

Tuesday, June 2, 2015, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

Americans With Disabilities Act - The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in Council meetings. Persons requiring assistance or auxiliary aids should call City Hall (209/831-6000) 24 hours prior to the meeting.

Addressing the Council on Items on the Agenda - The Brown Act provides that every regular Council meeting shall provide an opportunity for the public to address the Council on any item within its jurisdiction before or during the Council's consideration of the item, provided no action shall be taken on any item not on the agenda. Each citizen will be allowed a maximum of five minutes for input or testimony. At the Mayor's discretion, additional time may be granted. The City Clerk shall be the timekeeper.

Consent Calendar - All items listed on the Consent Calendar are considered routine and/or consistent with previous Council direction. A motion and roll call vote may enact the entire Consent Calendar. No separate discussion of Consent Calendar items will occur unless members of the City Council, City staff or the public request discussion on a specific item at the beginning of the meeting.

Addressing the Council on Items not on the Agenda – The Brown Act prohibits discussion or action on items not on the posted agenda. Members of the public addressing the Council should state their names and addresses for the record, and for contact information. The City Council's Procedures for the Conduct of Public Meetings provide that "Items from the Audience" following the Consent Calendar will be limited to 15 minutes. "Items from the Audience" listed near the end of the agenda will not have a maximum time limit. Each member of the public will be allowed a maximum of five minutes for public input or testimony. However, a maximum time limit of less than five minutes for public input or testimony may be set for "Items from the Audience" depending upon the number of members of the public wishing to provide public input or testimony. The five minute maximum time limit for each member of the public applies to all "Items from the Audience." Any item not on the agenda, brought up by a member of the public shall automatically be referred to staff. In accordance with Council policy, if staff is not able to resolve the matter satisfactorily, the member of the public may request a Council Member to sponsor the item for discussion at a future meeting. When members of the public address the Council, they should be as specific as possible about their concerns. If several members of the public comment on the same issue an effort should be made to avoid repetition of views already expressed.

Presentations to Council - Persons who wish to make presentations which may exceed the time limits are encouraged to submit comments in writing at the earliest possible time to ensure distribution to Council and other interested parties. Requests for letters to be read into the record will be granted only upon approval of the majority of the Council. Power Point (or similar) presentations need to be provided to the City Clerk's office at least 24 hours prior to the meeting. All presentations must comply with the applicable time limits. Prior to the presentation, a hard copy of the Power Point (or similar) presentation will be provided to the City Clerk's office for inclusion in the record of the meeting and copies shall be provided to the Council. Failure to comply will result in the presentation being rejected. Any materials distributed, 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 – Employee of the Month
D.A.R.E Graduates
Proclamation – Crime Stoppers Month

1. CONSENT CALENDAR

- A. Adopt Council Minutes – Regular meeting minutes of May 19, 2015, and special meeting minutes of May 12, 2015 and May 19, 2015.
- B. Award a Construction Contract for the MacArthur Drive 24-Inch Water Line Project – CIP 75108 to the Lowest Responsive Bidder, Authorize an Allocation of \$525,000 from SMPA Fund 352, and Authorize the Mayor to Execute the Contract
- C. Adoption of the Appropriations Limit for Fiscal Year 2015-2016 for the City of Tracy
- D. Approve a Supplemental Appropriation of \$402,000 for Engineering Plan Review in the FY 14/15 City Budget
- E. Authorize the Mayor to Execute an Amendment to Cooperative Agreement C-12-045 with SJCOG for Proposition 1B PTMISEA Funds to Extend the Time of the Agreement to Allow for Reimbursement from the State of California
- F. Approve a Sponsorship Agreement for the 2015/2016 Presenting Season Programs at the Grand Theatre Center for the Arts with Singh Dental Center Whereby Singh Dental Center will Provide \$12,600 and Authorize the Mayor to Execute the Agreement
- G. Approve Amendment No. 2 to the Memorandum of Understanding Between the City of Tracy and the Grand Foundation to Discontinue the Foundation's Concession Management Responsibilities and Authorize the Mayor to Execute the Amendment
- H. Approve Memorandum of Understanding (MOU) with California State University Stanislaus, for use of City Facilities to Administer their Executive MBA Cohort Program in Tracy; and Authorize the Mayor to Execute the MOU
- I. Approve Memorandum of Understanding (MOU) With Notre Dame De Namur University, for Use of City Facilities to Administer their Bachelor of Science in Business Administration and Masters of Business Administration Degree Programs; and Authorize the Mayor to Execute the MOU
- J. Authorize the Mayor to Execute Amendments to the Mayor's Youth Community Support Network Reconnecting Our Youth Grant Agreements with Sow A Seed Community Foundation and Counseling and More, to Increase the Not to Exceed Amount to Match Available Funding from the County of San Joaquin

- K. Accept Travel Report from City Attorney Regarding Attendance at League of California Cities City Attorney's Conference
2. ITEMS FROM THE AUDIENCE
 3. CONDUCT A PUBLIC HEARING AND ADOPT A RESOLUTION TO VACATE RIGHT-OF-WAY FOR CHABOT COURT SOUTH OF GRANT LINE ROAD AND TO RESERVE AN EASEMENT FOR PUBLIC UTILITIES AND PUBLIC ACCESS
 4. PUBLIC HEARING TO CONSIDER AN APPLICATION FOR A PRELIMINARY AND FINAL DEVELOPMENT PLAN TO CONSTRUCT A 795,732 SQUARE FOOT INDUSTRIAL DISTRIBUTION BUILDING WITH CORRESPONDING PARKING AND LANDSCAPE IMPROVEMENTS AND TO CONSIDER AN AMENDMENT TO THE I-205 CORRIDOR SPECIFIC PLAN REGARDING BUILDING HEIGHT, LOCATED AT 8450 ARBOR AVENUE - APPLICANT IS DCT INDUSTRIAL OPERATING LLC; OWNERS ARE GREGG AND ROBERT CHRISTENSEN - APPLICATION NUMBERS D14-0028 AND SPA15-0002
 5. PUBLIC HEARING TO CONSIDER AMENDMENTS TO TRACY MUNICIPAL CODE 11.28 WATER MANAGEMENT AND IMPLEMENTATION OF PHASE III and IV WATER RESTRICTIONS
 6. INTRODUCE ORDINANCE AMENDING CHAPTER 4.20, REGULATION OF MASSAGE, OF THE TRACY MUNICIPAL CODE
 7. COUNCIL ITEMS
 - A. Appointment of City Council Subcommittee to Interview Applicants to Fill a Vacancy on the San Joaquin County Commission on Aging
 8. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

May 12, 2015, 5:00 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Maciel called the meeting to order at 5:04 p.m.
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. CONDUCT WORKSHOP REGARDING THE TRACY HILLS PROJECT

Troy Brown, City Manager, provided a brief overview and explained the purpose of the workshop was for Council to review and discuss the proposed project, receive input from the public and provide preliminary feedback.

Council comments and questions followed related to draft development agreements.

Scott Claar, Associate Planner, presented the staff report.

Council comments and questions followed related to Development Review. It was suggested that Development Review for non-residential projects be subject to review and approval by Planning Commission (or City Council) rather than just staff and that Development Review on residential architecture be subject to review by Planning Commission (or City Council) also. Another suggestion was to add note 5 to the table in staff's presentation to require approval of Conceptual Plans for future phases (post Phase 1a) be changed to approval by City Council.

The following representatives for Tracy Hills LLC. Developers were present: Drew Kusnick, Hans Van Leighten, John Palmer, Mike Souza, and John Zelmer.

Drew Kusnick provided a brief presentation to Council.

Council discussion followed, it was suggested that Industrial Zoning is not appropriate between Delta Mendota Canal and the California Aqueduct and it was requested that language be added to the Specific Plan identifying that area as a Special Study Area, which needs to have its zoning reevaluated prior to development, including review and approval by City Council.

It was recommended that staff communicate with San Joaquin Council of Governments to pursue authorization for the planting of denser trees and a greater variety of trees in the conservation easement area along I-580. As Council discussion continued there were questions regarding location of the first fire station and it was requested that more analysis be shown on where the first fire station will be located.

It was requested that the Specific Plan should state that parks maintenance is under the direction of the City rather than the Public Works Department, and use the term "Tracy parks commission" with lower case rather than "Parks Commission". There was also a request that perhaps a separate workshop to discuss financing of this project, in regards to facilities and maintenance of landscaping streets, parks, etc. be held sometime soon.

Diana Milligan expressed concern with the public service demands that this project would require. Ms. Milligan urged the Council to think ahead and limit the growth in order to maintain a safe and viable community.

5. ADJOURNMENT - Mayor Pro Tem Rickman motioned to adjourn. Council Member Young seconded the motion. Voice vote found all in favor; passed and so ordered. Time: 7:16 p.m.

The agenda was posted at City Hall on May 8, 2015.

ATTEST:

Mayor

City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

May 19, 2015, 6:00 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Maciel called the meeting to order at 6:00 p.m.
2. ROLL CALL – Roll call found Council Members Mitracos, Vargas, Mayor Pro Tem Rickman and Mayor Maciel present.

Council Member Young arrived at 6:01 p.m.
3. ITEMS FROM THE AUDIENCE – There were no speakers.
4. CONDUCT A WORKSHOP TO REVIEW AND DISCUSS THE PROPOSED FY 2015-16 CITY BUDGET, FIVE-YEAR FORECAST, GENERAL FUND RESERVES AND THE FY 2015/16 CAPITAL BUDGET

Troy Brown, City Manager, provided a brief overview of what would be considered.

Ray Durant, Management Partners Consultant, presented the staff report.

Council comments and questions followed.

The Mayor called for a recess at 7:00 p.m. to convene into regular City Council session. The workshop was to continue immediately following adjournment.

The Mayor reconvened the meeting at 9:25 p.m.

Ray Durant, Management Partners Consultant, continued the staff presentation.

Council comments and questions followed.

Council Member Vargas disclosed that she would not be in attendance at the regular June 2, 2015 Council meeting and requested to push the Budget Adoption to June 16, 2015. Upon Council consensus it was agreed to adopt the Budget at the regular Council meeting of June 16, 2015.

Staff was directed to prepare information related to salary saving budget to be included in the budget solutions workshop scheduled to take place on July 7, 2015.
5. ADJOURNMENT - Mayor Pro Tem Rickman motioned to adjourn. Council Member Young seconded the motion. Voice vote found all in favor; passed and so ordered. Time: 10:16 p.m.

The agenda was posted at City Hall on May 14, 2015.

ATTEST:

Mayor

City Clerk

May 19, 2015, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

Mayor Maciel called the City Council meeting to order at 7:05 p.m. and led the Pledge of Allegiance.

The invocation was offered by Reverend Dev Raj Vijn, Sant Nirankari Mission.

Roll call found Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel present.

Mayor Maciel recognized the D.A.R.E graduates from Jefferson and Anthony Traina Elementary and Saint Bernard's Catholic schools.

Mayor Maciel presented a proclamation to Karen Carcraft, Senior Center Volunteer and participant for Older Americans Month.

Mayor Maciel presented certificates of appointment to the new Transportation Advisory Commissioners Larry Gamino and Noel Varela.

1. CONSENT CALENDAR

ACTION Motion made by Mayor Pro Tem Rickman and seconded by Council Member Young to adopt the Consent Calendar with the exception of item 1B, 1C and 1D. Roll call vote found all in favor; passed and so ordered. Motion carried: 5:0

A. Adopt Council Minutes – Regular meeting minutes of April 7, 2015, April 21, 2015, and May 5, 2015, special meeting minutes of April 27, 2015 and closed session minutes of May 5, 2015 were approved.

E. Authorization of Lease Agreement with Tracy Renewable Energy, LLC for the Tracy Desalination and Green Energy Project and for the Mayor to Execute the Lease – Resolution 2015-071 authorized a lease agreement.

B. Adopt a Resolution Identifying that the City of Tracy will Compensate its Employees Portal-to-Portal While Assigned to an Emergency Incident in Support of the Agreement for Local Government Fire and Emergency Assistance to the State of California and Federal Fire Agencies

Council Member Vargas pulled this item for fiscal impact clarification.

ACTION Motion made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt Resolution 2015- 072 identifying that the City will compensate employees portal-to-portal while assigned to an emergency incident. Voice vote found all in favor; passed and so ordered.

- C. Approve a Public Agency Offsite Improvement Agreement with the Tracy Joint Unified School District for Construction of Offsite Improvements on Mt. Diablo Avenue and Mt. Oso Road and Authorization for the Mayor to Execute the Agreement

Council Member Vargas pulled this item to commend staff.

ACTION Motion made by Mayor Pro Tem Rickman and seconded by Council Member Vargas to adopt Resolution 2015-073 approving an agreement. Voice vote found all in favor; passed and so ordered.

- D. Accept Travel Report for City Manager Troy Brown’s Attendance at a Meeting of the International City/County Management Association Task Force on Inclusiveness and the San Joaquin One Voice Trip to Washington, D.C.

Mayor Maciel pulled this item for further discussion.

Troy Brown, City Manager, presented the staff report.

Mayor Maciel and Council Member Young each provided a brief report from the One Voice Trip to Washington, D.C. Mayor Maciel invited Loretta Smith to share her experience attending the One voice Trip as one of the representatives to the Altamont Corridor Express Passenger Advisory Council.

ACTION Motion made by Mayor Pro Tem Rickman and seconded by Council Member Young to accept the report. Voice vote found all in favor; passed and so ordered.

- 2. ITEMS FROM THE AUDIENCE – There were no speakers.
- 3. CONDUCT A PUBLIC HEARING AND ADOPT A RESOLUTION RELATED TO THE CITY’S INTENT TO VACATE A PORTION OF RIGHT-OF-WAY FOR NORTH MACARTHUR DRIVE, SOUTH OF I-205

Kul Sharma, Utilities Director, presented the staff report.

Mayor Maciel opened the public hearing. There were no speakers. Mayor Maciel closed the public hearing.

ACTION Motion made by Mayor Pro Tem Rickman and seconded by Council Member Mitracos to adopt Resolution 2015-074 related to the City’s intent to vacate a portion of Right-of-Way for North MacArthur Drive. Voice vote found all in favor; passed and so ordered.

- 4. CONDUCT A PUBLIC HEARING TO ADOPT A RESOLUTION APPROVING THE UPDATED MASTER FEE SCHEDULE

Anne Bell, Management Analyst, Administrative Services, presented the staff report.

Council comments and questions followed.

Mayor Maciel opened the public hearing.

Robert Tanner inquired about the use and rental of the West High pool.

Mayor Maciel closed the public hearing.

Council comments and question continued.

ACTION Motion made by Council Member Mitracos and seconded by Council Member Young to adopt Resolution 2015-075 approving the updated Master Fee Schedule. Voice vote found Council Members Mitracos, Young and Mayor Maciel in favor. Council Member Vargas and Mayor Pro Tem Rickman opposed; passed and so ordered.

Upon consensus by Council, staff was directed to conduct a Time in Motion Study this year, return to Council to review policies that drive the fee structure, and include further discussion on Program Management Fees.

Staff will bring forward a staff report in July with a budget solution update to wean the City from Measure E.

5. THAT COUNCIL CONDUCT A PUBLIC HEARING DECLARING THE EXISTENCE OF WEEDS, RUBBISH, REFUSE AND FLAMMABLE MATERIAL ON EACH OF THE PARCELS LISTED IN EXHIBIT "A" TO THIS AGENDA ITEM A NUISANCE; CONSIDER OBJECTIONS TO ABATEMENT OF SAID NUISANCE, AND ADOPT A RESOLUTION

Dave Bramell, Fire Division Chief, presented the staff report.

Mayor Maciel opened the public hearing. There were no speakers. Mayor Maciel closed the public hearing.

ACTION Motion made by Mayor Pro Tem Rickman and seconded by Council Member Mitracos to adopt Resolution 2015-076 declaring the existence of weeds, rubbish, refuse and flammable material on each of the parcels listed in exhibit A. Voice vote found all in favor; passed and so ordered.

6. ITEMS FROM THE AUDIENCE – There were no speakers.

7. COUNCIL ITEMS

Mayor Pro Tem Rickman referenced the recent fire on Tracy Boulevard and inquired how to abate the problem.

Staff will provide an update once the investigation is complete which will include cost recovery if any or fines incurred if applicable.

Mayor Pro Tem Rickman mentioned bringing up the Homelessness topic a few months ago and inquired when this will come back to Council for discussion.

Staff will return in June or July with an update on the City’s efforts to engage stakeholders, tools to bolster and assist where applicable, and other things that are being done to coordinate efforts related to homelessness.

Council Member Vargas reported meeting with two homeless advocates related to facilities. Ms. Vargas inquired about the City having vacant sites that could be identified for rent by non-profit to provide services for the homeless.

Council Member Young requested to include the safety aspect related to panhandling in the upcoming update on the homeless issue.

Mayor Pro Tem Rickman announced that on Monday, May 25, 2015 at 10:00 a.m. at the Tracy Cemetery there will be a ceremony and following that at the War Memorial in front of City Hall there will be recognition for those brave men and women who have given the ultimate sacrifice for this country.

Council Member Mitracos reported attending the 11th Street groundbreaking event and looks forward to a new overpass.

Council Member Young congratulated all graduates at all levels from elementary to middle, to high school who will be graduating over the next few weeks.

8. ADJOURNMENT

ACTION Motion made by Mayor Pro Tem Rickman and seconded by Council Member Young, to adjourn the meeting. Voice vote found all in favor; passed and so ordered. Time: 9:17 p.m.

The above agenda was posted at the Tracy City Hall on May 14, 2015. The above are action minutes. A recording is available at the Office of the City Clerk.

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.B

REQUEST

AWARD A CONSTRUCTION CONTRACT FOR THE MACARTHUR DRIVE 24-INCH WATER LINE PROJECT – CIP 75108 TO THE LOWEST RESPONSIVE BIDDER, AUTHORIZE AN ALLOCATION OF \$525,000 FROM SMPA FUND 352, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT

EXECUTIVE SUMMARY

As part of the City’s ongoing commitment to improve the City infrastructure and services to the community, City Council is requested to award a construction contract for the installation of a 24-inch water line on MacArthur Drive between Valpico Road and Linne Road, including replacement of traffic signal loops at the signalized intersections at Valpico Road Reservoir, re-striping, existing asphalt concrete grinding and repaving, and the installation of restrained joints and water valves (CIP 75108).

DISCUSSION

The MacArthur Drive Water Line project consists of the installation of a 24-inch water line on MacArthur Drive between Valpico Road and the Linne Road Reservoir in accordance with the City of Tracy Master Plans. This new water line will complete the required water loop system serving the adjacent residential developments and the Industrial Specific Plan developments.

The scope of work for the project includes the installation of water line valves, restrained joints, asphalt concrete overlay, and re-striping. Since the project encroaches into San Joaquin County, an encroachment permit was secured to implement the San Joaquin standards within their jurisdiction.

Engineering staff prepared the plans and specifications for the project and advertised for competitive bids on April 10 and April 17, 2015. The following eight bids were received and publicly opened at 2:00 p.m., on May 5, 2015, with the following results:

CONTRACTOR	BASE BID
Mozingo Construction, Oakdale, CA	\$1,479,636
Knife River Construction, Stockton, CA	\$1,480,311
Mountain Cascade, Inc. Livermore, CA	\$1,499,738
Preston Pipelines, Milpitas, CA	\$2,010,258
Specialty Construction, San Luis Obispo, CA	\$2,059,914
Cratus Inc., San Francisco, CA	\$2,116,402
Con-Quest Contractors, Inc., San Francisco, CA	\$2,281,724
California Trenchless, Inc., Hayward, CA	\$3,759,225

Mozingo Construction is the lowest monetary bidder. The bid analysis indicates their bid is “responsive” and the bidder is “responsible”. Mozingo Construction has the

appropriate contractor's license in current and active standing with the State of California.

The total estimated cost of this project if awarded to Mozingo Construction is as follows:

<u>Construction Cost</u>	<u>Base Bid</u>
Contractor's Bid for Construction	\$ 1,479,636
Contingency @ 10%	\$ 148,000
Design Support During Construction	\$ 20,000
Construction Management	\$ 74,000
Project Management	\$ 141,000
Total Construction Cost	\$ 1,862,636

Completion of construction is expected by mid-September 2015.

STRATEGIC PLAN

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

FISCAL IMPACT

This is an approved CIP project and there will be no impact to the General Fund. There is a total of \$1,340,000 available in CIP 75108, from fees collected from various development areas. An allocation of \$525,000 from the benefitting South MacArthur Planning Area Fund 352 is needed to complete the project.

RECOMMENDATION

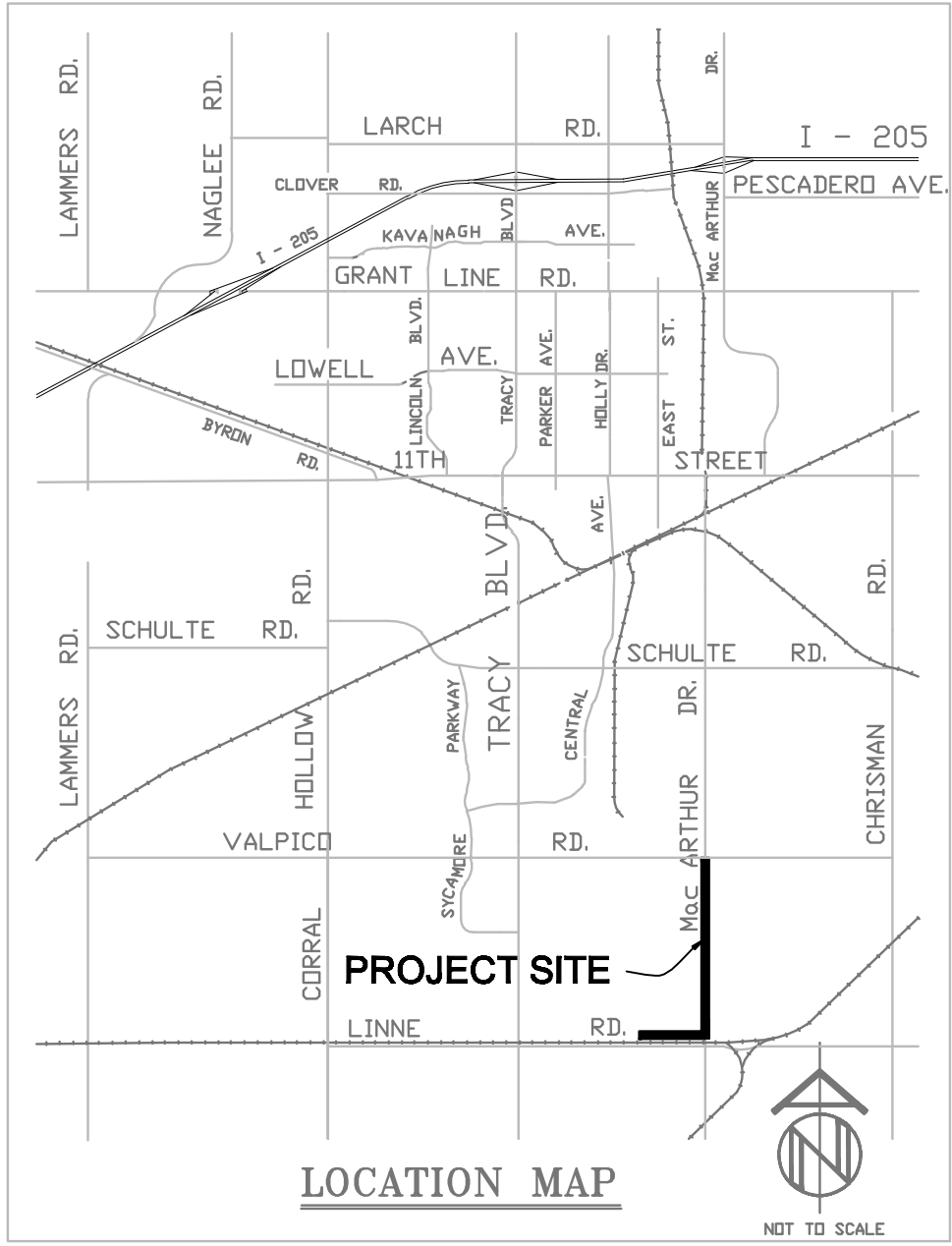
That City Council, by resolution, award a construction contract for MacArthur Drive 24-Inch Water Line Project – CIP 75108, to Mozingo Construction of Oakdale, California, in the amount of \$1,479,636, authorize an allocation of \$525,000 from SMPA Fund 352, authorize the Mayor to execute the construction contract, and authorize the City Manager or his designee to execute change orders up to the maximum amount permitted in accordance with City policies.

Prepared by: Khoder Baydoun, Associate Civil Engineer
Zabih Zaca, Senior Civil Engineer

Reviewed by: Kuldeep Sharma, Interim City Engineer/Utilities Director
Bill Dean, Interim Development Services Director
Andrew Malik, Interim Assistant City Manager

Approved by: Troy Brown, City Manager

Attachment: Location Map



RESOLUTION 2015-_____

AWARDING A CONSTRUCTION CONTRACT FOR THE MACARTHUR DRIVE 24-INCH WATER LINE PROJECT – CIP 75108, TO THE LOWEST RESPONSIVE BIDDER, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

WHEREAS, This project consists of installing approximately 6,528 linear foot of 24-inch ductile iron water line on MacArthur Drive between Valpico Road and Linne Road Reservoir on Linne Road, and

WHEREAS, The project completes the required water loop system serving the adjacent residential developments and the Industrial Specific Plan Developments, and

WHEREAS, The project was advertised for bids on April 10, and April 17, 2015, in which eight bids were received and publicly opened on May 5, 2015, and

WHEREAS, Mazingo Construction of Oakdale, California, is the lowest responsive monetary bidder and the bidder is responsible, and

WHEREAS, This is an approved CIP project with \$1,340,000 from the Gas Tax Fund;

NOW, THEREFORE BE IT RESOLVED, That City Council awards a construction contract for the MacArthur Drive 24-Inch Water Line Project - CIP 75108, to Mazingo Construction, of Oakdale, California, in the amount of \$1,479,636, and authorizes the Mayor to execute the construction contract.

* * * * *

The foregoing Resolution 2015-_____ was adopted by the City Council on the 2nd day of June 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

ADOPTION OF THE APPROPRIATIONS LIMIT FOR FISCAL YEAR 2015-2016 FOR THE CITY OF TRACY

EXECUTIVE SUMMARY

The City Council is required by the State Constitution to annually adopt an appropriations limit pertaining to the proceeds of taxes. The Administrative Services Department has done the necessary calculations to determine the limit for FY 15/16. Council adoption is required.

DISCUSSION

As per Article XIII B of the State Constitution, the City of Tracy is subject to an appropriations limit pertaining to the proceeds of taxes. The Gann Initiative, also known as Proposition 4, was a constitutional amendment approved by state voters in November 1979. The amendment placed a limit on the amount of revenue which could be spent by government entities. The limit became effective for the FY80-81, but with a formula for calculating the limits based upon a FY78-79 "base year" revenues. The limit could be updated annually for population growth and inflation. The limit was not placed upon all revenues, but only upon the proceeds of taxes.

Each year, the State and local governments must adopt a resolution establishing an appropriations limit. FY 78-79 appropriations serve as the base for this limit, with adjustments being made annually to reflect increases in population, the cost of living, and financial responsibility transfers.

Only tax proceeds are subject to the limit. Charges for services, regulatory fees, grants, loans, donations, and other non-tax proceeds are not subject to the limit. Exemptions are also made for voter-approved debt, debt that existed prior to January 1, 1979, and the cost of compliance with court or Federal mandates.

All tax revenues received in excess of the appropriations limit must be refunded to taxpayers within a two-year period.

The voters may approve and increase in the appropriations limit, however it must be re-approved by voters at four-year intervals.

Proposition 4 had little impact in its early years due to a high growth for inflation, increasing the appropriation limit faster than revenue growth. However, by the late 1980's, there were numerous complaints about the restrictions of Proposition 4. As inflation relaxed in the late 1980's, the limit was creating a ceiling for revenue growth in areas which were experiencing growth.

Proposition 111, approved by the voters in June 1990, provided for certain modifications to the appropriations limit. Proposition 111 provided a new formula for calculating the annual adjustment which would allow for community growth and added a layer of transparency by requiring an annual review of the Appropriations Limit by the legislative body. So, with Proposition 111, the limit would have a higher annual adjustment. The City now has two options each for calculating growth and inflation.

For growth, the options are:

1. City's population growth, or
2. County's population growth.

For inflation, the options are:

1. The California Per Capita Income, or
2. Percent change in the local assessment roll from the preceding year due to the addition of local nonresidential construction in the City.

The decision as to which options to select must be done by a recorded vote of the City Council.

In addition to establishing a new method with options for the annual update of the appropriations limit, Proposition 111 expanded the categories of expenditures exempt from the limit. Items which can be exempted from proceeds of taxes are debt service, federal mandates, court orders, and qualified capital outlays. These exemptions reduce the proceeds of taxes to an appropriation subject to the limit. This provides for an added margin when comparing appropriations to the annual limit.

The attached worksheet illustrates the computation used to derive the City's appropriations limit for FY 15/16. This limit is \$54,899,941. This is a 4.26% increase over the FY 14/15 limit of \$52,658,761.

Staff has used the City's population growth and California Per Capital Income options in the computations and recommends these options for Council selection. These factors were 1.0042% and 1.0382% respectively for a combined factor of 1.0426%. The population figure provided by the State of California, Department of Finance was 85,296 for the City as of January 1, 2015.

The City of Tracy is within its limit. For FY 15/16, the margin is \$8,935,321 or 84% of the limit. This margin can be construed as the amount by which City tax revenues have been restrained since FY 78-79 when compared to City growth and inflation.

The following represents the City's "proceeds of taxes" by fiscal year.

FISCAL YEAR	PROCEED OF TAXES	% CHANGE
FY 01-02	\$27,115,610	
FY 02-03	\$28,909,770	+6.6%
FY 03-04	\$30,951,450	+7.1%
FY 04-05	\$33,833,590	+10.6%
FY 05-06	\$35,601,660	+5.2%
FY 06-07	\$39,904,820	+12.1%

FY 07-08	\$42,434,700	+6.3%
FY 08-09	\$43,709,400	+3.0%
FY 09-10	\$38,007,030	-13.0%
FY 10-11	\$30,069,810	-20.9%
FY 11-12	\$35,931,410	+19.5%
FY 12-13	\$37,923,600	+5.5%
FY 13-14	\$41,002,610	+8.1%
FY 14-15	\$46,139,960	+12.5%
FY 15-16	\$49,198,620	+6.6%

The “proceed of taxes” figure of \$49,198,620 can be adjusted downward to an “appropriations subject to the limit” of \$45,964,620. This adjustment can be made due to \$1,204,000 budgeted for debt service in FY 15/16 to be paid out of tax proceeds and \$2,030,000 of tax proceeds either budgeted or reserved for capital outlays.

Attachment A shows the calculations to determine the appropriations limit, proceed of taxes, and appropriations subject to the limit.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact associated with this report. The City’s estimated taxes for FY 2015/16 are within the appropriation limit.

Attachment B shows the historical trends of the City’s appropriation limits compared to tax proceeds, appropriations subject to limit, and property taxes

RECOMMENDATION

Staff recommends that the City Council of the City of Tracy adopt a resolution establishing the Appropriations Limit for FY 15/16.

It is further recommended that, in adopting this resolution, the City Council select “The City’s Population Growth” and “California Per Capita Income” options for the annual update of the City’s appropriations limit for FY 15/16.

Prepared by: Allan J. Borwick, Budget Officer
Reviewed by: Ray Durant, Management Partners Inc.
Andrew Malik, Interim Assistant City Manager
Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A - Appropriations Limit Calculations
Attachment B – Graph of Appropriations Limits

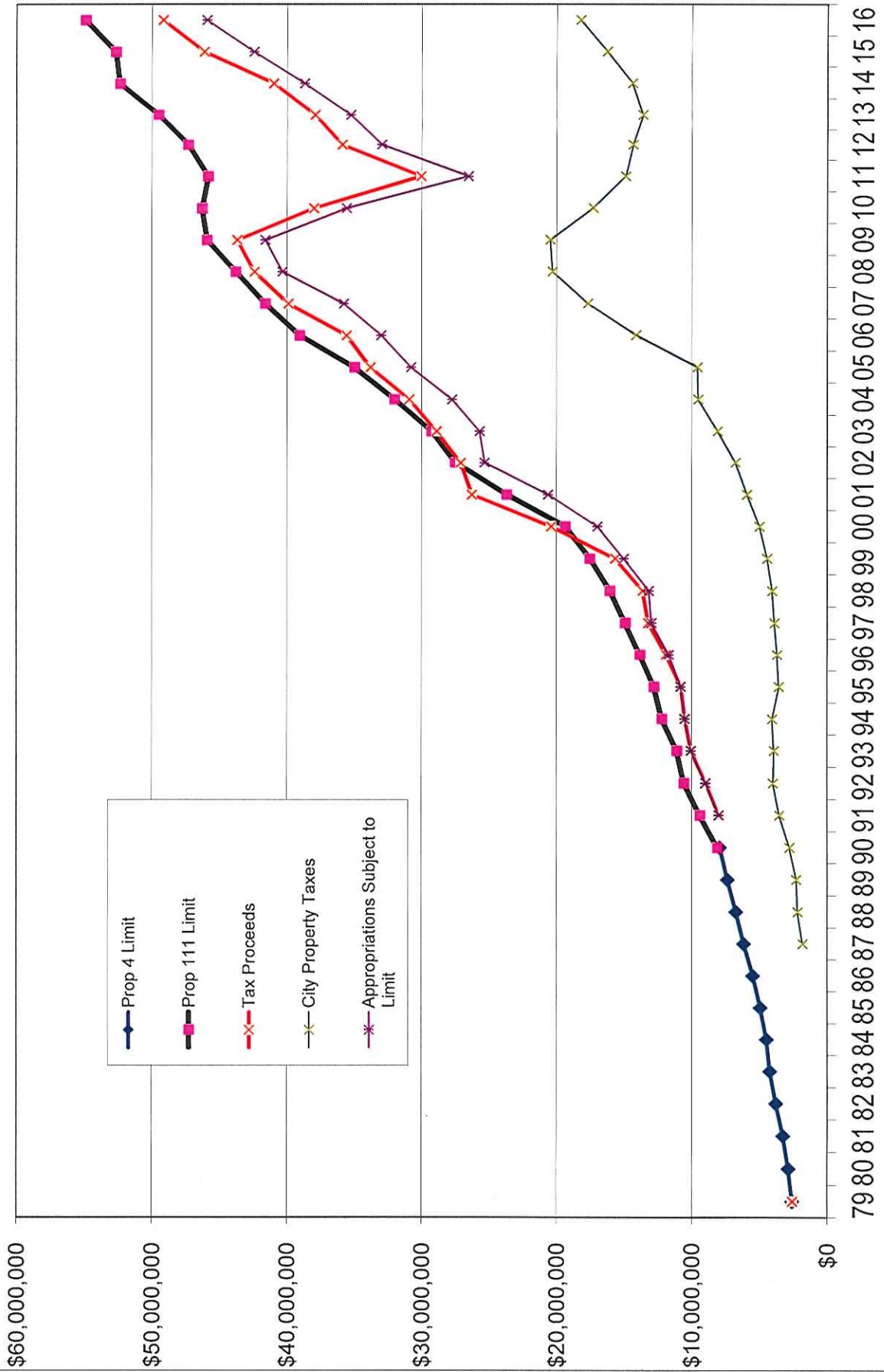
APPROPRIATION LIMIT FACTOR							
For YE June 30	Beginning Appropriation Limit	City Population Factor	Per Capita Income	Factor	Ending Appropriation Limit	% Limit Increase	
2005	32,024,361	1.0685	1.0328	1.1035	35,340,381	10.35	%
2006	35,341,704	1.0499	1.0526	1.1051	39,056,991	10.51	%
2007	39,056,991	1.0250	1.0396	1.0656	41,618,739	6.56	%
2008	41,618,739	1.0078	1.0442	1.0523	43,797,262	5.23	%
2009	43,797,262	1.0054	1.0429	1.0485	45,922,816	4.85	%
2010	45,922,816	1.0020	1.0062	1.0082	46,299,953	0.82	%
2011	46,301,339	1.0163	0.9746	0.9905	45,860,827	-0.95	%
2012	45,860,827	1.0069	1.0251	1.0322	47,336,316	3.22	%
2013	47,336,316	1.0079	1.0377	1.0459	49,508,950	4.59	%
2014	49,508,950	1.0060	1.0512	1.0575	52,356,071	5.75	%
2015	52,356,071	1.0081	0.9977	1.0058	52,658,761	0.58	%
2016	52,658,671	1.0042	1.0382	1.0426	54,899,941	4.26	%

CITY OF TRACY APPROPRIATIONS LIMIT			May 11, 2015	
Determination for FY15-16	TAX PROCEEDS	NON-TAX PROCEEDS		
=====	=====	=====		
TAXES	\$48,168,520	\$4,300,000		
SPECIAL ASSESSMENTS		\$52,820,360		
LIC, PERMIT & FRANCHISES	\$0	\$4,760,500		
STATE SHARED REVENUES	\$600,100	\$1,800,320		
STATE GRANTS		\$541,820		
FEDERAL GRANTS		\$12,884,860		
COUNTY & OTHER GRANTS		\$6,533,300		
CHARGES/FEES	\$0	\$67,316,960		
FINES		\$828,000		
USE OF MONEY	\$430,000	\$383,800		
RENTS & CONCESSIONS		\$405,000		
OTHER REVENUES		\$1,763,200		
OTHER FINANCING SOURCES		\$21,112,000		
FUND Balance		\$0		
	-----	-----		
Sub-Totals	\$49,198,620	\$175,450,120		
TOTAL Revenues	\$224,648,740			
Proceeds of Taxes	\$49,198,620	Qualified Capital Outlays		
Less Exemptions				
Debt Service	\$1,204,000	Impmts-11th & Old MacAr	\$200,000	
Qualified Capital Outlays	\$2,030,000	Larch Road Reconstruct	\$1,100,000	
Court Orders	\$0	Street Patch & Overlay	\$530,000	
Federal Mandates	\$0	Sidewalks & St Lights	\$200,000	

Appropriations Subject to Limit	\$45,964,620			
Appropriations Limit	\$54,899,941			
	=====			
Amount under Limit	\$8,935,321			-----
				\$2,030,000
% of Limit Appropriated	83.72%			

City of Tracy - Appropriations Limits FY78-79 through FY15-16

Limits, Taxes, & Appropriations



Fiscal Years

RESOLUTION _____

ESTABLISHING THE APPROPRIATIONS LIMIT FOR THE CITY OF TRACY FOR FISCAL YEAR 2015-2016

WHEREAS, Article XIII B of the State Constitution places an appropriations limit on the proceeds of taxes received by the State and local governments in California, and

WHEREAS, Article XIII B provides that the appropriations limit can be adjusted annually to account for growth and inflation, and

WHEREAS, It is necessary for the City Council to establish the appropriations limit for the City of Tracy for FY 15-16 and to specify the options used in the annual adjustment, and

WHEREAS, The attachments to this resolution show the calculations used to determine the appropriations limit as adjusted for the City of Tracy for FY 15-16;

NOW, THEREFORE, BE IT RESOLVED That:

1. The FY 15/16 appropriations limit for the City of Tracy is established as \$54,899,941;
2. In setting the appropriations limit for FY 15-16 the City Council has chosen the "City Population Growth" and "California Per Capita Income" options for the annual adjustment in the limit;
3. The appropriations, subject to the limit based upon the proposed City budget for FY 15-16 are \$45,964,620, or 84% of the limit, which is \$8,935,321 below the limit.

* * * * *

The foregoing Resolution 2015-_____ was adopted by City Council on the 2nd day of June, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.D

REQUEST

APPROVE A SUPPLEMENTAL APPROPRIATION OF \$402,000 FOR ENGINEERING PLAN REVIEW IN THE FY 14/15 CITY BUDGET

EXECUTIVE SUMMARY

Due to the high level of development activity, the demand for contracted work in the Engineering Plan Review section is exceeding the current budget of \$1,097,800. Staff is requesting approval of a supplemental appropriation of \$402,000 to keep up with development activity anticipated through the remainder of FY 14/15.

DISCUSSION

Due to the increased level of development activity anticipated with Prologis, Ellis, Tracy Hills, and NEI developments, staff estimates that a supplemental appropriation of \$402,000 will be needed through FY 14/15. Development Services staff is working with Human Resources on recruiting a new senior engineer in the development section of Engineering. While this recruitment is underway and development activity remains strong, the City will augment staff resources with contract staffing. It should be noted that this contract work should be funded by engineering fees paid by developers.

STRATEGIC PLAN

This agenda item supports the Economic Development Strategic Plan, specifically Goal 4. Staff is attempting to keep the development review process working without unnecessary procedural delays.

FISCAL IMPACT

The supplemental appropriation of \$402,000 would be made out of the General Fund on the interim basis; however, any funds expended would be offset by revenues gained through engineering fees paid by developers.

RECOMMENDATION

Approve a supplemental appropriation of \$402,000 for Engineering Plan Review work in the Engineering Division in the City's FY 14/15 budget.

Reviewed by: Allan Borwick, Budget Officer

Reviewed by: Ray Durant, Management Partners, Inc.
Kul Sharma, Interim City Engineer/Utilities
Andrew Malik, Interim Assistant City Manager

Approved by: Troy Brown, City Manager

RESOLUTION 2015-

APPROVING A SUPPLEMENTAL APPROPRIATION OF \$402,000 FOR ENGINEERING PLAN REVIEW IN THE FY 14/15 CITY BUDGET

WHEREAS, Due to the high level of development activity, the demand of contracted work in the Engineering Plan Review section is exceeding the current budget of \$1,097,800; and

WHEREAS, A supplemental appropriation for engineering plan review in the amount of \$402,000 is requested, and

WHEREAS, Development Services is working with Human Resources on recruiting a new senior engineer in the development section of engineering, while the recruitment is underway and development activity remains strong, the City will augment staff resources with contract staffing; and

WHEREAS, It is important to the economic development strategic plan, specifically Goal 4, to keep the development review process working without unnecessary procedural delays, and

WHEREAS, Funding for this appropriation will come from the General Fund on an interim basis; however, any funds expended would be offset by revenues gained through engineering fees paid by developers.

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the supplemental appropriation of \$402,000 for engineering plan review work in the Engineering Division in the City's FY 14/15 budget.

* * * * *

The foregoing Resolution 2015- was passed and adopted by the Tracy City Council on the 2nd day of June, 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

AUTHORIZE THE MAYOR TO EXECUTE AN AMENDMENT TO COOPERATIVE AGREEMENT C-12-045 WITH SJCOG FOR PROPOSITION 1B PTMISEA FUNDS TO EXTEND THE TIME OF THE AGREEMENT TO ALLOW FOR REIMBURSEMENT FROM THE STATE OF CALIFORNIA

EXECUTIVE SUMMARY

In February 2012, the City of Tracy entered into a cooperative agreement with the San Joaquin Council of Governments (SJCOG) to receive Proposition 1B (Prop 1B) Funds. These funds are for the purpose of public transportation modernization, improvement and service enhancement and are to be used for the purpose of purchasing a replacement transit bus. Staff is in process of purchasing the vehicle and the agreement needs to be amended to allow for full reimbursement of the funds.

DISCUSSION

On February 21, 2012, the City authorized the execution of a cooperative agreement with SJCOG to receive Prop 1B funds. Since that time, staff has been securing additional grants over the last two years to fund the remaining portion of the cost. The City is currently eligible for funds as part of the Prop 1B Public Transportation Modernization, Improvement, and Service Enhancement (PTMISEA) Funds with SJCOG which will go toward the purchase of a replacement transit bus.

Staff is currently in the process of purchasing the vehicles that these funds will go towards. This agreement will only pay for a portion of the cost for the replacement buses. An amendment to the existing cooperative agreement will extend the time of the agreement to allow for reimbursement of the funds from the state.

The amendment will extend the agreement to June 30, 2016.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact to the General Fund. The costs are covered completely by Prop 1B PTMISEA funds, FTA funds, and TDA funds.

RECOMMENDATION

Authorize The Mayor to execute an amendment to Cooperative Agreement C-12-045 with SJCOG for Proposition 1B PTMISEA funds to extend the time of the Agreement to allow for reimbursement from the State of California.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: David Ferguson, Director of Public Works
Andrew Malik, Interim Assistant City Manager

Approved by: Troy Brown, City Manager

Attachment

Exhibit "A" – Amendment #1 to the PTMISEA Cooperative Agreement (C-12-045 A-1) for the City of Tracy Bus Replacement

**AMENDMENT NO. 1 TO THE
PTMISEA COOPERATIVE AGREEMENT (C-12-045 A-1)
FOR
THE CITY OF TRACY BUS REPLACEMENT**

This Amendment No. 1 to the PTMISEA Cooperative Agreement for the City of Tracy Bus Replacement project is made as of Sept 1, 2014, between the City of Tracy (City), a political subdivision of the State of California, and the San Joaquin Council of Governments (SJCOG), acting as the Local Transportation Authority.

Recitals

- A. In September 2014 the SJCOG Board approved the extension of the PTMISEA Cooperative Agreement term through June 30, 2016 for the City of Tracy Bus Replacement project; and
- B. The parties wish to amend the original Agreement to reflect the change in the PTMISEA Cooperative Agreement term.

NOW, THEREFORE, in consideration of the mutual obligations in this Amendment No. 1 to the PTMISEA Cooperative Agreement, the parties to this Amendment No. 1 to the PTMISEA Cooperative Agreement agree that Section III.7 of the Agreement is hereby amended to read, in its entirety, as follows:

“Section III.7. This Agreement shall terminate upon satisfactory completion of all post-PROJECT construction obligations of City and the delivery of required PROJECT construction documents, with concurrence of SJCOG, or on **June 30, 2016**, whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal challenges, and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction related or other claims arising out of PROJECT be asserted against one of the parties, the parties agree to extend the fixed termination date of this Agreement, until such time as the construction related or other claims are settled, dismissed or paid.”

IN WITNESS WHEREOF, the undersigned parties have executed this Amendment No. 1 to the PTMISEA Cooperative Agreement for the City of Tracy Bus Replacement project on the day and year first written above.

**City of Tracy Bus Replacement
C 12-045 A-1**

CITY OF TRACY

SAN JOAQUIN COUNTY
TRANSPORTATION AUTHORITY

By: _____
MICHAEL MACIEL
Mayor

By: _____
STEVE DRESSER
Chair

ATTEST:

By: _____
NORA PIMENTEL
City Clerk

By: _____
ANDREW T. CHESLEY
Executive Director

APPROVED AS TO FORM:

By: _____
DAN SODERGREN
City Attorney

By: _____
STEVE DIAL
Deputy Executive Director/CFO

RESOLUTION _____

AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO COOPERATIVE AGREEMENT C-12-045 WITH SJCOG FOR PROPOSITION 1B PTMISEA FUNDS TO EXTEND THE TIME OF THE AGREEMENT TO ALLOW FOR REIMBURSEMENT FROM THE STATE OF CALIFORNIA

WHEREAS, Proposition 1B Public Transportation Modernization, Improvement, and Service Enhancement (PTMISEA) funds are available to the City of Tracy through the San Joaquin Council of Governments (SJCOG) for the purpose of purchasing a transit bus, and

WHEREAS, To secure the Proposition 1B PTMISEA funds, the City must amend the Cooperative Agreement with the San Joaquin Council of Governments, extending the time of the agreement to June 30, 2016;

NOW, THEREFORE, BE IT RESOLVED, That City Council hereby authorizes the Mayor to execute an amendment to Cooperative Agreement C-12-045 with the San Joaquin Council of Governments for Proposition 1B PTMISEA funds to extend the time of the Agreement to allow for reimbursement form the State of California.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 2nd day of June, 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 A SPONSORSHIP AGREEMENT FOR THE 2015/2016 PRESENTING SEASON PROGRAMS AT THE GRAND THEATRE CENTER FOR THE ARTS WITH SINGH DENTAL CENTER WHEREBY SINGH DENTAL CENTER WILL PROVIDE \$12,600 AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

On February 3, 2009, City Council adopted Sponsorship and Commercial Advertising Policies to assist with generating revenue and underwriting opportunities for programming for the City of Tracy. Staff is requesting that City Council approve Singh Dental Group as a Sponsor for family programming during the 2015/2016 Presenting Season. As a sponsor, Singh Dental Center will provide \$12,600. Staff is requesting that City Council approve the Sponsorship Agreement with Singh Dental Center.

DISCUSSION

On February 3, 2009, City Council adopted Sponsorship and Commercial Advertising Policies to assist in generating revenue for the City of Tracy. Exhibit "A," attached, is a proposed Sponsorship Agreement with Singh Dental Center as a Sponsor for a Presenting Program Family Entertainment Series.

In 2012, Dr. Singh opened a family practice in Tracy. She approached the Grand Theatre Center for the Arts to explore underwriting a series of family-themed programming. Staff met with Dr. Singh in an effort to develop a mutually beneficial sponsorship package that would meet Singh Dental Center's community outreach goals and also benefit the participants at the Grand Theatre Center for the Arts. Singh Dental Center has indicated that it is committed to developing a long lasting relationship with the Grand Theatre Center for the Arts and the City of Tracy.

The proposed Sponsorship Agreement includes a \$12,600 cash sponsorship. This sponsorship will fund during the 2015/2016 Presenting Season, two live family performances, four family movies and one literary special event with no expense to the Arts Education and Presenting Season budget. Exhibit "A" outlines the proposed Sponsorship Agreement.

STRATEGIC PLAN

This agenda item supports the Council Strategic Priority Quality of Life Strategy, specifically:

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

FISCAL IMPACT

Additional General Fund revenues will be realized as a result of the \$12,600 sponsorship.

RECOMMENDATION

That Council approves the proposed Sponsorship Agreement with Singh Dental Center, whereby Singh Dental Center will provide \$12,600 and authorizes the Mayor to execute the agreement.

ATTACHMENTS

Exhibit "A" – Proposed Sponsorship Agreement

Prepared by: Kim Scarlata, Division Manager II

Reviewed by: Andrew Malik, Interim Assistant City Manager

Approved by: Troy Brown, City Manager

**CITY OF TRACY
SPONSORSHIP AGREEMENT**

THIS SPONSORSHIP AGREEMENT (hereinafter "Agreement") is made and entered into by and between the CITY OF TRACY, a municipal corporation ("CITY"), and SINGH DENTAL CENTER ("SPONSOR").

RECITALS

WHEREAS, CITY is presenting the 2015/2016 Presenting Season and

WHEREAS, CITY passed a Resolution 2009-020 to create opportunities for sponsorships to reduce General Fund expenditures and provide underwriting opportunities, and

WHEREAS, SPONSOR wishes to enter into a Sponsorship Agreement with the CITY to support the local community through family events;

NOW, THEREFORE, The parties mutually agree as follows:

1. SPONSORSHIP RIGHTS.

1.1 SPONSOR shall have the right to use the CITY's name and its logo in SPONSOR'S marketing and advertising of the CITY's 2015-16 Family Series season programming at the Grand Theatre Center for the Arts (the "sponsored event"). If SPONSOR intends to use the CITY name or logo on any marketing materials, SPONSOR shall submit a copy of any such proposed marketing materials to the CITY for approval.

1.2 SPONSOR shall have the right to attend and distribute SPONSOR'S marketing and advertising at Presenting Season Family Series programming. CITY shall provide a location, tables and chairs to the SPONSOR for its use during sponsored event.

1.3 SPONSOR shall have the right to provide a public service announcement for presentation at Presenting Season Family Series programming. CITY shall work with SPONSOR to ensure presentation technical compatibility during sponsored event.

**CITY OF TRACY – SPONSORSHIP AGREEMENT
SINGH DENTAL GROUP
Page 2 of 2**

1.4 CITY shall place SPONSOR's name and/or logo on all marketing materials related to the sponsored event including 2015-16 Season Brochure, and electronic and print media. The size of the display of SPONSOR's name and/or logo on City-produced marketing materials shall be determined at the sole discretion of CITY to avoid the appearance that the sponsored event is a commercial event.

1.5 CITY shall provide single use of the Eleni Tsakopulous-Kounalakis Theatre (547 seats), including technical systems and staff, to SPONSOR for a private employee/client event or performance. CITY and SPONSOR will work together to schedule use at a mutually agreed date and time.

1.6 CITY shall make its best effort to provide all benefits enumerated in this Agreement, provided such provision of benefits are legal for the CITY to provide and are in accordance with all laws that govern the CITY'S ability to provide such benefits. CITY shall advise SPONSOR of any laws that may affect CITY'S ability to provide the benefits enumerated in this Agreement within a reasonable time from the time the CITY is informed or becomes aware of any such law.

2. CITY RIGHTS.

2.1 CITY will be responsible for CITY's marketing promotions and materials related to the sponsored event, such as posters, flyers, and web marketing, and will make the determination on any additional forms of advertising to be used to promote the sponsored event as well as approve any form of advertising or marketing done by SPONSOR for the sponsored event.

2.2 CITY has the right to secure additional sponsors for the sponsored event, at its discretion, to the extent that such additional sponsors do not duplicate the services sponsor is contractually obligated to provide (for example, CITY may obtain additional sponsors to supply food or beverages).

3. CITY DUTIES.

3.1 CITY shall supply four movies as part of a new Family Series, which shall be appropriate for all age levels. CITY shall supply a literary event, which shall be appropriate for all age levels. CITY shall supply two live performances, which shall be appropriate for all age levels. CITY shall insure that all intellectual property rights allowing the marketing and viewing of such events is secured in advance of such marketing and viewing.

3.2 CITY shall supply the proper technical systems and staff to operate the facility to present the sponsored event.

4. **SPONSOR'S DUTIES.**

4.1 SPONSOR shall provide \$12,600 in cash sponsorship to CITY. This amount shall be paid in eleven installments of \$1,145.45 on the first of each month beginning July 1, 2015 following the executed contract date. Failure by SPONSOR to pay the sponsorship amount by this date shall be grounds for termination of this Agreement.

5. **TERM AND TERMINATION.**

5.1 This agreement shall commence on the executed contract date and end on June 30, 2016.

5.2 Either party may cancel this Agreement, without liability to the other party, if the defaulting party repudiates or breaches any of the terms of this Agreement. In the event of termination where SPONSOR is the breaching party, SPONSOR shall pay for the cost of the event (s) and printing of all marketing and publicity pieces.

6. **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.

7. **INDEMNIFICATION.** SPONSOR shall indemnify, defend, and hold harmless the CITY (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) arising out of, pertaining to, or relating to the this Agreement except for those arising from the sole negligence of the CITY or its willful misfeasance.

8. **BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, SPONSOR shall obtain a City of Tracy Business License.

9. **NOTICES.** 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:

**CITY OF TRACY – SPONSORSHIP AGREEMENT
SINGH DENTAL GROUP**

Page 4 of 4

To CITY:

Kim Scarlata, Division Manager II
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

To SPONSOR:

Dr. Shailaja Singh
Singh Dental Center
2750 Naglee Rd.
Tracy, CA 95304

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy CA 95376

10. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
11. **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.
12. **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.
13. **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.
14. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed for this project. This Agreement supersedes all prior negotiations, representations, or agreements.
15. **COMPLIANCE WITH THE LAW.** SPONSOR shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.

**CITY OF TRACY – SPONSORSHIP AGREEMENT
SINGH DENTAL GROUP**

Page 5 of 5

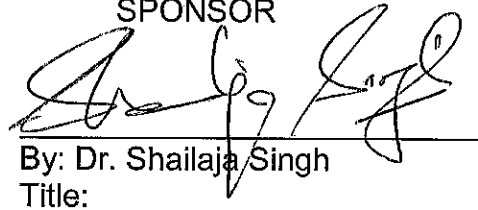
16. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the SPONSOR and the CITY. This Agreement shall inure to the benefit of 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

SPONSOR

By: Michael Maciel
Title: Mayor

By:  Dr. Shailaja Singh
Title:

Date: _____

Date: 05/20/2015
Fed. Employer ID No. _____

Attest:

By: Nora Pimentel
Title: City Clerk

Date: _____

Approved As To Form:

By: Daniel Sodergren
Title: City Attorney

Date: _____

RESOLUTION _____

APPROVING A SPONSORSHIP AGREEMENT FOR THE 2015/2016 PRESENTING SEASON AT THE GRAND THEATRE CENTER FOR THE ARTS WITH SINGH DENTAL CENTER WHEREBY SINGH DENTAL CENTER WILL PROVIDE \$12,600 AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, By Resolution 2009-020, the Tracy City Council adopted Sponsorship and Commercial Advertising Policies, and

WHEREAS, Singh Dental Center approached the Grand Theatre Center of the Arts to sponsor family friendly performances, and

WHEREAS, Singh Dental Center's sponsorship level in the amount of \$12,600, would completely underwrite two live family performances, four family movies and one literary special event;

NOW, THEREFORE BE IT RESOLVED, That City Council hereby approves a Sponsorship Agreement for the 2015/2016 Presenting Season with Singh Dental Center whereby Singh Dental Center will provide \$12,600 and authorizes the Mayor to execute the Sponsorship Agreement.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 2nd day of June, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.G

REQUEST

APPROVE AMENDMENT NO. 2 TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE GRAND FOUNDATION TO DISCONTINUE THE FOUNDATION'S CONCESSION MANAGEMENT RESPONSIBILITIES AND AUTHORIZE THE MAYOR TO EXECUTE THE AMENDMENT

EXECUTIVE SUMMARY

In 2012, City Council approved a Memorandum of Understanding (MOU) with the Grand Foundation, a not-for-profit public benefit California Corporation (Foundation). The Grand Foundation has several roles and responsibilities as the working partner with the City, one of which is to raise and administer funds for the Grand Theatre Center for the Arts. On September 16, 2014 the existing MOU was amended to allow the Foundation to manage concession activities, including the purchase and sale of alcoholic and non-alcoholic beverages. After the 2014/2015 presenting season's evaluation, staff recommends discontinuing the Foundation's exclusive rights to operate the concession area at the Grand Theatre Center for the Arts.

DISCUSSION

Staff recommends that the City Council amend the Grand Foundation MOU to discontinue concession management responsibilities, including the purchase and sale of food and alcoholic and non-alcoholic beverages and other concession items effective June 30, 2015.

After the 2014/2015 presenting season's evaluation, staff and the Grand Foundation recommend that the City discontinue the Grand Foundation's exclusive rights to operate the concession area at the Grand Theatre Center for the Arts. Operation and management of the concession area at the Grand Theatre Center for the Arts takes a considerable amount of time and the Grand Foundation has determined that its efforts need to be directed in other priority areas.

Staff is working with another Grand Theatre Center for the Arts non-profit co-presenting group that will take over the operations and management of the alcoholic beverage sales through a pilot agreement for the 15/16 Presenting Season, beginning July 1, 2015 and will evaluate the effectiveness and profitability over the next fiscal year.

Revenue from the concessions will be divided equally between the City of Tracy and Grand Foundation by June 1, 2015. One additional event will take place on June 24, 2015 and the final revenue from that event will be provided to the City of Tracy by June 29, 2015. The Grand Foundation will keep all financial records associated with the concession sales and provide City staff with a final year-end report listing all expenditures and revenues associated with the Grand concessions.

STRATEGIC PLAN

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

FISCAL IMPACT

Approval of this Amendment to the MOU will not impact the General Fund. Under the proposed amendment, revenue from concession sales will be shared equally between the City and the Grand Foundation for Fiscal Year 2014/2015 and staff will propose a replacement for the Grand Foundation to operate the Grand Theatre Center for the Arts concessions.

RECOMMENDATION

That the City Council, by resolution approve Amendment No. 2 to the Memorandum of Understanding between the City of Tracy and the Grand Foundation and authorize the Mayor to execute the agreement.

Prepared by: Kim Scarlata, Division Manager II

Reviewed by: Andrew Malik, Interim Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A – Amendment

CITY OF TRACY
AMENDMENT NO. 2 TO
THE MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF TRACY AND THE GRAND FOUNDATION

RECITALS

- A. This Amendment No. 2 ("Amendment") to the Memorandum of Understanding between the City of Tracy and the Grand Foundation (hereinafter "MOU") is made by and between the City of Tracy, a municipal corporation, and the Grand Foundation, a not-for-profit public benefit California Corporation.
- B. Effective June 30, 2015, the parties to the MOU desire to discontinue the Grand Foundation's exclusive rights to purchase and sell all of the beverages both alcohol and non-alcohol and food items from the concession area at the Grand for all presenting season concerts and events.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **Incorporation by Reference.** This Amendment incorporates by reference all terms set forth in the Agreement, and those set forth in Amendment No. 1 to the Agreement, unless specifically modified by this Amendment. The terms which are not specifically modified by this Amendment shall remain in effect.
- 2. **Terms of Amendment.** Effective June 30, 2015, subsection J of section IV. of the MOU is hereby deleted in its entirety.
- 3. **Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.
- 4. **Severability.** If any term of this Amendment is held invalid by a court of competent jurisdiction, the Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in effect.
- 5. **Signatures.** The individuals executing this MOU represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Amendment. This Amendment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

The parties agree to the full performance of the terms set forth here.

CITY OF TRACY

GRAND FOUNDATION

By: _____

By:  _____

Michael Maciel

Mike Souza

Title: Mayor

Title: President

Date: _____

Date: 5/13/15

CITY OF TRACY
Amendment No. 2 to Memorandum of Understanding
Grand Foundation
June 2, 2015
Page 2 of 2

Attest:

By: _____

Nora Pimentel

Title: City Clerk

Date: _____

Approved as to form:

By: _____

Daniel G. Sodergren

Title: City Attorney

Date: _____

RESOLUTION

APPROVING AMENDMENT NO. 2 TO THE MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF TRACY AND THE GRAND FOUNDATION AND
AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT

WHEREAS, In 2012, City Council approved a Memorandum of Understanding (MOU) with the Grand Foundation, a not-for-profit public benefit California Corporation, (Foundation), and

WHEREAS, The Foundation has several roles and responsibilities as the working partner with the City and one of those roles is to raise and administer funds for the Grand Theatre Center for the Arts, and

WHEREAS, Effective June 30, 2015 the parties to the MOU desire to discontinue the Foundation's exclusive rights to operate and manage the concession area at the Grand Theatre Center for the Arts;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves Amendment No. 2 to the MOU between the City of Tracy and the Grand Foundation discontinuing the Grand Foundation's exclusive rights to sell alcoholic and non-alcoholic beverages and food items during the City's presenting season at the Grand Theatre Center for the Arts effective June 30, 2015, and authorizes the Mayor to execute the Amendment.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 2nd day of June, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.H

REQUEST

APPROVE MEMORANDUM OF UNDERSTANDING (MOU) WITH CALIFORNIA STATE UNIVERSITY STANISLAUS, FOR USE OF CITY FACILITIES TO ADMINISTER THEIR EXECUTIVE MBA COHORT PROGRAM IN TRACY; AND AUTHORIZE THE MAYOR TO EXECUTE THE MOU

EXECUTIVE SUMMARY

In 2012, the City of Tracy entered into an MOU with California State University Stanislaus for the use of City facilities to administer the university's Executive MBA (EMBA) Cohort program. The EMBA cohort allows working professionals to participate in an accredited graduate program at an accelerated pace locally in Tracy.

This agreement served as part of a larger City effort to provide higher educational opportunities to residents of Tracy and the surrounding region, and enhance economic development activities in the community. The MOU recently expired in 2013, and CSU Stanislaus has requested a renewal to launch the EMBA program in Fall 2015. Staff has met with university representatives to renegotiate the MOU; a draft agreement has been prepared for Council's approval.

DISCUSSION

In 2012, the City of Tracy entered into an MOU with California State University Stanislaus for the use of City facilities to administer the university's Executive MBA (EMBA) Cohort program in Tracy. The EMBA cohort allows working professionals to participate in an accredited graduate program at an accelerated pace locally in Tracy.

The benefits of the CSU Stanislaus EMBA program includes: (1) Providing access to higher education opportunities for residents of Tracy and the surrounding region (2) Boosting economic activity through students and faculty purchasing goods and services from local businesses (3) Preparing the local workforce for jobs that require advanced degrees (4) Attracting future businesses that are drawn to cities with higher education establishments or programs.

Staff has met with California State University, Stanislaus, an agency of the State of California, and has developed an amended MOU (Exhibit "A") for Council's approval. The following table summarizes the services provided by CSU Stanislaus and the assistance the organization has requested from the City:

REQUESTING ORGANIZATION	PROGRAM, ACTIVITY OR SERVICE PROVIDED	SERVICES / ASSISTANCE REQUESTED
California State University, Stanislaus	The CSUS University Extended Education Executive MBA cohort	Provide rental of Tracy Transit Station, Room 105 for 63 Saturdays, September 5, 2015 through November 26, 2015, from 7 a.m.– 5:30 p.m., for a rental fee in the amount of fifteen thousand dollars (\$15,000)

CSU Stanislaus rotates their EMBA cohort program in Tracy every 3 years. The proposed CSU Stanislaus EMBA schedule does not conflict with the academic program scheduled proposed by Notre Dame de Namur University, whose courses will be offered on weekday evenings at the Tracy Transit Station.

The City’s actual non-profit rental fee associated with the proposed facility rental is roughly \$30,000. Given the benefits of the EMBA cohort to the community, the City negotiated a rental fee of \$15,000, which is adequate to cover personnel expenses associated with opening and closing the rental for the duration of the MOU.

STRATEGIC PRIORITY

This agenda item supports the City’s Economic Development Strategic Plan and specifically implements the following goal:

Economic Development Strategy

Goal 3: Support a higher education presence in Tracy.

FISCAL IMPACT

Approval of this MOU will not have a fiscal impact to the General Fund for staff time and resources related to the use of City facilities. Staff time may vary based on actual needs and demands of each event and use.

RECOMMENDATION

That City Council adopt a Resolution approving an MOU with the California State University, Stanislaus (Attachment “A”), and authorize the Mayor to execute the MOU.

Prepared by: Vanessa Carrera, Management Analyst II

Reviewed by: Andrew Malik, Acting Assistant City Manager

Approved by: Troy Brown, City Manager

Attachment “A” – MOU between the City of Tracy and California State University, Stanislaus

ATTACHMENT "A"

MEMORANDUM OF UNDERSTANDING

BETWEEN THE CITY OF TRACY AND
CALIFORNIA STATE UNIVERSITY, STANISLAUS
FOR THE USE OF CITY FACILITIES

- I. **PARTIES:** This Memorandum of Understanding (hereinafter "MOU") is made by and between the City of Tracy (hereinafter "City"), a municipal corporation, and California State University, Stanislaus (hereinafter "CSUS"), an agency of the State of California.
- II. **RECITALS:** CSUS University Extended Education serves the Central Valley community through non-traditional University Degrees (undergraduate and graduate degree programs), designed to meet our community's educational, workforce and professional development needs.

The City Council recognizes CSUS University Extended Education as a collaborator with the City to enhance education opportunities for its citizens and others through the provision of offering an Executive MBA cohort program.

- III. **RESPONSIBILITIES:** It is agreed by and between the parties hereto that each party have the following responsibilities:

A. City shall:

1. Provide rental of the Tracy Transit Station Room 105, for 43 Saturday dates, from 7:00 am to 5:30 pm on each date, from September 2015 through November 2016, for a total rental fee in the amount of fifteen thousand dollars (\$15,000).
2. Provide a maximum of 19 tables and 33 chairs (based on a cohort of 30 students), one white board, and one speaker's podium.
3. Provide access to restrooms and free parking for program participants.
4. Provide clean facilities in good repair.
5. Ensure that the room is unlocked prior to the start of the day and locked at the end of the day for each EMBA program day.
6. Indemnify, defend and hold harmless University, its officers, employees, elected officials, and agents, from and against any and all claims, losses, damages, expenses or liabilities arising as a result of the negligence or willful misconduct of City, its officers, employees, elected officials,

agents, contractors or invitees in performing under the terms and conditions of this MOU, including compliance with all applicable local, state, and federal regulations and laws. This Section shall not release University from the statutory obligation to comply with the applicable Government Claims statutes in the event of a claim against the City.

B. CSUS shall:

1. Provide the necessary staff, volunteers, equipment, and promotions to successfully conduct the "Executive MBA Cohort".
2. Adequately clean any City facilities to acceptable condition after permitted use. This includes ensuring all perishable food and trash is removed.
3. Facilitate and pay for any repairs to damages caused by such use, other than normal wear and tear.
4. Adhere to the City's established facility rental process and requirements.
5. Indemnify, defend and hold harmless City, its officers, employees, elected officials, and agents, from and against any and all claims, losses, damages, expenses or liabilities arising as a result of the negligence or willful misconduct of University, its officers, employees, elected officials, agents, contractors or invitees in performing under the terms and conditions of this MOU, including compliance with all applicable local, state, and federal regulations and laws. This Section shall not release City from the statutory obligation to comply with the applicable Government Claims statutes in the event of a claim against the University.

C. The parties shall agree that:

1. This MOU shall be subject to any and all policies, regulations and ordinances of the City of Tracy.
2. Under no circumstances shall this MOU be interpreted as creating a partnership, joint venture or employment between the parties. Each party acknowledges and agrees that it neither has, nor will give the appearance of having, any legal authority to bind or commit the other party in any way other than adherence to the terms of this MOU. CSUS and the City agree that each party shall be responsible for the payment of wages and benefits of each of their respective employees and agents.

Memorandum of Understanding
City of Tracy / California State University Stanislaus

3. University maintains self-insurance programs to fund its respective liabilities under this Agreement. City will fund its respective liabilities under this Agreement through its membership in the San Joaquin Valley Risk Management Authority.
- IV. **TERMINATION:** Either party may terminate this MOU by providing prior written notice to the other party of intention to terminate not less than thirty (30) days prior to actual termination.
- V. **TERM:** This MOU shall take effect on June 2, 2015, and shall continue through November 26, 2016, unless terminated by either party as set forth herein.
- VI. **AMENDMENTS:** This MOU may be amended in writing and the amendment must be approved by mutual agreement of both parties.
- VII. **DESIGNATED REPRESENTATIVES:** For the purposes of administering the MOU, the Dean of CSUS University Extended Education and the City Manager of the City of Tracy shall act as representatives for their respective organizations.

VIII. **NOTICES:**

CITY

City of Tracy
City Manager's Office
333 Civic Center Plaza
Tracy, CA 95376

CALIFORNIA STATE UNIVERSITY,
STANISLAUS
Attn: Chuck Gonzalez, Executive of
Extended Education
University Extended Education
One University Circle
Turlock, CA 95382

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

AREA INTENTIONALLY LEFT BLANK

Memorandum of Understanding
City of Tracy / California State University, Stanislaus

- IX. **ENTIRE AGREEMENT:** This MOU constitutes the entire agreement between the City and CSUS. Any amendment to this MOU, including oral modification, must be reduced to a writing and signed by both the City and CSUS.
- X. **SIGNATURES:** The individuals executing this MOU represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this MOU on behalf of the respective legal entities of CSUS and the City. This MOU shall inure to the benefit of and be binding upon the parties thereto and their respective successors and assigns

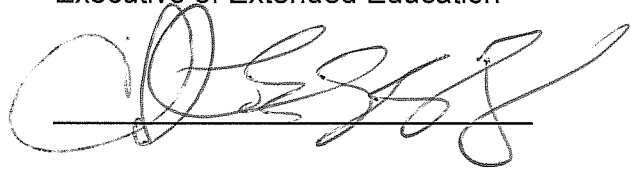
City of Tracy

Michael Maciel
Mayor

Date: _____

**California State University,
Stanislaus**

Chuck Gonzalez
Executive of Extended Education



Date: 5-27-15

ATTEST:

City Clerk

Date: _____

RESOLUTION _____

AUTHORIZING A MEMORANDUM OF UNDERSTANDING (MOU) WITH
THE CALIFORNIA UNIVERSITY, STANISLAUS (CSUS); AND
AUTHORIZING THE MAYOR TO EXECUTE THE MOU

WHEREAS, In 2012, the City of Tracy entered into an MOU with California State University Stanislaus for the use of City facilities to administer the university's Executive MBA (EMBA) Cohort program in Tracy; and

WHEREAS, CSUS has submitted a request to renew its MOU with the City to administer its Fall 2015 EMBA program; and

WHEREAS, The benefits of this program include: (1) Providing access to higher education opportunities for residents of Tracy and the surrounding region (2) Boosting economic activity through students and faculty purchasing goods and services from local businesses (3) Preparing the local workforce for jobs that require advanced degrees (4) Attracting future businesses that are drawn to cities with higher education establishments or programs; and

WHEREAS, CSUS University Extended Education requests the rental of the Tracy Transit Station Room 105 to conduct an Executive MBA Cohort on 63 Saturday Dates from September 5, 2015 to November 26, 2016, from 7:00 am to 5:30 pm each Saturday, for a total rental fee in the amount of fifteen thousand dollars (\$15,000).

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tracy does hereby approve the Memorandum of Understanding with the California State University, Stanislaus to allow the use of the Tracy Transit Station as listed above, and authorizes the Mayor to execute the agreement.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the ____ day of _____, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.I

REQUEST

APPROVE MEMORANDUM OF UNDERSTANDING (MOU) WITH NOTRE DAME DE NAMUR UNIVERSITY, FOR USE OF CITY FACILITIES TO ADMINISTER THEIR BACHELOR OF SCIENCE IN BUSINESS ADMINISTRATION AND MASTERS OF BUSINESS ADMINISTRATION DEGREE PROGRAMS; AND AUTHORIZE THE MAYOR TO EXECUTE THE MOU

EXECUTIVE SUMMARY

A goal of the City's Economic Development Strategic Plan is to support a higher education presence in Tracy. To-date, the City has hosted various universities for presentations and tours of the community in an effort to attract a higher education presence to Tracy. In 2013, representatives from NDNU met with City staff, the Tracy Consortium for Higher Education (TCHE) and elected officials to discuss the potential for higher educational programming in Tracy. NDNU later showed a renewed interest in the City of Tracy and began discussing options available as relates to higher educational programming. City staff, the TCHE and the City's educational consultant, Dr. Jonathan Brown, continued to engage NDNU which has aided in the launch of its accredited business degree programs in Tracy beginning this fall.

An MOU (Exhibit "A") has been drafted between the City and NDNU for the use of City facilities to administer the degree programs. The BS and MBA programs will meet individually one night per week, and are offered in an accelerated seven-week format designed for working professionals. The bachelor's program is designed for students with some college credits and the master's program will be delivered in a hybrid format (in-class and online instruction).

The non-profit rental fee associated with the proposed facility rental is \$ 32,660. Given the benefits of the NDNU accredited business degree programs to the Tracy community, and the long-term partnership the City is forming with NDNU to establish a possible a brick and mortar campus, the City and NDNU negotiated a rental fee of \$5,000 for its initial year of programming in Tracy. Staff is requesting Council approval of the MOU.

DISCUSSION

A goal of the City's Economic Development Strategic Plan is to support a higher education presence in Tracy. To-date, the City has hosted various universities for presentations and tours of the community in an effort to attract a higher education presence to Tracy. In 2013, representatives from Notre Dame de Namur University met with City staff, the Tracy Consortium for Higher Education (TCHE) and elected officials to discuss the potential for higher educational programming in Tracy. At the time, the NDNU representatives expressed their admiration for the community, but explained that they were not yet ready to commit to programming outside of their campus in Belmont, California.

In 2014, NDNU representatives showed a renewed interest in the City of Tracy and began discussing options available as relates to higher educational programming. The City, TCHE and elected officials met again to discuss the desire to bring a higher education institution to Tracy. The meeting was well received and NDNU representatives began initiating meetings with business leaders to hear about their needs as it relates to higher education in the workplace.

On September 23, 2014 the City of Tracy, TCHE, and NDNU hosted a luncheon with a select group of business leaders in the community. Speakers during the luncheon included Mayor Brent Ives, NDNU President Judith Maxwell Greig, as well as TCHE board member Roger Birdsall. A large portion of the meeting was dedicated to engaging the business representatives in an effort to better understand their higher educational needs. Much insight was shared from the business representatives and overall, NDNU was pleased with the feedback offered as well as the networking opportunity provided.

At the conclusion of the meeting, NDNU expressed their continued interest in the community and their desire to begin coordinating efforts to bring programming to Tracy. City staff, the TCHE and the City's educational consultant, Dr. Jonathan Brown, continued to engage NDNU representatives, which has aided in the launch of NDNU's accredited business degree programs in Tracy beginning this fall.

An MOU (Exhibit "A") has been drafted between the City and NDNU for the use of City facilities to administer the degree programs. NDNU is requesting the use of the Tracy Transit Station, Rooms 103, 104, and 105 (or comparable conference rooms at Tracy City Hall should a scheduling conflict exist), for 69 Tuesday dates, from 5:00 p.m. to 10:00 p.m. and 69 Wednesday dates from 5:00 p.m. to 10:00 p.m., from September 2015 through December 2016; and as space is available with a minimum two-week notice, NDNU may also reserve Rooms 103, 104, and/or 105 for program related events, marketing, and public relations for up to 8 additional uses for the duration of the MOU. The BS and MBA programs will meet individually one night per week, and are offered in an accelerated seven-week format designed for working professionals. The bachelor's program is designed for students with some college credits and the master's program will be delivered in a hybrid format (in-class and online instruction).

The benefits of the NDNU Tracy cohort includes: (1) Providing access to higher education opportunities for residents of Tracy and the surrounding region (2) Boosting economic activity through students and faculty purchasing goods and services from local businesses (3) Preparing the local workforce for jobs that require advanced degrees (4) Attracting future businesses that are drawn to cities with higher education establishments or programs.

The non-profit rental fee associated with the proposed facility rental is \$ 32,660. Given the benefits of the NDNU accredited business degree programs to the Tracy community, and the long-term partnership the City is forming with NDNU to establish a possible a brick and mortar campus, the City and NDNU negotiated a rental fee of \$5,000 for its initial year of programming in Tracy. This fee will be re-evaluated upon completion of the 2015-2016 academic year in Tracy. The \$5,000 rental fee will assist with personnel

expenses associated with opening and closing the rental for the duration of the agreement.

STRATEGIC PRIORITY

This agenda item supports the City's Economic Development Strategic Plan and specifically implements the following goal:

Economic Development Strategy

Goal 3: Support a higher education presence in Tracy.

FISCAL IMPACT

The MOU will have a minimal fiscal impact to the General Fund for staff time and resources to support the use of City facilities. Staff time may vary based on actual needs and demands of each event and use. Personnel costs can currently be absorbed within existing budgets.

RECOMMENDATION

That City Council adopt a Resolution approving an MOU with Notre Dame de Namur University, for use of City facilities to administer their Bachelor of Science in Business Administration and Masters of Business Administration degree programs; and authorize the Mayor to execute the MOU.

Prepared by: Vanessa Carrera, Management Analyst II

Reviewed by: Andrew Malik, Acting Assistant City Manager

Approved by: Troy Brown, City Manager

Attachment "A" – MOU between the City of Tracy and Notre Dame de Namur University

MEMORANDUM OF UNDERSTANDING

BETWEEN THE CITY OF TRACY AND NOTRE DAME DE NAMUR UNIVERSITY FOR THE USE OF CITY FACILITIES

- I. **PARTIES:** This Memorandum of Understanding (hereinafter "MOU") is made by and between the City of Tracy (hereinafter "City"), a municipal corporation, and Notre Dame de Namur University (hereinafter "NDNU"), a Catholic, independent, not-for-profit, coeducational institution of higher education.
- II. **RECITALS:** The City of Tracy and the Tracy Consortium for Higher Education (TCHE) have been working actively to attract a university to support the higher education needs of the community and surrounding region. The City and TCHE have begun engaging with Notre Dame de Namur University (NDNU) out of Belmont, California, to develop a higher education presence on Tracy. The first step to developing a physical university presence in Tracy is to partner with NDNU to launch an extended education cohort program for students and working adults.

The City Council recognizes NDNU's extended education program as a means to enhance educational opportunities for its citizens and individuals in the region through the provision of offering an evening Bachelor of Science in Business Administration degree completion program and Masters of Business Administration program through the university's School of Business and Management.

- III. **RESPONSIBILITIES:** It is agreed by and between the parties hereto that each party has the following responsibilities:

A. City shall:

1. Provide rental of the Tracy Transit Station Rooms 103, 104, and 105 (or comparable conference rooms at Tracy City Hall should a scheduling conflict exist), for 69 Tuesday dates, from 5:00 p.m. to 10:00 p.m. and 69 Wednesday dates from 5:00 p.m. to 10:00 p.m., from September 2015 through December 2016 (please refer to attached schedule Exhibit A), for a total rental fee in the amount of five thousand dollars (\$5,000).
2. As space is available and with minimum two-week notice, NDNU may also reserve rooms 103, 104, and/or 105 for program related events, marketing, and public relations to be included in the cost outlined in item A1 above, up to 8 additional uses for the duration of this MOU. For the purpose of this agreement, a "use" is defined as a one day set up.
3. Provide a maximum of 19 tables and 33 chairs per room (based on a cohort of 30 students), and one speaker's podium.
4. Provide access to restrooms and free parking for program participants.
5. Provide clean facilities in good repair.

6. Ensure that the room is unlocked prior to the start of the day and locked at the end of the day for each program day.

B. NDNU shall:

1. Provide the necessary staff, volunteers, equipment, and promotions to successfully conduct the "BS completion and MBA Cohort" programs.
2. Adequately clean any City facilities to acceptable condition after permitted use. This includes ensuring all perishable food and trash is removed.
3. Facilitate and pay for any repairs to damages caused by such use, other than normal wear and tear.
4. Adhere to the City's established facility rental process and requirements.
5. To the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of NDNU's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City. In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "NDNU" means the NDNU, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".
6. Throughout the duration of this Agreement, maintain insurance to cover NDNU, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
 - 6.1. **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 \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
 - 6.2. **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.
 - 6.3. **Workers' Compensation** coverage shall be maintained as required by the State of California.
 - 6.4. **Professional Liability** coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent

acts of NDNU in an amount not less than \$1,000,000 per occurrence.

6.5. Endorsements. NDNU shall obtain endorsements to the automobile and commercial general liability with the following provisions:

6.5.1. The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

6.5.2. For any claims related to this Agreement, NDNU's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the NDNU's insurance and shall not contribute with it.

6.6. Notice of Cancellation. NDNU shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. NDNU shall immediately obtain a replacement policy.

6.7. Authorized Insurers. All insurance companies providing coverage to NDNU 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. NDNU 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, no later than five days after the execution of this Agreement.

6.9. Substitute Certificates. No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, NDNU shall provide a substitute certificate of insurance.

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

C. The parties shall agree that:

1. This MOU shall be subject to any and all policies, regulations and ordinances of the City of Tracy.
2. Under no circumstances shall this MOU be interpreted as creating a partnership, joint venture or employment between the parties. Each party acknowledges and agrees that it neither has, nor will give the appearance of having, any legal authority to bind or commit the other party in any way other than adherence to the terms of this MOU. NDNU

Memorandum of Understanding
City of Tracy / Notre Dame de Namur University

and the City agree that each party shall be responsible for the payment of wages and benefits of each of their respective employees and agents.

- IV. **TERMINATION:** Either party may terminate this MOU by providing prior written notice to the other party of intention to terminate not less than thirty (30) days prior to actual termination.
- V. **TERM:** This MOU shall take effect on June 2, 2015, and shall continue through December 31, 2016, unless terminated by either party as set forth herein.
- VI. **AMENDMENTS:** This MOU may be amended in writing and the amendment must be approved by mutual agreement of both parties.
- VII. **DESIGNATED REPRESENTATIVES:** For the purposes of administering the MOU, the NDNU Vice President for Finance and Administration and the City Manager of the City of Tracy shall act as representatives for their respective organizations.

VIII. **NOTICES:**

CITY

City of Tracy
City Manager's Office
333 Civic Center Plaza
Tracy, CA 95376

NOTRE DAME DE NAMUR UNIVERSITY

Attn: Henry Roth
VP for Finance and Administration
1500 Ralston Avenue
Belmont, CA 94002

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

- IX. **ENTIRE AGREEMENT:** This MOU constitutes the entire agreement between the City and NDNU. Any amendment to this MOU, including oral modification, must be reduced to a writing and signed by both the City and NDNU.
- X. **SIGNATURES:** The individuals executing this MOU represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this MOU on behalf of the respective legal entities of NDNU and the City. This MOU shall inure to the benefit of and be binding upon the parties thereto and their respective successors and assigns

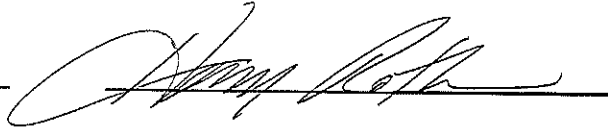
Memorandum of Understanding
City of Tracy / Notre Dame de Namur University

City of Tracy

Notre Dame de Namur University

Michael Maciel
Mayor

Henry Roth
VP for Finance and Administration



Date: _____

Date: 5/28/2015

ATTEST:

City Clerk

Date: _____

RESOLUTION _____

AUTHORIZING A MEMORANDUM OF UNDERSTANDING (MOU) WITH NOTRE DAME DE NAMUR UNIVERSITY, FOR USE OF CITY FACILITIES TO ADMINISTER THEIR BACHELOR OF SCIENCE IN BUSINESS ADMINISTRATION AND MASTERS OF BUSINESS ADMINISTRATION DEGREE PROGRAMS; AND AUTHORIZE THE MAYOR TO EXECUTE THE MOU

WHEREAS, The City of Tracy and the Tracy Consortium for Higher Education (TCHE) have been working actively to attract a university to support the higher education needs of the community and surrounding region; and

WHEREAS, The City and TCHE have begun engaging with Notre Dame de Namur University (NDNU) out of Belmont, California, to develop a higher education presence on Tracy; and

WHEREAS, The first step to developing a physical university presence in Tracy is to partner with NDNU to launch an extended education cohort program for students and working adults; and

WHEREAS, An MOU (Exhibit "A") has been drafted between the City and NDNU for the use of City facilities to administer the degree programs; and

WHEREAS, The non-profit rental fee associated with the proposed facility rental is \$32,660. Given the benefits of the NDNU accredited business degree programs to the Tracy community, the City and NDNU negotiated a rental fee of \$5,000 for its initial year of programming in Tracy.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tracy does hereby approve the Memorandum of Understanding with Notre Dame de Namur University to allow the use of the Tracy Transit Station as listed above, and authorizes the Mayor to execute the agreement.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the ____ day of _____, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.J

REQUEST

AUTHORIZE THE MAYOR TO EXECUTE AMENDMENTS TO THE MAYOR'S YOUTH COMMUNITY SUPPORT NETWORK RECONNECTING OUR YOUTH GRANT AGREEMENTS WITH SOW A SEED COMMUNITY FOUNDATION AND COUNSELING AND MORE, TO INCREASE THE NOT TO EXCEED AMOUNT TO MATCH AVAILABLE FUNDING FROM THE COUNTY OF SAN JOAQUIN

EXECUTIVE SUMMARY

The City of Tracy's Mayor's Community Youth Support Network, Reconnecting Our Youth (ROY) Grant Program aims at supporting local programs that develop skills and competencies resulting in healthy and thriving youth and families. The Mayor's Community Youth Support Network's approach is to prevent and intervene on issues of youth violence via a network of community service providers, the Tracy Police Department, and the Tracy Unified School District. To this end, the ROY grant helps support local services that foster:

- Positive relationship-building between youth and adults within and outside their families.
- Meaningful participation of youth in our community.
- Programs and staff that set high expectations for youth.
- Programs that mentor individual youth
- Programs that assist youth in improving academic achievement, parent/family relationships and self-awareness.

Since the inception of the MCYSN ROY grant program, the City has maintained an agreement with San Joaquin County Behavioral Health Services (BHS) to administer Prevention and Early Intervention (PEI) Programs through service provider agreements. In order to qualify for PEI funding, service providers must provide intensive mentoring and support to youth with emotional and behavioral difficulties.

Three local service providers were awarded PEI funding through the MCYSN ROY grant in the current fiscal year, they include: Community Partnerships for Families San Joaquin, Sow A Seed Community Foundation and Counseling and More. Staff has identified available funding under the County PEI budget, and proposes to divide it evenly amongst the three PEI service providers to support their current programs. By adding the supplemental appropriation, two of the service provider agreements (Sow A Seed Community Foundation and Counseling and More) will surpass the contract not to exceed amount of \$50,000. Per Tracy Municipal Code 2.20.140, the City Council shall award a contract for services with a value equal to, or greater than \$50,000. Staff is requesting that City Council authorize the Mayor to execute amendments to the Mayor's Youth Community Support Network, Reconnecting Our Youth grant agreements with Sow A Seed Community Foundation and Counseling and More, to increase the not to exceed amount.

DISCUSSION

The City of Tracy's Mayor's Community Youth Support Network is a collaborative effort involving City, County, community-based organizations and local schools with the purpose of outreaching and reconnecting our local youth and families to services in the community. The Reconnecting Our Youth (ROY) Grant helps support local services and programs that foster mentoring, counseling, positive relationship building, academic achievement and meaningful participation in the community.

Since the inception of the MCYSN ROY grant program in 2009, the City has maintained an agreement with San Joaquin County Behavioral Health Services (BHS) to administer Prevention and Early Intervention (PEI) Programs, through local service provider contracts. In order to qualify for PEI funding, service providers must provide intensive mentoring and support to youth with emotional and behavioral difficulties. Programs target very high-risk youth, including those who are gang involved or at risk of gang involvement, have been sexually exploited, and/or have other exposures to violence, criminality, or emotional abuse. PEI programs must be grounded on evidence-based or promising practices.

This fiscal year, the City entered into an agreement with the County to administer PEI programs in Tracy through the MCYSN ROY grant program, in the contract amount of \$200,000. Since 2009, the City has also budgeted roughly \$200,000 for ROY grant service provider agreements to support local non- PEI programs, such as youth counseling, tutoring, after school activities, and bullying prevention.

Three local service providers were awarded PEI funding through the MCYSN ROY grant in the current fiscal year, they include: Community Partnerships for Families San Joaquin, Sow A Seed Community Foundation and Counseling and More. Staff has identified \$4,032 of available funding under the County PEI budget, and proposes to divide it evenly amongst the three service providers to support their current programs (see chart below). The County strongly encourages the full use of available PEI funds to support the PEI programs granted under the ROY grant program.

Community Partnerships for Families San Joaquin	Sow-A-Seed	Counseling and More
Program: Teen Empowerment	Program: Bright Futures Youth Development	Program: Life skills training and positive action curriculum
Target Population: 14-21	Target Population:10-18	Target Population:10-18
Activities: <ul style="list-style-type: none"> • Train 10-20 youth coordinators in mentorship • Meet with youth coordinators weekly • Provide mentorship to 100 participants • Facilitate 20 weekly events for participants • Host 9 community outreach events • Develop assessment report on youth needs. 	Activities: <ul style="list-style-type: none"> • Serve 200 local youth • Provide 9 support group mentoring sessions to approximately 120 youth • Provide 6 1-on-1 mentoring sessions to approximately 35 youth • Provide intervention to all participants who are referred for expulsion, suspension, and involved in delinquency • Provide 3 social outings to approximately 60 youth • Provide 3 conferences to 120 youth 	Activities: <ul style="list-style-type: none"> • Serve 25 unduplicated students with mentorship and life-skills training from restoration specialist • Complete 400 background and learning style surveys • 150 youth receive 1-on-1 tutoring • 150 youth receive group tutoring • All students with behavioral needs referred to licensed clinician for mental health assessment • 75 parents receive support via parent liaison or Parent Project Program • Facilitate one parent workshop
Original Contract Amount: \$33,979	Original Contract Amount: \$49,994	Original Contract Amount: \$49,995
Supplemental Appropriation: \$1,344	Supplemental Appropriation: \$1,344	Supplemental Appropriation: \$1,344
Amended Contract Amount: \$35,323	Amended Contract Amount: \$51,338	Amended Contract Amount: \$51,339

By adding the supplemental appropriation from the PEI budget, two of the service provider agreements (Sow-A-Seed Community Foundation and Counseling and More) will surpass the contract not to exceed amount of \$50,000. Per Tracy Municipal Code 2.20.140, the City Council shall award a contract for services with a value equal to, or greater than \$50,000. Staff is requesting that City Council authorize the Mayor to execute amendments to the Mayor's Youth Community Support Network, Reconnecting Our Youth grant agreements with Sow-A-Seed Community Foundation and Counseling and More, to increase the not to exceed amount to match funds available from the

County.

STRATEGIC PRIORITY

This agenda item supports the Quality of Life Strategic Priority.

FISCAL IMPACT

Approval of this agenda item will not impact the general fund. Funding will be allocated from the FY 2014-15 San Joaquin County Behavioral Health Service contract with the City of Tracy.

RECOMMENDATION

That the City Council authorize the City Manager to approve amendments to the Mayor's Youth Community Support Network, Reconnecting Our Youth grant agreements with Sow-A-Seed Community Foundation and Counseling and More, to increase the not to exceed amount.

Prepared by: Vanessa Carrera, Management Analyst II

Reviewed by: Andrew Malik, Acting Assistant City Manager

Approved by: Troy Brown, City Manager

Attachment "A" – Amendment to Sow A Seed ROY Grant Agreement

Attachment "B" – Amendment to Counseling and More ROY Grant Agreement

ATTACHMENT "A"

CITY OF TRACY AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH SOW A SEED COMMUNITY FOUNDATION

This Amendment (hereafter "Amendment") amends the Professional Services Agreement that the City of Tracy (CITY) and SOW A SEED COMMUNITY FOUNDATION, a California non-profit corporation (hereinafter "CONSULTANT"), entered into effective June 2, 2015.

RECITALS

- A. On September 16, 2014, CITY executed a Professional Services Agreement ("Agreement") with CONSULTANT for youth mentoring, prevention and intervention programs.
- B. Section 17 of the Agreement states that the Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by both parties.
- C. CITY wishes to increase the Agreement "Not to Exceed" amount by \$1,344.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **RECITALS TRUE AND CORRECT.** CITY and CONSULTANT hereby agree that the recitals set forth above are true and correct.
2. **INCORPORATION OF AGREEMENT.** This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically deleted or modified hereby. Such deletions or modifications shall not be deemed to extinguish any monetary obligation that CONSULTANT assumed thereunder.
3. **TERMS OF AMENDMENT.** Section 5 of the Agreement is hereby amended to increase the Not to Exceed Amount by \$1,344.
4. **TERMS OF AMENDMENT.** Exhibit "A" of the Agreement is hereby amended to expand the Scope of Work as follows: enhance support of youth mentoring and intervention programs as part of the Bright Futures Program.
5. **SIGNATURES.** The individuals executing this Amendment represent and

warrant that they have the right, power, legal capacity, and authority to enter into and to execute this amendment on behalf or the respective legal entities of the CONSULTANT and the CITY. This amendment 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 this full performance of the terms set forth herein.


CITY OF TRACY:

By: _____
Michael Maciel

Title: Mayor

Date: _____

CONTRACTOR:

By: 
Rhodesia Ransom

Title: Executive Director

Date: 5/28/15

Approved as to legal form:

By: _____
Bill Sartor

Title: Assistant City Attorney

Date: _____

ATTACHMENT "B"

**CITY OF TRACY
AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
WITH COUNSELING AND MORE**

This Amendment (hereafter "Amendment") amends the Professional Services Agreement that the City of Tracy (CITY) and **COUNSELING AND MORE** a California non-profit corporation (herein after "CONSULTANT"), entered into effective June 2, 2015.

RECITALS

- A. On September 16, 2014, CITY executed a Professional Services Agreement ("Agreement") with CONSULTANT for youth intervention, prevention and outreach programs.
- B. Section 17 of the Agreement states that the Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by both parties.
- C. CITY wishes to increase the Agreement "Not to Exceed" amount by \$1,344.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **RECITALS TRUE AND CORRECT.** CITY and CONSULTANT hereby agree that the recitals set forth above are true and correct.
- 2. **INCORPORATION OF AGREEMENT.** This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically deleted or modified hereby. Such deletions or modifications shall not be deemed to extinguish any monetary obligation that CONSULTANT assumed thereunder.
- 3. **TERMS OF AMENDMENT.** Section 5 of the Agreement is hereby amended to increase the Not to Exceed Amount by \$1,344.
- 4. **TERMS OF AMENDMENT.** Exhibit "A" of the Agreement is hereby amended to expand the Scope of Work as follows: enhance support of youth mentoring, tutoring and life skills training.
- 5. **SIGNATURES.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this amendment on behalf of the respective legal entities of the CONSULTANT and the CITY. This amendment 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 this full performance of
the terms set forth herein.

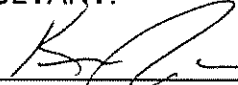
CITY OF TRACY:

By: _____
Michael Maciel

Title: Mayor

Date: _____

CONSULTANT:

By:  _____
Kevin James

Title: Executive Director

Date: 5/28/15

Approved as to legal form:

By: _____
Bill Sartor

Title: Assistant City Attorney

Date: _____

RESOLUTION _____

AUTHORIZING THE MAYOR TO EXECUTE AMENDMENTS TO THE MAYOR'S YOUTH COMMUNITY SUPPORT NETWORK, RECONNECTING OUR YOUTH GRANT AGREEMENTS WITH SOW A SEED COMMUNITY FOUNDATION AND COUNSELING AND MORE, TO INCREASE THE NOT TO EXCEED AMOUNT TO MATCH FUNDING FROM THE COUNTY OF SAN JOAQUIN

WHEREAS, The City of Tracy's Mayor's Community Youth Support Network, Reconnecting Our Youth (ROY) Grant Program aims at supporting local programs that develop skills and competencies resulting in healthy and thriving youth and families; and

WHEREAS, Since the inception of the MCYSN ROY grant program, the City has maintained an agreement with San Joaquin County Behavioral Health Services (BHS) to administer Prevention and Early Intervention (PEI) Programs through service provider agreements; and

WHEREAS, Staff has identified available funding under the County PEI budget in the amount of \$4,032 and proposes to divide it evenly amongst its PEI service providers to support their current programs; and

WHEREAS, By adding the supplemental appropriation, two of the service provider agreements (Sow A Seed Community Foundation and Counseling and More) will surpass the contract not to exceed amount of \$50,000; and

WHEREAS, Per Tracy Municipal Code 2.20.140, the City Council shall award a contract for services with a value equal to, or greater than \$50,000.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tracy does hereby authorize the Mayor to execute amendments to the Mayor's Youth Community Support Network, Reconnecting Our Youth grant agreements with Sow A Seed Community Foundation and Counseling and More, to increase the not to exceed amount to match funding from the County of San Joaquin.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the ____ day of _____, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

June 2, 2015

AGENDA ITEM 1.K

REQUEST

**ACCEPT TRAVEL REPORT FROM CITY ATTORNEY REGARDING ATTENDANCE AT
LEAGUE OF CALIFORNIA CITIES CITY ATTORNEYS' CONFERENCE**

EXECUTIVE SUMMARY

This agenda item involves a travel report from the City Attorney.

DISCUSSION

The City Attorney attended the annual League of California Cities City Attorneys' Conference May 6 - May 8, 2015. The Conference provided an opportunity to hear presentations, and obtain written materials, on a variety of topics including: CEQA, new FPPC developments, bid protests, initiatives, ethics, revenue and taxation, as well as general litigation, land use litigation, and labor and employment litigation updates.

Information obtained will be shared with the appropriate departments.

STRATEGIC PLAN

This agenda item is not related to City Council's Strategic Plans.

FISCAL IMPACT

The costs of travel and training were included in this year's budget.

RECOMMENDATION

That the Council accept the Conference Travel Report.

Prepared and Approved by Daniel G. Sodergren, City Attorney

AGENDA ITEM 3

REQUEST

CONDUCT A PUBLIC HEARING AND ADOPT A RESOLUTION TO VACATE RIGHT-OF-WAY FOR CHABOT COURT SOUTH OF GRANT LINE ROAD AND TO RESERVE AN EASEMENT FOR PUBLIC UTILITIES AND PUBLIC ACCESS.

EXECUTIVE SUMMARY

This agenda item involves a hearing before the City Council and interested public to consider the request for vacation of public street right-of-way along Chabot Court south of Grant Line Road pursuant to the provisions of Section 8320 et seq. of the Streets and Highways Code of the State of California, and to provide approval to vacate said lands at its discretion. Approval of this agenda item will authorize the City Clerk to record the Vacation of public street right-of-way in the Office of the San Joaquin County Recorder.

DISCUSSION

Chabot Court is a public street located on the south side of East Grant Line Road between Paradise Road and Banta Road. Chabot Court was constructed as part of the Chabot Court Commerce Center and dedicated as a public street in 2003. The City Council approved the subdivision map that created Chabot Court on October 21, 2003, and the final map was recorded on October 30, 2003, San Joaquin County Recorder's Book 38, Page 70. The street and utilities improvements including the water main, sewer main and storm drain line on Chabot Court were accepted by the City as public improvements.

On May 1, 2012, City Council approved a Planned Unit Development Preliminary and Final Development Plan Amendment for Development Project D12-0003 for AMB Hold Co., LLC and Prologis, LLP. Vacation of Chabot Court was incorporated into the Conditions of Approval for the project.

The 2012 Final Development Plan Amendment proposed to change the traffic circulation in the project area by extending Chabot Court from its dead end to the west and north to intersect with Paradise Road. [Attachment A] The reconfigured Chabot Court has been constructed as a private street that will be owned and maintained by the developer and property owners of the surrounding industrial development. The existing sewer main and storm drain line within Chabot Court will remain as public improvements and the City will be responsible for maintaining them. A Public Utilities Easement and Public Access Easement will be recorded for maintenance of utilities and public access.

The vacation of Chabot Court as generally shown in Attachment B is necessary in order to fulfill the design intent. Since Chabot Court is only used by the adjacent properties, it is in the interest of the City to designate it as a private street and transfer maintenance responsibility to the property owner.

The Engineering Division has reviewed the request for vacation of street right-of-way of Chabot Court and solicited comments from various City departments and utility

companies, and no objections to the proposed right-of-way vacation were received. The Developer's Engineer has prepared a Plat and Description for the Public Access Easement (P.A.E.) and a Public Utility Easement (P.U.E.) for water meter inspection and meter reading purposes, and for all the utilities located within Chabot Court right-of-way, including the public storm drain line, the public sewer line, AT&T telephone facilities, PG&E facilities and Comcast Cable facilities.

On April 25, 2012, the Planning Commission adopted Resolution 2012-013, approving the report that the proposed vacation of public street right-of-way affecting Chabot Court is consistent with the City of Tracy General Plan. Since then, the Developer has been working on the design and construction of Chabot Court. Now that construction of the street is complete, it is appropriate to proceed with the proposed vacation.

On May 5, 2015, City Council conducted the public hearing and adopted the Resolution of Intent to Vacate the Chabot Court Right-of-Way and set the date for public hearing as June 2, 2015. Staff has published and posted the notices conforming to the requirements of the Streets and Highways Code Sections 8322 and 8323.

STREET RIGHT OF WAY VACATION: California State Streets and Highways Codes Section 8334 authorizes the City Council to summarily vacate any excess right-of-way not required for street or highway purpose(s) if it lies within property under one ownership and does not continue through such ownership or end touching the property of another. The subject property meets all of these requirements. The existing right of way along Chabot Court is adequate for public access and for provision of public utilities services to the adjacent properties. The proposed vacation of a portion of street right-of-way is consistent with the City's General Plan. Staff has determined that the adoption of the Resolution to vacate a portion of Chabot Court can occur without adverse effect.

STRATEGIC PLAN

This vacation of street right-of-way is a routine operational item, and is not related to the Council's Strategic Plans.

FISCAL IMPACT

There will be no fiscal impact to the General Fund incurred for approving the Resolution to Vacate the Right-of-Way for Chabot. City will only be responsible for maintenance of the public storm drain line and public sewer main, and the City will no longer be obligated to repair or replace pavement and other street improvements, potentially resulting in reduced future maintenance costs to the City. All costs of processing the vacation of Chabot Court Right-of-Way and recordation of the vacation will be paid for by the applicant.

RECOMMENDATION

That City Council by Resolution, find that: 1) the Chabot Court right-of-way as shown on Attachment A is, (with the exception of the proposed reserved Public Utility Easements and Public Access Easements), an excess right-of-way and is unnecessary for present and prospective public use; 2) adopts a resolution vacating the street right-of-way of

Chabot Court, and authorizes the City Clerk to file a certified copy of the resolution of vacation with the office of the San Joaquin County Recorder.

Prepared by: Criseldo Mina, Senior Civil Engineer

Reviewed by: Kuldeep Sharma, Interim City Engineer/Utilities Director
Bill Dean, Interim Development Services Director
Andrew Malik, Interim Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A – Location Map and Map showing the easement area to be vacated

Attachment B – Resolution with Exhibit “A” Legal Description and Exhibit “B” Plat



LOCATION MAP

Right-of-Way to be vacated



RESOLUTION _____

VACATING CHABOT COURT RIGHT-OF-WAY SOUTH OF GRANT LINE ROAD AND
RESERVING EASEMENTS FOR PUBLIC UTILITIES AND PUBLIC ACCESS

WHEREAS, Pursuant to Streets and Highways Code Section 8300 *et seq.* of the State of California, the City of Tracy is authorized to vacate street rights-of-way, and

WHEREAS, The City intends to abandon its interest in the Chabot Court right-of-way more particularly described in Exhibit A (Legal Description) and Exhibit B (Plat) attached hereto and made a part hereof, and

WHEREAS, The vacation of the public street right-of-way is necessary to fulfill the design intent for the Paradise Road development project approved by City Council on May 1, 2012, and

WHEREAS, The Director of Development Services has determined that the Chabot Court right-of-way in question is unnecessary for present or prospective public use, and

WHEREAS, The City Council elects to proceed pursuant to the provisions of Section 8320 *et seq.* of the Streets and Highways Code of the State of California, and

WHEREAS, The City Council finds that it is in the public interest to proceed to order said vacation;

NOW, THEREFORE BE IT RESOLVED, That City Council hereby orders that the Right-of-Way for Chabot Court as shown in Exhibit A and Exhibit B shall be summarily vacated.

BE IT FURTHER RESOLVED

1. This vacation is made under the authority of California Streets and Highways Code Chapter 4 of part 3 of Division 9, commencing at Section 8330 *et. seq.*
2. The Right-of-Way is excess and is not required for street or highway purposes.
3. A Public Utility Easement and Public Access Easement will be recorded for the existing public facilities located within the Right-of-Way.

* * * * *

The foregoing Resolution 2015-_____ was adopted by the City Council on the 2nd day of June 2015, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

EXHIBIT "A"

CHABOT COURT PUBLIC ROAD VACATION LEGAL DESCRIPTION

BEING ALL OF CHABOT COURT AS SHOWN ON THAT MAP OF TRACT NO. 3019 FILED FOR RECORD ON OCTOBER 30, 2003 IN BOOK 38 OF MAPS AND PLATS AT PAGE 70, CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF NORTH LINE OF LOT 9, ALSO BEING THE SOUTH RIGHT OF WAY LINE OF GRANT LINE ROAD AS SHOWN ON SAID TRACT NO. 3019 AND THE WESTERLY LINE OF SAID CHABOT COURT;

THENCE ALONG THE WESTERLY, SOUTHERLY AND EASTERLY RIGHT OF WAY LINE OF SAID CHABOT COURT THE FOLLOWING (14) COURSES:

- 1) THENCE SOUTH 49°31'55" EAST A DISTANCE OF 60.43 FEET;
- 2) THENCE SOUTH 01°26'14" EAST A DISTANCE OF 105.34 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;
- 3) THENCE ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 970.00 FEET, THROUGH A CENTRAL ANGLE OF 01°58'19" FOR AN ARC LENGTH OF 33.38 FEET;
- 4) THENCE SOUTH 00°32'05" WEST A DISTANCE OF 932.31 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;
- 5) THENCE ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 97.00 FEET, THROUGH A CENTRAL ANGLE OF 19°54'51" FOR AN ARC LENGTH OF 33.71 FEET;
- 6) THENCE SOUTH 20°26'56" WEST A DISTANCE OF 60.52 FEET TO THE BEGINNING OF A CURVE TO THE LEFT;
- 7.) THENCE ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 60.00 FEET, THROUGH A CENTRAL ANGLE OF 219°46'41" FOR AN ARC LENGTH OF 230.20 FEET;
- 8.) THENCE NORTH 19°22'45" WEST A DISTANCE OF 60.52 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;
- 9.) THENCE ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 97.00 FEET, THROUGH A CENTRAL ANGLE OF 19°54'50" FOR AN ARC LENGTH OF 33.71 FEET;
- 10.) THENCE NORTH 00°32'05" EAST A DISTANCE OF 932.31 FEET TO THE BEGINNING OF A CURVE TO THE LEFT;

11.) THENCE ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 1030.00 FEET, THROUGH A CENTRAL ANGLE OF 01°58'19" FOR AN ARC LENGTH OF 35.45 FEET;

12.) THENCE NORTH 01°26'14" WEST A DISTANCE OF 105.28 FEET;

13.) THENCE NORTH 46°41'13" EAST A DISTANCE OF 60.46 FEET TO THE INTERSECTION WITH SAID SOUTH RIGHT OF WAY LINE OF GRANT LINE ROAD;

14.) THENCE SOUTH 88°35'12" WEST A DISTANCE OF 149.99 FEET TO THE **POINT OF BEGINNING.**

ALL AS SHOWN ON THE ATTACHED PLAT LABELED EXHIBIT "B", MADE A PART HEREOF, AND CONTAINING 1.9277 ACRES MORE OR LESS.



JOSEPH D. THOMPSON
PLS 8121
LICENSE EXPIRES: 12/31/16

5-19-15

DATE

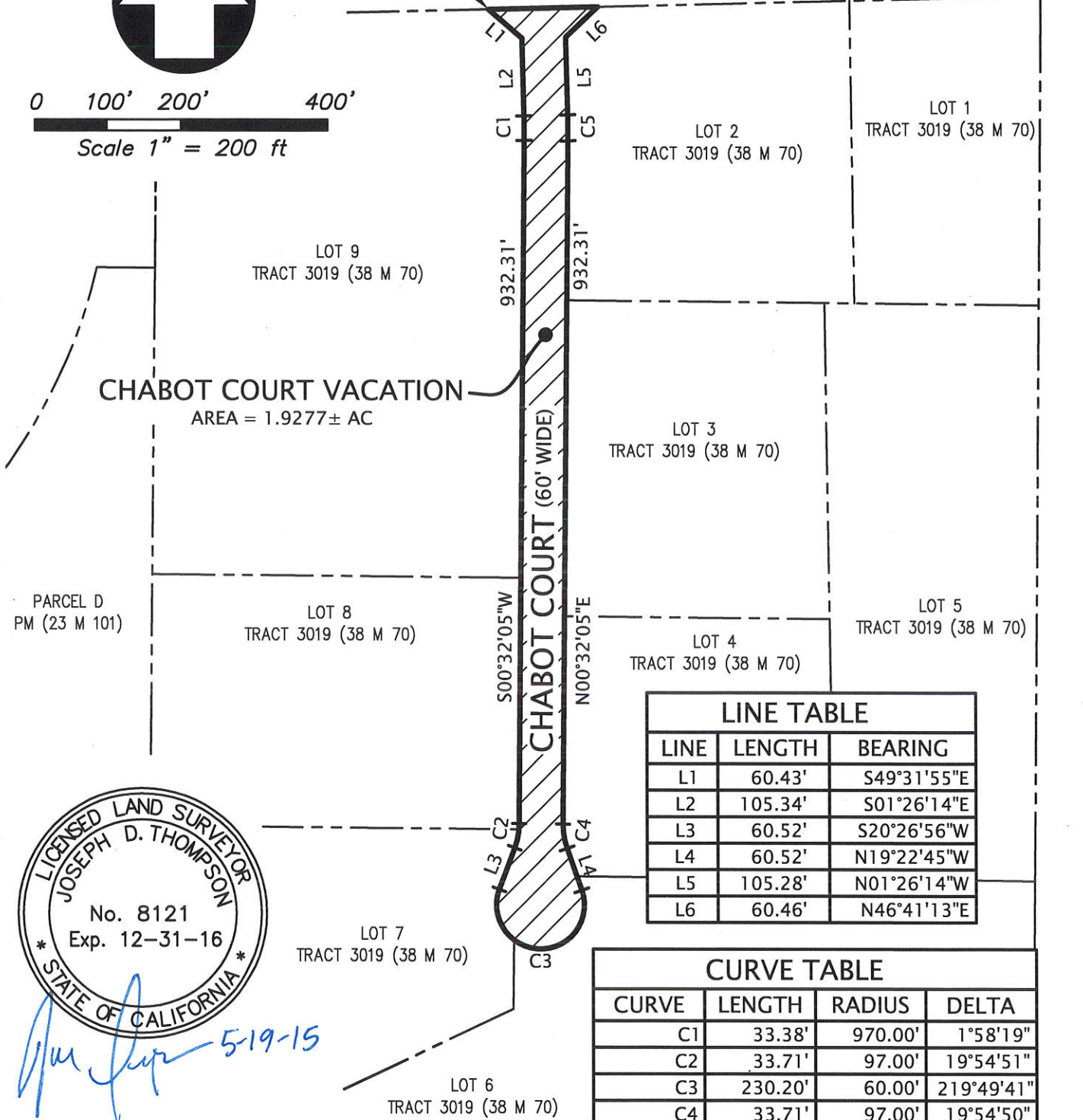




0 100' 200' 400'
Scale 1" = 200 ft

GRANT LINE ROAD
(WIDTH VARIES)

POB S88°35'12"W
149.99'



CHABOT COURT VACATION
AREA = 1.9277± AC

CHABOT COURT (60' WIDE)

LINE TABLE		
LINE	LENGTH	BEARING
L1	60.43'	S49°31'55"E
L2	105.34'	S01°26'14"E
L3	60.52'	S20°26'56"W
L4	60.52'	N19°22'45"W
L5	105.28'	N01°26'14"W
L6	60.46'	N46°41'13"E

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	33.38'	970.00'	1°58'19"
C2	33.71'	97.00'	19°54'51"
C3	230.20'	60.00'	219°49'41"
C4	33.71'	97.00'	19°54'50"
C5	35.45'	1030.00'	1°58'19"



KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road Phone (925) 245-8788
Livermore, California 94551 Fax (925) 245-8796

EXHIBIT "B"
CHABOT COURT
PUBLIC ROAD VACATION
TRACY SAN JOAQUIN COUNTY, CALIFORNIA

SCALE	1" = 200'
DATE	11-19-13
BY	RJH
JOB NO.	A10546-14
SHEET	1 OF 1

AGENDA ITEM 4

REQUEST

PUBLIC HEARING TO CONSIDER AN APPLICATION FOR A PRELIMINARY AND FINAL DEVELOPMENT PLAN TO CONSTRUCT A 795,732 SQUARE FOOT INDUSTRIAL DISTRIBUTION BUILDING WITH CORRESPONDING PARKING AND LANDSCAPE IMPROVEMENTS AND TO CONSIDER AN AMENDMENT TO THE I-205 CORRIDOR SPECIFIC PLAN REGARDING BUILDING HEIGHT, LOCATED AT 8450 ARBOR AVENUE - APPLICANT IS DCT INDUSTRIAL OPERATING LLC; OWNERS ARE GREGG AND ROBERT CHRISTENSEN - APPLICATION NUMBERS D14-0028 AND SPA15-0002

EXECUTIVE SUMMARY

This agenda item includes the consideration of a 795,732 square foot industrial distribution center and its related site plan improvements, as well as an amendment to the I-205 Corridor Specific Plan allowing increased building height for industrial structures.

DISCUSSION

Background

In 1990, the City Council adopted the I-205 Corridor Specific Plan within which the project area is located. The site is Zoned Planned Unit Development (PUD), and is designated Industrial by the General Plan, and Light Industrial by the Specific Plan.

Summary

Staff and the Planning Commission have reviewed and made recommendations for two actions on this project to the City Council as follows:

1. I-205 Specific Plan amendment to change the maximum allowable building height within the plan area for industrial buildings from 40 feet to 50 feet.
2. Preliminary and Final Development Plan approval for the construction of the industrial building and all of its related site improvements.

Site and Project Area Description

The project site is located east of Mac Arthur Drive, bordered on the north by Arbor Avenue and on the south by I-205 (Attachment A). The site is designated Light Industrial by the I-205 Corridor Specific Plan. The adjacent parcel to the west is also designated Light Industrial by the Specific Plan. To the north and east of the project is land outside of the current City Limits. The properties to the south of the project across the freeway are also within the I-205 Corridor Specific Plan and are designated General Commercial. Part of that area is developed with the outlet center (recently renamed to Shops at Northgate Village) and the remainder is vacant for the future expansion of the center.

Land Use

The project consists of the construction of a 795,732 square foot industrial distribution building with office areas, and the necessary parking and landscaping improvements (Attachment B). The tenant(s) of the building is not known at this time, and the building is designed with the vast majority of the floor plan for storage/distribution, with the ability to have office areas at all four corners of the building, depending on the number of tenants that may occupy the building. The auto parking on the site is also designed in a manner to accommodate multiple tenants as necessary.

This is the first industrial building to be considered within the I-205 Corridor Specific Plan area. When the plan was adopted 25 years ago, it included commercial, residential and industrial land use categories. Much of the Specific Plan area has been developed with a variety of land uses. The western portion of the plan area includes the West Valley Mall and its surrounding commercial uses, the Auto Plaza, The Pavilion, Tracy Marketplace, and residential units, including houses and apartments on the south side of the freeway and the Aspire Apartments under construction on Pavilion Parkway. The eastern portion of the I-205 Specific Plan allows for commercial and industrial uses, with the outlet center and the Chevron station at Mac Arthur and Pescadero being the only sites developed thus far. The proposed industrial building is well suited for this location, as the site is located within the Light Industrial area of the I-205 Corridor Specific Plan in an area where roadways and infrastructure have been designed for industrial development. The surrounding sites are planned for similar uses.

The project, as proposed, has an overall floor area ratio (FAR) of 46.1 percent. This is in compliance with the I-205 Corridor Specific Plan's maximum FAR of 50 percent.

Architecture and Building Height

The proposed building is comprised primarily of concrete tilt-up panels and is enhanced with accent colors, reveals, glass features at each corner, as well as additional glazing on the south side of the building, visible from I-205 (Attachments B and C). The variation in the roofline, as well as the façade breaks at each office area help to add visual interest to the large building.

The roofline of the building varies in height, with vertical relief added by false parapets being stepped up and down in several locations, most noticeably at the corners, with the office areas of the buildings. The variation of architectural features adds visual interest to the buildings from each elevation view, as the reveals and accent colors have been carried around all four sides of the building.

The height of the building ranges from approximately 40 feet at the lowest point, to 44 feet at the highest point. This exceeds the 40 maximum height requirement as established by the I-205 Corridor Specific Plan in 1990. The applicant has requested an amendment to the I-205 Corridor Specific Plan standard to accommodate their building height. This additional height is requested because the building must be designed for typical warehouse use, which requires an internal clear height of 40 feet. The height requirement is exceeded because exterior parapet walls are given height to ensure both visual interest and the screening of roof-mounted equipment. Also, in recent years, the

internal clear height for these typical distribution uses has increased industry-wide, resulting in the City approving taller building heights in both the Northeast Industrial Specific Plan area (60 feet) as well as in Cordes Ranch (100 feet). Staff agrees with the rationale provided by the applicant and recommends approval of the amendment in building height, to apply throughout the I-205 Corridor Specific Plan area, as all warehouse buildings will have the same height needs. Additionally, although the applicant's proposed building only reaches a height of 44 feet, staff recommends increasing the allowable building height within the I-205 Corridor Specific Plan to 50 feet for industrial uses, in order to accommodate other potential industrial users in the future without undergoing further amendments to the plan.

In order to ensure that this large building does not create any negative visual impacts within the city, particularly along I-205, staff has worked with the applicant to design the project in a way that minimizes its industrial appearance. First, the building's office areas, one at each corner, are enhanced with façade breaks, a variation in building height, accent colors, glass, and awnings. In an effort to call attention to these enhanced corners and minimize the other less interesting portions of the large building, the landscape plan has been designed in a manner to provide screening of much of the building, with clusters of trees along I-205, while maintaining a more open view shed at the corners, where the entries and all of their features can be emphasized. Because the landscaping along I-205 is not intended to entirely screen the building, that freeway-facing façade has also been enhanced with additional glass in some of the panels.

The most notable design feature that minimizes the industrial feel of this distribution center project from the public view is that all of the dock doors and trucks will be screened from view of the freeway. The site plan (Attachment B) shows a concrete wall (recommended by staff to match in color and design with the building) that will screen the dock doors and the trucks from I-205. On the east, most exposed side of the site which is the eastern edge of the City Limits north of I-205, this wall will extend from the south end of the building about 75 percent of the way across it, with the remainder of the exposed dock doors to be screened with a tube steel fence and landscaping. Along the west side of the building, where additional commercial and industrial buildings are ultimately expected to abut this site, the proposed screen wall will be placed only at the southwest corner of the building, with tube steel fencing and landscaping to screen the remainder of the building.

Landscape Areas

As shown on the preliminary landscape plan (Attachment B), the landscape areas proposed meet the requirements of Tracy Municipal Code Section 10.08.3560, and the requirements of the I-205 Corridor Specific Plan.

A combination of trees, shrubs and groundcover are proposed for the landscape areas. A recommended condition of approval requires the developer to submit a detailed landscape and irrigation plan for approval by the Development Services Director prior to the issuance of any building permits. All landscape and irrigation improvements are to be designed and installed in compliance with the requirements of the Water Efficient Landscape Guidelines, Tracy Municipal Code, I-205 Corridor Specific Plan, and all other applicable City standards. In addition, a recommended condition of approval requires that

prior to the issuance of any building permits, an Agreement for Maintenance of Landscape and Irrigation Improvements is to be executed, and financial security submitted to the Development Services Department. The agreement will ensure maintenance of the on-site landscape and irrigation improvements for a period of two years.

Parking and Circulation

The site will utilize two driveways on Arbor Avenue, both of which will allow for automobile and truck access. Parking is distributed throughout the project site to accommodate the parking needs of the proposed building. The parking spaces proposed are based on the potential for multiple tenants, each with office areas to occupy the building, and the proposed number of parking spaces is in compliance with the I-205 Corridor Specific Plan for warehouse and accompanying office uses as shown. The site plan provides for adequate circulation movements on the site for employees and customer parking, as well as truck traffic (Attachment B).

Environmental Document

The project is consistent with the Environmental Impact Report (EIR) that was prepared for the General Plan and certified on February 1, 2011. In accordance with CEQA Guidelines Section 15183, no further environmental assessment is required. An analysis of the project shows that there will be no significant on or off-site impacts as a result of this particular project that were not already discussed in the General Plan EIR. There is also no evidence of any significant impacts to occur off-site as a result of the project, including the proposed increase in height, as traffic, air quality, aesthetics, land use and other potential cumulative impacts have already been considered within the original environmental documentation. No new evidence of potentially significant effects has been identified as a result of this project.

Planning Commission Discussion

The Planning Commission held a public hearing to discuss this project and the proposed building height amendment on May 13, 2015. Most of the discussion centered on the building size (including height) and the landscaping. With the assurance that the building size and height are consistent with other recently developed industrial projects within the City and with the knowledge that the landscaping will meet or exceed current regulations for drought tolerance, the Planning Commission recommended City Council approval of the PDP/FDP and the Specific Plan Amendment to increase allowable building heights.

STRATEGIC PLAN

This agenda item supports the City's goals for economic development by attracting more job-creating industry to the City.

FISCAL IMPACT

This agenda item will have no fiscal impact, as the project proponent paid application fees to provide for the staff and consultant time necessary to complete all of the necessary analyses.

RECOMMENDATION

Staff recommends and the Planning Commission recommend that the City Council approve:

1. A minor amendment to the I-205 Corridor Specific Plan for building height to a maximum of 50 feet, Application Number SPA15-0002, subject to the conditions and based on the findings contained in the City Council Resolution dated June 2, 2015; and
2. The PUD Preliminary and Final Development Plan to develop a 795,732 square foot industrial distribution facility on a 39.58-acre site, and, located at 8450 Arbor Avenue, Application Number D14-0028, subject to the conditions and based on the findings contained in the City Council Resolution dated June 2, 2015.

Prepared by: Victoria Lombardo, Senior Planner

Reviewed by: Bill Dean, Interim Development Services Director
Andrew Malik, Interim Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

- A— Location Map
- B— Site Plan, Floor Plans, Elevations, Landscape Plan
- C— Color Elevations



LOCATION MAP (8450 ARBOR AVE, TRACY, CA 95304)

RESOLUTION 2015-_____

APPROVING A SPECIFIC PLAN AMENDMENT FOR MAXIMUM BUILDING HEIGHT THROUGHOUT THE I-205 CORRIDOR SPECIFIC PLAN AREA AND TO ALLOW FOR A MAXIMUM BUILDING HEIGHT OF 50 FEET FOR INDUSTRIAL BUILDINGS - APPLICATION NUMBER SPA15-0002

WHEREAS, The I-205 Corridor Specific Plan was approved by the City Council in 1990, and established the goals and standards and land uses for development within the area, and

WHEREAS, DCT Industrial Operating LLC, submitted an application for a Planned Unit Development Preliminary and Final Development Plan review (Application Number D14-0028) for a 795,732 square foot industrial building on December 29, 2014, and

WHEREAS, DCT Industrial Operating LLC, submitted an application for an amendment to the I-205 Corridor Specific Plan with regard to industrial building height (Application Number SPA15-0002) on April 29, 2015, and

WHEREAS, An amendment to the I-205 Corridor Specific Plan is required in order to approve the above project, including increasing the maximum height requirement for industrial buildings from 40 feet to 50 feet, and

WHEREAS, The Planning Commission conducted a public hearing to review and consider the applications on May 13, 2015;

NOW, THEREFORE BE IT RESOLVED, That the Tracy City Council does hereby approve a Specific Plan Amendment increasing the maximum building height for Light Manufacturing/Assembly and Warehouse/Distribution buildings from 40 feet to 50 feet throughout the I-205 Corridor Specific Plan, Section 4.1.2.2.C.2, Application Number SPA15-0002, based on the following findings:

1. The increase in maximum building height will not adversely affect or impair any properties in the vicinity of the I-205 Corridor Specific Plan lands because there will not be conflict with large buildings in proximity to smaller scale developments, such as residential neighborhoods. The minor amendment to the I-205 Corridor Specific Plan to revise the allowable building height to 50 feet will add to the aesthetic characteristics of the buildings by allowing for screening of roof equipment while keeping the necessary interior height for functionality.
2. The Specific Plan amendment will not cause any significant environmental impact, because it is consistent with the City's General Plan and its Environmental Impact Report as adopted by the City Council in 2011. The amendment is consistent with the land use, design, and other elements of the I-205 Corridor Specific Plan, the City of Tracy General Plan, and applicable requirements of the Tracy Municipal Code.

* * * * *

The foregoing Resolution 2015-_____ was adopted by the Tracy City Council on the 2nd day of June, 2015, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

RESOLUTION _____

APPROVING THE PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR A 795,732
SQUARE FOOT INDUSTRIAL DISTRIBUTION FACILITY
LOCATED ON A 39.58-ACRE SITE, LOCATED AT 8450 ARBOR AVENUE -
ASSESSOR'S PARCEL NUMBER 213-060-03
APPLICATION NUMBER D14-0028

WHEREAS, The subject property was annexed to the City of Tracy in 1990, received a zoning designation of Planned Unit Development, is designated Light Industrial in the I-205 Corridor Specific Plan, and is consistent with the General Plan designation of Industrial, and

WHEREAS, DCT Industrial Operating LLC, submitted an application for a Planned Unit Development Preliminary and Final Development Plan review (Application Number D14-0028) for a 795,732 square foot industrial building on December 29, 2014, and

WHEREAS, The subject property is located within the I-205 Corridor Specific Plan area, with a land use designation of Light Industrial, within which industrial land uses are permitted, and

WHEREAS, The Planning Commission conducted a public hearing to review and consider the application on May 13, 2015 and recommended City Council approval of the project;

NOW, THEREFORE BE IT RESOLVED, That the Tracy City Council does hereby approve the PUD Preliminary and Final Development Plan for a 795,732 square foot industrial building, Application No. D14-0028, subject to the conditions contained in Exhibit 1 to this Resolution, and based on the following findings:

1. The establishment, maintenance, and operation of the proposed use and associated structure is compatible with the land use, design, and operational characteristics of the neighboring properties. It will not, under the circumstances of the particular case or as conditioned, be injurious or detrimental to the health, safety, or general welfare of persons or property in the vicinity of the proposed use and its associated structure, or to the general welfare of the City because the project is consistent with the land use, design, and other elements of the I-205 Corridor Specific Plan, the City of Tracy General Plan, and applicable requirements of Chapter 10.08 of the Tracy Municipal Code.
2. The project will not adversely affect or impair the benefits of occupancy, most appropriate development, property value stability, or the desirability of property in the vicinity because the architectural elements of the project as designed and conditioned are a quality addition to the vacant parcel, and will not adversely visually impair the benefits of the properties in the vicinity. The project also includes greater setbacks than the required minimum, vertical and horizontal variation in the building faces, screen walls, and landscape improvements both adjacent to the building and the public rights-of-way.
3. The project, as designed and conditioned, will not cause any significant environmental impact, because it is consistent with the I-205 Specific Plan, and the General Plan and its Environmental Impact Report as adopted by the City Council in 2011. The project is consistent with the land use, design, and other elements of the I-205 Corridor Specific Plan, the City of Tracy General Plan, and applicable requirements of the Tracy Municipal Code.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 2nd day of June, 2015, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

Exhibit 1 - Development Services Department, Conditions of Approval

**Conditions of Approval for DCT Industrial
795,732 Square Foot Industrial Distribution Facility
8450 Arbor Avenue
Application Nos. D14-0028 and SPA15-0002
June 2, 2015**

1. These Conditions of Approval shall apply to the real property described as DCT Industrial, a 795,732 square foot industrial distribution facility located at 8450 Arbor Avenue, Application Numbers D14-0028 and SPA 15-0002 (hereinafter "Project"), located on a 39.58-acre site, Assessor's Parcel Number 213-060-03.
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 Development Services Director, or the City Engineer to perform the duties set forth herein.
 - c. "City Regulations" means all written laws, rules, and policies established by the City, including those set forth in the City of Tracy General Plan, the Tracy Municipal Code, I-205 Specific Plan, 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 DCT Industrial, a 795,732 square foot industrial distribution facility located at 8450 Arbor Avenue, Application Numbers D14-0028 and SPA15-0002. The Conditions of Approval shall specifically include all Development Services Department, including Planning Division and Engineering Division, conditions set forth herein.
 - f. "Project" means the real property consisting of approximately 39.58 acres located at 8450 Arbor Avenue, Assessor's Parcel Number 213-060-03.
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 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 1500, et seq., "CEQA Guidelines").

4. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all City Regulations.
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 February 1, 2011.
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. Except as otherwise modified herein, all construction shall be consistent with the site plan and architectural renderings received by the Development Services Department on May 7, and May 13, 2015.
8. Prior to the issuance of a building permit, the applicant shall provide a detailed landscape and irrigation plan consistent with City landscape and irrigation standards, including, but not limited to Tracy Municipal Code Section 10.08.3560 I-205 Specific Plan, and Water Efficient Landscape Guidelines on private property, and the Parks and Parkways Design Manual for public property, to the satisfaction of the Development Services Director. Said landscape plans shall include documentation which demonstrates that there is no less than 10 percent of the parking area in landscaping, and 40 percent canopy tree coverage at tree maturity.
9. Where landscape planters are parallel and adjacent to vehicular parking spaces, the planter areas shall incorporate a 12-inch wide concrete curb along their perimeter that is adjacent to the parking space in order to allow access to vehicles without stepping into landscape planters.
10. Prior to the issuance of a building permit, an Agreement for Maintenance of Landscape and Irrigation Improvements shall be executed and financial security submitted to the Development Services Department. The Agreement shall ensure maintenance of the on-site landscape and irrigation improvements for a period of two years. Said security shall be equal to the actual material and labor costs for installation of the on-site landscape and irrigation improvements, or \$2.50 per square foot of on-site landscape area.
11. No roof mounted equipment, including, but not limited to, HVAC units, vents, fans, antennas, sky lights and dishes whether proposed as part of this application, potential future equipment, or any portion thereof, shall be visible from Arbor Avenue, Mac Arthur Drive, I-205, or any other public right-of-way. All roof-mounted equipment shall be screened from line of sight view from public right of way to the satisfaction of the Development Services Director
12. All vents, gutters, downspouts, flashing, electrical conduit, and other wall-mounted or building-attached utilities shall be painted to match the color of the adjacent surface or

otherwise designed in harmony with the building exterior to the satisfaction of the Development Services Director.

13. Prior to final inspection or certificate of occupancy, on-site circulation signs shall be installed to the satisfaction of the Development Services Director.
14. Prior to final inspection or certificate of occupancy, all exterior and parking area lighting shall be directed downward or shielded, to prevent glare or spray of light into the public rights-of-way, to the satisfaction of the Development Services Director.
15. Prior to the issuance of a building permit, bicycle parking spaces shall be provided in accordance with Tracy Municipal Code Section 10.08.3510 to the satisfaction of the Development Services Director.
16. All PG&E transformers, phone company boxes, Fire Department connections, backflow preventers, irrigation controllers, and other on-site utilities, shall be vaulted or screened from view from any public right-of-way, behind structures or landscaping, to the satisfaction of the Development Services Director.
17. The applicant shall pay all applicable fees for the project, including, but not limited to, development impact fees, building permit fees, plan check fees, grading permit fees, encroachment permit fees, inspection fees, school fees, or any other City or other agency fees or deposits that may be applicable to the project.
18. All improvements shall be consistent with the Tracy Municipal Code, Standard Plans, and other applicable City Regulations.
19. No signs are approved as a part of this development application. Prior to the installation of any signs, the applicant shall submit a sign permit application and receive approval from the Development Services Director, and all signs shall be designed in compliance with the I-205 Specific Plan and Tracy Municipal Code Chapter 10.08, Article 35, Signs.
20. Prior to the issuance of a building permit, a detailed plan of the trash enclosures, at least eight feet in height, shall be submitted, showing solid metal doors, a solid roof, an interior concrete curb, and exterior materials and colors compatible with the adjacent building exterior.
21. Prior to the issuance of a building permit, a detailed plan of the screen walls shall be submitted, showing colors and details such as score lines, compatible with the adjacent building exterior.
22. The architectural elevations for all of the area contained within the PDP/FDP shall be consistent with the elevations received by the Development Services Department on May 7, 2015.

Engineering Division Conditions of Approval

C.1. General Conditions

C.1.1 Developer shall comply with the applicable recommendations of the technical analyses/ reports prepared for the Project listed as follows:

- a) *DCT Industrial Project Traffic Impact Study in the City of Tracy, prepared by TJKM Transportation Consultants, dated May 20, 2014 ("Traffic Analysis").*
- b) *Wastewater System Analysis for Properties at Arbor Road and MacArthur Drive, prepared by Ch2MHill, dated May 2014 ("Wastewater Analysis").*
- c) *Hydraulic Evaluation of I-205 Parcels M1 and M2 and Infill Parcel 7 and 13, prepared by West Yost Associates, dated July 7, 2014 ("Water Analysis").*
- d) *M2 Parcel Storm Drainage and Flood Protection Evaluation, prepared by Storm Water Consulting Inc., dated March 20, 2014 ("Storm Drainage Analysis"), and as updated per the Memorandum dated April 19, 2015.*

C.1.2 Developer shall comply with the requirements of the Finance Plan for M2 Parcel (39.58 Gross Acres), I-205 Industrial, approved by City Council.

C.1.3 Developer shall comply with the applicable requirements of Annexation and Development Agreement ("Development Agreement") dated October 29, 1990, recorded in the office of the San Joaquin County Recorder on November 5, 1990, Official Recorder No. 90109507

C.2. Grading Permit

The City will not accept grading permit application for the Project as complete until the Developer has provided all relevant documents related to said grading permit required by the applicable City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to, the following:

C.2.1 Grading and Drainage Plans prepared on a 24" x 36" size polyester film (mylar). Grading and Drainage Plans shall be prepared under the supervision of, and stamped and signed by a Registered Civil Engineer.

C.2.2 Payment of the applicable Grading Permit fees which include grading plan checking and inspection fees, and other applicable fees as required by these Conditions of Approval.

C.2.3 Three (3) sets of the Storm Water Pollution Prevention Plan (SWPPP) for the Project with a copy of the Notice of Intent (NOI) submitted to the State Water Quality Control Board (SWQCB) and any relevant documentation or written

approvals from the SWQCB, including the Wastewater Discharge Identification Number (WDID#).

- C.2.3.1 After the completion of the Project, the Developer is responsible for filing the Notice of Termination (NOT) required by SWQCB. The Developer shall provide the City with a copy of the completed Notice of Termination.
- C.2.3.2 The cost of preparing the SWPPP, NOI and NOT, including the filing fee of the NOI and NOT, shall be paid by the Developer.
- C.2.3.3 The Developer shall comply with all the requirements of the SWPPP and applicable Best Management Practices (BMPs) and the applicable provisions of the City's Storm Water Management Program.
- C.2.4 Two (2) sets of the Project's Geotechnical Report signed and stamped by a licensed Geo-technical Engineer licensed to practice in the State of California. The technical report must include relevant information related to soil types and characteristics, soil bearing capacity, percolation rate, and elevation of the highest observed groundwater level.
- C.2.5 A copy of the Approved Fugitive Dust and Emissions Control Plan that meets San Joaquin Valley Air Pollution Control District (SJVAPCD).
- C.2.6 Documentation of any necessary authorizations from Regional Water Quality Control Board (RWQCB) such as NOI and WDID and documents such as SWPPP.
- C.2.7 Two (2) sets of Hydrologic and Storm Drainage Calculations for the design of the on-site storm drainage system and for determining the size of the project's storm drainage connection, as required in Condition C.4.2.3(b) below.
- C.2.8 Executed hold-harmless agreement relieving the City of liability associated with flooding of portions of the parking areas as required in Condition C.11.3 below.
- C.3. Encroachment Permit - No applications for encroachment permit will be accepted by the City as complete until the Developer provides all relevant documents related to said encroachment permit required by the applicable City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to, the following:
 - C.3.1. Improvement Plans prepared on a 24" x 36" size 4-mil thick polyester film (mylar) that incorporate all the requirements described in these Conditions of Approval. Improvement Plans shall be prepared under the supervision of, and stamped and signed by a Registered Civil, Traffic, Electrical,

Mechanical Engineer, and Registered Landscape Architect for the relevant work.

- C.3.2. Two (2) sets of structural calculations, as applicable, signed and stamped by a Structural Engineer licensed in the State of California, as required in Condition C.4.1.(b), below.
 - C.3.3. Signed and stamped Engineer's Estimate that summarizes the cost of constructing all the public improvements shown on the Improvement Plans.
 - C.3.4. Signed and notarized Offsite Improvement Agreement (OIA) and Improvement Security, to guarantee completion of the identified public improvements that are necessary to serve the Project as required by these Conditions of Approval. The form and amount of Improvement Security shall be in accordance with Section 12.36.080 of the Tracy Municipal Code (TMC), and the OIA. The Developer's obligations in the OIA shall be deemed to be satisfied upon City Council's acceptance of the public improvements and release of the Improvement Security.
 - C.3.5. Signed and notarized Deferred Improvement Agreement (DIA) and Improvement Security, to allow deferment of completion of improvements as required by these Conditions of Approval. The form and amount of Improvement Security shall be in accordance with the DIA and Section 12.36.080 of the TMC, or pursuant to the terms of the Development Agreement, as appropriate. The Developer's obligations in the DIA shall be deemed to be satisfied upon the release of the Improvement Security.
 - C.3.6. Check payment for the applicable engineering review fees which include plan checking, permit and agreement processing, testing, construction inspection, and other applicable fees as required by these Conditions of Approval. The engineering review fees will be calculated based on the fee rate adopted by the City Council on April 15, 2014, per Resolution 2014-059.
 - C.3.7. Traffic Control Plan signed and stamped by a Registered Civil Engineer or Traffic Engineer licensed in the State of California.
- C.4. Improvement Plans - Improvement Plans shall contain the design, construction details and specifications of public improvements that are necessary to serve the Project. The Improvement Plans shall be drawn on a 24" x 36" size 4-mil thick polyester film (mylar) and shall be prepared under the supervision of, and stamped and signed by a Registered Civil, Traffic, Electrical, Mechanical Engineer, and Registered Landscape Architect for the relevant work. The Improvement Plans shall be completed to comply with City Regulations, these Conditions of Approval, and the following requirements:
- C.4.1. Site Grading
 - a) Include all proposed erosion control methods and construction details to be employed and specify materials to be used. All grading work shall be performed and completed in accordance with the

recommendation(s) of the Project's Geotechnical Engineer. A copy of the Project's Geotechnical Report must be submitted with the Grading and Storm Drainage Plans.

- b) When the grade of the Project Site is higher than the adjacent property(s) by more than 12 inches, a reinforced concrete or masonry block, or engineered retaining wall is required for retaining soil. The Grading Plan shall show construction detail(s) of the retaining wall or masonry wall. The entire retaining wall and footing shall be constructed within the Project Site. A structural calculation shall be submitted with the Grading and Storm Drainage Plans.
- c) An engineered fill may be accepted as a substitute of a retaining wall, subject to approval by the City Engineer. The Grading and Storm Drainage Plans must show the extent of the slope easement(s). The Developer shall be responsible for obtaining permission from owner(s) of the adjacent and affected property(s). The slope easement must be recorded, prior to the issuance of the final building certificate of occupancy.
- d) Grading for the site shall be designed such that the Project's storm water can overland release to a public street that has a functional storm drainage system with adequate capacity to drain storm water from the Project Site, in the event that the on-site storm drainage system fails or it is clogged. The storm drainage release point is recommended to be at least 0.70 foot lower than the building finish floor elevation and shall be improved to the satisfaction of the City Engineer.

C.4.2 Storm Drainage

C.4.2.1 Permanent Drainage System

- a) The development shall construct an initial phase of DET 13 to include 4.7 AF of storage within the Project boundaries, a pump station having a capacity of 1 cfs, and a force main outfall along Arbor Avenue to discharge to the Eastside Channel. DET 13 shall be a fully functioning initial phase of completion with the only retrofit needed being its expansion in area and volume in conjunction with adjacent new development in the future.

The Developer shall design and install Detention Basin DET13 in accordance with the Citywide Storm Drainage Master Plan ("Storm Drainage Master Plan"), Storm Drainage Analysis, and the City of Tracy's Engineering Design & Construction Standards. The Developer shall submit improvement plans and obtain approval of the plans by the City Engineer prior to beginning work. The improvement plans for DET13 shall include concept level plans for the ultimate configuration (build-out condition) of DET13. The developer shall receive fee credits

for the dedication of land, installation of pump station, and all costs associated with constructing DET13 as outlined in the Finance Plan.

In order for the above storage volumes requirements to be valid, it will be necessary to construct a 24" storm drain force main extending west in Arbor Avenue from DET13 to the City's existing Eastside Channel west of MacArthur Drive outfall to the Eastside Channel. The Developer shall be eligible to receive fee credits and/or reimbursements for the cost of this force main per the Finance Plan.

- b) Fee Credits and/or reimbursements for design and construction of DET13 and Downstream Improvements shall be as determined by the Finance Plan, and included in the OIA.
- c) The DET13 improvements will be accepted by the City upon completion of construction of the storm drainage facilities from DET13 to Eastside Channel.
- d) All Layout and design of Access Easements and maintenance access roads required to access DET13 and all off-site storm drains and structures to be dedicated to the City shall be per the requirements of Public Works Department and City Regulations.
- e) Parcel maps, Grant Deed documents or other instruments for dedication of the storm drainage basin parcel to the City shall be prepared and executed by the Developer. Acceptance of the basin parcel by the City will be upon completion of the downstream facilities as listed in Condition 4.2.1 (a) above, and upon the determination by the City Engineer that the basin is constructed and operational per the Master Plan and City Standards.
- f) The public street system serving the project site will need to include storm water quality treatment provisions that conform to the City's Manual of Stormwater Quality Control ("SWQC") Standards for New Development and Redevelopment. Design of DET13 shall include measures to provide measures for storm water quality treatment for the public streets.

C.4.2.2 Temporary Retention ("Interim Drainage")

If Developer does not construct DET13 and Down Stream Improvements as listed in Condition C.4.2.1 (a) then, the Developer may construct as Interim Drainage as follows:

- a) Per requirements cited in the Storm Drainage Analysis, DET13 may need to function as a Temporary Retention Basin ("Interim Drainage") serving this development until such time as the components of the Eastside Channel System that will ultimately discharge storm runoff from the Project to the Eastside Channel ("Downstream Improvements") are completed and operational. For

the Interim Drainage, at a minimum, the basin shall be designed to retain storm water run-off from the Project resulting from 200% of the 10-year, 48-hour storm event in compliance with Sections 5.06 and 5.07 of City of Tracy Design Standards.

- b) The Developer shall provide a geotechnical investigation with respect to the Temporary Retention Basin that validates that percolation rates for the subsurface soils that exist at and below the bottom of the basin are acceptable.
- c) Developer shall be responsible for conceptual design of the modifications needed to bring the configuration and design of the basin to the ultimate configuration per the Master Plan. Developer shall be eligible for reimbursements for basin improvements that comply with the ultimate configuration per the Master Plan. Reimbursement of costs shall be in accordance with Chapter 13.08 of Tracy Municipal Code.
- d) Developer shall be responsible for maintenance of DET13 as a Retention Basin until the downstream drainage facilities are installed and accepted by the City. The Developer shall sign an improvement agreement (Deferred Improvement Agreement), to assure completion of the Developer's obligation to repair and maintain said basin(s) while the storm drainage retention basin is in service and then to modify storm drainage retention basin to conform to Master Plan requirements at such time they are no longer needed due to the construction of the above-referenced permanent facilities.
- e) The Developer shall record a temporary storm drainage easement to grant rights to the City to access the temporary storm drainage retention basin(s) for any necessary emergency repair or maintenance work the City may have to perform within the basin site. Said temporary access easement shall include a sunset clause that such easement will automatically be terminated at such time as the above-referenced permanent storm drainage improvements are completed.

C.4.2.3 Onsite Drainage

- a) The design and construction details of the Project's storm drainage system and treatment facilities shall meet City Regulations in affect at the time of this approval and shall comply with the applicable requirements of the City's Storm Water Quality Control Standards and storm water regulations that were adopted by the City Council in 2008 and any subsequent amendments. Catch basin Filter inserts shall be permitted as an acceptable method of storm water quality due to the high groundwater present at the site.

- b) Calculations related to the design and sizing of on-site storm water treatment facilities must be submitted with the Grading and Storm Drainage Plans, and approved by City's Stormwater Coordinator prior to issuance of the Grading Permit for the Project.
- c) Prior to the final inspection of the building the Developer shall submit a signed and notarized Stormwater Treatment Facilities Maintenance Agreement (STFMA) as a guarantee for the performance of Developer's responsibility towards the repair and maintenance of on-site storm water treatment facilities.

C.4.3. The Developer shall arrange for a site sub-surface investigation for determining the presence of irrigation and drainage tile drains within and around the Project Site, if any, and submit a report prepared and signed by a Geotechnical Engineer. In the event that tile drains exist within and around the Project Site, the Developer has the option to either relocate or abandon the on-site tile drains as required for the proposed development. All existing tile drains and proposed improvements for the relocation or removal of tile drains must be shown on the Grading and Storm Drainage Plans. Any tile drains under the proposed buildings shall be abandoned or relocated as may be required, to the satisfaction of the City. The Developer or the property owner(s) will be responsible for maintenance of tile drains to remain or the relocated tile drains and associated improvements. Additionally, the Developer will be responsible for monitoring the groundwater levels, and for the mitigations, if any, that may be required, by any applicable laws and regulations.

C.4.4. Sanitary Sewer Improvement Plans

- a) As recommended in the Wastewater Analysis, the Developer shall design and install an 8-inch sewer line from the Project in Arbor Avenue to MacArthur Drive, a 10" line in MacArthur Drive to a new manhole on MacArthur Drive west of the existing MacArthur pump station, and a small section of 21-inch sewer line between the new manhole and existing manhole.

Since the proposed 8-inch and 10-inch diameter sewer lines are not part of the City's Wastewater Master Plan, these improvements are considered part of the Project's off-site sewer improvements and no fee credits will be issued. However, these lines do serve adjacent parcels and the developer will be eligible for reimbursement per the Finance Plan from the M1 Parcel as well as Infill Parcel Numbers 7 and 13 when these parcels develop.

All new sewer lines and associated appurtenances shall meet the City of Tracy Design Standards including minimum flow velocity requirement.

The Developer is responsible for the cost of installing the Project's permanent sewer connection(s) including but not limited to, replacing asphalt concrete pavement, application of 2" thick asphalt concrete overlay (25 feet on both sides of the utility trench) where required, restoring pavement marking and striping, and other improvements that are disturbed as a result of installing the Project's sewer connection. This pavement repair requirement is applicable when connections are perpendicular to the street direction, when the new sewer line is placed in the street parallel to the street direction; the width of overlay to be the width of the affected lane.

C.4.5. Water Distribution System

a) Off-site Water Line Improvements:

The developer shall design and install a 12-inch line in MacArthur Drive from the terminus of the existing 12-inch water line just north of I-205 to Arbor Ave, and 12-inch water line in Arbor Avenue from MacArthur Drive to the eastern property boundary of the Project. The developer is also responsible for constructing a 16-inch water line from the existing water line in Pescadero Avenue north, crossing under the freeway and continuing along the eastern edge of the Project and connecting to the new 12-inch line on Arbor Avenue. Alternatively, the 16" line may cross under the freeway on the western side of the Project and continue along the western edge of the Project. The actual location of the new line may be a variation of these, or any other location as approved by the City. The improvements are required to be complete, in place and operational, prior to the issuance of the final certificate of occupancy for the Project.

- b) Since the proposed water lines are not considered master plan improvements, no fee credits will be issued. However, the developer will be eligible from reimbursement per the finance plan from the M1 parcel, Infill Parcel Numbers 7 and 13, the Eastside Industrial development, the Chrisman Road property and all NEI Phase 3 properties at such time as these properties develop.
- c) During the construction phase of the Project, the Developer is responsible for providing water infrastructure (temporary or permanent) capable of delivering adequate fire flows and pressure appropriate to the various stages of construction and as required by the City of Tracy Fire Code Official.
- d) Prior to issuance of building permit, the Developer shall submit calculations and plans as required by the Fire Department and obtain approvals for the proposed fire system.
- e) In order to guarantee completion of the Offsite Water Line Improvements, the Developer shall enter into an improvement

agreement (Offsite Improvement Agreement or OIA) and post an improvement security in the amounts and form in accordance with section 12.36.080 of the TMC, and as required by these Conditions of Approval. The Developer shall submit the signed and notarized OIA with the necessary improvement security, prior to the issuance of the Grading Permit.

- f) All public improvements to be installed within the jurisdiction of the Caltrans and San Joaquin County (County) will require encroachment permit and a maintenance agreement with the respective agencies.

The Developer is required to coordinate with Caltrans and obtain approval of the design of the water line crossing under the I-205 freeway. The Developer shall comply with all the applicable requirements of Caltrans and County in connection therewith, obtain any necessary encroachment permit(s), and pay applicable permit processing, plan checking and inspection fees, prior to starting work.

- g) All costs associated with the installation of the Project's permanent water connection(s) as identified in the Water Analysis including acquisition of right-of-way and/or easements, the cost of removing and replacing asphalt concrete pavement, pavement marking and striping such as crosswalk lines and lane line markings, replacing traffic detecting loops, conduits, and wires, relocating existing utilities that may be in conflict with the water connection(s), and other improvements shall be paid by the Developer subject to terms of the Finance Plan.
- h) The portion of the new City water lines that run through existing agricultural properties may be run beneath existing dirt access roads. The City shall be granted a 15' easement for these pipelines even though the access roads may be as narrow as 10' to accommodate those existing agricultural activities. The access roads to have an all-weather surface.
- i) City will use its power of eminent domain, if necessary, to secure an easement for the City water line described herein across the small parcel situated between the Project and the Caltrans freeway property, or between Caltrans and the parcels immediately to the east or west of the Project. All costs of the eminent domain procedures shall be paid for by the Developer. However, the developer will be eligible from reimbursement per the Finance Plan from the M1 parcel, Infill Parcel Numbers 7 and 13, the Eastside Industrial development, the Chrisman Road property and all NEI Phase 3 properties at such time as these properties develop.
- j) Interruption to the water supply to the existing businesses and other users shall be kept to a minimum to facilitate construction of off-site improvements related to the Project. Prior to starting the work described in this section, the Developer shall submit a Work Plan

acceptable to the City that demonstrates no interruptions to the water supply, and Traffic Control Plan to be used during the installation of the offsite water mains and connections. The Developer shall be responsible for notifying business owner(s) and users, regarding construction work. The written notice, as approved by the City Engineer, shall be delivered to the affected residents or business owner(s) at least 72 hours before start of work.

- k) Domestic and Irrigation Water Services – The Developer shall design and install domestic and irrigation water service connection, including a remote-read master water meter (the water meter to be located within City's right-of-way) and a Reduced Pressure Type back-flow protection device in accordance with City Regulations. The domestic and irrigation water service connection(s) must be completed before the final inspection of the building. Sub-metering will be allowed within private property. The City will not perform water consumption reading on sub-meters. The Developer will be responsible for relocating or reinstalling water sub-meters. The City shall maintain water lines from the master water meter to the point of connection with the water distribution main (inclusive) only. Repair and maintenance of all on-site water lines, laterals, sub-meters, valves, fittings, fire hydrant and appurtenances shall be the responsibility of the Developer.
- l) Fire Service Line - The Developer shall design and install fire hydrants at the locations approved by the City's Fire Safety Officer and Chief Building Official. Prior to the approval of the Improvement Plans, the Developer shall obtain written approval from the City's Fire Safety Officer and Chief Building Official, for the design, location and construction details of the fire service connection to the Project, and for the location and spacing of fire hydrants that are to be installed to serve the Project.

C.4.6. Street Improvements:

- a) Prior to issuance of the final certificate of occupancy, the Developer shall complete construction of improvements identified in the Traffic Analysis, and satisfy all applicable requirements specified in these Conditions of Approval, I-205 Specific Plan and City Regulations.
- b) The Developer shall be responsible for design and construction of Frontage Improvements on the south side of Arbor Avenue for the full length of frontage of the Project. If any of the Frontage Improvements are not constructed prior to approval of the temporary certificate of occupancy, the Developer shall enter into a DIA with security to guarantee completion of such improvements. Scope of work and timing of completion of Frontage Improvements shall be subject to the approval of the City Engineer.

- c) The Developer shall design and install improvements to widen Arbor Avenue for the full frontage of the Project. The ultimate roadway section per the Roadway Master Plan will include one eastbound and one westbound travel lanes with a 16-foot wide raised median and a 10' wide Class 1 bicycle path on the north side of Arbor Avenue.

The roadway improvements to be constructed with this Project shall include, but are not limited to, concrete curb, gutter and sidewalk, accessible ramps, asphalt concrete pavement, signing and striping, storm drains, catch basins, fire hydrants, LED street lights, street trees with automatic irrigation system, barricade and guardrail, and other improvements as determined by the City Engineer that are necessary for a safe transition from a newly improved street to existing street sections on the east and west ends. The Project obligation will be to build the southern side of Arbor Avenue, a striped 11' median and one westbound lane to edge of pavement condition. The Arbor Avenue lane transitions to the west and east of the Project will be paved to an edge of pavement condition with appropriate striping. Other improvements will be provided by the appropriate land owner on which those improvements front.

The Developer shall submit geotechnical recommendations and pavement design calculations to the City to demonstrate adequacy and integrity of the existing structural street section on Arbor Avenue, and construct improvements as required to support STAA truck traffic. At a minimum, in addition to the widening, the Developer shall complete grinding and overlay of existing Arbor Street pavement with a 2" asphalt concrete overlay for the entire street width for the project frontage.

Prior to approval of Grading or Encroachment Permits, the Developer shall submit improvement plans for Arbor Avenue with the locations of all utilities including water, recycled water, sanitary sewer, storm drainage lines that will be installed within the right-of-way.

All underground facilities within the southerly half street section proposed to be built with the Project shall be completed prior to issuance final certificate of occupancy.

- d) For Arbor Avenue and the intersection improvements at Arbor Avenue/MacArthur Drive improvements, structural section of the roadway, turning radius and travel lane storage requirements for STAA Trucks are to be considered in the design of these roadway improvements. Adequate Acceleration and deceleration lanes shall be provided where required.

Intersection improvements at MacArthur Drive and Arbor Avenue shall include the installation of four-way stop signs, stop bars, and legend, pavement transition, lane line marking(s), pavement markings, traffic sign(s) and other improvements are necessary for the safe operation of

a four-way stop intersection as recommended in the traffic study prepared by TJKM Transportation Consultants, dated May 20, 2014.

- e) Right-of-Way on Arbor Avenue: The Developer shall dedicate 7-foot wide right-of-way along the entire frontage of the Property on Arbor Avenue to conform to the street sections shown on the *City of Tracy Citywide Roadway and Transportation Master Plan* prepared by RBF Consulting, November 2012 ("TMP"). Per the TMP, Arbor Avenue is designated as two-lane Arterial with Two-Way Left-Turn Lanes (TWLTL), (Figure 4.15(c) of TMP), and Right-of-way width of 84 feet. Additional right-of-way dedication may be required for turn lanes as identified in the Traffic Analysis and TMP and as shown on the Revised Preliminary Site Plan prepared by Kier & Wright Engineers, titled DCT Industrial Warehouse for DCT Industrial, dated April, 2014, "Interim & Ultimate Striping Plan of Arbor Ave", prepared by Kier & Wright, dated March 24, 2015, "N. MacArthur Drive at Arbor Ave Right Lane STAA turning Exhibit", prepared by Kier & Wright, dated February 11, 2015, "Potable Water Line Exhibit", prepared by Kier & Wright, dated March 24, 2015. Design of the improvements on Arbor Avenue shall be approved by the City Engineer.
- f) Right-of-Way at Arbor Avenue and N. MacArthur Drive Intersection: As recommended in the Traffic Analysis, the Developer shall acquire and dedicate required right-of-way at the intersection of Arbor Avenue and N. MacArthur Drive to accommodate STAA trucks. Final configuration of the right-of-way dedication shall be as approved by the City Engineer.
- g) The Developer shall execute a Grant Deed to convey the land in fee title and submit legal description and plat map that describes the area to be dedicated, prior to City Council's acceptance of the public improvements. The cost of right-of-way dedication including the cost of preparing the legal description and plat map will be paid by the Developer. The City will use its right of eminent domain, if necessary, to obtain the right of way dedications along Arbor Avenue and MacArthur Drive that are required to satisfy the interim and ultimate build-out of those streets to serve this Project as anticipated by the I-205 Specific Plan and the City's Master Plan. All costs of the eminent domain procedures shall be paid for by the Developer. However the developer will be eligible for reimbursement pursuant to the Finance Plan.
- h) The roadway improvements described in this sub-section (Offsite Roadway Improvements) must be designed and constructed by the Developer to meet the applicable requirements of the latest edition of the California Department of Transportation Highway Design Manual (HDM) and the California Manual of Uniform Traffic Control Devices (MUTCD), the applicable City Regulations, and these Conditions of

Approval. Design and construction details of the Offsite Roadway Improvements must be shown on the Improvement Plans.

- i) In order to guarantee completion of the Offsite Roadway Improvements, the Developer is required to enter into an Offsite Improvement Agreement (OIA) with the City and post improvement security in the amounts approved by the City Engineer, prior to the Encroachment Permit. The OIA requires authorization from the City Council. The Developer shall pay applicable engineering review fees such as plan checking, agreement and permit processing, testing, and construction inspection fees based on current charge rate and as required by these Conditions of Approval and shall be reimbursed in accordance with the Finance Plan.
 - j) The City will assume responsibility to maintain the public improvements and accept the offer of dedication for right-of-way on Arbor Avenue after the City Council accepts the public improvements.
 - k) Arbor Avenue is not an I-205 Specific Plan program-funded street. Hence, all improvements required for the Project as identified in the Traffic Analysis and these Conditions of Approval shall be completed by the Developer, and no fee credits shall be given. Per the Finance Plan, the developer shall be eligible for reimbursements from Parcel M1 and Infill Parcel Numbers 7 and 13 at the time these parcels develop for improvements constructed at the intersection of Arbor Avenue and N. MacArthur Drive.
- C.4.7. Project Driveways: Developer shall construct driveways to comply with the recommendations of the Traffic Analysis and City Regulations. Project driveways shall be designed for STAA truck access and provide adequate deceleration lanes on Arbor Avenue and safe site distances.
- C.4.8 Joint Utility Trench Plans – All future utilities along the frontage of the Project on Arbor Avenue shall be placed in an underground facility. If required, the Developer shall relocate existing utility poles after obtaining approval of affected utility companies and the City. No fee credits or reimbursements shall be applicable for utility pole relocations.
- City may form a Utility Underground District and complete the undergrounding of overhead utilities within Arbor Avenue right-of-way in the future in accordance with the applicable section(s) of Tracy Municipal Code.
- Developer shall prepare joint trench plans in compliance with utility companies' requirements and City regulations, and obtain approval of the plans. All private utility services to serve Project such as electric, telephone and cable TV to the building must be installed underground, and to be installed at the location approved by the respective owner(s) of the utilities.
- The Developer shall submit Joint Utility Trench Plans for the installation of electric, gas, telephone and TV cable main and service lines that are necessary to be installed to serve the Project. These utilities shall be

installed within the 10-foot wide Public Utility Easement (PUE) that will be offered for dedication to the City. The Developer shall coordinate, as feasible, with the respective owner(s) of the utilities for the design of these underground utilities to ensure they can be installed within the 10-foot wide PUE to the extent feasible (and except in the event, that additional space beyond the 10-foot PUE is required, as determined by the utilities owner(s)).

- C.4.9 Pavement cuts or utility trench(s) on existing street(s) for the installation of water distribution main, storm drain, sewer line, electric, gas, cable TV, and telephone will require the application of 2" asphalt concrete overlay and replacement of pavement striping and marking that are disturbed during construction. The limits of asphalt concrete overlay shall be 25 feet from both sides of the trench, and shall extend over the entire width of the adjacent travel lane(s) if pavement excavation encroaches to the adjacent travel lane or up to the street centerline or the median curb. If the utility trench extends beyond the street centerline, the asphalt concrete overlay shall be applied over the entire width of the street (to the lip of gutter or edge of pavement, whichever applies). This pavement repair requirement is applicable when cuts or trenches are perpendicular to the street direction; when the new joint trench is placed in the street parallel to the street direction; the width of overlay is to be the width of the affected lane.
- C.5. Building Permit - No building permit will be approved by the City until the Developer demonstrates, to the satisfaction of the City Engineer, compliance with all required Conditions of Approval, including, but not limited to, the following:
- C.5.1 Check payment of the applicable development impact fees including City Wide Roadway and Traffic, Water, Recycled Water, Wastewater, Storm Drainage, Public Safety, Public Facilities, and Park Development Impact Fees per the Finance Plan.
- C.5.2 Check payment of any applicable Regional Transportation Impact Fees (RTIF)
- C.5.3 Check payment of any applicable Agricultural Conversion or Mitigation Fee as required in Chapter 13.28 of the Tracy Municipal Code
- C.5.4 Approval of the Finance Plan by the City Council.
- C.6. Acceptance of Public Improvements - Public improvements will not be accepted by the City Council until after the Developer completes construction of the relevant public improvements, and also demonstrates to the City Engineer satisfactory completion of the following:
- C.6.1 Correction of all items listed in the deficiency report prepared by the assigned Engineering Inspector relating to public improvements subject to City Council's acceptance.

- C.6.2 Certified "As-Built" Improvement Plans (or Record Drawings). Upon completion of the construction by the Developer, the City shall temporarily release the originals of the Improvement Plans to the Developer so that the Developer will be able to document revisions to show the "As Built" configuration of all improvements.
- C.6.3 Signed and notarized Grant Deeds and /or Grant of Easement(s) including legal description and plat map(s), relating to the offer of dedication for the storm drainage detention basin, Arbor Avenue right-of-way, and utility easements, as required in these Conditions of Approval.
- C.6.4 Reasonable written permission from irrigation district or affected owner(s), if applicable. The cost of relocating and/or removing irrigation facilities and/or tile drains is the sole responsibility of the Developer.
- C.7. Temporary or Final Building Certificate of Occupancy - No Final Building Certificate of Occupancy will be issued by the City until after the Developer provides reasonable documentation which demonstrates, to the satisfaction of the City Engineer, that:
 - C.7.1. The Developer has satisfied all the requirements set forth in Conditions C.5 and C.6 above.
 - C.7.2. The Developer has completed construction of all required public facilities for the building for which a certificate of occupancy is requested and all the improvements required in these Conditions of Approval. Unless specifically provided in these Conditions of Approval, or some other applicable City Regulations, the Developer shall use diligent and good faith efforts in taking all actions necessary to construct all public facilities required to serve the Project, and the Developer 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.8. Improvement Security – The Developer shall provide improvement security for all public facilities, as required by the OIA, DIA, and these Conditions of Approval. The form of the improvement security may be a surety bond, letter of credit or other form in accordance with section 12.36.080 of the TMC and the Development Agreement. The amount of improvement security shall be as follows:
 - C.8.1. Faithful Performance (100% of the estimated cost of constructing the public facilities),
 - C.8.2. Labor & Materials (100% of the estimated cost of constructing the public facilities), and
 - C.8.3. Warranty (10% of the estimated cost of constructing the public facilities)

- C.9. Release of Improvement Security - Improvement Security(s) described herein shall be released to the Developer after City Council's acceptance of public improvements, and after the Developer demonstrates, to the satisfaction of the City Engineer, compliance of these Conditions of Approval, and completion of the following:
- C.9.1. Improvement Security for Faithful Performance, Labor & Materials, and Warranty shall be released to the Developer in accordance with Section 12.36.080 of the TMC.
 - C.9.2. Written request from the Developer and a copy of the recorded Notice of Completion.
- C.10. Benefit District – The Developer may make a written request to the City for the formation of a Benefit District, prior to the approval of improvement plans for the public facility(s) considered to be oversized that benefits other property(s) or development(s). Reimbursement request(s) will be processed in accordance with Chapter 12.60 of the TMC.
- C.11. Special Conditions
- C.11.1 All streets and utilities improvements within City's right-of-way shall be designed and constructed in accordance with City Regulations, and City's Design documents including the City's Facilities Master Plan for storm drainage, roadway, wastewater and water adopted by the City, or as otherwise specifically approved by the City.
 - C.11.2 When street cuts are made for installation of utilities, the Developer is required to install 2 inches thick asphalt concrete overlay with reinforcing fabric at least 25 feet from all sides and for the entire length of the utility trench. A 2 inches deep grind on the existing asphalt concrete pavement will be required where the asphalt concrete overlay will be applied and shall be uniform thickness in order to maintain current pavement grades, cross and longitudinal slopes. If the utility trench extends beyond the median island, the limit of asphalt concrete overlay shall be up to the lip of existing gutter located along that side of the street. This pavement repair requirement is when cuts/trenches are perpendicular to the street direction; when the street cut is parallel to the street direction, the width of overlay to be the width of the affected lane.
 - C.11.3 The Developer shall execute a hold-harmless agreement with the City relieving the City of any liability associated with flooding of portions of the parking areas and other site improvements contiguous to the proposed building that will be constructed below the base flood elevation of 22 feet for Old River depicted on the existing FEMA Flood Insurance Rate Map covering this area.

- C.11.4 All existing on-site wells, if any, shall be abandoned or removed in accordance with the City and San Joaquin County requirements. The Developer shall be responsible for all costs associated with the abandonment or removal of the existing well(s) including the cost of permit(s) and inspection. The Developer shall submit a copy of written approval(s) or permit(s) obtained from San Joaquin County regarding the removal and abandonment of any existing well(s), prior to the issuance of the Grading Permit.
- C.11.5 The Developer shall abandon or remove all existing irrigation structures, channels and pipes, if any, as directed by the City after coordination with the irrigation district, if the facilities are no longer required for irrigation purposes. If irrigation facilities including tile drains, if any, are required to remain to serve existing adjacent agricultural uses, the Developer will design, coordinate and construct required modifications to the facilities to the satisfaction of the affected agency and the City. Written permission from irrigation district or affected owner(s) will be required to be submitted to the City prior to the issuance of the Grading Permit. The cost of relocating and/or removing irrigation facilities and/or tile drains is the sole responsibility of the Developer.
- C.11.6 Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Tracy, or other public agency having jurisdiction. This Condition of Approval does not preclude the City from requiring pertinent revisions and additional requirements to the Grading Permit, Encroachment Permit, Building Permit, Improvement Plans, OIA, and DIA, if the City Engineer finds it necessary due to public health and safety reasons, and it is in the best interest of the City. The Developer shall bear all the cost for the inclusion, design, and implementations of such additions and requirements, without reimbursement or any payment from the City.

AGENDA ITEM 5

REQUEST

**PUBLIC HEARING TO CONSIDER AMENDMENTS TO TRACY MUNICIPAL CODE
11.28 WATER MANAGEMENT AND IMPLEMENTATION OF PHASE III and IV
WATER RESTRICTIONS**

EXECUTIVE SUMMARY

The Governor has declared a continued drought emergency and the State Water Resources Control Board (Water Board) has mandated that water suppliers (including the City) implement the stage of their water shortage contingency plans that includes mandatory restrictions on the number of days that outdoor irrigation with potable water may occur, prohibitions on uses of potable water, as well as promotion of water conservation by the End-User.

The City manages its water shortage contingency plans through Chapter 11.28 of the Tracy Municipal Code. The proposed Ordinance amends various sections of the chapter 11.28 Water Management to comply with the Governor's Order and Water Board emergency drought regulations, and also makes other clarifications and updates. The proposed Resolution implements Phase III and Phase IV water restrictions from the Tracy Municipal Code (both before and after the proposed ordinance amendment) and meets the State's requirement.

DISCUSSION

Background.

In response to the third year of severe drought, the State Water Resources Control Board, in 2014, enacted emergency regulations to ensure increased water conservation in urban settings, primarily through reduction in outdoor urban water use. With severe drought conditions persisting throughout California into a fourth year, Governor Brown declared a continued severe drought in February 2015. Due to this declaration, the Water Board adopted supplementary emergency regulations on March 27, 2015 that limited the number of days that outdoor irrigation is allowed for ornamental landscapes and turf that use potable water. In addition, the Water Board mandated End-User requirements for promotion of water conservation through public outreach and education as well as restrictions of irrigation during and 48 hours after a rainfall event.

Following the Water Board's March 27, 2015 emergency drought regulations, Governor Brown issued an Executive Order on April 1, 2015, directing the Water Board to implement further measures to conserve water 25% statewide. Water Board staff adopted additional mandatory potable water regulations on May 5, 2015.

In order to reduce water use by 25% statewide, the Water Board regulations place each urban water supplier into one of eight tiers which are assigned a conservation standard, ranging between 4% and 36%. The Water Board determined that the City of Tracy had saved 23% over the same time in 2013 and was placed in a 28% water conservation

tier. (However, in April 2015 the Tracy water savings rate was only 10% below 2013 levels.)

Penalties to the City for Citations by the Water Board.

Each month, the Water Board will compare every urban water suppliers' water use with their use for the same month in 2013 to determine if they are on track for meeting their conservation standard. Failure to take any action required in the emergency drought regulations, adopted by the Office of Administrative Law on May 18, 2015, is an infraction and is punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

In order to comply with all of the Water Board regulations together, the following prohibitions are necessary:

- Using potable water to wash hardscapes such as patios, sidewalks and driveways;
- Allowing runoff when irrigating with potable water;
- Using hoses with no automatic shutoff nozzles to wash cars;
- Using potable water in decorative fountains, ponds and water features that do not recirculate the water; and
- Restaurants serving water to their customers unless the customer requests it.
- Irrigation with potable water of ornamental turf or grass on public street medians; and
- Irrigation with potable water outside of newly constructed homes and buildings not in accordance with emergency regulations or other requirements established by the Building Standards Commission and the Department of Housing and Community Development.
- Potable water use for landscaping shall be restricted to three days per week between the hours of 7:00 p.m. and 9:00 a.m. for Residential, Commercial, Industrial, Institutional, Municipal and other entities as deemed necessary.
- Additionally, hotels and motels must offer their guests the option to not have their linens and towels laundered daily and prominently display this option in each guest room.

Implementation, Education and Enforcement

The City has continued to engage the community through educational messages on utility billing envelopes and statements, conservation advertisements in local movie theaters, and by tracking and responding to questions, inquiries and/or complaints through the City's Government Outreach program and mobile app. The City has taken

steps to strategically reduce watering at public facilities, and implemented part-time water patrol during regular work hours.

Water conservation concerns and/or complaints are referred to the Water Conservation Coordinator for investigation. Typically, staff will investigate the issue and provide water customers with educational materials about conservation and ways to manage/ monitor water usage. If the customer refuses to comply, a written letter would be issued encouraging compliance to avoid penalties. If the problem continues, a citation in accordance with City's municipal code could be issued. City fines would range between \$100 for a first violation to \$500 by a third violation and up to \$500 for a first violation if imposed by a State agency. However, staff's past practice is to use education and outreach before taking punitive action to achieve water conservation goals.

Drought Compliance Financial Assistance

The City has currently budgeted \$29,050 in rebates and incentives to encourage drought compliance for its utility customers. The current program provides a rebate to replace existing 3 gallon or higher use toilets with a more water efficient one in pre-1994 residential and commercial properties. This program meets compliance with the City's Water Conservation Plan. The state has several grants available to assist in water conservation efforts throughout the state, however, these grants are primarily aimed at under-served and disadvantaged communities and therefore the City of Tracy does not qualify. Staff will continue exploring other financial opportunities to assist its consumers in achieving compliance with State and Federal regulations.

Landscapes in New and Re- Development

Since extensive decorative landscapes are generally proposed by new developments on a temporary basis to front their sales offices and models, staff will work with the developer community to provide drought resistant landscape alternatives. Similarly, staff will also be critical in the approval of new landscapes in medians and behind sidewalks to ensure compliance with state regulations. Staff is also working to update existing drought resistant landscape standards for new and re- developments to achieve the required compliance.

Overall, the City of Tracy is in a good position to cut down on its per capita potable water consumption by replacing the irrigation of the public right of ways landscapes with recycled water in accordance with the adopted Master Plans.

Proposed Ordinance

The proposed ordinance makes changes to comply with the Water Board emergency drought regulations, and also includes other clarifications and updates.

Proposed Resolution

The City's existing water regulations (TMC Chapter 11.28) include five phases of water restrictions, to be implemented depending on the severity of drought conditions. The City Council is authorized to implement the phases by resolution.

Under the proposed Resolution:

A. Phases III and IV would be implemented immediately (as required by the Governor's order and the order of the Water Board), and

B. Phases III and IV, as amended by the concurrent ordinance, would be implemented within 30 days of final read and adoption of the amended ordinance.

These Phase III and IV restrictions will continue in place until adequate precipitation alleviates the drought. If the drought continues into a fifth year and beyond, additional emergency water restrictions may be required.

STRATEGIC PLAN

This agenda item does not relate to the Council's Strategic Plans.

FISCAL IMPACT

There is no fiscal impact to the City's General Fund. Decreased water usage will result in decreased revenue to the Water Fund. Monthly revenue from utility billing, along with the Water Fund Balance, will be monitored to ensure prudent fiscal management.

RECOMMENDATION

It is recommended that the City Council conduct a public hearing to introduce an ordinance amending various sections of Chapter 11.28, Water Management, of the Tracy Municipal Code and adopt a resolution authorizing implementation of Phase III and IV Water Restrictions.

Prepared by: Stephanie Reyna-Hiestand, Management Analyst II, Utilities Department

Reviewed by: Kul Sharma, Utilities Director
Andrew Malik, Interim Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A: Proposed Ordinance (showing changes from the current Municipal Code)
Attachment B: Proposed Ordinance

ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY AMENDING VARIOUS SECTIONS OF CHAPTER 11.28, WATER MANAGEMENT, OF THE TRACY MUNICIPAL CODE

WHEREAS, On March 27th, 2015, the State Water Resources Control Board (Water Board) adopted supplementary emergency drought regulations due to the fourth year of continued drought throughout California, and

WHEREAS, The Governor on April 1, 2015 issued an Executive Order directing the Water Board to adopt emergency drought regulations that conserve water statewide by 25%, and

WHEREAS, On May 5, 2015, the Water Board further adopted emergency drought regulations that limit and/or prohibit certain outdoor uses of potable water that must be implemented and enforced by all water suppliers, including the City of Tracy, to meet the 25% statewide conservation Executive Order, and

WHEREAS, In order to comply with the Water Board emergency drought regulations the City must amend its existing ordinance to include all new mandates. The ordinance also includes other clarifications and updates, and

WHEREAS, A duly noticed public hearing was held on June 2, 2015.

The Tracy City Council hereby ordains as follows:

SECTION 1: Various sections of Chapter 11.28, Water Management, of the Tracy Municipal Code are amended to read as set forth in Exhibit A.

SECTION 2. This Ordinance shall take effect 30 days after its final passage and adoption.

SECTION 3. Publication. A summary of this ordinance shall be published and a certified copy of the full text posted in the office of the City Clerk at least five days before the City Council meeting at which the proposed ordinance is to be adopted. Within 15 days after adoption, the City Clerk shall publish a summary, and shall post in her office a certified copy, of the ordinance with the names of those Council Members voting for and against the ordinance. (Government Code section 36933(c)(1).)

* * * * *

The foregoing Ordinance _____ was introduced at a regular meeting of the Tracy City Council on the _____ day of _____, 2015, and finally adopted on the _____ day of _____, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

ATTACHMENTS

Exhibit A: Various sections of Chapter 11.28, Water Management.

Exhibit A to Ordinance _____

Section 11.28.015 is added and Sections 11.28.010, 11.28.020, 11.28.050, 11.28.060, 11.28.070, 11.28.110, 11.28.130, 11.28.160, 11.28.170, 11.28.180, 11.28.190, 11.28.200, 11.28.210, 11.28.220, 11.28.230, 11.28.240, 11.28.250, and 11.28.290 are amended to Chapter 11.28, Water Management, of the Tracy Municipal Code to read as follows:

1. Section 11.28.010, Purpose, is amended to read as follows:

“11.28.010 - Purpose.

It is the purpose of this chapter to prevent the waste and unreasonable use of water and to promote water conservation as an effective means ~~provide for an effective means~~ to manage the local water supply as necessary for public health, safety, fire protection and recreational needs.”

2. A new Section 11.28.015, Application of regulations, is added to read as follows:

“11.28.015 Application of regulations.

This chapter applies to every person both within and outside the City who draws water from the City water distribution system.”

3. Section 11.28.020, Definitions, is amended to read as follows:

“11.28.020 - Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

~~(a)~~ —“Consumer unit” or “unit” means 100 cubic feet of water, or 748 gallons.

~~(b)~~ —“Customer” means owner, tenant, manager, or occupant of property receiving City water service.

~~(c)~~ —“Director” means the ~~Public Works~~ Director of Utilities or his/her designee, or any agent for the City authorized to enforce compliance with this chapter.

~~(d)~~ —“Drought” means a water shortage as declared by the Governor of California which affects the local water supply; or any unusual situation or circumstance affecting the quantity or quality of the local water supply.

~~(e)~~ —“Flagrant water waste” means any water which flows directly from a tap connected to the City water system that leaves the property of origin in a continuous flow of any dimension for 150 feet from said property, or for more than five (5) minutes in duration.~~the application of any potable water to outdoor landscapes or hardscapes~~

in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures.

(f) — "Flow restriction device" means any device expressly used to limit water flow or pressure to a water service.

"Hardscape" means the manmade part of the grounds surrounding a building such as but not limited to: a patio, sidewalk, cement walkway, asphalt, statue, driveway, street, gutter, or balcony.

"Incidental runoff" means unintended amounts of water runoff, such as minimal overspray from a sprinkler that escapes the area of intended use.

"Landscape" means trees, shrubs, grass, groundcover, plants or flowers. It does not include food sources such as vegetable and/or fruit plants and trees.

(g) — "~~Reclaimed Recycled water~~" or "Reuse water" means non-potable water, collected stormwater or treated wastewater.

(h) — "Water emergency" means an event, time or situation that requires extraordinary management or restrictions on potable water use caused as a result of natural events or as an unanticipated manmade event affecting the quantity or quality of the local water supply."

4. Section 11.28.050, Authority, is amended to read as follows:

"11.28.050 - Authority.

~~Pursuant to the provisions of section 836.5 of the State Penal Code, the following officers and employees of the City are hereby authorized to enforce this chapter, including issuing an order to cease and desist and/or a notice of intention to impose a penalty: citations for enforcement of this chapter City Manager; Public Works Director; Director of Development Services; Director of Public Works; Director of Utilities; Deputy Public Works Director; Water Resources Coordinator; Water Resources Analyst; Environmental Control Inspector; Officer; Water Patrol; Sworn Peace Officers; Firefighters; and Code Enforcement Officers.~~

5. Section 11.28.060, Enforcement, is renamed and amended to read as follows:

"11.28.060 - Enforcement and Implementation.

The City Manager or his/her designee is charged with primary responsibility ~~for~~ the implementation and enforcement of this chapter. If there is a conflict between two phases (at Sections 11.28.170 through 11.28.210), the more restrictive phase shall apply. The Director shall prepare the forms, warnings, and similar documents as he or she deems necessary or appropriate to implement this chapter.

6. Section 11.28.070, Fines, is renamed and amended to read as follows:

“11.28.070 – Order, Notice, Penalty and Appeal

~~(a) A person who violates a provision of Phase I through Phase V of article 6 of this chapter, or who fails to comply with an order or permit made thereunder, is guilty of an infraction, punishable as provided in section 1.04.030. In addition, a fourth violation within six (6) months of the first violation shall result in the installation of a meter service flow restrictor at the customer's expense. The meter service flow restrictor shall remain in place for the remainder of the drought or water emergency. Failure to pay assessed fines will result in termination of water service until payment in full of all fines and usual reconnection charges are collected from the customer.~~

_____Cease and desist order. Upon a determination by the Director that a person has consumed or used water in violation of a mandatory provision of this chapter, the Director may issue an order to cease and desist from the violation, and further order that the person comply with this chapter, or otherwise take appropriate remedial or preventive action. The Director shall serve the order: (1) personally, or (2) by leaving or posting a copy at the person's residence or place of business, or (3) by mail.

(b) Notice of intent to impose a penalty. If, after the issuance of a cease and desist order, the person continues to consume or use, or again consumes or uses, water in violation of this chapter, the Director may issue a notice of intention to impose a penalty. The notice shall:

- (1) identify the date and time of the violation;
- (2) state the amount of penalty to be imposed; and
- (3) advise the person of the appeal rights. The notice of intention shall be served in the same manner as the cease and desist order.

(c) Penalty. After the notice of intent to impose a penalty is served, a penalty shall be assessed in the amount of: \$100 for the first violation; \$200 for the second violation; and \$500 for the third and each subsequent violation. The penalty is subject to collection in the same manner as utility service charges.

(d) Appeal. A person may appeal the imposition of the penalty assessed to the utility account. The person must request an appeal within 15 calendar days from the date of service of the notice of intention to impose a penalty. The request for an appeal hearing must be addressed to the City Manager and received by the City within the 15-day period. Failure to timely appeal constitutes a waiver of the right to appeal (and the penalty will be assessed).

(e) Appeal hearing. If timely requested, the appeal hearing shall be held before the City Manager, or his or her designee, who shall make a factual finding on the existence of a violation(s). The hearing shall be held within 30 days from the date the City receives the appeal, unless continued by mutual consent. The hearing officer shall give notice by first class mail of the date and time of the appeal hearing, at least ten days before the hearing. The appellant may present witnesses and documentary evidence, and may be represented by anyone of his or her choosing. The decision of the hearing officer is final.”

7. Section 11.28.110, Termination of service, is amended to read as follows:

“11.28.110 - Termination of service.

The City shall terminate service to any customer due to excessive violations of this chapter after written notice to the customer. ~~Said The~~ notice shall be posted on the door of the customer by door hanger at least two ~~(2)~~ business days or sent by ~~certified~~ mail three ~~(3)~~ business days ~~prior to before~~ the termination of service. For purposes of this chapter, “excessive violations” ~~shall be considered to be means~~ more than four ~~(4)~~ violations within a six ~~(6)~~ month period.”

8. Section 11.28.130, Drought declaration, is amended to read as follows:

“11.28.130 - Drought declaration.

Enactment of the ordinance codified in this chapter shall cause the present implementation of Phase I voluntary conservation as set forth in Section 11.28.170 of Article 6. Phases II through IV are established to achieve subsequent reduction goals in potable water consumption ~~of ten (10%), fifteen (15%) and up to twenty-five (25%)~~ percent and more as deemed necessary due to drought conditions or other prolonged water emergencies. Phase V is established for water emergency declarations. Phase changes shall be implemented by resolution of the City Council. A duly noticed public hearing shall be required when going from Phase I up to and inclusive of Phase V. Phase changes shall be based upon the trigger mechanisms and criteria set forth in this article. Affected customers shall be notified of phase changes by notice on the utility bill or by actual written notification mailed to the billing address on record with the City.”
~~Finance Department.~~

9. Section 11.28.160, Implementation, is deleted.

10. Section 11.28.170, Phase I water conservation measures, is amended to read as follows:

“11.28.170 - Phase I water conservation measures.

~~This section applies to any person, owner or manager responsible for the day-to-day operations of a premises.~~

(a) No ~~person, owner, or manager~~ customer ~~responsible for the day-to-day operation of any premises~~ shall permit flagrant water waste or ~~excessive incidental water~~ runoff ~~of water at any time during which Phase I or subsequent phases are imposed.~~

(b) ~~Any person, owner or manager~~ customer must ~~shall~~ properly maintain ~~aintenance~~ of all plumbing and irrigation systems; ~~installation of water conserving plumbing or attachments; and~~ control all leaks within ~~seventy-two (72) hours of discovery or notification;~~

(c) ~~Residents and businesses are to~~ Each customer must practice prudent water conservation measures. ~~such as: at all times. Examples of useful water conservation measures are as follows: include:~~

(1) ~~Use of a~~ A hose that dispenses potable water shall be fitted with a shut-off nozzle or flow restriction device attached to it that causes it to cease dispensing water immediately when not in use;

~~hand-held sprayer with a self-closing "trigger" handle for all outdoor uses;~~

(2) The ~~voluntary~~ planting of drought tolerant landscapes; the installation and maintenance of water-efficient irrigation systems such as drip and bubble irrigation with weather or soil-based controllers; and the installation of sprinkler heads with a low flow rate appropriate for the landscape to prevent overwatering and runoff;

(3) Watering in the late night or early morning hours during non-windy periods.

(4) Not irrigating during or within 48 hours of a precipitation event.

(d) All ~~new~~ swimming pools, hot tubs and spas installed after May 1993 the effective date of the ordinance codified in this section shall must have a separation tank and water recovery system installed in the filter backwash system, with a ~~ninety (90%) percent~~ water recovery standard.

(e) Each swimming pool, hot tub and spa installed after July 15, 2015 must have a non-permeable floating pool-covers or equivalent device that shall be required and shall provide ~~ninety (90%) percent~~ surface coverage.

~~on all pools, spas and hot tubs~~

(f) Compliance with related state laws, including:

(1) Installation of water conserving plumbing fixtures to replace any non-compliant plumbing fixtures. This applies to building alterations or improvements-, sale or transfer of real property; and rent or lease of any pre-1994 single family residential, multi-family or commercial real property. (California Civil Code section 1101.1 and following.)

(2) All new development and re-development must comply with the Department of Water Resources Water Efficient Landscape Ordinance and CalGreen Building Standards. (23 Cal. Code of Regs. Chapter 2.7, beginning at section 490, and TMC section 9.14.020.)

11. Section 11.28.180, Phase II water restrictions – Ten Percent City-wide water reduction goal, is amended to read as follows:

~~“11.28.180 - Phase II water restrictions—Ten percent city-wide water reduction goal.~~

Under this Phase II, the ~~In addition to the measures of~~ Phase I water measures become ~~is new~~ mandatory. In addition, ~~along with,~~ the following restrictions ~~that shall~~ apply to ~~landscape irrigation and all other~~ outside potable water uses:

(a) Landscapes, ~~(including residential, commercial, industrial, municipal and other public agencies or entities),~~ may be irrigated only as follows:

- (1) At any time provided that ~~the a person irrigating the landscape is present outdoors and maintains a full view of the landscape being irrigated~~ and remains in full control of the water usage;
 - ~~(i) Unattended between 7:00 p.m. through 9:00 a.m. (May 1 through September 30);~~
 - ~~(ii) Unattended between 4:00 p.m. through 10:00 a.m. (October 1 through April 30);~~
- ~~(2) Unattended between the hours of 7:00 p.m. and 9:00 a.m.~~
- ~~(3) At any time providing provided that only drip, microspray or bubbler irrigation is solely used.~~

(b) The washing of commercial or non-commercial ~~sidewalks, driveways, porches, hardscapes~~ or other outdoor surfaces is prohibited, except:

- ~~(1) where the use of a high powered pressure washer is required as part of a business (painting, detailing, etc.); or~~
- ~~(2) in instances where a spill of a hazardous material or other substance which creates a public nuisance occurs and where it is not feasible to clean the affected area in any other manner. The washing of commercial or non-commercial, outdoor, hardscapes surfaces or furniture utilizing a bucket containing a limited amount of water is allowed at any time. When such uses occur, the discharge of the contaminated water must be in compliance with TMC section 11.34.050, Prohibition of illegal discharges.~~

~~(c) The washing of commercial sidewalks, driveways, filling stations, parking lots, or other outdoor surfaces is discouraged.~~

~~(cd) No one may add The addition of~~ water above the minimum level necessary to comply with the health or operational requirements for a public or private pool, hot tub, or jacuzzi circulation, ~~public or private is prohibited.~~

~~(ed) Individual residential Ccar~~ washing is allowed only with a bucket and a hose that is fitted with a shut-off nozzle or flow restriction device attached to it that causes it to cease dispensing water immediately when not in use.~~use of a self-closing "trigger" spray nozzle.~~

~~(fe) There are Nno~~ restrictions ~~shall be made with respect to regarding~~ the use of reclaimed-recycled or reuse water for outdoor landscape use.

~~(gf) New turf, grass, ground cover or bedding plants shall be irrigated consistent with this section. In this subsection, the term "new" means the earth was tilled for the express purpose of growing such plants, and the irrigation establishing the plants is for 30 days or less.~~

~~(hg) All ornamental fountains, ponds and water features must have a recirculating system as part of its operation or must be turned off.~~

12. Section 11.28.190, Phase III water restrictions—Fifteen percent city-wide water reduction goal, is amended to read as follows:

“11.28.190 - Phase III water restrictions.

~~—Fifteen percent city-wide water reduction goal.~~

In addition to the restrictions of Phases I and II, the following restrictions shall apply:

(a) Landscapes, including residential, commercial, industrial, municipal and other public agencies or entities, may be irrigated only as follows:

(1) Odd-numbered addresses may irrigate only on Mondays, Wednesdays and Saturdays between 7:00 p.m. and 9:00 a.m.

(2) Even-numbered addresses may irrigate only on Tuesdays, Thursdays and Sundays between 7:00 p.m. and 9:00 a.m.

(b) Public agencies may not use potable water to irrigate ornamental turf or grass on public street medians.

(c) No restaurant may serve water except upon customer request. Restaurants shall post at every table and in restrooms notice of drought conditions and water restrictions. Acceptable methods of notification to patrons include notices or tables tents placed on the tables or in the menus and in restrooms.

(d) The owner and manager of every hotel, motel, inn, guest house, and every other short-term commercial lodging shall post notice of drought conditions information in each guest room.”

~~(a) Landscapes, including residential, commercial, industrial, municipal and other public agencies or entities, may be irrigated as follows:~~

~~(1) May 1 through September 30.~~

~~Odd-numbered addresses shall water only on Monday, Wednesday and Saturday after 7:00 p.m. or before 9:00 a.m. Even-numbered addresses shall water only on Tuesday, Thursday and Sunday after 7:00 p.m. or before 9:00 a.m.~~

~~(2) October 1 through April 30.~~

~~Odd-numbered addresses shall water only on Monday, Wednesday and Saturday after 4:00 p.m. or before 10:00 a.m. Even-numbered addresses shall water only on Tuesday, Thursday and Sunday after 4:00 p.m. or before 10:00 a.m.~~

~~(b) The irrigation of landscapes during high winds that cause water to blow away from the landscapes being water is prohibited.~~

~~(c) The washing of commercial sidewalks, driveways, filling stations, parking lots, or other outdoor surfaces is prohibited, except on Friday, and except in instances where a spill of a hazardous material or other substance which creates a public nuisance occurs and where it is not feasible to clean the area in any other manner.~~

~~The washing of commercial, outdoor hard surfaces utilizing a bucket containing a limited amount of water is allowed at any time for cleaning food, grease, oil or other stains from surfaces.~~

~~(cd) No restaurant may serve water except upon customer request. Restaurants shall post at every table and in restrooms notice of drought conditions and water restrictions. Acceptable methods of notification to patrons include notices or tables tents placed on the tables or in the menus and in restrooms, in a form approved or provided by the Director.~~

~~(de) The owner and manager of every hotel, motel, inn, guest house, and every other short term commercial lodging shall post notice of drought conditions information in every guest room, in a form approved or provided by the Director.~~

13. Section 11.28.200, Phase IV water restrictions—Twenty-five percent city-wide water reduction goal, is amended to read as follows:

“11.28.200 - Phase IV water restrictions

In addition to the restrictions of Phases I, II and III, the following restrictions apply. This phase has a goal of 25% or more reduction in consumer water usage. If information is available, the City may establish a water budget for each consumer household, consistent with California Water Code section 10608.20.

(a) Except as otherwise provided, individual residential car washing shall be allowed only with the use of a bucket.

(b) Automobile and recreational vehicle dealerships are allowed to continue washing vehicles with a hose that is fitted with a shut-off nozzle or flow restriction device attached to it that causes it to cease dispensing water immediately when not in use, under the following conditions:

(1) Automobiles and recreational vehicles may be washed only on Fridays using the method outlined above.

(2) An automobile, motorcycle, boat or motorhome may be washed the day before or the day of delivery to the purchaser using the method outlined above.

(c) There are no restrictions on laundromats.

(d) There are no restrictions for car wash facilities employing the use of water recirculating equipment.

(e) The owner and manager of every facility with a public restroom shall post in every such public restroom a placard or decal with notice of drought condition information.

(f) The owner or manager of a newly constructed home or business may only irrigate the landscaping with potable water in a manner consistent with regulations or other requirements established by the California Building Standards Commission.

(g) No one may add water or refill a swimming pool, spa or hot tub unless it has a separation tank and water recovery system installed in the filter backwash system, with a 90% water recovery standard.”

~~“11.28.200 - Phase IV water restrictions—Twenty-five percent city-wide water reduction goal.~~

~~This phase shall establish a goal of twenty-five (25%) percent or more reduction in water usage by the customer. The customer shall be given a reduction goal based upon the base year's usage.~~

~~(a) Except as otherwise provided, car washing shall be allowed only with the use of a bucket.~~

~~(b) Automobile and recreational vehicle dealerships shall be allowed to continue washing vehicles with a hose and a handheld self-closing "trigger" nozzle under the following conditions:~~

~~(1) Automobiles and recreational vehicles may be washed only on Fridays using the method outlined above.~~

~~(2) An automobile, motorcycle, boat or motorhome may be washed the day before or the day of delivery to the purchaser.~~

~~(c) No restrictions shall be made to laundromats.~~

~~(d) No restrictions shall be made to car wash employing the use of water recycling equipment.~~

~~(e) The owner and manager of every facility with a restroom on the premises open to the public shall post in every such public restroom a placard or decal with notice of drought condition information in a form approved by the Director.~~

14. Section 11.28.210 – Phase V – Water emergency declaration, is amended to read as follows:

“11.28.210 - Phase V—Water emergency declaration.

(a) The City Council may declare a water emergency and direct the City Manager to implement appropriate water conservation and/or rationing requirements consistent with this chapter when one or more of the following conditions exist:

(1) A decrease in the ability to draw groundwater due to well contamination, well failure or other equipment or system failure, and no alternative source of water is available;

(2) Contamination of the water system;

(3) Natural disasters affecting water deliveries;

(4) During times of floods which would affect water quality;

(5) Sabotage or threats of sabotage against the water system;

(6) Any unusual situation or circumstance which affects the quantity or quality of the water supply.

(b) In addition to the restrictions of Phases I, II, III and IV, the City Council may mandate specific restrictions and reductions which may include but are not limited to:

(1) All water uses not required for public health and safety and fire protection are prohibited.

- (2) No ~~lawn and/or landscaping watering or irrigation~~ outdoor potable water uses are allowed.
- (3) No recreational water uses are allowed.”

15. Section 11.28.220, Temporary rate increases, is amended to read as follows:

“11.28.220 - Temporary rate increases.

When drought or water emergency conditions are declared by the City Council, it may become necessary to implement a temporary rate increase to cover reduced revenues as a result of conservation. Rates may be increased by resolution of the Council when it is determined that revenues are inadequate ~~to maintain the water enterprise.~~”

16. Section 11.28.230, Excess water use surcharge, is amended to read as follows:

“11.28.230 - Excess water use surcharge.

(a) During periods of a declared drought or water emergency, the City Council may, by resolution, establish a water rate structure which provides incentives (or disincentives) to conserve water use.

(b) Any water user may seek to have the excess water use surcharge waived or forgiven through the variance process set forth in Section 11.28.240(b) of this chapter upon substantial evidence of the following:

- (1) The excess water use was beyond the user's control, and was not reasonably correctable due to special and unique circumstances; or
- (2) An incident or condition occurred where public health or safety would have been threatened by decreased water usage.”

17. Section 11.28.240, Variances on usage restrictions or usage allotments, is amended to read as follows:

“11.28.240 - Variances on usage restrictions or usage allotments.

The Director, ~~or his/her designee~~ shall document the type and character of any residential, commercial, or industrial user or public authority requesting a variance in the assigned water goal in Phase I, II, III ~~and or~~ IV of this chapter. The Director ~~or his/her designee~~ shall maintain a separate file of each variance request and the response to that request. This file shall be available for public inspection during regular business hours.

(a) No variance request will be considered until a water use has been prohibited or an excess use fee has been assessed on the customer's bill.

(b) The ~~City Manager or his/her designee~~ Director may grant a ~~variances~~ for uses of water otherwise prohibited or adjust any consumer's allotment or billing, if the ~~City Manager or his/her designee~~ Director finds and determines that to fail to do so would cause an emergency condition affecting health, sanitation, or fire protection or causes undue hardship of the applicant or public.

(c) ~~Should-If~~ any condition upon which the variance request approval was based cease to exist (e.g., an occupant of the home vacates), the billed user of the home shall ~~beis~~ responsible ~~to-for~~ notifying the Finance Department of ~~such-the~~ change for an appropriate adjustment to the user's allotment.

(d) The City may request periodic confirmation from the billed user that all conditions upon which the variance request was approved are still in existence. Failure on the part of the user to respond to any reasonable inquiry shall be grounds for termination of the variance. Supplying false or erroneous information in such an inquiry for the purpose of obtaining or maintaining additional water allotments shall be deemed fraud.”

18. Section 11.28.250, Appeals, is amended to read as follows:

“11.28.250 - Appeals.

Any water service customer who considers an action taken by the City under ~~this-the provisions-of~~ this chapter to have been erroneously taken, may appeal ~~such-the~~ action and decision to the City Manager as set forth in section 1.12.010. The appellant shall continue to pay the monthly charge as billed pending the completion of the appeal process. “

19. Section 11.28.290, Construction water usage prohibited during period of water emergencies, is amended to read as follows:

“11.28.290 - Construction water usage prohibited during periods of water emergencies.

(a) The use of fresh water for construction uses during a period of drought or during water emergencies is prohibited except ~~upon-the~~ with the City's written approval ~~of-the City.~~

(b) ~~Construction water usage-~~The use of fresh water for dust control or other construction purposes shall ~~beis~~ prohibited during a declared drought or water emergency when an alternative approved water source is available. The City's Wastewater Treatment Plant may, in a drought or water emergency, supply ~~recycled~~ reclaimed wastewater or stormwater to water trucks for construction purposes whenever feasible. ~~to water trucks, at no charge.~~

~~(c) —~~ The Director may waive this requirement-prohibition may be waived on days of extreme winds which cause a dust control problem, if he or she which, in the opinion of the Director or his/her designee or the Construction Management Superintendent or his/her designee, finds and determines that extreme winds are prevalent which are creating a dust control nuisance which must be abated immediately.

In such instances, a one-day permit may be arranged through ~~the Construction Management Superintendent or his designee, or~~ the Director ~~or his/her designee.~~ Said The permit will expire at the end of the work day, and usage of potable-quality water will be billed at the per day permit fee, plus actual water consumption, plus an administrative fee. “

ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY AMENDING VARIOUS SECTIONS OF CHAPTER 11.28, WATER MANAGEMENT, OF THE TRACY MUNICIPAL CODE

WHEREAS, On March 27th, 2015 the State Water Resources Control Board (Water Board) adopted supplementary emergency drought regulations due to the fourth year of continued drought throughout California, and

WHEREAS, The Governor on April 1, 2015 issued an Executive Order directing the Water Board to adopt emergency drought regulations that conserve water statewide by 25%, and

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WHEREAS, A duly noticed public hearing was held on June 2, 2015.

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SECTION 2. This Ordinance shall take effect 30 days after its final passage and adoption.

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* * * * *

Ordinance _____

Page 2

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AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

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For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

"Consumer unit" or "unit" means 100 cubic feet of water, or 748 gallons.

"Customer" means owner, tenant, manager, or occupant of property receiving City water service.

"Director" means the Director of Utilities or his/her designee, or any agent for the City authorized to enforce compliance with this chapter.

"Drought" means a water shortage as declared by the Governor of California which affects the local water supply, or any unusual situation or circumstance affecting the quantity or quality of the local water supply.

"Flagrant water waste" means the application of any potable water to outdoor landscapes or hardscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures.

"Flow restriction device" means any device expressly used to limit water flow or pressure to a water service.

“Hardscape” means the manmade part of the grounds surrounding a building such as but not limited to: a patio, sidewalk, cement walkway, asphalt, statue, driveway, street, gutter, or balcony.

“Incidental runoff” means unintended amounts of water runoff, such as minimal over-spray from a sprinkler that escapes the area of intended use.

“Landscape” means trees, shrubs, grass, groundcover, plants or flowers. It does not include food sources such as vegetable and/or fruit plants and trees.

“Recycled water” or “Reuse water” means non-potable water, collected stormwater or treated wastewater.

“Water emergency” means an event, time or situation that requires extraordinary management or restrictions on potable water use caused as a result of natural events or as an unanticipated manmade event affecting the quantity or quality of the local water supply.”

4. Section 11.28.050, Authority, is amended to read as follows:

“11.28.050 - Authority.

The following officers and employees are authorized to enforce this chapter, including issuing an order to cease and desist and/or a notice of intention to impose a penalty: City Manager, Director of Development Services, Director of Public Works, Director of Utilities, Water Resources Coordinator, Water Resources Analyst, Environmental Control Officer, Water Patrol, Sworn Peace Officers, Firefighters, and Code Enforcement Officers.”

5. Section 11.28.060, Enforcement, is renamed and amended to read as follows:

“11.28.060 - Enforcement and Implementation.

The City Manager or his/her designee is charged with primary responsibility for the implementation and enforcement of this chapter. If there is a conflict between two phases (at Sections 11.28.170 through 11.28.210), the more restrictive phase shall apply. The Director shall prepare the forms, warnings, and similar documents as he or she deems necessary or appropriate to implement this chapter.”

6. Section 11.28.070, Fines, is renamed and amended to read as follows:

“11.28.070 – Order, Notice, Penalty and Appeal

(a) Cease and desist order. Upon a determination by the Director that a person has consumed or used water in violation of a mandatory provision of this chapter, the Director may issue an order to cease and desist from the violation, and further order that the person comply with this chapter, or otherwise take appropriate remedial or preventive action. The Director shall serve the order: (1) personally, or (2) by leaving or posting a copy at the person’s residence or place of business, or (3) by mail.

(b) Notice of intent to impose a penalty. If, after the issuance of a cease and desist order, the person continues to consume or use, or again consumes or uses, water in violation of this chapter, the Director may issue a notice of intention to impose a penalty. The notice shall:

- (1) identify the date and time of the violation,
- (2) state the amount of penalty to be imposed, and
- (3) advise the person of the appeal rights. The notice of intention shall be served in the same manner as the cease and desist order.

(c) Penalty. After the notice of intent to impose a penalty is served, a penalty shall be assessed in the amount of: \$100 for the first violation, \$200 for the second violation, and \$500 for the third and each subsequent violation. The penalty is subject to collection in the same manner as utility service charges.

(d) Appeal. A person may appeal the imposition of the penalty assessed to the utility account. The person must request an appeal within 15 calendar days from the date of service of the notice of intention to impose a penalty. The request for an appeal hearing must be addressed to the City Manager and received by the City within the 15-day period. Failure to timely appeal constitutes a waiver of the right to appeal (and the penalty will be assessed).

(e) Appeal hearing. If timely requested, the appeal hearing shall be held before the City Manager, or his or her designee, who shall make a factual finding on the existence of a violation(s). The hearing shall be held within 30 days from the date the City receives the appeal, unless continued by mutual consent. The hearing officer shall give notice by first class mail of the date and time of the appeal hearing, at least ten days before the hearing. The appellant may present witnesses and documentary evidence, and may be represented by anyone of his or her choosing. The decision of the hearing officer is final.”

7. Section 11.28.110, Termination of service, is amended to read as follows:

“11.28.110 - Termination of service.

The City shall terminate service to any customer due to excessive violations of this chapter after written notice to the customer. The notice shall be posted on the door of the customer by door hanger at least two business days or sent by mail three business days before the termination of service. For purposes of this chapter, “excessive violations” means more than four violations within a six month period.”

8. Section 11.28.130, Drought declaration, is amended to read as follows:

“11.28.130 - Drought declaration.

Enactment of the ordinance codified in this chapter shall cause the present implementation of Phase I voluntary conservation as set forth in Section 11.28.170 of Article 6. Phases II through IV are established to achieve subsequent reduction goals in potable water consumption up to 25% and more as deemed necessary due to drought conditions or other prolonged water emergencies. Phase V is established for water emergency declarations. Phase changes shall be implemented by resolution of the City

Council. A duly noticed public hearing shall be required when going from Phase I up to and inclusive of Phase V. Phase changes shall be based upon the trigger mechanisms and criteria set forth in this article. Affected customers shall be notified of phase changes by notice on the utility bill or by actual written notification mailed to the billing address on record with the City.”

9. Section 11.28.160, Implementation, is deleted.

10. Section 11.28.170, Phase I water conservation measures, is amended to read as follows:

“11.28.170 - Phase I water conservation measures.

This section applies to any person, owner or manager responsible for the day-to-day operations of a premises.

- (a) No customer shall permit flagrant water waste or incidental water runoff.
- (b) Any customer must properly maintain all plumbing and irrigation systems and control all leaks within 72 hours of discovery or notification,
- (c) Each customer must practice prudent water conservation measures. Examples include:
 - (1) A hose that dispenses potable water shall be fitted with a shut-off nozzle or flow restriction device attached to it that causes it to cease dispensing water immediately when not in use,
 - (2) The planting of drought tolerant landscapes, the installation and maintenance of water-efficient irrigation systems such as drip and bubble irrigation with weather or soil-based controllers, and the installation of sprinkler heads with a low flow rate appropriate for the landscape to prevent overwatering and runoff,
 - (3) Watering in the late night or early morning hours during non-windy periods.
 - (4) Not irrigating during or within 48 hours of precipitation.
- (d) All swimming pools, hot tubs and spas installed after May 1, 1993 must have a separation tank and water recovery system installed in the filter backwash system, with a 90% water recovery standard.
- (e) Each swimming pool, hot tub and spa installed after July 15, 2015 must have a non-permeable floating cover or equivalent device that provides 90% surface coverage.
- (f) Compliance with related state laws, including:
 - (1) Installation of water conserving plumbing fixtures to replace any non-compliant plumbing fixtures. This applies to building alterations or improvements, sale or transfer of real property, and rent or lease of any pre-1994 single family residential, multi-family or commercial real property. (California Civil Code section 1101.1 and following.)

(2) All new development and re-development must comply with the Department of Water Resources Water Efficient Landscape Ordinance and CalGreen Building Standards. (23 Cal. Code of Regs. Chapter 2.7, beginning at section 490, and TMC section 9.14.020.)”

11. Section 11.28.180, Phase II water restrictions – Ten Percent City-wide water reduction goal, is amended to read as follows:

“11.28.180 - Phase II water restrictions

Under Phase II, the Phase I water measures become mandatory. In addition, the following restrictions apply to outside potable water uses:

(a) Landscapes (including residential, commercial, industrial, municipal and other public agencies or entities) may be irrigated only as follows:

- (1) At any time provided that a person is present outdoors and remains in full control of the water usage,
- (2) Unattended between the hours of 7:00 p.m. and 9:00 a.m.
- (3) At any time provided that only drip, microspray or bubbler irrigation is used.

(b) The washing of commercial or non-commercial hardscapes or other outdoor surfaces is prohibited, except:

- (1) where the use of a high powered pressure washer is required as part of a business (painting, detailing, etc.), or
- (2) in instances where a spill of a hazardous material or other substance which creates a public nuisance occurs and where it is not feasible to clean the affected area in any other manner. The washing of commercial or non-commercial hardscapes or furniture utilizing a bucket is allowed at any time. When such uses occur, the discharge of the contaminated water must be in compliance with TMC section 11.34.050, Prohibition of illegal discharges.

(c) No customer may add water above the minimum level necessary to comply with the health or operational requirements for a public or private pool, hot tub, or jacuzzi circulation.

(d) Individual residential car washing is allowed only with a bucket and a hose that is fitted with a shut-off nozzle or flow restriction device attached to it that causes it to cease dispensing water immediately when not in use. When feasible, the vehicle should be pulled onto landscaped area to be cleaned.

(e) There are no restrictions regarding the use of recycled or reuse water for outdoor landscape use.

(f) New turf, grass, ground cover or bedding plants shall be irrigated consistent with this section. In this subsection, the term “new” means the earth was tilled for the express purpose of growing such plants, and the irrigation establishing the plants is for 30 days or less.

(g) All ornamental fountains, ponds and water features must have a recirculating system as part of its operation or must be turned off.

12. Section 11.28.190, Phase III water restrictions—Fifteen percent city-wide water reduction goal, is amended to read as follows:

“11.28.190 - Phase III water restrictions.

In addition to the restrictions of Phases I and II, the following restrictions apply:

(a) Landscapes, including residential, commercial, industrial, municipal and other public agencies or entities, may be irrigated only as follows:

(1) Odd-numbered addresses may irrigate only on Mondays, Wednesdays and Saturdays between 7:00 p.m. and 9:00 a.m.

(2) Even-numbered addresses may irrigate only on Tuesdays, Thursdays and Sundays between 7:00 p.m. and 9:00 a.m.

(b) Public agencies may not use potable water to irrigate ornamental turf or grass on public street medians.

(c) No restaurant may serve water except upon customer request. Restaurants shall post at every table and in restrooms a notice of drought conditions and water restrictions. Acceptable methods of notification to patrons include notices or tables tents placed on the tables or in the menus and in restrooms.

(d) The owner and manager of every hotel, motel, inn, guest house, and every other short-term commercial lodging shall post notice of drought conditions information in each guest room.”

13. Section 11.28.200, Phase IV water restrictions—Twenty-five percent city-wide water reduction goal, is amended to read as follows:

“11.28.200 - Phase IV water restrictions

In addition to the restrictions of Phases I, II and III, the following restrictions apply. This phase has a goal of 25% or more reduction in consumer water usage. If information is available, the City may establish a water budget for each consumer household, consistent with California Water Code section 10608.20.

(a) Except as otherwise provided, individual residential car washing shall be allowed only with the use of a bucket.

(b) Automobile and recreational vehicle dealerships are allowed to continue washing vehicles with a hose that is fitted with a shut-off nozzle or flow restriction device attached to it that causes it to cease dispensing water immediately when not in use, under the following conditions:

(1) Automobiles and recreational vehicles may be washed only on Fridays using the method outlined above.

- (2) An automobile, motorcycle, boat or motorhome may be washed the day before or the day of delivery to the purchaser using the method outlined above.
- (c) There are no restrictions on laundromats.
- (d) There are no restrictions for car wash facilities employing the use of water recirculating equipment.
- (e) The owner and manager of every facility with a public restroom shall post in every such public restroom a placard or decal with notice of drought condition information.
- (f) The owner or manager of a newly constructed home or business may only irrigate the landscaping with potable water in a manner consistent with regulations or other requirements established by the California Building Standards Commission.
- (g) No one may add water or refill a swimming pool, spa or hot tub unless it has a separation tank and water recovery system installed in the filter backwash system, with a 90% water recovery standard.”

14. Section 11.28.210 – Phase V – Water emergency declaration, is amended to read as follows:

“11.28.210 - Phase V water emergency declaration.

- (a) The City Council may declare a water emergency and direct the City Manager to implement appropriate water conservation and/or rationing requirements consistent with this chapter when one or more of the following conditions exist:
 - (1) A decrease in the ability to draw groundwater due to well contamination, well failure or other equipment or system failure, and no alternative source of water is available,
 - (2) Contamination of the water system,
 - (3) Natural disasters affecting water deliveries,
 - (4) During times of floods which would affect water quality,
 - (5) Sabotage or threats of sabotage against the water system,
 - (6) Any unusual situation or circumstance which affects the quantity or quality of the water supply.
- (b) In addition to the restrictions of Phases I, II, III and IV, the City Council may mandate specific restrictions and reductions which may include but are not limited to:
 - (1) All water uses not required for public health and safety and fire protection are prohibited.
 - (2) No outdoor potable water uses are allowed.
 - (3) No recreational water uses are allowed.”

15. Section 11.28.220, Temporary rate increases, is amended to read as follows:

“11.28.220 - Temporary rate increases.

When drought or water emergency conditions are declared by the City Council, it may become necessary to implement a temporary rate increase to cover reduced revenues as a result of conservation. Rates may be increased by resolution of the Council when it is determined that revenues are inadequate.”

16. Section 11.28.230, Excess water use surcharge, is amended to read as follows:

“11.28.230 - Excess water use surcharge.

(a) During periods of a declared drought or water emergency, the City Council may, by resolution, establish a water rate structure which provides incentives (or disincentives) to conserve water use.

(b) Any water user may seek to have the excess water use surcharge waived or forgiven through the variance process set forth in Section 11.28.240(b) of this chapter upon substantial evidence of the following:

- (1) The excess water use was beyond the user's control, and was not reasonably correctable due to special and unique circumstances, or
- (2) An incident or condition occurred where public health or safety would have been threatened by decreased water usage.”

17. Section 11.28.240, Variances on usage restrictions or usage allotments, is amended to read as follows:

“11.28.240 - Variances on usage restrictions or usage allotments.

The Director, shall document the type and character of any residential, commercial, or industrial user or public authority requesting a variance in the assigned water goal in Phase I, II, III or IV of this chapter. The Director shall maintain a separate file of each variance request and the response to that request. This file shall be available for public inspection during regular business hours.

(a) No variance request will be considered until a water use has been prohibited or an excess use fee has been assessed on the customer's bill.

(b) The Director may grant a variance for uses of water otherwise prohibited or adjust any consumer's allotment or billing, if the Director finds and determines that to fail to do so would cause an emergency condition affecting health, sanitation, or fire protection or causes undue hardship of the applicant or public.

(c) If any condition upon which the variance request approval was based cease to exist (e.g., an occupant of the home vacates), the billed user of the home is responsible for notifying the Finance Department of the change for an appropriate adjustment to the user's allotment.

(d) The City may request periodic confirmation from the billed user that all conditions upon which the variance request was approved are still in existence. Failure on the part of the user to respond to any reasonable inquiry shall be grounds for termination of the variance. Supplying false or erroneous information in such an inquiry for the purpose of obtaining or maintaining additional water allotments shall be deemed fraud.”

18. Section 11.28.250, Appeals, is amended to read as follows:

“11.28.250 - Appeals.

Any water service customer who considers an action taken by the City under this chapter to have been erroneously taken, may appeal the action and decision to the City Manager as set forth in section 1.12.010. The appellant shall continue to pay the monthly charge as billed pending the completion of the appeal process. “

19. Section 11.28.290, Construction water usage prohibited during period of water emergencies, is amended to read as follows:

“11.28.290 - Construction water usage prohibited during periods of water emergencies.

(a) The use of fresh water for construction uses during a period of drought or during water emergencies is prohibited except with the City’s written approval.

(b) The use of fresh water for dust control or other construction purposes is prohibited during a declared drought or water emergency when an alternative approved water source is available. The City’s Wastewater Treatment Plant may, in a drought or water emergency, supply recycled wastewater or stormwater to water trucks for construction purposes whenever feasible.

The Director may waive this prohibition on days of extreme winds which cause a dust control problem, if he or she, finds and determines that extreme winds are prevalent which are creating a dust control nuisance which must be abated immediately.

In such instances, a one-day permit may be arranged through the Director. The permit will expire at the end of the work day, and usage of potable-quality water will be billed at the per day permit fee, plus actual water consumption, plus an administrative fee. “

RESOLUTION _____

AUTHORIZING IMPLEMENTATION OF PHASE III AND IV WATER RESTRICTIONS

WHEREAS, The Governor has declared a continued drought and the State Water Resources Control Board (Water Board) has mandated that cities implement their water shortage contingency plans to impose restrictions on the number of days for outdoor irrigation, and

WHEREAS, the Water Board has mandated, among other things, that:

- restaurants do not serve drinking water except upon request, and
- the application of potable water to outdoor landscaping during and within 48 hours after a measurable rainfall are prohibited, and
- hotels and motels provide guests with the option of choosing not to have towels and linens laundered daily by prominently displaying a notice in each guestroom, and

WHEREAS, For the first three months of 2015, Tracy has achieved a 19% reduction in water use compared the same time in 2013, and

WHEREAS, The need for water conservation will continue until adequate precipitation alleviates the drought, and if the drought continues additional emergency water conservation regulations may be required, and

WHEREAS, Tracy Municipal Code Section 11.28.130, Drought declaration, authorizes the City Council to make changes in the phases of water restrictions by Resolution, and

WHEREAS, concurrently with this Resolution, the City Council will consider an ordinance amending Tracy Municipal Code Chapter 11.28, including the Phase III and Phase IV water restrictions of sections 11.28.190 and 11.28.200.

NOW, THEREFORE, BE IT RESOLVED, That:

A. the City Council authorizes implementation of Phase III and Phase IV water restrictions under existing Tracy Municipal Code sections 11.28.190 and 11.28.200, as cited below:

11.28.190 - Phase III water restrictions—Fifteen percent city-wide water reduction goal.

In addition to the restrictions of Phases I and II, the following restrictions shall apply:

(a) Landscapes, including residential, commercial, industrial, municipal and other public agencies or entities, may be irrigated as follows:

(1) May 1 through September 30.

Odd-numbered addresses shall water only on Monday, Wednesday and Saturday after 7:00 p.m. or before 9:00 a.m.

Even-numbered addresses shall water only on Tuesday, Thursday and Sunday after 7:00 p.m. or before 9:00 a.m.

(2) October 1 through April 30.

Odd-numbered addresses shall water only on Monday, Wednesday and Saturday after 4:00 p.m. or before 10:00 a.m. Even-numbered addresses shall water only on Tuesday, Thursday and Sunday after 4:00 p.m. or before 10:00 a.m.

(b) The irrigation of landscapes during high winds that cause water to blow away from the landscapes being water is prohibited.

(c) The washing of commercial sidewalks, driveways, filling stations, parking lots, or other outdoor surfaces is prohibited, except on: Friday, and except in instances where a spill of a hazardous material or other substance which creates a public nuisance occurs and where it is not feasible to clean the area in any other manner.

The washing of commercial, outdoor hard surfaces utilizing a bucket containing a limited amount of water is allowed at any time for cleaning food, grease, oil or other stains from surfaces.

(d) No restaurant may serve water except upon customer request. Restaurants shall post at every table and in restrooms notice of drought conditions and water restrictions. Acceptable methods of notification to patrons include notices or tables tents placed on the tables or in the menus and in restrooms in a form approved or provided by the Director.

(e) The owner and manager of every hotel, motel, inn, guest house, and every other short-term commercial lodging shall post notice of drought conditions information in every guest room, in a form approved or provided by the Director.

11.28.200 - Phase IV water restrictions—Twenty-five percent city-wide water reduction goal.

This phase shall establish a goal of twenty-five (25%) percent or more reduction in water usage by the customer. The customer shall be given a reduction goal based upon the base year's usage.

(a) Except as otherwise provided, car washing shall be allowed only with the use of a bucket.

(b) Automobile and recreational vehicle dealerships shall be allowed to continue washing vehicles with a hose and a handheld self-closing "trigger" nozzle under the following conditions:

(1) Automobiles and recreational vehicles may be washed only on Fridays using the method outlined above.

(2) An automobile, motorcycle, boat or motorhome may be washed the day before or the day of delivery to the purchaser.

(c) No restrictions shall be made to laundromats.

(d) *No restrictions shall be made to car washes employing the use of water recycling equipment.*

(e) *The owner and manager of every facility with a restroom on the premises open to the public shall post in every such public restroom a placard or decal with notice of drought condition information in a form approved by the Director.*

B. The City Council authorizes implementation of the amended Phase III and Phase IV water restrictions under Tracy Municipal Code sections 11.28.190 and 11.28.200, as they are amended by the ordinance considered concurrently with this Resolution. Those water restrictions take effect on the date the ordinance takes effect.

11.28.190 - Phase III water restrictions.

In addition to the restrictions of Phases I and II, the following restrictions shall apply:

(a) *Landscapes, including residential, commercial, industrial, municipal and other public agencies or entities, may be irrigated only as follows:*

(1) *Odd-numbered addresses may irrigate only on Mondays, Wednesdays and Saturdays between 7:00 p.m. and 9:00 a.m.*

(2) *Even-numbered addresses may irrigate only on Tuesdays, Thursdays and Sundays between 7:00 p.m. and 9:00 a.m.*

(b) *Public agencies may not use potable water to irrigate ornamental turf or grass on public street medians.*

(c) *No restaurant may serve water except upon customer request. Restaurants shall post at every table and in restrooms notice of drought conditions and water restrictions. Acceptable methods of notification to patrons include notices or tables tents placed on the tables or in the menus and in restrooms.*

(d) *The owner and manager of every hotel, motel, inn, guest house, and every other short-term commercial lodging shall post notice of drought conditions information in each guest room.*

11.28.200 - Phase IV water restrictions

In addition to the restrictions of Phases I, II and III, the following restrictions apply. This phase has a goal of 25% percent or more reduction in consumer water usage. If information is available, the City may establish a water budget for each consumer household, consistent with California Water Code section 10608.20.

(a) *Except as otherwise provided, individual residential car washing shall be allowed only with the use of a bucket.*

(b) *Automobile and recreational vehicle dealerships are allowed to continue washing vehicles with a hose that is fitted with a shut-off nozzle or flow restriction device attached to it that causes it to cease dispensing water immediately when not in use, under the following conditions:*

(1) *Automobiles and recreational vehicles may be washed only on Fridays using the method outlined above.*

(2) *An automobile, motorcycle, boat or motorhome may be washed the day before or the day of delivery to the purchaser using the method outlined above.*

(c) *There are no restrictions on laundromats.*

(d) *There are no restrictions for car wash facilities employing the use of water recirculating equipment.*

(e) *The owner and manager of every facility with a public restroom shall post in every such public restroom a placard or decal with notice of drought condition information.*

(f) *The owner or manager of a newly constructed home or business may only irrigate the landscaping with potable water in a manner consistent with regulations or other requirements established by the California Building Standards Commission.*

(g) *No one may add water or refill a swimming pool, spa or hot tub unless it has a separation tank and water recovery system installed in the filter backwash system, with a 90% water recovery standard.*

* * * * *

The foregoing Resolution 2015-_____ was adopted by Tracy City Council on the 19th day of May, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 6

REQUEST

INTRODUCE ORDINANCE AMENDING CHAPTER 4.20, REGULATION OF MASSAGE, OF THE TRACY MUNICIPAL CODE

EXECUTIVE SUMMARY

Consider introduction of an Ordinance to amend Chapter 4.20, Regulation of Massage, of the Tracy Municipal Code.

DISCUSSION

The City adopted massage regulations in 2005, and amended them in 2009 and 2011. State regulations authorizing the state certification of massage therapists and the local regulation of massage establishments were first adopted in 2009 (the California Massage Therapy Act), and were amended in 2011, 2012 and 2014. Under the existing ordinance, massage therapists may either be state certified or have a local, Tracy permit.

The Police Department is recommending a fundamental change in the massage regulations. Instead of a dual system of State-certified and City-permitted therapists, the City will require that all therapists be state certified, under the authority of the California Massage Therapy Council (CAMTC) established by state law. This decision was based on: the reliability of CAMTC; the ongoing communication between the CAMTC and local police departments; the ability of CAMTC to evaluate applicants and their educational background, and to perform background checks; and the potential cost savings to the Department of not having to operate its own, parallel permitting system.

City Staff is now recommending that the City amend its ordinance to:

1. Update the ordinance;
2. Conform its ordinance to state law;
3. Require that all massage therapists operating in the City be state-certified.

Any therapist with a current City massage therapy permit will have one year to submit his or her application for state certification. (Ordinance Section 2)

To accomplish these changes, Chapter 4.20 has been entirely rewritten. In summary, these are other key provisions of the ordinance:

- Clarifies the definition of massage and bodywork, consistent with state law.
- Allows only state-certified massage therapists to practice in the City.

- Allows only massage establishments in which each massage therapist is state-certified.
- Provides a grace period of one year (plus up to six months state review time) for existing massage therapists to become state-certified.
- Requires each massage establishment to register with the Police Department annually, and to update any provided information within 30 days of a change (including the name and state-certification number of each massage therapist).
- Requires each massage establishment to maintain certain records, including a daily register subject to police inspection.
- Directs the Police Department to coordinate on a regular basis with the California Massage Therapy Council (CAMTC).

The Police Department contacted local massage therapists and establishment owners to discuss the changes to the ordinance. The meeting was held on April 13, 2015 in the City Council Chambers and was attended by approximately 10 interested parties. As a result of that meeting, a minor change was made to allow sufficient time to allow locally permitted therapists to obtain state-certification. Support for the new ordinance was expressed by several people and no significant concerns were voiced.

FISCAL IMPACT

None.

STRATEGIC PLAN

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

RECOMMENDATION

That Council introduces the Ordinance Amending Chapter 4.20, Regulation of Massage, of the Tracy Municipal Code by adopting a new Chapter 4.20, including Sections 4.20.010 through 4.20.110.

Prepared by: Jeremy Watney, Special Operations Division Captain

Reviewed by: Gary Hampton, Chief of Police
Andrew Malik, Interim Assistant City Manager

Approved by: Troy Brown, City Manager

ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY AMENDING CHAPTER 4.20,
REGULATION OF MASSAGE, OF THE TRACY MUNICIPAL CODE, IN ITS ENTIRETY,
BY ADOPTING A NEW CHAPTER 4.20

WHEREAS, the City adopted massage regulations in 2005, and amended them in 2009 and 2011; and

WHEREAS, State regulations authorizing the State certification of massage therapists and the local regulation of massage establishments were first adopted in 2009 (the California Massage Therapy Act), and were amended in 2011, 2012 and 2014; and

WHEREAS, the City wishes to amend its ordinance to: (1) update the ordinance; (2) conform its ordinance to State law; and (3) require that all massage therapists operating in the City be State-certified.

The Tracy City Council hereby ordains as follows:

SECTION 1: Chapter 4.20 of the Tracy Municipal Code, Regulation of Massage, is amended in its entirety to read as set forth in Exhibit A, attached.

SECTION 2: The City will not issue any new massage practitioner or massage technician permits after the effective date of this ordinance. However, the City wishes to give existing practitioners and technicians one year to obtain State-certification. Although this ordinance takes effect in 30 days after its adoption, any massage therapist with a current City massage practitioner or massage technician permit may continue to practice massage in the City for up to one year from the effective date of this ordinance, as long as he or she renews that permit on a timely basis. The Police Department may extend this one-year period by an additional six months for a massage therapist who has submitted a complete application to CAMTC within the one-year period, while the therapist is waiting for final approval.

SECTION 3: This Ordinance shall take effect 30 days after its adoption.

SECTION 4: This Ordinance shall be published once in the Tri-Valley Times, a newspaper of general circulation, within 15 days after its adoption.

* * * * *

The foregoing Ordinance _____ was introduced at a regular meeting of the Tracy City Council on the _____ day of _____, 2015, and finally adopted on the _____ day of _____, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

Exhibit A
Chapter 4.20
MESSAGE ESTABLISHMENTS AND THERAPISTS

Sections:

- 4.20.010 Purpose – Authority.
- 4.20.020 Definitions.
- 4.20.030 Requirements.
- 4.20.040 City registration.
- 4.20.050 Posting and record keeping.
- 4.20.060 Facility requirements.
- 4.20.070 Inspections.
- 4.20.080 Hours of operation.
- 4.20.090 Department coordination with CAMTC.
- 4.20.100 Appeals.
- 4.20.110 Property owner responsibility.

4.20.010 Purpose – Authority.

It is the purpose and intent of this chapter to provide for the orderly regulation of massage therapists and massage establishments, in the interest of the public health, safety and welfare. The city wishes both to recognize the practice of massage as a valid professional field and to discourage prostitution and other unlawful activity which otherwise may become associated with some massage establishments.

This chapter relies upon the state certification process of the California Massage Therapy Council under the Massage Therapy Act (California Business and Professions Code sections 4600 through 4620). In addition, this chapter provides certain minimum standards for the operation of massage establishments, their managing employees, and massage therapists.

This chapter is adopted under the authority of Government Code sections 51030 through 51034, Government Code section 37101, Business and Professions Code section 16000, and California Constitution Article XI, Section 7.

4.20.020 Definitions.

In this chapter:

- A. *California Massage Therapy Council* or *CAMTC* means the California Massage Therapy Council established under Business and Professions Code section 4500.5(a).
- B. *Certified massage therapist* or *therapist* means a person who is currently certified as a massage therapist by the CAMTC, and who administers massage for compensation. A certified massage therapist who is an independent contractor is one who works at a massage establishment (or has an outcall massage service), but is not a salaried employee and does not share a percentage of therapy proceeds with the establishment. (Included within this definition through December 31, 2016 is a certified massage practitioner, a person who is currently certified as a massage practitioner by the CAMTC.)
- C. *Chief* means the chief of police or his/her designee. The chief's designees may include the City's code enforcement officers.

D. *Massage or bodywork* means the application of various techniques to the muscular structure and soft tissues of the human body. Application of massage and bodywork techniques may include, but is not limited to, stroking, kneading, tapping, compression, vibration, rocking, friction, pressure and similar techniques. Examples of massage include Swedish massage, sports massage, shiatsu, polarity therapy, rolfing, reiki, hellerwork and reflexology. Massage and bodywork have the same meaning.

Massage specifically excludes: diagnosis, prescription, intentional manipulation or adjustments of the skeletal structure, or any other service, procedure or therapy which requires a license to practice (chiropractic, osteopathy, orthopedics, physical therapy, podiatry, or medicine), hypnosis, naturopathic, colonic irrigation, acupuncture, vacuum cupping, nutritional or dietary counseling, detoxification programs, yoga, exercise, spiritual healing, or procedures which penetrate body cavities, either manually or with any other method of intrusion. Massage also excludes: an athletic team trainer who administers massage in the course of training duties; a state-licensed barber, beautician, cosmetologist, esthetician or manicurist who administers massage in the normal course of duties; individuals administering massage to participants in road races, track meets and similar single-occurrence events if approved by the event sponsors and provided only at the site of the event.

E. *Massage establishment* means a fixed location where (only) state-certified therapists practice massage for compensation. The following are not considered massage establishments under this chapter: a hospital, nursing home, sanitarium, physiotherapy establishment, office of a licensed medical professional, or other state-licensed physical or mental health facility; nor a personal fitness training center, gymnasium, athletic facility or health club, when the giving of massage is an incidental function of the business, constituting 10% or less of the business.

F. *Outcall massage service* means a business that provides massage at a location designated by the client or the massage therapist, other than at a massage establishment.

4.20.030 Requirements.

A. Massage establishment. No person may own or operate a massage establishment (or outcall massage service) in the city unless:

1. Each person administering massage for compensation (whether as an employee or independent contractor) is a certified massage therapist; and
2. The owner or operator has a current registration on file at the police department. (See Section 4.20.040.)

B. Massage therapist. No person may practice massage in the city who is not a certified massage therapist. A certified massage therapist working in the city must either:

1. work at a city-permitted massage establishment; or
2. as an independent contractor not affiliated with a massage establishment, provide outcall massage services only if he or she first registers with the city as a massage establishment, and indicates on the registration form that he or she does outcall massage services.

C. Other city permits. Establishments are advised that they must also obtain a city business license.

4.20.040 City registration.

A massage establishment must register with the city police department annually, and shall post evidence of city registration wherever massage is practiced. There is no charge for the registration. The establishment shall notify the department within 30 days of any change in the information provided. The registration is not transferrable to another owner or manager; any such change requires re-registration.

The registration application shall include:

1. name, address and telephone of the establishment, and the hours of operation;
2. name, address and telephone of the owner(s) and manager(s). (If the applicant is a corporation, the name of the corporation shall be set forth as shown in its articles of incorporation or charter, together with the State and date of incorporation and the name, residence address, and telephone number of each of the officers and directors of the corporation. If the applicant is a partnership, the name, residence address, and telephone number of each of the partners. If the applicant is a limited partnership or limited liability company, it shall furnish a copy of its certificate of limited partnership or limited liability company as filed with the Secretary of State.);
3. contact information for the primary person in charge; and
4. name, address, state certification number and expiration date of each employee or independent contractor who will offer massage at (or through) the establishment. The massage establishment shall provide a copy of the state certification of any therapist upon request.

4.20.050 Posting and record keeping.

A. The operator of a massage establishment shall:

1. post in a conspicuous place within the massage establishment the photograph and a copy of the state certification of each massage therapist working at or through the establishment; and
2. maintain a daily register of each client, the assigned room (or location of outcall massage service), the massage therapist who treated the client, a description of service(s) performed and the time of the appointment. The daily register shall be completed by the close of business every day, and shall be available for inspection by the city during regular business hours. The register shall be considered confidential, not for public review, and may be inspected by the city only as part of a criminal investigation or during proceedings to investigate compliance with this chapter. These records shall be retained for at least one year.

B. An independent contractor massage therapist (including a therapist providing outcall massage services) is responsible for compliance with subsection A.2 of this section.

4.20.060 Facility requirements.

The operator of a massage establishment shall maintain and operate the establishment in a safe and sanitary manner, and shall:

A. Comply with all applicable building, fire, safety, health, electrical, plumbing, mechanical, heating and ventilating, sanitation, and other laws applicable to the premises;

B. Maintain all equipment used to perform massage services in a safe and sanitary condition, including the regular application of cleansers and bacterial cleaning agents, and launder all materials furnished for the personal use of the client, such as towels and linens, before each use;

C. Maintain all bathroom and plumbing fixtures in a sanitary condition, provide hot and cold running water, and comply with sanitation requirements of the county health department;

D. Provide either a separate room or dressing and locker facilities for each client. Dressing and undressing may occur in the same room as massage therapy if the client is alone in the room with the door(s) closed and opaque coverings are present on any windows while undressing or dressing. The massage therapist or other clients may not be present in the same room when the client is undressing;

E. For a massage establishment in which the therapist is an employee, all massage services shall be paid for in the reception area, and all tips, if any, shall be paid in the reception area. For a massage establishment at which a therapist is an independent contractor, all massage services and all tips, if any, may be paid in the same room where the massage occurred, provided the door to the room is fully open. A massage establishment located in a home is exempt from this subsection.

4.20.070 Inspections.

The chief may inspect the premises at the time of registering a massage establishment, and may make periodic, reasonable inspections of the establishment during normal business hours to assure compliance with CAMTC requirements, this chapter (including record-keeping as required by Section 4.20.050) and applicable fire, health and safety requirements. (Health & Saf. Code § 4612(c)(1).) If any violations are found, the chief shall notify the establishment in writing. The chief may give the establishment 10 days to correct the violation(s), or, if the violation(s) presents a danger to public health or safety, close the establishment until the violation(s) is corrected.

4.20.080 Hours of operation.

No massage establishment and no massage therapist may provide massage service between the hours of 10:00 p.m. and 6:00 a.m. Clients and visitors shall be excluded from a massage establishment during those hours.

4.20.090 Department coordination with CAMTC.

The chief shall designate a person in the police department or code enforcement division to coordinate with CAMTC, including maintaining a list of certified therapists practicing in the city, maintaining a list of massage establishments operating in the city, receiving notices and information from CAMTC, and notifying CAMTC of any arrest or conviction of Penal Code section 647 or other act punishable as a sexually related crime. (Health & Saf. Code §§ 4602(c), 4602.5.)

4.20.100 Appeals.

A person may appeal a decision of the chief in accordance with TMC Section 1.12.010. The decision of the city manager or designee is final and may not be appealed to the city council.

4.20.110 Property owner responsibility.

Any place where lewdness, assignation or prostitution occurs is a public nuisance which may be abated and permanently enjoined, and for which the city may recover damages from the property owner, as well as from the person conducting or maintaining the nuisance. (Penal Code §§ 11225 and 11226.)"

AGENDA ITEM 7.A

REQUEST

APPOINTMENT OF CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANTS TO FILL A VACANCY ON THE SAN JOAQUIN COUNTY COMMISSION ON AGING

EXECUTIVE SUMMARY

Request appointment of subcommittee to interview applicants to fill an upcoming vacancy on the San Joaquin County Commission on Aging.

DISCUSSION

On June 30, 2015, the term for the Council appointed representative on the San Joaquin County Commission on Aging will expire. The upcoming vacancy has been advertised and the recruitment closed on May 26, 2015. The City Clerk's office received two applications. As stated in Resolution 2004-152, in the event there are not two or more applicants than vacancies, the filing deadline will be extended. The recruitment has been extended and will close at 6:00 p.m. on Wednesday, June 9, 2015.

In accordance with Resolution 2004-152, a two-member subcommittee needs to be appointed to interview the applicants and make a recommendation to the full Council.

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That Council appoints a two-member subcommittee to interview applicants to fill an upcoming term expiration on the San Joaquin County Commission on Aging.

Prepared by: Adrienne Richardson, Deputy City Clerk

Reviewed by: Nora Pimentel, City Clerk
Andrew Malik, Interim Assistant City Manager

Approved by: Troy Brown, City Manager