	\$ 148,350.15

WHEREAS, CIPs 73132 and 73134, are approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund. All remaining funds will be transferred back into the CIPs for future sidewalk construction;

NOW, THEREFORE BE IT RESOLVED That City Council, accepts construction of the Twelfth Street Sidewalk Improvements CIPs 73132 and 73134, completed by Knife River Construction of Stockton, California, and authorizes the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bond and retention payment

* * * * *

The foregoing Resolution 2013-_____ was adopted by City Council on the 3rd day of December, 2013, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM F00

REQUEST

AUTHORIZE INTERIM RENEWAL CONTRACTS BETWEEN THE UNITED STATES BUREAU OF RECLAMATION AND THE CITY FOR PROVIDING CENTRAL VALLEY PROJECT WATER SERVICE AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENTS

EXECUTIVE SUMMARY

Authorize three Interim Renewal Contracts for the United States Bureau of Reclamation (Bureau), Central Valley Project water, from the Delta-Mendota Canal. The term for these contracts is approximately two years.

DISCUSSION

In 1974, the City entered into a long-term contract with the Bureau for water service from the Delta-Mendota Canal. This contract is for delivery of 10,000 acre-feet per year and expires on December 31, 2013.

In 2004, the Bureau authorized contract assignments between the City and Banta Carbona Irrigation District (BCID), and the City and the West Side Irrigation District (WSID). The contract assignments provide for delivery of 7,500 acre-feet of water per year (5,000 acre-feet from the BCID contract and 2,500 acre-feet from the WSID contract) from the Delta-Mendota Canal. In 2004, both BCID and WSID had interim renewal contracts with the Bureau and these agencies have subsequently renewed these contracts into long-term renewal contracts. In 2007, 2008, 2010, and 2012, the City entered into interim renewal contracts, the most recent of which expires on February 28, 2014.

The City and the Bureau have been negotiating a new long-term renewal contract. Unfortunately, the Bureau is currently unable to enter into long-term contracts until completion of appropriate environmental documentation for the Central Valley Project Improvement Act, which includes the operation of the Central Valley Project. Therefore, an interim contract is necessary.

With the upcoming expiration of the long-term contract, the Bureau and the City agreed to combine the 7,500 acre-feet contract assignments with the 10,000 acre-feet long-term contract for a combined interim renewal contract in the amount of 17,500 acre-feet of water, with a provision to increase to 20,000 acre-feet when the WSID option agreement is executed and approved. The Bureau has prepared the Interim Renewal Contract for the long-term contract for execution by the City. This interim renewal contract has a term effective from January 1, 2014, through February 29, 2016.

As a precautionary measure that in the event approval of the long-term interim renewal contract is delayed, the Bureau prepared additional interim renewal contracts for the BCID and WSID assignments. The term of these agreements is from March 1, 2014, through February 29, 2016.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact to the General Fund or the Water Fund for entering into these agreements. The cost of the water received is set by the Bureau every five years independently of the interim renewal contracts.

RECOMMENDATION

That the City Council, by resolution, authorize:

Interim Renewal Contract No. 14-06-200-7858A-IR1
Interim Renewal Contract No. 14-06-200-4305-A-IR14-B (BCID)
Interim Renewal Contract No. 7-07-20-W0045-IR14-B (WSID)

between the United States and the City of Tracy providing for Central Valley Project Water Service and authorize the City Manager to execute the agreements.

Prepared by: Steve Bayley, Project Specialist

Reviewed by: David Ferguson, Director of Public Works
Maria A. Hurtado, Assistant City Manager

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

ATTACHMENTS

Attachment A - Interim Renewal Contract No. 14-06-200-7858A-IR1
Attachment B - Interim Renewal Contract No. 14-06-200-4305-A-IR14-B (BCID)
Attachment C - Interim Renewal Contract No. 7-07-20-W0045-IR14-B (WSID)

M&I Only
RO/SCCAO-TO Draft 09/26/2013
SCCAO-TO Draft 09/16/2013
Contract No. 14-06-200-7858A-IR1

1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California

5 INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 THE CITY OF TRACY
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM THE DELTA DIVISION

10 THIS CONTRACT, made this _____ day of _____, 201____, in
11 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
12 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
13 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
14 June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050),
15 as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
16 hereinafter referred to as Federal Reclamation law, between the UNITED STATES OF
17 AMERICA, hereinafter referred to as the United States, and the CITY OF TRACY, hereinafter
18 referred to as the Contractor, a public agency of the State of California, duly organized, existing,
19 and acting pursuant to the laws thereof, with its principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
23 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood
24 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection

25 and restoration, generation and distribution of electric energy, salinity control, navigation and
26 other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River,
27 and the San Joaquin River and their tributaries; and

28 [2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related
29 facilities, hereinafter collectively referred to as the Delta Division Facilities, which will be used
30 in part for the furnishing of water to the Contractor pursuant to the terms of this interim renewal
31 contract; and

32 [3rd] WHEREAS, the rights to Project Water were acquired by the United States
33 pursuant to California law for operation of the Project; and

34 [4th] WHEREAS, the Contractor and the United States entered into Contract
35 No. 14-06-200-7858A dated July 22, 1974, which established the terms for the delivery to the
36 Contractor of up to ten thousand acre-feet of Project Water from the Delta Mendota Canal
37 through December 31, 2013; and

38 [5th] WHEREAS, the United States and the Contractor have, pursuant to subsection
39 3404(c)(3) of CVPIA, subsequently entered into a binding agreement identified as Binding
40 Agreement No. 14-06-200-7858A-BA dated September 30, 1997, which sets out the terms
41 pursuant to which the Contractor agreed to renew Contract No. 14-06-200-7858A before its
42 expiration date after completion of a programmatic environmental impact statement and other
43 appropriate environmental documentation and negotiation of a renewal contract, and which also
44 sets out the consequences of a decision not to renew; and

45 [6th] WHEREAS, pursuant to a June 5, 2001 “Agreement for Assignment of
46 Entitlement to CVP Water Between the City of Tracy and the Banta-Carbona Irrigation District,”
47 as amended on September 11, 2002, the Contractor was assigned five thousand acre-feet of

48 Banta-Carbona Irrigation District's entitlement to Project Water under Contract
49 No. 14-06-200-4305A-IR7, which assignment is reflected in the increased Contract Total under
50 subdivision (a) of Article 3 of this Contract; and

51 [7th] WHEREAS, pursuant to an August 21, 2001 "Agreement for Assignment of
52 Entitlement to CVP Water Between the City of Tracy and The West Side Irrigation District," as
53 amended on September 11, 2002, the Contractor was assigned two thousand five hundred acre-feet
54 of The West Side Irrigation District's entitlement to Project Water under Contract
55 No. 7-07-20-W0045-IR7, which assignment is reflected in the increased Contract Total under
56 subdivision (a) of Article 3 of this Contract; and

57 [7.1] WHEREAS, pursuant to that same August 21, 2001 "Agreement for Assignment
58 of Entitlement to CVP Water Between the City of Tracy and The West Side Irrigation District,"
59 as amended on September 11, 2002, the Contractor obtained an option to purchase an additional
60 two thousand five hundred acre-feet of The West Side Irrigation District's entitlement to Project
61 Water under Contract No. 7-07-20-W0045-IR7 (hereinafter "Unexercised Option") and the
62 Contractor expects to exercise that option during the term of this Contract; and

63 [8th] WHEREAS, the Contractor and the United States entered into two separate
64 interim renewal contracts, Contract No. 14-06-200-4305A-IR13-B and Contract
65 No. 7-07-20-W0045-IR13-B, which in the aggregate, established the terms for the delivery to the
66 Contractor of up to seven thousand five hundred acre-feet of Project Water from the
67 Delta-Mendota Canal through February 28, 2014; and

68 [9th] WHEREAS, Contract No. 14-06-200-7858A dated July 22, 1974, Contract
69 No. 07-20-W0045-IR13-B dated February 29, 2012, and Contract No. 14-06-200-4305A-IR13-B

70 dated February 29, 2012, in the aggregate, constitute and are hereinafter referred to as the
71 “Existing Contract”; and

72 [10th] WHEREAS, the Contractor has requested renewal of the Existing Contract,
73 pursuant to Subsection 3404(c)(1) of the CVPIA, which will provide for the continued delivery
74 of up to seventeen thousand five hundred acre-feet of Project Water from the Delta Mendota
75 Canal of the Central Valley Project; and

76 [11th] WHEREAS, Section 3404(c) of the CVPIA, precludes long-term renewal of water
77 service contracts (including Contract No. 14-06-200-7858A dated July 22, 1974) until the
78 completion of appropriate environmental documentation, including a programmatic
79 environmental impact statement (hereinafter “PEIS”) which is required by Section 3409 of the
80 CVPIA, pursuant to the National Environmental Policy Act (NEPA) analyzing the direct and
81 indirect impacts and benefits of implementing the CVPIA and the potential renewal of all
82 existing contracts for Project Water; and

83 [12th] WHEREAS, in order to continue water service provided under Project water
84 service contracts that expire prior to the completion of appropriate environmental documentation,
85 including the PEIS, the United States intends to execute interim renewal contracts for a period
86 not to exceed three Years in length, and for successive interim periods of not more than two
87 Years in length, until appropriate environmental documentation, including the PEIS, is finally
88 completed, at which time the Secretary shall, pursuant to Federal Reclamation law, upon request
89 of the Contractor, enter into a long-term renewal contract for a period of forty Years; and may
90 thereafter renew such long-term renewal contracts for successive periods not to exceed forty
91 years each; and

92 [13th] WHEREAS, the United States has completed the PEIS, but since the
93 environmental documentation necessary to execute a long-term renewal contract has not been
94 completed, the Contractor has requested an interim renewal contract pursuant to Section
95 3404(c)(1) of the CVPIA; and

96 [14th] WHEREAS, the United States has determined that the Contractor has fulfilled all
97 of its obligations under the Existing Contract; and

98 [15th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
99 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
100 reasonable and beneficial use and expects to utilize fully for reasonable and beneficial use the
101 quantity of Project Water to be made available to it pursuant to this interim renewal contract; and

102 [16th] WHEREAS, water obtained from the Central Valley Project has been relied upon
103 by urban areas within California for more than thirty-nine years, and is considered by the
104 Contractor as an essential portion of its water supply; and

105 [17th] WHEREAS, the economies of regions within the Central Valley Project,
106 including the Contractor's, depend upon the continued availability of water, including water
107 service from the Central Valley Project; and

108 [18th] WHEREAS, the Secretary intends through coordination, cooperation, and
109 partnerships to pursue measures to improve water supply, water quality, and reliability of the
110 Project for all Project purposes; and

111 [19th] WHEREAS, the mutual goals of the United States and the Contractor include: to
112 provide for reliable Central Valley Project Water supplies; to control costs of those supplies; to
113 achieve repayment of the Central Valley Project as required by law; to guard reasonably against
114 Central Valley Project Water shortages; to achieve a reasonable balance among competing

115 demands for use of Central Valley Project Water; and to comply with all applicable
116 environmental statutes, all consistent with the legal obligations of the United States relative to
117 the Central Valley Project; and

118 [19.1] WHEREAS, the parties intend by this Contract to develop a more cooperative
119 relationship in order to achieve their mutual goals; and

120 [20th] WHEREAS, the Contractor has utilized or may utilize transfers, contract
121 assignments, rescheduling and conveyance of Project Water and non-Project water under this
122 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the
123 beneficial uses of water; and

124 [20.1] WHEREAS, the parties desire and intend that this Contract not provide a
125 disincentive to the Contractor in continuing to carry out the beneficial activities set out in the
126 Explanatory Recital immediately above; and

127 [20.2] WHEREAS, The Secretary intends to assure uninterrupted water service and
128 continuity of contract through the process set forth in Article 2 hereof; and

129 [21st] WHEREAS, the United States and the Contractor are willing to enter into this
130 Contract pursuant to Federal Reclamation law on the terms and conditions set for below;

131 NOW, THEREFORE, in consideration of the mutual and dependent covenants
132 herein contained, it is hereby mutually agreed by the parties hereto as follows:

133 DEFINITIONS

134 1. When used herein unless otherwise distinctly expressed, or manifestly
135 incompatible with the intent of the parties as expressed in this Contract, the term:

136 (a) "Assigned Water" shall mean all Project water supply acquired through
137 assignment from the Banta Carbona Irrigation District, assignment agreement

138 No.14-06-200-4305A-B, dated February 27, 2004, and acquired through assignment from
139 The West Side Irrigation District, assignment agreement No. 7-07-20-W0045-B dated
140 February 27, 2004. Prior to execution of this contract, the Assigned Water has been delivered to
141 the Contractor pursuant to the Existing Contract;

142 (b) “Calendar Year” shall mean the period January 1 through December 31,
143 both dates inclusive;

144 (c) “Charges” shall mean the payments required by Federal Reclamation law
145 in addition to the Rates specified in this Contract as determined annually by the Contracting
146 Officer pursuant to this Contract;

147 (d) “Condition of Shortage” shall mean a condition respecting the Project
148 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the
149 Contract Total;

150 (e) “Contracting Officer” shall mean the Secretary of the Interior’s duly
151 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
152 or regulation;

153 (f) “Contract Total” shall mean the maximum amount of water to which the
154 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

155 (g) “Contractor’s Service Area” shall mean the area to which the Contractor is
156 permitted to provide Project Water under this Contract as described in Exhibit “A” attached
157 hereto, which may be modified from time to time in accordance with Article 34 of this Contract
158 without amendment of this Contract;

159 (h) “CVPIA” shall mean the Central Valley Project Improvement Act, Title
160 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

161 (h.1) “Delta Division Facilities” shall mean those existing and future Project
162 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to,
163 the Tracy Pumping Plant, the O’Neill Pumping/Generating Plant, and the San Luis Reservoir,
164 used to divert, store and convey water to those Project Contractors entitled to receive water
165 conveyed through the Delta-Mendota Canal.

166 (i-j) Omitted;

167 (k) “Full Cost Rate” shall mean an annual rate, as determined by the
168 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
169 Project Irrigation or M&I functions, as appropriate, of facilities in service including all operation
170 and maintenance deficits funded, less payments, over such periods as may be required under
171 Federal Reclamation law, or applicable contract provisions. Interest will accrue on both the
172 construction expenditures and funded Operations and Maintenance deficits from
173 October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs
174 arising subsequent to October 12, 1982, and shall be calculated in accordance with subsections
175 202(3)(B) and (3)(C) of the Reclamation Reform Act. The Full-Cost Rate includes actual
176 operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and
177 Regulations for the RRA;

178 (l-m) Omitted;

179 (n) “Irrigation Water” shall mean water made available from the Project that
180 is used primarily in the production of agricultural crops or livestock, including domestic use
181 incidental thereto, and watering of livestock;

182 (o) Omitted;

183 (p) “Municipal and Industrial (M&I) Water” shall mean Project Water, other
184 than Irrigation Water, made available to the Contractor. M&I Water shall include water used for
185 human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses)
186 which are kept for personal enjoyment or water delivered to land holdings operated in units of
187 less than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer
188 that the use of water delivered to any such landholding is a use described in subdivision (m) of
189 this Article;

190 (q) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to
191 the delivery of M&I Water;

192 (r) “Operation and Maintenance” or “O&M” shall mean normal and
193 reasonable care, control, operation, repair, replacement (other than Capital replacement), and
194 maintenance of Project facilities;

195 (s) “Operating Non-Federal Entity” shall mean the entity(ies), its (their)
196 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of
197 the Delta Division Facilities pursuant to written agreement(s) with the United States. When this
198 Contract was entered into, the Operating Non-Federal Entity(ies) was (were) the San Luis
199 Delta-Mendota Water Authority;

200 (t) “Project” shall mean the Central Valley Project owned by the United
201 States and managed by the Department of the Interior, Bureau of Reclamation;

202 (u) “Project Contractors” shall mean all parties who have water service
203 contracts for Project Water from the Project with the United States pursuant to Federal
204 Reclamation law;

205 (v) "Project Water" shall mean all water that is developed, diverted, stored, or
206 delivered by the Secretary in accordance with the statutes authorizing the Project and in
207 accordance with the terms and conditions of water rights acquired pursuant to California law;

208 (w) "Rates" shall mean the payments determined annually by the Contracting
209 Officer in accordance with the then-current applicable water ratesetting policies for the Project,
210 as described in subdivision (a) of Article 7 of this Contract;

211 (x) "Recent Historic Average" shall mean the most recent five-year average of
212 the final forecast of water made available to the Contractor pursuant to this Contract or its
213 preceding contract(s);

214 (y) "Secretary" shall mean the Secretary of the Interior, a duly appointed
215 successor, or an authorized representative acting pursuant to any authority of the Secretary and
216 through any agency of the Department of the Interior;

217 (aa) "Water Delivered" or "Delivered Water" shall mean Project Water
218 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting
219 Officer;

220 (bb) "Water Made Available" shall mean the estimated amount of Project
221 Water that can be delivered to the Contractor for the upcoming year as declared by the
222 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

223 (cc) "Water Scheduled" shall mean Project Water Made Available to the
224 Contractor for which times and quantities for delivery have been established by the Contractor
225 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

226 (dd) "Year" shall mean the period from and including March 1 of each
227 Calendar Year through the last day of February of the following Calendar Year.

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TERM OF CONTRACT

2. (a) This Contract shall renew the Existing contract, and replace contract numbers 14-06-200-4305A-IR13B and 7-07-20-W0045-IR13B and shall be effective January 1, 2014, through February 29, 2016, and thereafter will be renewed as described in this Article. Except as provided in subdivision (b) of this Article, until completion of all appropriate environmental review, and provided that the Contractor has complied with all the terms and conditions of the Contract in effect for the period immediately preceding the requested successive interim renewal contract, this Contract will be renewed, upon request of the Contractor, for successive interim periods each of which shall be no more than two Years in length. Also, except as provided in subdivision (b) of this Article, in order to promote orderly and cost effect contract administration, the terms and conditions in subsequent interim renewal contracts shall be identical to the terms and conditions in the interim renewal contract immediately preceding the subsequent interim renewal: *Provided, however,* That each party preserves the right to propose modification(s) in any interim renewal contract other than those described in subdivision (b) of this Article, in which case the parties shall negotiate in good faith appropriate modification(s) to be included in any successive interim renewal contracts. Said modification(s) of each successive interim renewal contract shall be agreed upon within a reasonable time prior to expiration of the then-existing interim renewal contract. Nothing in this Article shall in any way alter the obligation that, upon final completion of necessary environmental documentation, the Secretary shall, pursuant to Federal Reclamation law, upon request of the Contractor, enter into a long-term renewal contract for a period of forty Years and shall thereafter renew such long-term renewal contracts for successive periods not to exceed forty Years each.

251 (b) The parties have engaged and if necessary will continue to engage in good
252 faith negotiations intended to permit the execution of a forty Year long-term renewal contract
253 contemplated by Section 3404(c) of the CVPIA, hereinafter referred to as a “long-term renewal
254 contract”. The parties recognize the possibility that this schedule may not be met without further
255 negotiations. Accordingly: in the event (i) the Contractor and the Contracting Officer have
256 reached agreement on the terms of the Contractor’s long-term renewal contract or (ii) the
257 Contractor and Contracting Officer have not completed the negotiations on the Contractor’s
258 long-term renewal contract, believe that further negotiations on that contract would be beneficial,
259 and mutually commit to continue to negotiate to seek to reach agreement, but (iii) all
260 environmental documentation required to allow execution of the Contractor’s long-term renewal
261 contract have not been completed in time to allow execution by December 31, 2013, then
262 (iv), the parties will expeditiously complete the environmental documentation required of each of
263 them in order to execute the Contractor’s long-term renewal contract at the earliest practicable
264 date. In addition, the Contractor’s then current interim renewal contract will be renewed without
265 change upon the request of either party through the agreed-upon effective date of the
266 Contractor’s long-term renewal contract, through or, in the absence of agreement on the terms of
267 the Contractor’s long-term renewal contract, through the next succeeding February 28.

268 (c) The omission of language in this interim renewal contract providing for
269 conversion of this interim renewal contract or any subsequent renewals thereof to a repayment
270 contract, pursuant to the Act of July 2, 1956 (70 Stat. 483), shall not prejudice the Contractor’s
271 right to assert a right to have such language included in subsequent renewals of this interim
272 renewal contract or to exercise such conversion, all as provided by law, or to negotiate the
273 language regarding such conversion to be included in subsequent renewal contracts.

274 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

275 3. (a) During each Year, consistent with all applicable State water rights,
276 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
277 this Contract, the Contracting Officer shall make available for delivery to the Contractor up to
278 20,000 acre-feet of water for M&I purposes; *Provided*, That 2,500 acre-feet of this amount
279 represents an “Unexercised Option” for which the Contractor must provide proof to the
280 Contracting Officer that the option has been exercised prior to 2,500 acre-feet of Assigned Water
281 being made available. *Provided*, however, during the two month period of January and February
282 of Year 2014, the Contracting Officer shall make available for delivery to the Contractor that
283 portion of the 2013 allocation of Project Water unused by the Contractor under the Existing
284 Contract. Water Delivered to the Contractor in accordance with this subdivision shall be
285 scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

286 (b) Because the capacity of the Project to deliver Project Water has been
287 constrained in recent years and may be constrained in the future due to many factors including
288 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
289 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this
290 Article in any given Year is uncertain. The Contracting Officer’s most recent modeling
291 referenced in the PEIS projected that the Contract Total set forth in this Contract will not be
292 available to the Contractor in many years. During the most recent five years, the Recent Historic
293 Average of Water Made Available to the Contractor was _____ acre-feet. Nothing in
294 subdivision (b) of this Article shall affect the rights and obligations of the parties under any
295 provision of this Contract.

296 (c) The Contractor shall utilize the Project Water in accordance with all
297 applicable legal requirements.

298 (d) The Contractor shall make reasonable and beneficial use of all Project
299 Water or other water furnished pursuant to this Contract. Groundwater recharge programs
300 (direct, indirect, or in lieu), groundwater banking programs, surface water storage programs, and
301 other similar programs utilizing Project Water or other water furnished pursuant to this Contract
302 conducted within the Contractor's Service Area which are consistent with applicable State law
303 and result in use consistent with Federal Reclamation law will be allowed; *Provided*, That any
304 direct recharge program(s) is (are) described in the Contractor's Water Conservation Plan
305 submitted pursuant to Article 25 of this Contract; *Provided, further*, That such Water
306 Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so
307 that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable
308 for such uses and in compliance with Federal Reclamation law. Groundwater recharge
309 programs, groundwater banking programs, surface water storage programs, and other similar
310 programs utilizing Project Water or other water furnished pursuant to this Contract conducted
311 outside the Contractor's Service Area may be permitted upon written approval of the Contracting
312 Officer, which approval will be based upon environmental documentation, Project Water rights,
313 and Project operational concerns. The Contracting Officer will address such concerns in
314 regulations, policies, or guidelines.

315 (e) The Contractor shall comply with requirements applicable to the
316 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
317 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as
318 amended, which are within the Contractor's legal authority to implement. The Existing Contract,

319 which evidences in excess of thirty-nine years of diversions for M&I purposes of the quantities
320 of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
321 developing an appropriate baseline for the biological assessment prepared pursuant to the
322 Endangered Species Act, and any other needed environmental review. Nothing herein shall be
323 construed to prevent the Contractor from challenging or seeking judicial relief in a court of
324 competent jurisdiction with respect to any biological opinion or other environmental
325 documentation referred to in this Article.

326 (f) Following the declaration of Water Made Available under Article 4 of this
327 Contract, the Contracting Officer will make a determination whether Project Water, or other
328 water available to the Project, can be made available to the Contractor in addition to the Contract
329 Total under Article 3 of this Contract during the Year without adversely impacting other Project
330 Contractors. At the request of the Contractor, the Contracting Officer will consult with the
331 Contractor prior to making such a determination. If the Contracting Officer determines that
332 Project Water, or other water available to the Project, can be made available to the Contractor,
333 the Contracting Officer will announce the availability of such water and shall so notify the
334 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor
335 and other Project Contractors capable of taking such water to determine the most equitable and
336 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such
337 water, the Contracting Officer shall make such water available to the Contractor in accordance
338 with applicable statutes, regulations, guidelines, and policies.

339 (g) The Contractor may request permission to reschedule for use during the
340 subsequent Year some or all of the Water Made Available to the Contractor during the current
341 Year referred to as “rescheduled water.” The Contractor may request permission to use during

342 the current Year, a quantity of Project Water which may be made available by the United States
343 to the Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s
344 written approval may permit such uses in accordance with applicable statutes, regulations,
345 guidelines, and policies.

346 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
347 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract
348 during the term thereof and any subsequent renewal contracts, as described in Article 2 of this
349 Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all
350 of its obligations under this Contract and any renewals thereof. Nothing in the preceding
351 sentence shall affect the Contracting Officer’s ability to impose shortages under Article 11 or
352 subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal
353 contracts.

354 (i) Project Water furnished to the Contractor pursuant to this Contract may be
355 delivered for purposes other than those described in subdivision (p) of Article 1 of this Contract
356 upon written approval by the Contracting Officer in accordance with the terms and conditions of
357 such approval.

358 (j) The Contracting Officer shall make reasonable efforts to protect the water
359 rights necessary for the Project and to provide the water available under this Contract. The
360 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
361 extent permitted by law, in administrative proceedings related to the Project Water rights;
362 *Provided*, That the Contracting Officer retains the right to object to the substance of the
363 Contractor’s position in such a proceeding; *Provided further*, That in such proceedings the

364 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
365 Contract to use Project Water.

366 TIME FOR DELIVERY OF WATER

367 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer
368 shall announce the Contracting Officer's expected declaration of the Water Made Available.
369 Such declaration of Project operations will be expressed in terms of both Water Made Available
370 and the Recent Historic Average and will be updated monthly, and more frequently if necessary,
371 based on then-current operational and hydrologic conditions and a new declaration with changes,
372 if any, to the Water Made Available will be made. The Contracting Officer shall provide
373 forecasts of Project operations and the basis of the estimate, with relevant supporting
374 information, upon the written request of the Contractor. Concurrently with the declaration of the
375 Water Made Available, the Contracting Officer shall provide the Contractor with the updated
376 Recent Historic Average.

377 (b) On or before each March 1 and at such other times as necessary, the
378 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the
379 Contracting Officer, showing the monthly quantities of Project Water to be delivered by the
380 United States to the Contractor pursuant to this Contract for the Year commencing on such
381 March 1. The Contracting Officer shall use all reasonable means to deliver Project Water
382 according to the approved schedule for the Year commencing on such March 1.

383 (c) The Contractor shall not schedule Project Water in excess of the quantity
384 of Project Water the Contractor intends to put to reasonable and beneficial use within the
385 Contractor's Service Area or sell, transfer or exchange pursuant to Article 9 of this Contract
386 during any Year.

387 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
388 Contract, the United States shall deliver Project Water to the Contractor in accordance with the
389 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any
390 written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable
391 time prior to the date(s) on which the requested change(s) is/are to be implemented.

392 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

393 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
394 Contract shall be delivered to the Contractor at a turnout from the Delta-Mendota Canal and at
395 any additional point or points of delivery either on Project facilities or another location or
396 locations mutually agreed to in writing by the Contracting Officer and the Contractor.

397 (b) The Contracting Officer, either directly or indirectly through its written
398 agreement(s) with the Operating Non-Federal Entity(ies) shall make all reasonable efforts to
399 maintain sufficient flows and levels of water in Project facilities to deliver Project Water to the
400 Contractor at specific turnouts established pursuant to subdivision (a) of this Article.

401 (c) The Contractor shall not deliver Project Water to land outside the
402 Contractor's Service Area unless approved in advance by the Contracting Officer.

403 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
404 measured and recorded with equipment furnished, installed, operated, and maintained by the
405 United States, the Operating Non-Federal Entity or other appropriate entity at the point or points
406 of delivery established pursuant to subdivision (a) of this Article. Upon the request of either
407 party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the
408 responsible Operating Non-Federal Entity, the accuracy of such measurements and shall take any
409 necessary steps to adjust any errors appearing therein. For any period of time when accurate

410 measurements have not been made, the Contracting Officer shall consult with the Contractor and
411 the responsible Operating Non-Federal Entity prior to making a final determination of the
412 quantity delivered for that period of time.

413 (e) Absent a separate contrary written agreement with the Contractor, neither
414 the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the
415 control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor
416 pursuant to this Contract beyond the delivery points specified in subdivision (a) of this Article.
417 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
418 account of damage or claim of damage of any nature whatsoever for which there is legal
419 responsibility, including property damage, personal injury, or death arising out of or connected
420 with the control, carriage, handling, use, disposal, or distribution of such Water Delivered
421 beyond such delivery points, except for any damage or claim arising out of: (i) acts or omissions
422 of the Contracting Officer or any of its officers, employees, agents, or assigns, including any
423 responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in
424 any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers,
425 employees, agents, or assigns, including any responsible Operating Non-Federal Entity;
426 (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns
427 including any responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from
428 a malfunction of facilities owned and/or operated by the United States or responsible Operating
429 Non-Federal Entity; *Provided*, That the Contractor is not the Operating Non-Federal Entity that
430 owned or operated the malfunctioning facility(ies) from which the damage claim arose.

431 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

432 6. (a) The Contractor has established a measuring program satisfactory to the
433 Contracting Officer. The Contractor shall ensure that all surface water delivered for M&I
434 purposes is measured at each M&I service connection. The water measuring devices or water
435 measuring methods of comparable effectiveness must be acceptable to the Contracting Officer.
436 The Contractor shall be responsible for installing, operating, and maintaining and repairing all
437 such measuring devices and implementing all such water measuring methods at no cost to the
438 United States. The Contractor shall use the information obtained from such water measuring
439 devices or water measuring methods to ensure its proper management of the water, to bill water
440 users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I
441 purposes by customer class as defined in the Contractor's water conservation plan provided for
442 in Article 25 of this Contract. Nothing herein contained, however, shall preclude the Contractor
443 from establishing and collecting any charges, assessments, or other revenues authorized by
444 California law. The Contractor shall include a summary of all its annual surface water deliveries
445 in the annual report described in subdivision (c) of Article 25.

446 (b) To the extent the information has not otherwise been provided, upon
447 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
448 report describing the measurement devices or water measuring methods being used or to be used
449 to implement subdivision (a) of this Article and identifying the M&I service connections or
450 alternative measurement programs approved by the Contracting Officer, at which such
451 measurement devices or water measuring methods are being used, and, if applicable, identifying
452 the locations at which such devices and/or methods are not yet being used including a time
453 schedule for implementation at such locations. The Contracting Officer shall advise the

454 Contractor in writing within sixty days as to the adequacy and necessary modifications, if any, of
455 the measuring devices or water measuring methods identified in the Contractor's report and if the
456 Contracting Officer does not respond in such time, they shall be deemed adequate. If the
457 Contracting Officer notifies the Contractor that the measuring devices or methods are
458 inadequate, the parties shall within sixty days following the Contracting Officer's response,
459 negotiate in good faith the earliest practicable date by which the Contractor shall modify said
460 measuring devices and/or measuring methods as required by the Contracting Officer to ensure
461 compliance with subdivision (a) of this Article.

462 (c) All new surface water delivery systems installed within the Contractor's
463 Service Area after the effective date of this Contract shall also comply with the measurement
464 provisions described in subdivision (a) of this Article.

465 (d) The Contractor shall inform the Contracting Officer and the State of
466 California in writing by April 30 of each Year of the monthly volume of surface water delivered
467 within the Contractor's Service Area during the previous Year.

468 (e) The Contractor shall inform the Contracting Officer and the Operating
469 Non-Federal Entity on or before the twentieth calendar day of each month of the quantity of
470 M&I Water taken during the preceding month.

471 RATES AND METHOD OF PAYMENT FOR WATER

472 7. (a) The Contractor shall pay the United States as provided in this Article for
473 all Delivered Water at Rates and Charges established in accordance with: (i) the Secretary's
474 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended,
475 modified, or superseded only through a public notice and comment procedure; (ii) applicable
476 Federal Reclamation law and associated rules and regulations, or policies; and (iii) other

477 applicable provisions of this Contract. Payments shall be made by cash transaction, wire
478 transfer, or any other mechanism as may be agreed to in writing by the Contractor and the
479 Contracting Officer. The Rates and Charges applicable to the Contractor upon execution of this
480 Contract are set forth in Exhibit "B", as may be revised annually.

481 (b) The Contracting Officer shall notify the Contractor of the Rates and
482 Charges, as follows:

483 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
484 provide the Contractor an estimate of the Charges for Project Water that will be applied
485 to the period October 1, of the current Calendar Year, through September 30, of the
486 following Calendar Year, and the basis for such estimate. The Contractor shall be
487 allowed not less than two months to review and comment on such estimates. On or
488 before September 15 of each Calendar Year, the Contracting Officer shall notify the
489 Contractor in writing of the Charges to be in effect during the period October 1 of the
490 current Calendar Year, through September 30, of the following Calendar Year, and such
491 notification shall revise Exhibit "B".

492 (2) Prior to October 1 of each Calendar Year, the Contracting Officer
493 shall make available to the Contractor an estimate of the Rates for Project Water for the
494 following Year and the computations and cost allocations upon which those Rates are
495 based. The Contractor shall be allowed not less than two months to review and comment
496 on such computations and cost allocations. By December 31 of each Calendar Year, the
497 Contracting Officer shall provide the Contractor with the final Rates to be in effect for
498 the upcoming Year, and such notification shall revise Exhibit "B".

499 (c) At the time the Contractor submits the initial schedule for the delivery of
500 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
501 Contractor shall make an advance payment to the United States equal to the total amount payable
502 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water
503 scheduled to be delivered pursuant to this Contract during the first two calendar months of the
504 Year. Before the end of the first month and before the end of each calendar month thereafter, the
505 Contractor shall make an advance payment to the United States, at the Rate(s) set under
506 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
507 during the second month immediately following. Adjustments between advance payments for
508 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of
509 the following month; *Provided*, That any revised schedule submitted by the Contractor pursuant
510 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
511 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
512 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such
513 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to
514 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no
515 additional Project Water shall be delivered to the Contractor unless and until an advance
516 payment at the Rates then in effect for such additional Project Water is made. Final adjustment
517 between the advance payments for the Water Scheduled and payments for the quantities of Water
518 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no
519 later than April 30th of the following Year, or sixty days after the delivery of Project Water
520 carried over under subdivision (g) of Article 3 of this Contract if such water is not delivered by
521 the last day of February.

522 (d) The Contractor shall also make a payment in addition to the Rate(s) in
523 subdivision (c) of this Article to the United States for Water Delivered, at the Charges then in
524 effect, before the end of the month of delivery. The payments shall be consistent with the
525 quantities of M&I Water Delivered as shown in the water delivery report for the subject month
526 prepared by the Operating Non-Federal Entity or, if there is no Operating Non-Federal Entity, by
527 the Contracting Officer. The water delivery report shall be deemed a bill for the payment of
528 Charges for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be
529 made through the adjustment of payments due to the United States for Charges for the next
530 month. Any amount to be paid for past due payment of Charges shall be computed pursuant to
531 Article 19 of this Contract.

532 (e) The Contractor shall pay for any Water Delivered under subdivision (d),
533 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to
534 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting
535 policies; *Provided*, That the Rate for Water Delivered under subdivision (d) of Article 3 of this
536 Contract shall be no more than the otherwise applicable Rate for M&I Water under
537 subdivision (a) of this Article.

538 (f) Payments to be made by the Contractor to the United States under this
539 Contract may be paid from any revenues available to the Contractor.

540 (g) All revenues received by the United States from the Contractor relating to
541 the delivery of Project Water or the delivery of non-Project water through Project facilities shall
542 be allocated and applied in accordance with Federal Reclamation law and the associated rules or
543 regulations, and the then current Project ratesetting policies for M&I Water.

544 (h) The Contracting Officer shall keep its accounts pertaining to the
545 administration of the financial terms and conditions of its long-term contracts, in accordance
546 with applicable Federal standards, so as to reflect the application of Project costs and revenues.
547 The Contracting Officer shall, each Year upon request of the Contractor, provide to the
548 Contractor a detailed accounting of all Project and Contractor expense allocations, the
549 disposition of all Project and Contractor revenues, and a summary of all water delivery
550 information. The Contracting Officer and the Contractor shall enter into good faith negotiations
551 to resolve any discrepancies or disputes relating to accountings, reports, or information.

552 (i) The parties acknowledge and agree that the efficient administration of this
553 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
554 policies, and procedures used for establishing Rates and Charges, and/or for making and
555 allocating payments, other than those set forth in this Article may be in the mutual best interest
556 of the parties, it is expressly agreed that the parties may enter into agreements to modify the
557 mechanisms, policies, and procedures for any of those purposes while this Contract is in effect
558 without amending this Contract.

559 (j) Omitted.

560 (k) For the term of this Contract, Rates under the respective ratesetting
561 policies will be established to recover only reimbursable O&M (including any deficits) and
562 capital costs of the Project, as those terms are used in the then-current Project ratesetting
563 policies, and interest, where appropriate, except in instances where a minimum Rate is applicable
564 in accordance with the relevant Project ratesetting policy. Changes of significance in practices
565 which implement the Contracting Officer's ratesetting policies will not be implemented until the

566 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and
567 impact of the proposed change.

568 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
569 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates
570 adjusted upward or downward to reflect the changed costs of delivery (if any) of the transferred
571 Project Water to the transferee's point of delivery in accordance with the then-applicable CVP
572 Ratesetting Policy.

573 (m) Omitted.

574 (n) Omitted.

575 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

576 8. Omitted.

577 SALES, TRANSFERS, OR EXCHANGES OF WATER

578 9. (a) The right to receive Project Water provided for in this Contract may be
579 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of
580 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
581 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
582 Water under this Contract may take place without the prior written approval of the Contracting
583 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or
584 exchanges shall be approved absent all appropriate environmental documentation, including but
585 not limited to documents prepared pursuant to the National Environmental Policy Act and the
586 Endangered Species Act. Such environmental documentation should include, as appropriate, an
587 analysis of groundwater impacts and economic and social effects, including environmental
588 justice, of the proposed water transfers on both the transferor and transferee.

589 (b) In order to facilitate efficient water management by means of water
590 transfers of the type historically carried out among Project Contractors located within the same
591 geographical area and to allow the Contractor to participate in an accelerated water transfer
592 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,
593 all necessary environmental documentation including, but not limited to documents prepared
594 pursuant to the National Environmental Policy Act and the Endangered Species Act analyzing
595 annual transfers within such geographical areas and the Contracting Officer shall determine
596 whether such transfers comply with applicable law. Following the completion of the
597 environmental documentation, such transfers addressed in such documentation shall be
598 conducted with advance notice to the Contracting Officer, but shall not require prior written
599 approval by the Contracting Officer. Such environmental documentation and the Contracting
600 Officer's compliance determination shall be reviewed every five years and updated, as necessary,
601 prior to the expiration of the then-existing five year period. All subsequent environmental
602 documentation shall include an alternative to evaluate not less than the quantity of Project Water
603 historically transferred within the same geographical area.

604 (c) For a water transfer to qualify under subdivision (b) of this Article, such
605 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three
606 years, for M&I use, groundwater recharge, water banking, or fish and wildlife resources; not lead
607 to land conversion; and be delivered to established cropland, wildlife refuges, groundwater
608 basins or municipal and industrial use; (ii) occur within a single Year; (iii) occur between a
609 willing seller and a willing buyer; (iv) convey water through existing facilities with no new
610 construction or modifications to facilities and be between existing Project Contractors and/or the
611 Contractor and the United States, Department of the Interior; and (v) comply with all applicable

612 Federal, State, and local or tribal laws and requirements imposed for protection of the
613 environment and Indian Trust Assets, as defined under Federal law.

614 APPLICATION OF PAYMENTS AND ADJUSTMENTS

615 10. (a) The amount of any overpayment by the Contractor of the Contractor's
616 O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current
617 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of
618 more than one thousand dollars shall be refunded at the Contractor's request. In lieu of a refund,
619 any amount of such overpayment at the option of the Contractor may be credited against
620 amounts to become due to the United States by the Contractor. With respect to overpayment,
621 such refund or adjustment shall constitute the sole remedy of the Contractor or anyone having or
622 claiming to have the right to the use of any of the Project Water supply provided for herein. All
623 credits and refunds of overpayments shall be made within thirty days of the Contracting Officer
624 obtaining direction as to how to credit or refund such overpayment in response to the notice to
625 the Contractor that it has finalized the accounts for the Year in which the overpayment was
626 made.

627 (b) All advances for miscellaneous costs incurred for work requested by the
628 Contractor pursuant to Article 24 of this Contract shall be adjusted to reflect the actual costs
629 when the work has been completed. If the advances exceed the actual costs incurred, the
630 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
631 advances, the Contractor will be billed for the additional costs pursuant to Article 24 of this
632 Contract.

633 TEMPORARY REDUCTIONS—RETURN FLOWS

634 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
635 requirements of Federal law and (ii) the obligations of the United States under existing contracts,
636 or renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall
637 make all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in
638 this Contract.

639 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
640 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for
641 the purposes of investigation, inspection, maintenance, repair, or replacement of any of the
642 Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor,
643 but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the
644 Contractor due notice in advance of such temporary discontinuance or reduction, except in case
645 of emergency, in which case no notice need be given; *Provided*, That the United States shall use
646 its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of
647 service after such reduction or discontinuance, and if requested by the Contractor, the United
648 States will, if possible, deliver the quantity of Project Water which would have been delivered
649 hereunder in the absence of such discontinuance or reduction.

650 (c) The United States reserves the right to all seepage and return flow water
651 derived from Water Delivered to the Contractor hereunder which escapes or is discharged
652 beyond the Contractor's Service Area; *Provided*, That this shall not be construed as claiming for
653 the United States any right as seepage or return flow being put to reasonable and beneficial use
654 pursuant to this Contract within the Contractor's Service Area by the Contractor or those
655 claiming by, through, or under the Contractor.

656

CONSTRAINTS ON THE AVAILABILITY OF WATER

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12. (a) In its operation of the Project, the Contracting Officer will use all

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reasonable means to guard against a Condition of Shortage in the quantity of water to be made

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available to the Contractor pursuant to this Contract. In the event the Contracting Officer

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determines that a Condition of Shortage appears probable, the Contracting Officer will notify the

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Contractor of said determination as soon as practicable.

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(b) If there is a Condition of Shortage because of errors in physical operations

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of the Project, drought, other physical causes beyond the control of the Contracting Officer or

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actions taken by the Contracting Officer to meet current and future legal obligations, except as

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provided in Article 17 of this Contract, then no liability shall accrue against the United States or

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any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

667

(c) Omitted.

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(d) Project Water furnished under this Contract will be allocated in

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accordance with the then-existing "Central Valley Project M&I Water Shortage Policy". Such

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policy shall be amended, modified, or superseded only through a public notice and comment

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procedure. The parties agree that as of the date of execution of this Contract, the Assigned

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Water will only be afforded irrigation water reliability under the existing Central Valley Project

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M&I Water Shortage Policy.

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(e) By entering into this Contract, the Contractor does not waive any legal

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rights or remedies it may have to file or participate in any administrative or judicial proceeding

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contesting (i) the sufficiency of the "Central Valley Project M&I Water Shortage Policy," (ii) the

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substance of such a policy; (iii) the applicability of such a policy; or (iv) the manner in which

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such policy is implemented in order to allocate Project Water between municipal and industrial

679 and irrigation purposes; *Provided*, That the Contractor has commenced any such judicial
680 challenge or any administrative procedures necessary to institute any judicial challenge within
681 six months of the policy becoming final. By agreeing to the foregoing, the Contracting Officer
682 does not waive any legal defenses or remedies that it may then have to assert in such a
683 proceeding. Nothing contained herein shall be interpreted to validate or invalidate the “Central
684 Valley Project M&I Water Shortage Policy.”

685 UNAVOIDABLE GROUNDWATER PERCOLATION

686 13. Omitted.

687 RULES, REGULATIONS, AND DETERMINATIONS

688 14. (a) The parties agree that the delivery of M&I Water or the use of Federal
689 facilities pursuant to this Contract is subject to Federal Reclamation law, as amended and
690 supplemented, and the rules and regulations promulgated by the Secretary of the Interior under
691 Federal Reclamation law.

692 (b) The Contracting Officer shall have the right to make determinations
693 necessary to administer this Contract that are consistent with its provisions, the laws of the
694 United States and the State of California, and the rules and regulations promulgated by the
695 Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

696 PROTECTION OF WATER AND AIR QUALITY

697 15. (a) Project facilities used to make available and deliver water to the
698 Contractor shall be operated and maintained in the most practical manner to maintain the quality
699 of the water at the highest level possible as determined by the Contracting Officer; *Provided*,
700 That the United States does not warrant the quality of the water delivered to the Contractor and is
701 under no obligation to furnish or construct water treatment facilities to maintain or improve the
702 quality of water delivered to the Contractor.

703 (b) The Contractor shall comply with all applicable water and air pollution
704 laws and regulations of the United States and the State of California; and shall obtain all required
705 permits or licenses from the appropriate Federal, State, or local authorities necessary for the
706 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,
707 State, and local water quality standards applicable to surface and subsurface drainage and/or
708 discharges generated through the use of Federal or Contractor facilities or Project water provided
709 by the Contractor within the Contractor’s Project Water Service Area.

710 (c) This article shall not affect or alter any legal obligations of the Secretary
711 to provide drainage or other discharge services.

712 WATER ACQUIRED BY THE CONTRACTOR
713 OTHER THAN FROM THE UNITED STATES

714 16. (a) Omitted.

715 (b) Water or water rights now owned or hereafter acquired by the Contractor,
716 other than from the United States, may be stored, conveyed and/or diverted through Project
717 facilities, subject to the completion of appropriate environmental documentation, with the
718 approval of the Contracting Officer and the execution of any contract determined by the
719 Contracting Officer to be necessary, consistent with the following provisions:

720 (1) The Contractor may introduce non-Project water into Project
721 facilities and deliver said water to lands within the Contractor's Service Area, subject to
722 payment to the United States and/or to any applicable Operating Non-Federal Entity of an
723 appropriate rate as determined by the applicable CVP Ratesetting Policy and the RRA
724 each as amended, modified or superseded from time to time. In addition, if electrical
725 power is required to pump non-Project water through the facilities, the Contractor shall
726 be responsible for obtaining the necessary power and paying the necessary charges
727 therefore.

728 (2) Delivery of such non-Project water in and through Project facilities
729 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project
730 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of
731 water available to other Project Contractors; (iii) interfere with the delivery of contractual
732 water entitlements to any other Project Contractors; or (iv) interfere with the physical
733 maintenance of the Project facilities.

734 (3) Neither the United States nor the Operating Non-Federal Entity
735 shall be responsible for control, care or distribution of the non-Project water before it is
736 introduced into or after it is delivered from the Project facilities. The Contractor hereby
737 releases and agrees to defend and indemnify the United States and the Operating Non-
738 Federal Entity, and their respective officers, agents, and employees, from any claim for
739 damage to persons or property, direct or indirect, resulting from the Contractor's or its
740 officers', employees', agents' or assigns', act of (i) extracting or diverting non-Project
741 water from any source, or (ii) diverting such non-Project water into Project facilities.

742 (4) Diversion of such non-Project water into Project facilities shall be
743 consistent with all applicable laws, and if involving groundwater, consistent with any
744 applicable groundwater management plan for the area from which it was extracted.

745 (5) After Project purposes are met, as determined by the Contracting
746 Officer, the United States and the Contractor shall share priority to utilize the remaining
747 capacity of the facilities declared to be available by the Contracting Officer for
748 conveyance and transportation of non-Project water prior to any such remaining capacity
749 being made available to non-Project contractors.

750 OPINIONS AND DETERMINATIONS

751 17. Where the terms of this Contract provide for actions to be based upon the opinion
752 or determination of either party to this Contract, said terms shall not be construed as permitting
753 such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
754 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
755 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
756 or unreasonable opinion or determination. Each opinion or determination by either party shall be

757 provided in a timely manner. Nothing in Article 17 of this Contract is intended to or shall affect
758 or alter the standard of judicial review applicable under Federal law to any opinion or
759 determination implementing a specific provision of Federal law embodied in statute or
760 regulation.

761 COORDINATION AND COOPERATION

762 18. (a) In order to further their mutual goals and objectives, the Contracting
763 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
764 with other affected Project contractors, in order to improve the operation and management of the
765 Project. The communication, coordination, and cooperation regarding operations and
766 management shall include, but not be limited to, any action which will or may materially affect
767 the quantity or quality of Project Water supply, the allocation of Project Water supply, and
768 Project financial matters including, but not limited to, budget issues. The communication,
769 coordination, and cooperation provided for hereunder shall extend to all provisions of this
770 Contract. Each party shall retain exclusive decision making authority for all actions, opinion,
771 and determinations to be made by the respective party.

772 (b) Within one hundred and twenty days following the effective date of this
773 Contract, the Contractor, other affected Project contractors, and the Contracting Officer shall
774 arrange to meet with interested Project contractors to develop a mutually agreeable, written
775 Project-wide process, which may be amended as necessary separate and apart from this Contract.
776 The goal of this process shall be to provide, to the extent practicable, the means of mutual
777 communication and interaction regarding significant decisions concerning Project operation and
778 management on a real-time basis.

779 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
780 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this
781 intent:

782 (1) The Contracting Officer will, at the request of the Contractor,
783 assist in the development of integrated resource management plans for the Contractor.

784 Further, the Contracting Officer will, as appropriate, seek authorizations for
785 implementation of partnerships to improve water supply, water quality, and reliability.

786 (2) The Secretary will, as appropriate, pursue program and project
787 implementation and authorization in coordination with Project contractors to improve the
788 water supply, water quality, and reliability of the Project for all Project purposes.

789 (3) The Secretary will coordinate with Project contractors and the
790 State of California to seek improved water resource management.

791 (4) The Secretary will coordinate actions of agencies within the
792 Department of the Interior that may impact the availability of water for Project purposes.

793 (5) The Contracting Officer shall periodically, but not less than
794 annually, hold division level meetings to discuss Project operations, division level water
795 management activities, and other issues as appropriate.

796 (d) Without limiting the contractual obligations of the Contracting Officer
797 under the other Articles of this Contract, nothing in this Article shall be construed to limit or
798 constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the
799 Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to
800 protect health, safety, physical integrity of structures or facilities.

801 CHARGES FOR DELINQUENT PAYMENTS

802 19. (a) The Contractor shall be subject to interest, administrative, and penalty
803 charges on delinquent payments. If a payment is not received by the due date, the Contractor
804 shall pay an interest charge on the delinquent payment for each day the payment is delinquent
805 beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in
806 addition to the interest charge, an administrative charge to cover additional costs of billing and
807 processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor
808 shall pay, in addition to the interest and administrative charges, a penalty charge for each day the
809 payment is delinquent beyond the due date, based on the remaining balance of the payment due
810 at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt
811 collection services associated with a delinquent payment.

812 (b) The interest rate charged shall be the greater of either the rate prescribed
813 quarterly in the Federal Register by the Department of the Treasury for application to overdue
814 payments, or the interest rate of 0.5 percent per month. The interest rate charged will be
815 determined as of the due date and remain fixed for the duration of the delinquent period.

816 (c) When a partial payment on a delinquent account is received, the amount
817 received shall be applied first to the penalty charges, second to the administrative charges, third
818 to the accrued interest, and finally to the overdue payment.

819 EQUAL OPPORTUNITY

820 20. During the performance of this Contract, the Contractor agrees as follows:

821 (a) The Contractor will not discriminate against any employee or applicant for
822 employment because of race, color, religion, sex, or national origin. The Contractor will take
823 affirmative action to ensure that applicants are employed, and that employees are treated during
824 employment, without regard to their race, color, religion, sex, or national origin. Such action
825 shall include, but not be limited to, the following: Employment, upgrading, demotion, or
826 transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other
827 forms of compensation; and selection for training, including apprenticeship. The Contractor
828 agrees to post in conspicuous places, available to employees and applicants for employment,
829 notices to be provided by the Contracting Officer setting forth the provisions of this
830 nondiscrimination clause.

831 (b) The Contractor will, in all solicitations or advertisements for employees
832 placed by or on behalf of the Contractor, state that all qualified applicants will receive
833 consideration for employment without discrimination because of race, color, religion, sex, or
834 national origin.

835 (c) The Contractor will send to each labor union or representative of workers
836 with which it has a collective bargaining agreement or other contract or understanding, a notice,
837 to be provided by the Contracting Officer, advising the said labor union or workers'
838 representative of the Contractor's commitments under Section 202 of Executive Order 11246 of

839 September 24, 1965, and shall post copies of the notice in conspicuous places available to
840 employees and applicants for employment.

841 (d) The Contractor will comply with all provisions of Executive Order
842 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders
843 of the Secretary of Labor.

844 (e) The Contractor will furnish all information and reports required by said
845 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
846 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting
847 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with
848 such rules, regulations, and orders.

849 (f) In the event of the Contractor's noncompliance with the nondiscrimination
850 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
851 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared
852 ineligible for further Government contracts in accordance with procedures authorized in said
853 amended Executive Order, and such other sanctions may be imposed and remedies invoked as
854 provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as
855 otherwise provided by law.

856 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
857 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
858 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
859 provisions will be binding upon each subcontractor or vendor. The Contractor will take such
860 action with respect to any subcontract or purchase order as may be directed by the Secretary of
861 Labor as a means of enforcing such provisions, including sanctions for noncompliance:
862 *Provided, however,* That in the event the Contractor becomes involved in, or is threatened with,
863 litigation with a subcontractor or vendor as a result of such direction, the Contractor may request
864 the United States to enter into such litigation to protect the interests of the United States.

865 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

866 21. (a) The obligation of the Contractor to pay the United States as provided in
867 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
868 obligation may be distributed among the Contractor's water users and notwithstanding the
869 default of individual water users in their obligations to the Contractor.

870 (b) The payment of charges becoming due pursuant to this Contract is a
871 condition precedent to receiving benefits under this Contract. The United States shall not make
872 water available to the Contractor through Project facilities during any period in which the
873 Contractor is in arrears in the advance payment of water rates, any operation and maintenance
874 charges due the United States or is in arrears for more than 12 months in the payment of any
875 construction charges due the United States. The Contractor shall not deliver water under the
876 terms and conditions of this Contract for lands or parties which are in arrears in the advance

877 payment of water rates or operation and maintenance charges as levied or established by the
878 Contractor.

879 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
880 obligation to require advance payment for water rates which it levies.

881 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

882 22. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
883 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
884 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
885 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub.
886 L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
887 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
888 Interior and/or Bureau of Reclamation.

889 (b) These statutes prohibit any person in the United States from being
890 excluded from participation in, being denied the benefits of, or being otherwise subjected to
891 discrimination under any program or activity receiving financial assistance from the Bureau of
892 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this
893 Contract, the Contractor agrees to immediately take any measures necessary to implement this
894 obligation, including permitting officials of the United States to inspect premises, programs, and
895 documents.

896 (c) The Contractor makes this agreement in consideration of and for the
897 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
898 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
899 Reclamation, including installment payments after such date on account of arrangements for
900 Federal financial assistance which were approved before such date. The Contractor recognizes
901 and agrees that such Federal assistance will be extended in reliance on the representations and
902 agreements made in this article and that the United States reserves the right to seek judicial
903 enforcement thereof.

904 (d) Complaints of discrimination against the Contractor shall be investigated
905 by the Contracting Officer's Office of Civil Rights.

906 PRIVACY ACT COMPLIANCE

907 23. Omitted.

908 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

909 24. In addition to all other payments to be made by the Contractor pursuant to this
910 Contract, the Contractor shall pay to the United States, within sixty days after receipt of a bill

911 and detailed statement submitted by the Contracting Officer to the Contractor for such specific
912 items of direct cost incurred by the United States for work requested by the Contractor associated
913 with this Contract plus indirect costs in accordance with applicable Bureau of Reclamation
914 policies and procedures. All such amounts referred to in this Article shall not exceed the amount
915 agreed to in writing in advance by the Contractor. This Article shall not apply to costs for
916 routine contract administration.

917 WATER CONSERVATION

918 25. (a) Prior to the delivery of water provided from or conveyed through
919 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
920 shall be implementing an effective water conservation and efficiency program based on the
921 Contractor's water conservation plan that has been determined by the Contracting Officer to
922 meet the conservation and efficiency criteria for evaluating water conservation plans established
923 under Federal law. The water conservation and efficiency program shall contain definite water
924 conservation objectives, appropriate economically feasible water conservation measures, and
925 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
926 Contract shall be contingent upon the Contractor's continued implementation of such water
927 conservation program. In the event the Contractor's water conservation plan or any revised
928 water conservation plan completed pursuant to subdivision (d) of this Article have not yet been
929 determined by the Contracting Officer to meet such criteria, due to circumstances which the
930 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be
931 made under this Contract so long as the Contractor diligently works with the Contracting Officer
932 to obtain such determination at the earliest practicable date, and thereafter the Contractor

933 immediately begins implementing its water conservation and efficiency program in accordance
934 with the time schedules therein.

935 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
936 Article 3 of this Contract equal or exceed two thousand acre-feet per Year, the Contractor shall
937 implement the “Best Management Practices” identified by the time frames issued by the
938 California Urban Water Conservation Council for such M&I Water unless any such practice is
939 determined by the Contracting Officer to be inappropriate for the Contractor.

940 (c) The Contractor shall submit to the Contracting Officer a report on the
941 status of its implementation of the water conservation plan on the reporting dates specified in the
942 then-existing conservation and efficiency criteria established under Federal law.

943 (d) At five year intervals, the Contractor shall revise its water conservation
944 plan to reflect the then-current conservation and efficiency criteria for evaluating water
945 conservation plans established under Federal law and submit such revised water management
946 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then
947 determine if the water conservation plan meets Reclamation’s then-current conservation and
948 efficiency criteria for evaluating water conservation plans established under Federal law.

949 (e) If the Contractor is engaged in direct groundwater recharge, such activity
950 shall be described in the Contractor’s water conservation plan.

951 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

952 26. Except as specifically provided in Article 16 of this Contract, the provisions of
953 this Contract shall not be applicable to or affect non-Project water or water rights now owned or
954 hereafter acquired by the Contractor or any user of such water within the Contractor’s Service
955 Area. Any such water shall not be considered Project Water under this Contract. In addition,

956 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
957 any water user within the Contractor's Service Area acquires or has available under any other
958 contract pursuant to Federal Reclamation law.

959 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

960 27. (a) The O&M of a portion of the Project facilities which serve the Contractor,
961 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
962 San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate
963 agreement (8-07-20-X0354) between United States and the Operating Non-Federal Entity San
964 Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or
965 affect the rights or obligations of the Contractor or the United States hereunder.

966 (b) The Contracting Officer has previously notified the Contractor in writing
967 that the O&M of a portion of the Project facilities which serve the Contractor has been
968 transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and
969 therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis &
970 Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under
971 the terms and conditions of the separate agreement between the United States and the Operating
972 Non-Federal Entity San Luis & Delta Mendota Water Authority described in subdivision (a) of
973 this Article, all Rates, Charges, or assessments of any kind, including any assessment for reserve
974 funds, which the Operating Non-Federal Entity San Luis & Delta Mendota Water Authority or
975 such successor determines, sets, or establishes for the O&M of the portion of the Project
976 facilities operated and maintained by the Operating Non-Federal Entity San Luis &
977 Delta-Mendota Water Authority or such successor. Such direct payments to the Operating
978 Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor shall not

979 relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
980 of the Project Rates and Charges except to the extent the Operating Non-Federal Entity San Luis
981 & Delta-Mendota Water Authority collects payments on behalf of the United States in
982 accordance with the separate agreement identified in subdivision (a) of this Article.

983 (c) For so long as the O&M of any portion of the Project facilities serving the
984 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
985 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
986 Rates for Water Delivered under this Contract representing the cost associated with the activity
987 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
988 Authority or its successor.

989 (d) In the event the O&M of the Project facilities operated and maintained by
990 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by
991 the United States during the term of this Contract, the Contracting Officer shall so notify the
992 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include
993 the portion of the Rates to be paid by the Contractor for Project Water under this Contract
994 representing the O&M costs of the portion of such Project facilities which have been re-assumed.
995 The Contractor shall, thereafter, in the absence of written notification from the Contracting
996 Officer to the contrary, pay the Rates and Charges specified in the revised Exhibit "B" directly to
997 the United States in compliance with Article 7 of this Contract.

998 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

999 28. The expenditure or advance of any money or the performance of any obligation of
1000 the United States under this Contract shall be contingent upon appropriation or allotment of
1001 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1002 obligations under this Contract. No liability shall accrue to the United States in case funds are
1003 not appropriated or allotted.

1004

BOOKS, RECORDS, AND REPORTS

1005 29. (a) The Contractor shall establish and maintain accounts and other books and
1006 records pertaining to administration of the terms and conditions of this Contract, including the
1007 Contractor's financial transactions; water supply data; project operation, maintenance, and
1008 replacement logs; Project land and rights-of-way use agreements; the water users' land-use (crop
1009 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
1010 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
1011 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws
1012 and regulations, each party to this Contract shall have the right during office hours to examine
1013 and make copies of the other party's books and records relating to matters covered by this
1014 Contract.

1015 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1016 books, records, or other information shall be requested from the Contractor by the Contracting
1017 Officer unless such books, records, or information are reasonably related to the administration or
1018 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1019 time within which to provide the requested books, records, or information.

1020 (c) At such time as the Contractor provides information to the Contracting
1021 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1022 to the Operating Non-Federal Entity.

1023 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

1024 30. (a) The provisions of this Contract shall apply to and bind the successors and
1025 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1026 therein shall be valid until approved in writing by the Contracting Officer.

1027 (b) The assignment of any right or interest in this Contract by either party
1028 shall not interfere with the rights or obligations of the other party to this Contract absent the
1029 written concurrence of said other party.

1030 (c) The Contracting Officer shall not unreasonably condition or withhold
1031 approval of any proposed assignment.

1032 SEVERABILITY

1033 31. In the event that a person or entity who is neither (i) a party to a Project contract,
1034 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor
1035 (iii) an association or other form of organization whose primary function is to represent parties to
1036 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1037 enforceability of a provision included in this Contract and said person, entity, association, or
1038 organization obtains a final court decision holding that such provision is legally invalid or
1039 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1040 the parties to this Contract shall use their best efforts to (i) within thirty days of the date of such
1041 final court decision identify by mutual agreement the provisions in this Contract which must be
1042 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).
1043 The time periods specified above may be extended by mutual agreement of the parties. Pending
1044 the completion of the actions designated above, to the extent it can do so without violating any
1045 applicable provisions of law, the United States shall continue to make the quantities of Project
1046 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1047 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1048 RESOLUTION OF DISPUTES

1049 32. Should any dispute arise concerning any provisions of this Contract, or the
1050 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1051 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1052 Officer referring any matter to Department of Justice, the party shall provide to the other party
1053 thirty days' written notice of the intent to take such action; *Provided*, That such notice shall not
1054 be required where a delay in commencing an action would prejudice the interests of the party

1055 that intends to file suit. During the thirty day notice periods, the Contractor and the Contracting
1056 Officer shall meet and confer in an attempt to resolve the dispute. Except as specifically
1057 provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor
1058 or the United States may have.

1059 OFFICIALS NOT TO BENEFIT

1060 33. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1061 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1062 manner as other water users or landowners.

1063 CHANGES IN CONTRACTOR'S SERVICE AREA

1064 34. (a) While this Contract is in effect, no change may be made in the
1065 Contractor's Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger,
1066 or otherwise, except upon the Contracting Officer's written consent.

1067 (b) Within thirty days of receipt of a request for such a change, the
1068 Contracting Officer will notify the Contractor of any additional information required by the
1069 Contracting Officer for processing said request, and both parties will meet to establish a mutually
1070 agreeable schedule for timely completion of the process. Such process will analyze whether the
1071 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this
1072 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this
1073 Contract or to pay for any Federally-constructed facilities for which the Contractor is
1074 responsible; and (iii) have an impact on any Project Water rights applications, permits, or
1075 licenses. In addition, the Contracting Officer shall comply with the National Environmental
1076 Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs
1077 incurred by the Contracting Officer in this process, and such costs will be paid in accordance
1078 with Article 24 of this Contract.

1079

FEDERAL LAWS

1080 35. By entering into this Contract, the Contractor does not waive its rights to contest
1081 the validity or application in connection with the performance of the terms and conditions of this
1082 Contract of any Federal law or regulation; *Provided*, That the Contractor agrees to comply with
1083 the terms and conditions of this Contract unless and until relief from application of such Federal
1084 law or regulation to the implementing provision of the Contract is granted by a court of
1085 competent jurisdiction.

1086

NOTICES

1087 36. Any notice, demand, or request authorized or required by this Contract shall be
1088 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1089 delivered to the Area Manager, South-Central California Area Office, Mid-Pacific Region,
1090 Bureau of Reclamation, 1243 N Street, Fresno, CA 93721, and on behalf of the United States,
1091 when mailed, postage prepaid, or delivered to the City Manager, c/o Public Works Department,
1092 520 Tracy Blvd., Tracy CA 95376. The designation of the addressee or the address may be
1093 changed by notice given in the same manner as provided in this article for other notices.

1094

CONFIRMATION OF CONTRACT

1095 37. Promptly after the execution of this Contract, the Contractor shall provide
1096 evidence to the Contracting Officer that, pursuant to the laws of the State of California, the
1097 Contractor is a legally constituted entity and the contract is lawful, valid, and binding on the
1098 Contractor. This Contract shall not be binding on the United States until such evidence has been
1099 provided to the Contracting Officer's satisfaction.

CONTRACT DRAFTING CONSIDERATIONS

1100 38. This Contract has been, negotiated and reviewed by the parties hereto,
1101 each of whom is sophisticated in the matters to which this Contract pertains. The double-spaced
1102 articles of this Contract have been drafted, negotiated, and reviewed by the parties, and no one
1103 party shall be considered to have drafted the stated articles.

1104 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
1105 the day and year first above written.

1106 UNITED STATES OF AMERICA

1107 By: _____
1108 Regional Director, Mid-Pacific Region
1109 Bureau of Reclamation

1110 CITY OF TRACY

1111 By: _____
1112 City Manager

1113 Attest:

1114 By: _____
1115 Secretary

Draft

EXHIBIT A

[Map or Description of Service Area]

Draft

DRAFT EXHIBIT B
City Of Tracy
2013 Rates and Charges
(Per Acre-Foot)

	M&I Water
COST-OF-SERVICE (COS) RATE	
Construction Cost	\$22.00
O&M Cost	
Water Marketing	\$4.69
Storage	\$9.92
Conveyance ¹	
Conveyance Pumping	\$0.37
American Recovery and Reinvestment Act ²	\$0.00
Other Costs	\$0.00
Deficit Cost Component	\$0.00
TOTAL COS RATE	\$36.98
CHARGES AND ASSESSMENTS (<i>Payments in addition to Rates</i>)	
P.L. 102-575 Surcharge	
Restoration Fund Payments [Section 3407(d)(2)(A)]	\$19.58
P.L. 106-377 Assessment (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.05

EXPLANATORY NOTES

- 1 Conveyance and Conveyance Pumping Operation and Maintenance Costs were removed for ratesetting purposes and are to be direct billed.

Recent historic use, as defined in the CVP M&I Water Shortage Policy, is _____ acre-feet.

Additional detail of rate components is available on the Internet at

<http://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>

M&I Only
Contract No. 14-06-200-4305A-IR14-B
(Partial Assignment from Banta-Carbona)

1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California

5 INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 THE CITY OF TRACY
8 PROVIDING FOR PROJECT WATER SERVICE

9 THIS CONTRACT, made this _____ day of _____, 2014,
10 in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
11 supplementary thereto, including, but not limited to, the acts of August 26, 1937 (50 Stat. 844),
12 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
13 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), as
14 amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
15 hereinafter referred to as Federal Reclamation law, between the UNITED STATES OF
16 AMERICA, hereinafter referred to as the United States, and the CITY OF TRACY, hereinafter
17 referred to as the Contractor, a public agency of the State of California, duly organized, existing,
18 and acting pursuant to the laws thereof;

19 WITNESSETH, That:

20 EXPLANATORY RECITALS

21 WHEREAS, the United States and the Banta-Carbona Irrigation District
22 (Banta-Carbona) entered into interim renewal Contract (long-form interim renewal contract)
23 No. 14-06-200-4305A-IR1, which provided for the continued water service of 25,000 acre-feet

24 of Central Valley Project (CVP) water to Banta-Carbona following expiration of Contract
25 No. 14-06-200-4305A; and

26 WHEREAS, the United States and Banta-Carbona entered into successive
27 renewals, of which the last long-form interim renewal contract was Contract
28 No. 14-06-200-4305A-IR5, hereinafter referred to as IR5; and

29 WHEREAS, on February 27, 2004, the Contractor, Banta-Carbona, and the
30 United States executed a partial assignment agreement, “Agreement for Assignment of Portion
31 of Water Service Contract”, which assigned to the Contractor the rights, duties, and obligations
32 of Banta-Carbona’s Contract No. 14-06-200-4305A-IR7 for 5,000 acre-feet; and

33 WHEREAS, the United States and the Contractor entered into the first interim
34 renewal contract identified as Contract No. 14-06-200-4305A-IR9-B, hereinafter referred to as
35 IR9-B; and

36 WHEREAS, the United States and the Contractor have entered into successive
37 renewals of IR9-B, the most recent of which is Contract No. 14-06-200-4305A-IR13-B,
38 hereinafter referred to as IR13-B, effective March 1, 2012, through February 28, 2014; and

39 WHEREAS, the United States and the Contractor have made significant progress
40 in their negotiations of a long-term renewal contract, believe that further negotiations on the
41 long-term renewal contract would be beneficial, and mutually commit to continue to negotiate to
42 seek to reach agreement, but anticipate that the environmental documentation necessary for
43 execution of any long-term renewal contract may be delayed for reasons beyond the control of
44 the parties; and

45 WHEREAS, the Contractor has requested a subsequent interim renewal contract
46 pursuant to IR13-B; and

47 WHEREAS, the United States has determined that the Contractor has to date
48 fulfilled all of its obligations under IR13-B; and

49 WHEREAS, the United States is willing to renew IR13-B pursuant to the terms
50 and conditions set forth below;

51 NOW, THEREFORE, in consideration of the mutual and dependent covenants
52 herein contained, it is hereby mutually agreed by the parties hereto as follows:

53 RENEWAL AND REVISION OF
54 CONTRACT NO. 14-06-200-4305A-IR13-B

55 1. Except as specifically modified by this Contract, all provisions of IR13-B are
56 renewed with the same force and effect as if they were included in full text with the exception of
57 Article 1 of IR13-B thereof, which is revised as follows:

58 (a) The first sentence in subdivision (a) of Article 1 of IR13-B is replaced
59 with the following language: “This Contract shall be effective from March 1, 2014, and shall
60 remain in effect through February 29, 2016, and thereafter will be renewed as described in
61 Article 2 of IR5 if a long-term renewal contract has not been executed with an effective
62 commencement date of March 1, 2016.”

63 (b) Subdivision (b) of Article 1 of IR13-B is amended by deleting the date
64 “February 15, 2014,” and replacing same with the date “February 15, 2016.”

65 (c) Subdivision (c) of Article 1 of IR13-B is amended by deleting the dates
66 “February 1, 2014,” “February 15, 2014,” and “February 28, 2014,” and replacing same with
67 the dates “February 1, 2016,” “February 15, 2016,” and “February 29, 2016,” respectively.

68 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
69 the day and year first above written.

70 UNITED STATES OF AMERICA

71 By: _____
72 Regional Director, Mid-Pacific Region
73 Bureau of Reclamation

74 (SEAL)

75 CITY OF TRACY

76 By: _____
77 City Manager

78 Attest:

79 By: _____
80 Secretary

M&I Only
Contract No. 7-07-20-W0045-IR14-B
(Partial Assignment from The West Side)

1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California

5 INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 THE CITY OF TRACY
8 PROVIDING FOR PROJECT WATER SERVICE

9 THIS CONTRACT, made this _____ day of _____, 2014,
10 in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
11 supplementary thereto, including, but not limited to, the acts of August 26, 1937 (50 Stat. 844),
12 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
13 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), as
14 amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
15 hereinafter referred to as Federal Reclamation law, between the UNITED STATES OF
16 AMERICA, hereinafter referred to as the United States, and the CITY OF TRACY, hereinafter
17 referred to as the Contractor, a public agency of the State of California, duly organized, existing,
18 and acting pursuant to the laws thereof;

19 WITNESSETH, That:

20 EXPLANATORY RECITALS

21 WHEREAS, the United States and The West Side Irrigation District (The West
22 Side) entered into an interim renewal Contract (long-form interim renewal contract)
23 No. 7-07-20-W0045-IR1, which provided for the continued water service of 7,500 acre-feet

24 of Central Valley Project (CVP) water to The West Side following expiration of Contract
25 No. 7-07-20-W0045; and

26 WHEREAS, the United States and The West Side entered into successive
27 renewals, of which the last long-form interim renewal contract was Contract
28 No. 7-07-20-W0045-IR5, hereinafter referred to as IR5; and

29 WHEREAS, on February 7, 2004, the Contractor, The West Side, and the United
30 States executed a partial assignment agreement, "Agreement for Assignment of Portion of Water
31 Service Contract", which assigned to the Contractor the rights, duties, and obligations of The West
32 Side in Contract No. 7-07-20-W0045-IR7 for 2,500 acre-feet with an exclusive option for the
33 Contractor to acquire the contract right to an additional 2,500 acre-feet; and

34 WHEREAS, the United States and the Contractor entered into the first interim
35 renewal contract identified as Contract No. 7-07-20-W0045-IR9-B, hereinafter referred to as
36 IR9-B; and

37 WHEREAS, the United States and the Contractor have entered into successive
38 renewals of IR9-B, the most recent of which is Contract No. 7-07-20-W0045-IR13-B, hereinafter
39 referred to as IR13-B effective March 1, 2012, through February 28, 2014; and

40 WHEREAS, the United States and the Contractor have made significant progress
41 in their negotiations of a long-term renewal contract, believe that further negotiations on the
42 long-term renewal contract would be beneficial, and mutually commit to continue to negotiate to
43 seek to reach agreement, but anticipate that the environmental documentation necessary for
44 execution of any long-term renewal contract may be delayed for reasons beyond the control of
45 the parties; and

46 WHEREAS, the Contractor has requested a subsequent interim renewal contract
47 pursuant to IR13-B; and

48 WHEREAS, the United States has determined that the Contractor has to date
49 fulfilled all of its obligations under IR13-B; and

50 WHEREAS, the United States is willing to renew IR13-B pursuant to the terms
51 and conditions set forth below;

52 NOW, THEREFORE, in consideration of the mutual and dependent covenants
53 herein contained, it is hereby mutually agreed by the parties hereto as follows:

54 RENEWAL AND REVISION OF
55 CONTRACT NO. 7-07-20-W0045-IR13-B

56 1. Except as specifically modified by this Contract, all provisions of IR13-B are
57 renewed with the same force and effect as if they were included in full text with the exception of
58 Article 1 of IR13-B thereof, which is revised as follows:

59 (a) The first sentence in subdivision (a) of Article 1 of IR13-B is replaced
60 with the following language: "This Contract shall be effective from March 1, 2014, and shall
61 remain in effect through February 29, 2016, and thereafter will be renewed as described in
62 Article 2 of IR5 if a long-term renewal contract has not been executed with an effective
63 commencement date of March 1, 2016."

64 (b) Subdivision (b) of Article 1 of IR13-B is amended by deleting the date
65 "February 15, 2014," and replacing same with the date "February 15, 2016."

66 (c) Subdivision (c) of Article 1 of IR13-B is amended by deleting the dates
67 "February 1, 2014," "February 15, 2014," and "February 28, 2014," and replacing same with
68 the dates "February 1, 2016," "February 15, 2016," and "February 29, 2016," respectively.

69 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
70 the day and year first above written.

71 UNITED STATES OF AMERICA

72 By: _____
73 Regional Director, Mid-Pacific Region
74 Bureau of Reclamation

75 (SEAL)

76 CITY OF TRACY

77 By: _____
78 City Manager

79 Attest:

80 By: _____
81 Secretary

RESOLUTION _____

AUTHORIZING INTERIM RENEWAL CONTRACTS BETWEEN THE UNITED STATES BUREAU OF RECLAMATION AND THE CITY FOR PROVIDING CENTRAL VALLEY PROJECT WATER SERVICE AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS

WHEREAS, In 1974, the City entered into a long-term contract with the Bureau for water service from the Delta-Mendota Canal. This contract is for delivery of 10,000 acre-feet per year and expires on December 31, 2013, and

WHEREAS, In 2004, the Bureau authorized contract assignments between the City and Banta Carbona Irrigation District (BCID), and the City and the West Side Irrigation District (WSID), and

WHEREAS, In 2007, 2008, 2010, and 2012, the City entered into Interim Renewal Contracts, the most recent of which expires on February 28, 2014, and

WHEREAS, The Bureau has prepared the Interim Renewal Contract for the long-term contract for execution by the City effective from January 1, 2014, through February 29, 2016, and

WHEREAS, A California Environmental Quality Act Categorical Exemption has been prepared as there are no impacts to the environment;

NOW, THEREFORE, BE IT RESOLVED, That the City Council authorizes Interim Renewal Contract No. 14-06-200-7858A-IR1 between the United States and the City of Tracy providing for Central Valley Project Water Service and authorizes the City Manager to execute the agreements.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 3rd day of December, 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

CONTINUED PUBLIC HEARING TO ADOPT AMENDMENTS TO THE CITYWIDE ROADWAY AND TRANSPORTATION, AND STORM DRAINAGE MASTER PLANS, THE ESTABLISHMENT OF ROADWAY AND TRAFFIC, WATER, RECYCLED WATER, WASTEWATER, STORM DRAINAGE, PUBLIC SAFETY, PUBLIC FACILITIES, AND PARK DEVELOPMENT IMPACT FEES AND THE ASSOCIATED AB1600 FEE STUDIES FOR ALL NEW DEVELOPMENTS WITHIN THE CITY

EXECUTIVE SUMMARY

Due to comments received from the development community late in the week ending November 14, 2013 related to the proposed development fees, the public hearing for this meeting was continued from the November 19, 2013 City Council Meeting.

The City Council adopted Citywide infrastructure Master Plans in late 2012 and 2013. Since then more detailed infrastructure studies have been completed for the Cordes Ranch area as part of their Specific Plan resulting in minor amendments to the Roadway and Transportation Master Plan and Storm Drainage Master Plan. Based upon the infrastructure Master Plans, the Development Impact Fees have been finalized in accordance with AB1600. Adoption of the Master Plans amendments and the Development Impact Fees will initiate the development process of new areas in the City.

DISCUSSION

In 2010, the City began the process of preparing Citywide Master Plans for traffic, water and recycled water, wastewater, storm drainage, public safety, public facilities and parks to serve new developments. The Citywide Master Plans were completed at the end of 2012, and subsequently adopted by City Council. Since that time, the Cordes Ranch Specific Plan and EIR documents have been adopted by Council. As a result of the detailed studies for the specific plan improvements, the Transportation Master Plan has been amended to reflect the addition of improvements at two interchanges. The addition of these interchanges was also required due to comments received from Caltrans. In addition, the Storm Drainage Master Plan has been amended to reflect the fact that the storm drainage detention basin upstream of Cordes, located in San Joaquin County's jurisdiction, is not needed to provide flood protection for new development within the City's sphere of influence. Cordes Ranch will mitigate all of its on-site storm drainage impacts and will reduce the downstream effects from the storm run-off generated up stream in the county which passes through Cordes Ranch toward the downstream properties located in the county. This detention basin upstream of the Cordes Ranch area is being deleted from the Master Plan since it does not serve property currently in the City's sphere.

After adoption of the Master Plans, AB1600 Development Impact Fee studies were completed. These studies determine the equitable share that new development must

pay in order for the City to build the infrastructure needed to serve them. This includes major projects such as multiple wastewater treatment plant expansions, new eastside and westside sewer conveyance lines, a Citywide recycled water system, new water tanks, distribution lines, and water supply sources, as well as new police, fire and park facilities. These projects are outlined in each of the studies along with the method for allocating these costs to the various land uses. These fee studies were provided to the development community for review and comment.

In an effort to keep Development Impact Fees competitive and in a reasonable range, the City used various alternatives to finalize the fees after further detailed reviews and receiving input from the development community. The following decisions were made to reduce immediate impacts to new development:

1. The Transportation Master Plan identified improvements needed to serve developments through 2035 horizon year. This resulted in smaller street widths in the immediate future, however, ultimately wider right of ways will be reserved for future development. In order to keep the fees competitive, these improvements were spread over the total trips generated at build-out of the General Plan.
2. The traffic unit costs were adjusted on a case by case basis after input was received from the development community indicating some of the unit costs were too high given current market conditions.
3. It was assumed that \$274 million would be received from grants, regional Traffic Impact Fees and Measure K to offset traffic costs.
4. Water fees were reduced by a factor of 15% and the Recycled Water Fees by 30% based on discussions with developers who felt construction costs were too high given the current economic conditions. The fees will be reviewed and adjusted annually as the cost of construction increases or decreases.
5. The project soft-costs amount was proposed at 45% in line with the construction industry. However, after discussions with developers, the amount was reduced to 40%.
6. After receiving input from the development community the Park Impact Fees were adjusted to a more reasonable and competitive level.

The Citywide Master Plans analyzed 19 different planning areas covering 8,860 acres. The plan analyzed the various infrastructure needed to serve these new developments. The master plans were adopted by City Council as follows:

- “Citywide Roadway and Transportation Master Plan” adopted on November 26, 2012, by Resolution 2012-240
- “Citywide Water Master Plan” adopted on January 15, 2013, by Resolution 2013-008
- “Tracy Wastewater Master Plan” adopted on January 15, 2013, by Resolution 2013-008
- “Citywide Storm Drainage Master Plan” adopted on April 16, 2013, by Resolution 2013-056
- “Citywide Public Safety Master Plan” adopted on April 16, 2013, by Resolution 2013-056
- “Citywide Public Facilities Master Plan” adopted on April 16, 2013, by Resolution Number 2013-056

- “Parks Master Plan New Developments” adopted on April 16, 2013, by Resolution 2013-056

Amendments to the Citywide Roadway and Transportation and Storm Drainage Master Plans are being adopted concurrent with the fee studies. To fund the infrastructure identified in the Master Plans, AB1600 Development Impact Fee reports have been prepared. These reports identify the facilities and their costs and distribute them equitably to new developments. The reports take into consideration existing or potential future City funding sources.

The following reports were prepared to meet the requirements of the Mitigation Fee Act and establish the Development Impact Fees:

- “Citywide Roadway and Transportation Master Plan Traffic Impact Fee Program” prepared by RBF and Kimley Horn Consultants, November 2013.
- “Citywide Water System Master Plan – Tier 1 Development Impact Fee Analysis for the Backbone Buildout Portable and Recycled Water Systems” prepared by West Yost Associates, August 28, 2013.
- “Tracy Wastewater Conveyance and Treatment Development Impact Fee Study” prepared by CH2MHill, January 2013.
- “City of Tracy Citywide Storm Drainage Master Plan Impact Fee Analysis for New Impact Fee Program Areas” prepared by Stantec, November 2013.
- “Public Safety AB1600 Development Impact Fee Technical Memo” prepared by Harris and Associates, May 2013.
- “Public Facilities AB1600 Development Impact Fee Technical Memo” prepared by Harris and Associates, dated April 2013.
- “Parks AB1600 Development Impact Fee Technical Memo” prepared by Harris and Associates, May 2013.

Development Impact Fees

In preparing the Development Impact Fees, the City has been consistent with the procedural and substantive requirements of the Mitigation Fee Act (also known as AB1600) as set forth in each of the above technical reports. The findings and conclusions for each infrastructure fee are summarized in the individual report. A summary of the fees are included in Attachment A.

These fees apply only to those developments that do not currently have finance plans in place. The facilities funded through the impact fee program are generally considered to be facilities that make up the backbone infrastructure. These fees do not include on-site infrastructure that is specific to each development. Maps and lists of the included facilities are included in each fee report.

Each new development will determine the necessary on-site improvements and will work with the City of Tracy to assess which, if any, of the Citywide improvements will be triggered as part of the development.

These impact fees will be updated on an annual basis by the Director of Development Services using the Engineering News Record (ENR) Construction Cost Index. The fees

are also subject to periodic review and update based on recently completed project costs and industry trends, subject to City Council approval.

STRATEGIC PLAN

This agenda item supports Objective 1.c of the Economic Development Strategic Plan which ensures quality infrastructure to meet future development needs.

FISCAL IMPACT

There is no fiscal impact on the General Fund. Development Impact Fees are paid by the developers to fund the infrastructure improvements required to serve their developments. Administration and updates to these fees are funded through the soft costs included in all the infrastructure cost estimates.

RECOMMENDATION

That City Council conduct the Public Hearing, take public testimony and adopt and approve by Resolution:

1. The Addendum to the Citywide Roadway and Transportation Master Plan;
2. The Supplement to the Citywide Storm Drainage Master Plan;
3. The Development Impact Fees for Traffic, Water, Recycled Water, Wastewater, Storm Drainage, Public Safety, Public Facilities, and Parks as set forth in Attachment A; and
4. The impact fee reports for Citywide Traffic, Water and Recycled Water, Wastewater, Storm Drainage, Public Safety, Public Facilities and Parks as set forth in Attachment B.

Prepared By: Kuldeep Sharma, City Engineer

Reviewed By: Andrew Malik, Development Services Director
Maria A. Hurtado, Assistant City Manager

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

ATTACHMENTS

Attachment A – Impact Fee Summary

Attachment B – Impact Fee Studies (Oversized: Available at Development Services Department in City Hall and on the City of Tracy Website at www.ci.tracy.ca.us)

Attachment A

	Transportation	Water			Recycled Water	Wastewater			Parks	Public Safety	Public Facilities
		Distribution	Supply	Treatment		Treatment Plant	East Conveyance	West Conveyance			
	per unit										
Residential-Very Low Density	\$ 5,092	\$ 4,236	\$ 1,813	\$ 3,295	\$ 2,654	\$ 6,727	\$ 2,405	\$ 1,610	\$ 7,557	\$ 1,353	\$ 2,953
Residential-Low Density	\$ 5,092	\$ 4,236	\$ 1,813	\$ 3,295	\$ 2,654	\$ 6,727	\$ 2,405	\$ 1,610	\$ 7,557	\$ 1,353	\$ 2,953
Residential-Medium Density (attached 2-4)	\$ 3,106	\$ 3,050	\$ 1,305	\$ 2,372	\$ 2,282	\$ 5,504	\$ 1,968	\$ 1,317	\$ 6,183	\$ 1,107	\$ 2,416
Residential-High Density (attached 4+)	\$ 3,106	\$ 2,160	\$ 925	\$ 1,680	\$ 1,539	\$ 4,485	\$ 1,603	\$ 1,073	\$ 5,038	\$ 902	\$ 1,969
	per acre									per 1,000 sf	per 1,000 sf
Commercial/Retail	\$ 152,057	\$ 17,622	\$ 7,542	\$ 13,707	\$ 14,942	\$ 29,048	\$ 10,385	\$ 6,952	\$ -	\$ 410	\$ 77
Office	\$ 124,045	\$ 13,216	\$ 5,657	\$ 10,280	\$ 12,182	\$ 29,048	\$ 10,385	\$ 6,952	\$ -	\$ 683	\$ 128
Industrial	\$ 75,420	\$ 13,216	\$ 5,657	\$ 10,280	\$ 12,182	\$ 26,908	\$ 9,620	\$ 6,440	\$ -	\$ 137	\$ 26

Storm Drainage*										
	Keenan	Westside Residential	NW WSO	Larch Clover	East Side Industrial	Chrisman & East UR-1	South MacArthur and Rocha	Mtn. House	Lammers Watershed	Kagehiro and West Larch Clover**
	per du									
Residential-Very Low Density	NA	NA	NA	NA	NA	\$ 1,703	\$ 4,866	NA	\$ 1,421	\$ 613
Residential-Low Density	\$ 2,141	\$ 4,571	NA	NA	NA	\$ 1,572	\$ 4,469	NA	\$ 1,304	\$ 532
Residential-Medium Density (attached 2-4)	\$ 1,446	\$ 3,062	NA	NA	NA	\$ 1,045	\$ 2,971	NA	\$ 868	\$ 375
Residential-High Density (attached 4+)	\$ 1,293	\$ 2,732	NA	NA	NA	\$ 933	\$ 2,659	NA	\$ 777	\$ 335
	per acre									
Commercial/Retail	NA	NA	\$ 16,384	\$ 16,793	\$ 48,957	\$ 28,682	\$ 81,501	\$ 15,795	\$ 23,818	NA
Office	NA	NA	\$ 16,384	NA	NA	\$ 28,682	NA	\$ 15,795	\$ 23,818	NA
Industrial	NA	NA	\$ 16,384	NA	\$ 48,957	\$ 28,682	NA	\$ 15,795	\$ 23,818	NA

* See storm drainage breakdown for split between outfall versus program infrastructure.

**Kagehiro and West Larch Clover only pay the Westside Outfall fee. No additional program infrastructure is required by Kagehiro and the West Larch Clover area is discharged directly to the existing detention basin.

Total Fees										
	Keenan	Westside Residential	NW WSO	Larch Clover	East Side Industrial	Chrisman & East UR-1	South MacArthur and Rocha	Mtn. House	Lammers Watershed	Kagehiro and West Larch Clover**
	per du									
Residential-Very Low Density	NA	NA	NA	NA	NA	\$ 39,788	\$ 42,951	NA	\$ 38,711	\$ 37,903
Residential-Low Density	\$ 39,431	\$ 41,861	NA	NA	NA	\$ 39,657	\$ 42,554	NA	\$ 38,594	\$ 37,822
Residential-Medium Density (attached 2-4)	\$ 30,090	\$ 31,706	NA	NA	NA	\$ 30,339	\$ 32,265	NA	\$ 29,512	\$ 29,019
Residential-High Density (attached 4+)	\$ 24,171	\$ 25,610	NA	NA	NA	\$ 24,341	\$ 26,067	NA	\$ 23,655	\$ 23,213
	per acre									
Commercial/Retail	NA	NA	\$ 264,615	\$ 265,024	\$ 300,621	\$ 280,346	\$ 333,165	\$ 264,026	\$ 272,049	NA
Office	NA	NA	\$ 233,658	NA	NA	\$ 249,389	NA	\$ 233,069	\$ 241,092	NA
Industrial	NA	NA	\$ 170,028	NA	\$ 205,781	\$ 185,506	NA	\$ 169,439	\$ 177,462	NA

The following summarizes the estimated fees by landuse. Note that fees for public facilities and public safety are based on a fee per square foot, so these total fees per acre, for the non-residential landuses are only estimates.

RESOLUTION _____

AUTHORIZING ADDENDUM TO THE CITYWIDE ROADWAY AND TRANSPORTATION
MASTER PLAN

WHEREAS, The City adopted the Citywide Roadway and Transportation Master Plan, as approved by City Council Resolution Number 2012-240, on November 26, 2012, and

WHEREAS, The Cordes Ranch EIR was certified by City Council on September 3, 2013, and

WHEREAS, The Cordes Ranch Specific Plan was certified by City Council on September 3, 2013, and

WHEREAS, The Cordes Ranch Specific Plan identified two additional interchange improvements that were not previously identified in the Transportation Master Plan, and

WHEREAS, In order to be consistent with the Cordes Ranch Specific Plan and EIR, the Master plan must be amended to add these additional interchange improvements;

NOW, THEREFORE, BE IT RESOLVED, That the City Council does hereby adopt and approve the addendum to the Citywide Roadway and Transportation Master Plan.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council the 3rd day of December, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

RESOLUTION _____

ADOPTING THE SUPPLEMENT TO THE CITYWIDE STORM DRAINAGE MASTER PLAN

WHEREAS, The City adopted the Citywide Storm Drainage Master Plan, as approved by City Council Resolution 2013-056, on April 16, 2013, and

WHEREAS, The Cordes Ranch EIR was certified by City Council on September 3, 2013, and

WHEREAS, The Cordes Ranch Specific Plan was certified by City Council on September 3, 2013, and

WHEREAS, The Cordes Ranch Specific Plan area was required to mitigate their storm drainage impacts with the use of on-site storm drainage facilities, and

WHEREAS, It has been determined that the upstream storm drainage basin located in San Joaquin County's jurisdiction is not needed to provide flood protection for the new developments within the City's sphere of influence; the Cordes Ranch Development will mitigate all of its onsite storm drainage impacts and will reduce the downstream effects from the storm run-off generated up stream in the county which pass through Cordes Ranch toward the downstream properties located in the county;

NOW, THEREFORE, BE IT RESOLVED, That the City Council does hereby adopt and approve the supplement to the Citywide Storm Drainage Master Plan.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 3rd day of December, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

RESOLUTION _____

ADOPTING AND APPROVING THE ESTABLISHMENT OF ROADWAY AND TRAFFIC, WATER, RECYCLED WATER, WASTEWATER, STORM DRAINAGE, PUBLIC SAFETY, PUBLIC FACILITIES, AND PARK DEVELOPMENT IMPACT FEES AND THE ASSOCIATED AB1600 FEE STUDIES FOR ALL NEW DEVELOPMENTS

WHEREAS, The City adopted the Citywide Roadway Master Plan, as approved by City Council Resolution 2012-240, on November 26, 2012, and amended on November 19, 2013, and

WHEREAS, The City adopted the Water Master Plan, as approved by City Council Resolution 2013-008, on January 15, 2013, and

WHEREAS, The City adopted the Wastewater Master Plan, as approved by City Council Resolution 2013-008, on January 15, 2013, and

WHEREAS, The City adopted the Storm Drainage Master Plan, as approved by City Council Resolution 2013-056, on April 16, 2013, and amended on November 19, 2013, and

WHEREAS, The City adopted the Public Safety Master Plan, as approved by City Council Resolution 2013-056, on April 16, 2013, and

WHEREAS, The City adopted the Public Facilities Master Plan, as approved by City Council Resolution 2013-056, on April 16, 2013, and

WHEREAS, The City adopted the Parks Master Plan, as approved by City Council Resolution 2013-056, on April 16, 2013, and

WHEREAS, The City's consultants completed the following Development Impact Fee reports which are consistent with the adopted master plans and which meet the Mitigation Fee Act Requirements:

- "Citywide Roadway and Transportation Master Plan Traffic Impact Fee Program" prepared by RBF and Kimley Horn Consultants, October 2013.
- "Citywide Water System Master Plan – Tier 1 Development Impact Fee Analysis for the Backbone Buildout Portable and Recycled Water Systems" prepared by West Yost Associates, August 28, 2013.
- "Tracy Wastewater Conveyance and Treatment Development Impact Fee Study" prepared by CH2MHill, January 2013.
- "City of Tracy Citywide Storm Drainage Master Plan Impact Fee Analysis for New Impact Fee Program Areas" prepared by Stantec, November 2013.
- "Public Safety AB1600 Development Impact Fee Technical Memo" prepared by Harris and Associates, May 2013.
- "Public Facilities AB1600 Development Impact Fee Technical Memo" prepared by Harris and Associates, dated April 2013.
- "Parks AB1600 Development Impact Fee Technical Memo" prepared by Harris and Associates, May 2013, and

WHEREAS, The fees apply to all new development within the City of Tracy that do not already have finance plans in place as of the date of adoption of these fees, and as identified in the various Development Impact Fee Studies, and

WHEREAS, Each of the technical studies listed above, include an estimate of the reasonable cost to provide the infrastructure, including an estimate of land acquisition and a mark-up of the estimated construction costs to cover the costs of design, construction management, contingency, and program management, and

WHEREAS, The Development Services Director is authorized to update the development impact fees with the Engineering News Record (ENR) Construction Cost Index for San Francisco on an annual basis using the November 2013 index as the initial index, pursuant to Section 13.04.070(a) of the Tracy Municipal Code, and

WHEREAS, Government Code Section 66017 provides that Development Impact Fees are not effective until 60 days following adoption of the fee by the City;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby adopts and approves the Citywide Development Impact Fees and associated AB1600 Development Impact Fee Studies for Roadway and Traffic, Water and Recycled Water, Wastewater, Storm Drainage, Public Safety, Public Facilities, and Parks.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the 3rd day of December, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 4

REQUEST

PUBLIC HEARING TO CONSIDER APPLICATIONS TO AMEND THE EASTLAKE AND ELISSAGARAY RANCH PLANNED UNIT DEVELOPMENTS TO REMOVE A TEN ACRE SITE PREVIOUSLY DESIGNATED FOR A SCHOOL; TO APPROVE THE CONCEPT, PRELIMINARY AND FINAL DEVELOPMENT PLANS FOR THE ELISSAGARAY INFILL PLANNED UNIT DEVELOPMENT; TO APPROVE A VESTING TENTATIVE SUBDIVISION MAP TO SUBDIVIDE THE TEN ACRE SITE INTO 47 RESIDENTIAL LOTS; AND TO INTRODUCE THE ORDINANCE AND ADOPT THE RESOLUTION. THE PROJECT IS LOCATED ON DOMINIQUE DRIVE BETWEEN EASTLAKE CIRCLE AND BASQUE DRIVE, ASSESSOR'S PARCEL NUMBERS 252-050-24 AND 252-260-01. THE APPLICANT AND PROPERTY OWNER IS TVC TRACY HOLDCO, LLC. APPLICATION NUMBERS PUD12-0003 AND TSM12-0002

EXECUTIVE SUMMARY

Last year, the City Council amended the General Plan for a vacant ten acre site located in the center of the Eastlake and Elissagaray Ranch subdivisions in anticipation of future development applications for single-family homes (Application Number GPA10-0004). Prior to that amendment, the site was identified for a public school within the Tracy Unified School District. According to the Tracy Unified School District, a school is no longer needed at that location. The property owner now proposes to develop a single-family detached home subdivision on the site.

BACKGROUND

The subject site is located on Dominique Drive between Eastlake Circle and Basque Drive. The westerly five acres of the site is contained within the Eastlake Planned Unit Development (PUD), and the easterly five acres is in the Elissagaray Ranch PUD (Attachment A: Location Map), both of which were approved in the late 1990's.

The property owner has submitted an application to amend the Eastlake and Elissagaray Ranch PUDs to remove the school site from those PUD areas. The application includes a new PUD called Elissagaray Infill and a Vesting Tentative Subdivision Map for 47 lots.

DISCUSSION

Amendment to the Eastlake and Elissagaray Ranch PUDs

As discussed above, the Eastlake and Elissagaray Ranch PUDs designate the subject site comprised of two five acre parcels for a school, which is no longer needed by the Tracy Unified School District. The proposed amendment would remove each five acre parcel from each respective PUD. Zoning guidelines for the subject site are proposed to be established in a separate PUD known as Elissagaray Infill.

Establishment of the Elissagaray Infill PUD

The proposed Elissagaray Infill PUD is comprised of a Concept Development Plan (CDP), Preliminary Development Plan (PDP), and a Final Development Plan (FDP) to establish the land use and development standards for the Elissagaray Infill subdivision. Neighborhood input sought during the General Plan amendment process revealed that the primary interests of neighbors residing in Eastlake and Elissagaray Ranch are that the homes be similar in size, design, and quality to the existing homes. These considerations were taken by the applicant in the project proposal, as outlined below.

Development Plan and Architecture

The proposed development plan consists of 47 detached single-family residential homes on a ten acre infill parcel. The proposed PUD is consistent with the General Plan designation of Residential Low. The proposed project would be consistent with the density allowed, which ranges from 2.1 to 5.8 units per gross acre. The average density of the proposed Elissagaray Infill subdivision is 4.7 dwelling units per gross acre.

The proposed architecture is consistent with the City's Design Goals and Standards for residential development. The proposal includes one single-story plan and three two-story plans with sizes ranging between approximately 2,300 and 3,500 square feet. Each of the four plan types would have three distinct elevation styles, giving the subdivision 12 different exterior house designs (Attachment B: Concept, Preliminary, and Final Development Plan). The proposed architectural styles took inspiration from Spanish (elevation A), Craftsman (elevation B), English Country (elevation C), and Farmhouse (elevation D) styles. The architectural styles utilize differing building planes, various roof lines, a variety of siding materials, decorative doors and windows, covered entries, front porches, and decorative details carried around on all four sides of each house.

Through the use of the design techniques described above, the proposed architecture would be consistent with the quality and design of existing homes in the Eastlake and Elissagaray Ranch neighborhoods. Furthermore, the color palettes proposed are warm and cool tones, complementary to those used on homes in the adjacent neighborhoods. A conceptual development plan (Attachment C) demonstrates how the housing mix goals established in the Design Goals and Standards can be achieved by the proposed number of floor plans and elevation styles, and Condition of Approval B.5 is recommended to ensure these goals are achieved prior to construction of the homes.

Zoning Standards

The proposed PUD zoning regulations are intended to complement those of the Eastlake and Elissagaray Ranch subdivisions. Setbacks and other development standards are similar to those in the adjacent subdivisions and the Low Density Residential Zone (Attachment B: Concept, Preliminary, and Final Development Plan). Three of the plans include two-car garages and one plan includes a three-car garage, which meets and exceeds Tracy's standard parking requirement for each single-family dwelling to have a

two-car garage. Though it is not required, on-street parking is also available along the proposed and existing streets.

Vesting Tentative Subdivision Map

The proposed subdivision complements the adjacent residential neighborhoods. The proposed density is similar to the average density of 4.13 units per gross acre in Eastlake. The average density in Elissagaray Ranch is lower at 2.9 units per acre. The proposed lots range between approximately 6,600 to approximately 12,200 square feet (Attachment D: Vesting Tentative Subdivision Map). The lots are sized to be similar to the surrounding subdivisions, with particular attention to lots adjacent to existing homes. Typical lots in the Eastlake subdivision adjacent to the proposed project site are 60 feet in width by 100 feet in depth. Typical lots in the Elissagaray Ranch subdivision adjacent to the proposed project site are 65 feet by 100 feet and 80 feet by 120 feet. Similarly, the Elissagaray Infill subdivision proposes minimum lot sizes of 60 feet in width by 100 feet in depth. In consideration of the homes that back up to the proposed subdivision, the applicant proposes deeper rear yards than typical to provide greater privacy to the existing homes. These lots are between approximately 134 feet and 164 feet in depth, which is significantly deeper than most residential lots in the city. There are no reverse corner lots, resulting in greater efficiency in siting the houses, maximizing on-street parking, maximizing usable yard areas, and improving sight distances for vehicles backing out of driveways.

The subdivision would have its primary access from MacArthur Drive, Valpico Road, and Chrisman Road through existing residential streets crossing through the Eastlake and Elissagaray Ranch neighborhoods. The project proposes one through street connecting Eastlake Circle to Dominique Drive. The new street will allow for efficient circulation by giving vehicles and pedestrians two options to exit the subdivision. The street connection to Dominique Drive will also help slow down the speed of traffic on Dominique Drive, an issue on which residents have voiced concerns. The street is also strategically designed for the underground utility infrastructure that enters the subdivision from Eastlake Circle. The right-of-way will be 56 feet in width with a monolithic sidewalk to match the existing streets throughout the Eastlake and Elissagaray Ranch subdivisions.

Residential Growth Allotments

The project will require 47 RGAs for construction of the 47 proposed residential units. The project will be eligible to apply for and receive RGAs per the regulations set forth in the Growth Management Ordinance and Growth Management Ordinance Guidelines after a Tentative Subdivision Map is approved. The RGAs will be required prior to the issuance of any building permits.

Schools

The proposed project is located within the Tracy Unified School District. As stated above, the project site was originally planned for a school but the Tracy Unified School District has informed the City and the property owner that it no longer desires to locate a

school on this site, which grants development opportunity back to the property owner. In order to mitigate the proposed developments' impacts on school facilities, Memorandums of Understanding (MOU) were executed with the Tracy Unified School District when the Eastlake and Elissagaray Ranch subdivisions were developed, which included this ten acre site. Per the MOUs, a per-unit fee is to be charged for each of the 47 units constructed.

Parks

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

In this case, staff has determined that no dedication of park acreage is desired within the proposed project because the adjacent Eastlake and Elissagaray Ranch subdivision already exceeds the City's requirement for park land. Eastlake contains a 3.9-acre park and Elissagaray Ranch contains a four acre park, both of which are within a quarter mile of the proposed subdivision. In lieu of providing park land, the applicant would be required to pay the park in-lieu fees. These fees would provide funds for the creation of parks and recreation facilities consistent with the Parks Master Plan and the City's General Plan.

Neighborhood Concerns

As stated earlier, during the General Plan Amendment public hearing process in 2012, residents in the Eastlake and Elissagaray Ranch subdivisions expressed interest and concern about future residential development and its fit within the existing neighborhoods. The applicant conducted several private meetings and one larger neighborhood meeting on September 26, 2013 at the Community Center to introduce his proposed project to the neighbors and collect their feedback. According to the applicant, the primary interests of the neighbors in attendance are related to density, lot sizes, architecture, and traffic. According to the applicant, neighbors were receptive to the proposed density, lot sizes, and architecture.

Concerns related to vehicular speeding on Dominique Drive were raised. Dominique Drive is a long, straight, 74-foot right-of-way with little cross-traffic bordered by homes, some of which back up to the street with a sound wall, and the subject site, which is currently undeveloped. When the new subdivision is constructed, twelve homes will face onto Dominique Drive, and the future through-street will intersect Dominique Drive. These improvements will increase cross-traffic and encourage more careful driving that will cause traffic to naturally slow.

Increased traffic congestion on Eastlake Circle was another concern raised. The proposed 47-lot single family subdivision will generate fewer trips per day than the elementary school previously planned for the site. These figures were derived using the data in *Trip Generation, 7th Edition* by the Institute of Transportation Engineers. In

conclusion, the traffic generated by the proposed subdivision will be less than that generated by the school that was originally planned to be built.

Some residents voiced their disappointment in the cancellation of the school. As stated above, the Tracy Unified School District no longer desires this site for a public school.

Planning Commission's Recommendation

Planning Commission held a public hearing on November 6, 2013, to review and consider the applicant's proposals. Public comments included maintenance of private yards and questions about California Building Code and California Fire Code compliance. Following staff's report, comments from the applicant, and comments from the neighbors, the Planning Commission unanimously voted in favor of recommending City Council approval of the project.

Environmental Document

The project is exempt from the California Environmental Quality Act per Section 15162 pertaining to projects with a certified Environmental Impact Report (EIR) where the project does not propose substantial changes that will result in a major revision of the previous EIR. On February 1, 2011, the City of Tracy adopted the General Plan. The associated EIR (SCH# 1992 122 069) was certified on February 1, 2011. The project does not propose new significant changes to the environment that was not analyzed in the General Plan EIR, including the areas of traffic, air quality, and aesthetics. Therefore, no further documentation is needed.

STRATEGIC PRIORITY

This agenda item is not related to the City's Strategic Plans.

FISCAL IMPACT

This agenda item will not require any expenditure of funds. The applicant entered into a Cost Recovery Agreement for the staff time that was required to review and process the proposed project. The applicant will also pay all of the appropriate building permit and development impact fees upon the commencement of construction of the dwelling units and other improvements.

Completion of the development, will help expand the City's property tax base and generate General Fund supported infrastructure maintenance expenses.

RECOMMENDATION

Staff and Planning Commission recommend that the City Council do the following:

1. Introduce an Ordinance:
 - a. Amending the Eastlake Planned Unit Development to remove the five-acre site that was previously designated for a school,

- b. Amending the Elissagaray Ranch Planned Unit Development to remove the five-acre site that was previously designated for a school, and
 - c. Creating a new Planned Unit Development called Elissagaray Infill and approves the Concept Development Plan for the Elissagaray Infill Planned Unit Development for the ten-acre site located on Dominique Drive between Eastlake Circle and Basque Drive, Assessor's Parcel Numbers 252-050-24 and 252-260-01 (application number PUD12-0003).
2. Approve application number PUD12-0003 and application number TSM12-0002 as described in the City Council Resolution dated December 3, 2013, and subject to the conditions attached as Exhibit "1", which include the following:
 - a. Approval of the Preliminary Development Plan and Final Development Plan for the Elissagaray Infill Planned Unit Development, and
 - b. Approval of the Vesting Tentative Subdivision Map to subdivide the total ten acre site into 47 residential lots for the ten acre site located on Dominique Drive between Eastlake Circle and Basque Drive, Assessor's Parcel Numbers 252-050-24 and 252-260-01.

Prepared by: Kimberly Matlock, Assistant Planner

Reviewed by: Bill Dean, Assistant Development Services Department Director
Andrew Malik, Development Services Department Director
Maria A. Hurtado, Assistant City Manager

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

ATTACHMENTS

Attachment A – Location Map

Attachment B – Concept, Preliminary, and Final Development Plan (Oversized: Available at Development Services Department in City Hall and on the City of Tracy Website at www.ci.tracy.ca.us)

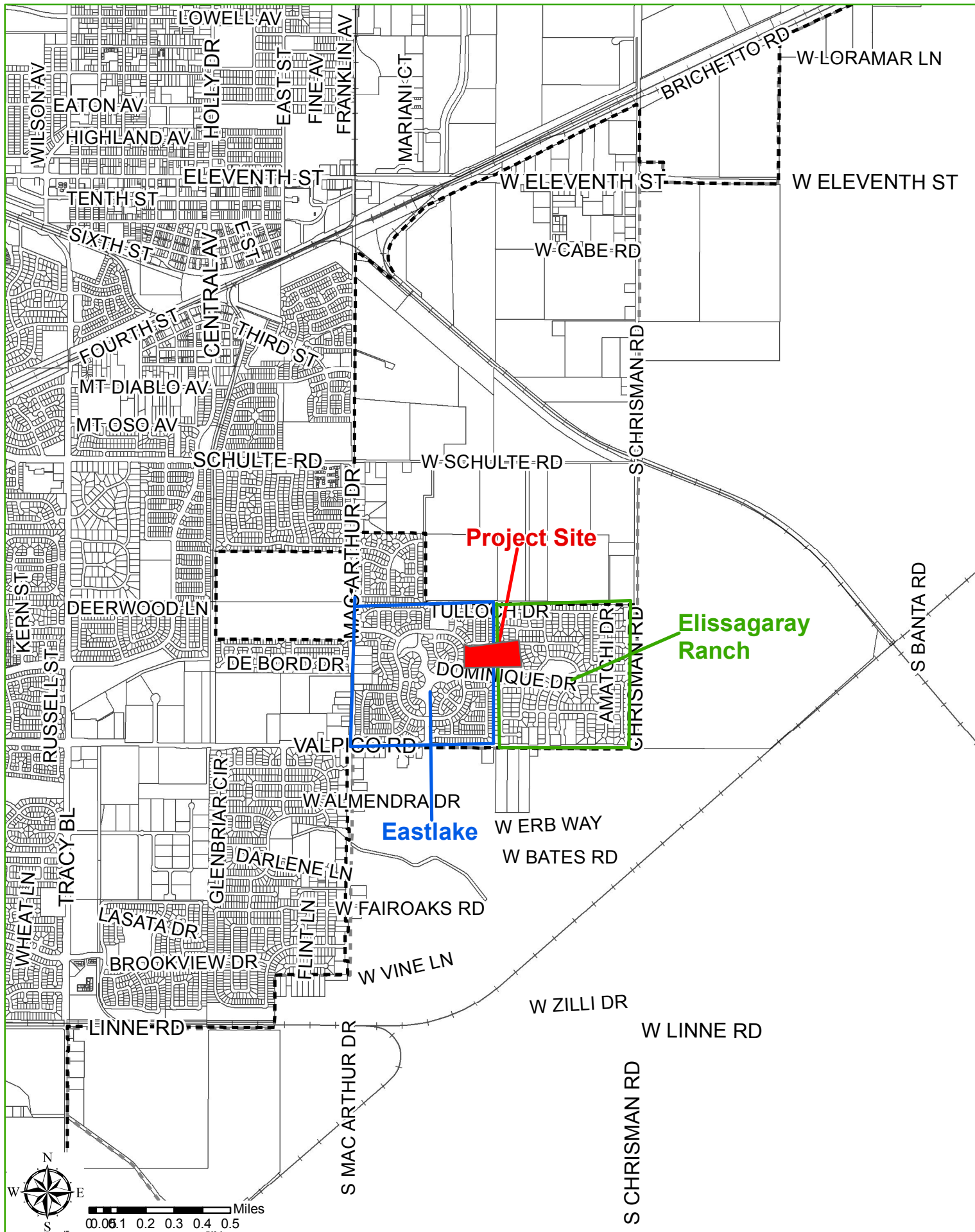
Attachment C – Conceptual Development Plan

Attachment D – Vesting Tentative Map (Oversized: Available at Development Services Department in City Hall and on the City of Tracy Website at www.ci.tracy.ca.us)

Attachment E – Ordinance

Attachment F – City Council Resolution

Location Map

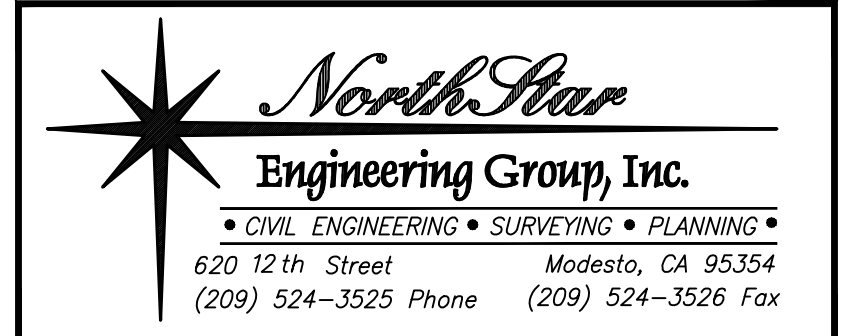


ELISSAGARAY INFILL

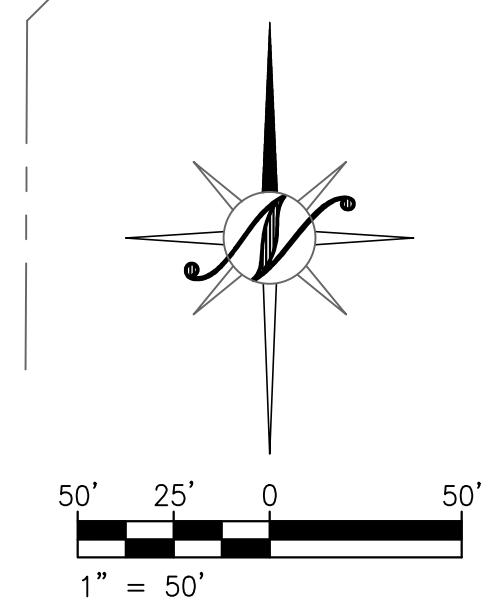
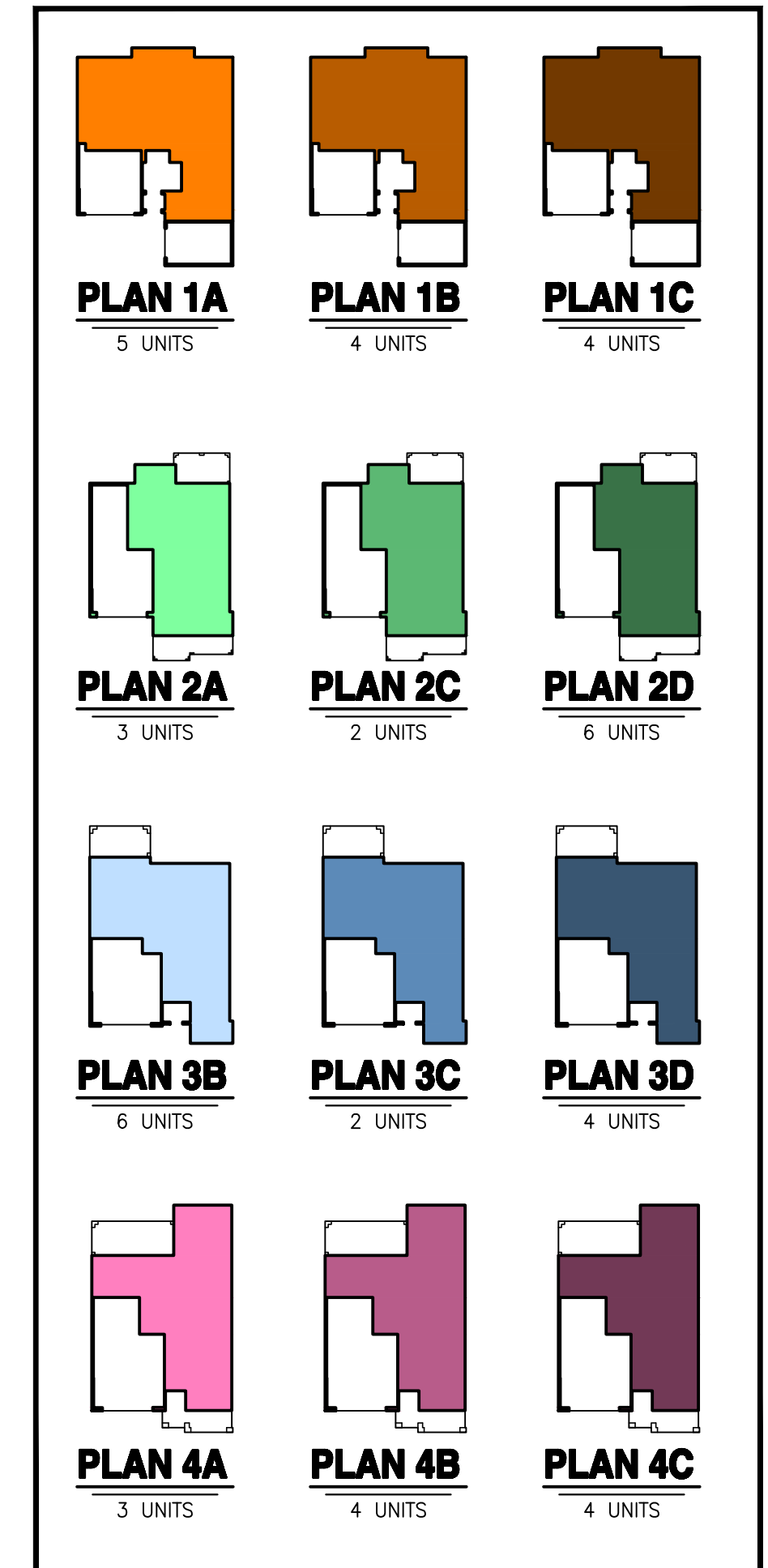
NEIGHBORHOOD PLAN - BY PRODUCT

TRACY, SAN JOAQUIN COUNTY, CALIFORNIA

ATTACHMENT C



UNIT DISTRIBUTION



ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY AMENDING THE EASTLAKE PLANNED UNIT DEVELOPMENT TO REMOVE A FIVE-ACRE SITE PREVIOUSLY DESIGNATED FOR A SCHOOL, AMENDING THE ELISSAGARAY RANCH PLANNED UNIT DEVELOPMENT TO REMOVE A FIVE-ACRE SITE PREVIOUSLY DESIGNATED FOR A SCHOOL, AND CREATING A NEW PLANNED UNIT DEVELOPMENT FOR THE TOTAL TEN-ACRE SITE KNOWN AS THE ELISSAGARAY INFILL PLANNED UNIT DEVELOPMENT. THE PROJECT IS LOCATED ON DOMINIQUE DRIVE BETWEEN EASTLAKE CIRCLE AND BASQUE DRIVE, ASSESSOR'S PARCEL NUMBERS 252-050-24 AND 252-260-01. THE APPLICANT AND PROPERTY OWNER IS TVC TRACY HOLDCO, LLC. APPLICATION NUMBER PUD12-0003

The City Council of the City of Tracy does ordain as follows:

SECTION 1: The 5.02-gross acre site designated as a school, Assessor's Parcel Number 252-050-24, is removed from the Eastlake Planned Unit Development.

The 5.02-gross acre site designated as a school, Assessor's Parcel Number 252-260-01, is removed from the Elissagaray Ranch Planned Unit Development.

The Concept Development Plan for the Elissagaray Infill Planned Unit Development located on the 10.04-gross acre property located on Dominique Drive between Eastlake Circle and Basque Drive is approved as discussed and conditioned in the City Council staff report and its attachments.

SECTION 2: This Ordinance shall take effect thirty (30) days after its final passage and adoption.

SECTION 3: 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 _____ was introduced at a regular meeting of the Tracy City Council on the 3rd day of December, 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

RESOLUTION _____

APPROVING THE PRELIMINARY AND FINAL DEVELOPMENT PLANS FOR THE ELISSAGARAY INFILL PLANNED UNIT DEVELOPMENT AND TO APPROVE A VESTING TENTATIVE SUBDIVISION MAP TO SUBDIVIDE THE SITE INTO 47 RESIDENTIAL LOTS. THE PROJECT IS ON A TEN-ACRE SITE LOCATED ON DOMINIQUE DRIVE BETWEEN EASTLAKE CIRCLE AND BASQUE DRIVE, ASSESSOR'S PARCEL NUMBERS 252-050-24 AND 252-260-01. THE APPLICANT AND PROPERTY OWNER IS TVC TRACY HOLDCO, LLC. APPLICATION NUMBERS PUD12-0003 AND TSM12-0002

WHEREAS, TVC Tracy Holdco, LLC submitted applications for a Preliminary Development Plan and a Final Development Plan for the Elissagaray Infill Planned Unit Development and a Vesting Tentative Subdivision Map to subdivide the site into 47 lots, and

A. WHEREAS, The following findings address the approval of the Elissagaray Infill Preliminary Development Plan and Final Development Plan:

WHEREAS, The applicant submitted an application for the creation of the Elissagaray Ranch Planned Unit Development, a single-family residential subdivision proposed on a ten-acre site, and

WHEREAS, The proposed subdivision consists of 47 lots, which is consistent with the General Plan designation of Residential Low and the proposed Concept Development Plan for the Elissagaray Infill Planned Unit Development, and

WHEREAS, The proposed development and architecture meets the General Plan community character policies for a variety of residential building styles and sizes that provide visual interest to the streetscape, and

WHEREAS, The proposed development plan complements the existing surrounding neighborhoods with lots similarly sized to match adjacent lots, lots with deeper rear yards adjacent to existing residences, and a streetscape designed to match the existing surrounding neighborhoods, and

WHEREAS, The architectural renderings are in compliance with Tracy's Design Goals and Standards and complement the surrounding neighborhoods because they have incorporated substantial variation between floor plans and elevations, building projections, varied rooflines, architectural features on all four sides of each house, and recessed garages so they do not dominate the street.

B. WHEREAS, The following findings address the Vesting Tentative Subdivision Map:

WHEREAS, The project is consistent with the General Plan and Title 12, the Subdivision Ordinance, of the Tracy Municipal Code, in terms of density, circulation, and land use, and

WHEREAS, The site is physically suitable for the type of development, as the site is virtually flat, and

WHEREAS, The site is physically suitable for the proposed density of development, which is below the maximum density allowed by the General Plan designation of Residential Low, and

WHEREAS, Traffic circulation is designed in accordance with City standards for the proposed density to ensure adequate traffic service levels are met and to match existing adjacent street improvements, and

WHEREAS, The design of the subdivision or the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, and

WHEREAS, The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision, and

WHEREAS, The project complies with all other applicable ordinances, regulations and guidelines of the City, including but not limited to, the local floodplain ordinance. The subject property is not located within any floodplain and the project, with conditions, will meet all applicable City design and improvement standards, and

WHEREAS, All the public facilities necessary to serve the subdivision will be in place prior to the issuance of building permits. All the public facilities necessary to serve the subdivision or mitigate the impacts created by the subdivision will be assured through a subdivision improvement agreement prior to the approval of a final map.

WHEREAS, The project does not propose substantial changes that will result in a major revision of the previous Environmental Impact Report that analyzed the project site and is exempt from the California Environmental Quality Act per Section 15162, and

WHEREAS, The Planning Commission conducted a public hearing to review and consider the project on November 6, 2013, and recommended approval of the project, and

WHEREAS, The City Council conducted a public hearing to review and consider the project on December 3, 2013;

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

1. Approves the Preliminary Development Plan and Final Development Plan for the Elissagaray Infill Planned Unit Development, and
2. Approves the Vesting Tentative Subdivision Map to subdivide the total ten-acre site into 47 residential lots for the ten-acre site located on Dominique Drive between Eastlake Circle and Basque Drive, Assessor's Parcel Numbers 252-050-24 AND 252-260-01, Application Numbers PUD12-0003 and TSM12-0002, subject to conditions stated in Exhibit "1," attached and made part hereof.

Resolution Number _____
Elissagaray Infill PUD
Application Numbers PUD12-0003 AND TSM12-0002
Page 3

BE IT FURTHER RESOLVED, That this resolution will become effective 30 days after the Ordinance establishing the Elissagaray Infill Planned Unit Development is adopted.

* * * * *

The foregoing Resolution 2013-_____ was adopted by the City Council on the 3rd day of December, 2013, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

City of Tracy
Conditions of Approval
Elissagaray Infill Subdivision
Application Numbers PUD12-0003 and TSM12-0002
December 3, 2013

A. General Provisions and Definitions.

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

The Project: Concept, Preliminary, and Final Development Plan for the Elissagaray Infill PUD and the Elissagaray Infill Vesting Tentative Subdivision Map

The Property: 10-acre parcel located on Dominique Drive between Eastlake Circle and Basque Drive, Assessor's Parcel Numbers 252-050-24 and 252-260-01

A.2. Definitions.

- a. "Applicant" means any person, or other legal entity, defined as a "Developer."
- b. "City Engineer" means the City Engineer of the City of Tracy, or any other duly licensed Engineer designated by the City Manager, or the Development Services Director, or the City Engineer to perform the duties set forth herein.
- c. "City Regulations" means all written laws, rules and policies established by the City, including those set forth in the City of Tracy General Plan, the Tracy Municipal Code, ordinances, resolutions, policies, procedures, and the City's Design documents (the Streets and Utilities Standard Plans, Design Standards, Parks and Streetscape Standard Plans, Standard Specifications, and Manual of Storm Water Quality Control Standards for New Development and Redevelopment, and Relevant Public Facilities Master Plans).
- d. "Development Services Director" means the Development Services Department Director of the City of Tracy, or any other person designated by the City Manager or the Development Services Director to perform the duties set forth herein.
- e. "Conditions of Approval" shall mean the conditions of approval applicable to the Project (Application Numbers PUD12-0003 and TSM12-0002). The Conditions of Approval shall specifically include all Development Services Department conditions set forth herein.
- f. "Developer" means any person, or other legal entity, who applies to the City to divide or cause to be divided real property within the Project boundaries or who applies to the City to develop or improve any portion of the real property within the Project boundaries. The Developer may be the property owner or the leasee, where responsibilities for improvements are distributed among each party. The term "Developer" shall include all successors in interest.

A.3. Compliance with submitted plans. Except as otherwise modified herein, the project shall be constructed in substantial compliance with the Concept, Preliminary and Final Development Plan, which includes development standards, floor plans, and

architectural elevations, received by the Development Services Department on October 7, 2013. The Final Map shall be consistent with the Vesting Tentative Subdivision Map received by the Development Services Department on September 30, 2013, unless modified herein.

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

B. Development Services Planning Division Conditions

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

- B.1. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all applicable mitigation measures identified in the General Plan Environmental Impact Report, dated February 11, 2011.
- B.2. Prior to the issuance of a building permit, the Developer shall document compliance with all applicable school mitigation requirements consistent with City Council standards and obtain certificate of compliance from Tracy Unified School District for each new residential building permit.
- B.3. Prior to approval of the Final Map, the Developer shall obtain approval of all street names from the Development Services Department. At least one street shall be

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

- B.4. Prior to the issuance of the first building permit, the Developer shall submit a development plan that specifies the house type (i.e. floor plan type and elevation type) for each particular lot in a manner that achieves a sufficient mix and variety in the streetscape outlined in the Design Goals and Standards as follows:
 - B.5.1. The floor plan shall be used on not less than 17% of the lots nor on more than 30% of the lots.
 - B.5.2. Each elevation style shall be used at least twice per floor plan.
 - B.5.3. No exact plan and elevation shall be located on consecutive lots (side-by side or directly across), and elevations 3B and 4B shall not be used on side-by-side lots.
 - B.5.4. At least 20% of the houses shall have garage doors which are setback a minimum of thirty feet from the back of sidewalk.
- B.5. Prior to the issuance of the first building permit, the Developer shall submit a building permit application that demonstrates the shingle siding used on the front elevation of Elevation 4B wraps around the "left" elevation to a logical stopping point to the satisfaction of the Development Services Director.
- B.6. Prior to approval of each Final Map, the Developer shall submit improvement plans that demonstrate driveway locations and widths which do not exceed 20 feet and curb cuts which do not exceed 18 feet.
- B.7. The Developer shall comply with all applicable requirements of the San Joaquin Valley Air Pollution Control District (APCD), including District Rule 9510, Regulation VIII, and payment of all applicable fees.
- B.8. The Developer shall comply with all applicable provisions of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan, including Incidental Take Minimization Measures applicable at the time of permit, a pre-construction survey prior to ground disturbance and payment of all applicable fees, to the satisfaction of San Joaquin Council of Governments.

C. Development Services Engineering Division Conditions

Contact: Criseldo S. Mina, P. E (209) 831-6425 cris.mina@ci.tracy.ca.us

C.1 Tentative Subdivision Map

Prior to signature of the Tentative Subdivision Map by the City Engineer, the Subdivider shall comply with the requirements set forth in this section, to the satisfaction of the City Engineer.

- C.1.1 Revise the Tentative Subdivision Map to include statement and signature block for the Secretary of the Planning Commission.

- C.1.2 Revise the Tentative Subdivision Map to show restricted access to Eastlake Circle for Lots 24, 25, and 47, to Tung M. Nguyen Street along the eastern side of Lots 35 and 36, and to Dominique Drive for Lots 7 and 8.
- C.1.2 Submit one (1) reproducible copy of the approved tentative subdivision map for the Project within ten (10) days after Subdivider's receipt of a notification of approval of the tentative subdivision map. The owner of the Property must consent to the preparation of the Tentative Subdivision Map, and the proposed subdivision of the Property.

C.2 Final Map

No final map within the Project boundaries will be approved by the City until the Subdivider demonstrates, to the satisfaction of the City Engineer, compliance with all required Conditions of Approval, including, but not limited to, the following:

- C.2.1 The Subdivider has completed all the requirements set forth in this section, and Condition C.1., above.
- C.2.2 The Final Map prepared in accordance with the applicable requirements of the Tracy Municipal Code, the City Design Documents, and in substantial conformance with the Tentative Subdivision Map for the Project.
- C.2.3 The Final Map shall include dedications or offers of dedication of all right(s)-of-way and/or easement(s) required to serve the Project described by the Final Map, in accordance with City Regulations and these Conditions of Approval.
- C.2.4 Horizontal and vertical control for the Project shall be based upon the City of Tracy coordinate system and at least three 2nd order Class 1 control points establishing the "Basis of Bearing" and shown as such on the final map. The final map shall also identify surveyed ties from two of the horizontal control points to a minimum of two (2) separate points adjacent to or within the Property described by the Final Map.
- C.2.5 A construction cost estimate of subdivision improvements and for all required public facilities, prepared in accordance with City Regulations to be used for calculating engineering review fees and for bonding purposes. In determining the total construction cost, add ten percent (10%) for construction contingencies.
- C.2.6 All the required improvement agreements are executed, improvement security is submitted and documentation of insurance are provided, as required by these Conditions of Approval. The amounts of improvement security shall be approved by the City and the type and form of improvement security shall be in accordance with the Tracy Municipal Code.
- C.2.7 All infrastructure or public facilities that are required to serve the proposed development within the final map boundaries, including water distribution, sewer conveyance, and water and wastewater treatment plant including

water supply have been evaluated and the City has determined that capacities are available for this Project.

C.2.8 Payment of final map checking fees and all fees required by these Conditions of Approval and City Regulations.

C.3 Grading and Encroachment Permit

No applications for grading permit and encroachment permit within the Project boundaries will be accepted by the City as complete until the Subdivider provides all documents required by City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to, the following:

C.3.1 The Subdivider has completed all requirements set forth in this section.

C.3.2 The Subdivider has obtained the approval of all other public agencies with jurisdiction over the required public facilities.

C.3.3 The Subdivider has executed all the agreements, posted all improvement security, and provided documentation of insurance, as required by these Conditions of Approval.

C.3.4 The Improvement Plans including the Grading and Drainage Plans prepared in accordance with the Subdivision Ordinance and the City Design Documents. The improvement plans for all improvements (in-tract and off-site) required to serve the Project in accordance with the City Design Documents, and these Conditions of Approval. The improvement plans shall be prepared to specifically include, but not be limited to, the following items:

C.3.4.1 All existing and proposed utilities including the size and location of the pipes.

C.3.4.2 All supporting engineering calculations, technical or materials specifications, cost estimate, and technical reports related to the design of streets and utilities improvements.

C.3.4.3 The Project's on-site drainage connections to City's storm drainage system as approved by the City Engineer. Improvement Plans to be submitted with the hydrology and storm drainage calculations for the sizing of the on-site storm drainage system.

C.3.4.4 Improvement Plans prepared on a 24" x 36" size polyester film (mylar) with the City Engineer and Fire Safety Officer approval and signature blocks. Improvement Plans shall be prepared under the supervision of, and stamped and signed by a Registered Civil, Traffic, Electrical, Mechanical Engineer, and Registered Landscape Architect for the relevant work.

C.3.5 Joint Trench Plans and Composite Utility Plans, prepared on a 24" x 36" size mylar, and signed and stamped by a Registered Civil Engineer, for the

- installation of dry utilities such as electric, gas, TV cable, telephone, and others that will be located within the 10 feet wide Public Utility Easement or to be installed to serve the residential lots or the Project, as required Condition C.5, below.
- C.3.6 Three (3) copies of the Project's Geo-technical /Soils Report, prepared or signed and stamped by a Geo-technical Engineer and copy of recorded slope easements (if applicable), as required in Condition C.6.2, below.
 - C.3.7 Three (3) sets of the Project's Storm Water Pollution Prevention Plan (SWPPP), Best Management Practices (BMPs) and a copy of the Notice of Intent (NOI) with the State-issued Wastewater Discharge Identification number (WDID#), as required in Conditions C.6.1, C.6.4, and D.1, below.
 - C.3.8 Payment of applicable fees required by these Conditions of Approval and City Regulations, including but not limited to, plan checking, grading and encroachment permits and agreement processing, construction inspection, and testing fees.
 - C.3.9 Tracy's Fire Marshall's signature on the Improvement Plans indicating their approval of the location and construction detail of the Project's fire service connection(s), and the location and spacing of street fire hydrants, as required in Condition C-9.5, below.
 - C.3.10 Signed and notarized Subdivision Improvement Agreement with the fully executed improvement security for faithful performance, labor and materials, and warranty, for the construction of subdivision improvements including the Project's domestic, irrigation and fire service connections, storm drainage connection, and the permanent sanitary sewer connection, asphalt concrete overlay work on Eastlake Circle, Dominique Drive, and Basque Drive as required in Conditions C.7, C.8, C.9, and C.10, below.
 - C.3.11 All streets and utilities improvements within City right-of-way shall be designed and constructed in accordance with City Regulations, and City's Design documents including the City's Facilities Master Plan for storm drainage, roadway, wastewater and water adopted by the City, or as otherwise specifically approved by the City.
 - C.3.12 All existing on-site wells, if any, shall be abandoned or removed in accordance with the City and San Joaquin County requirements. The Subdivider shall be responsible for all costs associated with the abandonment or removal of the existing well(s) including the cost of permit(s) and inspection. The Subdivider shall submit a copy of written approval(s) or permit(s) obtained from San Joaquin County regarding the removal and abandonment of any existing well(s), prior to the issuance of the Grading Permit.

C.4 Building Permit

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

C.4.1 The Subdivider has completed all requirements set forth in Condition C.3, above.

C.4.2 Lots 1 through 16 and Lots 33 through 38 are within Category C Pay Zone B and is classified as Agricultural Habitat Land/ Open Spaces per the San Joaquin County of Governments (SJCOG) Compensation Plan Map and is subject to applicable habitat mitigation fees ("SJMSCP Development Fees") per the adopted San Joaquin County Multi-Species Habitat Conservation and Open Space Plan ("SJMSCP").

Lots 17 through 32 and Lots 39 through 47 are within Category B Pay Zone A and is classified as Other Open Spaces per the SJMSCP. In accordance with the amended SJMSCP that was approved by the City Council on October 18, 2011, pursuant to Resolution 2011-196 and the update to the SJMSCP Development Fees approved by the City Council on October 2, 2012, per Resolution 2012-203, the SJMSCP Development Fee applicable to the Project for the two (2) pay zones identified above is \$12,711 per acre.

The estimated SJMSCP Development Fees that are due at the time of issuance of the building permit is \$127,618.44, assuming that the Subdivider will grade the entire Project site at one time.

C.4.3 Lots 1 through 16 (16 Single Family Dwelling Units or SFDUs, and Lots 33 through 38 (6 SFDUs) are within the South MacArthur Planning Area (SMPA) and are subject to SMPA Development Impact Fees. Lots 17 through 32 (16 SFDUs) and Lots 39 through 47 (9 SFDUs) are within the Plan C development area and are subject to Plan C Development Impact Fees. Subdivider is required to pay Plan C and SMPA Development Impact Fees required by these Conditions of Approval and City Regulations that are in effect at the time of issuance of the building permit.

C.5 Undergrounding of Overhead Utilities

The Subdivider shall prepare improvement plans, and design and construct the subdivision improvements in accordance with the following requirements.

C.5.1 All private utility services to serve Project such as electric, telephone and cable TV to the building must be installed underground, and to be installed at the location approved by the respective owner(s) of the utilities. The Subdivider shall submit improvement plans for the installation of electric, gas, telephone and TV cable lines that are to be installed on the existing 10 feet wide Public Utility Easement along Eastlake Circle, Dominique Drive, Tung M Nguyen Lane, and Basque Drive.

C.5.2 Pavement cuts or utility trench(s) on existing street(s) for the installation of electric, gas, cable TV, and telephone will require the application of 2" asphalt concrete overlay and replacement of pavement striping and marking. The limits of asphalt concrete overlay shall be 25 feet from the trench and a travel lane width or up to the street centerline. If the utility trench extends beyond the street centerline, the asphalt concrete overlay shall be applied over the entire width of the street (to the lip of gutter).

C.6 Site Grading

The Subdivider shall prepare improvement plans, and design and construct the subdivision improvements in accordance with the following requirements.

C.6.1 All grading work (on-site and off-site) shall require a Grading Permit. Erosion control measures shall be implemented in accordance with Grading Plans approved by the City Engineer for all grading work not completed before October 15. Improvement Plans shall specify all erosion control methods to be employed and materials to be used.

C.6.2 Submit a Grading and Drainage Plan prepared by a Registered Civil Engineer and accompanied by Soils Engineering report. The report shall provide recommendations regarding adequacy of the site relative to the stability of soils such as soil types and classification, percolation rate, soil bearing capacity, highest observed ground water elevation, and others.

C.6.3 Reinforced or engineered masonry block retaining wall is the preferred method of retaining soil at property lines when the grade differential between the project site and adjacent property(s) exceeds 12 inches. The Subdivider is required to submit improvement plans, construction details and structural calculations of the retaining wall or masonry wall. Slope easements may be accepted subject to approval by the City Engineer and if permission is granted from owner(s) of the adjacent and affected property(s). Slope easements is an acceptable option as a substitute to engineered wall, where cuts or fills do not match existing ground or final grade with the adjacent property or public right of way, up to a maximum grade differential of two (2) feet, subject to approval by the City Engineer. Slope easements shall be recorded, prior to the issuance of the Grading Permit. The Subdivider shall be responsible to obtain and record slope easement(s) on private properties, where it is needed to protect private improvements constructed within and outside the Project, and a copy of the recorded easement document must be provided to the City, prior to the issuance of the Grading Permit.

C.6.4 Prior to the issuance of the Grading Permit, the Subdivider shall submit three (3) sets of the Storm Water Pollution Prevention Plan (SWPPP) identical to the reports submitted to the State Water Quality Control Board (SWQCB) and any documentation or written approvals from the SWQCB including a copy of the Notice of Intent (NOI) with the state-issued Wastewater Discharge Identification number (WDID). After the completion of the Project, the Subdivider is responsible for filing the Notice of Termination (NOT) required by SWQCB, and shall provide the City, a copy of the completed Notice of

Termination. Cost of preparing the SWPPP, NOI and NOT including the annual storm drainage fees and the filing fees of the NOI and NOT shall be paid by the Subdivider. The Subdivider shall comply with all the requirements of the SWPPP and applicable Best Management Practices (BMPs) and the Storm Water Regulations adopted by the City in 2008 and any subsequent amendment(s).

- C.6.5 The Subdivider shall abandon or remove all existing irrigation structures, channels and pipes, if any, as directed by the City after coordination with the irrigation district, if the facilities are no longer required for irrigation purposes. If irrigation facilities including tile drains, if any, are required to remain to serve existing adjacent agricultural uses, the Subdivider will design, coordinate and construct required modifications to the facilities to the satisfaction of the affected agency and the City. Written permission from irrigation district or affected owner(s) will be required to be submitted to the City prior to the issuance of the Grading Permit. The cost of relocating and/or removing irrigation facilities and/or tile drains is the sole responsibility of the Subdivider.

C.7 Storm Drainage

The Subdivider shall prepare improvement plans, and design and construct the subdivision improvements in accordance with the following requirements.

- C.7.1 Storm drainage release point is a location at the boundary of the Project adjacent a City right-of-way or public street where storm water leaves the Property, in the event of a storm event and when the Property's on-site storm drainage system fails to function or it is clogged. Site grading shall be designed such that the Project's storm drainage overland release point will be directly to a public street with functional storm drainage system and the storm drainage line on the street has adequate capacity to drain storm water from the Property. The storm drainage release point is recommended to be at least 0.70 foot lower than the building finish floor elevation and shall be improved to the satisfaction of the City Engineer.
- C.7.2 The Project's permanent storm drainage connection(s) shall be designed and constructed meet City Regulations. The design of the permanent storm drainage connection shall be shown on the Grading and Drainage Plans with calculations for the sizing of the storm drain pipe(s), and shall comply with the applicable requirements of the City's storm water regulations adopted by the City Council in 2008 and any subsequent amendments.

C.8 Sanitary Sewer

The Subdivider shall prepare improvement plans, and design and construct the subdivision improvements in accordance with the following requirements.

- C.8.1 It is the Subdivider's responsibility to design and construct the Project's permanent sanitary sewer connection to Eastlake Circle and Dominique Drive in accordance with City Regulations. The Subdivider shall submit improvement plans that include the design of the sanitary sewer line from the

Property to the point of connection. The Subdivider is responsible for the cost of installing the Project's permanent sanitary sewer connection including but not limited to, replacing asphalt concrete pavement, reconstructing curb, gutter and sidewalk, restoring pavement marking and striping, and other streets and utilities improvements that are disturbed as a result of installing the Project's permanent sanitary sewer connection.

Prior to starting the work described in this section, the Subdivider shall submit a Traffic Control Plan, to show the method and type of construction signs to be used for regulating traffic during the installation of the sanitary sewer main on Dominique Drive. The Traffic Control Plan shall be prepared by a Civil Engineer or Traffic Engineer licensed to practice in the State of California.

- C.8.3 The Subdivider is hereby notified that the City will not provide maintenance of the sewer lateral within the public right-of-way unless the sewer cleanout is located and constructed in conformance with Standard Plan No. 203. The City's responsibility to maintain on the sewer lateral is from the wye fitting to the point of connection with the sewer main.

C.9 Water System

The Subdivider shall prepare improvement plans, and design and construct the subdivision improvements in accordance with the following requirements.

- C.9.1 The Project's permanent water connection points will be at Eastlake Circle and Dominique Drive. Three (3) gate valves will be required at each connection point. All water connections that are bigger than 2 inches in diameter shall be Ductile Iron Pipe (DIP).
- C.9.2 Domestic water service with a remote read (radio-read) water meter shall be installed in accordance with City Regulations and at the location approved by the City Engineer. City's responsibility to maintain water lines shall be from the water main on the street to the back of the water meter (inclusive) only. Repair and maintenance of all on-site water lines, laterals, valves, and fittings shall be the responsibility of the Subdivider or the individual lot owner(s).
- C.9.3 All costs associated with the installation of the Project's permanent water connection(s) including the cost of removing and replacing asphalt concrete pavement, pavement marking and striping such as crosswalk lines and lane line markings on existing street that may be disturbed with the installation of the permanent water connection(s), domestic water service for each lot, and other improvements shall be paid by the Subdivider.
- C.9.4 If a water main shut down is necessary, the City will allow a maximum of 4 hours water supply shutdown. The Subdivider shall be responsible for notifying residents or property owner(s), regarding the water main shutdown. The written notice, as approved by the City Engineer, shall be delivered to the affected residents or property owner(s) at least 72 hours before the planned water main shutdown. Prior to starting the work described in this section, the Subdivider shall submit a Traffic Control Plan, to show the method and type

of construction signs to be used for regulating traffic during the installation of the water main. The Traffic Control Plan shall be prepared by a Civil Engineer or Traffic Engineer licensed to practice in the State of California.

- C.9.5 The Subdivider shall design and install fire hydrants at the locations approved by the City's Building Division and Fire Department. Location and construction details of the fire service line shall be approved by the Chief Building Official and Fire Safety Officer. Prior to the approval of the Improvement Plans by the City Engineer, the Subdivider shall obtain written approval from the Chief Building Official and Fire Safety Officer, for the design, location and construction details of the individual lot fire service, and for the location and spacing of fire hydrants that are to be installed to serve the Project.

C.10 Street Improvements

The Subdivider shall prepare improvement plans, and design and construct the subdivision improvements in accordance with the following requirements.

- C.10.1 The Subdivider shall design and construct street and utilities improvements on Tung M. Nguyen Street in accordance with City Regulations and approved Improvement Plans. The street and utilities improvements include but not limited to, concrete curb, gutter, and sidewalk, residential driveway, water main, domestic and fire sprinkler service, sanitary sewer main, sewer lateral and cleanout, storm drain line, catch basin, storm drainage drop inlet, street tree, pavement marking and striping, and traffic sign, and other improvements that are required to serve the Project.
- C.10.2 Installation of domestic and fire sprinkler services for Lots 1 through 7 on Basque Drive and for Lots 36 through 47 on Dominique Drive will require street or pavement cut and the construction of utility trenches that extends beyond the centerline of these two streets. In order to hide pavement excavation or trench marks, the application of 2 inches thick asphalt concrete overlay will be required over the entire width of these two streets within the limits described below. The City Engineer may extend the limits of the asphalt concrete overlay, if determined to be necessary.

C.10.2.1 Basque Drive from the curb-return on Dominique Drive to the projected northern property line of Lot 1

C.10.2.2 Dominique Drive from the curb-return on Eastlake Circle to the curb-return on Tung Nguyen Street

Installation of the Project's storm drain, water, and sanitary sewer connections will require cutting of existing pavement. The application of asphalt concrete overlay will be required at the following location within the limits described below.

C.10.2.3 Eastlake Circle (entire width of the pavement) from the two curb-returns of Tung M. Nguyen Street

Grinding the existing asphalt concrete pavement 2 inches deep (uniform thickness) is required in order to maintain existing pavement grades, and cross and longitudinal slopes.

The Subdivider shall replace all existing improvements including but not limited to, concrete curb, gutter, and sidewalk, pavement marking and striping that are disturbed as result of the installation of the Project's water main connections, domestic and fire sprinkler services, permanent sewer connections, and sewer laterals as part of the asphalt concrete overlay work. The work described under this section must be completed, prior to City's acceptance of the subdivision improvements or performing final building inspection, all at the Subdivider's sole cost and expense, with no reimbursement from the City.

- C.10.4 All work to be performed and improvements to be constructed within City's right-of-way including the installation of the Project's water main and sanitary sewer main on Eastlake Circle and Dominique Drive and the storm drain connection on Eastlake Circle will require an Encroachment Permit from the City, prior to starting the work. The Subdivider or its authorized representative shall submit all documents that are required to process the Encroachment Permit including but not limited to, approved Improvement Plans, Traffic Control Plan that is prepared by and signed and stamped by a Civil Engineer or Traffic Engineer registered to practice in the State of California, payment of engineering review fees, copy of the Contractor's license, Contractor's Tracy business license, and certificate of insurance naming the City of Tracy as additional insured or as a certificate holder.

C.11 Agreements, Improvement Security, and Insurance

- C.11.1. Inspection Improvement Agreement - Prior to City approval of a final map, the Subdivider may request to proceed with construction of the public facilities required to serve the real property described by the final map only if the Subdivider satisfies all of the following requirements to the satisfaction of the City Engineer:

- C.11.1.1 The Subdivider has submitted all required improvement plans in accordance with the requirements of City Regulations and these Conditions of Approval, and the improvement plans have been approved by the City Engineer.
- C.11.1.2 The Subdivider has submitted a complete application for a final map which is served by the required public improvements, and the final map is in the process of being reviewed by the City.
- C.11.1.3 The Subdivider has paid all required processing fees including plan check and inspection fees.
- C.11.1.4 The Subdivider executes an Inspection Improvement Agreement, in substantial conformance with the City's standard form agreement, by which (among other things) the Subdivider agrees

to complete construction of all required improvements, and the Subdivider agrees to assume the risk that the proposed final map may not be approved by the City.

- C.11.1.5 The Subdivider posts all required improvement security and provides required evidence of insurance.
- C.11.2. Subdivision Improvement Agreement - Concurrently with the City's processing of a final map, and prior to the City's approval of the final map, the Subdivider shall execute a Subdivision Improvement Agreement (for the public facilities required to serve the real property described by the final map), which includes the Subdivider's responsibility to complete all of the following requirements to the satisfaction of the City Engineer:
 - C.11.2.1 The Subdivider has submitted all required improvement plans in accordance with the requirements of City Regulations and these Conditions of Approval, and the improvement plans have been approved by the City Engineer.
 - C.11.2.2 The Subdivider has submitted a complete application for a final map which is served by the required public improvements, and the final map has been approved by the City Engineer.
 - C.11.2.3 The Subdivider has paid all required processing fees including plan check and inspection fees.
 - C.11.2.4 The Subdivider executes a Subdivision Improvement Agreement, in substantial conformance with the City's standard form agreement, by which (among other things) the Subdivider agrees to complete construction of all required improvements.
 - C.11.2.5 The Subdivider posts all required improvement security and evidence of insurance.
- C.11.3. Deferred Improvement Agreement - Prior to the City's approval of the first final map within the Project, the Subdivider shall execute a Deferred Improvement Agreement, in substantial conformance with the City's standard form agreement, by which (among other things) the Subdivider agrees to complete construction of all remaining public facilities (to the extent the public facilities are not included in the Subdivision Improvement Agreement) which are required by these Conditions of Approval. The Deferred Improvement Agreement shall identify timing requirements for construction of all remaining public facilities, in conformance with the phasing plan submitted by the Subdivider and approved by the City Engineer.
- C.11.4. Improvement Security - The Subdivider shall provide improvement security for all public facilities, as required by an Inspection Improvement Agreement or a Subdivision Improvement Agreement. The form of the improvement security may be a bond, or other form in accordance with City Regulations.

The amount of the improvement security shall be in accordance with City Regulations, generally, as follows:

- C.11.4.1 Faithful Performance (100% of the approved estimates of the construction costs of public facilities),
 - C.11.4.2 Labor & Material (100% of the approved estimates of the construction costs of public facilities), and
 - C.11.4.3 Warranty (10% of the approved estimates of the construction costs of public facilities)
- C.11.5 Insurance - For each Inspection Improvement Agreement and Subdivision Improvement Agreement, the Subdivider shall provide the City with evidence of insurance, as follows:
- C.11.5.1 General. The Subdivider shall, throughout the duration of the Agreement, maintain insurance to cover Subdivider, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under the Agreement at the minimum levels set forth below.
 - C.11.5.2 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$3,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
 - C.11.5.3 Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
 - C.11.5.4 Workers' Compensation coverage shall be maintained as required by the State of California.
 - C.11.5.5 Endorsements Subdivider shall obtain endorsements to the automobile and commercial general liability with the following provisions:
 - C.11.5.5.1 The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
 - C.11.5.5.2 For any claims related to this Agreement, Subdivider's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Subdivider's insurance and shall not contribute with it.

- C.11.5.6 Notice of Cancellation Subdivider shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the City should the policy be cancelled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
 - C.11.5.7 Authorized Insurers All insurance companies providing coverage to Subdivider shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
 - C.11.5.8 Insurance Certificate Subdivider shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City.
 - C.11.5.9 Substitute Certificates No later than thirty (30) days prior to the policy expiration date of any insurance policy required by the Agreement, Subdivider shall provide a substitute certificate of insurance.
 - C.11.5.10 Subdivider's Obligation Maintenance of insurance by the Subdivider as specified in the Agreement shall in no way be interpreted as relieving the Subdivider of any responsibility whatsoever (including indemnity obligations under the Agreement), and the Subdivider may carry, at its own expense, such additional insurance as it deems necessary.
- C.11.6. Release of Improvement Security – Release of improvement security shall be in accordance with the requirements of the Tracy Municipal Code. The City shall not release any improvement security until after the Subdivider provides as-built plans, to the satisfaction of the City Engineer. Within twenty (20) days after the City's approval of the final map, the City shall provide the Subdivider one (1) set of reproducible duplicates on polyester film of all approved Improvement Plans. Upon completion of the construction by the Subdivider, the City shall temporarily release the originals to the Subdivider so that the Subdivider will be able to document revisions to show the "As Built" configuration of all improvements. The Subdivider shall submit these As-Built Plans (or Record Drawings) to the City Engineer within 30 days after City Council acceptance of the public improvements.
- C.12 Final Building Inspection
No Final building inspection will be performed by the City until after the Subdivider provides documentation which demonstrates, to the satisfaction of the City Engineer, that:

- C.12.1 The Subdivider has completed all requirements set forth in this section, and Conditions C.1, C.2, C.3, C.4, C.5, C.6, C.7, C.8, C.9, and C.10, above.
- C.12.2 The Subdivider has completed construction of all public facilities required to serve the building for which a certificate of occupancy is requested. Unless specifically provided in these Conditions of Approval, or some other City Regulation, the Subdivider shall take all actions necessary to construct all public facilities required to serve the Project, and the Subdivider shall bear all costs related to construction of the public facilities (including all costs of design, construction, construction management, plan check, inspection, land acquisition, program implementation, and contingency).

C.13 Special Conditions

Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Tracy, or other public agency having jurisdiction. This Condition of Approval does not preclude the City from requiring pertinent revisions and additional requirements to the final subdivision map, improvement agreement, and improvement plans, prior to the City Engineer's signature on the final subdivision map and improvement plans, if the City Engineer finds it necessary due to public health and safety reasons, and it is in the best interest of the City. The Subdivider shall bear all the cost for the inclusion, design, and implementations of such additions and requirements, without reimbursement or any payment from the City.

D. Public Works Department Conditions

Contact: Stephanie Hiestand (209) 831-4333 stephanie.hiestand@ci.tracy.ca.us

- D.1. Prior to issuance of a grading permit, the Developer shall provide proof of compliance with the Construction General Permit through a Waste Discharge ID number or Notice of Intent submittal; and provide proof of compliance with the City of Tracy Manual of Stormwater Quality Control Standards for New Development and Redevelopment (Manual), which includes the requirements for Site Design, Source and Treatment Control Measures, in a project Stormwater Quality Control Plan (SWQCP), to the satisfaction of the Public Works Director or his/her designee.
- D.2. Prior to the issuance of a building permit, the Developer shall prepare a detailed landscape and irrigation plan for all landscape areas (e.g. back yards, front yards, and public right of way) consistent with City standards and shall show compliance with adopted Water Efficient Landscape Ordinance and mandatory CalGreen Building Standards for Residential Properties through submittal and approval of the required Landscape Package, which includes project information, a water efficient landscape worksheet, a soil management report and Landscape, Irrigation, Drainage and Grading Plans, to the satisfaction of the Public Works Director or his/her designee.
- D.3. Prior to building permit final inspection, a Storm Water Treatment Device Access and Maintenance Agreement must be approved and notarized between the Developer and the City, to the satisfaction of the Public Works Director or his/her designee.

AGENDA ITEM 5

REQUEST

PUBLIC HEARING TO CONSIDER AN APPROPRIATION OF \$25,245 IN CITIZENS' OPTIONS FOR PUBLIC SAFETY "COPS" GRANT FUNDING TO PURCHASE POLICE SAFETY EQUIPMENT

EXECUTIVE SUMMARY

In Fiscal Year (FY) 2012-13, the City Council appropriated \$100,000 from the Supplemental Law Enforcement Services Funds (SLESF) and Citizens' Option for Public Safety (COPS) grant. The Police Department recently received notification that the amount awarded in FY 2012-13 increased to \$125,245. Staff is requesting authorization to allocate the additional \$25,245 in grant funding toward the purchase of safety equipment.

DISCUSSION

The Citizens' Option for Public Safety (COPS) grant program is awarded to cities and counties that provide law enforcement services on a per capita basis which is allocated to county Supplemental Law Enforcement Services Funds (SLESF). Government Code 30061 specifies "In order to utilize these funds, under California Government Code Section 30061(c)(2), ...the City Council shall appropriate existing and anticipated moneys exclusively to fund frontline municipal police services, in accordance with the written requests submitted by the Chief of Police..." These written requests shall be acted upon by the City Council at a public hearing.

In August 2012, the City Council appropriated \$100,000 in SLESF and COPS grant funding, which was used for the purchase of a ballistic engineered armored response all purpose vehicle. The Police Department intends to use the additional award of \$25,425 to purchase safety equipment for patrol vehicles, technological equipment enhancements and automated external defibrillators (AEDs). Below is a more detailed description of the proposed purchase:

ITEM	AMOUNT
Safety Equipment: <ul style="list-style-type: none"> ▪ Replace four light bars and four trunk organizers in our patrol fleet and outfit a patrol vehicle to be used by our K-9 officers. 	\$15,991
Technological Equipment: <ul style="list-style-type: none"> ▪ Purchase three computers and two phones, a tactical field camera and transmitter for the investigations unit and replacement batteries for mobile data computers (MDC's). 	\$6,374

Automated External Defibrillator: ▪ For installation at the police department and the firing range to provide first line responders with AED's to prevent death from Sudden Cardiac Arrest (SCA) prior to the arrival of EMS personnel.	\$2,880
TOTAL	\$25,245

STRATEGIC PLAN

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

FISCAL IMPACT

The City of Tracy has received the additional \$25,245 from the State COPS Grant. There is no fiscal impact to the Fiscal Year 2013-14 General Fund.

RECOMMENDATION

That the City Council hold the required public hearing and by resolution, approve the request to appropriate and expend the State COPS program funds for the aforementioned purchases.

Prepared by: Diane Manuel, Executive Assistant

Reviewed by: Gary R. Hampton, Chief of Police
Maria A. Hurtado, Assistant City Manager

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

RESOLUTION _____

APPROVING APPROPRIATION OF \$25,245 IN CITIZENS' OPTIONS
FOR PUBLIC SAFETY "COPS" GRANT FUNDING FOR THE
PURCHASE OF POLICE SAFETY EQUIPMENT

WHEREAS, The Police Department has been notified of and funded with an additional \$25,245 from the Supplemental Law Enforcement Services Funds (SLESF) and Citizens' Option for Public Safety (COPS) for Fiscal Year 2012-13, and

WHEREAS, The program known as the "Citizens' Option for Public Safety" (COPS), allocated funds to local agencies on a population basis to be used for front line law enforcement services, and

WHEREAS, Police Department staff recommends COPS funding be utilized to purchase equipment to replace safety equipment on patrol vehicles, purchase AED's for the department and purchase needed technology equipment, and

WHEREAS, The City Council has held the required public hearing to consider this request;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby approves the appropriation and expenditure of the additional State COPS Grant program funds in the amount of \$25,245

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 3rd day of December, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 6

REQUEST

ACCEPT UPDATE ON THE TRACY HILLS PROJECT AND PROVIDE DIRECTION ON THE PROPOSED DEVELOPMENT AGREEMENT

EXECUTIVE SUMMARY

This agenda item provides City Council with an update on the Tracy Hills project, including current status of development agreement (DA) negotiations. Earlier this year, applications were submitted to amend the Tracy Hills Specific Plan, and for a Tentative Subdivision Map for the first phase of development, which includes approximately 1,200 homes. As the Specific Plan contains the land use concept and development standards for the project, including areas abutting the I-580 freeway, this agenda item provides City Council with an opportunity to discuss the project with staff and the developer prior to completing work and setting the project for public hearings. No specific action is required, other than providing direction (if any) on DA negotiations and/or the project. The developer will be making a presentation regarding the land planning concepts for the first phase of development.

DISCUSSION

The Tracy Hills Specific Plan was originally approved and annexed to the City in 1998, zoning the site for a mix of residential, commercial and industrial land uses. To date it has not developed, and the current efforts by the property owners represent new investment in this project and ideas on how the first phase of development can begin. A number of the new ideas have their origins in the City's General Plan, which was updated since the original 1998 approvals. A significant amount of work has taken place over the last several years on addressing infrastructure delivery to the plan area. This largely took place during the preparation of several Citywide Infrastructure Master Plans approved earlier this year, namely Parks, Roadways, Wastewater, Public Buildings and Public Safety. These Master Plans contemplate the Tracy Hills project and address infrastructure delivery.

Currently, applications have been submitted for a Specific Plan Amendment amending the entire Specific Plan document including proposed land use changes for a portion of the Tracy Hills area (proposed amendment), and a Tentative Subdivision Map for the first phase of development, which is approximately 400 acres containing approximately 1,200 single family homes and 50 acres of business park, as well as a school site and storm drain facilities, roads, and other infrastructure. The proposed amendment still includes residential uses; however, the land uses are organized in a new layout for the area between I-580 and the California Aqueduct. The project proponents will be presenting this layout at the City Council meeting.

Several areas of importance for discussion include the freeway edge (how to turn habitat constraints into landscaping opportunities); neighborhood design that provides for high levels of mobility, public safety access, and access to public spaces; land uses

dedicated to business park development at the project entrance; project and City of Tracy identification at Corral Hollow Road and I-580.

Development Agreement

Per City Council direction, staff is negotiating a DA. The following comprise the basic categories that are being negotiated in this agreement. As negotiations are still ongoing, this list could change, including any changes directed by City Council. A list of the main Draft DA terms will be published with publication of draft project documents including the Draft Specific Plan, Tentative Map, and Draft Environmental Impact Report.

General Terms:

- \$5 million public benefit payment to City for use as directed by City Council
- Vesting rights for the project, meaning that the approvals are “locked in” for the terms of the agreement and cannot be changed without consent of each party, City and developer
- Use of a Community Facilities District (CFD) to fund capital infrastructure costs and maintenance and operations costs of various aspects of the project
- 25 year term

Water Storage:

- Use of water storage at the water treatment plant and timing of water tank, and funding for Aquifer Storage and Recovery (ASR) well

Wastewater Treatment:

- Funding for wastewater treatment plant expansion and reservations for funded capacity

Wastewater Conveyance

- Timing and funding of improvements to Corral Hollow sewer line and force main to Lammers sewer line

Traffic

- Use of traffic development impact fees used for Tracy Hills related traffic impacts

Project Timing

The City is in the process of preparing a subsequent Environmental Impact Report (EIR) to analyze the applications, and has issued a Notice of Preparation to solicit comments on what should be studied. The Planning Commission conducted a hearing on November 6, 2013, to receive public comment on the scope of the EIR. It is anticipated that an EIR will be issued for public review in Winter 2014, and hearings for the project could begin as early as Spring 2014. The developer has expressed a strong interest in beginning construction in early 2015.

STRATEGIC PLAN

This agenda item does not directly relate to one of Council's Strategic Plans; it relates to land use applications submitted to the City.

FISCAL IMPACT

There is no fiscal impact associated with this agenda item. The developers have entered into a Cost Recovery Agreement with the City to cover staff and consultant time associated with processing the applications. As the Tracy Hills project is evaluated for infrastructure requirements, environmental impacts, compliance with City standards, the fiscal impacts associated with impacts to public services are also being evaluated. A component of the project involves the formation of a CFD to fund capital infrastructure expenses; this funding tool is also being evaluated to fund maintenance and operational costs associated with the project, including long term costs such as police, fire, and other City services. This is being evaluated in part due to the existing property tax sharing agreement with San Joaquin County where the City share of property tax from the Tracy Hills project is zero percent. This previous arrangement was put in place in the 1990s when the Northeast Industrial Area (NEI) of the City was also contemplated under the tax sharing agreement with the City netting a higher property tax amount in NEI than was customary. The CFD and various capital and operational funding plans will be presented to City Council as work on the project applications progresses.

RECOMMENDATION

Staff recommends that the City Council accept the update on the Tracy Hills project, and provide any direction to staff, as necessary, related to the project or the DA.

Prepared by: Bill Dean, Assistant Director of Development Services

Reviewed by: Andrew Malik, Director of Development Services
Maria A. Hurtado, Assistant City Manager

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

AGENDA ITEM 9.A

REQUEST

DETERMINE WHETHER TO DIRECT STAFF TO PLACE AN ITEM ON A FUTURE COUNCIL AGENDA REGARDING INITIATING AN INVESTIGATION OF THE CITY'S ACTIONS REGARDING THE AGREEMENT THE SURLAND COMPANIES PROPOSED TO THE CITY RELATED TO AIRPORT FUEL SALES

EXECUTIVE SUMMARY

Determine whether to direct staff to place an item on a future agenda regarding initiating an investigation of the City's actions regarding the Agreement the Surland Companies proposed related to airport fuel sales.

DISCUSSION

At the City Council meeting held on November 5, 2013, Council Member Rickman requested that Council consider directing staff to initiate an independent inquiry surrounding a proposed agreement by the Surland Companies related to airport fuel sales.

The purpose of this agenda item is to provide an opportunity for Council to discuss whether staff time and City resources should be devoted to placing an item on a future agenda to consider Council Member Rickman's request. Approval of Council Member Rickman's request would enable the Council make a decision regarding his request at a future Council meeting.

STRATEGIC PLAN

This agenda item is a routine operational item which does not relate to the Council's Strategic Plans.

FISCAL IMPACT

There is no fiscal impact with Council's discussion of this item.

RECOMMENDATION

It is recommended that the City Council determine whether to direct staff to place an item on a future Council agenda regarding initiating an investigation of the City's actions regarding the agreement the Surland Companies proposed to the City relating to airport fuel sales.

Prepared by: Sandra Edwards, City Clerk

Reviewed by: Maria A. Hurtado, Assistant City Manager

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

AGENDA ITEM 9.B

REQUEST

APPOINT AN APPLICANT TO THE TRANSPORTATION ADVISORY COMMISSION FROM THE COMMISSION'S ELIGIBILITY LIST

EXECUTIVE SUMMARY

There is a vacancy on the Transportation Advisory Commission due to Commissioner Gainor's resignation. There is one applicant on the eligibility list, Mr. Tim Silva, which was created following the last Transportation Advisory Commission recruitment. Council confirmation of the appointment of Mr. Silva to the Transportation Advisory Commission is requested.

DISCUSSION

There is one vacancy on the Transportation Advisory Commission due to Commissioner Gainor resigning from the Commission on September 12, 2013. Mr. Gainor's term was due to expire on April 30, 2014. The last time appointments were made to the Transportation Advisory Commission was June 4, 2013. At that time the subcommittee consisting of Council Member Rickman and Council Member Manne nominated one applicant to fill a vacancy on the Transportation Advisory Commission and recommended one applicant be placed on an eligibility list. The purpose of an eligibility list is to fill vacancies that might occur in the 12 months following the last appointment to the board and/or commission. Council confirmed the subcommittee's nomination and the creation of an eligibility list. Resolution 2004-152 (Attachment A), includes direction on the "Selections Process for Appointee Bodies," and also states that if an appointee will fill an un-expired term with six months or less remaining, the appointment shall be deemed to be for the new term.

At this time, Council can either appoint Mr. Silva to the Transportation Advisory Commission for a term commencing on December 4, 2013, and expiring on April 30, 2018, or direct staff to open a new recruitment. If a new recruitment is opened, Council would need to determine how to proceed with regard to Mr. Silva's status.

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That Council approves the subcommittee's recommendation to appoint Mr. Silva to the Transportation Advisory Commission to serve a term which will commence on December 4, 2013, and expire on April 30, 2018.

Prepared by: Adrienne Richardson, Deputy City Clerk

Reviewed by: Maria A. Hurtado, Assistant City Manager

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

ATTACHMENTS

Attachment A – Resolution 2004-152

RESOLUTION 2004-152

REVISING RESOLUTION NO. 2004-089 ESTABLISHING THE COUNCIL SELECTION PROCESS, AND DEFINING RESIDENCY REQUIREMENTS, FOR APPOINTEE BODIES (GOVERNMENT CODE §54970 ET SEQ. LOCAL APPOINTEE OFFICERS)

WHEREAS, Council Policy D-5 was adopted by Resolution 2002-434 on October 15, 2002, which established a selection process for appointee bodies, and

WHEREAS, A variety of terms are used to define residency for the purposes of eligibility for appointment to various Appointee bodies and a method to verify residency has not been established, and

WHEREAS, Council wishes to define the terms and identify methods by which to verify residency and to incorporate those definitions into the selection process, and

WHEREAS, The definitions established herein shall apply to all boards and commissions to which the City Council appoints members unless the Bylaws of the board or commission specifically define otherwise, and

WHEREAS, Revisions to Resolution No. 2004-089 were considered and approved by the City Council on May 18, 2004 as set forth below.

NOW, THEREFORE, the Tracy City Council hereby resolves as follows:

A. SELECTION PROCESS FOR APPOINTEE BODIES:

1. On or before December 31st of each year, the clerk shall prepare an appointment list of all regular and ongoing boards, commissions and committees that are appointed by the City Council of the City of Tracy. The list shall contain the following information:
 - a. A list of all appointee terms which will expire during the next calendar year, with the name of the incumbent appointee, the date of the appointment, the date the term expires and the necessary qualifications for the position.
 - b. A list of all boards, commissions and committees whose members serve at the pleasure of the Council and the necessary qualifications of each position.
 - c. The list of appointments shall be made available to the public for a reasonable fee that shall not exceed actual cost of production. The Tracy Public Library shall receive a copy of the list.
2. Whenever a vacancy occurs in any board, commission or committee, whether due to expiration of an appointee's term, resignation, death, termination or other causes, a special notice shall be posted in the office of the City Clerk, The Tracy Public Library, the City website, and in other places as directed within twenty (20) days after the vacancy occurs. Final

appointment to the board, commission or committee shall not be made by the City Council for at least ten (10) working days after the posting of the notice in the Clerk's office. If Council finds an emergency exists, the Council may fill the unscheduled vacancy immediately.

3. Appointments shall be made for the remainder of the term created by the vacancy except as follows:
 - a. If appointee will fill an un-expired term with six months or less remaining, the appointment shall be deemed to be for the new term.
 - b. If the vacancy is filled by an emergency appointment the appointee shall serve only on an acting basis until the final appointment is made pursuant to section 3.
4. The council shall use the following selection process to provide an equal opportunity for appointment to a board, commission or committee:
 - a. Mayor (or designee) and a selected Council member will review applications, interview applicants and recommend a candidate for appointment to the board, commission or committee.
 - b. If the interview subcommittee determines there are multiple qualified candidates, the subcommittee can recommend the Council establish an eligibility list that can be used to fill vacancies that occur in the following twelve (12) months.
 - c. At the interview subcommittee's discretion, the chair (or designee) of the board, committee or commission for which a member will be appointed, can participate in the interviews.
5. In the event there are not two or more applicants than vacancies on any board, commission or committee, the filing deadline may be extended by staff.
6. An individual already serving on a City of Tracy board, committee or commission may not be appointed to serve on an additional City of Tracy board, committee, or commission concurrently.

B. DEFINITION OF RESIDENCY REQUIREMENTS:

1. The following definitions shall be used to determine whether residency requirements are met for boards and commissions to which the Tracy City Council appoints members:
 - a. Tracy Planning Area means the geographical area defined in the City of Tracy General Plan and any amendments thereto.
 - b. City of Tracy means within the city limits of the City of Tracy.

- c. Citizen means a resident of the City of Tracy.
 - d. Tracy School District means the geographical area served by the Tracy Unified School District.
 - e. Sphere of Influence shall be the geographical area approved by the Local Agency Formation Commission (LAFCo) of San Joaquin County and any amendments thereto.
2. Residency, as defined above and as set forth in the applicable bylaws for each board or commission, shall be verified annually by the City Clerk. The residency must be verifiable by any of the following means:
- a. Voter registration,
 - b. Current California Driver's License or Identification,
 - c. Utility bill information (phone, water, cable, etc.),
 - d. Federal or State tax returns.
3. Members of boards or commissions shall notify the City Clerk in writing within thirty (30) days of any change in residency. If the change in residency results in the board member or commissioner no longer meeting the residency requirements, the member shall tender their resignation to the City Clerk who shall forward it to the City Council.


The foregoing Resolution 2004-152 was passed and adopted by the Tracy City Council on the 18th day of May, 2004, by the following vote:

AYES: COUNCIL MEMBERS: HUFFMAN, IVES, TOLBERT, TUCKER, BILBREY
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE
ABSTAIN: COUNCIL MEMBERS: NONE



Mayor

ATTEST:



City Clerk