

December 17, 2013, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

The invocation was provided by Pastor Tim Heinrich, Crossroads Baptist Church.

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

Mayor Ives presented a Certificate of Appointment to new Transportation Advisory Commissioner, Tim Silva.

1. CONSENT CALENDAR - Following the removal of item 1-B by a member of the audience, it was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered. Council Member Manne abstained from item 1-J.
 - A. Approval of Minutes – Regular meeting minutes of October 15, 2013, were approved.
 - C. A Resolution of the City of Tracy Accepting Placement of the Tracy Sports Hall of Fame Plaque in City Hall - Resolution 2013-190 accepted placement of the plaque.
 - D. Acceptance of Offsite Improvements Constructed by McDonald's USA, LLC, Related to Street and Utility Improvements on Eleventh Street and F Street - Resolution 2013-191 accepted the improvements.
 - E. Acceptance of the Holly Sugar Sports Complex Project (Legacy Park) – CIP 78115, Completed by Desilva Gates Construction of Dublin, California, and Authorization for the City Clerk to File the Notice of Completion - Resolution 2013-192 accepted the project.
 - F. Acceptance of the Police Firearms Practice Range Waterline – CIP 71072D, Completed by Extreme Excavation of Tracy, California, and Authorization for the City Clerk to File a Notice of Completion - Resolution 2013-193 accepted the project.
 - G. Authorization of Purchase of Wildlife Habitat Mitigation Credits for the Effluent Outfall Pipeline and Diffuser Improvement Project from the Westervelt Ecological Services, LLC, and Authorization for the Mayor to Execute the Agreement - Resolution 2013-194 authorized the purchase of mitigation credits.
 - H. Award a Construction Contract to the Lowest Responsive Bidder for the Slurry Seal Project (FY 2012-13), CIP 73130B, and Authorize the Mayor to Execute the Contract - Resolution 2013-195 awarded the construction contract.

- I. Award a Construction Contract for the Tracy Boulevard Overlay Project – CIP 73130A to the Lowest Responsive Bidder, and Authorize the Mayor to Execute the Contract - Resolution 2013-196 awarded the construction contract.
- J. Minor Amendment to the Chevrolet Final Development Plan to Modify the Façade at 3400 Auto Plaza Way - Applicant and Owner is Golden Bears III LLC - Resolution 2013-197 approved the amendment.
- K. Approving the 2014 Calendar Year Budget for the Operation of the Tracy Material Recovery Facility and Solid Waste Transfer Station - Resolution 2013-198 approved the budget.
- B. Authorize Amendment of the City's Classification and Compensation Plans and Position Control Roster by Approving the Establishment of a Classification Specification and Salary Range for Utilities Director - Leon Churchill, Jr., City Manager, provided the staff report. Given the highly complex and technical nature of water and wastewater services, a Utilities Director classification is recommended to lead and direct the City's water and wastewater utilities. In particular, capable leadership is needed to manage the City's planned wastewater treatment expansion project which must be coordinated appropriately with current and future commercial and residential development activity.

Currently, utilities are managed within the Public Works Department, however, based on the Utilities Director classification study, it has been determined that a standalone Utilities Department is feasible and would provide better oversight than if left structured within the Public Works Department. Establishment of the new classification would also help the City meet its goals in the area of enhanced service delivery, organizational effectiveness and operational efficiency.

The Human Resources Division has completed a study of the Utilities Director classification. The study revealed that a wide range of organizational structures exist for cities with utilities operations. Many of the existing Utilities Departments in the surrounding area included Water and Wastewater Treatment Plants and some are even electricity providers. Given the City's size and the complexity of water and wastewater services provided, a standalone Utilities Department is feasible and may provide for better oversight of these two areas of operations.

The proposed Utilities Director classification would be a Department Head position and would direct and participate in all activities of the Utilities Department including short and long-range planning and would be responsible for reviewing and approving final plans and specifications for utility capital improvement projects. This classification would report to the City Manager or his/her designee and would be an "at will" position. It would also be reflected as a new position in the Department Heads Compensation and Benefits Plan.

Staff reviewed the salaries and benefits for seven agencies with Utilities Directors, including Daly City, Pittsburg, Roseville, Sacramento, Santa Cruz, Santa Maria, and Santa Rosa. While these cities are not the typical comparable cities used for Tracy's compensation studies, these cities were found most similar due to a combination of their size and/or the scope of services provided. Staff recommended that the annual salary range for the Utilities Director be established at \$145,561.20 to \$176,899.68. This range is similar to the existing

Development Services Director salary range and accounts for competitive market rates as well as internal equity issues with respect to other Department Head positions within the City.

It is anticipated that the cost of the Utilities Director position will be approximately \$238,000, including salary and benefits. This position would be funded through the Water and Wastewater Enterprise Fund and partially offset through the reallocation of a budgeted, vacant Deputy Director of Public Works–Utilities Division. The Deputy Director position is currently budgeted at \$200,000, including salary and benefits. The remaining \$38,000 would be funded through the Water and Wastewater Enterprise Fund until the next rate study which is anticipated to occur within two years to ensure compliance with salinity regulations due to the waste water desalination project.

Staff recommended that Council authorize amendment of the City's classification and compensation plans and position control roster by approving the establishment of a classification specification and salary range for Utilities Director; authorize the Administrative Services Director to update the City's classification plan; and authorize the Budget Officer to update the City's compensation plan and position control roster to incorporate the proposed changes.

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

Robert Tanner asked if the Deputy Director position was vacant and therefore the funds from that position would be used to fund this new position. Mr. Churchill stated yes. Mr. Tanner asked if the additional funds would come from the Wastewater Fund. Mr. Churchill stated funds would come from the Water and Wastewater fund.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2013-199, authorizing amendment of the City's Classification and Compensation Plans and Position Control Roster by approving the establishment of a Classification Specification and Salary Range for Utilities Director. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Veronica Vargas thanked staff and the City for moving forward with the sidewalk improvements on Valpico Road.

Steve Nicolaou addressed Council regarding the status of the investigation of the acts against Council Member Young and her family during the summer. Mr. Nicolaou requested that the community be informed whether they should be concerned about the presence of any hate groups that may have taken hold in the City of Tracy. Mr. Nicolaou wished everyone happy holidays and a safe and prosperous 2014.

Paul Miles addressed Council responding to Police Chief Hampton's remarks made at the December 3, 2013, Council meeting and stated Police Chief Hampton deceived the people of Tracy. Mr. Miles provided a letter dated December 17, 2013, and a handout titled "Definitions: What constitutes criminal behavior?" asking that they be made part of the record. Mr. Miles verbally submitted a formal complaint against Police Chief Hampton for dishonesty, violation of oath, and obstruction of

justice. Mr. Miles further stated that Dan Sodergren, City Attorney, and Leon Churchill, Jr., City Manager, cannot be a part of any investigation of Mr. Hampton. Mr. Miles requested a copy of the procedures that will be followed in the investigation of his complaint stating he expected to receive a copy of the procedures at the January 7, 2014, Council meeting.

3. PUBLIC HEARING TO HEAR OBJECTIONS TO AND APPROVE THE FINAL COSTS OF WEED ABATEMENT AND AUTHORIZE A LIEN ON THE LISTED PROPERTIES IN THE COSTS OF ABATEMENT AMOUNT PLUS 25 PERCENT – Steve Hanlon, Division Fire Chief, provided the staff report. Pursuant to Tracy Municipal Code Section 4.12.260, properties were identified by the Fire Department that required weed abatement. The property owners were given notice to abate and a public hearing was conducted July 2, 2013, and October 1, 2013, to hear any objections to abatement. Tracy Municipal Code provides that upon failure of the owner, or authorized agent, to abate within 20 days from the date of notice, the City will perform the necessary work by private contractor and the cost of such work will be made a personal obligation of the owner, or become a tax lien against the property. The City Council authorized the abatement.

The Fire Department designated 13 parcels that required abatement by Baylor Services, the contractor for the City. The abatement was completed at a cost to the City of \$7,523.50. The cost of abatement assessed to the property owner is the actual cost of the City contractor plus a 25% overhead charge, per Resolution 2013-086. The total cost, including the 25% overhead charge is \$9,404.36.

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

Approximately \$12,100 was allocated for weed abatement services in the FY 2013/14 adopted operating budget. The abatement performed by Baylor Services was below budget at a cost of \$7,523.50.

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

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 Young asked if the City has spent part of the \$12,100 allocated for this fiscal year. Division Chief Hanlon stated this was the first time those funds were used.

Council Member Rickman thanked the Division Chief and Fire Department for watching out for fire hazards.

It was moved by Mayor Pro Tem Maciel and seconded Council Member Manne to adopt Resolution 2013-200 approving the final costs of weed abatement and authorizing the lien on the properties for which the City conducted weed abatement. Voice vote found all in favor; passed and so ordered.

4. AWARD A CONSTRUCTION CONTRACT TO THE LOWEST RESPONSIVE BIDDER FOR THE VALPICO ROAD SIDEWALK IMPROVEMENT PROJECT – CIP 73133, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONSTRUCTION CONTRACT – Andrew Malik, Development Services Director, provided the staff report. The new five-foot sidewalk is approximately 680 linear feet long and will be installed in the public right-of-way. No additional property acquisition is required for this project. The new sidewalk will transition into existing driveways of adjacent businesses to meet existing grades with minimal disruption of access to businesses. A full-scale sidewalk with new driveways, curbs and gutters will be installed as part of the widening of the Valpico Road Project – CIP 73095, between MacArthur Drive and Tracy Boulevard, which is currently in the design stage, and will be awarded construction when funds become available within the next three years.

This project involves the installation of approximately 3,409 square feet of new sidewalk. The work also includes the removal of plants, trees, barricades, and lawns. The new sidewalk connects to existing sidewalks on both ends of the project and will comply with the Americans with Disabilities Act (ADA).

The project was advertised for competitive bids on September 20, and September 27, 2013; nine bids were received and publicly opened on October 15, 2013. Taylor Backhoe Service, Inc. of Merced, California, was the lowest monetary bidder; however, this bid was considered non-responsive as it did not acknowledge receipt of the second addendum as required by the project specifications. Consequently, the contract needed to be awarded to the next lowest monetary bidder, Dunton Construction Company.

If the project is awarded to Dunton Construction Company, construction will commence in early January 2014, with completion expected by the end of February 2014, weather permitting.

This is an approved CIP project which has no fiscal impact on the General Fund. The contract cost is \$115,501.50 with a total anticipated project cost of \$149,551.50. Approximately \$150,000 has been budgeted for this capital project from the Gas Tax Fund.

Since this sidewalk project is part of the overall Valpico Road Widening Project - CIP 73095, partially funded from development fees, the cost of completion of this sidewalk project will be reimbursed from CIP 73095, after completion of construction and acceptance of the sidewalk project. This will release Gas Tax funds from the sidewalk project for other projects using Gas Tax funds in the City.

Staff recommended that Council award a construction contract to Dunton Construction Company, of Anderson, California, in the amount of \$115,501.50, and authorize the Mayor to execute the construction contract and City Council further authorize reimbursement of the total cost of this project from CIP 73095, after completion of construction and acceptance of the sidewalk project.

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

Mayor Ives asked for clarification regarding alignment of the sidewalks. Mr. Malik stated the sidewalks will align once the widening of Valpico Road is completed.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2013-201 awarding a construction contract in the amount of \$115,501.50 for the Valpico Road Sidewalk Improvement Project – CIP 73133, to Dunton Construction Company, of Anderson, California, and authorizing the Mayor to execute the contract. Voice vote found all in favor; passed and so ordered.

5. APPROVE AN APPROPRIATION FROM UNSPENT 301 FUNDS IN THE AMOUNT OF \$550,000 FOR COSTS ASSOCIATED WITH REMOVAL OF USE RESTRICTIONS AND FEDERAL REVERSIONARY RIGHTS ON THE 150-ACRE SCHULTE ROAD PARCEL FROM GENERAL SERVICES ADMINISTRATION, AUTHORIZE THE MAYOR TO EXECUTE ANY NECESSARY DOCUMENTS TO COMPLETE THE TRANSFER, AND APPROPRIATE \$100,000 FOR A PROFESSIONAL SERVICES AGREEMENT WITH URS CORPORATION FOR CONSULTANT SERVICES TO SERVE AS THE CITY'S REPRESENTATIVE IN ASSESSING AND NEGOTIATING A RENEWABLE ENERGY PROJECT AT THE SCHULTE ROAD PROPERTY – Leon Churchill, Jr., City Manager, provided the staff report. The Schulte Road property is approximately 200 acres and is located on the south side of Schulte Road, west of Lammers Road. The City acquired fee title to the Schulte Road property by way of Federal legislation enacted in 1998 (Public Law 105-277, section 140) (authorizing legislation). The authorizing legislation was amended in 1999 and 2004. The authorizing legislation permits the City to acquire 150 acres of the property for educational or recreation purposes and 50 acres of the property for economic development.

In 2007, the Federal Government deeded both the 50 and 150 acre parcels to the City. For the 50-acre parcel, the City was required to pay fair market value, which at the time of the purchase was \$950,000. The 50-acre parcel is unrestricted. The 150-acre parcel was deeded to the City for \$1.00. However, the 150-acre parcel is restricted to recreational or educational uses. The City exhausted educational and recreational uses over the last 15 years. Recreation land uses have been diverted to what the community knows as Legacy Fields, and educational uses appear destined for other locations.

To allow the City to pursue solar uses on the 150-acre site, new legislation was enacted in 2012 to allow the removal of the restrictions on the 150-acre parcel upon the City paying the fair market value of the parcel. The legislation authorizes the General Services Administration (GSA) to offer to enter into a binding agreement with the City for removal of the restrictions. Since the enactment of the legislation, the City has undergone an extensive process with the Federal Government through the GSA to find a viable use for the Schulte Road property. The City is now at the same juncture experienced approximately one year ago. Several options remain for the City, but the basic decision is whether to invest more resources into the property to remove the use restrictions on the 150-acre parcel that could lead to a return on investment, or to abandon such efforts and leave the property's outcome to the Federal Government as threatened 15 years ago with a prison.

The City pursued private development of the property for solar uses by GWF, a private energy provider, for several years until the project was abandoned and GWF was purchased by Star West Generation of Houston, TX. GWF also concluded the project was not viable due to the high cost (estimated at \$19 million) of transmission line upgrades required by Pacific Gas & Electric (PG&E). Such upgrades are required for projects over 20 megawatts.

On September 18, 2012, Council considered appropriating \$1,105,250 from the RSP Fund for costs associated with the removal of use restrictions and Federal reversionary rights on the 150-acre Schulte Road parcel. Council approved the appropriation and directed staff to request that GSA grant a two month extension of its offer to enter into an agreement to remove the restrictions while the City performed due diligence on the viability of a renewable energy project on the site. Staff requested the extension from GSA and received a response from GSA. GSA agreed to grant the City a six-month extension of its offer with two conditions: 1. The City pay a \$50,000 deposit by November 14, 2012, which would be applied to the purchase price; and 2. The City complete its purchase by April 1, 2013, The deadline was later extended to August 1, 2013, and subsequently to October 30, 2013.

On November 7, 2012, Council approved an appropriation of \$50,000 from the Residential Areas Specific Plan (RSP) Fund for the deposit. Council also approved \$40,000 from the RSP Fund for necessary consultant services to assess the viability and best options for a renewable energy project on the site including obtaining and evaluation of necessary project development information, development of a Request for Proposals (RFP) and evaluation of submitted proposals. An RFP was issued for consulting services and in December 2012, URS was the consultant chosen to assist the City.

URS finalized the Schulte Road Renewable Energy Development Options report in February 2013. The report stated that several development pathways could be pursued to implement a viable renewable energy project on the Schulte Road site. Given the many potentially feasible solar development options at the Schulte Road site, URS recommended that the City request bids from solar developers for pursuing one or more of the development options addressed in the report, and two proposals were received in response to the RFP. Both proposals offered reasonable return on investment although many variables have to be addressed. The City also received two additional and separate unsolicited proposals from Energy and Financial Consulting and Surland Companies. The proposal from Energy and Financial Consulting offered a turnkey project using a Certificate of Participation (COP) to secure long-term zero down, low-cost funding for a 20 MW solar PV "FIT" (Feed in Tariff) project, on 100 acres. Under this proposal, the rate would yield approximately 3.55% for 20 years (final cost set at offering time). The proposal stated that the City's margin would be guaranteed from the utility, by means of a FIT agreement, for up to 25 years.

The proposal from Surland Companies sought to purchase the 150 acres to explore the development of a solar project. The proposal was ultimately pursued by the City because it was a viable public-private partnership that did not require City capital investment, therefore allowing the City to use its capital funds on other high priority unfunded capital projects (i.e. Improvements to Joe Wilson Pool, Tracy Ballpark, second phase of Animal Shelter, etc.). Council approved a purchase agreement with Surland Companies, but Surland Companies did not sign the agreement and notified the City it had abandoned its efforts to acquire the property.

The City has wrestled with the Schulte Road property for 13 years consumed by attempts to develop it for educational and recreational uses to no avail. Additionally, the last four years have focused on removing the land use restrictions to enable renewable energy development. These efforts included a private effort by GWF and proposed public-private partnership with Surland Companies. Both efforts had the potential to use private investment for the purchase, and preserve the City's ability to use or obtain credit

for alternative energy power. In addition, the preservation of an additional \$1.6 million in capital funding would have enabled the City to address other capital needs in the community.

The development possibilities discussed did not materialize for various reasons, and the City is now at the juncture to complete the process to remove the use restrictions with an additional investment or stop, preserve capital resources, but forgo the opportunity for any return on investment. The City requested a time extension from the GSA, which resulted in a proposal from GSA. The GSA gives the City two options which allow the 150 acres to revert back to the Federal Government, or commit to a five-year payment plan for the purchase. The City is essentially at the same milestone as it experienced one year ago.

Staff recommended that the City finalize the transaction to remove use restrictions and Federal reversionary rights on the 150-acre Schulte Road parcel. Staff also recommended the City pursue a viable energy renewable project on the site as originally planned.

Consultant services will be necessary negotiate a renewable energy project on the Schulte site, including obtaining and evaluating necessary project development information, development and execution of a Request for Proposals, evaluation of the submitted proposals, and representing the City in any negotiations with the solar developers and other related stakeholders. URS is the sole source consultant recommended for these services as they were involved in the initial RFP development and analysis of submittals.

If Council chooses not to remove the use restrictions by making payments to the GSA, staff recommends that the City Council not agree to revert the property to the Federal Government. An apparent conflict exists between the authorizing legislation and the deed granting the property to the City. Therefore, staff will need additional time to clarify whether the City has the legal right to maintain its ownership of the property for possible future recreational or educational use. As to the Federal Government's power to revert the property, the authorizing legislation, as amended, provides in relevant part that:

(e) REVERSIONARY INTERESTS.—(1) If a portion of the real property conveyed under subsection (a) is used for educational purposes, as provided in subsection (c), and the Secretary of Education determines that such portion is no longer being used for such purposes, all right, title, and interest in and to that portion of the property, including any improvements thereon, shall revert to the United States.

(2) If a portion of the real property conveyed under subsection (a) is used for recreational purposes, as provided in subsection (c), and the Secretary of the Interior determines that such portion is no longer being used for such purposes, all right, title, and interest in and to that portion of the property, including any improvements thereon, shall revert to the United States.

This language assumes that the property is first put to use for educational or recreational uses and then such uses are abandoned. The City has yet to put the property to use for educational or recreational uses. Furthermore, the deed from the Federal Government to the City provides in relevant part that:

The Property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in an amendment to an application submitted by the Grantee dated September 15, 2005, which program and plan may be amended from time to time at the written request of either the Grantor or Grantee, with the written concurrence of the other party, and such amendments will be added to and become a part of the original application.

City staff is unable to locate such a program or plan and is uncertain as to whether one exists. Staff has requested that the GSA provide a copy of the program or plan. GSA has yet to provide the City with a copy of the program or plan. If and when the City receives this information, it will have to be determined whether the program or plan is consistent with the authorizing legislation. Therefore, if Council chooses not to remove the use restrictions by making payments to the GSA, staff recommends that Council not agree to revert the property to the United States at this time until staff obtains more information regarding this specific issue. This option has the benefit of saving expenditures of \$1.6 million, but presumes no viable use for the Schulte Road property for the foreseeable future if not perpetuity.

A total of \$650,000 is requested from unspent 301 monies. Approximately \$100,000 is required for consultant services to assess the viability of a renewable energy project and negotiate lease or purchase. The remaining \$550,000 would cover the cost of acquiring the property from the GSA.

The City's investment into the Schulte Road property totals \$3.2 million. City Council appropriated an additional \$1 million in 2012, for costs associated with removal of use restrictions and Federal reversionary rights on the 150-acre Schulte Road parcel. The balance of \$550,000 is necessary to complete the transaction with the Federal Government. If Council chooses to approve this funding, the total investment into the Schulte Road property will be \$4.8 million to date.

A \$50,000 deposit made to the GSA may be refundable in the event the City does not move forward with paying to remove the restrictions and allows the property to revert to the Federal Government. Staff recommended that the City not allow the property to revert at this time.

Staff recommended Council approve an appropriation from unspent 301 funds in the amount of \$550,000 for costs associated with removal of use restrictions and Federal reversionary on the 150-acre Schulte Road parcel from General Services Administration, authorize the Mayor to execute any necessary documents to complete the transfer, and appropriate \$100,000 for a Professional Services Agreement with URS Corporation for consultant services for a renewable energy project at the Schulte Road property.

Council Member Rickman outlined various options including spending \$650,000 or pursuing a public/private partnership. Mr. Churchill stated any private partnership would lessen the City's outlay. Council Member Rickman asked what would happen if the City did nothing. Mr. Churchill stated the collective opinion is that the land will stay in its current state with land use restrictions but not revert to the Federal Government. Dan Sodergren, City Attorney, stated there seemed to be some inconsistency between the authorizing legislation and the deed that was granted by the Federal Government. Mr.

Sodergren recommended if Council chooses to not buy off the restrictions, that staff return at a later date and do further analysis of the status of the reversionary clause.

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

Robert Tanner asked for clarification regarding Surland's request to delay payment because they were going to spend \$2 million to purchase this property.

Paul Miles asked for information regarding the \$3.2 million prior investment in the property. Andrew Malik, Development Services Director, stated funds were used on the environmental process for a school and ball fields and construction of a well on the site. Mayor Ives stated there were also poles and an underground storage tank removed.

Mr. Miles stated he did not see any previous proposals for partnerships in the material provided. Mayor Ives explained that the intent was for the City to own the property and a private company to develop the property, creating a public/private partnership.

Mr. Miles asked if the City pursued development of the property, would it have to be annexed into the City. Mr. Malik stated if a solar project was proposed, the property could remain in the County as a conditional use under agricultural zoning; if the property was developed for anything else, it would have to go through environmental review including zoning, general plan amendment, and annexation, which would ultimately lead to annexation by LAFCO.

Mr. Miles asked if Council could direct staff to show him a letter where GWF indicates that a high power plant was not viable. Mayor Ives asked staff to provide the letter, if available, to Mr. Miles.

Dave Helm asked if the City owned the land. Mayor Ives stated the City owned 50 acres outright and 150 acres with restrictions. A discussion ensued regarding the City's efforts to date for developing the land and funds spent. Mr. Helm asked for clarification regarding Surland's request to delay a payment due to the City because Surland intended to purchase this property. Mr. Helm stated it seemed like a poor investment and suggested doing nothing with the property until someone comes up with a viable offer that will get the City its money back.

Dave Anderson suggested Council consider the alternative provided by the City Attorney and consider sitting on the property until the loose ends are tied up. Mr. Anderson stated if the City does consider a solar project, to look at partnering with the Department of Energy.

Paul Miles reminded Council that real property sales are required to go out to bid and that he hoped the City will seek the bid process as required by Code.

Council Member Manne asked if the majority of the \$3.2 million spent to date was on environmental work. Mr. Malik stated some improvements were done on the 50 acres the City owns and that two environmental impact reports were completed for two large proposed projects.

Mayor Ives asked if the \$3.2 million included the cost of purchasing the 50 acres. Mr. Malik stated he would have to check. Mayor Ives stated he believed it did include the price for the 50 acres.

Council Member Rickman asked for clarification regarding the property restrictions. Mr. Sodergren explained that the original legislation stated if the City used the property for education or recreation use and later abandon that use, the Federal government could revert the property. Mr. Sodergren further stated the City went back to Congress and received permission to buy back the revisionary rights which allows the GSA greater flexibility to buy these restrictions. Mr. Sodergren added that GSA has greater control and that staff would have to go back and negotiate with GSA.

Council Member Rickman asked if the City could save money by negotiating with GSA. Mr. Sodergren stated if Council directed, staff could request that GSA grant the City an extension of time. Council Member Rickman asked if that happened, could the City sit on the property. Mr. Sodergren stated yes.

Council Member Young asked if the government had proposed a use for the land before it was deeded to the City. Mr. Churchill stated a prison was proposed for the land. Council Member Young stated it would be a good idea to negotiate for a longer time frame. Mr. Churchill stated GSA indicated the City had 30 days from the end of November, 2013 to make a decision.

Council Member Young stated she did not believe there was enough information to make a decision, but that it would be beneficial for the City to have control over the property.

Mayor Pro Tem Maciel stated 15 years is enough and that the Schulte Road property has become a white elephant. Mayor Pro Tem Maciel provided a brief history of acquiring and developing the property. Mayor Pro Tem Maciel stated it would be worthwhile to eliminate the government restrictions and put the City in a position to take advantage of any investment possibilities. Mayor Pro Tem Maciel indicated the Cordes Ranch property may increase the property value. Mayor Pro Tem Maciel suggested Council authorize funding, put staff in a position to move forward and to continue negotiating to find the best deal for the City.

Council Member Manne stated the property was a big loser and was tempted to cut the City's loses. Council Member Manne stated he was in favor of lifting the restrictions in order to pursue investment opportunities.

Mayor Ives stated the \$3.2 million must include the \$950,000 cost to purchase the property. Mayor Ives also stated there were many places where the City could use \$550,000 rather than putting it in this project and did not believe the Federal Government can do anything with the property without going back to Congress.

Council Member Rickman stated he agreed with comments made by Mayor Ives. Council Member Rickman indicated the City should hold off spending additional funds and continue negotiations with GSA.

Mayor Pro Tem Maciel stated he was committed to not spend additional funds until more information is provided.

It was moved by Council Member Rickman and seconded by Council Member Manne to direct staff to enter into renegotiations with GSA regarding the 150-acre Schulte Road

property for additional time and a lower price. Voice vote found all in favor; passed and so ordered.

6. RECEIVE AND DISCUSS ITEMS REFERENCED IN THE MEMORANDUM DATED APRIL 26, 2013, FROM SURLAND COMPANIES TO THE CITY OF TRACY – Maria Hurtado, Assistant City Manager, provided the staff report. On October 15, 2013, Council discussed an agenda item related to the Airport improvements and the San Joaquin County Airport Land Use Commission's (ALUC) determination that an application to amend the Ellis Specific Plan from Surland Communities was found not consistent with the San Joaquin County Airport Land Use Commission's Airport Land Use Compatibility Plan. Among a number of items, the April 26, 2013, memorandum from Surland Companies (Surland) to the City of Tracy to the City was a topic of interest. Subsequently, on December 3, 2013, Council Member Rickman requested, and Council agreed, to agendize an item for discussion related to the status of the proposed actions outlined in the memorandum from Surland to the City.

The memorandum dated April 26, 2013, from Surland to the City (the Surland memo) outlined the terms of a proposal that Surland unilaterally presented to the City and staff rejected and, therefore, did not bring to Council for approval. The terms of the proposal included Surland paying a portion of the existing Fuel Operator's obligations under an existing agreement between the City and the Fuel Operator in exchange for the City taking certain land use, and other actions. Ms. Hurtado detailed each of Surland's proposed deal points and provided information regarding the authorizing entity and where any action was taken.

Proposed Deal Point 1 proposed that *"Surland submit amounts to the City on the various dates:*

City staff verbally informed Surland that the City had no interest in the proposed agreement with Surland and also had no interest in any three party agreement between Surland, the Fuel Operator (Turlock Air Center, LLC) and the City. The City's agreement with Turlock Air Center, LLC (TAC) already obligates TAC to pay the City more than the amounts set forth in the Surland memo.

On October 31, 2011, the City entered into a Fuel Sales and Fuel Facility Lease Agreement with TAC. Among other things, for the privilege of *using* the City-owned fuel facility, the agreement requires TAC to pay the City a fuel facility use fee of \$0.10 per gallon on all aviation fuel sold to airport customers. For the privilege of *selling* aviation fuel at the airport, the agreement also required TAC to pay the City a fuel flowage fee of \$0.07 per gallon on all aviation fuel sold up to 100,000 gallons during the 12 month period beginning on January 1 of each year; and \$0.03 per gallon on all aviation fuel sold to airport customers over 100,000 gallons during such 12 month period. To guarantee payment of the fuel facility use fees and fuel flowage fees, the agreement requires TAC to pay the City a \$50,000 annual payment guarantee due by January 1, each year.

On February 5, 2013, after repeated unsuccessful demands from the City to pay the \$50,000 annual payment guarantee, the City issued a three-day notice to pay rent or quit to Turlock Air Center.

On June 18, 2013, the City Council approved an amendment to the agreement. Among other things, the amendment revised the fuel flowage fee to a flat \$0.07 fee per gallon on

all aviation fuel sold. The amendment also revised the required annual \$50,000 payment guarantee by making it due to the City by April 1, of each year.

On July 1, 2013, the City received a letter from TAC remitting payment of the \$50,000 annual payment guarantee. Attached to the letter were a memorandum and a check to the City from Surland for \$50,000.

The July 1, 2013, hand delivered letter from Stephen S. Stuhmer (Stuhmer) regarding the Fuel Sales Operator and Fuel Facility Lease Agreement between the City and TAC informed the City that pursuant to Section 20.1 of the amendment, TAC was remitting to the City the minimum annual payment guarantee amount of \$50,000 for calendar year 2013.

Attached to the letter from Stuhmer was a letter and check from Surland dated July 2, 2013, related to the Fuel Sales Operator and Fuel Facility Lease Agreement between the City and TAC. The letter stated that a check for \$50,000 to the City was being submitted as payment for the Minimum Annual Payment Guarantee for calendar year 2013, per the Fuel Sales Operator and Fuel Facility Lease Agreement between the City and TAC. The City accepted the \$50,000 payment submitted by TAC pursuant to the existing contractual obligations between TAC and the City.

The City has no knowledge whether or not an agreement between Surland and TAC exists, other than the public statement made by Mr. Serpa at the October 15, 2013, Council meeting that Surland has no agreement with Stuhmer. This statement was during the public comment portion related to Agenda Item 6. The City has no agreement with Surland regarding airport fuel (or any other deal point contained in the Surland memo) nor does the City have a three party agreement between Surland, TAC, and the City regarding airport fuel (or any other deal point contained in the Surland memo).

Proposed Deal Point 2: Fuel Flowage Fee - suggested that "the Fuel Flowage Fee shall be 7 cents per gallon of all fuel pumped and or sold at TCY. The gross Fuel Flowage Fee shall be paid directly to Surland, without any offset, credit or administrative fee, monthly as a reimbursement."

City staff did not agree to this proposal and verbally informed Surland it would not enter into the proposed agreement between Surland and the City nor would it enter into a three party agreement with Surland, the City, and TAC.

Proposed Deal Point 3: Specific Contingency Language Shall be Part of the Agreement between Surland and the City Summary - the City did not enter into Surland's proposed agreement.

Surland Contingency 1A: The City of Tracy shall on or before June 30, 2013, revise the ALP and submit this ALP to the FAA showing runway 12/30 to be a maximum length of 3,996 feet, and shall physically re-mark the runway to confirm to the new ALP depicting a runway 12/30 to be a maximum length of 3,996 feet.

The City did not revise the ALP nor did the City submit the ALP to the FAA showing runway 12/30 to be a maximum of 3,996 feet. A longstanding City goal has been to repave the airport runway. Over the years, staff has taken several steps necessary to secure FAA funding for airport improvements, the most recent step was the completion of a Pavement Maintenance and Management Plan (PMMP) that delineated the

necessary pavement improvements at the airport. This PMMP was approved by Council on October 2, 2012, and completed in March 2013.

On June 18, 2013, staff presented Council with an update on the Airport Pavement Project and recommended changes to both the runway width and length. At that Council meeting, staff recommended adjusting the runway width from 100 feet to 75 feet and the taxiway width from 40 feet to 35 feet. This recommendation was made to meet the FAA standards and receive full funding. In retrospect, staff could have provided greater clarity that the runway length was *not* tied to receiving full funding and meet FAA standards; only the runway width and the taxiway width. Because the City had an opportunity to complete a revised airport design, staff recommended reducing the runway length from 4,002 feet to 3,997 feet as it was estimated to be compatible with existing operations and planned development at the airport. Subsequent to the June 18, 2013, recommendations on runway width and length, staff received direction from the FAA that the ALP for the Tracy Municipal Airport would need to be updated prior to any construction due to the extensive changes the reconstruction of the runways and taxiways required.

On August 6, 2013, Council approved a contract with the airport consultant to update the ALP. Through additional discussion with the consultant and the FAA, staff better understood the FAA's grant review and grant award timeline and FAA's concerns related to changes to runway length. Subsequently, on October 15, 2013, staff requested that Council leave the runway length at 4,002 feet, to meet the 2014 FAA funding cycle for the re-pavement project. Additionally, Council directed staff to proceed with the ALP changes with a 4,002 foot runway length.

Surland Contingency 1B: *The City of Tracy shall reflect runway 12/30 designated as a Safety Compatible Zone consistent with the 2011 California Transportation Safety Compatibility Zone for a Short General Aviation Runway (Short Runway) as attached when adopting/updating the Tracy Airport Master plan.*

The authority to classify a "Short Runway" for the purposes of safety cones lies with the Airport Land Use Commission (ALUCP), not with the City of Tracy, unless the City Council chooses to override the ALUCP's determination. The City did not reflect runway 12/30 as a Safety Compatible Zone to be consistent with the 2011 California Transportation Safety Compatibility Zone for a Short General Aviation Runway as proposed by Surland in Contingency 1B. At the October 15, 2013, Council meeting, Council asked staff to return with information to evaluate what the override process would entail, which will be agendaized at a Council meeting in early 2014.

The proposed language in Contingency 1C contains three separate and specific actions.

Surland Contingency 1C (Action 1): *The City of Tracy shall notify the San Joaquin County ALUC on or before July 15, 2013 of the new information (revised ALP, reflecting change in 12/30 runway length) and request for Economic rationale or other rationale as agreed to amend the ALUCP to reflect runway 12/30 designated as a Safety Compatible Zone consistent with the 2011 California Transportation Safety Compatibility Zone for a short General Aviation Runway (Short Runway), in conformance with the City of Tracy newly adopted ALP.*

The City of Tracy did not request an amendment to the Airport Land Use Compatibility Plan (ALUCP). Staff contacted San Joaquin Council of Government (SJCOG) staff to

update and facilitate review of a subsequent application, because SJCOG, acting as the Airport Land Use Commission, would be involved in the review process for Surland's Specific Plan Amendment. Some development applications submitted to the City of Tracy require approvals or an opportunity for comments from outside agencies. These applications typically involve General Plan Amendments, Environmental Impact Reports, Specific Plans, Development Reviews, Annexations, etc. Where outside agencies are involved in the City's permit processes, it is common practice that staff contacts those outside agencies to provide clarifying information, updates, or other support to facilitate an expedited review timeline for processing the permit or application. Typical outside agencies include: CalTrans, Local Agency Formation Commission (LAFCo), San Joaquin Council of Governments (SJCOG), Air Quality Resource Board, among others.

Surland Contingency 1C (Action 2): *The ALUC shall amend the 2009 ALUCP on or before November 30, 2013, to reflect runway 12/30 designated as a Safety Compatible Zone consistent with the 2011 California Transportation Safety Compatibility Zone for a Short General Aviation Runway (Short Runway), in conformity with the City of Tracy newly adopted ALP.*

The City has no jurisdictional control over the ALUC. The ALUC did not amend the 2009 ALUCP.

Surland Contingency 1C (Action 3): *If the ALUC does not amend the 2009 ALUCP on or before November 30, 2013, at the request of Surland, the City agrees it will notify the ALUC of the City's intent to override any ALUCP that does not reflect a Safety Compatible Zone consistent with the 2011 California Transportation Safety Compatibility Zone for a Short General Aviation Runway (Short Runway), and City will then proceed with override hearing per State Law.*

On October 15, 2013, Council directed staff to gather additional information and to explore the potential for an override, but no findings have been completed or decision made by Council. As such, no notification regarding the City's intent to override any ALUCP has been given to the ALUC.

Surland Contingency 1D: *The Fuel Flowage Fee shall not be less than \$0.07 per gallon reimbursed to Surland for all fuel pumped or sold at the Tracy Municipal Airport.*

City staff did not agree to this proposal and verbally informed Surland it would not enter into the proposed agreement between Surland and the City nor would it enter into a three party agreement with Surland, the City, and TAC.

The fuel flowage fee in the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center is currently at \$0.07 per gallon. The fuel flowage fee is to be paid to the City by the Lessee (Turlock Air Center) after the Lessee surpasses \$50,000 in fuel sales for the year.

Surland Contingency 1E: *The City of Tracy agrees to generate and process amendments to the Ellis Specific Plan and City of Tracy General Plan to reflect a Safety Compatible Zone consistent with the 2011 California Transportation Safety Compatibility Zone for a Short General Aviation Runway (Short Runway), and changes in zoning to TR Ellis in the General Plan from Commercial and from Limited Use in the Ellis Specific Plan that are no longer in the Safety Compatibility Zone noted above, and to Zone any property that is in the Outer Approach/Departure Compatibility Zone to Commercial in*

the General Plan, and Limited Use in the Ellis Specific Plan that is not already zoned such, and schedule for hearing dates in December, 2013.

The City did not agree and did not generate any amendments to the Ellis Specific Plan or the General Plan. Surland submitted an application on July 11, 2013, to amend the Ellis Specific Plan and City's General Plan to provide for land use designations and zoning consistent with the Short Aviation Runway. The currently adopted Ellis Plan (January 2013) is consistent with the outer approach zone as established in the adopted 2009 ALUCP. No hearing on the Surland application has been scheduled. However, City staff brought an agenda item to City Council on October 15, 2013, to discuss whether or not to pursue an override, based on SJCOG's review of the application materials and determination of inconsistency with the ALUCP.

Surland Contingency 2: Cessation of fuel operation. Should the current fuel service operator cease operation, or sell the business or assign the contract with the City of Tracy then Surland's obligation to assist in funding the shortfall shall terminate immediately without any prior notice.

City staff verbally informed Surland Companies that it did not agree to this proposal. The existing fuel operation agreement is currently binding between TAC and the City therefore the obligation to pay any amount owed to the City falls upon the TAC. It is unknown whether TAC solicited a third party to pay its obligation.

In summary, the City did not enter into the agreement proposed in the Surland memo. Four of the ten deal points proposed in the Surland memo related to the current lease agreement between the City and TAC and no action was taken by staff or the City Council regarding those proposed deal points. One of the ten proposed deal points was related to the development application process and no action was taken by staff or the City Council regarding that deal point. The remaining five of the ten proposed deal points were related to the airport, four of which had no action taken by staff, the ALUC or the City Council. The other proposed deal point was related to the Airport runway length.

The Council did change the proposed airport runway length from 4,002 feet to 3,997 feet on June 19, 2013, but subsequently reverted the proposed runway length back to 4,002 feet due to staff's greater understanding of the FAA's grant review and grant award timeline and FAA's concerns related to changes to runway length and impact on funding and review timeline.

Staff recommended Council receive and discuss the items referenced in the memorandum dated April 26, 2013, from Surland Companies to the City of Tracy.

Council Member Rickman asked when City Manager or Assistant City Manager became aware of the agreement. Leon Churchill, Jr., stated in the spring of 2013. Council Member Rickman asked if there was a meeting to discuss the agreement. Mr. Churchill stated no meeting was held, the agreement was denied on the spot. Council Member Rickman asked who was aware of the agreement. Ms. Hurtado stated the normal review process that staff has taken is that a development team meets on a regular basis with developers. Ms. Hurtado added that the team has met with Tracy Hills and Surland to trouble shoot issues. Ms. Hurtado added that on at least three occasions the development team discussed the concepts with Surland and told Surland that an agreement was not the appropriate venue to amend the Ellis Specific Plan and suggested they submit an application to amend their plan. Ms. Hurtado stated therefore,

Surland was verbally informed that the concepts outlined in his memorandum would not be considered and subsequently Surland submitted an application to amend their Specific Plan.

Council Member Rickman asked if there were any negotiations before the memorandum was sent to the City. Ms. Hurtado stated during the weekly team meetings ideas are vetted.

Council Member Rickman asked how many public records act requests have been received pertaining to the airport in the last six months. Ms. Hurtado stated she did not know the exact number of requests, but stated there was a significant amount.

Council Member Rickman referred to a condition of the proposed agreement dated April 26, 2013, and the accompanying \$50,000 check from Surland, asking if Surland met the guarantee instead of the lease. Ms. Hurtado stated the City received a letter on July 1, 2013, from Mr. Stuhmer with the \$50,000 payment that was due based on the amended agreement; attached to Mr. Stuhmer's letter was a letter and check from Surland dated July 2, 2013, stating the payment enclosed was for the obligation in the fuel sales agreement with the City and Turlock Air Center (TAC). Ms. Hurtado added that the City accepted the \$50,000 payment submitted by TAC based on existing contractual obligations between the City and TAC.

Council Member Rickman asked if this would be considered a contract modification. Ms. Hurtado stated no, because the letter and payment was received from TAC.

Council Member Rickman referred to contingency 1a of the proposed agreement regarding revising the Airport Land Use Plan by modifying runway 12/30 to a maximum length of 3,996 feet. Council Member Rickman asked if the Council action on June 18, 2013, modifying the runway length would qualify it as a short general aviation runway based on the 2011 Cal Transportation Compatibility Zone. Ms. Hurtado stated yes, but only if the Airport Land Use Commission (ALUC) would have made that adjustment. Ms. Hurtado added that Council has oversight on the Airport Layout Plan, but the Council decision was not enough; the City would have had to update the Airport Layout Plan, file it with the FAA and have FAA acceptance of the plan. Ms. Hurtado stated the Council action was step one of four; the process was stopped at step one when the City learned shortening the runway could jeopardize funding.

Council Member Rickman stated on September 26, 2013, Council voted to have staff send an amendment of the Ellis Specific Plan to the SJCOG. Ms. Hurtado stated what Council voted on was for staff to bring back more information regarding the overrule process before a decision was made whether or not to go through that process.

Council Member Rickman asked if part of contingency C was met since the City sent the amendment to the ALUC. Andrew Malik, Development Services Director, added it was part of the normal application review process.

Council Member Rickman asked if an agent of the City entered into an oral agreement and the City Council became aware of the agreement and did nothing, can the agreement be ratified by non-action. Dan Sodergren, City Attorney, stated unless the City Manager had authority via City resolution or ordinance, it would be void. The Council could consider the agreement and would have to act on it.

Council Member Rickman asked if there was an oral agreement entered into and the Council did nothing and the item went to court, could the agreement be ratified because of non-action. Mr. Sodergren stated there could not be an oral agreement unless it was approved by Council or its delegate; the court would find that there was no agreement.

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

Robert Tanner stated it seemed that the City provided a verbal rejection but never followed up with a written notice and asked why a written notice did not take place. Mr. Tanner stated it alludes to the fact that the City did have an agreement because a check was written on Surland's account and not on TAC's account. Mr. Tanner further stated it seems there might have been an agreement between Surland and TAC and the City should have rejected the check.

Mayor Ives asked staff if a verbal rejection was normal policy and if accepting a third party check was normal. Ms. Hurtado stated typically proposals and ideas are discussed during the review process and prior to an application being submitted. During those discussions ideas are vetted out, and staff works with the applicant. In this case, no written response was given because the entire proposal was rejected and staff directed Surland to the proper process. Ms. Hurtado added that the City Manager could consider establishing an administrative policy requiring staff to provide written notice of rejections. Ms. Hurtado, referring to third party checks, provided an example of water bills being paid at the front desk, where a person brings in a relative to pay for their bill; the City doesn't question where it comes from, but applies it to the person's account. Ms. Hurtado stated in this case, the letter from TAC and the attached letter from Surland stated they were making a payment for the obligation between the City of Tracy and TAC for their annual payment that was due.

Dave Helm stated he recalled that Council was advised that the grant proposal limitations specifically dealt with runway width, not length, and that Council Members Manne and Rickman asked whether a runway length of 3,997 feet or 4,002 feet mattered, which seems to be in conflict with Ms. Hurtado's comments. Mr. Helm further stated he previously submitted an e-mail from Mr. Stuhmer dated April 12, 2013, directed to Rod Buchanan and Andrew Malik, where Mr. Stuhmer indicates that TAA, Skyview, Surland, and TAC were all in accord with the overall direction and vision for the development of TCY as a boutique general aviation airport. Mr. Helm asked if there was an FSO agreement already in place. Mr. Helm provided background on various emails between airport personnel, staff, Mr. Stuhmer and subsequent actions by City Council.

Mr. Helm asked who verbally told Mr. Serpa that their proposal was rejected. Mr. Helm stated it could be argued that the City did make an agreement based on the memo accompanying the check. Mr. Helm stated it was time for more transparency and a little less doublespeak.

Mayor Ives asked staff to respond regarding negotiating the agreement in April 2013. Ms. Hurtado stated the amendment to the agreement that Council approved earlier this year resulted in two major adjustments. One adjustment was a renegotiation of the flowage fee to \$.07 per gallon of fuel sales to be paid by TAC to the City of Tracy. Ms. Hurtado continued that the proposal in the Surland memo stated that the \$.07 per gallon fuel flowage should be paid by the City of Tracy to Surland, which is a very different proposal. Ms. Hurtado stated the other significant change was that the date of TAC's annual \$50,000 obligation payment was renegotiated to be due in April versus February.

Those adjustments were made in an effort by the City to receive payment from TAC and to continue doing business with them. Ms. Hurtado added that the City was not aware that TAC was not in proper legal standing at the time of the amendment and that the City Attorney's office was researching the issue.

Mayor Ives asked who can reject a proposal and in what manner. Ms. Hurtado stated the presentation was provided in a point by point manner based on previous direction by Council. Ms. Hurtado stated there was one memo from Surland to the City that contained ten points. Ms. Hurtado further stated the City rejected the entire memo.

Trina Anderson asked for clarification regarding the date that the runway was to be shortened to 3,997 feet, the discrepancy between the date of the cover letter and the date on the Surland check, and the \$.07 per gallon for flowage fee due from TAC. Ms. Anderson stated TAC has not paid the fuel flowage fee, the \$50,000 due since 2012, and has a suspended license. Ms. Anderson asked why the City accepted a check from Surland for a TAC obligation. Ms. Anderson stated SJCOG would have considered shortening the runway if this issue had not been brought up.

Ms. Hurtado stated on June 18, 2013, Council directed staff to reduce the runway length from 4,002 feet. to 3,997 feet; and on October 15, 2013, Council directed staff to revert that decision and return the runway length back to 4,002 feet once the FAA indicated shortening the runway length could impact potential funding. Mayor Ives asked how the check related to the letter from Mr. Stuhmer. Ms. Hurtado stated the City received a letter from Mr. Stuhmer indicating he was enclosing payment for his annual obligation to the City. In addition, attached to Mr. Stuhmer's letter was a memo and check from Surland. Ms. Hurtado stated the City accepted the payment as TAC's obligation to the City.

Mayor Ives asked if the City is receiving the flowage fee payment from TAC. Ms. Hurtado referred to page three of nine of the contract with TAC, section 19.2 and 20.1, which explains the relationship between the per gallon flowage fee and the \$50,000 annual payment. Ms. Hurtado provided a brief history of the fuel sales and the basis for the contract. Ms. Hurtado stated the City is not getting a separate check of \$.07 per gallon for fuel sales; the City is receiving an annual payment of \$50,000. Ed Lovell, Management Analyst II, added that the \$50,000 is an upfront payment and if there were sales beyond \$50,000, TAC would have to pay the City.

Mayor Ives asked if TAC was in arrears for 2012. Mr. Lovell stated no, TAC was current for 2012.

Dave Anderson, President of the Tracy Airport Center, stated it was clear from the airport memorandum that it was not the first discussion on the matter. Mr. Anderson presented information including dates, emails, and various actions taken related to changing the runway length. Mr. Anderson provided a packet of information titled "Item 7a dated September 2013". Mr. Anderson suggested that Council go through the list and the documentation he provided.

Mayor Ives asked staff for clarification regarding the request to COG and Council direction on June 18, 2013. Ms. Hurtado stated on June 18, 2013, Council directed staff to reduce the runway length to 3,997. Staff informed SJCOG of the action and indicated an application would be submitted. Ms. Hurtado further stated on July 18, 2013, the applicant submitted an application which went to ALUC who found that the application

was not consistent with their compatibility plan. Staff returned to Council on October 15, regarding the ALUC determination. On that same date, Council directed staff to return to Council on a subsequent date with more information on the overrule process before Council decided whether or not to pursue an overrule.

Council Member Rickman asked what did not take place on Item C. Ms. Hurtado stated the ALUC did not re-designate the runway as a short runway; they found that it was inconsistent. Ms. Hurtado added that Council did not overrule ALUC's decision, but asked for additional information before making a decision.

Robert Tanner asked if minutes of the meetings were taken with the developers. Ms. Hurtado stated not typically.

Mayor Ives called for a recess at 9:38 p.m., reconvening at 9:43 p.m.

George Riddle asked why Surland felt he was entitled to the \$.07 fuel flowage fee and if it was discussed by staff. Mr. Riddle indicated they did not see any evidence of a 2012 check from Mr. Stuhmer. Mr. Riddle asked why the runway was referred to as a "short" runway when the 2011 ALUCP designates it as "medium" for runway length. Mr. Riddle added that there was no spill kit around the fuel area.

Ms. Hurtado stated staff could only speculate that the reason Surland believed they would be entitled to the fuel flowage fee was if the City accepted the \$50,000 check.

Mayor Ives asked if Mr. Stuhmer made the \$50,000 payment for 2012. Mr. Lovell stated the check was received at the end of 2011. Mayor Ives asked for clarification regarding a short and medium runway. Bill Dean, Assistant Development Services Director, stated the runway was a hybrid cone.

Dave Helm asked if the City accepted check 1063 in the amount of \$25 for rent at the fuel service operation. Mr. Helm asked if notes are taken when the development team meets, and if not, why. Mr. Helm asked if the City was evicting Mr. Stuhmer and TAC at the airport. Mr. Helm asked for clarification regarding meetings with Surland and/or their representatives.

Mayor Ives asked if the City received a check for \$25. Mr. Lovell explained the \$25 represented the difference between what was paid and what was due.

Mayor Ives asked for clarification regarding how the development team meets and if any notes or minutes are taken. Ms. Hurtado stated typically minutes are not taken, the attendees vary depending on the issue, and there is no tracking of who attends.

Mayor Ives asked if Surland and others represent the same team. Ms. Hurtado stated yes, including Surland's consultants and lawyers.

Mayor Ives asked if there was some direction to the consultant to shorten the runway prior to Council direction. Mr. Lovell stated it was done in preparation of the application.

Les Serpa, Surland Companies, indicated a survey was done that found the airport runway was 3,996 feet. Mr. Serpa stated Surland has always disagreed with the ALUCP regarding the hybrid cone. Mr. Serpa stated whenever Surland presents a proposal, it goes to staff, who forwards it to legal and then it is brought to Council. Mr. Serpa stated

in this case a concept was presented that went nowhere; nothing was implemented or processed. Mr. Serpa stated staff is obligated to process applications; their application was forwarded to ALUC who found that the application was inconsistent. Mr. Serpa stated there is no agreement with staff, the City or the Council.

A discussion ensued regarding runway lengths and runway designations.

Council Member Rickman asked if the \$50,000 condition was met. Ms. Hurtado stated no.

Council Member Rickman asked if the contingency to shorten the runway length to 3,997 feet was met. Ms. Hurtado stated on June 18, 2013, yes; that decision was reversed by Council on October 15, 2013.

Council Member Rickman asked if condition b was met. Ms. Hurtado stated no; that the City does not have the authority to change the runway length.

Council Member Rickman asked for clarification regarding the determination of inconsistency. Ms. Hurtado stated it was not rejected, it was found to be inconsistent.

Council Member Rickman referred to condition c, indicating the action taken by City Council on June 18, 2013, was for economic purposes. Ms. Hurtado stated the action taken on June 18, was to take advantage of future changes at the airport including the reduction in runway width which would make it compatible with current operations at the airport. Ms. Hurtado stated staff did not realize until further negotiations with the FAA that it could jeopardize funding.

Council Member Young stated it appears that it was communicated during a development meeting that any proposal would have to be approved by Council. Council Member Young stated it was not clear if Council was making decisions because staff was twisting their arms. Council Member Young stated this was a good exercise in transparency.

Council Member Rickman stated the main goal is to be transparent and there were still questions that have not been answered for him. Council Member Rickman stated the whole process has been frustrating and was unfortunate that there had to be a third party to bring it to Council's attention. Council Member Rickman thanked Ms. Hurtado for bringing the item forward.

Council Member Manne thanked those who asked questions tonight and in the past. Council Member Manne agreed that it was best to discuss these items in public and thanked staff for preparing the report and answering all the questions. Council Member Manne stated if anything was to be learned from this, was to make the choice to respond to all proposals in writing. Council Member Manne stated the answer is to be transparent and be grateful that we can have these types of conversations.

Mayor Pro Tem Maciel thanked staff, especially Ms. Hurtado, for preparing the report. Mayor Pro Tem Maciel stated the report was prepared item by item, just as Council directed. Mayor Pro Tem Maciel further stated he believed the questions were answered, specifically that there was no agreement or anything to strongly suggest there was an agreement. Mayor Pro Tem Maciel added that there was never an attempt to

cover up anything, and stated he hoped that the City does not get caught up in this type of whirlwind in the future.

Mayor Ives thanked staff for indulging the Council in this exercise. Mayor Ives added that there will always be people that take exception to direction Council makes. Mayor Ives stated there were lessons to be learned and a cost to what some call transparency and others call suspicion.

Council accepted the report.

7. ITEMS FROM THE AUDIENCE – Paul Miles stated he welcomed the opportunity to air his concerns openly with Police Chief Hampton, but would rather have had time to prepare.

Trina Anderson asked that staff contact her regarding an Automated Weather Observation Service that was promised by GWF, and for information regarding City vehicles that claim they are a clean air vehicle provided by the GWF Tracy Peaker Plant Oversight Committee.

8. STAFF ITEMS

- A. Receive and Accept the City Manager Informational Update – R. Leon Churchill, Jr., City Manager, provided the report. Council accepted the informational update.

Police Chief Hampton addressed Council responding to comments made by Mr. Miles during Items from the Audience. Police Chief Hampton stated Mr. Miles has received copies of the complaint policy on several occasions and stated the policy relates to all police personnel, including the Police Chief. Police Chief Hampton indicated he would be willing, if the City believed it was necessary, to provide the results of any investigation conducted into his performance over the last 36 months of employment with the City.

Paul Miles responded that there needed to be policy change regarding individuals being recorded in their own home, and a policy that allows the public to review internal affairs investigations. Mr. Miles apologized to Police Chief Hampton for being harsh.

Chief Hampton accepted the apology.

9. COUNCIL ITEMS – Council Member Rickman announced that the new Parks and Recreation Guide was available. Council Member Rickman wished everyone a Merry Christmas and a safe and happy New Year.

Council Member Young requested future agenda items regarding 1) a citizen's committee to address complaints; 2) individuals being recorded in their homes and surveillance; and 3) the Van Lehn report.

Council Member Manne wished everyone a Merry Christmas and a happy New Year.

10. ADJOURNMENT – It was moved by Council Member Manne and seconded by Council Member Young to adjourn. Voice vote found all in favor; passed and so ordered. Time 10:46 p.m.

The above agenda was posted at the Tracy City Hall on December 12, 2013. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk