

**Tuesday, March 17, 2015, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

Web Site: [www.ci.tracy.ca.us](http://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, including those distributed within 72 hours of a regular City Council meeting, 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.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

PRESENTATIONS – Swearing in of Police Officers

- Certificate of Appointment – Measure E Residents' Oversight Committee
- Certificate of Recognition – Outgoing Transportation Advisory Commission

1. CONSENT CALENDAR

- A. Council Minutes-Regular Minutes of September 16, 2014, Special Meeting Minutes of February 24, 2015, and Closed Session Action Minutes of March 3, 2015
- B. Award a Construction Contract to Teichert /MCM, a Joint Venture of Davis, California, for the Reconstruction of the Eleventh Street - East Tracy Overhead Bridge Replacement Project- CIP 73063, Federal Project No. BHLS – 5192(020), Authorize the City Manager to Approve Required Change Orders, Authorize Appropriation of \$790,000 from Gas Tax Fund 245 to this Project, and Authorize the Mayor to Execute the Construction Contract
- C. Approve the Final Subdivision Map and Subdivision Improvement Agreement for the Bungalows, Tract 3351, Authorize the Mayor to Execute the Agreement, and Authorize the City Clerk to file the Subdivision Improvement Agreement with the San Joaquin County Recorder
- D. Award a Construction Contract to the Lowest Responsive and Responsible Bidder for the Corral Hollow/Kavanagh Storm Water Pump Station Rehabilitation - CIP 76065, and Authorize the Mayor to Execute the Contract
- E. Acceptance of the Widening of Grant Line Road East of MacArthur Drive to the Eastern City Limit – CIPS 73048, 75046, 76028, 76036, 72025, 72087 and 72088, Authorization for the City Clerk to file the Notice of Completion and Authorization for the City Engineer to Release the Bonds and Retention Payment
- F. Approve the Second Amendment to the Off-Site Improvement Agreement with Tracy Joint Unified School District Relating to Kimball High School, the First Amendment to the Deferred Improvement Agreement with Tracy Joint Unified School District Relating to Kimball High School, Authorize the Mayor to Execute the Agreement, and Authorize the City Clerk to file the Amendments with the San Joaquin County Recorder
- G. Approval of Permits for the Consumption of Alcoholic Beverages on City Streets for Various Events in 2015

2. ITEMS FROM THE AUDIENCE

3. HOLD A PUBLIC HEARING TO APPROPRIATE \$204,980 FROM THE FY 2013-14 AND 2014-15 CITIZENS OPTIONS FOR PUBLIC SAFETY "COPS" GRANT PROGRAM FUNDING FOR THE PURCHASE OF OFFICER BODY-WORN CAMERAS, AND RELATED EQUIPMENT, FIND IT IS IN THE BEST INTEREST OF THE CITY TO FOREGO THE FORMAL REQUEST FOR BID PROCESS AND AUTHORIZE THE MAYOR TO EXECUTE A 5-YEAR CONTRACT WITH TASER INTERNATIONAL, INCORPORATED AND EVIDENCE.COM FOR DATA STORAGE
4. PUBLIC HEARING TO CONSIDER THE ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME INVESTMENT PARTNERSHIP PROGRAM (HOME) FUNDS FOR FISCAL YEAR 2015-2016
5. DISCUSS AND PROVIDE DIRECTION ON CITY COUNCIL PROCEDURES FOR PREPARATION, POSTING AND DISTRIBUTION OF AGENDA AND THE CONDUCT OF PUBLIC MEETINGS, INCLUDING PROVISIONS RELATED TO COUNCIL MEMBER REQUESTS FOR MATTERS TO BE DISCUSSED BY COUNCIL
6. SECOND READING AND ADOPTION OF ORDINANCE 1195 AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTION 3.08.580, OF CHAPTER 3.08 (TRAFFIC REGULATIONS) OF TITLE 3 (PUBLIC SAFETY) OF THE TRACY MUNICIPAL CODE
7. DISCUSS WHETHER TO CANCEL THE REGULAR CITY COUNCIL MEETING SCHEDULED FOR TUESDAY, APRIL 21, 2015 AND SCHEDULE A SPECIAL MEETING ON APRIL 28, 2015
8. ITEMS FROM THE AUDIENCE
9. COUNCIL ITEMS
10. ADJOURNMENT

**September 16, 2014, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

Web Site: [www.ci.tracy.ca.us](http://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 offered by Reverend Edward Dondi, Church of the Resurrection

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

1. CONSENT CALENDAR – Following the removal of agenda items 1.H and 1.L it was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt the consent calendar. Roll call vote found Council Members Rickman and Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Manne absent.
  - A. Approval of Minutes – Joint City Council/Successor Agency to the Community Development Agency closed session minutes of September 2, 2014, were approved
  - B. Approve a Professional Services Agreement With Dakota Press, Inc. for the Printing of the City of Tracy Recreation Activity Guide and Authorize the Mayor to Execute the Agreement – Resolution 2014-148 approved the agreement with Dakota Press, Inc.
  - C. Authorization to Enter Into a Professional Services Agreement With World Events, Inc. to Perform Youth Basketball League Services for the City of Tracy and for the Mayor to Sign the Agreement – Resolution 2014-149 authorized entering into an agreement with World Events, Inc.
  - D. Declare and Approve the List of Surplus Equipment for Sale at Public Auction to the Highest Bidder – Resolution 2014-150 approved the list of surplus equipment for sale at public auction.
  - E. Authorize Amendment of the Position Control Roster by Approving the Reallocation of Two Full Time Recreation Specialist Positions to One Recreation Program Coordinator I Position and One Part Time Recreation Leader III Position – Resolution 2014-151 approved the amendment to the position control roster.
  - F. Approve the Union Pacific Railroad (UPRR) Company Public Highway At-Grade Crossing Improvement Agreement and Supplemental Agreement to Provide Intersection Improvements at the Intersection of Eleventh Street and MacArthur Drive (Western) at Mile Post 83.15 – Eleventh Street (DOT No. 753058M) and Authorize the Mayor to Execute the Agreements – Resolution 2014-152 – Approved the agreement with Union Pacific Railroad Company.

- G. Approve the Final Subdivision Map and Subdivision Improvement Agreement for Trinity Lane, Tract 3820, Authorize the Mayor to Execute the Agreement, and Authorize the City Clerk to File the Agreement With the San Joaquin County Recorder – Resolution 2014-153 approved the Final Subdivision Map and Subdivision Improvement Agreement for Trinity Lane.
- H. Approve the Final Subdivision Map and Subdivision Improvement Agreement for Primrose - Phase 1, Tract 3772, Authorize the Mayor to Execute the Agreement, and Authorize the City Clerk to File the Subdivision Improvement Agreement With the San Joaquin County Recorder – Item continued to October 7, 2014 meeting.
- I. Authorization of Professional Services Agreement With West Yost Associates for the 2014 Aquifer Storage and Recovery Program and Authorization for the Mayor to Execute the Agreement – Resolution 2014-154 authorized the agreement with West Yost Associates.
- J. Approve Amendment Number 1 to the Master Professional Services Agreement With SNG & Associates, Inc. for Staff Support and Plan/Map Review Services – Resolution 2014-155 approved Amendment Number 1 to the Master Professional Services Agreement with SNG & Associates.
- K. Authorization of Laboratory Services for Fiscal Year 2014 – 2015 – Resolution 2014-156 authorized Laboratory Services for Fiscal Year 2014-2015.
- L. Adopt Resolution Authorizing the Mayor to Sign Terms and Conditions of Accepting Airport Improvement Program Grants; Execute Grant Agreement AIP #3-06-0259-016-2014 in the Amount of \$7,126,261 With Federal Aviation Administration for Reimbursement for Engineering and Design Work on the Airport Pavement Project, Reconstruction of Runways 12-30 and 8-26, and Reconstruction of Taxiways A, B, D, and E Including Runway/Taxiway Intersections – Ed Lovell, Management Analyst, presented the staff report. The Federal Aviation Administration (FAA) classifies the City as the “sponsor” of the Tracy Municipal Airport. As an airport sponsor, the City applies for and administers airport grants and contracts. Council has already approved the City’s airport consultant to complete a Pavement Maintenance and Management Plan (PMMP), engineering and design work on the airport pavement project, and an updated Airport Layout Plan (ALP). The PMMP has been completed as well as the updated ALP. The pavement project has been designed, bid, and sent to FAA for review. The next phase in this project is to begin construction.

The FAA Airport Improvement Entitlement Program (AIP), currently funds approved projects at ninety percent (90%). The City is pursuing the funding in the amount of \$7,126,261 to fund a reimbursement for reimbursement for engineering and design work on the airport pavement project, reconstruction of runways 12-30 and 8-26, and reconstruction of taxiways A, B, D and E including runway/taxiway intersections.

Originally, this City was only anticipating receiving funding for the first phase of the project which was to reconstruct runway 12-30 and taxiways B, D, and E with an anticipated cost of \$5,687,297. In late July, FAA informed the City of the potential for additional funding that was available. This funding would allow the City to also construct the second phase of the project which was to reconstruct runway 8-26 and taxiway A. Doing both phases at the same time would allow for significant cost savings to the overall project, and ensure quality rehabilitation. The new total for both phases of the project is now \$7,126,261.

Council has previously approved \$513,900 toward design and engineering costs as well as construction of the first phase of the project. A total match amount of \$712,626 is needed to complete both the first and second phases of the project leaving a total of approximately \$198,726 in matching funds to be identified. This amount does not need to be identified at this time in order to execute the grant. It is anticipated that the construction of this project will not begin until Spring of 2015. Staff will bring back a proposal for the remaining matching funds as part of the mid-year budget adjustment.

On April 2, 2013, Council approved a matching amount of \$65,900 toward the design and engineering of the reconstruction of the pavement at the airport. Additionally, \$448,000 of matching funds was appropriated by Council for the Airport Pavement Project as part of the FY13/14 budget. As part of the mid-year budget adjustment process in February 2015, staff will bring forward a General Fund supplemental appropriation of \$198,726 for the remaining matching funds. Where available the City will also seek additional 5% matching funds from Caltrans Division of Aeronautics. This will help to lower the overall matching requirement from the City.

Staff recommended that Council adopt a resolution authorizing the Mayor to sign Terms and Conditions of Accepting Airport Improvement Program Grants; execute grant agreements AIP No. 3-06-0259-016-2014 in the amount of \$7,126,261 with Federal Aviation Administration for reimbursement for engineering and design work on the airport pavement project, reconstruction of runways 12-30 and 8-26, and reconstruction of taxiways A, B, D and E including runway/taxiway intersections.

Dave Anderson, President, Tracy Airport Association, thanked staff and Council for moving it forward. Mr. Anderson added the report did not talk about the ramp areas that were covered with messy slurry in Phase three or four and he would like to make sure those areas do not get forgotten.

Mayor Ives asked staff for an update on the apron areas. Mr. Lovell responded the project was originally broken up into three or four phases. There are two phases being combined into one which will move other areas up a year.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt Resolution 2014-157 authorizing the Mayor to sign terms, and conditions of accepting Airport Improvement Program Grants; and execute Grant Agreement AIP #3-06-0259-016-2014. Council Members Rickman and Young, Mayor Pro Tem Maciel and Mayor Ives all in favor; Council Member Manne absent.

2. ITEMS FROM THE AUDIENCE - Alena Contreras, Donovan, and Kyle, members of a Teen Empowerment Group addressed Council regarding their goal to create positive events by youth and for youth in the community. The Teen Empowerment Group members invited Council to an Open House event at 729 Central Avenue, from 4:30 p.m. to 6:30 p.m. on Thursday, September 18, 2014.

Brent Riddle addressed Council requesting a member of the Council to instruct staff to include on a future agenda whether to form a Senior Advisory Commission.

Steve Nicolaou addressed Council asking for the status on a hate crime involving Council Member Young. Mr. Nicolaou called upon Council Member Young to request the findings in the case be released, and to ask that an item for discussion be included on the next Council agenda.

Paul Miles addressed City Manager Troy Brown regarding alleged criminal violations by Police Chief Hampton and Assistant City Manager Maria Hurtado's refusal to investigate the violations. Mr. Miles requested an investigation in accordance with California law.

3. PUBLIC HEARING TO AUTHORIZE, BY IMPLEMENTING RESOLUTION, THE ADOPTION OF THE PUBLIC SAFETY AB1600 DEVELOPMENT IMPACT FEE STUDY AND UPDATED PUBLIC SAFETY FEES FOR THE CITYWIDE MASTER PLANS, NORTHEAST INDUSTRIAL PHASE 1, NORTHEAST INDUSTRIAL PHASE 2, INFILL, GATEWAY PHASE 1, ISP SOUTH, PLAN C, ELLIS, SOUTH MACARTHUR PLANNING AREA AND I-205 – Andrew Malik, Development Services Director, provided the staff report. On April 16, 2013, the City adopted a Citywide Public Safety Master Plan (Resolution 2013-56). The Master Plan outlines the Public Safety improvements needed to serve the City at build-out of its sphere of influence. The Master Plan points out that, as topography of new development areas change with the addition of buildings and population, there will be an additional need for emergency radio coverage for public safety in these areas. The Radio Tower also serves to update and improve existing communication coverage throughout the City.

On January 7, 2014, the City adopted the *Public Safety AB1600 Development Impact Fee Technical Memo* (Resolution 2014-10) that provides the basis for the Public Safety fees for all new development in the City not previously covered under an existing finance plan. These fees were established to fund the facilities identified in the Public Safety Master Plan.

Staff researched options to address communications coverage into new developments and has been working with the County as part of the Master Radio Communications Plan to facilitate the joint use of radio communications services for the San Joaquin Operational Area. As part of the Plan, there are goals to establish a county wide public safety digital simulcast infrastructure to serve as the building block for interoperability.

Because this new communications system will serve all existing residents and businesses as well as all new developments, the cost of this new system must be shared by both developments covered in the new master plan as well as new developments that will occur under existing finance plans. In addition, the City

will provide funding through Grants and other City funding sources to cover the cost that is associated with existing residents and businesses.

The City worked with program manager, Harris and Associates, to develop the appropriate cost share for the tower and related equipment based on this refined understanding. The following fees were developed for all new development.

**Communication Tower And Related Equipment Fee**

<b>Residential</b>	<b>Fee per EDU</b>
Low-Density	\$ 67.81
Medium-Density (attached 2-4)	\$ 55.48
High-Density (attached 4+)	\$ 45.21
<b>Commercial</b>	<b>Fee per 1000 SF</b>
Office	\$ 34.25
Retail	\$ 20.55
Industrial	\$ 6.85

The City of Tracy has historically adopted a Finance and Implementation Plan (FIP) for each new specific plan area or development in the City. These finance plans are based on technical studies that were completed at the time the project comes forward and identifies the infrastructure needed to mitigate the impacts of that development. Over time the infrastructure needs change and periodically it is necessary to review and update those FIP's as regulations and requirements change.

On April 16, 2013, the "Citywide Public Safety Master Plan" was adopted by City Council. The public safety master plan evaluated current conditions; space standards and function flow; staff and space need projections; alternative facility plans and comparative cost estimates. The Public Safety Master Plan is a guideline document for the identification of public health and safety facilities needed to serve the City at build-out of the City's Sphere of Influence. The Public Safety Master Plan is also a guideline document for the identification of public health and safety upgrades needed to adapt existing spaces to new or expanded uses.

On January 7, 2014, the "Public Safety AB1600 Development Impact Fee Technical Memo" was adopted by City Council (Resolution 2014-010). The Public Safety fee established the cost per capita for new development needed to pay their fair share of necessary police and fire facilities.

As the City of Tracy expands with new developments, the current communications system does not adequately cover these new developments and in fact, there are areas in the existing City limits where communication is limited or non-existent. This leads to concerns of public health and safety for emergency service responders such as police, fire and ambulance during service calls to those areas. Staff has been researching options to address the communications coverage into the new developments. Public health and safety officers during patrol or emergency response to these areas and responsiveness to citizen calls for service will be improved.



The City and County have been working collaboratively as part of the Master Radio Communications Plan to facilitate the joint use of radio communications services for the San Joaquin Operational Area. As part of the Plan, there are goals set forth to establish a county wide public safety digital simulcast infrastructure to serve as the building block for interoperability. This infrastructure allows agencies to have public safety emergency communications in a disaster situation, and daily tactical activities to communicate on a single countywide interoperability channel.

As part of the City Wide Public Safety Master Plan adopted in 2013, estimates were provided for the cost of radio communications tower and equipment at \$2,797,000. All of this cost was listed as the responsibility of new developments. This project includes, but was not limited to, a 180-foot tower, 30-foot x 10-foot equipment shelter with connections, fencing, and a 70-foot x 34-foot foundation pad, microwave, conventional simulcast system; 2 sites, 2 channels.

Based on information now available, the estimated cost of the tower is \$3,905,000 including all associated equipment, mark-ups and land acquisition. Further analysis also indicates that since the new communication system will replace/improve the present systems, the existing residents/City must pay the fair share cost. The City asked their program manager, Harris and Associates, to develop an AB1600 fee to cover this anticipated cost and to integrate this fee into the existing master plan fees as well as the various FIP's. Harris and Associates completed the *Public Safety AB1600 Development Impact Fee Update Technical Memorandum* dated July 28, 2014. Because this system is being built in part to replace and improve the City's existing communication system as well as to expand the coverage area to include new development areas, the City must cover the fair share of the existing residents and businesses which is estimated to be \$1,274,074. Action was taken on September 2, 2014, to fund this requirement.

All new developments in the City are expected to provide their fair share of funding to cover the new tower and remaining costs of the system through the payment of development impact fees.

**Citywide Public Safety Fees** - The fees that were adopted on January 7, 2014, as part of the Citywide Public Safety Master Plan for new developments are decreasing by \$4.35 per single family unit due to the fact that the City will be responsible for the fair share payment of the existing residents and businesses. However, fees for existing development areas i.e., NEI, South MacArthur, etc., are increasing. Because the new system is replacing parts of the old system, the entire cost cannot be spread to new development as previously done.

The Citywide Public Safety fees apply to all new developments that are not covered under an existing finance plan.

**Developments with Existing FIP's** - Developments that have existing finance plans will pay their fair share of the communication tower costs as shown in the table above. These new fees have been incorporated into the fee schedules for each specific plan or development area. This includes: North East Industrial Phase 1, North East Industrial Phase II, Infill, Gateway Phase 1, ISP South, Plan C, Ellis, South MacArthur Planning Area, and I-205.

**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 mentioned technical reports.

These fees will be updated on an annual basis on January 1<sup>st</sup> of each year by the Director of Development Services using the Engineering News Record (ENR) Construction Cost Index. The fees will also be subject to periodic review and update based on a review of recently completed project costs and industry trends, subject to City Council approval.

Development Impact Fees are paid by the developer to fund the infrastructure improvements. The City will be required to fund their fair share of these improvements.

Staff recommended that Council adopt and approve, by resolution, the Public Safety AB1600 Development Impact Fee Update and the Development Impact Fees.

Mayor Ives opened the public hearing. There was no one wishing to address Council. Mayor Ives closed the public hearing.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt Resolution 2014-158 authorizing the adoption of the Public Safety AB1600 Development Impact Fee Study and updated Public Safety Fees for the Citywide Master Plans, North East Industrial Area Phase 1, North East Industrial Area Phase 2, Plan C, Gateway Phase 1, Infill, Ellis, 1-205, ISP South, and South MacArthur Planning Area Developments. Voice vote found Council Members Rickman and Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Manne absent.

## DEVIATION

6. ACCEPT CITY TREASURER ANNUAL REVIEW AND UPDATE OF CITY INVESTMENT POLICY – Ray McCray, City Treasurer, presented the staff report. There are no recommended changes to the City Investment Policy since the last annual review. The City and its investment advisor regularly discuss the status of the performance of its managed assets and compliance with City policy. The City's advisor and auditor have confirmed that the City is in compliance with its investment policy per policy provisions of California Government Code Section 53600 and the Tracy Municipal Code.

Mr. McCray recommended that the City Council, by resolution, accept the existing City Investment Policy (Council Policy B-6) with no changes.

Mr. McCray introduced Ted Piorkowski, Chandler Asset Management, who provided a brief overview of its investment advisory services and the City's investment for a period ending June 30, 2014.

Mayor Pro Tem Maciel asked for an explanation on basis points. Mr. Piorkowski responded a basis point is one 100th of a percent. One percent has 100 basis points.

Mr. McCray stated the City has some short term money to guarantee there is a minimum of 6 months liquidity at all times.

Mayor Ives stated he appreciated the detail of disciplined program. Mayor Ives added Tracy is well served by our professional accretions on investments by the City's Treasurer and City Manager.

Council Member Rickman thanked Mr. McCray for his hard work and Mr. Piorkowski for his presentation.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt Resolution 2014-159 adopting the annual review and update of City Investment Policy. Voice vote found Council Members Rickman and Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Manne absent.

4. RECEIVE UPDATE AND PROVIDE INPUT ON CURRENT AND FUTURE SENIOR NEEDS OF SENIOR CITIZENS IN TRACY BASED ON THE RESULTS FROM THE COMMUNITY CONVERSATIONS – Kim Scarlata, Division Manager II, presented the staff report and a powerpoint presentation. On May 7, 2013, Council directed staff to explore the potential formation of a Senior Advisory Commission with the goal of providing seniors with an opportunity to advise City Council on senior programming and/or issues affecting the senior population. Staff then went to the Parks and Community Services, Tracy Arts and Youth Advisory Commissions and presented the idea of forming a Senior Advisory Commission. The consensus among all three Commissions was not to form a Senior Advisory Commission. The Commission determined that the Parks and Community Services Commission's current role is to serve seniors in the Tracy community and each established Commission has senior representation.

On July 2, 2013, staff presented to Council the results from the Commission presentations and various considerations in the formation of a Senior Advisory Commission including staffing needs and costs associated with establishing a new Commission. The operating expenses associated with creating a Senior Advisory Commission are estimated at \$27,650 annually. Staff also presented Council with alternatives that may accomplish the goal of increased senior engagement for Council discussion. Based on the report, Council directed staff to facilitate a Community Conversation meeting with the public for the purpose of identifying current and future needs of seniors in the Tracy community. This meeting would be facilitated by an outside consultant with assistance from a City Council appointed Ad Hoc Senior Steering Committee.

On December 9, 2013, the City hosted the Community Conversation meetings with the assistance of a management consultant and the Senior Steering Committee. The forum provided the opportunity for the 43 seniors and community stakeholders in attendance to discuss the current strengths and opportunities for senior services in Tracy as well as discuss the current limitations and issues affecting senior services and future needs.

On February 4, 2014, City Council and the Parks and Community Services Commission held a joint meeting to accept and discuss the report on the current and future needs of senior citizens. The report included results gathered from the Community Conversation meetings. Council accepted the report and requested staff to categorize the findings, direct them to the appropriate agency or City department, and provide Council with an update on the status of addressing senior needs and concerns that were gathered from the Community Conversations. In addition, Council directed these issues to be followed

up by the Parks and Community Services Commission because it falls under its purview. The Parks and Community Services Commission agreed and indicated that it would take the feedback from the report and see how the Commission can better serve seniors.

On March 20, 2014, staff from Code Enforcement, Recreation, Fire, Police and the Transportation Divisions met to discuss the findings from the Community Conversation meetings and assigned them to the appropriate City department or agency that would best address the senior issue or concern. Based on the findings, staff categorized the senior needs and concerns into eight areas: City Manager's Office/Recreation Division, City Manager's Office/Public Information Officer, Development Services, Public Works, Police Department, Administrative Services, San Joaquin Department of Aging and General Comments. Recommendations to address each senior concern or need with a target due date were established.

On May 1, 2014, staff presented to the Parks and Community Services Commission the results from the February 4, 2014, joint City Council and Parks and Community Services Commission workshop and provided recommendations to address the findings from the Community Conversations. The Commission discussed and reviewed each senior concern by category and approved staff recommendations. Additionally, the Commission requested staff to provide an update at its November monthly meeting. Staff will continue to report to the Parks and Community Services Commission on a quarterly basis on current and future needs for seniors in the Tracy community and will continue to inform the community on how to connect with the following Commissions: Parks and Community Services, Planning, Tracy Arts and Transportation as it relates to seniors' needs. Additionally, staff will host annual Community Conversation meetings in May of each year beginning in 2015 and report back to City Council and the Parks and Community Services Commission at a joint meeting on the findings.

Staff recommended City Council accept the report and provide input on the current and future needs of senior citizens in Tracy based on the results from the Community Conversations.

Council Member Young stated it is not the job of the commission's to determine whether a Senior Commission is warranted. Council Member Young added it does not state anywhere that the Senior Commission is not needed. It was previously asked if the City will have a Senior Commission and the response was that it was a process. The beginning of the process was to form a Senior Steering Committee. Council Member Young stated the public was only given five days' notice for the Community Conversations. Council Member Young further stated if Council can determine a Youth Commission is necessary to serve the needs of the young, a Senior Commission is needed to serve seniors. Lolly Hansen Senior Center is a place seniors can go also to place their concerns. Council Member Young wanted to know how the process works. The senior community needs a place that is safe to talk about their issues.

Council Member Rickman asked if Council was discussing forming a commission or providing input. Troy Brown, City Manager, responded the purpose is to provide updated information to Council. A Senior Commission will not be formed at the meeting. Council Member Young suggested the City Manager review the item originally brought to Council in 2013.

Council Member Rickman asked Dan Sodergren, City Attorney, if an item related to an up and down vote on a Senior Committee could be brought back to Council. Mr. Sodergren responded yes.

Cindy Gustafson, Senior Steering Committee, stated formation of a Senior Commission was not discussed. Out of 40 people that attended the Community Conversation half was aged between 61-70 years of age. Ms. Gustafson added seniors of this age group will be looking for activities and places to voice concerns.

Mayor Ives asked Ms. Gustafson if the Community Conversation was well rounded. Ms. Gustafson responded yes conversation was well rounded. There were many issues that had more weight than others. Communication between seniors and the Senior Center and what services were available was a big issue.

Janice Johnson, Parks and Community Services Commissioner, stated in September 2014, the Parks and Community Services Commission approved a goal to increase involvement in senior programming. On September 7, 2014 the Parks and Community Services Commission formed subcommittees to better serve seniors in the community. Parks and Community Service Commission meetings received updates from staff on services to the community and how they can better reach the community.

Linda Jimenez, stated she respectfully disagreed with Council Member Young's statement that seniors would not come out and talk to commissions or address Council. There are seniors who will go out and address their needs. Ms. Jimenez provided facts taken from a report from Recreation Department dated September 4, 2014, including: Aquatic programs for City swim lessons averages 120 participants daily; over 20 seniors participated in senior water exercise; in June approximately 2,654 seniors participated in programs; and in July 2014, 2,566 more attended the Senior Center; January 1, 2014 to July 31, 2014, 141 new registered seniors participated in programs; June 2014, senior fitness had 618 participants and increased to 678 in July; 308 hot lunches were served to seniors in June, 2014; Meals on Wheels delivered 600 meals to homebound seniors; Recreation Department has offered free flu clinics and trips to Winchester Mystery House. Ms. Jimenez stated she continually sees staff addressing senior needs through the Recreational Department. Ms. Jimenez asked staff if there is a comment box at the Senior Center. Ms. Scarlata confirmed there was a comment box at the Senior Center and if the seniors are not comfortable talking to staff directly, they may use the comment box. Ms. Jimenez asked about the comment box process.

Jolene Jauregui-Correll, Recreation Coordinator, stated comments are addressed with supervisors within a week. If the request is a bigger item it is brought to staff and Parks Commission for approval. Typically seniors are comfortable with staff and also address staff on site with comments or concerns.

Ms. Jimenez stated she was pleased to see the Recreation Department addressing issues, setting timelines and goals, and continually doing outreach. Ms. Jimenez referred to goals and accomplishments included in the staff report. Ms. Jimenez added as a senior she is impressed with what the Recreation Department provides.

Robert Tanner stated he was happy with classes provided for seniors, and also liked the resource brochure. Mr. Tanner did not believe a Senior Commission was needed. Mr.

Tanner added the seniors in attendance at the Community Conversation were very vocal on what they needed and he felt seniors were being heard.

Brent Riddle stated he had questions regarding integrity of the report. Mr. Riddle added the Steering Committee was prohibited from assisting in the Community Conversation. Mr. Riddle stated the Community Conversation was worthwhile and well rounded, but was simply a list of items which could be considered. Mr. Riddle's concern with the report was that it failed to weigh a list of concerns and there was no order or priority. Mr. Riddle added City staff and commissions were asked whether they want a Senior Commission and they have said no, but do not know if the residents of Tracy would like a Senior Advisory Commission. Mr. Riddle wanted to hear from Council whether they wanted a commission.

Mayor Ives asked Mr. Riddle to explain Tracy Seniors Association. Mr. Riddle responded the organization has 50 members which include 20-30 businesses and organizations that support seniors and tries to address their issues quickly. Mr. Riddle stated he is the President of Tracy Seniors Association and is representing group at the Council meeting.

Council Member Rickman asked Mr. Riddle how many members are in the Tracy Seniors Association. Mr. Riddle responded 20-30 members. Mayor asked the members consisted of non-profits. Mr. Riddle responded the organization consisted non-profits and businesses.

Mayor Pro Tem Maciel stated the focus needed to be whether the City is meeting the needs of the senior community. Mayor Pro Tem Maciel stated the response has been unanimous that the commissions are responsive to needs of seniors. Mayor Pro Tem Maciel added the direction has been clear that a stand-alone Senior Commission is not needed, and if there was any suggestion that the needs of seniors were not being met he would support a separate commission. Mayor Pro Tem Maciel stated no commission had operational control of any departments.

Council Member Young asked about the process for seniors if they have an issue. Ms. Scarlata responded typically the seniors would go to staff, or to the City Manager, which is an open door for the community to voice concerns. The City Manager will then direct the concern to staff. Ms. Scarlata further stated whether the seniors put it in a comment box, or approach staff directly, their requests and concerns are taken care of.

Council Member Young stated the senior community did not know where to call so they contact the City Manager's office. Council Member Young asked if a senior tells staff about a concern, how is it addressed. Ms. Scarlata responded if there is a need or interest in a program, staff has leeway to create programs in the current budget. It is not always a concern or complaint, and may be something new. Ms. Scarlata added there are focus groups at senior center.

Council Member Young commended the Recreation Department on programming and being responsive and stated that has never been the issue. Council Member Young stated the concern is not just programming. Council Member Young stated she feared Council would be redefining what the Parks and Community Services Commission was supposed to do. A senior commission would be able to go to different areas and seek out issues which might fall between the cracks. There is that need to fill in the gap and

not to make it a part of another commission. Council Member Young further stated she had thought all information would be brought forth by the Steering Committee so Council can see if a Senior Commission is warranted. Council Member Young stated the process has been railroaded off task and taken on by others whose decision it should not have been.

Mayor Ives asked Council Member Young if she felt there is an unrepresented voice which is not being heard. Council Member Young responded she was concerned the Steering Committee was underutilized. Instead of being participants they were observers.

Mayor Ives stated Council commissioned a process and a meeting was held. At least 44 needs were listed, and of the 44, 70 percent will be completed by the end of the year. The process the Parks and Community Services Commission used has dealt with the new focus on seniors and the list will be dealt with. Parks and Community Services Commission has three people designated to address seniors needs. Mayor Ives added staff needs to come up with a process to obtain the broad set of input from the community and have a process for focus groups to address the needs of all seniors, not just those who attend the Senior Center. Mayor Ives further stated so far the needs of the seniors are being addressed. Senior needs were collected, and the needs were delegated to commissions/departments. Mayor Ives stated he is not seeing the need for a Senior Commission. Mayor Ives complimented staff on an excellent job.

Ms. Scarlata stated on July 2, 2013, Terry Sonnefeld, City of Tracy appointee to the San Joaquin County Aging Commission, who was unable to attend the meeting, suggested looking at broader senior issues not under a city's purview and making efforts to connect with other organizations that can help seniors. Ms. Scarlata stated Ms. Jauregui-Correll would like to be invited to the Tracy Senior Association meetings and hear the feedback from business owners and non-profits.

Mayor Pro Tem Maciel suggested naming an ombudsman who seniors could contact with any needs or concerns.

Council Member Rickman suggested staff inform of any events and programs.

Council Member Young asked who is responsible for this report. The report is solely for covering the issues brought up from the meetings. Ms. Scarlata responded that was correct. Staff was asked to gather information, come up with a plan and bring it back to Council which is the report and also a summary of prior meetings.

Council Member Young asked if quarterly reports were being prepared by the City based on information that is gathered and given to Parks and Recreation to handle. Ms. Scarlata responded quarterly reports will be brought to the Parks Commission to discuss any issues or suggestions unless staff feels it is relevant to the Parks Commission before the next quarter. Ms. Scarlata added staff would like to do an annual workshop with Council and the Parks Commission to discuss senior needs on an ongoing basis. Council Member Young asked if the information presented quarterly would be just on programming. Ms. Scarlata responded no monthly reports are on attendance and programming. Quarterly reports will talk about issues that are broader.

Council Member Young asked if the quarterly report related to broader issues will be brought to commission and then an annual discussion with Council. Ms. Scarlata responded there will be joint annual Council meetings so there can be dialogue with the Parks Commission and City Council.

Council accepted the report.

Mayor Ives asked if staff had an action item on the list to deal with anything more other than exercising the process that is in place. Mr. Brown responded Council likes the concept of broader discussion to happen quarterly and an opportunity on annual basis to engage in that dialogue with the Parks Commission.

Mayor Ives stated it would behoove staff to clarify the process so Council will know what to expect during the year. Mayor Ives added when the Parks Commission has the process clarified it would be a usual tool for Council to weigh in and endorse or not.

Ms. Scarlata stated Council would like staff to work closer with the Parks Commission to identify what the process is going to be regarding their goals that have been established for the next two years relating to seniors. Ms. Scarlata added the recommendation is to have quarterly reports with Parks Commission and the yearly workshop with Council.

Mayor Ives asked for a date for staff to bring the process back to Council. Ms. Scarlata responded she would like to talk to the Parks Commission at their next meeting in October and come up with a date in the next three months.

Council Member Young stated when the Parks Commission returns with their goals and process for the seniors, Council should receive all the information needed to determine whether a commission is warranted or not. Council Member Young read a comment from Council Member Manne recorded in the July 2, 2013 City Council Minutes – *Council Member Manne pointed out that the growing trend of baby boomers turning 60 has not been addressed and that the alternatives suggested go in the opposition direction. Council Member Manne indicated the senior population is growing and will require additional attention. Council Member Manne suggested consolidating the commissions would further deteriorate services of those commissions. Council Member Manne stated he believes Parks and Community Services has done a good job with the time and funding provided. Council Member Manne stated he supported a commission or group that individually addresses seniors.* Council Member Young stated she wanted all five Council members present to discuss the item.

Mr. Brown summarized the direction by Council - 1) how does the City address a broader range of senior needs – the report addresses that and highlights some of the areas. Some senior needs may fall under purview of the Parks Commission. It may not be a commission, but be in another form. Suggested staff discuss with the Parks Commission what their role would be in that.

Mayor Ives stated over the next two or three months staff will be putting together the process for addressing the broad set of senior needs and Council can help staff determine how they are going to be able to do it.

Council Member Rickman stated throwing more government into it does not mean it will work any better. Council Member Rickman stated the City is proactive and wanted to



see that continue. Mr. Brown responded staff does not have a lot of resources to throw at these issues. Staff can look at the resources we have and continue the dialogue.

8. APPROVE AMENDMENT NO. 1 TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE GRAND FOUNDATION AND AUTHORIZE THE MAYOR TO EXECUTE THE AMENDMENT – Kim Scarlata, Division Manager II, presented the staff report. Staff recommends that the City Council consider amending the Grand Foundation Memorandum of Understanding (MOU) to include concession management responsibilities, including the purchase and sale of food and alcoholic and non-alcoholic beverages and other concession items. Revenue from the concessions would be divided equally between the City of Tracy and Grand Foundation by June 1st of each fiscal year. The Grand Foundation would keep all financial records associated with the concession sales and provide City staff with a quarterly report listing expenditures and revenues associated with the Grand concessions. Using the Grand Foundation's Alcohol Beverage Control (ABC) License, the City's past practice was to purchase alcohol for resale at the Grand Theater for special events and performances. The City and Grand Foundation would cooperatively sell various concession items, including alcohol. Amending the Grand Foundation's MOU would allow City staff to remove themselves from the practice of purchasing and selling alcohol.

Additionally, one of the general responsibilities of the Grand Foundation under the 2012 MOU Agreement included volunteer management. Staff and the Grand Foundation Board have collectively evaluated the area of volunteer management and determined that it is more appropriate to have City staff recruit and manage volunteers. Given staff's knowledge and understanding of theater operations and presentations, it is recommended that the Grand Foundation no longer be responsible for volunteer management.

Approval of this Amendment to the MOU will minimally impact the General Fund. Currently, all concession revenue goes to the City's General Fund. Under the proposed amendment, revenue from concession sales will be shared equally between the City and the Grand Foundation. The Fiscal Year 2014/15 budget assumes approximately \$8,000 in concession revenue.

Staff recommended that the Council, by resolution approve Amendment 1 to the Memorandum of Understanding between the City of Tracy and the Grand Foundation and authorize the Mayor to execute the agreement.

Mayor Ives asked for confirmation that this item removes City staff from the practice of purchasing and selling alcohol. Ms. Scarlata responded that was correct.

It was moved Mayor Pro Tem Maciel and seconded by Council Member Young to adopt Resolution 2014-160 approving Amendment No. 1 to the Memorandum of Understanding between the City of Tracy and the Grand Foundation and authorizing the Mayor to execute the amendment. Roll call vote found Council Member Young, Mayor Pro Tem and Mayor Ives in favor. Council Members Manne and Rickman absent.

9. RECEIVE AND DISCUSS THE GRAND THEATRE CENTER FOR THE ARTS ANNUAL REPORT AND ACCEPT THE GRAND FOUNDATION'S FISCAL YEAR 2014/15 ANNUAL UNDERWRITING SUPPORT AND APPROVE A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$25,000 FOR PROGRAMMING AND

TECHNICAL SUPPORT AT THE GRAND THEATRE CENTER FOR THE ARTS – Kim Scarlata, Division Manager II, presented the staff report and powerpoint presentation. The Grand Theatre Center for the Arts is entering its eighth year of programming and operations. September 2013 kicked off a new season of programming and presentations. Over the past year, the Grand Theatre Center for the Arts has increased performance attendance and visibility in Tracy and surrounding communities. The Grand Foundation has played a significant role in bringing in new guests to the Theatre through their newly launched Membership Program that began in August 2013. There have been significant changes in staff reorganization, increased and diversified marketing efforts and an increased and strengthened collaboration with the Grand Foundation, which has resulted in greater efficiencies, streamlining processes and increased revenue for the Theatre Presentations and Rentals.

The year 2013/2014 Presenting Season kicked off on September 13, 2013, with stand-up comedian, actor and producer, Drew Carey. The season continued with five Grammy Award Winner and rock blues icon Robert Cray, which was close to a sell-out on Tuesday, September 24, 2013, with 503 tickets sold. The success continued with solo country artist, Uncle Kracker and NBC's "The Voice" semifinalists, the Swon Brothers.

Community co-presents included Mariachi Sol De Mexico on October 19, presented by the City of Tracy and the Tracy Chamber of Commerce which was a complete sell-out at 545 tickets. Happy Diwali, Festival of Lights October 26, 2013, was also a highly attended performance that celebrated cultural and traditional Indian music and dance, with a touch of Bollywood. Jazz Nights, presented with Main Street Music, which are held the 4th Friday of each month in the Lobby of the Grand Theatre have become so increasingly popular, patrons are sometimes left with standing room only as an option to attend the event. Holidays at the Grand in December were very exciting with Cirque Du Noel leading the holiday season and the Nutcracker Ballet presented by The Children's Dance Theatre of Tracy and the City of Tracy which sold over 1,200 tickets. January 11, 2014, began the new year with Blues and Brews Night featuring Chris Cain and the Daniel Castro Band. February was a busy month at the Grand Theatre with the Brubeck Institute and Jazz Reach, Charlotte's Web, the Sun Kings, the Freedom Riders Play and Antsy McClain and the Trailer Park Troubadours.

During the months of March-April, there was something going on for everyone. The movie "Under the Tuscan Sun" was shown with a pre-party which included wine tastings from local wineries and wine shops and appetizers. Alice in Wonderland was sold out both for the performance and the Mad Hatter's Tea Party. The Grand Foundation hosted their fundraiser, Dancing with the Tracy Stars, which was a huge success. This event brought the community together for a wonderful show at the same time, dancers were able to not only fundraise for the Grand Foundation, but were able to donate half of their donations to their favorite local charity. The Foundation will be hosting this event again on May 9, 2015. Country Artist Jon Pardi wrapped up the Presenting Season with a complete sell-out. The Presenting Season concluded with almost 8,000 tickets sold and \$181,419 in gross revenue. Community Rentals for Fiscal Year 2013/14 included 26 non-profit rentals and 8 commercial rentals and generated \$50,000 in net revenue. Commercial rentals brought in 55% of the revenue and the remaining 45% was brought in by non-profit rentals.

The year 2014/2015 Presenting Season kicked off on August 23, 2014 with legendary vocalist and two-time Grammy Award Winner Peabo Bryson. The 2014/15 Presenting

Season has a well-rounded lineup that should provide entertainment for everyone. From a number one country artist to an Off Broadway Musical, this season is expected to break annual attendance records.

Staff anticipates commercial rentals to increase for the 2014/15 year with the implementation of a new marketing strategy to entice event planners and corporate planners to rent the Grand Theatre Center for the Arts for their corporate conferences and company events, which typically happen during the day on weekdays when the Grand Theatre is currently underutilized. The goal of the strategy is to increase commercial rentals by at least 25% for the next fiscal year.

In 2013/14, the Arts Education (AEP) served 1,715 students through classes, workshops, camps and special events to participants of all ages in Dance, Drama, Music, and Visual Arts (including Ceramics). The AEP generated \$104,170 in General Fund revenues and received \$16,750 of underwriting support from the Grand Foundation. There were 37 instructors active in 2013/14, and 15 of those were new to the Grand during that period. The decline in class offerings seen in 2012/13 continued into 2013/14 with the departure of additional contract instructors. Meanwhile the numbers of Dance, Music, and Workshops/Camps increased. These enrollments were boosted through the recruitment of new instructors to replace those lost, strategic underwriting of classes with GF support and increased electronic promotions to patrons. In October 2013, the AEP, in collaboration with the South Side Community Association, presented the second annual commemoration of the Day of the Dead, a traditional Mexican and Mexican-American holiday coinciding with Halloween. The programming consisted of several free hands-on workshops for children and adults, as well as altars dedicated to the community.

In June 2014, the Grand Foundation's Arts Education Advisory Committee provided valuable feedback to the Arts Education Program in its consideration of new classes and other activities proposed by new and continuing instructors. The AEP maintained the monthly e-newsletter and increased use in the resources of social media and website content. These efforts provide deeper and more engaging access for the public to be aware of news and events, staff support, current instructors and class information. Across 2013/14, the AEP maintained collaborative relationships with Main Street Music, Young Rembrandts, Tracy Art League, Tracy Camera Club, Music First, Music Together of Tracy, Rueda de Ritmo and developed a new collaboration with Tracy Academy of Performing Arts.

In 2014/15, the AEP will benefit from the expansion of staff and re-development of program offerings. The AEP expects to serve a greater amount of patrons and increase revenue in 2014/15, as new contract instructors are recruited and additional classes are offered. These increases should be seen in Winter/Spring semester and continue forward across 2015.

In the summer of 2014, the AEP offered Professional Development Workshops as well as a Summer Theatre Camp for Youth and a Special Needs Musical Theatre Camp; both with public performances. In the fall of 2014, the AEP will expand Saturday hours from 10am to 2pm to 9am to 4pm weekly, as weekend demand has grown. The AEP will join with the Exhibitions Program in support of workshops and the return of the Artist-In-Residence program in the summer of 2015. The AEP is working to expand enrollments on several fronts, including an increase in the number of culturally relevant offerings such as bilingual classes and workshops. In 2015, the AEP expects to offer new and additional

Spring Break and Summer Camp opportunities for children and teens. New collaborators, such as Tracy Performing Arts Foundation (TPAF), are being cultivated, and on-going analysis of Grand Foundation (GF) underwriting is identifying community interest in new programming. In addition, the Artists-Teaching-Artists – Professional Development Workshop Series for teens and adults continues, and a new DIY/hands-on Maker Series is being introduced in the fall semester, with a family musical instrument-making class.

The year 2013/2014 Exhibitions Program (EP) presented five feature exhibitions in the Souza and GWF Energy Galleries collaborating with 54 artists and lenders. In addition, the EP managed Art Co-Opted, a curated sales cooperative, in the Matthews Gallery working with over 40 artists. While Gallery attendance decreased from the 2012/13 season with 5,672 visitors, averaging 37.8 daily and 189 weekly, forecasted economic growth was actualized with revenues exceeding projections by 8%. The EP recorded \$6,494 in sales; the third highest sales total and the second highest total of number of artwork/objects sold at 213 since the Co-Op opened in 2009/10. The season opened in September with a unique retrospective of calligraphy and letterform by celebrated artist and educator, Jim Lewis. Visitors from across the western United States including California, Oregon, Washington, Colorado, and Nevada traveled to experience the profound work, and to reconnect with Emeritus Professor Lewis. As part of the annual Holidays at the Grand programming, over 40 artists participated in seasonal Co-Op exhibition in November and December with 90 works selling across four weeks. In February, the EP presented a body of collage and assemblage works by Angela Johal of Livermore, entitled *Beyond Consumerism: The Body Speaks*. Ms. Johal offered a series of special events including an insightful Gallery Talk, as well as popular family and adult hands-on workshops. The 5th offering of Expressions! Selections, presented in collaboration with the Tracy Art League, opened in March featuring 25 works by 22 area artists. An annual highlight of this successful partnership is the Artist Panel Discussion offered in April exploring the roles of living/working artists in our community.

The season closed with *Personal Abstractions – Paintings* by Matt Rhoades, the first exhibit of large format abstract painting in the Galleries. Mr. Rhoades also was honored as Artist-In-Residence. The public was invited to meet and interact with Matt as he worked in the studios at the Center. The residency culminated with an abstract painting workshop. This special summer programming received recognition with feature articles by the Tracy Press and Stockton Record and resulted in highest June (832 visitors) attendance in the history of the Exhibitions Program.

The 2014/15 Exhibition Season will expand and present at least six feature exhibitions in the Souza and GWF Energy Galleries and continue on-going operations of Art Co-Opted in the Matthews Gallery. The season opened on September 6th, in conjunction with the Taste of the Valley Art & Food Festival and annual open house at the Center, with a dynamic thematic exhibition. *Transforming the Written Word* features five northern Californian artists of regional, national and international acclaim, and curated by Tracy artist and arts educator, Susan Richardson. As part of the annual Holidays at the Grand programming, over 40 local and regional artists will participate in Co-Op exhibition spanning all three galleries in November and December. Patrons from across the region and beyond particularly enjoy shopping for unique gifts at this time of the year. In January, the EP presents the work of two Tracy Photographers, one documenting a foreign Peace Corp experience in traditional print photography and the other exploring automotive and architectural themes working in digitally enhanced media. March brings the 6th offering of Expressions! Selections in collaboration with the Tracy Art League, and

the summer of 2015 will feature the return of the Artists-In-Residence programming with Bay Area artists working in our community to create educational and fun experiences. With the redesign of the Chamber of Commerce's festival, expansion of public hours across six days a week, and an increase in cross-collaborative events in the upcoming Season at the Grand, it is anticipated that the 2014/15 Exhibition Season will experience growth in visitation and continue to see stable and favorable trends in revenue.

Acceptance of programming and technical underwriting support from the Grand Foundation to the Cultural Arts Division, for the 2014/2015 Fiscal Year will result in a General Fund appropriation of \$25,000 to the Cultural Arts Division.

Staff recommended that Council accept the Grand Theatre Center for the Arts Annual Report and accept the Grand Foundation's Fiscal Year 2014/2015 Annual Underwriting support and approves supplemental appropriation of \$25,000 in proceeds for programming and technical support at the Grand Theatre Center for the Arts.

Ms. Scarlata introduced Mike Souza, President, Grand Foundation, who presented the Grand Foundation 2013/2014 annual report to the City of Tracy. Mr. Souza described the role, goals and activities of the Grand Foundation. Mr. Souza also described the roles of the Grand Theatre committees. The Membership Committee spearheads the membership campaign and special events for the Grand Foundation Members. The Special Events/Fund raising committee is in the planning stages for a seat campaign to be launched in 2015. Mr. Souza indicated the Grand Foundation has established an endowment through the Community Foundation of San Joaquin with an initial investment of \$5,000. In the 2013/2014 fiscal year, the endowment pledge will be \$20,000. Five thousand will be deposited in September 2014 and the balance committed through the seat campaign. City staff has presented the Grand Foundation with an estimated and prioritized set of funding requests. The Grand Foundation will underwrite \$10,000 towards programming support for a Spring Concert as a co-presenter and 25 to 30 arts education programs. The total underwriting donation by the Grand Foundation for the 2013/2014 fiscal year will be \$25,000.

Mr. Souza presented the City with a check on behalf of the Grand Foundation in the amount of \$25,000.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt Resolution 2014-161 approving the Grand Theatre Center for the Arts Annual Report and accepting the Grand Foundation's Fiscal Year 2014/15 annual underwriting support and approving a supplemental appropriation of \$25,000 in proceeds for programming and technical support at the Grand Theatre Center for the Arts. Voice vote found Council Members Rickman, and Young, Mayor Pro Tem Maciel and Mayor Ives in favor. Council Member Manne absent.

4. RECEIVE AND DISCUSS UPDATE REGARDING THE TRACY UNIFIED SCHOOL DISTRICT (TUSD) BOARD OF TRUSTEES DECISION TO TERMINATE THE WEST HIGH SCHOOL POOL JOINT USE AGREEMENT – Ed Lovell, Management Analyst II, presented the staff report and powerpoint presentaion. On November 21, 2006, the City Council discussed and approved moving forward with entering into an agreement with Tracy Unified School District (TUSD) to share the costs of building and operating a 52-meter competition pool at West High School. An Memorandum of Understanding (MOU) was approved by Council on February 6, 2007 for the development and operation of a swimming pool at West High School for a period of thirty years. The MOU outlined both TUSD and the City's contribution towards the capital and ongoing maintenance cost to build and operate the competition pool. The City's contribution for the construction of the pool was 25% of the total cost and 25% of the design and construction management related cost, and all of the cost associated with the construction of the community buildings at the pool. The City also agreed to pay 25% of the ongoing operation and maintenance costs for the pool as well as contribute to a capital maintenance fund used to pay for capital costs over the life of the agreement. The City's capital contribution totaled \$1,556,196, the City's share of operating and maintenance cost has been approximately \$49,000 per year, and the current balance the City has deposited in the capital maintenance fund is \$206,145.

The MOU also states that after a period of five years, either party may elect to terminate the agreement without cause. In doing so, the funds used by either party toward construction of the pool would be returned on a pro-rated basis according to the schedule outlined in the MOU. Because TUSD has elected to exercise this termination option, it is estimated that the City will receive \$1,381,124 from TUSD for the City's contribution towards the construction of the pool.

The City anticipates using the budgeted \$49,000 previously allocated for annual maintenance and operations and re-allocating it to rent the West High Pool for the summer of 2015 to continue the various classes and recreation swim. Staff anticipates that, at current rates, it will cost approximately \$24,420 to rent the pool for the summer which will require no additional general fund allocation.

The City and TUSD representatives are currently negotiating a transition plan to ensure the planned programs and classes scheduled for summer 2015 continue with minimal impact to the community.

Key transition points to be discussed are the TUSD swim teams' use of the pool, City programming use, and community swim teams' use. On September 10, 2014, the City and TUSD representatives met to discuss various community and City programmatic needs and interest in renting West High pool at the current TUSD hourly rental rate. The rental would cover approximately 641 hours for 2015 summer swim programming to ensure a smooth transition while the Joe Wilson pool is reconstructed. The proposed programming hours include the following days and times:

- Lifeguard Training during Spring Break: April 6 to 10, 2015 from 8am to 4pm
- Programming run June 1 to August 7, 2015 (includes Classes & Rec Swim)
- Additional Rec Swim (Weekends Only):
  - August 8 & 9
  - August 15 & 16

- August 22 & 23
- August 29 & 30

The TUSD Superintendent and the TUSD facilities subcommittee will discuss the City's proposed schedule in the following weeks. After a transition plan is finalized and negotiated, the City will inform the users, YMCA, and other community stakeholders.

Update on Wild Rivers Negotiation and Next Steps: City staff continues to work with representatives from both Wild Rivers and Surland Communities on preliminary site layouts for a twenty acre water park facility to be included as part of the planned Ellis project, located generally along Corral Hollow Road. Staff is discussing terms of acquiring an additional four acres with Surland; the detail of which could be included in an upcoming Development Agreement Amendment. All parties have been very focused on balancing the characteristics of a water park (ride heights, architecture, noise etc.) with the surrounding planned Ellis residential neighborhoods.

Equally important regarding the site layout has been the concept of maximizing site amenities as well as the preservation of a portion of the twenty acre site for City competition/ recreational needs. Wild Rivers earlier this year indicated that it would require twenty acres to develop its typical regional serving water park. Staff and Wild Rivers have come to a mutual understanding relative to reserving two acres of the proposed twenty acre water park for a City competition or recreational swimming pool facility. This will provide the City with flexibility in locating future competition or recreational aquatic facilities.

Wild Rivers has recently added a new financial partner to assist with the development of its Southern California locations. This new financial partner is currently looking at the Northern California/Tracy development opportunity. Staff has had several meetings with the new financial partner in an effort to familiarize it with the Northern California/Tracy market. Additional market feasibility analyses are currently being completed by Wild Rivers in an effort to fine tune pro forma financials associated with the water park, which will directly relate to maintenance and other lease terms being negotiated.

Staff will come back to Council on November 5, 2014, to preview conceptual site layouts of the twenty acre water park facilities at Ellis (including the two acre set aside land), and to review preliminary financial options related to development of the water park. Financial options may include terms related to maintenance/operations, insurance, long-term lease details, and percentage rent. It is expected that on November 5th, 2014, a final transition plan for summer aquatics programming will be negotiated with the school district as well and can be shared with the Council and the public.

TUSD's decision to terminate the West High School Pool Joint Use Agreement will result in a payment of \$1,381,124 to the City from TUSD. Additionally, remaining funds (\$206,145) in the established capital fund for capital maintenance will be available for reprogramming. A total of \$1,587,269 will be returned to the general fund.

It is proposed that the available pool maintenance funds be reallocated to support temporary West High School pool rental expenses estimated at \$24,420 for summer 2015. Any unanticipated expenses related to the transition plan can be offset within the existing budget and remaining funds will go back to the General Fund.

Staff recommended that City Council receive and discuss the update regarding the Tracy Unified School District's decision to terminate the West High Pool agreement.

Mayor Pro Tem Maciel asked if the financial terms of the buyout were predetermined by the MOU. Mr. Lovell responded that was correct. There was a schedule in the MOU that outlined how much the City would get back.

Council Member Rickman asked if Dr. Powers Park could be completed earlier than the summer of 2015. Mr. Lovell responded the estimated construction time will be nine months. Staff is anticipating completion of construction to be spring of 2016.

Council Member Rickman asked when the design for Dr. Power's Park is coming before the public. Mr. Lovell responded he was not sure of the date, but there will be public input prior to the February date.

Mayor Ives asked if the school is asking for the City's position relative to transition or are they going to tell us what the transition is. Mr. Lovell responded staff is suggesting what the City's needs are. There has already been discussion with City staff and the Superintendent, which will continue.

Mayor Ives stated the City desires to be a part of that transition plan in terms of timing. Mr. Lovell responded that was correct. Staff wants minimal impact to our programming for next summer.

Mayor Ives asked if staff would be bringing back the conceptual site layouts for Wild River on November 5, 2014. Andrew Malik, Development Services Director, responded staff is aiming for that date. Staff is working with Surland and Wild Rivers to show a conceptual plan.

Council Member Young asked how often the School District and the City meet. Staff responded on a quarterly basis. Council Member Young asked if this has come up already or is the pool a new issue.

Council Member Rickman stated they talked on an informal basis.

Mayor Pro Tem Maciel stated it was not negotiated. The committee was advised this was the way the School District was headed.

Council Member Rickman stated the committee talked about the mutual beneficial aspect of cooperating with the pool and fields.

Council Member Young stated it was new news to the community. Council Member Young stated it is almost like the City is at the mercy of the School District. Council Member Young stated it leaves the community with a void next summer.

Council Member Rickman stated that he and Mayor Pro Tem Maciel did not have any forewarning before the board meetings.

Mollie Lowe addressed Council stating she wanted the money coming back from MOU to be allocated to the aquatic center. Ms. Lowe wanted to see specific details on the transition plan. As a stake holder she felt she should have input regarding her needs.



Ms. Lowe further stated she has had no conversations with City staff. The pool at West High cannot accommodate recreational swim teams and there is not enough parking. Ms. Lowe added she appreciated Council's efforts, but was frustrated because of time it has taken to make any changes. Ms. Lowe stated her focus is to meet the aquatic needs of the community.

Mayor Ives asked Ms. Lowe if she was taking her message to the School Board also as they are representatives as well. Ms. Lowe responded yes although she was unable to attend the School District meeting, Marsha McCray read a letter on her behalf.

Marsha McCray addressed Council stating she attend the TUSD meeting and read Ms. Lowe's letter. Ms. McCray stated school facilities should not have been relied upon to provide for the City. Ms. McCray asked how the number of hours for planning programming compares in 2014 and previous years and is the City providing less service to the community. Ms. McCray asked what contingency plan the City is putting in place if Dr. Power's Park is not completed in 2016. Ms. McCray stated Dr. Power's Park will be an extra facility but cannot be the only facility. Ms. McCray referred to other cities in the area which are building facilities that would attract regional and national events. Tracy is a city of 80,000 and the City needs to plan forward.

Robert Tanner addressed Council and suggested the City should forget the commercial and focus on the competition pools.

Chris Martin addressed Council regarding the lack of progress in the aquatics program. Mr. Martin commented on swimming statistics for the young and minority children. Dr. Power's will not fulfill needs for aquatics programs and the City will be sinking money into a pool that will not service an aquatics program. Mr. Martin stated if the City had an aquatics program with a competition pool, larger meets could be hosted and tax dollars provided. Building a year round aquatics program to underserved and minorities in the City of Tracy is something that should be a motivator. Mr. Martin referred to the City of Commerce who has made a commitment to have a city funded city aquatic program. Mr. Martin suggested the City needs to fund a City sponsored aquatics program and not just kick the can down the road.

Mayor Ives stated up until now he thought the swim community understood but now sees their message was that they always wanted a 50 meter pool. Staff is working with Wild Rivers to put in a 50 meter pool. Mayor Ives stated he hoped the public process can work and things can move ahead at reasonable pace and the money comes and the City builds what we need to build. Mayor Ives stated now we know we are just going to build a 50 meter pool and let Wild Rivers build the rest.

Council Member Young stated there has been progress and deliberation working towards pool facilities which includes recreational swimming and not just competition swimming. Council Member Young stated she fought at the last discussion for Dr. Power's as a solution because prior discussions geared toward a 50 meter pool. Council Member Young stated she had pointed out that in Phase one a 50 meter pool was not included, just recreation. If the City is looking at an aquatic solution that supports the needs of community, it should include recreational and not just competition. Council Member Young stated on November 5, 2014, both items will be brought back to Council and the community will have another opportunity to weigh in on what they want.

Council Member Rickman stated he supported Dr. Power's pool. Council Member Rickman supported Wild Rivers because it is a public private partnership and will bring people and businesses to town. Discussions with Wild Rivers always included a 50 meter pool, which the City would build and they would take care of the upkeep.

Mayor Pro Tem Maciel stated the City needs to find out if Wild Rivers is going to bring something to the table financially and if not the City needs to look at moving forward without them. Mayor Pro Tem Maciel stated the swimming community should have never envisioned the 50 meter for youth swim only. There has to be a community facility. Mayor Pro Tem Maciel added if the City moves forward on its own, it should be marketed as a fitness facility with pool and running and biking tracks. Wild Rivers and the 50 meter pool were always part of the concept. The commercial side would help to offset the competitive side of the swim. Wild Rivers has to be a community event for everyone. Mayor Pro Tem Maciel stated it is time to make a decision and move forward. Mayor Pro Tem Maciel further stated Dr. Power's pool should not be confused with Wild Rivers.

Council Member Rickman asked staff what information will be brought back on November 5, 2014. Andrew Malik, Development Services Director, responded the conceptual plan and general financial options will be brought back on November 5, 2014. Mr. Malik stated a new financial planner added is unfamiliar with the Northern California market so is doing feasibility.

Council accepted the report.

7. AUTHORIZE AND DIRECT THE CITY MANAGER TO SIGN THE PETITION OF SUPPORT AND CAST A BALLOT IN SUPPORT OF THE RENEWAL OF THE DOWNTOWN TRACY COMMUNITY BENEFIT DISTRICT AND ADOPT A RESOLUTION OF INTENT – Amie Mendes, Economic Development Analyst, provided the staff report. The California State legislature enacted the Property and Business Improvement District Law of 1994 (California Streets and Highways Code – Sections 36600 to 36671), which authorizes cities to levy assessments within a business improvement area. In December 2009, property owners in Downtown Tracy voted overwhelmingly to fund special benefit services through a self-assessment, with the goal of jumpstarting and expediting the revitalization of Downtown Tracy. At the time, the economy was experiencing one of the most severe recessions in 70 years and Tracy was one of the few cities statewide to take on such an initiative.

Pursuant to State Law, these new Property Improvement Districts, called Community Benefit Districts, have a maximum first term of just five years. The Downtown Tracy Community Benefit District (the "CBD") was approved in December 2009 and subsequently the Tracy City Center Association (TCCA) was formed to oversee the operations of the CBD. TCCA has done an excellent job at highlighting and activating the great assets of Downtown Tracy and has successfully attracted a number of new restaurants and retailers to the downtown area.

With the Downtown Tracy Community Benefit District set to expire in 2015, TCCA contracted with New City America, a consulting company that has formed over 70 similar districts nationwide, to initiate the steps for renewal of the CBD. Without renewal of the CBD, the momentum and achievements of TCCA come to an abrupt halt.

TCCA is proposing to renew the CBD for a ten-year term, as allowed under the Property and Business Improvement District Law of 1994 (California Streets and Highways Code – Section 36600 et seq.), and to expand the boundaries of the renewed district to include the portion of Central Avenue between 11th Street and Grunauer Alley. The assessments, costs and methodology will remain exactly the same as originally adopted in 2009.

The City of Tracy is the fee owner of Assessor's Parcel Numbers 235-056-15, 235-067-01, 235-067-02, 235-068-06, 235-068-09, 235-068-17, 235-150-28, located within the proposed CBD renewal area. The Property and Business Improvement District Law of 1994 requires that potentially affected property owners in the proposed district, who will collectively pay more than 50 percent of the assessments proposed to be levied, sign a petition to renew the district pursuant to Section 36621 of the California Streets and Highways Code.

New City America representatives sent petitions to all potentially affected property owners, including the City, around July 28, 2014. The petitions were sent consistent with the requirements outlined in Section 36621 of the California Streets and Highways Code

Section 36622 of the Streets and Highway Code requires that a management district plan be created as part of the formation of a district. The Downtown Tracy Community Benefit District Management District Plan contains all of the required information.

The collective amount of the proposed assessments to be levied on City-owned properties is \$24,359.30. The collective total amount of the assessments for the entire proposed Downtown Tracy Community Benefit District is \$148,064. The City's weighted portion is approximately 16% of the total. Three factors are considered to determine the weighted vote which include; lot square footage, building square footage, and linear frontage.

The Downtown Tracy Community Benefit District Management District Plan, as agreed to by the TCCA Board of Directors, includes the following categories and corresponding percentage of funds allocated to the identified categories:

- District Identity & Business Attraction (46%)
- Sidewalk Operations and Beautification (20%)
- Administration/Corporate Operations (30%)
- Contingency – Parking Lot Maintenance (4%)

The City cannot revitalize Downtown Tracy on its own. The engagement of property owners and merchants is critical to the success of Downtown Tracy. Over the past five years, the TCCA has made an immense impact on the revitalization of the downtown area. Property owners, who were once non-participatory, are now Board Members and play an active role in the revitalization taking place in downtown. The proposed \$148,064 annual budget will allow for the continuation of improvements and activities which confer special benefits in favor of the downtown property owners and businesses.

Staff recommends that the City Council support the renewal of the Downtown Tracy Community Benefit District.

Pursuant to Section 36621 of the Streets and Highway Code, upon submission of written petitions, signed by the property owners in the proposed district who will pay more than fifty percent of the assessments proposed to be levied, the City Council may initiate proceedings to renew a district by the adoption of a resolution expressing its intention to renew a district. With the City's support, the 50 percent threshold has been met. The resolution of intention shall contain all of the following:

- (1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements and activities and the location and extent of the proposed district.
- (2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623 which requires that the notice, protest, and hearing procedure shall comply with Section 53753 of the Government Code.

A resolution of intention has been prepared pursuant to Section 36621 of the Streets and Highway Code. Further, upon adoption of the resolution of intent, staff will comply with Section 36623 of the Street and Highway Code and Section 53753 of the Government Code regarding the notice, protest, and hearing procedure.

The recommended action does not result in a fiscal impact at this time. If the Downtown Tracy Community Benefit District does get renewed, it will result in a fiscal impact of \$24,359.30 to the General Fund for FY2015-16.

Staff recommended Council authorize and direct the City Manager to sign the City Petition and cast a ballot in support of the CBD Renewal on behalf of the City owned properties and adopt the Resolution of Intention.

Mayor Ives stated the City in partnership with TCCA has made a world of difference to the downtown and suggested the City vote in favor.

Council Member Rickman commented on the new facilities which are opening up downtown. In last 4 years the downtown has grown dramatically. Council Member Rickman thanked TCCA for what their efforts.

Mayor Pro Tem Maciel stated the downtown is evolving. TCCA has been instrumental in making progress downtown. Mayor Pro Tem Maciel believed the City should support voting to extend the renewal for the next 10 years.

Council Member Young stated she was glad to see the expansion on to Eleventh Street. The City and TCCA partnership is great and the downtown is headed in a good direction.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt Resolution 2014-162 authorizing the City Manager to sign the petition of support to renew the Downtown Tracy Community Benefit District. Voice vote found Council Members Rickman and Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Manne absent.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt Resolution 2014-163 approving the Resolution of Intent to renew a Property and Business Improvement District known as the "Downtown Tracy Community Benefit District". Voice vote found Council Members Rickman and Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Manne absent.

10. AUTHORIZE A BUDGET ADJUSTMENT TO HIRE PART-TIME LIMITED SERVICE STAFF TO SUPPORT A TEMPORARY RENTAL OF THE GRAND THEATRE CENTER FOR THE ARTS – Kim Scarlata, Division Manager II, presented the staff report. In May 2014, representatives from Grace Church requested to temporarily rent the Grand Theatre Center for the Arts for Sunday worship services while the church undergoes a building renovation beginning January 2015. The rental request is for approximately one year and includes using the ETK Theatre and several other rooms in the Center. Representatives from the church indicated that they underwent an extensive search for rental alternatives; however, none of the facilities, with the exception of the Grand, met the requirements needed to conduct services. It is important to note that that current performance bookings and annual events/rentals will have priority over church's Sunday rental requests. This exception has been communicated to Grace Church and, if approved, will be reflected in the rental schedule and agreement.

Typically, the Grand Theatre Center for the Arts is closed on Sundays, with the exception of an occasional event or play. Staff availability and budget constraints have limited the City's ability to rent the Grand Theatre regularly on Sundays. Given the increase in rental requests and performances throughout the year, there is very little capacity to support facility usage on Sundays. As a result, the City needs additional part-time limited service staff to accommodate the temporary rental request by Grace Church.

Staff anticipates 24 weeks of rentals between January 2015 and June 2015. During this six month period, the total projected revenue is estimated to be \$44,856. Required expenses are approximately \$36,986, which include two part time limited service staff and custodial services. The remaining six months (July 2015-January 2016) of rental revenue and expenditures would be addressed through the FY2015/16 budget process.

Fiscal Impact: To provide rental services, an expenditure budget adjustment in the amount of \$36,986 is required; however, these expenses will be offset by incoming rental revenue. Projected revenue is anticipated to be \$44,856. The estimated net positive impact to the General Fund is \$7,870.

Staff recommended that City Council, by resolution, authorizes a budget adjustment in the amount of \$36,986 to hire part-time limited service staff to support a temporary rental of the Grand Theatre Center for the Arts.

John Field, Lead Pastor, Grace Church, stated no one knows the weight that goes into decisions from organizations thanked Council and staff.

Mayor Ives asked if Grace Church is requesting the temporary rental due to renovation to their building which indicates growing church.

Mayor Pro Tem Maciel stated it is a wonderful opportunity and welcomed Grace Church.

Council Member Young stated Grace Church is a benefit to the community.

Council Member Rickman thanked Grace Church for serving the residents in Tracy.

Jenny Haruyama, Administrative Services Director stated there was a minor clarification on the resolution to be adopted. An amended resolution should include that City Council authorizes an expenditure budget adjustment in the amount of \$36,986 and a revenue adjustment in the amount of \$44,856. Ms. Haruyama added when there is an expenditure there should be offsetting revenue. It was left out of the resolution but adequately explained in the staff report.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt Resolution 2014-164 as amended authorizing a budget adjustment to hire part-time limited service staff to support a temporary rental of the Grand Theatre Center for the Arts. Voice vote found Council Members Rickman, and Young, Mayor Pro Tem Maciel and Mayor Ives in favor. Council Member Manne absent.

11. ITEMS FROM THE AUDIENCE - Trina Anderson, addressed Council asking if a scheduled payment of \$2 million had been received from Surland. Jenny Haruyama, Administrative Services Director, confirmed the funds had been received.

12. STAFF ITEMS

- A. City Manager's Report – The City Manager provided Council with an informational report on various items, including upcoming special events, status on key projects, or other items of interest in an effort to keep Council, staff, and residents abreast of newsworthy events.

Council accepted the City Manager's informational update.

13. COUNCIL ITEMS – Council Member Rickman announced a number of activities in Tracy scheduled for September 27<sup>th</sup> including the Tracy Hospital Health Fair, the Wine Stroll and a fund raiser for Tracy non-profits.

Council Member Young referred to comments made by Steve Nicolaou under Items from the Audience, related to a hate crime against herself and her family. Council Member Young stated the actions were not reflective of the entire Tracy Community and she would not be requesting an item to discuss this issue on the next Council agenda. There is nothing staff can do or Council needs to discuss. Council Member Young stated it has been dealt with, and hoped the community can continue to work together and be concerned about one another.

14. ADJOURNMENT – It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adjourn. Council Members Rickman and Young, Mayor Pro Tem Maciel and Mayor Ives all in favor. Council Member Manne absent. Time: 11:01 p.m.

The above agenda was posted at the Tracy City Hall on September 11, 2014. The above are summary minutes. A recording is available at the office of the City Clerk.

---

Mayor

ATTEST:

---

City Clerk

**February 24, 2015, 9:00 a.m.**

Tracy Transit Station – 50 E. Sixth Street Rm 105

Web Site: [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)

1. The special meeting was called to order at 9:00 a.m.
2. Present at the special meeting were Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel.
3. Items from the Audience - None
4. Council Retreat – Troy Brown, City Manager, introduced the facilitator, Dr. Frank Benest, former City Manager of Palo Alto, California. Mr. Benest is a noted consultant and trainer on rightsizing public organizations, entrepreneurial government, civic engagement, leadership development and succession planning.  
  
Mr. Benest engaged Council and staff in discussions to develop a list of desired outcomes, as well as long-term potential outcomes for the City and began defining those outcomes. (Retreat Summary Attached)
5. Adjournment – The meeting adjourned at 4:00 p.m.

The above agenda was posted at the Tracy City Hall on February 18, 2015. The above are action minutes.

---

Mayor

---

City Clerk



**City Council/  
Department Head  
Retreat Summary**

**February 24, 2015**





1. Clarify different roles for Mayor, Council Members & City Management
2. Review & clarify Strategic Priorities of City
3. Create sense of unity & commitment to collaborate in order to make our priorities happen.
4. Other

## Celebrate

1. Good position (Business community, stable finances)
2. Quality of Life
  - Low Crime
  - Amenities
  - Infrastructure
3. Pride
4. Prologis (Business Partner)
5. Good customer service
6. Navigating tough times
7. Better transparency/accountability
8. Better productivity with reduced staff
9. "Growing" and developing staff from within
10. Planning for the future
11. Safe community





## **My Role- Mayor**

### Individually, as Mayor

- Exercise leadership
- Provide guidance
- Create environment/facilitate
- Provide a helpful & supportive environment
- Represent City (regionally)
- Get to know Council Members
- Earn trust of Council

### Collectively, with support of Council

- Develop effective policies
- Supervise CM/CA
- Earn trust & faith of the public
- Set goals

## **My Role- Council Member**

### Individually, as a Council Member

- Give voice (Community/Group)
- Investigate issues by talking to community
- Be a positive role model
- When speaking to group, differentiate what I believe vs. what Council acted on
- Represent people (85K)
- Stand by principles & values, views
- Be transparent about what drives you
- Be personally accountable
- Provide due diligence
- Support Council in the decisions

Collectively, as a Council Member

- Create policies & procedures
- Allocate resources
- Make/give policy direction
- Create community vision (and communicate it)
- Contribute to staff morale (help or hurt)

## **My Role- Department Heads**

Individually

- Do the right thing vs. doing what you have the right to do
- Provide legal advice (or any advice)
- Ensure departments' readiness to respond
- Help motivate & lead
- Implement Council policies
- Oversee day-to-day operations in department
- Practice "Honest, Often, Timely & Tactful" (HOTT) communications

Collectively

- Solve "big" problems
- Contribute to staff morale (hurt or help)
- Maintain consistency
- Create organizational culture that reflects values
- Succeed or fail together
- Look at needs of organization & not just departments' needs – Big Picture view

## **A Great Policy Team . . . . .**

- Is willing to listen to different points of view
- Is honest, respectful, professional
- Finds common ground – "How to get there"
- Ensures that it has all the facts/resources
- Is informed from all sides
  - Makes the "batter" (puts it together)  
Analyzes facts/implications
- Collaborative/ "give & take"
- Understands each other
- Engages staff & asks "is this feasible, is this workable?"
- Fixes things as they go along - Readjusts
- Supports their policy/decisions after the vote

# What Makes a Great Management Team

A great City management team . . . . .

- Knows each other
- Keeps its word
- Respects diverse opinions
- Is loyal (organizational/not individual)
- Exhibits flexibility
- Demonstrates collaborative spirit
- Listens to each other
- Is supportive of each other
- Is honest/open/ethical
- Demonstrates respect for each other
- Is open to input from others
- Exhibits positive/effective communications
- Has courageous members on team
- Directs
- Takes action
- Is willing to talk about difficult issues
- Commits to team (vs. individual dept.)
- Has respectful debates
- Manages their egos

## My Commitments

### City Council Members

*I commit to . . . . .*

- Engage staff
- Be more direct
- Actively listen to all viewpoints
- Commit to being there & flexible (accessible)
- Get to know people better/understand where common ground is
- Support other members in their perspectives

## My Commitments

### Department Heads

*I commit to . . . . .*

- Continue to be collaborative
- Learn more about team
- Build relationships
- Become a better listener
- Seek to understand how things work
- Continue to challenge team
- Listen & support
- Trust my team members

## Strategic Priority – Economic Development

### 1. Housing (Excellent housing development)

- Good infrastructure, layouts, circulation, schools, police fire, etc.
- Diverse housing for families, seniors, etc.
- Financially sustainable

Services & infrastructure are provided (police, fire, maintenance-public works)

### 2. Jobs (Head of Household)

Median income or middle class jobs w/benefits

High-tech jobs (local) demographics (no more warehouse jobs)

### 3. Understand/leverage market

### 4. One-time investments

- Entry points to city – aesthetics
- Amenities

### 5. Retail/entertainment

## Economic Development

Focus	Voting
1. Sustainable and diverse housing- (srvs/infrastructure, PD, Fire, PW)	3
2. Jobs- (A). Head of household, 1 Median household income	4
3. Middle class w/benefits	2
4. High tech jobs	4
5. Retail and entertainment	5
6. Marketing our assets (land, skills, business park, incentives, business friendly)	2

### Amenities

	First Round Vote	Second Round Vote
Legacy Fields		4
Community pool facilities	1	5
Competitive swim pool		2
City aesthetics (entrances and main arterials to City)		1
Senior facilities(expanding or building new one)	5	1
Community Recreation Center	4	2
Upgrading Tracy Ballpark	4	1
Upgrading or developing a new community center		3
Upgrading existing street infrastructure	2	
Sewer Plant		
Phase II animal shelter		
Recycled Waterr		
Water Towers	4	
Library		1

First Round -- General Fund \$

Second Round -- Other funding

## Follow-Up

1. Council discussion about Legacy Fields—March 3, 2015
2. Draft Council norms for consideration
3. Submit 2015 Strategic Priorities for Council review—June
4. Review City Manager performance
  - a. Informal—March
  - b. Formal—September
5. Six month check-in - - October 2015

## “Parking Lot”

(Important issues to be addressed at a later date)

1. What do you do when a department or staff is not motivated/connected to Department Head? (Disconnect between a Department Head & labor force)
2. Whistle blowing protocol (CM/CA, Council, staff)
3. Development – Fees, standards, services (police, fire, maintenance, etc.)
4. Two-step process (Council procedures as a whole)
5. Transparency



## What Resonated with Council Members

1. Informality of conversations
2. Good start – come together with this team
3. Get on same page
4. Good start; same page
  - Amenities/Economic Development
5. Planning & moving forward
6. Good start
7. Motivated Council
8. Inter-dependence of Council & staff



## What Did Not Resonate with Council Members

1. A lot of important loose ends we need to discuss in future agenda
2. Need deadlines, achievements
  - Need process/plan/accountability
3. Shallow process – didn't get as much done as hoped
4. Shallow process – more to do, but good time spent
5. Did not have an opportunity to talk about ourselves

## Continuing Hopes & Dreams for Council Members

1. Stay on path – Good time for Tracy
2. Articulate same goals moving forward
3. Like this Council – has a vision & can articulate it
4. Accomplish our goals – do what we said we were going to do
5. Not efficient in our work nor effective right now – need to be more effective/efficient in our work in future
6. Accept our respective roles (Staff/Council)
7. Put work plans & move forward
  - Look forward



TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

**March 3, 2015, 4:00 p.m.**

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Maciel called the meeting to order at 4:00 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel present.
3. ITEMS FROM THE AUDIENCE – None
4. CLOSED SESSION
  - Labor Negotiations (Gov. Code, section 54957.6)
    - Employee Organizations: Tracy Police Managers Association  
Tracy Police Officers Association  
Tracy Firefighters' Association  
Teamsters Local 439, IBT  
Tracy Mid-Managers; bargaining Unit
    - City's designated representatives: Troy Brown, City Manager  
Maria A. Hurtado, Assistant City Manager  
Midori Lichtwardt, Human resources  
Manager  
Dania Torres Wong, Esq.
5. MOTION TO RECESS TO CLOSED SESSION – Mayor Pro Tem Rickman motioned to recess the meeting to closed session at 4:01 p.m. Council Member Young seconded the motion. Voice vote found all in favor; passed and so ordered.
6. RECONVENE TO OPEN SESSION – Mayor Maciel reconvened the meeting into open session at 5:40 p.m.
7. REPORT OF FINAL ACTION – None
8. ADJOURNMENT - Mayor Pro Tem Rickman motioned to adjourn. Council Member Vargas seconded the motion. Voice vote found all in favor; passed and so ordered. Time: 5:40 p.m.

The agenda was posted at City Hall on February 26, 2015. The above are action minutes.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

AGENDA ITEM 1.B

REQUEST

**AWARD A CONSTRUCTION CONTRACT TO TEICHERT / MCM, A JOINT VENTURE OF DAVIS, CALIFORNIA, FOR THE RECONSTRUCTION OF THE ELEVENTH STREET - EAST TRACY OVERHEAD BRIDGE REPLACEMENT PROJECT- CIP 73063, FEDERAL PROJECT NO. BHLS – 5192(020), AUTHORIZE THE CITY MANAGER TO APPROVE REQUIRED CHANGE ORDERS, AUTHORIZE APPROPRIATION OF \$790,000 FROM GAS TAX FUND 245 TO THIS PROJECT, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONSTRUCTION CONTRACT.**

EXECUTIVE SUMMARY

The California Department of Transportation (Caltrans) has approved replacement of the existing Eleventh Street - East Tracy Overhead Bridge #29C0126, instead of its retrofit for seismic and structural upgrades. The total replacement cost is estimated at \$52 million and the City secured the majority of the funds from a Measure 1B grant. The construction bids were opened on March 3, 2015. Award of the construction contract to the lowest monetary bidder will facilitate the start of construction of this long awaited project.

DISCUSSION

Originally constructed in 1936 by Caltrans, the Eleventh Street Overhead Bridge structure is designated as the Eleventh Street East Tracy Overhead, Bridge #29C-0126 on the Caltrans Bridge Inventory system. The original two-lane structure was widened to four lanes in 1960. The 1,441-foot long structure (35 spans) is comprised of reinforced concrete t-beams and steel girders crossing three Union Pacific Railroad tracks. Following construction of the State Route 205 bypass, the City accepted control and maintenance of the bridge in 1971. Caltrans, however, remains responsible for annual bridge inspections.

In 2004, the Caltrans Bridge Inspection Report classified the bridge as “Structurally Deficient”. The bridge roadway section is deteriorated due to damage at the deck joint. The bridge requires, but has not undergone, a seismic retrofit in its 73 year service life.

The City secured Federal funds under the Highway Bridge Program (HBP) and Local Seismic Safety Retrofit Program (LSSRP) for initial and environmental studies, preparation of construction documents and construction cost.

During the initial studies, the City prepared the retrofit and the complete bridge replacement scenarios and recommended Caltrans consider bridge replacement instead of a structural and seismic retrofit. After careful reviews, Caltrans and Federal Highway Authority agreement with the City’s recommendation for replacement of the existing bridge with a new structure.

The proposed bridge will have four travel lanes, a four foot median, including an eight foot bike way and an eight foot pedestrian walkway in both directions. The scope of work of this project also includes lighting, landscaping and traffic marking and stripping.

A major portion of the cost of the project is funded from Proposition 1-B (bridge retrofit and bridge replacement) and the remaining is from local funds. The approximate cost of the bridge replacement was estimated at \$52 million, but after the bid opening due to the lower bid proposal, the project cost went down to approximately \$46.5 million. Out of this amount, (\$40.84m) has already been funded from Federal and State grants and the remaining (\$5.66m) was the City's responsibility.

In order to further lower the City's share of the cost, the City has pursued and successfully received a grant of (\$2.27m) from Measure 1-B with the remaining of (\$3.39m) to be paid by the City.

Under the Federal Highway Administration new guidelines, all projects over \$20,000,000 fall under the high cost project definition and can be funded up to \$20,000,000 per fiscal year. Since the Eleventh Street replacement project cost is around \$46.5 million, the current Federal guideline is applicable.

On September 8, 2014, Caltrans approved initial funding of \$17 million toward construction of this project for FY14-15. Caltrans has also authorized the City of Tracy to proceed with construction and issued a construction notification called "E-76".

The project plans and specifications were prepared by the Drake Haglan Engineering, Inc. of Rancho Cordova, California. The project was advertised for competitive bids on January 30, and February 6, 2015. The following six bids were received for the project and publicly opened on March 3, 2015.

<b><u>Contractor</u></b>	<b><u>Bid amount</u></b>
1. Teichert/MCM, Joint Venture, Davis, CA	\$32,204,687.33
2. B & W and Bay Cities, Joint Venture, Walnut Creek, CA	\$32,579,514.81
3. DaSilva Gates- CC Myers, Joint Venture, Dublin, CA	\$34,346,827.40
4. RGW Construction, Inc., Livermore, CA	\$34,953,933.40
5. O.C Jones and Sons-Myers and Sons, Berkeley, CA	\$36,109,479.20
6. Flatiron West Inc., Benicia, CA	\$39,351,432.20

Teichert/MCM, Joint Venture is the lowest monetary bidder and bid analysis indicates that the lowest monetary bid is responsive and the bidder is responsible. The bidder has the appropriate contractor's license and has completed similar projects for other agencies including Caltrans. The bid amount is lower than the Engineer's estimate of \$35 million.

The total estimated cost of this project if awarded to the lowest monetary bidder will be:

Engineering Design	\$ 4,064,000.00
Right of Way Acquisition	\$ 740,153.00
Utility Relocations	\$ 662,137.00
Supplementary Work (Training, etc.)	\$ 152,100.00
Construction Bid	\$32,204,687.33

Project Construction Engineering (Construction Management)	\$ 5,548,950.00	
Construction Contingency	<u>\$ 3,068,369.00</u>	
Total construction cost:	\$46,440,396.33	(Approx. \$46.5m)

Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by the City Council. The estimated construction contingency amount for this project is \$3,068,369 which can be approved by the City Manager, on as needed basis, in accordance with the above provisions.

### STRATEGIC PLAN

The agenda is a routine operational item and is not related to the Council's Strategic Plans.

### FISCAL IMPACT

The Eleventh Street – East Tracy Overhead Bridge Replacement Project is an approved Capital Improvement Project – CIP 73063, funded primarily through Federal and State grants. Of the total estimated cost of \$46.5 million, \$40.84 million is funded from Federal State grants and \$2.27 million from Measure 1-B. The remaining \$3.39 million is the City's obligation and a total of \$2.6 million is allocated toward this project in the City's budget. A portion of this amount has already been spent in the project design phase. Additional appropriation of \$790,000 is needed from gas tax fund 245 to complete this project.

### RECOMMENDATION

Staff recommends that City Council, by resolution, award a construction contract to Teichert-MCM, Joint Venture of Davis, California, in the amount of \$32,204,687.33 for the Eleventh Street – East Tracy Overhead Bridge Replacement Project - CIP 73063, and Federal Project No. BHLS – 5192 (020), authorize the City Manager to approve change orders up to the specified project contingency amount of \$3,068,369, if needed, authorize appropriation of \$790,000 from gas tax fund 245 to this project, and authorize the Mayor to execute the construction contract.

Prepared by: Zabih Zaca, Senior Civil Engineer

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

Approved by: Troy Brown, City Manager

RESOLUTION 2015 - \_\_\_\_\_

AWARDING A CONSTRUCTION CONTRACT TO TEICHERT / MCM, A JOINT VENTURE OF DAVIS, CALIFORNIA, FOR THE ELEVENTH STREET – EAST TRACY OVERHEAD BRIDGE REPLACEMENT PROJECT - CIP 73063, FEDERAL PROJECT NO. BHLS – 5192(020), AUTHORIZING THE CITY MANAGER TO APPROVE REQUIRED CHANGE ORDERS, AUTHORIZING APPROPRIATION OF \$790,000 FROM GAS TAX FUND 245 TO THIS PROJECT, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

WHEREAS, The Eleventh Street East Tracy Overhead Bridge Replacement Project has approved by Caltrans to be replaced with a new structure, and

WHEREAS, The total cost of replacement of this project is estimated at \$46.5 million, and falls under the new regulation of Federal Highway Administration which allows funding up to \$20 million per fiscal year, and

WHEREAS, On September 8, 2014, Caltrans approved initial funding of \$17 million toward construction of this project for FY 2014/15, and

WHEREAS, The project was advertised for competitive bids on January 30 and February 6, 2015; six bids were received and publicly opened on February March 3, 2015, and

WHEREAS, Teichert / MCM, a Joint Venture of Davis, California, was the lowest monetary bidder; bid analysis indicates their bid is responsive and the bidder is responsible, and

WHEREAS, Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council, and

WHEREAS, The recommended contingency amount for this project is \$3,068,369, and

WHEREAS, This is an approved Capital Improvement Project. The General Fund is not contributing toward this project;

NOW, THEREFORE BE IT RESOLVED, That City Council awards a construction contract to Teichert / MCM, Joint Venture of Davis, California, for the Eleventh Street – East Tracy Overhead Bridge Replacement Project - CIP 73063, Federal Project No. BLHS – 5192(020) in the amount of \$32,204,687.33, authorizes the City Manager to approve required change orders, authorizes appropriation of \$790,000 from Fund 245 to this project and authorizes the Mayor to execute the contract.

\* \* \* \* \*

The foregoing Resolution 2015 - \_\_\_\_\_ was adopted by the Tracy City Council on the 17th day of March 2015, by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK



AGENDA ITEM 1.C

REQUEST

**APPROVE THE FINAL SUBDIVISION MAP AND SUBDIVISION IMPROVEMENT AGREEMENT FOR THE BUNGALOWS, TRACT 3351, AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT, AND AUTHORIZE THE CITY CLERK TO FILE THE SUBDIVISION IMPROVEMENT AGREEMENT WITH THE SAN JOAQUIN COUNTY RECORDER**

EXECUTIVE SUMMARY

Approval of the Final Subdivision Map will facilitate recordation of the Final Subdivision Map and the issuance of building permits to construct residential houses in the Bungalows subdivision. Woodside 05N, LP, a California limited partnership (Subdivider), has signed the Subdivision Improvement Agreement (SIA) for the construction of improvements to serve 52 single family dwelling lots.

DISCUSSION

On May 20, 2014, the City Council approved the Vesting Tentative Subdivision Map for the "The Classics Subdivision" now known as "The Bungalows", a residential subdivision with 57 residential lots for single family dwelling units, to be located at the northwest corner of MacArthur Drive and Pescadero Avenue as shown on Attachment "A". This subdivision is approximately 9.42 acres and is designated in the General Plan as Residential Medium.

The Final Subdivision Map of "The Bungalows" will create 52 residential lots for single family dwelling units and a remainder parcel described as "Outlot C" for five future residential lots. The Final Subdivision Map has been reviewed as to its substantial compliance with the approved Vesting Tentative Subdivision Map. The Subdivider has executed the SIA for the completion of the subdivision improvements.

The Engineering Division has reviewed the Improvement Plans and all improvements required of The Bungalows, Tract 3351. These improvements are guaranteed as part of the SIA with security. The SIA, Final Subdivision Map, and Improvement Plans are on file with the City Engineer and are available for review upon request.

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

FISCAL IMPACT

There will be no impact to the General Fund; the Subdivider has paid the applicable engineering review fees such as plan checking, engineering inspection, and testing fees including the cost of processing the Final Subdivision Map and Subdivision Improvement Agreement.

STRATEGIC PLAN

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

RECOMMENDATION

That City Council, by resolution, approve the Final Subdivision Map for The Bungalows, Tract 3351, authorize the Mayor to execute the Subdivision Improvement Agreement, and authorize the City Clerk to file the Agreement with the San Joaquin County Recorder.

Prepared by: Carlos Garcia, Engineering Technician II  
Criseldo Mina, Senior Civil Engineer

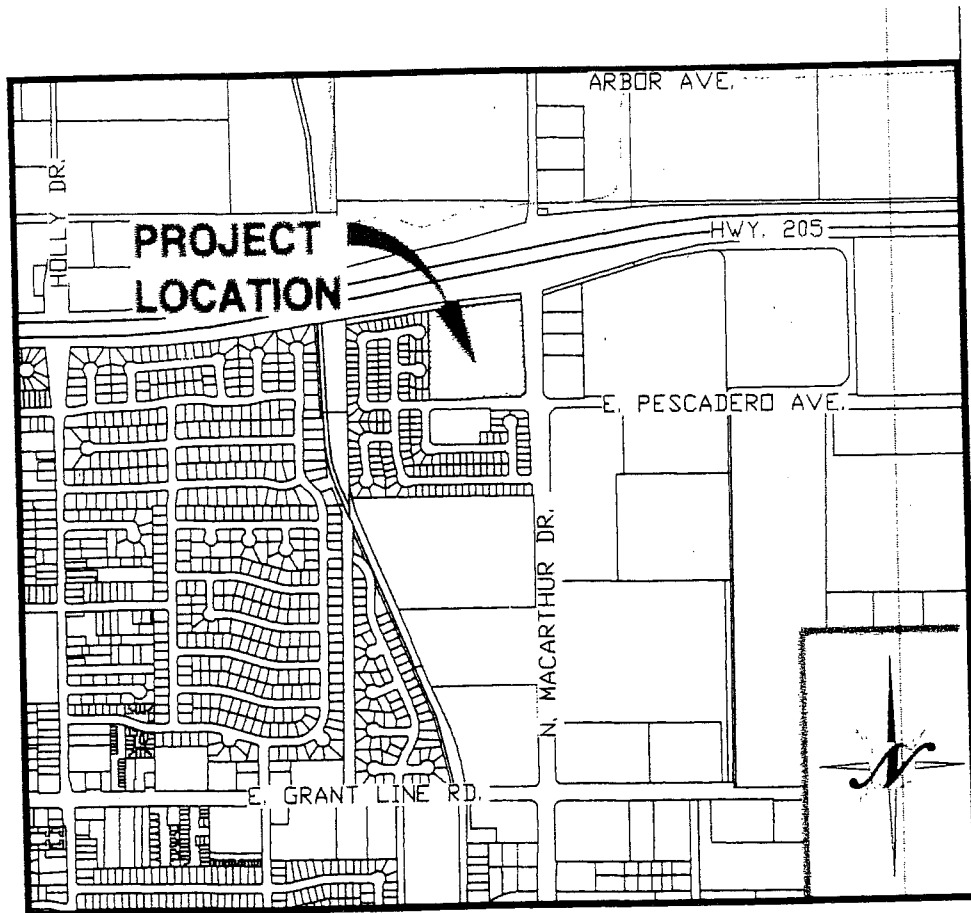
Reviewed by: Kuldeep Sharma, Interim City Engineer/Utilities Director  
Andrew Malik, Development Services Director  
Maria A. Hurtado, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A - Vicinity Map

# ATTACHMENT A



**PROJECT  
LOCATION**

## VICINITY MAP

NOT TO SCALE

RESOLUTION 2015 - \_\_\_\_\_

APPROVING THE FINAL SUBDIVISION MAP AND SUBDIVISION IMPROVEMENT AGREEMENT FOR THE BUNGALOWS, TRACT 3351, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT, AND AUTHORIZING THE CITY CLERK TO FILE THE SUBDIVISION IMPROVEMENT AGREEMENT WITH THE SAN JOAQUIN COUNTY RECORDER

WHEREAS, On May 20, 2014, the City Council approved the Vesting Tentative Subdivision Map for the “The Classics Subdivision” now known as The Bungalows, and

WHEREAS, The Final Subdivision Map of “The Bungalows” will create 52 residential lots for single family dwelling units and a remainder parcel described as “Outlot C” for five future residential lots, and

WHEREAS, The Subdivider has executed the SIA for the completion of the subdivision improvements, and

WHEREAS, The Engineering Division has reviewed the Improvement Plans and all improvements required of The Bungalows, Tract 3351, and

WHEREAS, The Subdivider has executed the Subdivision Improvement Agreement, for completion of the subdivision improvements, and

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

WHEREAS, There will be no impact to the General Fund; the Subdivider has paid the applicable engineering review fees such as plan checking, engineering inspection, and testing fees including the cost of processing the Final Subdivision Map and Subdivision Improvement Agreement;

NOW, THEREFORE BE IT RESOLVED, That City Council approves the Final Subdivision Map for The Bungalows, Tract 3351, authorizes the Mayor to execute the Subdivision Improvement Agreement, and authorizes the City Clerk to file the Agreement with the San Joaquin County Recorder.

\* \* \* \* \*

The foregoing Resolution 2015 - \_\_\_\_\_ was adopted by the Tracy City Council on the 17th day of March 2015, by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

Recording Requested By

City of Tracy  
Development Services  
333 Civic Center Plaza  
Tracy, CA 95376

And When Recorded Mail To:

City of Tracy  
Office of the City Clerk  
333 Civic Center Plaza  
Tracy, CA 95376  
Attention: Carole Fleischmann

**CITY OF TRACY  
SUBDIVISION IMPROVEMENT AGREEMENT  
THE BUNGALOWS (AKA THE CLASSICS), TRACT 3351**

This **SUBDIVISION IMPROVEMENT AGREEMENT** (hereinafter "Agreement") is made and entered into by and between the **CITY OF TRACY**, a municipal corporation (hereinafter "City"), and **WOODSIDE 05N, LP**, a California limited partnership (hereinafter "Subdivider").

**RECITALS**

- A. The Subdivider is currently the owner of the real property located at the northwest corner of MacArthur Drive and Pescadero Avenue (hereinafter "Property"), and more particularly described in Exhibit "A", attached and incorporated herein by its reference.
- B. In accordance with the Subdivision Map Act (California Government Code sections 66410, *et seq.*) and the Subdivision Ordinance (Tracy Municipal Code, title 12), the Subdivider has submitted to the City a Final Map (hereinafter "Final Map") for the Project known as **THE BUNGALOWS, TRACT 3351** (hereinafter "Project"). The Final Map, as approved by the City Council on \_\_\_\_\_, 2015, pursuant to Resolution No. 2015-\_\_\_\_\_, is on file with the City Clerk, and is incorporated herein by reference.
- C. The Project is geographically located within the boundaries of the Vesting Tentative Subdivision Map known as **THE CLASSICS SUBDIVISION** (hereinafter "Tentative Subdivision Map"). The Tentative Subdivision Map, as approved by the City Council on May 20, 2014, pursuant to Resolution 2014-078, is on file with the City Clerk, and is incorporated herein by reference.
- D. The approval of the Tentative Subdivision Map by the City Council was subject to specified conditions of approval (hereinafter "Conditions"). The Conditions are attached hereto as Exhibit "B," and incorporated herein by reference.

**CITY OF TRACY – SUBDIVISION IMPROVEMENT AGREEMENT  
THE BUNGALOWS, TRACT 3351**

Page 2 of 11

- E. The Conditions describe, among other things, improvements that are required for approval of the Final Map pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards.
- F. Improvement Plans and Specifications (which incorporate portions of the City's Standard Specifications) have been prepared on behalf of the Subdivider, and approved by the City Engineer, which describe in more detail the improvements which are required for approval of the Final Map. The Plans and Specifications, as approved by the City Engineer, are on file with the City Engineer, and are incorporated herein by reference. The term "Plans and Specifications" shall include nineteen (19) sheets of improvement plans titled "Improvement Plans for The Bungalows, Tract No. 3351" prepared by North Star Engineering of Modesto, California, seven (7) sheets of improvement plans entitled "Joint Trench Plans for The Bungalows, Tract 3351" prepared by Sunshine Design, and eight (8) sheets of improvement plans entitled "Landscaping Plans for The Bungalows, Tract 3351" prepared by KLA & Associates.
- G. Since the required improvements, as described in the Conditions and the Plans and Specifications, have not been completed, the Subdivider has requested to execute this Agreement as authorized by Government Code section 66462.
- H. On December 2, 2014, the City Council approved the Inspection Improvement Agreement for The Bungalows to allow the Subdivider to start the construction of the subdivision improvements, pursuant to Resolution 2014-197.

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

- 1. **SCOPE OF WORK.** The Subdivider shall perform, or cause to be performed, the Work described in the Plans and Specifications and the Conditions (hereinafter "Work"), to the satisfaction of the City Engineer. The Work shall be performed, and all materials and labor shall be provided, at the Subdivider's expense, in the manner described in the Plans and Specifications. No change shall be made to the Scope of Work unless authorized in writing by the City Engineer. The Subdivider may submit a written request to the City Engineer for a change in the Scope of Work, as required by Tracy Municipal Code section 12.36.060(f).
  - 1.1. It was determined that the Subdivider's obligation towards the repair and maintenance of the three (3) storm water treatment structures is estimated to be \$100,000 (hereinafter "Storm Water In-Lieu Fee). The Subdivider shall pay 50% of the Storm Water In-Lieu Fee, prior to the recordation of the Final Map and the remaining 50% of the Storm Water In-Lieu Fee prior to the issuance of the first building permit (not counting the model homes). If a public facility maintenance district is not formed at the time of final building inspection of the first residential house within the Final Map area, the City shall consider the payment of the Storm Water In-Lieu Fee to have satisfied the Subdivider's obligation towards the repair and maintenance of the three storm water treatment structures. The City shall not

**CITY OF TRACY – SUBDIVISION IMPROVEMENT AGREEMENT**  
**THE BUNGALOWS, TRACT 3351**  
**Page 3 of 11**

seek additional funds from the Subdivider, or its successors or assigns including but not limited to individual homeowners or a homeowners association, for maintenance or repair of the storm water treatment structures.

If a public facility maintenance district is formed prior to final building inspection of the first residential house within the Final Map area, the Subdivider shall participate and annex the Final Map area into the public facility maintenance district. The City shall return the unused portion of the cash deposit to the Subdivider within 15 working days from date of recordation of the assessment map.

If the City forms a public facility maintenance district after the final inspection of the first residential building within the Final Map area, the homeowners within the Final Map area will not be subject to any assessment that relates to the maintenance of the storm water treatment structures.

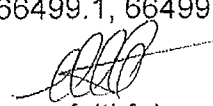
- 1.2. Prior to the recordation of the Final Map, the Subdivider shall pay the City cash in the amount of \$80,000 (Storm Drainage Outlet In-lieu Fee) for the cost of designing and installing two (2) storm water flow control gates at the Eastside Channel and all associated improvements that will be constructed by the City as part of the future Eastside Channel Upgrade Improvement project. Upon receipt of the payment for the Storm Drainage Outlet In-lieu Fee, the Subdivider's obligation towards installing the Project's permanent storm drainage connections at the Eastside Channel will be considered to have been fully satisfied. The Storm Drainage Outlet In-Lieu Fee includes design, construction, engineering inspection, and testing costs.
- 1.3. Condition C.8.3 required the Subdivider to pay the City \$386,745, for the cost of upgrading the channel bottom of a specific portion of the Eastside Channel with a concrete lining, prior to the approval of the Final Map. The Subdivider is entitled to receive a storm drainage fee credit of \$1,429 per Single Family Dwelling Unit (SFDU) at the time of issuance of building permit for each lot. Upon completion of the storm drainage channel upgrade improvements, the City shall reimburse the Subdivider the amount of \$204,547 which is a portion of the cost of the storm drainage channel upgrade improvements that are to be paid by projects within the South MacArthur Planning Area (SMPA) and other developments. The City shall make the reimbursement payment within 30 calendar days from the date of the City Council's acceptance of the storm drainage channel upgrade improvements.

**2. GRADING AND STREETS MAINTENANCE.**

- 2.1. Until all the Work is accepted by the City as complete, the Subdivider shall diligently perform the necessary maintenance of the entire Project site, including streets constructed within the Project, to the satisfaction of the City Engineer, at the Subdivider's own cost.



**CITY OF TRACY – SUBDIVISION IMPROVEMENT AGREEMENT**  
**THE BUNGALOWS, TRACT 3351**  
Page 4 of 11

- 2.2. All infrastructure constructed under this Subdivision Improvement Agreement will be maintained by the Subdivider until accepted by the City.
3. **SUBDIVIDER'S AUTHORIZED REPRESENTATIVE.** At all times during the progress of the Work, Subdivider shall have a competent foreman or superintendent (hereinafter "Authorized Representative") on site with authority to act on behalf of the Subdivider. The Subdivider shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. The Subdivider shall, at all times, keep the City Engineer informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work.
4. **LOCATION OF PERFORMANCE.** The Subdivider shall perform all Work at the locations and grades shown on the Plans and Specifications. The Subdivider shall acquire all at the Subdivider's sole cost and expense, any easement or right-of-way necessary for the performance of the Work, with no reimbursement from the City.
5. **IMPROVEMENT SECURITY.** Concurrently with the execution of this Agreement by the Subdivider, and prior to the commencement of any Work, the Subdivider shall furnish contract security, in a form authorized by the Subdivision Map Act (including Government Code sections 66499 *et seq.*) and Tracy Municipal Code section 12.36.080, in the following amounts:
- 5.1. **Faithful Performance** security in the amount of **\$1,876,260** in accordance with the cost estimates approved by City to secure faithful performance of this Agreement (until the date on which the City Council accepts the Work as complete) pursuant to Government Code section 66499.1, 66499.4, and 66499.9.
- 5.2. **Labor and Material** security in the amount of **\$1,876,260** in accordance with the cost estimates approved by City to secure payment by the Subdivider to laborers and materialmen (until the date on which claims are required to be made by laborers and materialmen) pursuant to Government Code sections 66499.2, 66499.3, 66499.4 and 66499.7(b).
- 5.3. **Warranty** security in the amount of **\$187,626** in accordance with the cost estimates approved by City to secure faithful performance of this Agreement (from the date on which the City Council accepts the Work as complete until one year thereafter) pursuant to Government Code section 66499.1, 66499.4, and 66499.9.
- 5.4. **Monumentation** security in the amount of **\$3,000** to secure faithful performance of setting monuments as described in the Final Map within one year from the date this of Agreement pursuant to Government Code section 66496. \$12,000 
6. **INSURANCE.** Concurrently with the execution of this Agreement by the Subdivider, and prior to the commencement of any Work, the Subdivider shall furnish evidence to the City that all of the following insurance requirements have been satisfied.

CITY OF TRACY – SUBDIVISION IMPROVEMENT AGREEMENT  
THE BUNGALOWS, TRACT 3351  
Page 5 of 11

- 6.1. **General.** The Subdivider shall, throughout the duration of this Agreement, maintain insurance to cover Subdivider, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
- 6.2. **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.
- 6.3. **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.
- 6.4. **Workers’ Compensation** coverage shall be maintained as required by the State of California.
- 6.5. **Endorsements.** Subdivider shall obtain endorsements to the automobile and commercial general liability with the following provisions:
  - 6.5.1. The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
  - 6.5.2. 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.
- 6.6. **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 canceled 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.
- 6.7. **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.
- 6.8. **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 Attorney.

**CITY OF TRACY – SUBDIVISION IMPROVEMENT AGREEMENT  
THE BUNGALOWS, TRACT 3351  
Page 6 of 11**

**6.9. Substitute Certificates.** No later than thirty calendar (30) days prior to the policy expiration date of any insurance policy required by this Agreement, Subdivider shall provide a substitute certificate of insurance.

**6.10. Subdivider's Obligation.** Maintenance of insurance by the Subdivider as specified in this Agreement shall in no way be interpreted as relieving the Subdivider of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Subdivider may carry, at its own expense, such additional insurance as it deems necessary.

**7. PERMITS, LICENSES, AND COMPLIANCE WITH LAW.** The Subdivider shall, at the Subdivider's expense, obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, the Subdivider shall obtain a City of Tracy Business License. The Subdivider shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.

**8. TIME OF PERFORMANCE.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. The Subdivider shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition, which purportedly caused the delay, and not later than the date on which performance is due.

**8.1. Commencement of Work.** No later than fifteen (15) days prior to the commencement of Work, the Subdivider shall provide written notice to the City Engineer of the date on which the Subdivider shall commence Work. The Subdivider shall not commence Work until after the notice required by this section is properly provided, and the Subdivider shall not commence Work prior to the date specified in the written notice.

**8.2. Schedule of Work.** Concurrently with the written notice of commencement of Work, the Subdivider shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect the Subdivider's prosecution of the Work.

**8.3. Completion of Work.** The Subdivider shall complete all Work by no later than three hundred sixty-five (365) days after the City's execution of this Agreement. If the Work is not completed and accepted by City Council by this date, City Engineer may grant an extension of time if a) the Subdivider submits a written request for extension at least ten (10) days prior to expiring date of completion, b) the City Engineer determines that Work is substantially complete and an extension is warranted, c) the Subdivider amends this agreement and provides bonds to cover the term of the Amendment, and d) the Subdivider pays all processing fees for such time extension.

**CITY OF TRACY – SUBDIVISION IMPROVEMENT AGREEMENT  
THE BUNGALOWS, TRACT 3351  
Page 7 of 11**

The Subdivider shall complete portion of the Work on MacArthur Drive and Pescadero Avenue including the construction of the right-turn lane and landscaping improvements along MacArthur Drive, and the modification of the traffic signal and installation of associated improvements at the intersection of MacArthur Drive and Pescadero Avenue as shown on the Improvement Plans, prior to the final inspection of the first residential building (excluding the model homes) within the Final Map area.

- 8.4. Reversion to Acreage.** In the event that the Subdivider fails to commence the Work prior to the date on which completion is due, the Subdivider shall, upon written request by the City, consent to the reversion to acreage of all real property described by the Final Map, and the Subdivider shall bear all costs thereof.
- 9. INSPECTION BY THE CITY.** In order to permit the City to inspect the Work, the Subdivider shall, at all times, provide to the City proper and safe access to the Project site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.
- 10. INSPECTION FEES.** Concurrently with the execution of this Agreement by the Subdivider, and prior to the commencement of any Work, the Subdivider shall pay the City Inspection Fees in the amount of three and one-half percent (3-1/2 %) of the estimated Project costs (as approved by the City Engineer). In the event that the City determines that the City's actual costs of inspecting the Work (including all costs and expenses of inspection, reviewing maps and plans, field checking, testing, and administrative and overhead costs of fifteen percent (15 %)) exceeds the amount of Inspection Fees paid by the Subdivider, the Subdivider shall pay the City the actual costs of inspecting the Work less Inspection Fees previously paid. In the event that the City requires an independent inspection, the Subdivider shall pay all such costs and provide a report to the City.

In the event that the City determines that the City's actual costs of inspecting the Work (including all costs and expenses of inspection, reviewing maps and plans, field checking, testing and administrative and overhead costs of fifteen (15%)) is less than the amount of Inspection Fees paid by the Subdivider, the City shall refund the Subdivider the cost difference between the Inspection Fees previously paid and the actual costs of inspecting the Work.

- 11. DEFAULT.**
- 11.1.** In the event that the Subdivider is in default of this Agreement, as defined in this section, the City Engineer shall provide written notice to the Subdivider and the Subdivider's surety (if any) in which the default is described.
- 11.2.** The Subdivider shall be in default of this Agreement if the City Engineer determines that any one of the following conditions exist:

**CITY OF TRACY – SUBDIVISION IMPROVEMENT AGREEMENT**  
**THE BUNGALOWS, TRACT 3351**  
**Page 8 of 11**

- 11.2.1. The Subdivider is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.
  - 11.2.2. The Subdivider abandons the Project site.
  - 11.2.3. The Subdivider fails to perform one or more requirements of this Agreement.
  - 11.2.4. The Subdivider fails to replace or repair any damage caused by Subdivider or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.
  - 11.2.5. The Subdivider violates any legal requirement related to the Work.
- 11.3. In the event that the Subdivider fails to cure the default within five (5) days, or provide adequate written assurance to the satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in the discretion of the City Engineer, take any or all of the following actions:
- 11.3.1. Cure the default and charge the Subdivider for the costs therefore, including administrative costs and interest in an amount equal to seven percent (7 %) per annum from the date of default.
  - 11.3.2. Demand the Subdivider to complete performance of the Work.
  - 11.3.3. Demand the Subdivider's surety (if any) to complete performance of the Work.
12. **ACCEPTANCE OF WORK.** Prior to acceptance of the Work by the City Council, the Subdivider shall be solely responsible for maintaining the quality of the Work, and maintaining safety at the Project site. The Subdivider's obligation to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.
13. **WARRANTY PERIOD.** The Subdivider shall warrant the quality of the Work, in accordance with the terms of the Plans and Specifications, for a period of one year after acceptance of the Work by the City Council. In the event that (during the one year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of the Subdivider under this Agreement, the Subdivider shall be in default.
14. **INDEPENDENT CONTRACTOR STATUS.** Subdivider is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Subdivider is not City's employee and

**CITY OF TRACY – SUBDIVISION IMPROVEMENT AGREEMENT  
THE BUNGALOWS, TRACT 3351  
Page 9 of 11**

Subdivider shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Subdivider.

**15. OWNERSHIP OF WORK.** All original documents prepared by Subdivider for this Agreement are the property of the City, and shall be given to the City at the completion of Subdivider's Work, or upon demand from the City. Prior to acceptance of the work, the Subdivider shall submit the as-built drawings in Auto-CAD format Release-14 or higher in a compact disc (CD).

**16. ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

**15. ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the Subdivider's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.

**16. NOTICES.**

**18.1.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To CITY:  
City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376  
Attn: City Engineer

To Subdivider:  
Woodside 05N, LP  
111 Woodmere Road, Suite 190  
Folsom, CA 95630  
Attn: Doug Goldsmith

**18.2.** Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated above, or (2) three working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

**19. MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

**20. WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

**CITY OF TRACY – SUBDIVISION IMPROVEMENT AGREEMENT  
THE BUNGALOWS, TRACT 3351  
Page 10 of 11**

21. **SEVERABILITY.** In the event, any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.
  
22. **JURISDICTION AND VENUE.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
  
23. **INDEMNIFICATION.** Subdivider shall indemnify, defend and hold harmless the City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, liabilities, costs and expenses (including court costs and attorney's fees) resulting from or arising out of the performance of the Work by Subdivider or Subdivider's agents, representatives, contractors, subcontractors or employees.
  
24. **ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the improvements to be constructed for this Project. This Agreement supersedes all prior negotiations, representations, or agreements.

Portion of this Page Intentionally Left Blank

**CITY OF TRACY – SUBDIVISION IMPROVEMENT AGREEMENT  
THE BUNGALOWS, TRACT 3351**

Page 11 of 11

**25. SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Subdivider and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto 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,  
a municipal corporation

SUBDIVIDER:  
WOODSIDE 05N, LP, a  
California limited partnership

\_\_\_\_\_  
By: Michael Maciel  
Title: MAYOR  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: Scott A. Hoisington  
Title: VICE PRESIDENT  
Date: 2/27/15

Attest:

\_\_\_\_\_  
By: Nora Pimentel  
Title: CITY CLERK  
Date: \_\_\_\_\_

Approved As To Form:

\_\_\_\_\_  
By: Dan Sodergren  
Title: CITY ATTORNEY  
Date: \_\_\_\_\_

01-121415cm



ORIGINAL

CITY OF TRACY  
SUBDIVISION IMPROVEMENT AGREEMENT  
THE BUNGALOWS, TRACT 3351

EXHIBIT A  
PAGE 1 OF 1

LEGAL DESCRIPTION OF THE PROPERTY

THAT CERTAIN REAL PROPERTY SITUATED IN THE STATE OF CALIFORNIA,  
COUNTY OF SAN JOAQUIN, CITY OF TRACY, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE RANCHO EL PESCADERO SUBDIVISION, MORE  
PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF LOT "B", AS SHOWN ON THE FINAL MAP FOR THE SUBDIVISION KNOWN  
AS "CALIFORNIA MIRAGE", FILED FOR RECORD ON DECEMBER 22, 1995, IN  
BOOK 32 OF MAPS AND PLATS, AT PAGE 71 OF THE SAN JOAQUIN COUNTY  
RECORDS.

CONTAINING APPROXIMATELY 9.44 ACRES

NOTHING FOLLOWS

02-111714cm

## CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGEMENT

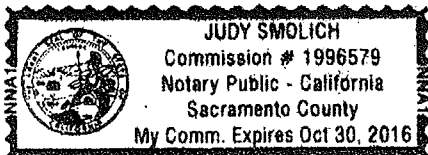
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

On February 27, 2015 before me, Judy Smolich, a Notary Public in and for said County and State personally appeared Scott A Hoisington who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



(Notary Seal)

WITNESS my hand and official seal.

*Judy Smolich*  
\_\_\_\_\_  
Signature of Notary Public

RESOLUTION 2014-078

APPROVING THE AMENDMENT TO THE 57-LOT THE CLASSICS VESTING TENTATIVE SUBDIVISION MAP AND AMENDMENT TO THE PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR A 9.42-ACRE SITE LOCATED AT THE NORTHWEST CORNER OF PESCADERO AVENUE AND MACARTHUR DRIVE APPLICATION NUMBERS TSM13-0006 AND PUD13-0006

WHEREAS, The subject property was annexed to the City of Tracy in 1957, and is an infill parcel, with a General Plan land use designation of Residential Medium, and

WHEREAS, The project will amend an existing Vesting Tentative Subdivision Map to create 57 single-family dwelling units on 19.42 gross acres, with an overall density of approximately 6.1 dwelling units per acre, which is consistent with the General Plan land use and density requirements, and

WHEREAS, The proposed map amendment is consistent with the General Plan, and Title 12, the Subdivision Ordinance, of the Tracy Municipal Code. The General Plan designation of the property is Residential Medium, which provides for a density range of 5.9 to 12 dwelling units per acre. The General Plan identifies that the characteristic housing for the Medium Density Residential categories includes single family homes, as well as other housing types, and

WHEREAS, The site is physically suitable for the type of development, as the site, once graded will be virtually flat and the characteristically high clay content of Tracy's soils may require amendments and treatment for proposed landscaping, foundations, and other surface and utility work. The physical qualities of the property make it suitable for residential development in accordance with City standards, and

WHEREAS, The site is physically suitable for the proposed density of development. The 6.1 dwelling units per acre proposed is consistent with the allowable density range prescribed by the General Plan. Traffic circulation is designed in accordance with City standards for the proposed density to ensure adequate traffic service levels are met, 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. An Environmental Impact Report was certified for the City's General Plan in 2006. Significant fish or wildlife or their habitat have not otherwise been identified on the site and no further environmental documentation is required, 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

EXHIBIT " B "  
Page 2 of 26

Resolution 2014-078  
Page 2

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, and

WHEREAS, the architectural renderings are in compliance with Tracy's Design Goals and Standards because they have incorporated significant variation between floor plans and elevations, located garage set back from the facades of the living space, and used architectural features on all four sides of each house, and

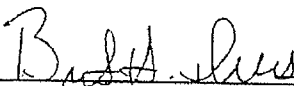
WHEREAS, The Planning Commission conducted a public hearing to review and consider the amendments to the Vesting Tentative Subdivision Map and Preliminary and Final Development Plan on March 26, 2014 and re-opened the public hearing for discussion on April 23, 2014 and recommended City Council approval;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the amendments to The Classics Vesting Tentative Subdivision Map and Preliminary and Final Development Plan, Application Numbers TSM13-0006 and PUD13-0006, subject to conditions stated in Exhibit "1", attached and made part hereof.

\*\*\*\*\*

The foregoing Resolution 2014-078 was adopted by the Tracy City Council on the 20<sup>th</sup> day of May, 2014, by the following vote:

AYES: COUNCIL MEMBERS: MACIEL, MANNE, RICKMAN, YOUNG, IVES  
NOES: COUNCIL MEMBERS: NONE  
ABSENT: COUNCIL MEMBERS: NONE  
ABSTAIN: COUNCIL MEMBERS: NONE

  
MAYOR

ATTEST:

  
CITY CLERK (INTERIM)

EXHIBIT " B "
Page 3 of 26

Exhibit 1 - Development Services Department Conditions of Approval

Conditions of Approval for
The Classics Vesting Tentative Subdivision Map and
Concept, Preliminary and Final Development Plan
Application Numbers 1-06-TSM, 9-06-D, and 1-06-R

- 1. These Conditions of Approval shall apply to the real property described as The Classics Vesting Tentative Subdivision Map Amendment, Application Numbers TSM13-0006, and PUD13-0006 (hereinafter "Project"), generally located on approximately 9.42 gross acres at the northwest corner of Pescadero Avenue and Mac Arthur Drive, Assessor's Parcel Number 213-350-61.
2. The following definitions shall apply to these Conditions of Approval:
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 Public Works Director, or the City Engineer to perform the duties set forth herein.
c. "City Regulations" means all written laws, rules, and policies established by the City, including those set forth in the City of Tracy General Plan, the Tracy Municipal Code, ordinances, resolutions, policies, procedures, and the City's Design Documents (including the Standard Plans, Standard Specifications, Design Standards, and relevant Public Facility Master Plans).
d. "Development Services Director" means the Development Services 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 Classics Vesting Tentative Subdivision Map and Concept, Preliminary and Final Development Plan Amendment, Application Numbers TSM13-0006, and PUD13-0006. The Conditions of Approval shall specifically include all Development Services Department Conditions set forth herein.
f. "Project" means the real property consisting of approximately 9.42 gross acres located at the northwest corner of Pescadero Avenue and Mac Arthur Drive, Assessor's Parcel Number 213-350-61.
g. "Subdivider" 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. "Subdivider" also means the Developer. The term "Subdivider" shall include all successors in interest.
3. 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 Subdivision

EXHIBIT " B "  
Page 4 of 26

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 2

Map Act (Government Code sections 66410, *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 15000, *et seq.*, "CEQA Guidelines").

4. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all City Regulations, including, but not limited to the Planned Unit Development Zone district.
5. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all mitigation measures identified in the General Plan Environmental Impact Report, dated July 20, 2006.
6. 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.
7. All final maps shall be consistent with the Amended Vesting Tentative Subdivision Map received by the Development and Engineering Services Department on March 20, 2014, unless modified herein.
8. 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. School mitigation requirements include payment of all special taxes associated with Community Facilities District 87-1 and the Sterling Act "school fee".
9. Prior to approval of the Final Map, the Developer shall obtain approval of all street names from the Traffic Division.
10. Prior to the issuance of building permits, the applicant shall pay all park in-lieu fees required for the project.
11. The floor plans and architectural elevations for the project shall be consistent with the plans received by the Development and Engineering Service Department on May 15, 2014.
12. The building setbacks, heights, lot coverage, and other descriptive regulations shall be consistent with The Classics Planned Unit Development Standards, received March 20, 2014.

EXHIBIT " B "  
Page 5 of 26

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 3

13. Unless otherwise noted within the Planned Unit Development Standards, the project shall comply with the regulations of the Medium Density Cluster Zone.
  14. Prior to the approval of the first Final Map, the Subdivider shall prepare a detailed landscape and irrigation plan consistent with City standards, including the Water Efficient Landscape Guidelines, to the Satisfaction of the Development and Engineering Services Director.
  15. Prior to the recordation of the first Final Map, the Subdivider shall show public utility easements necessary to accommodate the needs of local utility providers in accordance with City standards, to the satisfaction of the City Engineer.
- C. Engineering Division Conditions of Approval  
Contact: Criseldo S. Mina, P. E. C#54782 (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 following requirements, to the satisfaction of the City Engineer.

- C.1.1 The Subdivider shall satisfy the City Engineer that the design, development, or improvements relating to this subdivision are in compliance with the Tracy General Plan, Specific Plans, relevant ordinances, policies and standards in effect at the time of approval or conditional approval.

C.2 Final Map Application

No application for Final Map 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.2.1 The Subdivider has completed all the requirements set forth in this section, and Condition C.1, above.
- C.2.2 One (1) reproducible copy of the approved Tentative Subdivision Map for the Project within ten (10) days after Subdivider's receipt of notification of approval of the Tentative Subdivision Map by the City Council.
- C.2.3 The Final Map application, which includes tract boundary, right-of-way and lot closure calculations, updated subdivision map guarantee, preliminary title report (not more than 3 months old) and copies of recorded easements and/or deeds needed in the technical review of the Final Map, as required by the City Engineer.
- C.2.4 The Final Map prepared in accordance with the Subdivision Ordinance and the City Design Documents. Multiple final maps may be filed with prior approval of the proposed construction phasing.

EXHIBIT " B "  
Page 6 of 26

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 4

- C.2.5 The improvement plans for all improvements (on-site and off-site) required to serve the Project as described by the Final Map, in accordance with the Subdivision Ordinance, the City Design Documents, and these Conditions of Approval. The improvement plans shall specifically include, but not be limited to the following items:
    - C.2.5.1 All existing and proposed utilities. Indicate size and approximate location of the utilities.
    - C.2.5.2 All supporting calculations, specifications, and reports related to the design of the subdivision improvements.
    - C.2.5.3 Improvement plans shall be prepared on a 24" x 36" size polyester film (mylar) with the City approved title and signature blocks.
  - C.2.6 The Grading Plan in accordance with applicable sections of Tracy Municipal Code and City Regulations.
  - C.2.7 The landscape, irrigation, and masonry wall improvement plans including the engineering calculations.
  - C.2.8 Utility and joint-trench improvement plans as required in Condition C.7.3, below.
  - C.2.9 A detailed phasing plan, if applicable, showing construction limits and logical sequence of construction of street improvements and utilities. The phasing plan shall clearly identify the improvements to be constructed with each phase of the Project.
  - C.2.10 Traffic Control Plan signed and stamped by a Civil Engineer or Traffic Engineer licensed to practice in the State of California, if necessary, as determined by the City Engineer.
  - C.2.11 A construction cost estimate (Engineer's Estimate) for all required public facilities, prepared in accordance with City Regulations. Add 10% for construction contingencies.
  - C.2.12 Streets must be identified with street names that are approved by the Engineering Division and Fire Department.
  - C.2.13 Payment of applicable fees, reimbursements and engineering review fees including plan check, agreement processing, final map review, inspection and other fees required by these Conditions of Approval and City Regulations.
- C.3 Final Map Approval



The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 5

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.3.1 The Subdivider has completed all requirements set forth in Condition C.2, above.
- 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 final map shall include dedications or offers of dedication of all rights-of-way and temporary/construction and/or permanent easements that are required to serve the Project described by the Final Map, in accordance with City Regulations and these Conditions of Approval.
- C.3.4 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 control points to a minimum of two separate points adjacent to or within the Property described by the Final Map.
- C.3.5 Execution of all improvements agreements, posting of all improvement security, and providing documentation of insurance, as required by these Conditions of Approval.
- C.3.6 Payment of all fees and engineering review fees including agreement fees, map review fees, encroachment and grading permit and inspection fees, and testing fees required by these Conditions of Approval and City Regulations.
- C.3.7 Payment of habitat mitigation fee in accordance with the pay zone or fee category applicable for this Project, that are in effect at the time these fees are due to be collected and paid to appropriate agency(s), as required in Condition C.6.4, below.
- C.3.8 Name of the streets must be approved by Engineering Division and the City's Fire Department. Subdivider shall ensure that all street names shown on the Final Map meets their approval.
- C.3.9 The Subdivider shall provide documentation issued by the Director of Parks and Community Services Department, stating that Subdivider's obligation towards the dedication of a park site, and construction of a neighborhood/mini park and community park will be mitigated by paying the applicable development neighborhood/mini park and community park impact fees (a.k.a. capital in-lieu fees). The final development impact fees to be paid by the Subdivider shall be the Infill neighborhood/mini park and community park

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 6

development impact fees that are in effect at the time of issuance of the building permit.

C.3.10 The Subdivider has financially assured all public facilities required to serve the Project, including water and wastewater capacity. The City will make reasonable efforts to facilitate the necessary planning, but cannot and does not guarantee that sufficient public facilities, and the resulting capacity, will be available before expiration of the Tentative Subdivision Map for this Project (under Government Code Section 66452.6 and relevant City Regulations).

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 the 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 Payment of all fees, reimbursements and processing fees including all applicable Infill Properties development impact fees required by these Conditions of Approval and City Regulations.

C.4.3 Signed and stamped letter from the Project Geo-Technical Engineer certifying that grading work performed by the Subdivider within the Project meets the requirements of the Project Engineering Soils Reports and recommendations by the Project Geo-Technical Engineer and that the grading work was performed under the Project Geo-Technical Engineer's direct supervision, as required in Condition C.6.1, below.

C.4.4 Letter to the City acknowledging participation in a Benefit District as required by these Conditions of Approval. The letter shall state that the Subdivider agrees to pay the Project's proportional share of cost of public improvements as determined by the Benefit District and shall deliver the payment at the time specified by the City or in a written notice from the City requesting payment to be made.

C.5 Final Building Inspection

The City will not conduct a final building inspection on any of the buildings within the Project boundaries until the Subdivider provides documentation which demonstrates, to the satisfaction of the City Engineer, that:

C.5.1 The Subdivider has completed all requirements set forth in Condition C.4, above.

C.5.2 The Subdivider has completed construction of all public facilities (either temporary or permanent facilities, as approved by the City Engineer) required

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 7

to serve the building for which a final building inspection 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.6 Site Grading

The Subdivider shall prepare improvement plans, and design and construct the required improvements in accordance with the City Regulations, these Conditions of Approval, and the following requirements.

- C.6.1 A Grading Plan prepared by a Registered Civil Engineer and accompanied by Soils Engineering and Engineering Geology reports shall be submitted to the City with the Subdivision Improvement Plans. The reports shall provide recommendations regarding adequacy of sites to be developed by the proposed grading and also information relative to the stability of soils. Slope easements shall be recorded per City's requirements. Prior to the issuance of each building permit within the Property, the Subdivider shall submit a letter to the City's Building Division, signed and stamped by a Registered Geo-Technical Engineer, certifying that grading work including excavation, backfilling, compacting and backfilling work performed by the Subdivider, meets the requirements of the Project's Soils Report and was completed under the supervision of the Project's Geo-Technical Engineer (licensed to practice in the State of California) for that specific residential lot where a building permit is sought and being processed.
- C.6.2 All grading work within and around the Project shall require a Grading Permit. Erosion control measures shall be implemented in accordance with plans approved by the City Engineer for all grading work not completed before October 15. Improvement Plans shall designate all erosion control methods and materials to be employed.
- C.6.3 Prior to the issuance of the Grading Permit, the Subdivider shall submit three (3) sets of the Storm Water Pollution Prevention Plan (SWPPP) and a copy of the Notice of Intent (NOI) submitted to the State Water Quality Control Board (SWQCB) and any documentation or written approvals from the SWQCB. After the completion of the project, the Subdivider is responsible for filing the Notice of Termination (NOT) required by SWQCB. The Subdivider shall provide the City, a copy of the completed Notice of Termination. Cost of preparing the SWPPP, NOI and NOT including the filing fee of the NOI and NOT shall be paid by the Subdivider. The Subdivider shall provide the City with Waste Water Discharge Identification number, prior to the issuance of the grading permit. The Subdivider shall comply with all the requirements of the SWPPP and applicable Best Management Practices (BMPs) and the City's Storm Water Management Program.

EXHIBIT " B "  
Page 10 of 26

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 8

- C.6.4 This Project is within the boundaries of Land Category C and Pay Zone B and is classified as Agricultural Habitat Land/ Open Spaces per the San Joaquin County of Governments 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). The purpose of the SJMSCP development fees is to finance the SJMSCP program including preserving land acquisition, preserving enhancement, land management, and administration associated with land lost as a result of developments in the City and San Joaquin County areas. In accordance with the amended SJMSCP that was approved by the City Council on October 15, 2013, pursuant to Resolution No. 2013-164, the applicable fee for the identified pay zone is \$13,295 per acre. The Subdivider is required to submit the payment of the fees described in this section, in cash, prior to the issuance of the Grading Permit.
- C.6.5 Prior to the issuance of the Grading Permit, the Subdivider shall provide documentation of Project's compliance with the San Joaquin Valley Air Pollution Control District's (SJVAPCD) dust control requirements and program. Subdivider shall comply with the requirements of Regulation VIII, Fugitive PM10 Prohibitions of the San Joaquin Valley Air Pollution Control District, pertaining to Fugitive Dust Control at Construction Sites. Compliance to regulations related to Visible Dust Emissions, Soil Stabilization, Carryout and Track-out, Access and Haul Roads, Storage Piles and Materials, Dust Control Plans, Nuisances, Notification and Record Keeping are required. Subdivider is responsible for all costs associated with compliance to this requirement.
- C.6.6 If the grade differential at and along the boundary of the Property exceeds 12 inches, an engineered masonry wall or reinforced concrete wall will be required to retain soil. If the difference in elevation between two properties is less than 12 inches, a treated wooded board can be used. The retaining wall shall be installed within the Property if arrangement has not been made to install the retaining wall outside the Property. Prior to the issuance of the grading permit, the Subdivider shall submit documentation to the City to show that permission have been granted by owner(s) of affected property(s) or slope easement has been obtained, if applicable.

If the height of the retaining wall and the fence is more than 84 inches, the Subdivider shall obtain a building permit, and pay plan check, permit and inspection fees. Construction details of the wall and structural calculations (signed and stamped by a Structural Engineer) will be required as part of a complete submittal of a building permit application. Length of the retaining wall including the bottom and top of wall elevation must be shown on the Grading Plans.

EXHIBIT " B ."  
Page 11 of 26

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 9'

- C.6.7 The masonry wall located along the northern boundaries of the Project and the City's storm drainage channel and MacArthur Drive shall be at least 8-foot high and shall be constructed outside Caltrans (State of California). Subdivider shall submit improvement plans, structural calculations, construction detail and other documents as required by the City Engineer and the City's Building Division. Prior to starting construction of the masonry wall, the Subdivider shall obtain a building permit, and pay plan check and building permit and inspection fees.
- C.6.8 The existing masonry wall along the western boundary of the Project is located along the common boundary line of the Project and California Mirage Subdivision. The Subdivider or owner of record shall coordinate with the respective owner(s) of the portions of the masonry wall located within the California Mirage Subdivision on the maintenance and repair of the masonry wall.

The proposed masonry wall along the south and east sides of the Project shall be constructed outside City right-of-way on Pescadero Avenue and MacArthur Drive, respectively. The owner of record where the masonry wall is located will be responsible for repairing and maintaining the portion of the masonry that is located on their property. The City has no obligation to repair and maintain the masonry wall.

C.7 Street Improvements

The Subdivider shall prepare improvement plans, and design and construct the required improvements in accordance with the City Regulations, these Conditions of Approval, and the following requirements.

- C.7.1 The Subdivider shall comply with all the mitigation measures and recommendations identified in the traffic analysis dated January 18, 2008, prepared by TJKM Transportation Consultants entitled "City of Tracy – Queuing and Circulation Evaluation for The Classics Development" (Traffic Report). Cost of public improvements and cost of mitigating Project's traffic impact identified in the Traffic Report shall be paid by the Subdivider. Subdivider is responsible for completing the design, improvement plans, acquiring right-of-way, if necessary, and construction of the required public improvements. Subdivider shall also pay plan check, agreement processing, if applicable, and engineering inspection fees. The Traffic Report is on file with the office of the City Engineer and is available for review upon request.
- C.7.2 The Subdivider shall dedicate right-of-way, design, and construct all roadway improvements on MacArthur Drive that are required for the Project in conformance with the recommendations in the Traffic Report and in accordance with City Regulations, including an exclusive 12-foot wide right-turn lane on MacArthur Drive for westbound Pescadero Avenue and the construction of a "pork-chop" shape island at the northwest corner of MacArthur Drive and Pescadero Avenue (hereinafter "Offsite

EXHIBIT " B "  
Page 12 of 26

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 10

Improvements"). The radius for the corner curb and the "pork-chop" island shall be in accordance with the Traffic Report. The exclusive 12-foot wide right-turn lane shall be designed and constructed to have a storage length of 307 feet. Offsite improvements shall include, but not limited to, concrete curb, gutter, sidewalk, asphalt concrete pavement, asphalt concrete overlay with reinforcing fabric where street cuts were made (limits to be determined during improvement plan review), streetlight, fire hydrant, irrigation water service and meter, backflow prevention device, parkway landscaping with automatic irrigation system, masonry wall, pavement marking and striping, traffic sign, and other necessary improvements as determined by the City Engineer.

As part of the striping work on MacArthur Drive, the existing shared "through and right" MacArthur Drive southbound travel lane shall be re-striped to be a "through" travel lane. The geometric configuration of the intersection of Pescadero Avenue and MacArthur Drive, signing and striping of MacArthur Drive and Pescadero Avenue shall require approval from the City Engineer. After the completion of the Offsite Improvements, if it is necessary to adjust the signal timing of the existing traffic signal to achieve efficient operation of the traffic signal, the Subdivider shall coordinate the necessary work with the City's Traffic Section, and shall complete the necessary signal timing adjustment, prior to the acceptance of the Offsite Improvements by the City Council.

Offsite Improvements must be completed by the Subdivider, prior to the final inspection of the first building to be constructed or occupied within the Property. To guarantee completion of the Offsite Improvements within the specified time, the Subdivider shall commence construction of the Offsite Improvements, prior to the issuance of the first building permit.

- C.7.3 All public utilities including appurtenances such as vaults, electrical transformers, switches and service line(s) within the Property and along street frontages shall be undergrounded, to the satisfaction of the utility companies and the City Engineer and in accordance with the requirements of the Tracy Municipal Code. All existing overhead utilities and appurtenances on MacArthur Drive and Pescadero Drive including service lines to the Property and to the residential lots shall be undergrounded by the Subdivider. Undergrounding work performed by the Subdivider beyond Subdivider's responsibility shall be compensated in accordance with the requirements of the Tracy Municipal Code and these Conditions of Approval. All on site service connections shall be undergrounded. No above ground transformers, switches in cabinets or above-ground boxes will be allowed on Macarthur Drive and Pescadero Avenue.
- C.7.4 Subdivider shall install concrete sidewalk along the entire frontage of the Property on MacArthur Drive and Pescadero Avenue per City Regulations. A "No Pedestrian Beyond This Point" sign mounted on an inverted U shape

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 11

metal railing made of 1 ½" diameter galvanized iron pipes shall be installed at the north end of the sidewalk on MacArthur Drive. If necessary, the Subdivider shall obtain encroachment permit from Caltrans (State of California) and pay plan check, permit and inspection fees, for work that is necessary to be performed within Caltran's right-of-way.

- C.7.5 The Subdivider shall dedicate a 10-foot wide Public Utility Easement (PUE) along the residential lot frontages, or where appropriate, to the City, on the Final Map(s), for the installation, repair, operation, use and maintenance of public utilities such as electric, gas, telephone, cable TV and others. The Subdivider shall coordinate with PG&E or the respective owner(s) of the public utilities the design, installation and timely completion of the Project's electrical, gas, telephone and TV cable service connections. Joint trench or composite utility plans are part of the improvement plans submittal.
- C.7.6 All improvements between the final or existing face of curb and the ultimate right-of-way line (masonry wall) including landscaping with automatic irrigation system (irrigation system equipped with Motorola Controller) and masonry wall within the frontage of the Project on Pescadero Avenue and MacArthur Drive shall be designed and constructed in accordance with the City's Design Standards, Streetscape Design Guidelines (previously described as "Parks and Parkways Design Manual") and City Regulations. Size, type and spacing of plants shall be in accordance with City Regulations, or as approved by the City. Irrigation and Landscape Improvement Plans must be signed and stamped by a registered Landscape Architect.
- C.7.7 Paving work on Pescadero Avenue and MacArthur Drive will be allowed after all underground utilities are installed. No lane closure will be allowed without prior approval from the City Engineer. The Subdivider shall submit Traffic Control Plan prepared or signed by a Civil Engineer or Traffic Engineer licensed to practice in the State of California for all offsite work that require lane closure or interruption of traffic flow or as determined by the City Engineer.
- Paving design and construction shall be based on State of California "R" value method, using Traffic Indices approved by the City Engineer. The Subdivider may request the City Engineer to approve a change on the pavement structural section subject to an R value test by a City approved soil testing company.
- C.7.8 If cuts are required to install any utility connections on an existing street, the Subdivider will be required to install a 2-inch thick (uniform thickness) asphalt concrete overlay with reinforcing fabric 25 feet from each each side of the trench, for the full width of the street or up to the limits determined by the City Engineer. A 2-inch thick pavement-grind with uniform thickness across the entire width of the pavement or the areas to be applied with asphalt concrete

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 12

overlay. The elevation of the pavement crown and the existing pavement cross slope must remain.

- C.7.9 Valley gutters shall not be used to provide drainage across any through street or through intersections.
  - C.7.10 All traffic control devices, including stop signs, speed limit signs, street name signs, legends and striping shall be installed in accordance with a detailed striping and signing plan approved by the City Engineer. The Subdivider shall provide documentation that placement of fence on each lot meet the required horizontal sight distance.
  - C.7.11 Streetlights shall be installed in accordance with City Standards on a detailed street light plan and at locations approved by the City Engineer.
  - C.7.12 To provide the City access to the Project's storm drainage connection to the existing channel, Subdivider is required to design and construct a paved access road along the northern boundary of the Property between the existing storm drainage channel and the masonry wall. The width of the access road shall not be less than 12 feet and the asphalt concrete pavement shall be at least 3 inches thick over an 8 inches thick aggregate base. Cross slope of the entire pavement shall not be less than two percent (2%) and shall drain towards the existing storm drainage channel. Cost of these improvements is the responsibility of the Subdivider without any reimbursement from the City.
  - C.7.13 It has been determined that a portion of City's right-of-way on MacArthur Drive south of the I-205 Interstate Highway will not be needed for roadway purposes and it will be vacated. The amount and location of the excess right-of-way on MacArthur Drive is shown on the Tentative Subdivision Map. The Subdivider shall pay all costs associated with the vacation of the excess right-of-way on MacArthur Drive such as street-abandonment processing fees, document recording, and the cost of preliminary title report, legal description and plat map, and reproduction of recorded documents needed by the City. Within fifteen (15) calendar days from the date of City Council's approval of the Tentative Subdivision Map, the Subdivider shall submit a letter requesting the City to begin the street-vacation process. The required street-vacation processing fee must be submitted with the letter. The City shall make reasonable efforts subject to prompt to complete the street vacation process before the approval of the Final Map. The legal description and plat map and is required to be submitted as part of the Final Map application.
- C.8 Storm Drainage Facilities  
The Subdivider shall prepare improvement plans, and design and construct the required improvements in accordance with the City Regulations, these Conditions of Approval, and the following requirements.



The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 13

- C.8.1 The storm drainage system shall be designed in accordance with City Regulations. The runoff coefficient shall be consistent with the runoff coefficient adopted by the City Council. No reverse flow shall be permitted in any storm drain lines. All cul-de-sacs shall be designed in such a way that it will drain away from the cul-de-sac bulb towards the intersecting street. The use of bubble-up system within City's right-of-way on Pescadero Avenue and MacArthur Drive will not be permitted.
- C.8.2 Storm drainage drop-inlets shall be installed throughout the Project and where it is required, to ensure no valley gutter conditions exist on through-streets.
- C.8.3 The Technical Memorandum dated November 6, 2007 titled "The Classic/Pombo Square – Concrete Lining of Eastside Channel Bottom" prepared by City's consultant identified that the discharge point for storm water from the Project will be at the existing Eastside Channel located along the northern boundary of the Property. This storm drainage channel was constructed as part of the Community Facilities District 89-1 (CFD 89-1) improvements.

In accordance with the technical report, in order to control erosion at the bottom of the channel, the riprap bottom is required to be upgraded with an 8 inches thick concrete lining for a portion of the storm drainage channel for a total length of 1,067 feet at the location specified in the technical report. The west end of the proposed channel bottom concrete lining that the Subdivider is required to fund is approximately 290 feet away or upstream of the point of connection with the old storm drainage channel. This gap of 290 feet in length also requires concrete lining and will be included on the cost of upgrading the storm drainage channel.

In lieu of performing the work, the Subdivider is required to pay the estimated cost of the upgrade to the City's storm drainage channel as described above in the amount of \$386,745 (1357 lineal feet multiplied by \$285 per lineal foot), prior to the approval of the Final Map. Upon receipt of the cash payment, the City will consider that the Subdivider's obligation towards the upgrade improvements to the City's storm drainage channel to be have been fully satisfied. The City will be responsible for completing the upgrade improvements as part of a storm drainage capital improvement project.

Subdivider shall prepare improvement plans, specifications and cost estimates for City's review and approval. Design, Improvement Plans and Cost Estimates must be completed prior to the approval of the first Final Map. The improvements required under this section shall be constructed as part of the subdivision improvements and must be completed prior the issuance of the first building permit.

EXHIBIT " B "  
Page 16 of 26

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 14

C.9 Water System

The Subdivider shall prepare improvement plans, and design and construct the required improvements in accordance with City Regulations, these Conditions of Approval, and the following requirements.

- C.9.1 Prior to approval of any Final Map, the Subdivider shall demonstrate to the satisfaction of the City Engineer that water facilities (capacities at the plant and distribution or transmission lines) are adequate to meet project service demands on a permanent basis, and are, consistent with the City's Water Master Plan. Water analysis may be required to be performed by the City (or its consultant) to determine whether or not this condition has been satisfied for both interim and ultimate needs of the Project. Costs of such analysis by City (including cost of consultants) required to make such finding shall be the responsibility of the Subdivider.
- C.9.2 The Developer shall design and install the fire service line for the Project in accordance with City's Regulations and to the satisfaction of the City's Fire Department. Size, type, location and construction details of the fire service line shall be approved by the Fire Department.
- C.9.3 Water system facilities shall be designed and constructed in accordance with the recommendations of the water network analysis prepared by West Yost & Associates, and as approved by the City. The Subdivider shall comply with all the recommendations of the water network analysis described above, and if necessary, Subdivider shall design and construct the water facilities improvements required in the technical analysis, at the time specified in the technical analysis or as determined by the City.
- C.9.4 The Subdivider shall design and install fire hydrants at the spacing and locations approved by the Fire Department.
- C.9.5 Individual water meter for each lot will be required. The water meter shall be installed at the location approved by the City Engineer. The Subdivider shall submit improvement plans that show the construction detail of the individual water service connection for City's review and approval. Water meter shall be located outside driveway approach and driveway areas. Water service shall be 11 feet away from a sanitary sewer lateral.

C.10 Sanitary Sewer System

The Subdivider shall prepare improvement plans, and design and construct the required improvements in accordance with City Regulations, these Conditions of Approval, and the following requirements.

- C.10.1 Prior to approval of any Final Map, the Subdivider shall demonstrate to the satisfaction of the City Engineer that wastewater facilities (capacities at the treatment plant and collection or conveyance lines) are adequate to meet project service demands on a permanent basis, and are, consistent with the

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 15

City's Wastewater Master Plan. Wastewater analysis may be required to be performed by the City (or its consultant) to determine whether or not this condition has been satisfied for both interim and ultimate needs of the Project. Costs of such analysis by City (including cost of consultants) required to make such finding shall be the responsibility of the Subdivider.

- C.10.2 Sanitary sewer lines and manholes to serve this Project shall be designed and constructed in accordance with City Regulations. Sanitary sewer lines that are located outside City rights-of-way will be maintained by the owner of record where the sanitary sewer line(s) is located.
- C.10.3 The location and construction detail of the sewer service (with cleanout) shall be in accordance with City Regulations. Cleanout shall be located outside the driveway approach and driveway areas and shall be 11 feet away from a water service line.

C.11 Neighborhood/Mini and Community Park

- C.11.1 The Subdivider shall pay Infill Properties community and neighborhood/mini park development impact fees (a.k.a. capital in-lieu fees) in lieu of dedicating a park site and constructing a neighborhood/mini park within the Project. Subdivider shall pay the Infill Properties community and neighborhood/mini park development impact fees that are in effect at the time of issuance of the building permit.

C.12 Agreements, Improvement Plans, Improvement Security, and Bonds

- C.12.1 Improvement Plans - Complete improvement plans (drawn upon City furnished mylars), specifications and calculations shall be submitted to and approved by the City Engineer prior to the recordation of the Final Map.
- C.12.2 Inspection Improvement Agreement. Prior to 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.12.2.1 The Subdivider has submitted all required improvement plans in accordance with the requirements of City Regulations and these Conditions of Approval, and the City Engineer has approved the improvement plans.
  - C.12.2.2 The Subdivider has submitted a complete application for a final map which is served by the required public improvements, and the final map is in the process of being reviewed by the City.
  - C.12.2.3 The Subdivider has paid all required processing fees including plan check and inspection fees.

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 16

- C.12.2.4 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 City may not approve the proposed final map.
- C.12.2.5 The Subdivider posts all required improvement security and provides required evidence of insurance.
- C.12.3. 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.12.3.1 The Subdivider has submitted all required improvement plans in accordance with the requirements of City Regulations and these Conditions of Approval, and the City Engineer has approved the improvement plans.
  - C.12.3.2 The Subdivider has submitted a complete application for a final map, which is served by the required public improvements, and the City Engineer has approved the final map.
  - C.12.3.3 The Subdivider has paid all required processing fees including plan check and inspection fees.
  - C.12.3.4 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.12.3.5 The Subdivider posts all required improvement security and evidence of insurance.
- C.12.4 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: Faithful Performance (100% of the approved estimates of the construction costs of public facilities), Labor & Material (100% of the approved estimates of the construction costs of public facilities), and Warranty (10% of the approved estimates of the construction costs of public facilities).

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 17

- C.12.5 Insurance - For each Inspection Improvement Agreement and Subdivision Improvement Agreement, the Subdivider shall provide the City with evidence of insurance, as follows:
- C.12.5.1 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.12.5.2 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.12.5.3 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.12.5.4 Workers' Compensation coverage shall be maintained as required by the State of California.
  - C.12.5.5 Endorsements Subdivider shall obtain endorsements to the automobile and commercial general liability with the following provisions:
    - C.12.5.5.1 The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
    - C.12.5.5.2 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.12.5.6 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.

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 18

- C.12.5.7 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.12.5.8 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.12.5.9 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.12.5.10 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.12.6 Benefit District - The Subdivider may make a written request to the City for the formation of a Benefit District only if the written request is made prior to the approval of the final map for which the public facilities are required, and in accordance with these conditions of approval and City Regulations (including the Tracy Municipal Code).
- C.12.6.1 The written request shall include a description of all information relevant to the formation of the Benefit District, including the following: the public facility for which the Subdivider requests reimbursement; the estimated costs related to the construction of the public facility; the amount of capacity provided by the public facility; the amount of capacity in the public facility which is supplemental to the capacity required to serve the Project, including a detailed description of the method of allocating capacity; and the dollar amount for which the Subdivider requests reimbursement.
- C.12.6.2 Concurrently with the written request, the Subdivider (hereinafter, "Responsible Subdivider") shall pay the City a processing fee to cover all costs related to the formation of the Benefit District.
- C.12.6.3 After the City has received the required processing fee from the Responsible Subdivider, the City shall prepare a first draft Benefit District Study, and the City shall provide a written notice to all affected property owners, and the City shall accept written

comments on the first draft Benefit District Study for a period not less than 14 days. The written notice shall include, at a minimum, the following elements, each to the satisfaction of the City Engineer:

- C.12.6.3.1 A notice of the City's intention to form a Benefit District, and a request for written comments until a specified date not less than 14 days after the date the City sends the written notice.
- C.12.6.3.2 A notice of the date, time, and place of a public hearing before City Council to discuss approval of the Benefit District. The hearing will be scheduled no earlier than 14 days after the date the City sends the written notice.
- C.12.6.3.3 A description of the geographical area ("Benefit District Area") to be served by the Benefit District Public Facilities. This description shall include a description of the assumptions regarding amounts and locations of the proposed land uses and/or dwelling unit types within the Benefit District Area. The description shall include maps, graphs, tables, and narrative text, and a numbering system to identify each legal parcel within the Benefit District Area.
- C.12.6.3.4 A description of the Benefit District Public Facilities. This description shall include an outline of all essential elements of the Benefit District Study in a level of detail satisfactory to the City Engineer.
- C.12.6.3.5 An estimate of all costs related to the construction of the public facilities included in the Benefit District Area. The cost estimate shall include costs of design, construction, construction management, plan check, inspection, land acquisition, program implementation, and contingency.
- C.12.6.3.6 An identification of the owners of real property, other than the Responsible Subdivider, which benefit from the Benefit District Public Facility ("Benefiting Subdividers"). The identification of real property owners shall be based upon information from the County Assessors office, or any other more accurate evidence of property ownership provided to the City, as of the date of the notice of public hearing.

EXHIBIT " B "  
Page 22 of 26

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 20

- C.12.6.3.7 A quantification of the capacity (or benefit) created by the Benefit District Public Facilities, a description of how the Responsible Subdivider and the Benefiting Subdividers benefit from the Benefit District Public Facility, a description of the method of spreading the capacity to the Responsible Subdivider and the Benefiting Subdividers, a description of the method of spreading the cost of the Benefit District Public Facility to the Responsible Subdivider and the Benefiting Subdividers so that there is a reasonable relationship between each development project and the benefit received from the Benefit District Public Facility, and a quantification of the resulting Benefit District Fee.
- C.12.6.3.8 A statement that the full text of the final draft Benefit District Study is available for review, upon request, in the office of the City Engineer. The Benefit District Study shall include, at a minimum, the following items prepared to the satisfaction of the City Engineer, in accordance with City Regulations: a preliminary design based upon technical analysis of the Benefit District Public Facilities, and a precise plan line describing the location of the Benefit District Public Facilities. The precise plan line for any roadway shall take into consideration, and coordinate with, the alignment of all other required public facilities including water, wastewater, and storm drainage, as well as other private utilities.
- C.12.6.4 After the City Council approves the Benefit District Study, any final map for any Benefiting Subdivider shall not be approved by the City until the Benefiting Subdivider demonstrates to the satisfaction of the City Engineer that either: (1) the Benefiting Subdivider has entered into a written agreement with the Responsible Subdivider including essential terms in a form substantially the same as that set forth in Condition subsection f, below; or (2) the Benefiting Subdivider has paid a Benefit District Fee to the City (to be reimbursed to the Responsible Subdivider) for the Benefiting Subdividers' proportionate share of all costs related to construction of the Benefit District Public Facilities, in an amount established by the City Engineer (including the City's cost of administering the collection of the fee and reimbursement to the Responsible Subdivider) in accordance with the approved Benefit District Study.
- C.12.6.5 After the City Council approves the Benefit District Study, the Benefit District Fee shall be a fixed dollar amount, and the



EXHIBIT " B "  
Page 23 of 26

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 21

obligation to pay the Benefit District Fee shall be recorded against the real property of all Benefiting Subdividers. Provided, however, that the Responsible Subdivider or any Benefiting Subdivider may apply for an amendment to the Benefit District Study in the event that the subdivider establishes, to the satisfaction of the City Engineer, that actual construction costs vary from the estimated construction costs by more than 10 percent. The application for the amendment to the Benefit District Study shall include the payment of a processing fee by the Responsible Subdivider to cover the City's estimated costs of reviewing the application. A notice of the request for amendment shall be sent to all Benefiting Subdividers, including all relevant information and notice of public hearing as required by this condition. The amendment shall be subject to the approval of City Council at a duly noticed public hearing.

- C.12.6.6 The form of the agreement between the Benefiting Subdivider and the Responsible Subdivider, as referenced in Condition subsection d, above, shall contain, at a minimum, all of the following essential elements, to the satisfaction of the City Engineer: (a) Identifying information including: an identification of the legal names of all relevant parties, an identification of the Benefit District Public Facilities which is the subject of the agreement, an identification of the legal descriptions of all real property benefiting from the Benefit District Public Facilities, a quantification of the dollar amount paid by the Responsible Subdivider for the costs related to construction of the Benefit District Public Facilities, a quantification of the Benefiting Subdivider's proportionate share of the costs related to construction of the Benefit District Public Facilities; and (b) The Responsible Subdivider's signed waiver of rights to any reimbursement in language substantially the same as the following: "The Responsible Subdivider hereby acknowledges that it has received valuable consideration from the Benefiting Subdivider, in return for which the Responsible Subdivider hereby waives its right to request reimbursement for the Benefiting Subdivider's proportionate share of the costs related to construction of the Benefit District Public Facilities. The Responsible Subdivider shall indemnify, defend, and hold harmless the Benefiting Subdivider and the City of Tracy (including their officials, officers, agents, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of Benefiting Subdivider's failure to pay an in-lieu fee to the City for costs related to construction of the Benefit District Public Facilities."

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 22

- C.12.6.7 The City shall use reasonable efforts to administer the reimbursements from the Benefiting Subdivider to the Responsible Subdivider. The City shall make reimbursement payments to the Responsible Subdivider only to the extent that the City actually receives reimbursement payments from Benefiting Subdividers pursuant to Condition subsection d, above. Under no circumstances will the City be required to make any reimbursement payments to the Responsible Subdivider unless the City has actually received an equivalent sum in reimbursement payments from a Benefiting Subdivider. The City shall make no reimbursement payments to the Responsible Subdivider until after the construction of the Subregional Public Facilities are accepted as complete by the City Council. The right to receive reimbursement payments, if any, shall be personal to the Responsible Subdivider and shall not run with the land.
- C.12.6.8 The Responsible Subdivider shall maintain a file, for a minimum of five years after completion of construction of the Benefit District Public Facility, of all original documents related to: the construction of the Benefit District Public Facility, and all costs for which the Responsible Subdivider seeks reimbursement. The Responsible Subdivider shall provide access to the file to the City, upon reasonable prior notice from the City. After completion of construction of the Benefit District Public Facility, the Responsible Subdivider shall provide access to the file to any Benefiting Subdivider, upon reasonable prior notice from the Benefiting Subdivider.
- C.12.7 Within twenty (20) days of approval of the Final Map, the Subdivider shall provide the City one (1) set of reproducible duplicates on polyester film of all approved Improvement Plans for the development. Upon completion of the work, the City shall temporarily release the originals to the Subdivider for revisions to show the "As Built" configuration of all improvements. These Record Drawings shall be submitted within 30 days of Council acceptance of the public improvements and release or partial release of Bonds, etc. shall be contingent upon submittal of "As Built" originals.
- C.13 Fees and Deposits
- C.13.1 The Subdivider shall participate and pay required fees in accordance with the Infill Properties Finance Implementation Plan (FIP) and all amendments and update to the FIP, for public improvements including public buildings, parks, wastewater treatment plant upgrade, water treatment plant upgrade, roadways, and storm drainage as established by the City, except for water distribution system and wastewater conveyance which are paid through assessments as lien on the Property through Assessment District 87-3 and 84-1, respectively. The final development impact fees to be paid by the

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 23

Subdivider shall be the Infill Properties development impact fees that are in effect at the time of issuance of the building permit.

- C.13.2 The Subdivider shall participate in any applicable Benefit Districts and/or Assessment Districts as required by the City, and shall pay all formation and processing fees, as required by these Conditions of Approval.

C.14 City Release of Improvement Security

C.14.1 The City shall not release any improvement security for faithful performance until the Subdivider has completed all required public improvements and provided as-built plans, all to the satisfaction of the City Engineer, and subject to the final approval and acceptance by the City Council. Within twenty (20) days after the City's approval of the Final Map, the Subdivider shall provide the City 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 thirty calendar (30) days after City Council's acceptance of the public improvements.

C.14.2 The City shall not release any improvement security for labor and materials (also known as payment bond) until the statutory time has passed for claimants to file claims with the City on the security and until the As-Built Plans as listed above are submitted to the City in a satisfactory manner. Generally, claimants have six months after acceptance of improvements to file a claim.

C.15 Miscellaneous

C.15.1 Prior to approval of the Final Map, for each phase, the Subdivider shall coordinate with the City and the School Districts regarding pedestrian and vehicular access to schools from this Project, and submit to the City improvements plans showing pedestrian routes, facilities for bus transportation and bike paths for approval by the City. Subdivider shall design and construct "School Zone" improvements as determined by the City, all at the Subdivider's sole cost and expense, without any reimbursement from the City. Subdivider shall pay for the cost of design, preparation of improvement plans, engineering calculations, construction, plan checking and engineering inspection and all costs for complying with the requirements under this section.

C.15.2 The Property is within the boundaries of Assessment District 84-1 (Wastewater Facilities) and Assessment District 87-3 (Water Facilities). The Subdivider shall provide, for each assessment district in which subdivision is

The Classics Vesting Tentative Subdivision Map Amendment  
Application Nos. TSm13-0006 and PUD13-0006  
May 20, 2014  
Page 24

located, all preliminary assessment maps and payment of fees as required by the City Engineer, for proper segregation of said assessment district, prior to the approval of the Final Map by the City Council. The segregation of sewer and water assessment and recordation of sewer and water assessment maps including the notice of amending water and sewer assessments must be recorded at the San Joaquin County Recorder must be completed, prior to the issuance of building permit.

- C.15.4 The Subdivider shall coordinate with the Tracy United States Postal Service (USPS) Post Master for location of, and installation (by Subdivider) of, cluster type mailbox units within the Project. Design and construction details of the cluster mailbox shall be in accordance with USPS requirements and these Conditions of Approval. Concrete pad for the mailbox shall extend from the back of the sidewalk to the street right-of-way line or property line of the adjacent residential lot where the mailbox is installed. Subdivider shall submit an improvement plans showing the location and construction details of all the cluster mailbox(s) that will be installed within the Project. Cluster mailbox shall be at least 8 feet away from a fire hydrant or streetlight.
- C.15.7 All existing on-site wells shall be abandoned in accordance with the City and San Joaquin County requirements. All costs associated with the abandonment of existing wells including the cost of permits, if required, shall be the responsibility of the Subdivider. The Subdivider shall provide the City documentation or copy of permit issued by the San Joaquin County, approving the removal of destruction of existing well, if applicable, prior to the issuance of the Grading Permit.
- C.15.8 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. These Conditions of Approval does not preclude the City from requesting additional revisions and requirements to the Improvement Plans, prior to the City Engineer's signature and approval of the proposed improvement plans, if the City deems it necessary. The Subdivider shall bear all cost for the inclusion, design, and implementations of such additions or revisions and requirements, without reimbursement or any payment from the City.

AGENDA ITEM 1.D

REQUEST

**AWARD A CONSTRUCTION CONTRACT TO THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER FOR THE CORRAL HOLLOW/KAVANAGH STORM WATER PUMP STATION REHABILITATION - CIP 76065, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT**

EXECUTIVE SUMMARY

Award of this construction contract will facilitate construction of the Corral Hollow/Kavanagh Storm Water Pump Station Rehabilitation. Staff is recommending City Council award a construction contract to the lowest responsive responsible bidder.

DISCUSSION

The storm water pump station located at the southeast intersection of Corral Hollow Road and Kavanagh Avenue was installed in 1989. This pump station consists of two 8 inch diameter 1,350 gpm main pumps and two 4 inch diameter 480 gpm low flow pumps. The project involves replacing the pumps and check valves which have exceeded their 20 year service life.

Due to the construction market fluctuation and unpredictability of bids, the project was designed to have base bid and additive bid items. Base bid items include replacing one main pump and one low flow pump. Additive bid items include replacing one additional main and low flow pump and two check valves.

Plans and specifications for this project were prepared in-house. The project was advertised for construction bids on January 16, and January 23, 2015. A total of three bids were received on February 18, 2015, as follows:

<u>Contractors</u>	<u>Total Base Bid</u>	Add Bid Item A1	Add Bid Item A2	Add Bid Item A3	Add Bid Item A4
HOWK SYSTEMS, MODESTO	\$46,100	\$14,900	\$31,200	\$13,850	\$7,500
CONCO WEST, MANTECA	\$51,300	\$16,000	\$28,000	\$14,500	\$2,900
GREGORY EQUIPMENT, REDDING	\$68,687	\$14,853	\$25,019	\$6,246	\$3,546

The lowest monetary bid is from Howk Systems, of Modesto, California, in the amount of \$46,100. The bid analysis indicates that the bid is responsive and the bidder is responsible and has completed similar projects for the City. Sufficient funds are available to also award Additive Bid Items A2 (main pump) and A4 (check valve) for a total of \$84,800. The bid schedule states that the contract will be awarded on the basis of the Total Base Bid Amount without consideration of the Additive Bid Items.

Status of project funding is as follows:

Construction Bid Amount	\$84,800
Contingency (10%)	\$ 8,480
Construction Management & Inspection	\$ 2,000
Citywide Project Management	\$ 3,000
Total Project Cost	\$98,280
<b>Available Budget</b>	<b>\$98,920</b>

Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by Council. The recommended contingency amount for this project is \$8,480.

#### STRATEGIC PLAN

The agenda item is a routine operational item and is not related to the Council's Strategic Plans.

#### FISCAL IMPACT

There will be no impact to the General Fund. This is an approved FY 2014/15 Capital Improvement Program project funded through the Storm Water Utilities Enterprise Fund.

#### RECOMMENDATION

Staff recommends that City Council, by resolution, award a construction contract to Howk Systems of Modesto, California in the amount of \$84,800 (which includes Total Base Bid and Additive Items A2 and A4) for the Corral Hollow/Kavanagh Storm Drain Lift Station Rehabilitation, authorize the City Manager to approve change orders up to the specified project contingency amount of \$8,480, if needed, and authorize the Mayor to execute the construction contract.

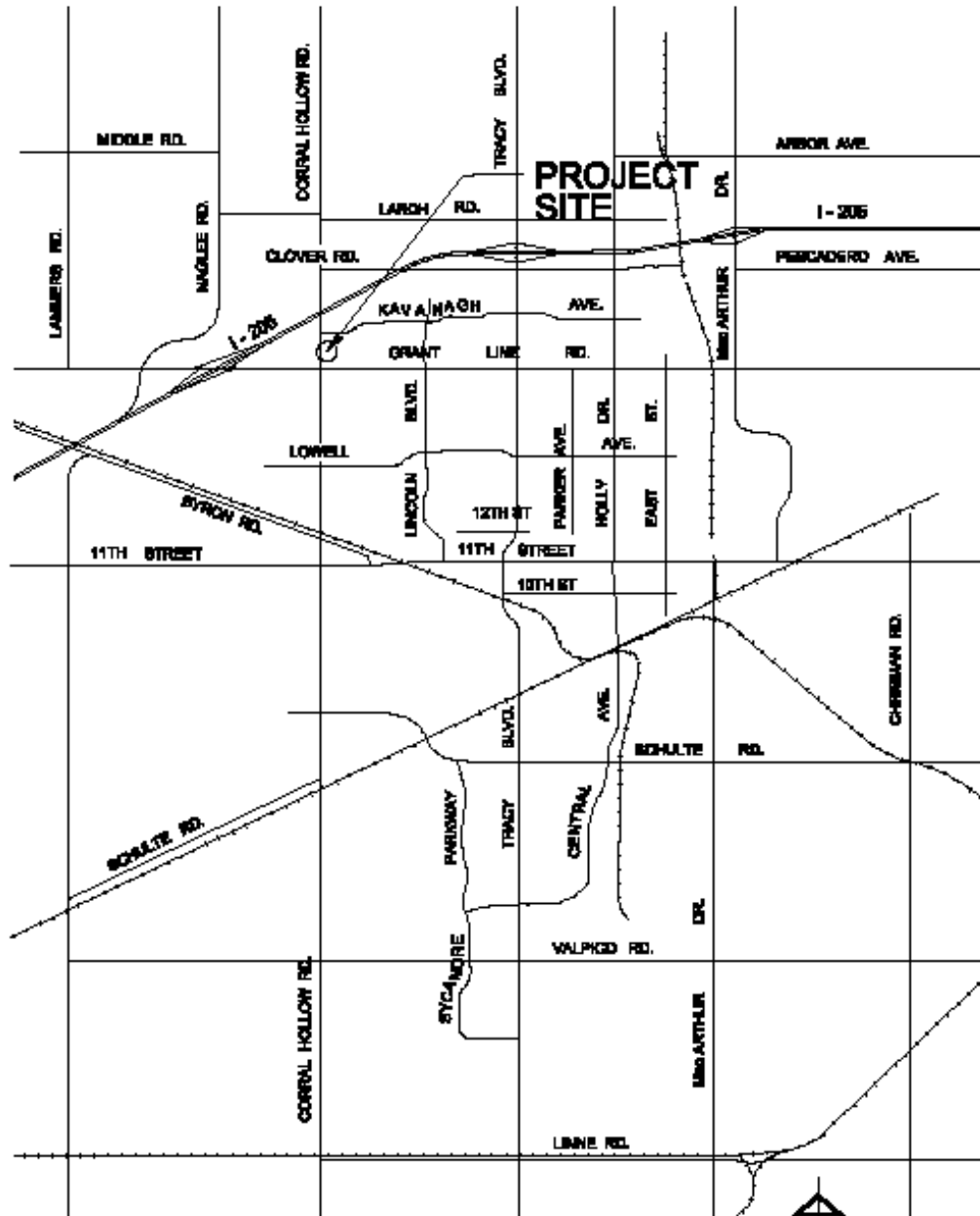
Prepared by: Binh Nguyen, Associate Civil Engineer  
Zabih Zaca, Senior Civil Engineer

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

Approved by: Troy Brown, City Manager

#### ATTACHMENTS

Attachment A - Vicinity Map



**VICINITY MAP**

**CORRAL HOLLOW/KAVANAGH SDLS** N.T.S.

RESOLUTION 2015 - \_\_\_\_\_

AWARDING A CONSTRUCTION CONTRACT TO HOWK SYSTEMS OF MODESTO, CALIFORNIA, FOR THE CORRAL HOLLOW/KAVANAGH STORM WATER PUMP STATION REHABILITATION - CIP 76065, AUTHORIZING A CONTINGENCY AMOUNT OF \$8,480 AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

WHEREAS, This project is part of the City's ongoing commitment to maintain and improve public infrastructure, and

WHEREAS, The Corral Hollow/Kavanagh Storm Water Pump Station has been in service since 1989, and in need of rehabilitation, and

WHEREAS, The project was advertised for competitive bids on January 16 and January 23, 2015; three bids were received and publicly opened on February 18, 2015, and

WHEREAS, Howk Systems, of Modesto, California, was the lowest monetary bidder; bid analysis indicates their bid is responsive and the bidder is responsible, and

WHEREAS, Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council, and

WHEREAS, The recommended contingency amount for this project is \$8,480, and

WHEREAS, This is an approved Capital Improvement Project. The General Fund is not contributing toward this project;

NOW, THEREFORE BE IT RESOLVED, That City Council awards a construction contract to Howk Systems, of Modesto, for the Corral Hollow/Kavanagh Storm Water Pump Station Rehabilitation - CIP 76065, in the amount of \$84,800, authorizes a contingency amount of \$8,480, and authorizes the Mayor to execute the construction contract.

\*\*\*\*\*

The foregoing Resolution 2015 - \_\_\_\_\_ was adopted by the Tracy City Council on the 17th day of March 2015, 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

**ACCEPTANCE OF THE WIDENING OF GRANT LINE ROAD EAST OF MACARTHUR DRIVE TO THE EASTERN CITY LIMIT – CIPS 73048, 75046, 76028, 76036, 72025, 72087 AND 72088, AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION AND AUTHORIZATION FOR THE CITY ENGINEER TO RELEASE THE BONDS AND RETENTION PAYMENT**

EXECUTIVE SUMMARY

The contractor has completed construction of the Widening of Grant Line Road east of MacArthur Drive to the eastern City limit - CIPS 73048, 75046, 76028, 76036, 72025, 72087 and 72088, in accordance with plans, specifications, and contract documents. Project costs are within the available budget. The project widened Grant Line Road from two lanes to four lanes up to Chrisman Road and six lanes east of Chrisman Road to the City limits in the NEI area.

DISCUSSION

On April 8, 2013, City Council awarded a construction contract to Knife River Construction of Stockton, California, for the base bid and additive bid alternates "A" and "C" in the amount of \$12,748,420 for the Widening of Grant Line Road east of MacArthur Drive to the eastern City limits CIPS 73048, 75046, 76028, 76036, 72025, 72087 and 72088.

The scope of work included widening and reconstruction of Grant Line Road from two lanes to four lanes up to Chrisman Road and six lanes east of Chrisman Road to the City limits. These improvements included demolition of existing roadway and utilities to accommodate widening and reconstruction of new roadway segment with curb, gutter sidewalk, Median Island, street lights, utilities, traffic signals, landscaping, signing and striping, installation of storm drainage system, waterlines, sewer system and other utilities. The project also included installation of a sewer lift station, irrigation pump station and its associated equipment and appurtenances. In addition, the project consisted of installation of two new traffic signals, modification of two existing traffic signals; and a fiber optic interconnect system that connects the east city limit traffic signal to the signal at Mac Arthur Drive. The project also included construction of a storm drainage channel and culverts to provide the storm drainage for the improved street and development in the NEI area.

The project site is home for several underground service lines including a Chevron high pressure petroleum line, PG&E gas transmission line, PG&E distribution line, AT&T communication trunk line, AT&T fiber optic line, tile drain lines along with the City's main water transmission line and a storm drainage collection line. Most of these services were installed at shallow depths decades ago when the street was in San Joaquin County. The shallow depth of these services lines and the lack of as-built information made the execution of the project construction difficult and posed numerous challenges during construction.

Thirteen change orders were issued totaling \$1,410,913.74 to avoid utility conflicts, mitigate unforeseen conditions, or additional work to complete the project.

Out of 13 change orders, 7 change orders in the amount of \$857,649.04 involved relocation and protection of PG&E, Chevron and AT&T lines. The City coordinated the scope of work with those utility companies and required them to pay the cost. This amount has already been paid to the City by these utility companies. During construction it was discovered that existing PG&E gas lines, Chevron high pressure petroleum line and AT&T trunk lines were shallow and in conflict with either the structural section of the street or with new water, storm and sewer lines. Protection and relocation of the existing utilities were the responsibility of various utility companies under the franchise agreement.

To avoid any delay claims PG&E, Chevron and AT&T authorized the City in writing to relocate and protect these utilities using the City's contractor as a change order. The utility companies agreed to reimburse the City for the cost of the additional work. The additional work was engineered and supervised by PG&E and Chevron to ensure the required protection of their utilities. Staff invoiced seven change orders in the amount of \$857,649.04 and the City has received payment accordingly.

The remaining six change orders were for extra work needed to address unforeseen construction including stabilize the existing subgrade, and restore existing improvements fronting the businesses which was damaged during construction and additional work due to unforeseen conditions. To avoid delays and claims, some of this additional work was completed on a time and material basis and the remaining work was pre-approved through change orders in accordance with the contract documents.

Based upon the reimbursement cost from Chevron and PG&E, the net cost for the City's share of change orders is \$553,264.70. The approved contingency amount for the project was \$1,500,000 and the construction change orders were limited to \$553,264.70.

The project construction contract unit prices are based on estimated engineering quantities. Actual payment is based on field measured quantities installed by the contractor. According to the City's inspection records, actual field measured quantities are less than the contract quantities in the amount of \$266,110.38. These quantities were deducted in accordance with the bid unit prices of the contract and are listed as under run of quantities.

Status of budget and project costs is as follows:

A.	Construction Contract Amount	\$ 12,748,420.00
B.	Approved Change orders	\$ 1,410,913.74
C.	Change order cost Reimbursed to City	-\$ 857,649.04
D.	Under run of Quantities	-\$ 266,110.38
E.	ROW Acquisition	\$ 4,287,349.00
F.	Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 912,187.00
G.	Project Management Charges (Estimated)	\$ 617,355.00
	Total Project Costs	\$ 18,852,465.32
	Budgeted Amount	\$21,085,292.00

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

#### STRATEGIC PLAN

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

#### FISCAL IMPACT

This project is funded from the Northeast Industrial Area development impact fees. CIPS 73048, 75046, 76028, 76036, 72025, 72087 and 72088 are approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund. This project also involved acquisition of additional right of ways from the fronting properties. Full property take was made from the property located at the northwest corner of Paradise Road and Grant Line Road intersection. Approximately \$35,000 will be required to remove the existing structure from the site including grading and filling of the septic tanks and leach field lines on the remaining unused property. This work is essential to remove the blighted conditions. The unused portion of the property is owned by the City and can be sold in the future. All remaining unused funds will be transferred back into Fund 351- NE Industrial Area Phase1.

#### RECOMMENDATION

That City Council, by resolution, accept the Widening of Grant Line Road east of MacArthur Drive to the eastern City limit - CIPS 73048, 75046, 76028, 76036, 72025, 72087 and 72088, as completed by Knife River Construction of Stockton, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

Prepared by: Paul Verma, Senior Civil Engineer

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

Approved by: Troy Brown, City Manager

RESOLUTION 2015-\_\_\_\_\_

ACCEPTING THE WIDENING OF GRANT LINE ROAD EAST OF MACARTHUR DRIVE TO THE EASTERN CITY LIMIT – CIPS 73048, 75046, 76028, 76036, 72025, 72087 AND 72088, AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION AND AUTHORIZING THE CITY ENGINEER TO RELEASE THE BONDS AND RETENTION PAYMENT

WHEREAS, On April 8, 2013, City Council awarded a construction contract to Knife River Construction of Stockton, California, for the base bid and additive bid alternates “A” and “C” in the amount of \$12,748,420 for the Widening of Grant Line Road east of MacArthur Drive to the eastern City limits CIPS 73048, 75046, 76028, 76036, 72025, 72087 and 72088, and

WHEREAS, The scope of work included widening and reconstruction of existing Grant Line Road from two lanes to four lanes up to Chrisman Road and six lanes east of Chrisman Road to the City limits, and

WHEREAS, The project site is home for several underground service lines including a Chevron high pressure petroleum line, PG&E gas transmission line, PG&E distribution line, AT&T communication trunk line, AT&T fiber optic line, tile drain lines along with the City’s main water transmission line and a storm drainage collection line. The shallow depth of these pipes and the lack of as-built information made the execution of the project construction difficult and posed numerous challenges during construction, and

WHEREAS, Thirteen change orders were issued to avoid utility conflicts, mitigate unforeseen conditions, or construct additional work in the amount of \$1,410,913.74, and

WHEREAS, Out of thirteen change orders, seven change orders in the amount of \$857,649.04 were requested and paid by the utility companies (PG&E, Chevron and AT&T), and

WHEREAS, According to the City’s inspection records, actual field measurement quantities are less than the contract quantities in the amount of \$266,110.38, and

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

A.	Construction Contract Amount	\$12,748,420.00
B.	Approved Change orders	\$ 1,410,913.74
C.	Change order cost Reimbursed to City	- (\$ 857,649.04)
D.	Under run of Quantities	- (\$ 266,110.38)
E.	ROW Acquisition	\$ 4,287,349.00
F.	Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 912,187.00
G.	Project Management Charges (Estimated)	\$ 617,355.00
	Total Project Costs	\$18,852,465.32
	Budgeted Amount	\$21,085,292.00

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

WHEREAS, CIPS 73048, 75046, 76028, 76036, 72025, 72087 and 72088 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 Fund 351- NEI Industrial Area Phase1;

NOW, THEREFORE, BE IT RESOLVED, That City Council accepts the Widening of Grant Line Road east of MacArthur Drive to the eastern City limit - CIPS 73048, 75046, 76028, 76036, 72025, 72087 and 72088, as completed by Knife River Construction of Stockton, and authorizes the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

\*\*\*\*\*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the 17<sup>th</sup> day of March, 2015, 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

**APPROVE THE SECOND AMENDMENT TO THE OFF-SITE IMPROVEMENT AGREEMENT WITH TRACY JOINT UNIFIED SCHOOL DISTRICT RELATING TO KIMBALL HIGH SCHOOL, THE FIRST AMENDMENT TO THE DEFERRED IMPROVEMENT AGREEMENT WITH TRACY JOINT UNIFIED SCHOOL DISTRICT RELATING TO KIMBALL HIGH SCHOOL, AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT, AND AUTHORIZE THE CITY CLERK TO FILE THE AMENDMENTS WITH THE SAN JOAQUIN COUNTY RECORDER**

EXECUTIVE SUMMARY

Approval of these amendments are necessary to reflect that the Tracy Joint Unified School District ("School District") has fully satisfied its obligations to complete various street and utility improvements related to Kimball High School. The amendments also release the School District from obligations to provide improvement security.

DISCUSSION

School District has constructed a high school facility known as Kimball High School on a 52-acre parcel located outside the City boundaries on the east side of Lammers Road and approximately 1300 feet south of Eleventh Street. The school facility comprised of classrooms, laboratories, teaching stations, performing arts theatre, a gymnasium, shower/locker rooms, food service areas, a library/learning resource center, administration and outdoor recreational facilities. The City agreed to allow the School District connections to the City's water distribution and sewer collection systems on Lammers Road.

As a condition of approving the encroachment permit for water and sewer connections on Lammers Road, the School District was required to construct certain interim offsite improvements that are necessary to serve the new school building facility. The improvements include, but not limited to, asphalt concrete paving, signing, striping, the extension of a 20-inch diameter water main with fire hydrants on Lammers Road from Eleventh Street to Jaguar Run, a traffic signal at the main access to the school site, and a temporary asphalt concrete walkway along the east side of Lammers Road for pedestrian connection from Eleventh Street to the school site.

On March 18, 2008, pursuant to Resolution 2008-036, the School District entered into an improvement agreement (Offsite Improvement Agreement or OIA) with the City and posted improvement security (surety bonds), to guarantee completion of the interim offsite improvements described above. The City Council also authorized an improvement agreement (Deferred Improvement or DIA) with the School District, to allow deferment of completion of the landscaping improvements in front of the school site on Lammers Road until the occupancy of the new school building. The DIA was recorded on May 21, 2009, as Document Number 2009-076853 of the San Joaquin County Records.

The alignment plan of Lammers Road from Eleventh Street to Redbridge Drive that was adopted by the City Council on June 19, 2007, pursuant to Resolution 2007-137, set the precise location of the centerline of Lammers Road, and also identified the amount of right of way needed from each of the properties that are located along Lammers Road including Kimball High School. The School District conveyed the right-of-way needed for the widening of Lammers Road to its ultimate section per the approved alignment plan for their frontage on Lammers Road under a Quitclaim Deed that was recorded on November 20, 2013 as Document Number 2013-144582 with San Joaquin County Records.

The developers of the Tracy Gateway Business Park - Phase 1, signed a Subdivision Improvement Agreement (SIA) with the City, and posted surety bonds to guarantee construction of full street improvements on Lammers Road which included the frontage of Kimball High School. The street improvements on Lammers Road included a four-way traffic signal, the 20-inch water distribution main, and the improvements behind the curb, such as sidewalk, street light, fire hydrant, and public landscaping with irrigation system at the ultimate location per the approved alignment plan. The SIA was approved by the City Council on July 20, 2010, pursuant to Resolution 2010-121. The street improvements on Lammers Road were completed by the developers of the Tracy Gateway Business Park - Phase 1, and are now under required landscape maintenance period prior to City Council's acceptance.

At the request of the School District, the City Council approved an amendment to the Offsite Improvement Agreement for Kimball High School (First Amendment to the OIA) to remove the School District's obligation to construct the 20-inch water distribution main on Lammers Road from their OIA since this water line improvement is already covered under the SIA for Tracy Gateway Business Park – Phase 1. If the developers of Tracy Gateway Business Park – Phase 1 did not complete the work, the School District is obligated under their agreements with the City to complete all the improvements on Lammers Road that are required of Kimball High School.

Now that the full street improvements on Lammers Road are completed by the developers of Tracy Gateway Business Park, Phase 1, all the improvements on Lammers Road that are required of Kimball High School under the OIA, the First Amendment to the OIA, and DIA are no longer needed.

Therefore, approval of these amendments are necessary to reflect that the Tracy Joint Unified School District ("School District") has fully satisfied its obligations to complete various street and utility improvements related to Kimball High School. The amendments also release the School District from obligations to provide improvement security.

#### FISCAL IMPACT

There will be no impact to the General Fund. The School District will pay the City for the cost of processing this agreement.

STRATEGIC PLAN

This agenda item is a routine operational item, and is not related to the City Council's Strategic Plans.

RECOMMENDATION

That City Council, by resolution, approve the Second Amendment to the Off-Site Improvement Agreement with the School District relating to Kimball High School, the First Amendment to the Deferred Improvement Agreement with the School District relating to Kimball High School, authorize the Mayor to execute the Amendments, and further authorize the City Clerk to record the Amendments with the San Joaquin County Recorder.

Prepared by: Criseldo Mina, Senior Civil Engineer

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

Approved by: Troy Brown, City Manager

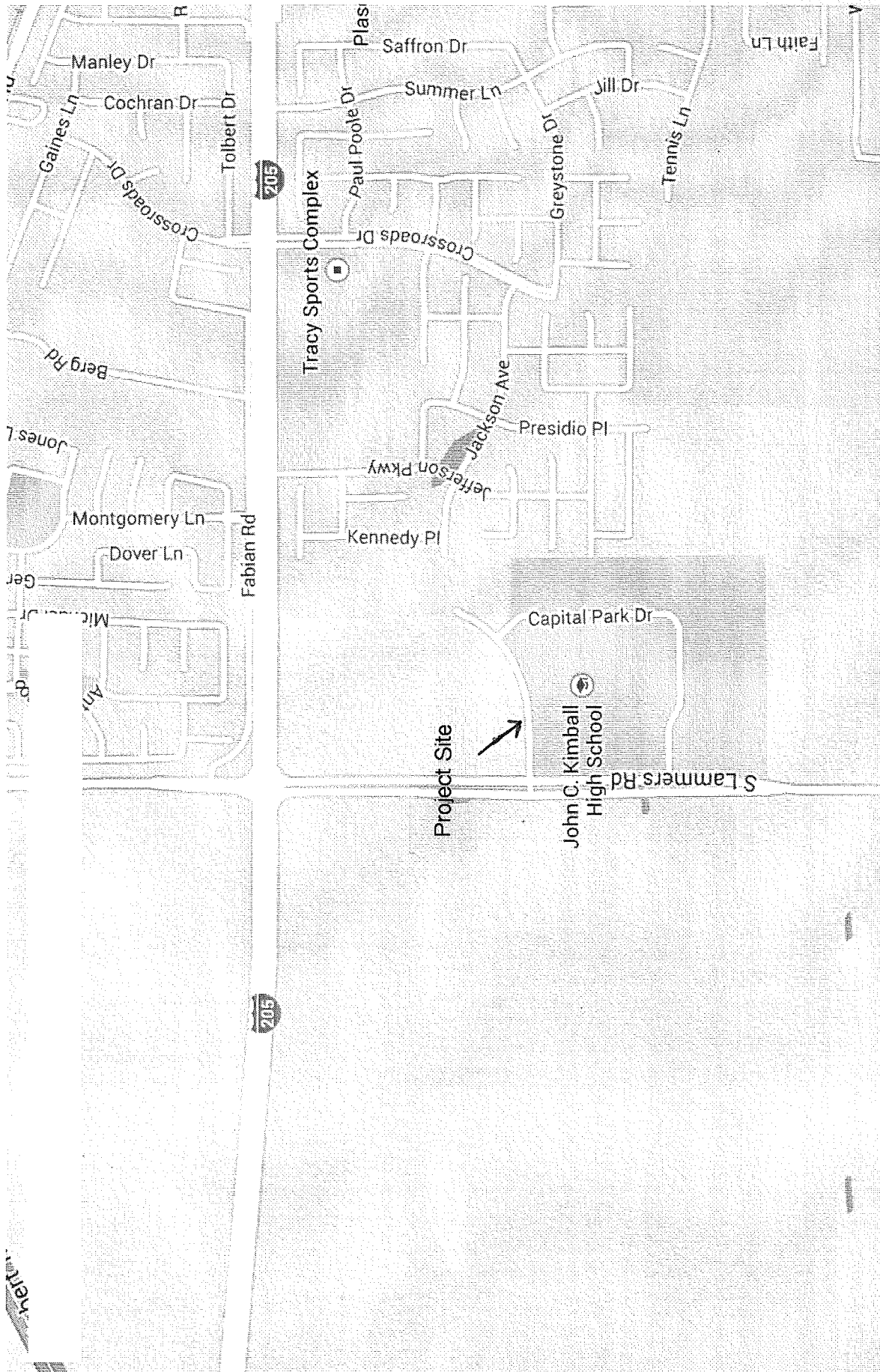
Attachment A- Vicinity Map

Attachment B – Second Amendment to the Offsite Improvement Agreement

Attachment C – First Amendment to the Deferred Improvement Agreement



# ATTACHMENT A



**CITY OF TRACY  
SECOND AMENDMENT TO  
OFF-SITE IMPROVEMENT AGREEMENT  
KIMBALL HIGH SCHOOL  
EAST SIDE OF LAMMERS ROAD AND SOUTH OF 11<sup>TH</sup> STREET**

This **SECOND AMENDMENT** (hereinafter "First Amendment") is made and entered into by and between the **CITY OF TRACY**, a municipal corporation (hereinafter "City"), and **TRACY UNIFIED SCHOOL DISTRICT**, a political subdivision of the State of California ("District").

**RECITALS**

- A. On September 12, 2008, the City and District entered into an Off-Site Improvement Agreement for improvements relating to Kimball High School (Resolution 2008-036) ("Agreement").
- B. The Agreement was first amended on September 30, 2011 (Resolution 2011-166).
- C. The parties now wish to enter into this Second Amendment to the Agreement to reflect that the improvement obligations contained in the Agreement have been satisfied and that improvement security is no longer necessary.

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

- 1. The District has fully satisfied its obligations to perform the work described in Section 2 of the Agreement ("Scope of Work")
- 2. Section 5 of the Agreement ("Improvement Security") is deleted in its entirety.

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

CITY OF TRACY,

DISTRICT

\_\_\_\_\_  
By: Michael Maciel  
Title: MAYOR

\_\_\_\_\_  
By: *Casey J. Goodall*  
Title: *Assoc. Superintendent of Business*

Date: \_\_\_\_\_

Date: 3/12/15

**CITY OF TRACY – SECOND AMENDMENT TO  
OFF-SITE IMPROVEMENT AGREEMENT  
KIMBALL HIGH SCHOOL  
PAGE 2 OF 2**

Attest:

\_\_\_\_\_  
By: Nora Pimentel  
Title: CITY CLERK  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved As To Form:

\_\_\_\_\_  
By: Daniel G. Sodergren  
Title: CITY ATTORNEY  
Date: \_\_\_\_\_

RECORDING REQUESTED BY:  
City of Tracy  
Development & Engineering Services  
333 Civic Center Plaza  
Tracy, CA 95376

WHEN RECORDED MAIL TO:  
City of Tracy  
Office of the City Clerk  
333 Civic Center Plaza  
Tracy, CA 95376  
Attn: Nora Pimentel

---

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

---

**CITY OF TRACY  
FIRST AMENDMENT TO  
DEFERRED IMPROVEMENT AGREEMENT  
KIMBALL HIGH SCHOOL  
EAST SIDE OF LAMMERS ROAD AND SOUTH OF 11<sup>TH</sup> STREET**

This **FIRST AMENDMENT** (hereinafter "First Amendment") is made and entered into by and between the **CITY OF TRACY**, a municipal corporation (hereinafter "City"), and **TRACY UNIFIED SCHOOL DISTRICT**, a political subdivision of the State of California ("District").

**RECITALS**

- A. On May 18, 2009, the City and District entered into a Deferred Improvement Agreement for improvements relating to Kimball High School (Resolution 2008-036) ("Agreement"). The Agreement was recorded on May 21, 2009 as document no. 2009-076853 in the Office of the San Joaquin County Recorder.
- B. The parties now wish to amend to the Agreement to reflect that the improvement obligations contained in the Agreement have been satisfied and that improvement security is no longer necessary.

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

- 1. The District has fully satisfied its obligations to perform the work described in Section 2 of the Agreement ("Scope of Work")
- 2. Section 5 of the Agreement ("Improvement Security") is deleted in its entirety.

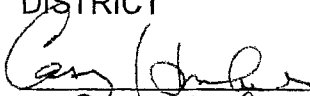
**CITY OF TRACY – FIRST AMENDMENT TO  
DEFERRED IMPROVEMENT AGREEMENT  
KIMBALL HIGH SCHOOL  
PAGE 2 OF 2**

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

CITY OF TRACY,

DISTRICT

\_\_\_\_\_  
By: Michael Maciel  
Title: MAYOR

  
\_\_\_\_\_  
By: Casey J. Goodall  
Title: Assoc. Superintendent  
of Business

Date: \_\_\_\_\_

Date: 3/12/15

Attest:

\_\_\_\_\_  
By: Nora Pimentel  
Title: CITY CLERK  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved As To Form:

\_\_\_\_\_  
By: Daniel G. Sodergren  
Title: CITY ATTORNEY  
Date: \_\_\_\_\_

RESOLUTION 2015-\_\_\_\_\_

APPROVING THE SECOND AMENDMENT TO THE OFF-SITE IMPROVEMENT AGREEMENT WITH TRACY JOINT UNIFIED SCHOOL DISTRICT RELATING TO KIMBALL HIGH SCHOOL, THE FIRST AMENDMENT TO THE DEFERRED IMPROVEMENT AGREEMENT WITH TRACY JOINT UNIFIED SCHOOL DISTRICT RELATING TO KIMBALL HIGH SCHOOL, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND AUTHORIZING THE CITY CLERK TO FILE THE AMENDMENTS WITH THE SAN JOAQUIN COUNTY RECORDER

WHEREAS, The School District has constructed a high school facility known as Kimball High School on a 52-acre parcel located outside the City boundaries on the east side of Lammers Road, approximately 1,300 feet south of Eleventh Street, and

WHEREAS, The City agreed to allow the School District connections to the City's water distribution and sewer collection systems on Lammers Road, and

WHEREAS, The School District was required to construct certain interim offsite improvements that were necessary to serve the new school building facility, and

WHEREAS, The School District entered into an improvement agreement (Offsite Improvement Agreement or OIA) with the City and posted improvement security (surety bonds), to guarantee completion of the interim offsite improvements, and

WHEREAS, City Council also authorized an improvement agreement (Deferred Improvement or DIA) with the School District, to allow deferment of completion of the landscaping improvements in front of the school site on Lammers Road until the occupancy of the new school building, and

WHEREAS, The developers of the Tracy Gateway Business Park - Phase 1, signed a Subdivision Improvement Agreement (SIA) with the City, and posted surety bonds to guarantee construction of full street improvements on Lammers Road which included the frontage of Kimball High School, and

WHEREAS, The street improvements on Lammers Road were completed by the developers of the Tracy Gateway Business Park - Phase 1, and are now under required landscape maintenance period prior to City Council's acceptance, and

WHEREAS, At the request of the School District, City Council approved an amendment to the Offsite Improvement Agreement for Kimball High School (First Amendment to the OIA) to remove the School District's obligation to construct the 20-inch water distribution main on Lammers Road from their OIA since this water line improvement is already covered under the SIA for Tracy Gateway Business Park – Phase 1, and

WHEREAS, Approval of these amendments are necessary to reflect that the Tracy Joint Unified School District ("School District") has fully satisfied its obligations to complete various street and utility improvements related to Kimball High School, and

WHEREAS, There will be no impact to the General Fund; the School District will pay the City for the cost of processing this agreement;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the second Amendment to the Off-Site Improvement Agreement with Tracy Joint Unified School District relating to Kimball High School, the first Amendment to the Deferred Improvement Agreement with Tracy Joint Unified School District relating to Kimball High School, authorizes the Mayor to execute the Agreement and further authorizes the City Clerk to file the Amendments with the San Joaquin County Recorder.

\*\*\*\*\*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the 17<sup>th</sup> day of March, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST

\_\_\_\_\_  
CITY CLERK

March 17, 2015

AGENDA ITEM 1.G

REQUEST

**APPROVAL OF PERMITS FOR THE CONSUMPTION OF ALCOHOLIC BEVERAGES ON CITY STREETS FOR VARIOUS EVENTS IN 2015**

EXECUTIVE SUMMARY

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

DISCUSSION

Tracy Municipal Code Section 4.12.1190(d) states, The Council, by resolution, may issue a permit under Chapter 4.40 allowing the consumption of intoxicating beverages on public property at an organized event of community-wide interest. The consumption of intoxicating beverages shall be restricted to the perimeters of the event as described in the permit.

Additionally, Tracy Municipal Code Chapter 4.40 governs special event permits occurring on or within the public right-of-way.

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

At the present time, the Public Works Department is coordinating several requests for alcohol permits to allow alcoholic beverages to be served as a component of the following community events: "Fourth of July Celebration" conducted by the Tracy Chamber of Commerce; "Taps on Tenth" and "Fall Wine Stroll" held by the Tracy City Center Association; and Big Country Round Up VIP Pre-Party, two "Girls Night Out" events, Blues, Brews and BBQ event and a series of five "Block Parties" hosted by the City of Tracy. Events hosted by the City of Tracy are directly organized by City staff and have been programmed into the existing budgets.

**Big Country Round Up VIP Pre-Party**: The Tracy City Center Association is requesting a permit to serve alcoholic beverages at its event on May 2, 2015, from 5:00 p.m. to 7:00 p.m. along 7<sup>th</sup> Street between Central Avenue and C Street, next to the Grand Theatre. This event is hosted by the City of Tracy.



**Block Parties:** The Tracy City Center Association is requesting a permit to serve alcoholic beverages at five block party events on June 5, July 17, July 31, August 21 and August 28, 2015 from 6:00 p.m. to 9:00 p.m. along 6<sup>th</sup> Street between Central Avenue and D Street. These events are hosted by the City of Tracy.

**Girls Night Out:** The Tracy City Center Association is requesting a permit to serve alcoholic beverages at its event on June 19, 2015, from 6:00 p.m. to 10:00 p.m. along 6<sup>th</sup> Street between Central Avenue and D Street and west bound 6<sup>th</sup> Street and the Downtown Plaza. This event is hosted by the City of Tracy.

**Fourth of July Celebration:** The Tracy Chamber of Commerce is requesting a permit to serve alcoholic beverages at its event on July 4, 2015, from 10:00 a.m. to 6:00 p.m., at Lincoln Park located on Eaton Avenue between Holly Drive and East Street.

**Blues, Brews and BBQ Event:** The Tracy City Center Association is requesting a permit to serve alcoholic beverages at its event on September 12, 2015, from 12:00 p.m. to 6:00 p.m. along 6<sup>th</sup> Street between Central Avenue and D Street and west bound 6<sup>th</sup> Street and the Downtown Plaza. This event is hosted by the City of Tracy.

**Taps on Tenth:** The Tracy City Center Association is requesting a permit to serve alcoholic beverages at its event on April 17, 2015 from 6:00 p.m. to 9:00 p.m., along Tenth Street from A Street to Central Avenue.

**Fall Wine Stroll:** The Tracy City Center Association is requesting a permit to serve alcoholic beverages at its event on September 26, 2015, from 6:00 p.m. to 9:00 p.m., along Tenth Street from A Street to Central Avenue and Central Avenue from 11<sup>th</sup> Street to 6<sup>th</sup> Street (including side streets).

**Girls Night Out – Witches and Broomsticks:** The Tracy City Center Association is requesting a permit to serve alcoholic beverages at its event on October 23, 2015, from 6:00 p.m. to 10:00 p.m. along 6<sup>th</sup> Street between Central Avenue and D Street and west bound 6<sup>th</sup> Street and the Downtown Plaza. This event is hosted by the City of Tracy.

## STRATEGIC PLAN

This agenda item supports Quality of Life Strategy to provide an outstanding quality of life by enhancing the City's amenities, business mix and services and cultivating connections to promote positive change and progress in our community, and specifically implements the following goal:

**Goal 1:** Improve current recreation and entertainment programming and services to reflect the community and match trending demands.

## FISCAL IMPACT

These special events can generate indirect costs to the General Fund through Public Works for assistance with set up and street closures, overtime costs of Police and Fire for safety support, and the Recreation Division for administering City events. Costs

associated with supporting these events have been programmed into the General Fund operating budget.

RECOMMENDATION

That City Council, by resolution, approve the permits described above for consumption of alcoholic beverages within the above-described designated areas for the following events: City of Tracy's "Big Country Round Up VIP Pre-Party" on May 2, 2015, City of Tracy's "Downtown Block Parties" on June 5, July 17, July 31, August 21, and August 28, 2015; "Girls Night Out – Pink Party" on June 19, 2015; Tracy Chamber of Commerce "Fourth of July Celebration" on July 4, 2015; TCCA's "Taps on Tenth" on April 17, 2015 and "Fall Wine Stroll" on September 26, 2015; City of Tracy's "Blues, Brews and BBQ Event" on September 12, 2015 and "Girls Night Out – Witches and Broomsticks" on October 23, 2015.

Prepared by: Brian MacDonald, Management Analyst II

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

Approved by: Troy Brown, City Manager

RESOLUTION \_\_\_\_\_

APPROVAL OF PERMITS FOR THE CONSUMPTION OF ALCOHOLIC BEVERAGES ON CITY STREETS FOR VARIOUS EVENTS IN 2015: CITY OF TRACY BIG COUNTRY ROUND UP VIP PRE-PARTY ON MAY 2, 2015; CITY OF TRACY DOWNTOWN BLOCK PARTIES ON JUNE 5, JULY 17, JULY 31, AUGUST 21, AND AUGUST 28, 2015; CITY OF TRACY "GIRLS NIGHT OUT" EVENT ON JUNE 19, 2015; CHAMBER OF COMMERCE "FOURTH OF JULY CELEBRATION" ON JULY 4, 2015; TRACY CITY CENTER ASSOCIATION "TAPS ON TENTH" ON APRIL 17, 2015 AND THE "FALL WINE STROLL" ON SEPTEMBER 26, 2015; CITY OF TRACY BLUES, BREWS AND BBQ EVENT ON SEPTEMBER 12, 2015 AND CITY OF TRACY "GIRLS NIGHT OUT – WITCHES AND BROOMSTICKS" EVENT ON OCTOBER 23, 2015

WHEREAS, City staff has requested a permit to conduct special events on May 2, June 5, July 17, July 31, August 21, August 28, September 12, and October 23, 2015, that requires approval of City Council to permit the consumption of alcoholic beverages in public places, and

WHEREAS, The Tracy Chamber of Commerce has requested a permit to conduct a special event in the City of Tracy on July 4, 2015, that requires approval of City Council to permit the consumption of alcoholic beverages in public places, and

WHEREAS, The Tracy City Center Association (TCCA) has requested a permit to conduct special events in the City of Tracy on April 17 and September 26, 2015, that requires approval of City Council to permit the consumption of alcoholic beverages in public places, and

WHEREAS, Subject to City Council approval, the Tracy Municipal Code allows such activities and permits under Section 4.12.1190(d) and Chapter 4.40;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the issuance of a permit to the Tracy Chamber of Commerce, TCCA and the City of Tracy for the possession and consumption of alcoholic beverages within the boundary and time frames of the above-described special events, to be conducted in the Downtown Area of Tracy.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was adopted by City Council on the 17<sup>th</sup> day of March, 2015, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

. AGENDA ITEM 3

REQUEST

**HOLD A PUBLIC HEARING TO APPROPRIATE \$204,980 FROM THE FY 2013-14 AND 2014-15 CITIZENS OPTIONS FOR PUBLIC SAFETY “COPS” GRANT PROGRAM FUNDING FOR THE PURCHASE OF OFFICER BODY-WORN CAMERAS, AND RELATED EQUIPMENT, FIND IT IS IN THE BEST INTEREST OF THE CITY TO FOREGO THE FORMAL REQUEST FOR BID PROCESS AND AUTHORIZE THE MAYOR TO EXECUTE A 5-YEAR CONTRACT WITH TASER INTERNATIONAL, INCORPORATED AND EVIDENCE.COM FOR DATA STORAGE**

EXECUTIVE SUMMARY

The Police Department annually receives grant funding from the Supplemental Law Enforcement Services Funds (SLESF) and Citizen’s Option for Public Safety (COPS). Staff recommends the City Council authorize the appropriation of the Supplemental Law Enforcement Services Funds to purchase TASER International Axon Flex body-worn cameras and the first year of Evidence.Com cloud based storage. Staff further recommends that the Mayor execute the services agreement for online storage services between the City of Tracy and Evidence.Com for the term of July 1, 2015 to June 30, 2020 (Attachment A).

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.

The funds accrued in FY 2013-14 must be expended by June 30, 2015 or they will be forfeited. Therefore, staff is seeking the approval to use the funds from the past fiscal year in addition to monies received this fiscal year for the purchase of body-worn cameras.

Officer body-worn camera systems have become a prevalent and effective form of technology among law enforcement agencies. Staff is requesting to purchase 100 TASER International Flex body-worn cameras, accessories, on-site training, installation of data ports to support the technology and year-one of unlimited storage of data and enter into an agreement with Evidence.Com cloud based storage in an effort to better serve our community and facilitate our protection efforts.

Research has availed officer body-worn cameras have benefitted both officers and general public. There are many benefits to officer-worn cameras, such as: providing accurate documentation of police contacts; improved digital evidence collection; reduced

time in court testimony; increased successful prosecution of criminal cases; streamlined reporting; and use as a training tool. Additionally, it has been demonstrated that cameras avail more efficient clearance of public complaints, while reducing liability claims and strengthening law enforcement community relationships through greater transparency.

Video monitoring of police officer interaction with the public is not new to the Tracy Police Department. In-car video system integrated with remote audio transmitters worn by patrol officers was first implemented in June 2007. Subsequent to that, the first generation of body-cameras was deployed with Tracy police department's special enforcement teams, to include the Street Crimes Unit and Traffic Safety Unit. Complaints by the public and liability claims directed toward these special enforcement units has been virtually non-existent since implementation of the technology.

Staff conducted an evaluation and testing period and recommends the purchase of TASER International for the various options such as mounting options that include: eyewear, clothing and upper body. The flex camera is designed to move with the officer's head to provide a better perspective than a camera worn on the chest.

TASER International offers a constant thirty-second buffer built into the camera. This allows the unit to capture the prior thirty seconds of the event/incident when the unit is activated. Other body-worn camera systems begin recording when the officer activates the camera, missing the events that led up to the reason the camera was activated. This thirty-second buffer in conjunction with the storage in the Cloud is unique to TASER International body-worn cameras.

Only TASER International Axon Flex body-worn cameras with Evidence.com secured "cloud-based" storage system fully meet the needs of the department. The complete system will provide an efficient and effective method of collecting and preserving evidence. Also unique to TASER International is the built in replacement/upgrade of cameras included in the purchasing of a multi-year service contract. The agreement provides, at no cost, camera replacements at year 2.5 and year 5. There is a \$23,500 discount that TASER International is offering as a discount on the hardware taken from the cameras and docks for trade-in of cameras.

Staff believes that purchasing from TASER International without soliciting formal bids from other providers is in the best interest of the City due to the deadline on its discount, its 30 second buffering capability, other local jurisdictions satisfaction with its product, and for the other reasons set forth above.

Upon approval of this request, the following is the implementation plan and timeline for this technology:

March/April 2015- Equipment procurement, set-up and off line testing  
March/April/May 2015- Policy development, adoption & training  
May 2015 – Deployment and live conformance testing

### 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 \$137,559 for FY 2013-14 and \$67,421 to date for FY 2014-15 from the State COPS Grant. Staff will schedule a public hearing and seek appropriation for the future disbursements received for FY 2014-15.

The total cost of the cameras, accessories, on-site training, and year-one of unlimited storage of data is \$204,980.

There is no fiscal impact to the Fiscal Year 2014-15 General Fund.

The remaining four years of the Evidence.com Online Services Agreement costs \$98,400 per year and will be incorporated into future General Fund budgets as an additional operating expenditure of the Police Department.

### RECOMMEDATION

That the City Council holds the required public hearing and by resolution, approves the request to appropriate and expend the State COPS program funds for the aforementioned purchases, finds it is in the best interest of the City to forego the formal request for bid process, and authorizes the Mayor to execute the 5-Year Contract with Taser and Evidence.com for data storage.

Prepared by: Lani Smith, Support Operations Manager

Reviewed by: Gary R. Hampton, Police Chief  
Maria A. Hurtado, Assistant City Manager

Approved by: Troy Brown, City Manager

### ATTACHMENTS

Attachment A – Master Service Agreement



## EVIDENCE.com Master Service Agreement

By clicking the "I Agree" button or using the Evidence.com™ Services you agree that you have read and understand this Agreement and you accept and agree to be bound by the following terms and conditions. You represent to us that you are lawfully able to enter into contracts and if you are entering into this Agreement for an entity, such as the company, municipality, or government agency you work for, you represent to us that you have legal authority to bind that entity. If you do not have this authority, do not use the Service Offerings. If you disagree with any of the terms below, we do not grant you the right to use the Service Offerings and you should click "Cancel" to exit the installer and immediately discontinue all use of the Service Offerings.

TASER International, Inc. (**TASER, we, us, or our**) and you or the entity you represent (**City of Tracy**) agree to all terms of the Agreement effective on the date you first agreed to this Agreement or first began using the Service Offerings (**July 1, 2015**).

**1 Access Rights.** Upon the purchase or granting of a subscription from TASER and your opening of an Evidence.com account you will have access and use of the Evidence.com Services for the storage and management of and Your Content during the subscription term ("Term"). This is not a data sharing agreement. We do not continuously audit, inspect, or monitor individual agency content or Your Content. You are not intending to waive or diminish any privacy interests by your use of the Evidence.com Services. The Evidence.com Services and data storage are subject to usage limits, including, for example, the quantities specified in quotes, order forms and purchase orders. Unless otherwise specified, (a) a quantity in a quote, order form or purchase order refers to end users, and the Evidence.com Service may not be accessed by more than that number of end users, and (b) an end user identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Evidence.com Service. You and each of your end users agree to adhere to this Agreement and all laws, rules, regulations, and policies applicable to your use of the Evidence.com Services. If you become aware of any violation of this Agreement by an end user, you will immediately terminate that end user's access to Your Content and the Evidence.com Services.

**2 You Own Your Content.** You control and own all right, title, and interest in and to Your Content and we obtain no rights to Your Content. You are solely responsible for the uploading, sharing, withdrawal, management and deletion of Your Content. You consent to our limited access to Your Content solely for the purpose of providing and supporting the Evidence.com Services to you and your end users. You represent that you own Your Content; and that none of Your Content or your end users' use of Your Content or the Evidence.com Services will violate this Agreement or applicable laws.

**3 Evidence.com Data Security.** We will implement commercially reasonable and appropriate measures designed to secure Your Content against accidental or unlawful loss, access or disclosure. We will maintain a comprehensive Information Security Program ("ISP") that includes logical and physical access management, vulnerability management, configuration management, incident monitoring and response, encryption of digital evidence you upload, security education, risk management, and data protection. You are responsible for maintaining the security of your end user names and passwords and taking steps to maintain appropriate security and access by your end users to Your Content. Log-in credentials are for your internal use only and you may not sell, transfer, or sublicense them to any other entity or person. You agree to be responsible for all activities undertaken by you, your employees, your contractors or agents, and your end users which result in unauthorized access to your account or Your Content. Audit log tracking for the video data is an automatic feature of the Services which provides details as to who accesses the video data and may be downloaded by you at any time. You will contact us immediately if you believe an unauthorized third party may be using your account or Your Content or if your account information is lost or stolen.

**4 Our Support.** We will make available to you updates as released by us to the Evidence.com Services. Updates may be provided electronically via the Internet. It is your responsibility to establish and maintain adequate access to the Internet in order to receive the updates. We will use reasonable efforts to continue supporting the previous version of any API or software for 6 months after the change (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) is needed to comply with the law or requests of governmental entities). You are responsible for maintaining the computer equipment and Internet connections necessary for your use of the Evidence.com Services.

**5 Data Privacy.** We will not disclose Your Content or any information about you except as compelled by a court or administrative body or required by any law or regulation. We will give you notice if any disclosure request is received for Your Content so you may file an objection with the court or administrative body. You agree to allow us access to certain information from you in order to: (a) perform troubleshooting services for your account at your request or as part of our regular diagnostic screenings; (b) enforce our agreements or policies governing your use of Evidence.com Services; or (c) perform analytic and diagnostic evaluations of the systems.

**6 Data Storage.** We will determine the locations of the data centers in which Your Content will be stored and accessible by your end users. For United States customers, we will ensure that all of Your Content stored in the Evidence.com Services remains within the United States including any backup data, replication sites, and disaster recovery sites. You consent to the transfer of Your Content to third parties for the purpose of storage of Your Content. Third party subcontractors responsible for storage of Your Content are contracted by us for data storage services. Ownership of Your Content remains with you.

**7 Fees and Payment.** Additional end users may be added during the Term at the pricing in effect at the time of purchase of additional end users, prorated for the duration of the Term; except in the case of the optional subscription licenses described in Section 8. Additional end user accounts will terminate on the same date as the pre-existing subscriptions. You are responsible for paying all subscription fees and applicable taxes and duties for Evidence.com Services. Unless otherwise specified by us, all fees for Evidence.com Services are due and payable net 30 days for approved credit. Payment obligations are non-cancelable and fees paid are non-refundable and all amounts payable will be made without setoff, deduction, or withholding. We reserve the right to charge additional fees for you exceeding your purchased storage amounts or for TASER's assistance in the downloading or exporting of Your Content. We may charge you interest at the rate of 1.5% per



## EVIDENCE.com Master Service Agreement

month (or the highest rate permitted by law, if less) on all late payments. If a delinquent account is sent to collections, you are responsible for all collection and attorneys' fees.

**8 Optional Subscription License Tiers.** This Section 8 applies to the optional subscription licenses listed below. Each of the optional subscription licenses in this Section 8 must be purchased at the point of sale of the hardware. You may elect to be billed upfront or annually for these optional subscription licenses, and that election will be reflected on your quote. The optional subscription license prices do not include the purchase price of any hardware or data storage of other data files generated from non-Axon cameras or the Evidence Mobile App. Any hardware provided under the optional subscription licenses is subject to TASER's current *Hardware Warranty, Limitations and Release for Law Enforcement CEW Products and On-Officer Cameras* available at [www.TASER.com](http://www.TASER.com). If the optional subscription license is terminated early, no refunds or credits will be given. This Section 8 does not apply if you do not purchase any of the Optional Subscription License Tiers.

**8.1 Evidence.com Ultimate License.** Each Evidence.com Ultimate License includes the benefits of the Evidence.com Pro License, 20 GB of storage, and TAP for the Axon camera. TASER's current Sales Terms and Conditions for the Axon Flex® and Axon Body Cameras TASER Assurance Plan (U.S. Only) (TAP) are available at <http://www.taser.com/sales-terms-and-conditions>.

**8.2 Evidence.com Unlimited License.** Each Evidence.com Unlimited License includes the benefits of the Evidence.com Ultimate License and unlimited data storage for Axon camera and Evidence Mobile generated data in the Evidence.com Services. You must implement a data retention schedule in the Evidence.com Services for the management of your data stored in the Evidence.com Services to qualify for the Evidence.com Unlimited License. TASER reserves the right, in its sole discretion, to place any data stored in your Evidence.com accounts and not viewed or accessed for six months into archival storage. Data stored in archival storage will not have immediate availability and may take up to 24 hours to access. The Evidence.com Unlimited License must be purchased for a 3 or 5 term.

**8.3 Officer Safety Plan.** The Officer Safety Plan includes all the benefits of the Evidence.com Unlimited License, TAP for the Evidence.com Dock, one TASER brand conducted electrical weapon (CEW) with a 4-year extended warranty, one CEW battery, and one CEW holster of your choice. At any time during the Officer Safety Plan term you may choose to receive the CEW, battery and holster by providing a \$0 purchase order (orders may take 4–6 weeks to process). At the time you elect to receive the CEW, you may choose from any CEW model currently offered by us. The Officer Safety Plan must be purchased for a 5-year term. If the Officer Safety Plan is terminated before the end of the term and you did not receive your CEW, battery and holster then we will not and have no obligation to provide these items or a credit under the Officer Safety Plan. If the Officer Safety Plan is terminated before the end of the term and after you receive your CEW, battery and holster then then: (a) you will be invoiced for the remainder of the MSRP for the CEW, battery, and holster not already paid as part of the Officer Safety Plan before the termination date; or (b) only in the case of termination for non-appropriations, return the CEW, battery and holster to us within 30 days of the date of termination.

**9 Suspension of Evidence.com Services.** We may suspend your or any end user's right to access or use any portion or all of the Evidence.com Services immediately upon notice to you if we determine:

**9.1** Your or an end user's use of or registration for the Evidence.com Services (i) poses a security risk to the Evidence.com Services or any third party, (ii) may adversely impact the Evidence.com Services or the systems or content of any other customer, (iii) may subject us, our affiliates, or any third party to liability, or (iv) may be fraudulent;

**9.2** You are, or any end user is, in breach of this Agreement, including if you are delinquent on your payment obligations for more than 30 days; or

**9.3** You have become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding.

**9.4** If we suspend your right to access or use any portion or all of the Evidence.com Services, you remain responsible for all fees and charges incurred through the date of suspension without any credits for any period of suspension. We will not delete any of Your Content on Evidence.com as a result of your suspension, except as specified elsewhere in this Agreement.

## 10 Term.

**10.1 Subscription Term.** The start date of the Term of this Agreement will be determined based upon the shipment date of any hardware ordered as authorized by you in a signed quote or purchase order and will remain in effect for the subscription Term agreed to in the quote or purchase agreement together with any renewal Terms until terminated as provided in this Agreement. If the hardware is shipped in the first half of a month, then the Term starts on the 1<sup>st</sup> of the following month. If the hardware is shipped in the last half of a month, then the Term begins on the 15<sup>th</sup> of the following month. If no hardware is purchased, then the Term will begin on the first of the month following the Effective Date of the Agreement. This Agreement automatically renews for additional successive Terms of one (1) year each after the completion of your initial Term at the list prices then in effect, unless you give us written notice of cancellation sixty (60) days prior to the end of a Term.

**10.2 Free Trial Term.** If you signed up for a free trial, you are granted a limited non-exclusive license to use the Evidence.com Services for the term of the free trial period ("Trial Term"). Upon the expiration of the Trial Term you must purchase the Evidence.com Services to continue to use the Evidence.com Services to access Your Content.

**10.3 Free EVIDENCE.com Lite Account.** If you signed up for a free Evidence.com Lite account, you are granted a limited non-exclusive license to use the Evidence.com Lite Services. Your use of the Evidence.com Lite Services is not limited to a specific term and you may cancel your Evidence.com Lite account and download Your Content at any time. Evidence.com Lite allows users to manage their conducted electrical weapon (CEW) firing logs and TASER CAM data.





## EVIDENCE.com Master Service Agreement

### 11 Termination.

#### 11.1 Termination for Cause.

11.1.1 By Either Party. Either party may terminate this Agreement for cause upon 30 days advance notice to the other party if there is any material default or breach of this Agreement by the other party, unless the defaulting party has cured the material default or breach within the 30-day notice period. In the event that you terminate this Agreement under this Section and we failed to cure the material breach or default, we will issue you a refund of any prepaid amounts on a prorated basis.

11.1.2 By Agency. You are obligated to pay the fees under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during your then current fiscal year. In the event that sufficient funds will not be appropriated or are not otherwise legally available to pay the fees required under this Agreement, this Agreement may be terminated by you. You agree to deliver notice of termination under this Section (11.1.2) at least 90 days prior to the end of the then current fiscal year.

11.2 Effect of Termination. Upon any termination of this Agreement: (a) all your rights under this Agreement immediately terminate; (b) you remain responsible for all fees and charges you have incurred through the date of termination; and (c) Sections 2, 5–7, 12, 13 (except the license granted to you in Section 13), 14, and 16–20 will continue to apply in accordance with their terms.

### 12 Return of Your Content.

12.1 During the Term. You can log into the Evidence.com Services to retrieve and manually download Your Content at any time during the Term.

12.2 After Termination. We will not delete any of Your Content as a result of a termination during the 90 days following termination. During this 90-day period you may retrieve Your Content only if you have paid all amounts due (there will be no application functionality of the Evidence.com Services during this 90-day period other than the ability for you to retrieve Your Content). You will not incur any additional fees if you download Your Content from the Evidence.com Services during this 90-day period. We have no obligation to maintain or provide any of Your Content after the 90-day period and will thereafter, unless legally prohibited, delete all of Your Content stored in the Evidence.com Services. Upon request, we will provide written proof that all of Your Content has been successfully deleted and fully removed from the Evidence.com Services.

12.3 Post-Termination Assistance. We will provide you with the same post-termination data retrieval assistance that we generally make available to all customers. Requests that we provide additional assistance to you in downloading or transferring Your Content will result in additional fees from us and we will not warranty or guarantee data integrity or readability in the external system.

13 IP Rights. We or our licensors own and reserve all right, title, and interest in and to the Evidence.com Services and related software. Subject to the terms of this Agreement, we grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to access and use the Evidence.com Services solely in accordance with this Agreement during the Term. We own all right, title, and interest in and to the Evidence.com Services, including without limitation all Intellectual Property Rights. If you or your end users provide any suggestions to us for enhancements or improvements, we will own all right, title, and interest in and to the suggestions and have the right to use the suggestions without restriction, even if you or your end users have designated the suggestions as confidential. You irrevocably assign to us all right, title, and interest in and to the suggestions and agree to provide us any assistance we may require to document, perfect, and maintain our rights in the suggestions.

14 License Restrictions. Neither you nor any of your end users may use the Evidence.com Services in any manner or for any purpose other than as expressly permitted by this Agreement. Neither you nor any of your end users may, or attempt to: (a) permit any third party to access the Evidence.com Services except as permitted in this Agreement; (b) modify, alter, tamper with, repair, or otherwise create derivative works of any of the Evidence.com Services; (c) reverse engineer, disassemble, or decompile the Evidence.com Services or apply any other process or procedure to derive the source code of any software included in the Evidence.com Services, or allow any others to do the same; (d) access or use the Evidence.com Services in a way intended to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas; (e) copy the Evidence.com Services in whole or part, except as expressly permitted in this Agreement; (f) use trade secret information contained in the Evidence.com Services, except as expressly permitted in this Agreement; (g) resell, rent, loan, or sublicense the Evidence.com Services; (h) access the Evidence.com Services in order to build a competitive product or service or copy any features, functions, or graphics of the Evidence.com Services; (i) remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of ours or our licensors on or within the Evidence.com Services or any copies of the Evidence.com Services; or (j) use the Evidence.com Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, to store or transmit material in violation of third-party privacy rights, or to store or transmit malicious code. All licenses granted to you in this Agreement are conditional on your continued compliance this Agreement, and will immediately and automatically terminate if you do not comply with any term or condition of this Agreement. During and after the Term, you will not assert, nor will you authorize, assist, or encourage any third party to assert, against us or any of our affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Evidence.com Services you have used. You may only use our trademarks in accordance with the TASER Trademark Use Guidelines (located at [www.TASER.com](http://www.TASER.com)).

15 Third-Party Products and Services. No purchase of third-party products or services is required to use the Evidence.com Services other than a computer and Internet access. Any acquisition by you of third-party products or services and any exchange of data or Your Content between you and any third-party provider, is solely between you and the applicable third-party provider; including any fees necessary to obtain or use the third-party products or services. We are not responsible for examining or evaluating the content or accuracy of third-party



## EVIDENCE.com Master Service Agreement

products or services and we do not warrant and will not have any liability or responsibility for any third-party products or services, or for any other materials, products, or services of third parties. If you install or enable Third-Party Applications for use with Evidence.com Services, you acknowledge that we may need to allow providers of those Third-Party Applications to access Your Content as required for the interoperation of the Third-Party Applications with the Evidence.com Services. We are not responsible for any disclosure, modification or deletion of Your Content resulting from any access by Third-Party Application providers.

**16 Representations by You.** You represent and warrant to us that: (a) you have been duly authorized by the laws of the applicable jurisdiction, and by a resolution of your governing body, if legally required, to execute and deliver this Agreement and to carry out your obligations under this Agreement; (b) all legal requirements have been met, and procedures have been followed, including public bidding, if legally required, in order to ensure the enforceability of this Agreement; (c) if you are a government agency, that the Evidence.com Services will be used by you only for essential governmental or proprietary functions consistent with the scope of your authority and will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use; (d) if you are a government agency, you have funds available to pay until the end of its current appropriation period, and you intend to request funds to make payments in each appropriation period, from now until the end of the Term; and (e) you are responsible for (i) your or any of your end users' use of the Evidence.com Services (including any activities under your account and use by your employees and agents), (ii) breach of this Agreement or violation of applicable law by you or any of your end users, (iii) Your Content or the combination of Your Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by Your Content or by the use of Your Content, (iv) a dispute between you and any of your end users, and (v) a dispute between you and any third-party over your collection or use of Your Content. You agree to maintain insurance coverage up to the amount allowed by State and local laws and regulations that would cover any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or related to any third-party claim in this section 16.

**17 Our Warranty.** We warrant that the Evidence.com Services (a) will perform materially in accordance with the Documentation, (b) will be performed in a timely and professional manner by qualified persons with the technical skills, training, and experience to perform the Evidence.com Services, and (c) will not infringe or misappropriate any patent, copyright, trademark, or trade secret rights of any third party. All warranties or guarantees given or made by us with respect to the Evidence.com Services are solely for the benefit of you and your end users and are not transferable and are null and void if you breach any term or condition of this Agreement.

THE EVIDENCE.COM SERVICES ARE PROVIDED "AS IS." WE AND OUR AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE THAT THE EVIDENCE.COM SERVICES OR THIRD-PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR CONTENT OR THE THIRD-PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED, OR THAT THE EVIDENCE.COM SERVICES WILL MEET YOUR REQUIREMENTS. EXCEPT AS PROVIDED IN THIS SECTION 17, TO THE EXTENT PROHIBITED BY LAW, WE AND OUR AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

YOU ARE SOLELY RESPONSIBLE FOR ENSURING THAT YOUR USE OF THE EVIDENCE.COM SERVICES IS IN ACCORDANCE WITH APPLICABLE LAW. You are solely responsible for: (a) all data before it is uploaded to the Evidence.com Services; (b) configuring and setting up any hardware or networks that You connect to the Evidence.com Services; (c) Your networks and how they may interact with the hardware, software, or Evidence.com Services; and (d) any security settings You establish to interact with or on the Evidence.com Services. WE DISCLAIM any warranties or responsibility for data corruption or errors before the data is uploaded to the Evidence.com Services.

**18 Indemnification by Us.** We will defend, indemnify, and hold you harmless, and each of your respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any: (a) acts or omissions of us or our subcontractors or anyone directly or indirectly employed by any of them, save and except for damage or injury caused solely by the negligence of you or your agents, officers, or employees; and (b) third-party claim alleging that the use of the Evidence.com Services as permitted under this Agreement infringes or misappropriates the intellectual property rights of a third party. You must provide us with prompt written notice of each such claim, tender to us the defense or settlement of each such claim at our expense, and cooperate fully with us in the defense or settlement of each such claim. If we receive notice of an alleged infringement, or if your use of the Evidence.com Services will be prevented by permanent injunction, we may, at our sole option and expense, procure for you the right to continue using the Evidence.com Services as provided in this Agreement, modify the Evidence.com Services so that it no longer infringes, replace the Evidence.com Services with other services of equal or superior functional capability, refund to you all amounts paid by you to us under this Agreement for the Evidence.com Services in the 1-year period immediately preceding the first event giving rise to the claim of infringement, or in the case of trademark infringement, instruct you to use an alternative trademark. We have no liability to you or any third party if any alleged infringement or claim of infringement is to any extent based upon: (a) any modification of the Evidence.com Services by you or any third party not approved by us; (b) use of the Evidence.com Services in connection or in combination with equipment, devices, or services not approved or recommended by us; (c) the use of Evidence.com Services other than as permitted under this Agreement or in a manner for which it was not intended; or (d) the use of other than the most current release or version of any software



## EVIDENCE.com Master Service Agreement

provided by us as part of or in connection with the Evidence.com Services. Nothing in this Section will affect any warranties in favor of you that are otherwise provided in or arise out of this Agreement.

**19 Limitations of Liability.** WE AND OUR AFFILIATES OR LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE EVIDENCE.COM SERVICES, INCLUDING AS A RESULT OF ANY (i) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE EVIDENCE.COM SERVICES, (ii) OUR DISCONTINUATION OF ANY OR ALL OF THE EVIDENCE.COM SERVICES, OR, (iii) WITHOUT LIMITING ANY OTHER OBLIGATIONS, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE EVIDENCE.COM SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE EVIDENCE.COM SERVICES; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. IN ANY CASE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, OUR AND OUR AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE GREATER OF \$100,000 OR THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE EVIDENCE.COM SERVICES THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM.

**20 Miscellaneous.**

**20.1 Definitions.**

**20.1.1 "Evidence.com Services"** means our web services for Evidence.com, the EVIDENCE.com site, EVIDENCE Sync software, EVIDENCE Mobile App, Axon® Mobile App, other software, maintenance, storage, and any other product or service provided by us under this Agreement. This does not include any Third-Party Applications, hardware warranties, or the my.evidence.com services.

**20.1.2 "Your Content"** means software, data, text, audio, video, images or other content you or any of your end users (a) run on the Evidence.com Services, (b) cause to interface with the Evidence.com Services, or (c) upload to the Evidence.com Services under your account or otherwise transfer, process, use or store in connection with your account.

**20.1.3 "Documentation"** means the user guides, quick reference guides, and other technical and operations manuals and specifications for the Evidence.com Services provided by us, as that documentation may be updated by us from time to time.

**20.1.4 "Confidential Information"** means all nonpublic information disclosed by us, our affiliates, business partners or our or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Confidential Information includes: (a) nonpublic information relating to our or our affiliates or business partners' technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that we are obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between you and us or our affiliates that is not subject to your public record laws. Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to you at the time of your receipt from us; (iii) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by you without reference to the Confidential Information.

**20.1.5 "Policies"** means any Service Level Agreement, the Trademark Use Guidelines, all restrictions described on the Evidence.com site, and any other policy or terms referenced in or incorporated into this Agreement. Policies do not include whitepapers or other marketing materials.

**20.2 Confidentiality.** Any party may use the other party's Confidential Information only as permitted under this Agreement. Except as required by applicable law or judicial order, you will not disclose our Confidential Information during the Term or at any time during the 5-year period following the end of the Term. You will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of our Confidential Information.

**20.3 Force Majeure.** Neither party will be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond the parties' reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

**20.4 Independent Contractors.** The parties are independent contractors, and neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

**20.5 No Third-Party Beneficiaries.** This Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement.

**20.6 Non-discrimination and Equal Opportunity.** During the performance of this Agreement, we agree that neither we nor our employees will discriminate against any person, whether employed by us or otherwise, on the basis of race, color, religion, gender,



## EVIDENCE.com Master Service Agreement

age, national origin, handicap, marital status, or political affiliation or belief. In all solicitations or advertisements for employees, agents, subcontractors or others to be engaged by us or placed by or on behalf of us, we will state all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, national origin, handicap, marital status, or political affiliation or belief.

**20.7 U.S. Government Rights.** The Evidence.com Services are provided to the U.S. Government as “commercial items,” “commercial computer software,” “commercial computer software documentation,” and “technical data” with the same rights and restrictions generally applicable to the Evidence.com Services. If you are using the Evidence.com Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government’s needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Evidence.com Services. The terms “commercial item,” “commercial computer software,” “commercial computer software documentation,” and “technical data” are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

**20.8 Import and Export Compliance.** In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the U.S. Office of Foreign Assets Control. You are solely responsible for compliance related to the manner in which you choose to use the Evidence.com Services, including your transfer and processing of Your Content, the provision of Your Content to end users, and the region in which any of the foregoing occur.

**20.9 Assignment.** Neither party may assign or otherwise transfer this Agreement or any of its rights and obligations under this Agreement without the prior written approval of the other party; except that we may assign or otherwise transfer this Agreement or any of our rights or obligations under this Agreement without your consent (a) for financing purposes, (b) in connection with a merger, acquisition or sale of all or substantially all of our assets, (c) to as part of a corporate reorganization, or (d) to a subsidiary corporation. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

**20.10 No Waivers.** The failure by either party to enforce any provision of this Agreement will not constitute a present or future waiver of the provision nor limit the party’s right to enforce the provision at a later time. All waivers by a party must be in writing and sent in accordance with this Agreement to be effective.

**20.11 Severability.** This Agreement is contractual and not a mere recital. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.

**20.12 Governing Law; Venue.** The laws of the state where you are physically located, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between the parties. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

**20.13 Litigation Costs.** In the event of any legal action to enforce the provisions of this Agreement, the successful party in enforcing any provision of this Agreement will be awarded that party’s reasonable attorneys’ fees and taxable costs.

**20.14 Notices.** All communications and notices to be made or given pursuant to this Agreement must be in the English language.

**20.14.1 To You.** We may provide any notice to you under this Agreement by: (i) posting a notice on your specific agency EVIDENCE.com site; or (ii) sending a message to the email address(es) then associated with your account. Notices we provide by posting on your EVIDENCE.com site will be effective upon posting and notices we provide by email will be effective when we send the email. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email.

**20.14.2 To Us.** To give us notice under this Agreement, you must contact us: (i) by email transmission to [evidencecontracts@taser.com](mailto:evidencecontracts@taser.com); or (ii) by personal delivery, overnight courier or registered or certified mail to TASER International, Inc., ATTN: Evidence Contracts, 17800 N. 85<sup>th</sup> Street, Scottsdale, Arizona 85255. We may update the email or address for notices to us by posting a notice on your Evidence.com site. Notices provided by personal delivery will be effective immediately. Notices provided by email transmission or overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective 3 business days after they are sent.

**20.15 Entire Agreement.** This Agreement, including the Policies and the quote provided by TASER, is the entire agreement between you and TASER regarding the Evidence.com Services. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and TASER, whether written or verbal, regarding the subject matter of this Agreement. You agree that your purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by us regarding future functionality or features of the Evidence.com Services. We will not be bound by, and specifically object to, any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by you in any order, receipt, acceptance, confirmation, correspondence or other document. No modification or amendment of any portion of this Agreement will be effective unless in writing and signed by the parties to this Agreement. If we provide a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

**20.16 Voluntary Agreement.** This Agreement was negotiated and executed voluntarily and is not the result of duress, fraud, undue influence or any threat of any kind. All parties had the opportunity to read and consider this Agreement, to consult with counsel, and fully understand the Agreement.



## EVIDENCE.com Master Service Agreement

---

**20.17 Time is of the Essence.** Time is of the essence in connection with all matters and obligations pertaining to this Agreement.

**20.18 Counterparts.** If this Agreement from requires the signatures of the parties, then this Agreement may be executed in any number of counterparts, each of which will be considered an original for all purposes, and all of which, when taken together, constitute one and the same Agreement.

[Document revised 1-23-2015]

Evidence.com and 'Protect Life' are trademarks of TASER International, Inc., and TASER, Axon, Axon Flex, and © are registered trademarks of TASER International, Inc., registered in the U.S. All rights reserved. © 2015 TASER International, Inc.

**TASER International, Inc.'s Sales Terms and Conditions for the  
Evidence.com Dock and AXON flex™ and AXON body Cameras TASER Assurance Plan (U.S. Only)  
(Effective April 18, 2014)**

These Sales Terms and Conditions ("Terms") apply to your purchase of the TASER® Evidence.com Dock, AXON flex™ camera/AXON body camera, related accessories, and the TASER Assurance Plan ("TAP").<sup>1</sup> The products and TAP are expressly subject to and conditioned upon the Terms set forth below. By signing a quote, issuing a purchase order, or accepting delivery of the products, you accept and are bound to these Terms. Any different or additional terms set forth by you, whether in a purchase order or another communication, are expressly objected to and will not be binding on TASER.

**TASER Assurance Plan (TAP).** TAP may be purchased as part of the Ultimate Evidence.com License ("Ultimate License") tier, or on a standalone basis. If TAP is purchased on a standalone basis, TAP's purchase price does not include any initial hardware, software and the Evidence.com services must be purchased separately. TAP provides you with hardware extended warranty coverage, Spare Products (for AXON cameras), and Upgrade Models at the end of the TAP Term. TAP only applies to the AXON flex camera and controller, AXON body camera, or Evidence.com Dock, depending on the plan purchased. TAP does not apply to software or services offered for, by, on, or through the TASER.com or Evidence.com websites.

To qualify to purchase TAP, you must either purchase Ultimate Licenses for a 3-year term or purchase Evidence.com services for at least 3 years on a standalone basis.

You may not buy more than one TAP for any one AXON camera/Evidence.com Dock product. TAP must be purchased for all AXON cameras/ Evidence.com Docks purchased by your agency after your agency elects to participate in TAP.

**TAP Warranty Coverage.** See TASER's current *Hardware Warranty, Limitations and Release for Law Enforcement CEW Products and On-Officer Cameras* at [www.TASER.com](http://www.TASER.com) ("Hardware Warranty"). TAP includes the extended warranty coverage described in the current Hardware Warranty. TAP for the AXON camera products also includes free replacement of the AXON flex controller battery and AXON body battery during the TAP Term.<sup>2</sup> TAP warranty coverage starts at the beginning of the TAP Term and continues as long as you continue to pay the required annual fees for TAP. You may not have both an optional extended warranty and TAP on the AXON camera/Evidence.com Dock product.

**SPARE AXON cameras.** For TAP for AXON camera products, TASER will provide a predetermined number of spare AXON cameras (and controllers if applicable) (collectively the "Spare Products") to you to keep at your agency location to replace broken or non-functioning units in order to improve the availability

of the units to officers in the field. You must return to TASER, through TASER's RMA process, any broken or non-functioning units for which a Spare Product is utilized, and TASER will repair or replace the non-functioning unit with a replacement product. TASER warrants it will repair or replace the unit which fails to function for any reason not excluded by the TAP warranty coverage, during the TAP Term with the same product or a like product, at TASER's sole option. You may not buy a new TAP for the replacement product or the Spare Product.

Within 30 days of the end of the TAP Term you must return to TASER all Spare Products. You will be invoiced for and are obligated to pay to TASER the MSRP then in effect for all Spare Products not returned to TASER. If all the Spare Products are returned to TASER, then TASER will refresh your allotted number of Spare Products with Upgrade Models if you purchase a new TAP for the Upgrade Models.

**TAP Upgrade Models.** Upgrade Models to be provided as follows during and/or after the TAP Term: (i) after 3 years if you purchased 3 years of Evidence.com services/Ultimate Licenses and all TAP payments are made; or (ii) once after 2.5 years and once again after 5 years if you purchased 5 years of Evidence.com services/Ultimate Licenses and made all TAP payments. Any products replaced within the six months prior to the scheduled upgrade will be deemed the Upgrade Model. Thirty days after you receive the Upgrade Models, you must return the products to TASER or TASER will deactivate the serial numbers for the products for which you received Upgrade Models unless you purchase additional Evidence.com licenses for the AXON camera products you are keeping. You may buy a new TAP for any Upgraded Model.

**TAP AXON Camera Upgrade Models.** If you purchased TAP as a stand-alone service, then TASER will upgrade the AXON camera (and controller if applicable), free of charge, with a new on-officer video camera that is the same product or a like product, at TASER's sole option. TASER makes no guarantee that the Upgrade Model will utilize the same accessories or Evidence.com Dock. If you would like to change product models for the Upgrade Model, then you must pay the price difference in effect at the time of the upgrade between the MSRP for the offered Upgrade Model and the MSRP for the model you desire to acquire. No refund will be provided if the MSRP of the new model is less than the MSRP of the offered Upgrade Model.

If you purchased Ultimate License, then TASER will upgrade the AXON camera (and controller if applicable), free of charge, with a new on-officer video camera of your choice.

**TAP Evidence.com Dock Upgrade Models.** TASER will upgrade

<sup>1</sup> These terms apply when you purchase TAP as a stand-alone service for AXON camera products or Evidence.com Docks or as part of the Ultimate License. The Ultimate License does not include TAP coverage for

Evidence.com Docks.

<sup>2</sup> Applies to replacement for batteries which fail to function for any reason not excluded by the Hardware Warranty.

**TASER International, Inc.'s Sales Terms and Conditions for the  
Evidence.com Dock and AXON flex™ and AXON body Cameras TASER Assurance Plan (U.S. Only)  
(Effective April 18, 2014)**

the Evidence.com Dock free of charge, with a new Evidence.com Dock with the same number of bays that is the same product or a like product, at TASER's sole option. If you would like to change product models for the Upgrade Model or add additional bays, then you must pay the price difference in effect at the time of the upgrade between the MSRP for the offered Upgrade Model and the MSRP for the model you desire to acquire. No refund will be provided if the MSRP of the new model is less than the MSRP of the offered Upgrade Model.

**TAP Term.** The TAP Term start date is based upon the shipment date of the hardware covered under TAP. If the shipment of the hardware occurred in the first half of the month, then the Term starts on the 1<sup>st</sup> of the following month. If the shipment of the hardware occurred in the second half of the month, then the Term starts on the 15<sup>th</sup> of the following month.

**TAP Termination.** If an invoice for TAP is more than 30 days past due or your agency defaults on its payments for the Evidence.com services then TASER may terminate TAP and all outstanding AXON product related TAPs with your agency. TASER will provide notification to you that TAP coverage is terminated. Once TAP coverage is terminated, then:

1. TAP coverage will terminate as of the date of termination and no refunds will be given.
2. TASER will not and has no obligation to provide the free Upgrade Models.
3. You will be invoiced for and are obligated to pay to TASER the MSRP then in effect for all Spare Products provided to you under TAP. If the Spare Products are returned within 30 days of the Spare Product invoice date, credit will be issued and applied against the Spare Product invoice.
4. You will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TAP.

**TAP Payment Terms.** TAP may only be purchased at the point of sale. TASER will separately invoice you on an annual basis for the cost of TAP and you are responsible for payment within 30 days of the invoice (even if TASER does not receive an annual purchase order from you prior to issuing the invoice). The payment due date is based upon the Term start date. If multiple purchases of AXON camera products/Evidence.com Dock have been made, each purchase may have a separate TAP payment due date. Payment will be considered past due if not paid in full or if not received within 30 days of the invoice date.

**Sales Terms.** TASER's current Sales Terms and Conditions for Direct Sales to End User Purchasers, located at <http://www.taser.com/sales-terms-and-conditions>, are also applicable to your purchase.

**No Assignment.** You may not assign the TAP or any related order and you may not delegate your duties under these Terms without TASER's prior written consent, which will not be unreasonably withheld.

**Entire Agreement.** These Terms, along with the quote, sales order acknowledgement, Sales Terms and Conditions for Direct Sales to End User Purchasers, and the applicable product warranty, license and service agreements, constitute the entire agreement between the parties for the purchase of the AXON camera/Evidence.com Dock products and TAP. These Terms supersede and replace any prior agreement or understanding between the parties, including any oral representations concerning the subject matter of this agreement.

AXON flex is a trademark of TASER International, Inc., and TASER and © are registered trademarks of TASER International, Inc., registered in the U.S. © 2014 TASER International, Inc. All rights reserved.

RESOLUTION \_\_\_\_\_

AUTHORIZING AN APPROPRIATION OF \$204,980 FROM THE FY 2013-14 AND 2014-15 CITIZENS OPTION FOR PUBLIC SAFETY "COPS" GRANT PROGRAM FUNDING FOR THE PURCHASE OF OFFICER BODY-WORN CAMERAS, AND RELATED EQUIPMENT, FINDING IT IS IN THE BEST INTEREST OF THE CITY TO FOREGO THE FORMAL REQUEST FOR BID PROCESS, AND AUTHORIZING THE MAYOR TO EXECUTE A 5-YEAR CONTRACT WITH TASER INTERNATIONAL, INCORPORATED AND EVIDENCE.COM FOR THE DATA STORAGE

WHEREAS, The Police Department annually receives grant funding from the Supplemental Law Enforcement Services Funds (SLESF) and Citizen's Option for Public Safety (COPS), and

WHEREAS, The City of Tracy has received \$137,559 for FY 2013-14, and \$67,421 for FY 2014-15 from the State COPS Grant, and

WHEREAS, The Tracy Police Department intends to use the appropriation of \$204,980 to purchase body worn cameras, accessories, on-site training, installation of data ports to support technology and year one unlimited data storage and enter into an agreement with Evidence.com cloud based storage in an effort to better serve our community and facilitate our protection efforts;

NOW THEREFORE BE IT RESOLVED, That City Council hereby authorizes the appropriation of \$204,980 from the 2013-14 and 2014-15 Citizens' Option for Public Safety "COPS" Program funding for the purchase of officer body-worn cameras, and related equipment, finds it is in the best interest of the City to forego the formal request for bid process, and authorizes the Mayor to execute a 5-year contract with Taser International, Incorporated and Evidence.com for the data storage.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the Tracy City Council on the 17<sup>th</sup> day of March, 2015, 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 THE ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME INVESTMENT PARTNERSHIP PROGRAM (HOME) FUNDS FOR FISCAL YEAR 2015-2016**

EXECUTIVE SUMMARY

Consider and approve the allocation of Community Development Block Grant (CDBG) and Home Investment Partnership Program (HOME) funds for fiscal year (FY) 2015-2016.

BACKGROUND

Community Development Block Grant (CDBG) funds are allocated to cities and counties by the United States Department of Housing and Urban Development (HUD) for use in projects, programs and services that demonstrate a benefit to low and moderate income individuals and families. Applications must meet one of HUD's National objectives and criteria for eligibility.

During fiscal year 2008-09, City Council directed staff to revise the CDBG process so that eligible applications that best address the local needs of the Tracy community would receive priority for funding. On October 5, 2010, City Council approved the following four local priorities: (1) economic development / job creation, (2) emergency food and shelter, (3) domestic violence services, and (4) senior / adult services. In order to encourage meaningful citizen involvement, public examination and appraisal of the process, as well as enhance program accountability, a subcommittee of the Parks and Community Services Commission was established to evaluate the CDBG applications and make funding allocation recommendations.

DISCUSSION

CDBG and HOME applications for FY 2015-2016 became available on December 11, 2014 with a submittal deadline of January 15, 2015. Staff held a public meeting on January 7, 2015 to answer questions regarding application requirements. The City received a total of 15 applications.

In December 2014, San Joaquin County provided the City with an estimated CDBG allocation total for FY 2015-16. The total was \$457,746, with 15% designated within the Public Service Category (per HUD regulations) in the amount of \$68,661. At that time, the City also estimated to receive \$103,612 in federal HOME Investment Partnership Program (HOME) funds, which are intended for general housing activity types to include: homeowner and rental construction and/or rehabilitation and first-time homebuyer assistance. These figures were used by the Parks Commission (CDBG) subcommittee and Parks Commission to make funding recommendations in both the Public Improvement and Public Service funding categories.

The Parks Commission subcommittee conducted a public meeting on January 21, 2015 to consider the applications and make funding allocation recommendations. The Parks and Community Services Commission conducted a public meeting on Thursday, February 5, 2015, to consider the recommendations made by the subcommittee. Following a discussion by the Commissioners and comments by the public, the Parks and Community Services Commission made the following recommendations:

**CDBG - PUBLIC SERVICES CATEGORY (15% Cap) FUNDING**  
**RECOMMENDATIONS: \$68,661**

<b>ORGANIZATION NAME</b>	<b>PROJECT TITLE/DESCRIPTION</b>	<b>FUNDING REQUESTED</b>	<b>FUNDING RECOMMENDED</b>
<b>Emergency Food Bank and Family Svc. Of SJC</b>	Mobile Farmer's Market	\$2,000	\$2,000
<b>SJC Dept. Aging &amp; Community Svc.</b>	Home Delivered Meal Program	\$9,000	\$9,000
<b>McHenry House Tracy Family Shelter</b>	Family Crisis Intervention Program	\$25,000	\$5,000
<b>Second Harvest Food Bank of SJC/Stanslaus</b>	Food Assistance	\$10,000	\$4,000
<b>Tracy Interfaith Ministries</b>	Hunger Awareness & Food Distribution	\$15,000	\$13,661
<b>Tracy Boys and Girls Club</b>	Youth Inclusion Program	\$15,000	\$4,000
<b>Tracy Volunteer Caregivers</b>	Volunteer & Client Services	\$8,090	\$3,000
<b>VBR Foster Family Agency</b>	Domestic Violence Services	\$10,000	\$3,272
<b>Women's Center – Youth &amp; Family Svc.</b>	South County Services & Shelter	\$10,000	\$4,000
<b>San Joaquin Fair Housing Authority</b>	Fair Housing Activities	\$10,228	\$10,228
<b>UNeed2, Inc.</b>	Youth Computer Builder / Job Creation Program	\$43,560	\$10,500
<b>TOTAL AMOUNTS:</b>		<b>\$157,878</b>	<b>\$68,661</b>

**CDBG - PUBLIC FACILITIES & ECONOMIC DEVELOPMENT FUNDING**  
**RECOMMENDATIONS: \$389,085**

<b>ORGANIZATION NAME</b>	<b>PROJECT TITLE/DESCRIPTION</b>	<b>FUNDING REQUESTED</b>	<b>FUNDING RECOMMENDED</b>
<b>City of Tracy</b>	Downtown Façade Improvement Program	\$100,000	\$100,000
<b>Tracy Boys and Girls Club</b>	Clubhouse Portable at South West Park School	\$220,964	\$157,585
<b>McHenry House</b>	Indoor and Exterior Facility Improvements	\$80,456	\$71,500
<b>Small Business Development Center</b>	SBDC Consulting & Training	\$10,000	\$10,000
<b>Coalition of Tracy Citizens to Assist the Homeless</b>	Emerson House Renovation/Repair	\$68,880	\$50,000
<b>TOTAL AMOUNTS:</b>		<b>\$480,300</b>	<b>\$389,085</b>

**HOME FUNDS: \$103,612 FOR FY2015-16**

<b>ORGANIZATION NAME</b>	<b>PROJECT TITLE/DESCRIPTION</b>	<b>FUNDING REQUESTED</b>	<b>FUNDING RECOMMENDED</b>
<b>City of Tracy</b>	Loan Down Payment Assistance Program	\$103,612	\$103,612
<b>TOTAL AMOUNTS:</b>		<b>\$103,612</b>	<b>\$103,612</b>

On February 11, 2015, the City of Tracy received notice from San Joaquin County that the estimated CDBG/HOME allocation amount for FY 2015-16 had been amended to \$433,624, a decrease in funding of \$24,122. Per HUD regulations, 15% of the total is designated for Public Services programs, which equates to \$65,044. The HOME fund allocation amount had also been amended to \$97,194, a decrease in funding of \$6,418. Population 2013 estimates were used (as 2014 figures are not available yet) to calculate each jurisdiction's CDBG and HOME allocations for FY 2015-16.

In addition, the San Joaquin County Community Development Department completed an initial review of the FY 2015-16 CDBG applications, and provided the following feedback:

- The UNeed2, Inc. Youth Computer and Builder Program is considered a duplicate service already funded through the City's Mayor's Youth Community Support Program. The County informed City staff that CDBG funds cannot to be used for duplicate services, nor can they be used to replace funds currently being used to fund such an activity.

- VBR, Foster Family Agency requested funding for their Domestic Violence Counseling Program. However, in their application they state that all funds proposed for the program and the Foster Care Agency come from the Department of Social Services. CDBG funds cannot be used to replace funds that an agency is already receiving from a funding source.

Therefore, San Joaquin County recommends that the City deny the UNeed2, Inc. and VBR applications. The County is the administrator of Tracy's CDBG funding and therefore, has the final authority over the disbursement of funds for CDBG projects and services. Given the County's denial of the two aforementioned applications, staff recommends dividing the remaining balance of \$10,155 equally amongst the Public Services applicants as follows:

**AMENDED CDBG - PUBLIC SERVICES CATEGORY (15% Cap) FUNDING RECOMMENDATIONS: \$65,044**

<b>ORGANIZATION NAME</b>	<b>PROJECT TITLE/DESCRIPTION</b>	<b>FUNDING REQUESTED</b>	<b>FUNDING RECOMMENDED (Including \$10,155 balance divided amongst qualified applicants)</b>
<b>Emergency Food Bank and Family Svc. Of SJC</b>	Mobile Farmer's Market	\$2,000	\$3,128.33
<b>SJC Dept. Aging &amp; Community Svc.</b>	Home Delivered Meal Program	\$9,000	\$10,128.33
<b>McHenry House Tracy Family Shelter</b>	Family Crisis Intervention Program	\$25,000	\$6,128.33
<b>Second Harvest Food Bank of SJC/Stanslaus</b>	Food Assistance	\$10,000	\$5,128.33
<b>Tracy Interfaith Ministries</b>	Hunger Awareness & Food Distribution	\$15,000	\$14,789.33
<b>Tracy Boys and Girls Club</b>	Youth Inclusion Program	\$15,000	\$5,128.33
<b>Tracy Volunteer Caregivers</b>	Volunteer & Client Services	\$8,090	\$4,128.33
<b>VBR Foster Family Agency</b>	Domestic Violence Services	\$10,000	\$0
<b>Women's Center – Youth &amp; Family Svc.</b>	South County Services & Shelter	\$10,000	\$5,128.33
<b>San Joaquin Fair Housing Authority</b>	Fair Housing Activities	\$10,228	\$11,356.33

<b>UNeed2, Inc.</b>	Youth Computer Builder / Job Creation Program	\$43,560	\$0
<b>TOTAL AMOUNTS:</b>		<b>\$157,878</b>	<b>\$65,044</b>

**AMENDED CDBG FUNDS - PUBLIC FACILITIES & ECONOMIC DEVELOPMENT FUNDING RECOMMENDATIONS: \$368,580.**

<b>ORGANIZATION NAME</b>	<b>PROJECT TITLE/DESCRIPTION</b>	<b>FUNDING REQUESTED</b>	<b>FUNDING RECOMMENDED</b>
<b>City of Tracy</b>	Downtown Façade Improvement Program	\$100,000	\$79,495
<b>Tracy Boys and Girls Club</b>	Clubhouse Portable at South West Park School	\$220,964	\$157,585
<b>McHenry House</b>	Indoor and Exterior Facility Improvements	\$80,456	\$71,500
<b>Small Business Development Center</b>	SBDC Consulting & Training	\$10,000	\$10,000
<b>Coalition of Tracy Citizens to Assist the Homeless</b>	Emerson House Renovation/Repair	\$68,880	\$50,000
<b>TOTAL AMOUNTS:</b>		<b>\$480,300</b>	<b>\$368,580</b>

**AMENDED HOME FUNDS: \$97,194 FOR FY2015-16**

<b>ORGANIZATION NAME</b>	<b>PROJECT TITLE/DESCRIPTION</b>	<b>FUNDING REQUESTED</b>	<b>FUNDING RECOMMENDED</b>
<b>City of Tracy</b>	Loan Down Payment Assistance Program	\$97,194	\$97,194
<b>TOTAL AMOUNTS:</b>		<b>\$97,194</b>	<b>\$97,194</b>

**STRATEGIC PLAN**

This agenda item supports the City Council's Quality of Life Strategic Plan through the implementation of the local priorities for CDBG funding.

**FISCAL IMPACT**

There will be no impact to the General Fund. The City of Tracy, as a subrecipient of San Joaquin County, will be allocated an estimated \$433,624 in CDBG funds for FY 2015-2016. The City will also be allocated an estimated \$97,194 in HOME funds.

RECOMMENDATION

That City Council, by resolution, allocate \$433,624 in Community Development Block Grant funds and \$97,194 in HOME funds for FY 2015-2016 pursuant to the recommendations listed in the attached resolution; and authorize and direct the Development Services Director to execute the Form Agreements on behalf of the City.

Prepared by: Vanessa Carrera, Management Analyst  
Barbara Harb, Management Analyst

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

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A: Summary of Previous Allocations  
Attachment B: Form Agreement

RESOLUTION 2015- \_\_\_\_\_

ALLOCATING COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME INVESTMENT PARTNERSHIP PROGRAM (HOME) FUNDS FOR FISCAL YEAR 2015-2016

WHEREAS, Community Development Block Grant (CDBG) funds are allocated to cities and counties by the United States Department of Housing and Urban Development (HUD) for use in projects, programs, and services that demonstrate a benefit to low and moderate income persons; and

WHEREAS, The City of Tracy, as a subrecipient of San Joaquin County, will receive an estimated \$433,624 in CDBG funds and \$97,194 in HOME funds for fiscal year 2015-2016; and

WHEREAS, The application submittal period was from December 11, 2014 to January 15, 2015; and

WHEREAS, On February 5, 2015, the Parks and Community Services Commission conducted a public meeting to consider the applications and made funding allocation recommendations; and

WHEREAS, The City Council conducted a public hearing on March 17, 2015 to consider the applications for allocation of CDBG and HOME funds for FY 2015-2016; and

WHEREAS, The entities (the "Awardees") receiving CDBG funding are required to enter into an agreement with the City to ensure funds are spent in accordance with the applications that were evaluated to determine funding eligibility and amounts. A form agreement (the "Form Agreement") is attached to the staff report accompanying this resolution;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy does hereby award CDBG funds to the following Awardees in the following amounts:

Emergency Food Bank of San Joaquin County	\$3,128.33
SJC Department of Aging	\$10,128.33
McHenry House Family Shelter	\$6,128.33
Second Harvest Food Bank	\$5,128.33
Tracy Interfaith Ministries	\$14,789.33
Tracy Boys and Girls Club	\$5,128.33
Tracy Volunteer Caregivers	\$4,128.33
Women's Center – Tracy	\$5,128.33
SJC Fair Housing Authority	\$11,356.33
City of Tracy	\$79,495
Tracy Boys and Girls Club	\$157,585
McHenry House	\$71,500
Small Business Development Center	\$10,000
Coalition of Tracy Citizens to Assist the Homeless	\$50,000
Total	\$433,624

BE IT FURTHER RESOLVED, That \$97,194 in HOME funds is awarded to the City of Tracy for the purposes of funding the Down Payment Assistance Program;

BE IT FURTHER RESOLVED, That the Form Agreement is approved and that the Development Services Director is authorized and directed to sign the final agreement on behalf of the City.

\*\*\*\*\*

The foregoing Resolution 2015-\_\_\_\_\_ was adopted by the Tracy City Council on the 17<sup>th</sup> day of March 2015 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK



NEIGHBORHOOD PRESERVATION  
CDBG FINANCIAL STATUS REPORT  
CITY OF TRACY ALLOCATIONS

May 20, 2014

		HUD	ORIGINAL	TRANSFER	ADJUSTED	PROGRAM	UNLIQUIDATE	AMOUNT	TOTAL %	UNOBLIGATED
	DESCRIPTION	AC.#	ALLOCATION	ADD/(DEL)	ALLOCATION	INCOME	ENCUMBRAN	EXPENDED	OBL.& EXP	BALANCE
10-01	Tracy Interfaith Ministries Food Closet	1952	6,965.21		6,965.21			6,965.21	100.00%	0.00
10-02	Meals on Wheels	1953	7,035.57		7,035.57			7,035.57	100.00%	0.00
10-03	Second Harvest Food Bank	1954	6,736.55		6,736.55			6,736.55	100.00%	0.00
10-04	San Joaquin Fair Housing	1898	10,000.00		10,000.00			10,000.00	100.00%	0.00
10-05	McHenry House	1955	7,316.99		7,316.99			7,316.99	100.00%	0.00
10-06	Nutrition on the Move Program	1956	2,000.00		2,000.00			2,000.00	100.00%	0.00
10-07	Women's Center of SJC	1957	5,857.11	1,178.46	7,035.57			5,689.57	80.87%	1,346.00
10-08	Boys & Girls Club Outreach Program	1958	5,857.11		5,857.11			5,857.11	100.00%	0.00
10-09	Downtown ADA Sidewalk Improvement Project	1959	240,619.45	-240,619.45	0.00				0.00%	0.00
10-10	Tracy Caregivers	1960	6,208.89	-6,208.89	0.00				#DIV/0!	0.00
10-11	VBR Foster Family Agency	1961	6,156.12		6,156.12			6,156.12	100.00%	0.00
10-12	New City America Consulting Firm	1962	70,000.00	-22,000.00	48,000.00			48,000.00	100.00%	0.00
10-13	Boys & Girls Club Basketball Hoop Replacement	1963	60,000.00		60,000.00			60,000.00	100.00%	0.00
10-14	Disability Resource Agency (DRAIL)	1964	5,000.00	-51.30	4,948.70			4,948.70	100.00%	0.00
10-16	McHenry House Apartment Improvements	1965	0.00	5,200.00	5,200.00			5,200.00	100.00%	0.00
	2010 ALLOCATION		439,753.00	-262,501.18	177,251.82	0.00	0.00	175,905.82		1,346.00
11-01	Tracy Interfaith Ministries Food Closet	2083	9,568.00	(147.00)	9,421.00			9,421.00	100.00%	0.00
11-02	Boys & Girls Clubs of Tracy-Expansion	2084	76,918.00	8,264.00	85,182.00			85,000.00	99.79%	182.00
11-03	Second Harvest Food Bank	2085	9,152.00		9,152.00			9,152.00	100.00%	0.00
11-04	San Joaquin Fair Housing	2001	10,127.00		10,127.00			10,127.00	100.00%	0.00
11-05	McHenry House-Fire Alarm System	2086	45,000.00		45,000.00			28,000.00	62.22%	17,000.00
11-06	EFB-Mobile Farmer's Market	2087	2,000.00	1,000.00	3,000.00			3,000.00	100.00%	0.00
11-07	<b>Tracy City Center Association</b>	2088	67,869.00	-67,869.00	0.00	<b>PROJECT CANCELED BY HUD</b>			<b>#DIV/0!</b>	<b>0.00</b>
11-08	Women's Center of SJC	2089	8,423.00		8,423.00			8,423.00	100.00%	0.00
11-09	Boys & Girls Club Outreach Program	2090	9,568.00	-147.00	9,421.00			9,421.00	100.00%	0.00
11-10	City of Tracy - Grande Theater ADA Entrance Do	2091	58,000.00		58,000.00			46,980.84	81.00%	11,019.16
11-11	Lolly Hansen Senior Center Outdoor Recreation	2092	52,606.00		52,606.00			52,606.00	100.00%	0.00
11-12	Meals on Wheels Program	2093	8,112.00		8,112.00			8,112.00	100.00%	0.00
11-13	McHenry House Family Shelter	2094	8,944.00		8,944.00			8,944.00	100.00%	0.00
	2011 ALLOCATION		366,287.00	-58,899.00	307,388.00	0.00	0.00	279,186.84		28,201.16
12-01	Tracy Interfaith Ministries Food Closet	2176	7,994.00	41.60	8,035.60			8,035.60	100.00%	0.00
12-02	Boys & Girls Club of Tracy-Outreach	2177	7,994.00	147.00	8,141.00			8,141.00	100.00%	0.00
12-03	Second Harvest Food Bank	2178	7,994.00		7,994.00			7,994.00	100.00%	0.00
12-04	San Joaquin Fair Housing	2179	10,228.00		10,228.00			10,228.00	100.00%	0.00
12-05	McHenry House-Operations	2180	7,994.00		7,994.00			7,994.00	100.00%	0.00
12-06	EFB-Mobile Farmer's Market	2181	2,000.00		2,000.00			2,000.00	100.00%	0.00
12-07	Farm to Family	2182	2,500.00		2,500.00			2,500.00	100.00%	0.00
12-08	Women's Center	2183	7,994.00		7,994.00			7,994.00	100.00%	0.00
12-09	CDBG Administration	2184	10,000.00		10,000.00			2,331.00	23.31%	7,669.00
12-10	Fall 2012 Grants Program	2185	150,069.00	-150,069.00	0.00				0.00%	0.00
12-11	Lolly Hansen Sr. Ctr. Outdoor Rec Area	2186	195,000.00	10,000.00	205,000.00			202,678.00	98.87%	2,322.00
12-12	Meals on Wheels Program	2187	7,994.00		7,994.00			7,994.00	100.00%	0.00
12-14	Boys & Girls Club of Tracy-Solar Panels	2199		336,319.00	336,319.00				0.00%	336,319.00
12-15	McHenry House-Retrofit	2200		107,864.00	107,864.00			97,493.00	90.39%	10,371.00
	2012 ALLOCATION		417,761.00	304,302.60	722,063.60	0.00	0.00	365,382.60		356,681.00
13-01	TRACY INTERFAITH - FOOD PANTRY	2301	10,000.00	105.40	10,105.40			10,105.40	100.00%	0.00
13-02	BOYS & GIRLS CLUB-ECO CLASSROOM	2287	75,000.00		75,000.00				0.00%	75,000.00
13-03	SECOND HARVEST FOOD BANK	2288	7,000.00		7,000.00			5,645.45	80.65%	1,354.55
13-04	SAN JOAQUIN FAIR HOUSING	2255	10,228.00		10,228.00			6,451.53	63.08%	3,776.47
13-05	MCHENRY HOUSE-OPERATIONS	2289	12,500.00		12,500.00			12,500.00	100.00%	0.00
13-06	EFB-MOBILE FARMER'S MARKET	2290	1,272.00		1,272.00				0.00%	1,272.00
13-07	CITY OF TRACY-SIDEWALK ADA IMPROVEME	2291	100,535.00		100,535.00				0.00%	100,535.00
13-08	WOMEN'S CENTER-OPERATIONS	2292	7,000.00		7,000.00			7,000.00	100.00%	0.00
13-09	TRACY INTERFAITH-SOLAR PANELS	2293	155,408.00	-0.84	155,407.16			155,407.16	100.00%	0.00
13-10	VBR FOSTER FAMILY AGENCY	2294	5,000.00		5,000.00				0.00%	5,000.00
13-11	MCHENRY HOUSE-DAY CENTER REHAB	2295	30,353.00		30,353.00				0.00%	30,353.00
13-12	HSA-MEALS ON WHEELS	2296	9,000.00		9,000.00			7,735.00	85.94%	1,265.00
13-13	OPERATION EMERSON HOUSE RENOVATION	2297	20,000.00		20,000.00			12,500.00	62.50%	7,500.00
13-16	LOLLY HANSEN OUTDOOR RECREATION ARE	2300	14,450.00		14,450.00				0.00%	14,450.00
	2013 ALLOCATION		457,746.00	104.56	457,850.56	0.00	0.00	217,344.54		240,506.02
	GRAND TOTAL		10,420,175.37	596.39	10,420,771.76	35,207.01	0.00	9,820,414.09	94.24%	626,734.18
								PROGRAM INCOME		-25,645.00
								CDBG ALLOCATIONS		652,379.18
		439,330.00	-423.00							

AGREEMENT BETWEEN THE CITY OF TRACY  
AND (NAME OF ORGANIZATION)  
FOR COMMUNITY DEVELOPMENT BLOCK GRANT  
FUNDING FOR FISCAL YEAR 2015-2016

THIS AGREEMENT entered into this \_\_\_\_ day of \_\_\_\_ 2015 by and between the City of Tracy (herein called the "Grantee") and (NAME OF ORGANIZATION) (herein called the "Subrecipient").

WHEREAS, the Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383; and,

WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds to the benefit of low-income residents;

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

A. Activities

The Subrecipient will be responsible for administering a CDBG fiscal year 2015 - 2016 program in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant Program:

**Program Delivery**

Activity #1 (Complete description of activity to be undertaken, what products or services are to be performed, where they are to be provided, for whom they are to be provided, how they are to be provided.)

Activity #2 (Same)

Activity #3 (Same)

**General Administration**

B. National Objectives

The Subrecipient certifies that the activities carried out with funds provided under this Agreement will meet one or more of the CDBG program's National Objectives: 1) benefit low/moderate income persons, 2) aid in the prevention or elimination of slums or blight, 3) meet community development needs having a particular urgency, as defined in 24 CFR Part 570.208.

C. Levels of Accomplishment

In addition to the normal administrative services required as part of this Agreement, the Subrecipient agrees to provide the following levels of program services:

<u>Activity</u>	<u>Units per Month</u>	<u>Total Units/Year</u>
-----------------	------------------------	-------------------------

D. Staffing (Provide list of staff and time commitments to be allocated to each activity specified in I.A.)

E. Performance Monitoring

The Grantee will monitor the performance of the Subrecipient against goals and performance standards required herein. Substandard performance as determined by the Grantee will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the 1st day of July 2015 and end on the 30th day of June 2016. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other assets, including program income.

III. BUDGET

Line Item:	Amount:
Salaries	\$
Fringe	
Office Space (Program Only)	
Utilities	
Communications	
Reproduction/Printing	
Supplies and Materials	
Mileage	
Audit	
Other (specify)	
Indirect costs (specify)	
TOTAL	\$

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. The Grantee and the Subrecipient must approve any amendments to this budget in writing.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this contract shall not exceed **\$(enter amount) (\$0.0 Facilities, Economic Development and/or \$0.0 Public Services)** Draw-downs for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph III and in accordance with performance.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in OMB Circular A-87, Section 85.20

V. NOTICES

Communication and details concerning this contract shall be directed to the following contract representatives:

	<u>Grantee</u>	<u>Subrecipient</u>
Name & Title:	Andrew Malik	(Name of Contact)
Address:	333 Civic Center Drive	Address#1
City, State, Zip:	Tracy, CA 95376	Address City, State
Telephone:	209-831-6490	Phone Number
Fax Number:	209-830-6837	Fax Number

VI. SPECIAL CONDITIONS (Special conditions specific to the particular activity or individual subrecipient)

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)). The Subrecipient also agrees to comply with all other applicable federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the Subrecipient is an independent subrecipient.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this contract.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall comply with the insurance and bonding requirements of 24 CFR Part 84.

F. Grantor Recognition

The Subrecipient shall insure recognition of the role of the grantor agency in providing services through this contract. All activities, facilities and items utilized pursuant to this contract shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this contract.

G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Suspension or Termination

Either party may terminate this contract at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. Partial terminations of the Scope of Service in Paragraph I.A above may only be undertaken with the prior approval of the Grantee. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Subrecipient under this Agreement shall, at the option of the Grantee, become the property of the Grantee, and the Subrecipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

The Grantee may also suspend or terminate this Agreement, in whole or in part, if the Subrecipient materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and the Grantee may declare the Subrecipient ineligible for any further participation in the Grantee's contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe the Subrecipient is in noncompliance with any applicable rules or regulations, the Grantee may withhold up to fifteen (15) percent of said contract funds until such time as the Subrecipient is found to be in compliance by the Grantee, or is otherwise adjudicated to be in compliance.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR Part 84 and agrees to adhere to the accounting principles required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record-Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the federal regulations specified in 24 CFR Part 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meet one of the National Objectives of the CDBG program;
- c. Records required determining the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR Part 570.502, and 24 CFR Part 84; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. Retention

The Subrecipient shall retain all records pertinent to expenditures incurred under this contract for a period of four (4) years after the termination of all activities funded under this Agreement. The retention period starts from the date of submission of the consolidated annual performance and evaluation report (CAPER), in which the specific activity is reported on for the final time. Records for non-expendable property acquired with funds under this contract shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four (4) years after he/she has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service and, in the case of minor, that of a responsible parent/guardian.

5. Property Records\Reversion of Assets

The Subrecipient shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8), as applicable.

- a. Reversion of assets. Any real property acquired or improved in whole or in part using CDBG funds in excess of \$25,000 shall be used as indicated in this agreement (including the beneficiaries of such use) for a period of at least five years after the closeout of the County's grant from which the assistance was provided.

Any changes in the use or planned use of assisted real property shall be bound by the requirements of 24 CFR 570.505.

#### 6. Close-Outs

The Subrecipient's obligation to the Grantee shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records.

#### 7. Audits and Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, their designees or the federal government, at any time during normal business hours, as often as the Grantee or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning subrecipient audits and, as applicable, OMB Circular A-133.

### C. Reporting and Payment Procedures

#### 1. Program Income

The Subrecipient shall report monthly, on a monthly basis, all program income as defined at 24 CFR 570.500(a) generate by activities carried out with CDBG funds made available under this contract. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balance on hand. All unused program income shall be returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury is not program income and shall be remitted promptly to the Grantee.

#### 2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this contract based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee in a form, similar to Appendix "A" on a calendar quarterly basis.

D. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein.

All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this contract.

2. Procurement Standards

The Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR Part 84, Procurement Standards, and shall subsequently follow, Property Management Standards as modified by 24 CFR 570.502(b)(6), covering utilization and disposal of property.

3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this contract.

IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Antidisplacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in § 570.606(d) governing optional relocation policies. The Subrecipient shall provide relocation assistance to persons (families, individuals, businesses, nonprofit organizations and farms) that are displaced as a direct result of acquisition demolition or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

X. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with local and state civil right ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing



and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

2. Nondiscrimination

The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The Subrecipient will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570.601 and 602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), which prohibits discrimination against the handicapped in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this contract.

B. Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. W/MBE

The Subrecipient will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the term "minority and female business enterprise" mean a business at least fifty-one (51) percent owned

and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. EEO/AA Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276a-276a-5; 40 USC 327 and 40 USC 276c) and all other applicable Federal, State and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this contract. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction,

renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with federal requirements adopted by the Grantee pertaining to such 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journeyworkers; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. "Section 3" Clause  
a. Compliance

Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this contract is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project area and contracts for work in connection with the project awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing

within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency.

The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this contract without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Subrecipient further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the Subrecipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Grantee, or of any designated public agencies or subrecipients that are receiving funds under the CDBG Entitlement program.

5. Lobbying

The Subrecipient hereby certifies that:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and

d. Lobbying Certification - Paragraph d

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction

imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

7. Religious Organization

The Subrecipient agrees that funds provided under this contract will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 CFR 570.200(j).

XI. ENVIRONMENTAL CONDITIONS

A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this contract:

- Clean Air Act, 42 U.S.C., 7401, et seq.
- Federal Water Pollution control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R., Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), the Subrecipient shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this contract shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures might be undertaken.

D. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR, Part 800, Advisory Council on Historic Preservation

Procedures for Protection of Historic Properties, insofar as they apply to the performance of this contract.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

XII. DRUG FREE WORKPLACE

Subrecipient will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the subrecipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing an on-going drug-free awareness program to inform employees about:
  - a. The dangers of drug abuse in the workplace;
  - b. The subrecipient's policy of maintaining a drug-free workplace;
  - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
  - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee engaged in the performance of the grant is given a copy of the statement required by paragraph 1;
4. Notifying the employee in the statement required by paragraph 1 that as a condition of employment under the grant the employee will:
  - a. Abide by the terms of the statement; and
  - b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the Grantee in writing, within ten calendar days after receiving notice under subparagraph 4. b. from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
6. Taking on the following actions, within 30 calendar days of receiving notice under subparagraph 4. b., with respect to any employee who is so convicted:
  - a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - b. Requiring such employee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6.

XIII. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

GRANTEE

SUBRECIPIENT

\_\_\_\_\_  
Andrew Malik,  
Development Services Director

\_\_\_\_\_  
(Contact)  
(Title)



AGENDA ITEM 5

REQUEST

**DISCUSS AND PROVIDE DIRECTION ON CITY COUNCIL PROCEDURES FOR PREPARATION, POSTING AND DISTRIBUTION OF AGENDA AND THE CONDUCT OF PUBLIC MEETINGS, INCLUDING PROVISIONS RELATED TO COUNCIL MEMBER REQUESTS FOR MATTERS TO BE DISCUSSED BY COUNCIL**

EXECUTIVE SUMMARY

This item is on the agenda to allow the City Council to discuss and provide direction on City Council Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings, including provisions related to Council Member requests for matters to be discussed by Council.

DISCUSSION

On March 3, 2015, the City Council requested that staff place an item on the agenda to allow the Council to discuss and provide direction on the current two-step process for Council Member requests for matters to be discussed by Council. This process is contained in the City Council's Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings ("City Council Meeting Policy"). A copy of the City Council Meeting Policy is attached as Attachment A.

The City Council Meeting Policy contains the following process for Council Member requests for matters to be discussed by Council:

The intent of this policy is to provide an orderly means through which an individual Council Member can raise an issue for discussion and possible City Council direction or action. The policy described below has two parts. The first part is to enable the Council Member to place a matter in front of the Council. The second part is to enable the Council to determine whether staff time should be spent on the issue.

Part 1: Council Members wishing to have a matter discussed by the City Council may do so by one of two means:

1. During a Council meeting, under "Council Items," a Council Member may request that a matter be placed on a future agenda for discussion. The Council Member will state the meeting date for which he/she wishes the item to be agendized.
2. In advance of a Council meeting, a Council Member may contact the City Manager, or his/her designee, via telephone, email, or in person and convey the desired title of the agenda item and desired meeting date.

The desired title must be conveyed before 12:00 p.m. on the Wednesday prior to the Council meeting. This will give the City Clerk's Office time on the following Thursday to finalize the agenda and post it within the required timeframe. Requests received after this deadline shall be placed on the agenda for the following regularly-scheduled meeting. The item will then be added under the "Council Items" section of the agenda in the order it was received. It is the Council Member's option to prepare a one page summary report for the City Clerk's Office to include in the Council agenda packet. The one page summary will identify the Council Member who made the request and briefly describe the nature of the item.

Staff will not spend time preparing any reports or analyses on the requested item. The only staff assistance provided at this initial stage would be to help the Council Member frame the issue, if needed, so that the Council and public clearly understand the request.

Part 2: Consideration of the Council Member's Request: When the item is called at the Council meeting, the Council Member who made the request will describe the item. The Council discussion will be limited to determining whether staff time and City resources should be spent researching the particular agenda item and whether to direct staff to conduct further analysis on the item. Council will not take action on the item itself.

Concurrence that staff time and City resources will be devoted to the item does not signify approval of the item. It only indicates that the Council wishes to have it studied further. Additionally, the Council may, at any time, decide to drop the matter, even after the matter has been analyzed by staff.

Upon the concurrence of a majority of the Council that the item should be researched and agendaized, the City Manager will determine when to place the item on a future agenda based on time necessary to complete the research and staff workload considerations and the effect on City Council established priorities.

This process was added on July 15, 2008 (Resolution 2008-140). The staff report prepared at the time is attached as Attachment B. The minutes for the meeting relating to the item are attached as Attachment C.

#### STRATEGIC PLAN

This is a routine operational item and is not related to any of the Council Strategic Plans.

#### FISCAL IMPACT

There is no fiscal impact with this agenda item.

RECOMMENDATION

That the City Council discuss and provide direction on City Council Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings, including provisions related to Council Member requests for matters to be discussed by Council.

Prepared by: Maria A. Hurtado, Assistant City Manager  
Daniel G. Sodergren, City Attorney

Reviewed by: Maria A. Hurtado, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS:

- A. City Council Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings
- B. July 15, 2008 Staff Report
- C. July 15, 2008 Minutes

RESOLUTION 2015-012

RESCINDING RESOLUTION 2008-140 AND  
ESTABLISHING UPDATED COUNCIL POLICIES AND PROCEDURES

WHEREAS, On July 15, 2008, the Council adopted Resolution 2008-140 which revised the "Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings, and

WHEREAS, On January 20, 2015, Council desired to amend the City Council Policy related to procedures for preparation, posting and distribution of agenda and the conduct of public meetings and move from summary to action minutes, and


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

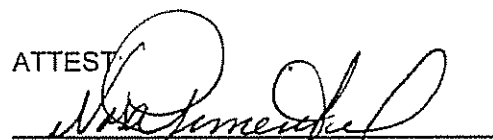
NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby rescinds Resolution 2008-140 and adopts the "Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings" attached as Exhibit "A."

\* \* \* \* \*

The foregoing Resolution 2015-012 was adopted by the Tracy City Council on the 20<sup>th</sup> day of January 2015, by the following vote:

AYES:	COUNCIL MEMBERS:	MITRACOS, RICKMAN, VARGAS, YOUNG, MACIEL
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE
ABSTAIN:	COUNCIL MEMBERS:	NONE

  
 \_\_\_\_\_  
 MAYOR

ATTEST  
  
 \_\_\_\_\_  
 CITY CLERK

**PROCEDURES FOR PREPARATION, POSTING  
AND DISTRIBUTION OF AGENDA  
AND THE CONDUCT OF PUBLIC MEETINGS**  
(Exhibit "A" to Resolution No. 2015-012)

Applicability

The procedures outlined below relating to the preparation, posting and distribution of agendas apply to the City Council, the Successor Agency to the Community Development Agency, the South County Fire Authority, the Public Facilities Corporation, the Tracy Operating Partnership Joint Powers Authority, and all City Boards, Commissions, and Committees. The procedures outlined below relating to the conduct of Council meetings apply only to the City Council. All City Council meetings shall be open to the public; however, the City Council may hold closed sessions as authorized by state law.

A. Preparation, Posting and Distribution of Agenda

Purpose of Agenda

The agenda process serves four purposes:

- As a communication mechanism, the agenda informs City staff, City Council, the public and the press.
- As a compliance mechanism, the agenda process ensures compliance with mandated state laws.
- As a decision-making mechanism, the agenda process regularly brings City business to the City Council for consideration and action. Agenda items should contain enough background information so City Council can obtain a full understanding of the issues. The agenda item should conclude with a staff recommendation so City Council has the benefit of staff input prior to making a final decision.
- As a historical reference that can be kept as a record of proceedings and actions as needed for future actions and/or litigation.

Agenda

As set forth above, the purpose of the agenda is to provide a framework within which Council meetings can be conducted and to effectively implement the approved Council programs, goals and budget. Staff shall work within the policies established by Council and not place matters on the agenda that are outside the scope of existing work programs and priorities except as approved by a majority of the Council, or matters necessary to the proper operation and well-being of the City.

The agenda shall contain a brief general description of each item of business to be transacted or discussed at the meeting.

Procedures for Preparation, Posting and Distribution of Agenda  
and the Conduct of Public Meetings  
Page 2

Distribution of Agenda

At a minimum the posting and distribution of all agendas shall be done in accordance with the Ralph M. Brown Act ("Brown Act") (California Government Code sections 54950 et seq.). Agendas for regular meetings shall be posted 72 hours prior to the meeting; special meeting agendas shall be posted not less than 24 hours prior to the meeting. All agendas shall be posted in the following locations: City Hall, the library, the City's website, and other locations as may be required by a particular Board or Commission's Bylaws. Posting of agendas at City Hall shall be the official location for purposes of Brown Act compliance.

The agenda packets are provided to City Council Members on the Thursday (or Friday) prior to City Council meeting. Distribution to the staff, public and media shall occur immediately after distribution to the City Council. The City will provide, by mail, a copy of the agenda cover sheet and the specific item relating to any individual and/or company which has an item on any given Council agenda.

Agenda subscriptions are available from the City Clerk's Office, 333 Civic Center Plaza, Tracy, (Tel: 209/831-6105). Copies of the agenda, and of individual agenda items, are available at costs established in the City's Master Fee Schedule. Copies of the agenda are also available at the Library and the agenda is posted on the City's website [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us).

Public Access to Written Materials after the Agenda has been Posted or Distributed at Council Meetings

On occasion, Council may receive written materials either after the Agenda has been posted or at a Council meeting. These written materials are typically related to an agenda item or handed out during Items from the Audience. Upon the Council receiving these written materials they become a public record. For materials related to an agenda item, a copy will be kept on file at the City Clerk's Office and will typically be posted on the City's website under "Materials Distributed at Council Meetings" 48 hours after the Council meeting.

B. Conduct of Council Meetings

Council Meetings

Council meetings are held on the first and third Tuesdays of the month, unless the meeting date falls on a holiday as defined in California Government Code Section 6700. No meeting shall be held on such a holiday, but a regular meeting shall be held at 7:00 p.m. on the next business day thereafter, as required by California Government Code Section 54954. Special meetings are scheduled as necessary.

Council meetings are broadcast live on Channel 26. Reruns of the preceding Council meeting are shown every Wednesday at 8:00 p.m. and every Saturday at 9:00 a.m. on Channel 26. Videotapes and DVD recordings of City Council meetings are available at costs established in the City's Master Fee Schedule.

Order of Business

The suggested order of business of Council meetings shall be as follows. However, the City Manager may make exceptions to the order as needed.

Procedures for Preparation, Posting and Distribution of Agenda  
and the Conduct of Public Meetings

Page 3

1. Roll Call
2. Pledge of Allegiance
3. Invocation
4. Proclamations and Awards
5. Consent Calendar
6. Items from the Audience
7. Continued Public Hearings
8. New Public Hearings
9. Regular Items including Introduction and Second Readings of Ordinances
10. Items from the Audience
11. Staff Items
12. Council Items
13. Adjournment

The regular order of business may be changed or suspended for any purpose at any particular meeting by the Mayor.

The Council may determine whether it will consider any new items after 11:00 p.m. and shall determine which specific items will be considered. If an item is continued due to the lateness of the hour, the item shall be automatically placed on the agenda for the next regularly scheduled City Council meeting unless otherwise scheduled by motion action of the Council.

Consent Calendar

All items listed on the Consent Calendar are considered to be routine matters or consistent with previous City Council direction. One motion, a second and a roll call vote may enact the items listed on the Consent Calendar. No separate discussion of Consent Calendar items shall take place unless members of the City Council, City staff or the public request discussion on a specific item at the beginning of the meeting.

Public Access/Items from the Audience

It is the policy of the City Council that members of the public be allowed to address the Council on any agenda item or other matter within the Council's jurisdiction. Each member of the public will be allowed a maximum of five minutes for public input or testimony. At the Mayor's discretion, additional time for testimony may be granted. The Mayor shall request that individuals addressing the Council state their names and addresses for the record, to ensure accuracy in the minutes and for contact information. An individual's failure to state his or her name or address shall not preclude the individual from addressing the Council. The public shall be given an opportunity to speak on "Items of Interest to the Public." Agendas for regular meetings will have two opportunities for "Items from the Audience." The first opportunity will be limited to a 15-minute maximum period. The second opportunity will not have a maximum time limit. The five minute maximum time limit per speaker will apply to all "Items from the Audience." The City Clerk shall be the timekeeper.

Non-Agendized Items (Items from the Audience and Council Items)

No matters, other than those on the posted agenda, shall be acted upon by the Council. However, items may be added to the agenda (such as emergency matters) as permitted in the

Brown Act. Brief announcements, brief responses or questions for clarification, may be made to statements or questions raised on items not on the agenda.

Action on any item not on the agenda shall be deferred until the item is properly listed on the agenda for a subsequent Council meeting unless added due to an immediate need if permitted under state law.

#### Council Member Request for Matters to be Discussed by Council

The intent of this policy is to provide an orderly means through which an individual Council Member can raise an issue for discussion and possible City Council direction or action. The policy described below has two parts. The first part is to enable the Council Member to place a matter in front of the Council. The second part is to enable the Council to determine whether staff time should be spent on the issue.

Part 1: Council Members wishing to have a matter discussed by the City Council may do so by one of two means:

1. During a Council meeting, under "Council Items," a Council Member may request that a matter be placed on a future agenda for discussion. The Council Member will state the meeting date for which he/she wishes the item to be agendized.
2. In advance of a Council meeting, a Council Member may contact the City Manager, or his/her designee, via telephone, email, or in person and convey the desired title of the agenda item and desired meeting date. The desired title must be conveyed before 12:00 p.m. on the Wednesday prior to the Council meeting. This will give the City Clerk's Office time on the following Thursday to finalize the agenda and post it within the required timeframe. Requests received after this deadline shall be placed on the agenda for the following regularly-scheduled meeting. The item will then be added under the "Council Items" section of the agenda in the order it was received. It is the Council Member's option to prepare a one page summary report for the City Clerk's Office to include in the Council agenda packet. The one page summary will identify the Council Member who made the request and briefly describe the nature of the item.

Staff will not spend time preparing any reports or analyses on the requested item. The only staff assistance provided at this initial stage would be to help the Council Member frame the issue, if needed, so that the Council and public clearly understand the request.

Part 2: Consideration of the Council Member's Request: When the item is called at the Council meeting, the Council Member who made the request will describe the item. The Council discussion will be limited to determining whether staff time and City resources should be spent researching the particular agenda item and whether to direct staff to conduct further analysis on the item. Council will not take action on the item itself.

Concurrence that staff time and City resources will be devoted to the item does not signify approval of the item. It only indicates that the Council wishes to have it studied



further. Additionally, the Council may, at any time, decide to drop the matter, even after the matter has been analyzed by staff.

Upon the concurrence of a majority of the Council that the item should be researched and agendized, the City Manager will determine when to place the item on a future agenda based on time necessary to complete the research and staff workload considerations and the effect on City Council established priorities.

#### Members of the Public - Request for Agenda Items

When a member of the public raises an item at a Council meeting which requires attention, such items shall be referred to staff for follow-up. If the requesting member of the public is not satisfied with staff's response to his/her question, the member of the public may request a Council Member to sponsor his/her item for discussion at a future Council meeting. In such cases, the sponsoring Council Member shall follow those procedures described under "Council Member Request for Agenda Items." Placing an item from a member of the public on a Council agenda does not imply or guarantee a decision or action different from that taken by staff in the initial follow-up to the question or request.

#### Public Hearings

Public hearings are required for a variety of City Council actions such as most changes to the Tracy Municipal Code, zoning revisions, some annexations, street vacations, weed abatement, liens, fee increases, etc. Whenever the law provides that publication of a notice shall be made, such notice shall be published in a newspaper of general circulation for the period prescribed, the number of times, and in the manner required. Each speaker will be allowed a maximum of five minutes for public input or testimony. At the Mayor's discretion, additional time for testimony may be granted. The City Clerk shall be the timekeeper.

#### Presentations to the Council

Letters and written communications: Speakers are encouraged to submit comments in writing at the earliest possible time to ensure distribution to Council and other interested parties. Letters submitted with a request that they be read into the record will be done so only upon a request of the majority of the Council.

PowerPoint (or similar): Staff and members of the public who wish to make PowerPoint, Video or similar presentations to the Council will utilize the City's audio/visual equipment. Staff and members of the public are required to provide the City Clerk's Office with the DVD/CD/Video (or email copy) of the presentation no later than 24 hours prior to the Council meeting.

Additionally, eight hard copies of the presentation material shall be provided to the City Clerk's Office for inclusion in the record of the meeting and for distribution to Council, City Attorney and City Manager.

#### Americans with Disabilities Act

The City of Tracy is in compliance with the Americans with Disabilities Act and will make all reasonable accommodations for the disabled. To allow for such reasonable accommodations,

Procedures for Preparation, Posting and Distribution of Agenda  
and the Conduct of Public Meetings

Page 6

persons requiring assistance or auxiliary aids to participate at a City meeting, should contact the City Manager's Office at (209) 831-6000 at least 24 hours prior to the meeting.

Workshops

The purpose of a workshop is to inform the policy body on complex issues. Workshops provide an opportunity for the Council to review documents and request additional information. However, no final Council action shall be taken during the workshop on workshop items.

Procedure for Invocations

Any member of the public who wishes to offer an invocation prior to the opening of a regular City Council meeting shall contact the City Clerk. The City Clerk shall select a mutually agreeable City Council meeting date for the invocation.

Minutes

The City Clerk's office shall be responsible for the preparation and distribution of the Council minutes. The minutes shall include a public report on any action taken and the vote or abstention on such action of each Council Member present for the action. Unless a reading of the minutes is requested by a Council Member, the minutes may be approved as a Consent Calendar item.

No minutes or written record of closed sessions of the City Council shall be kept, except as required by state law or as directed by the majority vote of the City Council. The Council shall report at a public meeting any action taken in closed session, as required by Government Code Section 54957.1.

The City Clerk shall include a report on posting of the agenda in the minutes.

Rules of Decorum – Enforcement

While the Council is in session, all persons shall preserve the order and decorum of the session. The standards of order and decorum shall be governed by common sense. Any person who disrupts the orderly course of the meeting is guilty of an infraction and may be called out of order by the Mayor and barred from further participation during that session of the Council in accordance with the Brown Act and the California Penal Code.

(Exhibit "A" to Resolution No. 2015-012)

July 15, 2008

## AGENDA ITEM 9

REQUEST**CONSIDERATION OF REVISIONS TO "PROCEDURES FOR PREPARATION, POSTING AND DISTRIBUTION OF AGENDA AND THE CONDUCT OF PUBLIC MEETINGS"**EXECUTIVE SUMMARY

On several occasions over the last 12-18 months Council has discussed various components of agenda preparation and the conduct of public meetings. Council policies were last revised on November 6, 2007. This item provides for further discussion of agenda matters and conduct of public meetings.

DISCUSSION

At previous City Council meetings in 2006 and 2007, and at several Council workshops, most recently on June 10, 2008, various matters related to agenda preparation and meeting procedures have been discussed. Council requested further discussion of these issues at a future meeting, particularly as it relates to "Council Items." Staff has reviewed the policies in various cities and consulted with Jan Perkins of Management Partners. Based on this review and consultation, staff proposes Council consider revising the current policies to reflect the "best practice" for Tracy.

There are proposed changes to three (3) sections of the Procedures. The proposed changes are in the following sections: (1) Public Access to Materials Distributed after the Agenda has been posted or at Council Meetings (Exhibit "A," Page 2); (2) Non-agendized Items (Exhibit "A," Pages 3 - 5), and (3) Presentations to the Council (Exhibit "A," Page 5)

The proposed revisions are identified in **bold** in the current "Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings" (attached as Exhibit "A" – Draft Revisions to Resolution 2007-258) and outlined as follows:

**SECTION A: PREPARATION, POSTING AND DISTRIBUTION OF AGENDA****Public Access to Materials Distributed After the Agenda has been Posted or at Council Meetings****CURRENT VERSION:**

No Current language.

**PROPOSED VERSION:****Public Access to Materials Distributed After the Agenda has been Posted or at Council Meetings**

On occasion, Council may receive written materials either after the Agenda has been posted or at a Council meeting. These written materials are typically related to an agendized item or handed out during Items from the Audience. Once the Council receives these written materials they become a public record. A copy will be kept in a file at the City Clerk's Office and posted on the City's website under "Materials Distributed at Council Meetings" 48 hours after the Council meeting.

## **SECTION B: CONDUCT OF COUNCIL MEETINGS**

### **Non-Agendized Items (Items from the Audience, Council Items, Staff Items)**

#### **CURRENT VERSION:**

### **Non-Agendized Items (Items from the Audience, Council Items, Staff Items)**

No matters, other than those on the posted agenda, shall be acted upon by the Council. However, items may be added to the agenda (such as emergency matters) as permitted in the Brown Act. Brief announcements, brief responses or questions for clarification, may be made to statements or questions raised on items not on the agenda. Action on any item not on the agenda shall be deferred until the item is properly listed on the agenda for a subsequent Council meeting unless added due to an immediate need as permitted under state law.

Items from the Audience shall be referred to staff. If staff is not able to deal with the matter satisfactorily within 30 days the item shall be added to a future agenda. If Council requests an item be placed on an agenda staff will do so, on the next regular meeting agenda (or as otherwise directed by the requesting Council Member). Unless otherwise directed by the Council, the City Manager, in concert with the Mayor, shall make the determination as to when these items will be scheduled on the agenda. [See Government Code section 54954.2]

#### **PROPOSED VERSION:**

### **Non-Agendized Items (Items from the Audience and Council Items)**

No matters, other than those on the posted agenda, shall be acted upon by the Council. However, items may be added to the agenda (such as emergency matters) as permitted in the Brown Act. Brief announcements, brief responses or questions for clarification, may be made to statements or questions raised on items not on the agenda. Action on any item not on the agenda shall be deferred until the item is properly listed on the agenda at a subsequent Council meeting (unless added due to an immediate need as permitted under state law).

### **Council Member Request for Matters to be Discussed by Council:**

The intent of this policy is to provide an orderly means through which an individual Council Member can raise an issue for discussion and possible direction by the City Council. The policy described below has two parts. The first part is to enable the Council Member to place a matter in front of the Council. The second part is to enable the Council to determine whether staff time should be spent on the issue.

**Part 1:** Council Members wishing to have a matter discussed by the City Council may do so by one of two means:

1. During a Council meeting, under "Council Items," a Council Member may request that a matter be placed on a future agenda for discussion. The Council Member will state the meeting date for which he/she wishes the item to be agendized.
2. In advance of a Council meeting, a Council Member may contact the City Manager, or his/her designee, via telephone, email, or in person and convey the desired title of the agenda item and desired meeting date. The desired

title must be conveyed before 12:00 p.m. on the Wednesday prior to the Council meeting. This will give the City Clerk's Office time on the following Thursday to finalize the agenda and post it within the required timeframe. Requests received after this deadline shall be placed on the agenda for the following regularly-scheduled meeting. The item will then be added under the "Council Items" section of the agenda in the order it was received. It is the Council Member's option to prepare a one page summary report for the City Clerk's Office to include in the Council agenda packet. The one page summary will identify the Council Member who made the request and briefly describe the nature of the item.

Staff will not spend time preparing any reports or analyses on the requested item. The only staff assistance provided at this initial stage would be to help the Council Member frame the issue, if needed, so that the Council and public clearly understand the request.

**Part 2: Consideration of the Council Member's Request:** When the item is called at the Council meeting, the Council Member who made the request will describe the item. The Council discussion will be limited to determining whether staff time and City resources should be spent researching the particular agenda item and whether to direct staff to conduct further analysis on the item. Council will not take action on the item itself.

Concurrence that staff time and City resources will be devoted to the item does not signify approval of the item. It only indicates that the Council wishes to have it studied further. Additionally, the Council may, at any time, decide to drop the matter, even after the matter has been analyzed by staff.

Upon the concurrence of a majority of the Council that the item should be researched and agendaized, the City Manager will determine when to place the item on a future agenda based on time necessary to complete the research and staff workload considerations.

#### **Members of the Public - Request for Agenda Items:**

When a member of the public raises an item at a Council meeting which requires attention, such items shall be referred to staff for follow-up. If the requesting member of the public is not satisfied with staff's response to his/her question, the member of the public may request a Council Member to sponsor his/her item for discussion at a future Council meeting. In such cases, the sponsoring Council Member shall follow those procedures described under "Council Member Request for Agenda Items." Placing an item from a member of the public on a Council agenda does not imply or guarantee a decision or action different from that taken by staff in the initial follow-up to the question or request.

#### **SECTION B: CONDUCT OF COUNCIL MEETINGS**

##### **Presentations to the Council**

**CURRENT VERSION:**

**Presentations to the Council**

PowerPoint (or similar): Members of the public who wish to make PowerPoint (or similar) presentations to the Council using the City's audio/visual equipment are required to provide 24 hours notice to the City Clerk's Office. All presentations must comply with the applicable time limits. A hard copy of the Power Point (or similar) presentation shall be provided to the City Clerk for inclusion in the record of the meeting and copies shall be provided to the City Council. Failure to do so will result in the rejection of the PowerPoint presentation.

**PROPOSED VERSION:**

**Presentations to the Council**

Letters and Written Communications: 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. Letters submitted with a request that they be read into the record will be done so only upon a request of the majority of the Council.

PowerPoint (or similar): Staff and members of the public who wish to make Power Point, Video or similar presentations to the Council will utilize the City's audio/visual equipment. Staff and members of the public are required to provide the City Clerk's Office with the DVD/CD/Video (or email copy) of the presentation no later than 24 hours prior to the Council meeting.

Additionally, eight (8) hard copies of the presentation material shall be provided to the City Clerk's Office for inclusion in the record of the meeting and for distribution to Council, City Attorney and City Manager.

**FISCAL IMPACT**

There is no fiscal impact to the General Fund.

**RECOMMENDATION**

That the Council discuss the current Procedures, and if desired, adopt revisions to the "Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings" attached as Exhibit "A."

Prepared by: Debra Corbett, City Attorney  
Maria A. Hurtado, Assistant City Manager

Attachments: Exhibit "A" – Draft Revisions (to Attachment "A" to Resolution 2007-258 with draft revisions shown in **bold**)  
Draft Resolution (if revisions to current procedures are adopted)

(PROPOSED REVISIONS SHOWN IN **BOLD**)  
PROCEDURES FOR PREPARATION, POSTING  
AND DISTRIBUTION OF AGENDA  
AND THE CONDUCT OF PUBLIC MEETINGS

Applicability

The procedures outlined below relating to the preparation, posting and distribution of agendas applies to the City Council, the Community Development Agency, the South County Fire Authority, the Public Facilities Corporation, the Tracy Operating Partnership Joint Powers Authority, and all City Boards, Commissions, and Committees. The procedures outlined below relating to the conduct of Council meetings apply only to the City Council. All City Council meetings shall be open to the public; however, the City Council may hold closed sessions as authorized by state law.

A. Preparation, Posting and Distribution of Agenda

Purpose of Agenda

The agenda process serves four purposes:

- As a communication mechanism, the agenda informs City staff, City Council, the public and the press.
- As a compliance mechanism, the agenda process ensures compliance with mandated state laws.
- As a decision-making mechanism, the agenda process regularly brings City business to the City Council for consideration and action. Agenda items should contain enough background information so City Council can obtain a full understanding of the issues. The agenda item should conclude with a staff recommendation so City Council has the benefit of staff input prior to making a final decision.
- As a historical reference that can be kept as a record of proceedings and actions as needed for future actions and/or litigation.

Agenda

As set forth above, the purpose of the agenda is to provide a framework within which Council meetings can be conducted and to effectively implement the approved Council programs, goals and budget. Staff shall work within the policies established by Council and not place matters on the agenda that are outside the scope of existing work programs and priorities except as approved by a majority of the Council, or to inform the Council of matters necessary to the proper operation and well-being of the City.

The agenda shall contain a brief general description of each item of business to be transacted or discussed at the meeting.

### Distribution of Agenda

At a minimum the posting and distribution of all agendas shall be done in accordance with the Ralph M. Brown Act ("Brown Act") (California Government Code sections 54950 et seq.). Agendas for regular meetings shall be posted 72 hours prior to the meeting; special meeting agendas shall be posted not less than 24 hours prior to the meeting. All agendas shall be posted in the following locations: City Hall, the Community Center, the library, the City's website, and other locations as may be required by a particular Board or Commission's Bylaws. Posting of agendas at City Hall shall be the official location for purposes of Brown Act compliance.

The agenda packets are provided to City Council Members on the Thursday (or Friday) prior to City Council meeting. Distribution to the staff, public and media shall occur immediately after distribution to the City Council. The City will provide, by mail, a copy of the agenda cover sheet and the specific item relating to any individual and/or company which has an item on any given Council agenda.

Agenda subscriptions are available from the receptionist at City Hall, 333 Civic Center Plaza, Tracy, (Tel: 209/831-6000). A paperless version of the agenda is available at a cost of \$2 per disc; a paper copy costs \$35 per month (\$17.50 per agenda) to be pre-paid not less than 10 days prior to any regular Council meeting. A full copy of the agenda shall be provided in an indexed binder and shall be available for review by the public at City Hall during normal operating hours. Copies of individual agenda items will be provided at a cost of \$.15 per page. Copies of the agenda are also available at the Library and the agenda is posted on the City's website [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us).

### Public Access to Written Materials after the Agenda has been Posted or Distributed at Council Meetings

**On occasion, Council may receive written materials either after the Agenda has been posted or at a Council meeting. These written materials are typically related to an agendized item or handed out during Items from the Audience. Once the Council receives these written materials they become a public record. A copy will be kept in a file at the City Clerk's Office and posted on the City's website under "Materials Distributed at Council Meetings" 48 hours after the Council meeting.**

### B. Conduct of Council Meetings

#### Council Meetings

Council meetings are held on the first and third Tuesdays of the month, unless the meeting date falls on a holiday as defined in California Government Code Section 6700. No meeting shall be held on such a holiday, but a regular meeting shall be held at 7:00 p.m. on the next business day thereafter, as required by California Government Code Section 54954. Special meetings are scheduled as necessary.

Council meetings are broadcast live on Channel 26. Reruns of the preceding Council meeting are shown every Wednesday at 8:00 p.m. and every Saturday at 9:00 a.m. on Channel 26. Videotapes and DVD recordings of City Council meetings are available. Videotapes cost \$3 per tape and DVDs cost \$2.

#### Order of Business

The suggested order of business of Council meetings shall be as follows. However, the City Manager may make exceptions to the order as needed.



1. Roll Call
2. Pledge of Allegiance
3. Invocation
4. Proclamations and Awards
5. Consent Calendar
6. Items from the Audience
7. Continued Public Hearings
8. New Public Hearings
9. Regular Items including Introduction and Second Readings of Ordinances
10. Items from the Audience
11. Staff Items
12. Council Items
13. Adjournment

The regular order of business may be changed or suspended for any purpose at any particular meeting by the Mayor.

The Council may determine whether it will consider any new items after 11:00 p.m. and shall determine which specific items will be considered. If an item is continued due to the lateness of the hour, the item shall be automatically placed on the agenda for the next regularly scheduled City Council meeting unless otherwise scheduled by motion action of the Council.

#### Consent Calendar

All items listed on the Consent Calendar are considered to be routine matters or consistent with previous City Council direction. One motion, a second and a roll call vote may enact the items listed on the Consent Calendar. There will be no separate discussion of Consent Calendar items unless members of the City Council, City staff or the public request discussion on a specific item at the beginning of the meeting.

#### Public Access/Items from the Audience

It is the policy of the City Council that members of the public be allowed to address the Council on any agenda item or other matter within the Council's jurisdiction. Each member of the public will be allowed a maximum of five (5) minutes for public input or testimony. At the Mayor's discretion, additional time for testimony may be granted. Individuals addressing the Council shall state their names and addresses for the record, to ensure accuracy in the minutes and for contact information. The public shall be given an opportunity to speak on "Items of Interest to the Public." Agendas for regular meetings will have two opportunities for "Items from the Audience." The first opportunity will be limited to a 15-minute maximum period. The second opportunity will not have a maximum time limit. The five (5) minute maximum time limit per speaker will apply to all "Items from the Audience." The City Clerk shall be the timekeeper.

#### Non-Agendized Items (Items from the Audience and Council Items)

No matters, other than those on the posted agenda, shall be acted upon by the Council. However, items may be added to the agenda (such as emergency matters) as permitted in the Brown Act. Brief announcements, brief responses or questions for clarification, may be made to statements or questions raised on items not on the agenda.

Action on any item not on the agenda shall be deferred until the item is properly listed on the agenda for a subsequent Council meeting unless added due to an immediate need as permitted under state law.

**Council Member Request for Matters to be Discussed by Council**

The intent of this policy is to provide an orderly means through which an individual Council Member can raise an issue for discussion and possible direction by the City Council. The policy described below has two parts. The first part is to enable the Council Member to place a matter in front of the Council. The second part is to enable the Council to determine whether staff time should be spent on the issue.

**Part 1: Council Members wishing to have a matter discussed by the City Council may do so by one of two means:**

- 1. During a Council meeting, under "Council Items," a Council Member may request that a matter be placed on a future agenda for discussion. The Council Member will state the meeting date for which he/she wishes the item to be agendized.**
- 2. In advance of a Council meeting, a Council Member may contact the City Manager, or his/her designee, via telephone, email, or in person and convey the desired title of the agenda item and desired meeting date. The desired title must be conveyed before 12:00 p.m. on the Wednesday prior to the Council meeting. This will give the City Clerk's Office time on the following Thursday to finalize the agenda and post it within the required timeframe. Requests received after this deadline shall be placed on the agenda for the following regularly-scheduled meeting. The item will then be added under the "Council Items" section of the agenda in the order it was received. It is the Council Member's option to prepare a one page summary report for the City Clerk's Office to include in the Council agenda packet. The one page summary will identify the Council Member who made the request and briefly describe the nature of the item.**

**Staff will not spend time preparing any reports or analyses on the requested item. The only staff assistance provided at this initial stage would be to help the Council Member frame the issue, if needed, so that the Council and public clearly understand the request.**

**Part 2: Consideration of the Council Member's Request: When the item is called at the Council meeting, the Council Member who made the request will describe the item. The Council discussion will be limited to determining whether staff time and City resources should be spent researching the particular agenda item and whether to direct staff to conduct further analysis on the item. Council will not take action on the item itself.**

**Concurrence that staff time and City resources will be devoted to the item does not signify approval of the item. It only indicates that the Council wishes to have it studied further. Additionally, the Council may, at any time, decide to drop the matter, even after the matter has been analyzed by staff.**

**Upon the concurrence of a majority of the Council that the item should be researched and agendized, the City Manager will determine when to place the item on a future agenda based on time necessary to complete the research and staff workload considerations and the erect on City Council established priorities.**



### Members of the Public - Request for Agenda Items

When a member of the public raises an item at a Council meeting which requires attention, such items shall be referred to staff for follow-up. If the requesting member of the public is not satisfied with staff's response to his/her question, the member of the public may request a Council Member to sponsor his/her item for discussion at a future Council meeting. In such cases, the sponsoring Council Member shall follow those procedures described under "Council Member Request for Agenda Items." Placing an item from a member of the public on a Council agenda does not imply or guarantee a decision or action different from that taken by staff in the initial follow-up to the question or request.

### Public Hearings

Public hearings are required for a variety of City Council actions such as most changes to the Tracy Municipal Code, zoning revisions, some annexations, street vacations, weed abatement, liens, fee increases, etc. Whenever the law provides that publication of a notice shall be made, such notice shall be published in a newspaper of general circulation for the period prescribed, the number of times, and in the manner required. Each speaker will be allowed a maximum of five (5) minutes for public input or testimony. At the Mayor's discretion, additional time for testimony may be granted. The City Clerk shall be the timekeeper.

### Presentations to the Council

Letters and written communications: 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. Letters submitted with a request that they be read into the record will be done so only upon a request of the majority of the Council.

PowerPoint (or similar): **Staff and members of the public who wish to make PowerPoint, Video or similar presentations to the Council will utilize the City's audio/visual equipment. Staff and members of the public are required to provide the City Clerk's Office with the DVD/CD/Video (or email copy) of the presentation no later than 24 hours prior to the Council meeting.**

**Additionally, eight (8) hard copies of the presentation material shall be provided to the City Clerk's Office for inclusion in the record of the meeting and for distribution to Council, City Attorney and City Manager.**

### Americans with Disabilities Act

The City of Tracy is in compliance with the Americans with Disabilities Act and will make all reasonable accommodations for the disabled. To allow for such reasonable accommodations, persons requiring assistance or auxiliary aids to participate at a City meeting, should contact the City Manager's Office at (209) 831-6000 at least 24 hours prior to the meeting.

### Workshops

The purpose of a workshop is to inform the policy body on complex issues. Workshops provide an opportunity for the Council to review documents and request additional information. However, no final Council action shall be taken on workshop items.

Procedure for Invocations

Any member of the public who wishes to offer an invocation prior to the opening of a regular City Council meeting shall contact the City Clerk. The City Clerk shall select a mutually agreeable City Council meeting date for the invocation.

Minutes

The City Clerk's office shall be responsible for the preparation and distribution of the Council minutes. The minutes shall be summary minutes and shall reflect the sense of the discussion and any action taken, or recommendation made, with respect to each item considered at the meeting. A written report or written communication presented at a City Council meeting will be referenced in the minutes with the name and title of the author, date of the report or communication, subject of the communication or title of report, and the action taken on the matter. Unless a reading of the minutes is requested by a Council Member, the minutes may be approved as a Consent Calendar item.

No minutes or written record of closed sessions of the City Council shall be kept, except as required by state law or as directed by the majority vote of the City Council. The Council shall report at a public meeting any action taken in closed session, as required by Government Code Section 54957.1.

The City Clerk shall include a report on posting of the agenda in the minutes.

Rules of Decorum – Enforcement

While the Council is in session, all persons shall preserve the order and decorum of the session. The standards of order and decorum shall be governed by common sense. Any person who disrupts the orderly course of the meeting is guilty of an infraction and may be called out of order by the Mayor and barred from further participation during that session of the Council in accordance with the Brown Act and the California Penal Code.

RESOLUTION 2008-140

RESCINDING RESOLUTION 2007-258 AND  
ESTABLISHING UPDATED COUNCIL POLICIES AND PROCEDURES

WHEREAS, On November 6, 2007, the Council adopted Resolution 2007-258 which revised the "Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings, and

WHEREAS, On July 15, 2008, Council desired to modify the Procedures related to, Public Access to Materials Distributed after the Agenda has been Posted or at Council Meetings, Non-agendized Items, and Presentations to the Council, and

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

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby rescinds Resolution 2007-258 and adopts the "Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings" attached as Exhibit "A."

\* \* \* \* \*

The foregoing Resolution 2008-140 was adopted by the Tracy City Council on the 15<sup>th</sup> day of July 2008, by the following vote:

AYES: COUNCIL MEMBERS: ABERCROMBIE, SUNDBERG, TOLBERT, TUCKER, IVES  
NOES: COUNCIL MEMBERS: NONE  
ABSENT: COUNCIL MEMBERS: NONE  
ABSTAIN: COUNCIL MEMBERS: NONE

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

use of the Breath Actuated Nebulizer (BAN) and begin use of the respiratory medication Atrovent. Training for these additional items will begin in late summer and the Department will use these items in early fall.

The Department also participates in the SJEMSA Continuous Quality Improvement Council. This group includes representatives from all field providers, receiving hospitals and the SJEMSA. The Council sets performance benchmarks for all aspects of patient care. The Department meets or exceeds the performance benchmarks established by the Council. The Department anticipates the expansion of the FRALS program to all stations during FY 08-09.

Staff recommended that the Council accept and file this report on the status of the First Responder Advanced Life Support program.

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

Council accepted the status report on the First Responder Advanced Life Support program.

9. **CONSIDERATION OF REVISIONS TO "PROCEDURES FOR PREPARATION, POSTING AND DISTRIBUTION OF AGENDA AND THE CONDUCT OF PUBLIC MEETINGS"** - Leon Churchill, Jr., City Manager, presented the staff report. Mr. Churchill stated that at previous City Council meetings in 2006 and 2007, and at several Council workshops, most recently on June 10, 2008, various matters related to agenda preparation and meeting procedures were discussed. Council requested further discussion of these issues at a future meeting, particularly as it relates to "Council Items." Staff has reviewed the policies in various cities and consulted with Jan Perkins of Management Partners. Based on this review and consultation, staff proposes Council consider revising the current policies to reflect the "best practice" for Tracy.

There are proposed changes to three sections of the Procedures. The proposed changes are in the following sections: (1) Public Access to Materials Distributed after the Agenda has been posted or at Council Meetings (2) Non-agendized Items, and (3) Presentations to the Council.

The proposed revisions are identified in bold type in the current "Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings" and outlined as follows:

**SECTION A: PREPARATION, POSTING AND DISTRIBUTION OF AGENDA**

**Public Access to Materials Distributed After the Agenda has been Posted or at Council Meetings**

**CURRENT VERSION:** No Current language.

**PROPOSED VERSION:** Public Access to Materials Distributed After the Agenda has been Posted or at Council Meetings

On occasion, Council may receive written materials either after the Agenda has been posted or at a Council meeting. These written materials are typically related to an agenda item or handed out during Items from the Audience. Once the Council receives these written materials they become a public record. A copy will be kept in a file at the City Clerk's Office and posted on the City's website under "Materials Distributed at Council Meetings" within 48 hours after the Council meeting.

#### SECTION B: CONDUCT OF COUNCIL MEETINGS

Non-Agenda Items (Items from the Audience, Council Items, Staff Items)

**CURRENT VERSION:** Non-Agenda Items (Items from the Audience, Council Items, and Staff Items)

No matters other than those on the posted agenda, shall be acted upon by the Council. However, items may be added to the agenda (such as emergency matters) as permitted in the Brown Act. Brief announcements, brief responses or questions for clarification, may be made to statements or questions raised on items not on the agenda. Action on any item not on the agenda shall be deferred until the item is properly listed on the agenda for a subsequent Council meeting unless added due to an immediate need as permitted under state law.

Items from the Audience shall be referred to staff. If staff is not able to deal with the matter satisfactorily within 30 days the item shall be added to a future agenda. If Council requests an item be placed on an agenda staff will do so, on the next regular meeting agenda (or as otherwise directed by the requesting Council Member). Unless otherwise directed by the Council, the City Manager, in concert with the Mayor, shall make the determination as to when these items will be scheduled on the agenda. [See Government Code section 54954.2]

**PROPOSED VERSION:** Non-Agenda Items (Items from the Audience and Council Items)

No matters other than those on the posted agenda, shall be acted upon by the Council. However, items may be added to the agenda (such as emergency matters) as permitted in the Brown Act. Brief announcements, brief responses or questions for clarification, may be made to statements or questions raised on items not on the agenda. Action on any item not on the agenda shall be deferred until the item is properly listed on the agenda at a subsequent Council meeting (unless added due to an immediate need as permitted under state law).

**Council Member Request for Matters to be Discussed by Council:**

The intent of this policy is to provide an orderly means through which an individual Council Member can raise an issue for discussion and possible direction by the City Council. The policy described below has two parts. The first part is to enable the Council Member to place a matter in front of the Council. The second part is to enable the Council to determine whether staff time should be spent on the issue.

**Part 1:** Council Members wishing to have a matter discussed by the City Council may do so by one of two means:



1. During a Council meeting, under "Council Items," a Council Member may request that a matter be placed on a future agenda for discussion. The Council Member will state the meeting date for which he/she wishes the item to be agendaized.
2. In advance of a Council meeting, a Council Member may contact the City Manager, or his/her designee, via telephone, email, or in person and convey the desired title of the agenda item and desired meeting date. The desired title must be conveyed before 12:00 p.m. on the Wednesday prior to the Council meeting. This will give the City Clerk's Office time on the following Thursday to finalize the agenda and post it within the required timeframe. Requests received after this deadline shall be placed on the agenda for the following regularly-scheduled meeting. The item will then be added under the "Council Items" section of the agenda in the order it was received. It is the Council Member's option to prepare a one page summary report for the City Clerk's Office to include in the Council agenda packet. The one page summary will identify the Council Member who made the request and briefly describe the nature of the item.

Staff will not spend time preparing any reports or analyses on the requested item. The only staff assistance provided at this initial stage would be to help the Council Member frame the issue, if needed, so that the Council and public clearly understand the request.

Part 2: Consideration of the Council Member's Request: When the item is called at the Council meeting, the Council Member who made the request will describe the item. The Council discussion will be limited to determining whether staff time and City resources should be spent researching the particular agenda item and whether to direct staff to conduct further analysis on the item. Council will not take action on the item itself.

Concurrence that staff time and City resources will be devoted to the item does not signify approval of the item. It only indicates that the Council wishes to have it studied further. Additionally, the Council may, at any time, decide to drop the matter, even after the matter has been analyzed by staff.

Upon the concurrence of a majority of the Council that the item should be researched and agendaized, the City Manager will determine when to place the item on a future agenda based on time necessary to complete the research and staff workload considerations.

#### Members of the Public - Request for Agenda Items:

When a member of the public raises an item at a Council meeting which requires attention, such items shall be referred to staff for follow-up. If the requesting member of the public is not satisfied with staff's response to his/her question, the member of the public may request a Council Member to sponsor his/her item for discussion at a future Council meeting. In such cases, the sponsoring Council Member shall follow those procedures described under "Council Member Request for Agenda Items." Placing an item from a member of the public on a Council agenda does not imply or guarantee a decision or action different from that taken by staff in the initial follow-up to the question or request.

## SECTION B: CONDUCT OF COUNCIL MEETINGS

## Presentations to the Council

**CURRENT VERSION:** Presentations to the Council PowerPoint (or similar): Members of the public who wish to make PowerPoint (or similar) presentations to the Council using the City's audio/visual equipment are required to provide 24 hours notice to the City Clerk's Office. All presentations must comply with the applicable time limits. A hard copy of the Power Point (or similar) presentation shall be provided to the City Clerk for inclusion in the record of the meeting and copies shall be provided to the City Council. Failure to do so will result in the rejection of the PowerPoint presentation.

**PROPOSED VERSION:** Presentations to the Council Letters and Written Communications: 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. Letters submitted with a request that they be read into the record will be done so only upon a request of the majority of the Council. PowerPoint (or similar): Staff and members of the public who wish to make Power Point, Video or similar presentations to the Council will utilize the City's audio/visual equipment.

Staff and members of the public are required to provide the City Clerk's Office with the DVD/CD/Video (or email copy) of the presentation no later than 24 hours prior to the Council meeting. Additionally, eight hard copies of the presentation material shall be provided to the City Clerk's Office for inclusion in the record of the meeting and for distribution to Council, City Attorney and City Manager.

Council Member Abercrombie asked for clarification regarding a Council member's request. Debra Corbett, City Attorney, stated the item would be agendaized before any discussion.

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

It was moved by Council Member Abercromble and seconded by Council Member Tolbert to adopt Resolution 2008-140 rescinding Resolution 2007-258 and establishing updated Council policies and procedures. Voice vote found all in favor; passed and so ordered.

10. ITEMS FROM THE AUDIENCE – None.

## 11. STAFF ITEMS

- A. Update on the Development of a Sustainability Program for the City of Tracy  
Kevin Tobeck, Public Works Director, presented the staff report. Mr. Tobeck stated that at the City Council Prioritization Workshop of February 19, 2008, Council directed staff to allocate funding for consulting services to assist the City in implementing a Sustainability Program. Funding in the amount of \$40,000 was approved in the FY 08-09 operating budget for these services.

AGENDA ITEM 6

REQUEST

**SECOND READING AND ADOPTION OF ORDINANCE 1195 AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTION 3.08.580, OF CHAPTER 3.08 (TRAFFIC REGULATIONS) OF TITLE 3 (PUBLIC SAFETY) OF THE TRACY MUNICIPAL CODE**

EXECUTIVE SUMMARY

Ordinance 1195 was introduced at the Council meeting held on March 3, 2015. Ordinance 1195 is before Council for a second reading and adoption.

DISCUSSION

Ordinance 1195 was introduced at the Council meeting held on March 3, 2015, to amend Section 3.08.580 of Chapter 3.08 (Traffic Regulations) of Title 3 (Public Safety) of the Tracy Municipal Code. The California Vehicle Code Section 40803 requires that in order to legally use radar equipment for speed enforcement, an engineering and traffic survey must be completed every five years to establish posted speeds. In October 2014, the Engineering Division completed an engineering and traffic survey on 40 segments of arterial and collector streets. The amendments to Section 3.08.580 of Chapter 3.08 of Title 3 will change and delete some previously established Declared Prima Facie Speed Limits (Miles per Hour) and add new Prima Facie Speed Limits, to certain streets.

Ordinance 1195 is before Council for a second reading and adoption.

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That Council adopt Ordinance 1195 following its second reading.

Prepared by: Adrienne Richardson, Deputy City Clerk

Reviewed by: Nora Pimentel, City Clerk  
Maria A. Hurtado, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS:

Attachment A – Ordinance 1195

## ORDINANCE 1195

AMENDING SECTION 3.08.580, OF CHAPTER 3.08 (TRAFFIC REGULATIONS) OF  
TITLE 3 (PUBLIC SAFETY) OF THE TRACY MUNICIPAL CODE

WHEREAS, The use of radar equipment is one of the most effective tools for enforcing speed limits and traffic safety on City streets, and

WHEREAS, Subsection (c) of California Vehicle Code section 40803 provides that evidence of conducting a speed zone survey within the last five years to establish the prima facie speed for a local street or road shall constitute a prima facie case that such local street or road is not a speed trap for the purposes of radar enforcement, and

WHEREAS, City staff completed an Engineering & Traffic survey in October 2014, and

WHEREAS, The survey shows prima facie speed limits for certain new street portions as set forth below, and

NOW THEREFORE, The City Council does ordain as follows:

SECTION 1: Amended Section. Section 3.08.580 of Chapter 3.08 of Title 3 of the Tracy Municipal Code is hereby amended to delete the Declared Prima Facie Speed Limit (Miles per Hour) for the below described street portions:

<u>Name of Street or Portion Affected</u>	Declared Prima Facie Speed Limit (Miles per Hour)
- Chrisman Road Eleventh Street to Brichetto Road	35
- Eleventh Street Chrisman Road to east City Limits (isolated portion within City Limits)	55

SECTION 2: Amended Section. Section 3.08.580 of Chapter 3.08 of Title 3 of the Tracy Municipal Code is hereby amended to add the Declared Prima Facie Speed Limit (Miles per Hour) for the below described street portions:

<u>Name of Street or Portion Affected</u>	Declared Prima Facie Speed Limit (Miles per Hour)
- Schulte Road Mountain House Parkway to Hansen Road	40
Hansen Road to east City Limit	50
- Mountain House Parkway Schulte Road (old) to Berkley Road	40
Berkley Road to I-205 (City Limits)	45
- Hansen Road Schulte Road to I-205 (city Limits)	50

SECTION 3: Amended Section. Section 3.08.580 of Chapter 3.08 of Title 3 of the Tracy Municipal Code is hereby amended to change the previously established Declared Prima Facie Speed Limit (Miles per Hour) for the below described street portions:

<u>Name of Street or Portion Affected</u>	<u>Declared Prima Facie Speed Limit (Miles per Hour)</u>
- Arbor Road Holly Drive to Mac Arthur Drive	35
- Byron Road Corral Hollow Road to Lammers Road	40
- Tracy Blvd Grant Line Road to Larch Road	35
- Tracy Blvd Linne Road to Valpico Road	45

SECTION 4: Remaining sections. Except as herein added or changed, the remaining sections of the Tracy Municipal Code, including the Declared Prima Facie Speed Limit (Miles per Hour) for the Portions of Streets not set forth above, shall remain in full force.

SECTION 5: Title, chapter, and section headings. Title, chapter, and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of any title, chapter, or section hereof.

SECTION 6: Constitutionality. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 7: Effective date. This Ordinance shall take effect thirty (30) days after its final passage and adoption.

SECTION 8: Publication. 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 1195 was introduced at a regular meeting of the Tracy City Council on the 3<sup>rd</sup> day of March, 2015, and finally adopted on the 17th day of March, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

---

MAYOR

ATTEST:

---

CITY CLERK

AGENDA ITEM 7

REQUEST

**DISCUSS WHETHER TO CANCEL THE REGULAR CITY COUNCIL MEETING SCHEDULED FOR TUESDAY, APRIL 21, 2015 AND SCHEDULE A SPECIAL MEETING ON APRIL 28, 2015**

EXECUTIVE SUMMARY

Staff recommends that Council consider cancelling the regular City Council meeting scheduled for April 21, 2015 and schedule a special meeting on April 28, 2015.

DISCUSSION

On April 21, 2015, Mayor Maciel, Council Member Young, and City Manager Brown will be attending the One Voice Legislative Conference. The Conference begins on April 20, 2015 through April 22, 2015, in Washington D.C. Staff requests that the Council consider cancelling the regular City Council meeting scheduled for April 21, 2015 and scheduling a special meeting on April 28, 2015.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact associated with this discussion item.

RECOMMENDATION

Staff requests that Council discuss whether to cancel the regular City Council meeting scheduled for Tuesday, April 21, 2015, and schedule a special meeting on April 28, 2015.

Prepared by: Nora Pimentel, City Clerk  
Reviewed by: Maria A. Hurtado, Assistant City Manager  
Approved by: Troy Brown, City Manager