

# NOTICE OF SPECIAL MEETING

Pursuant to Section 54956 of the Government Code of the State of California, a Special meeting of the **Tracy City Council** is hereby called for:

**Date/Time:** **Tuesday, June 16, 2015, 6:00 p.m.**  
(or as soon thereafter as possible)

**Location:** **Room 203, City Hall**  
**333 Civic Center Plaza, Tracy**

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Tracy City Council on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

1. Call to Order
2. Roll Call
3. Items from the Audience - *In accordance with Procedures for Preparation, Posting and Distribution of Agendas and the Conduct of Public Meetings, adopted by Resolution 2015-052 any item not on the agenda brought up by the public at a meeting, shall be automatically referred to staff. 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.*
4. DISCUSS AND PROVIDE DIRECTION ON POSSIBLE AMENDMENTS TO THE CITY'S REGULATIONS AND REQUIREMENTS FOR CONSIDERATION OF DEVELOPMENT AGREEMENTS INCLUDING PROVISIONS RELATED TO REQUIRED PUBLIC BENEFITS
5. Adjournment



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Mayor

**Posted: June 11, 2015**

The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in public meetings. Persons requiring assistance or auxiliary aids in order to participate should call City Hall (209-831-6105), at least 24 hours prior to the meeting.

Any materials distributed to the majority of the Tracy City Council regarding any item on this agenda will be made available for public inspection in the City Clerk's office located at 333 Civic Center Plaza, Tracy, during normal business hours.

AGENDA ITEM 4

REQUEST

**DISCUSS AND PROVIDE DIRECTION ON POSSIBLE AMENDMENTS TO THE CITY'S REGULATIONS AND REQUIREMENTS FOR CONSIDERATION OF DEVELOPMENT AGREEMENTS INCLUDING PROVISIONS RELATED TO REQUIRED PUBLIC BENEFITS**

EXECUTIVE SUMMARY

On January 20, 2015, the City Council directed staff to place an item on a future agenda to allow the City Council to discuss and provide direction on possible amendments to the City's Regulations and Requirements for Consideration of Development Agreements including provisions related to required public benefits.

DISCUSSION

On January 20, 2015, the City Council directed staff to place an item on a future agenda to allow the City Council to discuss and provide direction on possible amendments to the City's Regulations and Requirements for Consideration of Development Agreements ("Development Agreement Procedures") including provisions related to required public benefits.

**A. State Law**

Development agreements are contracts negotiated between project proponents and public agencies that govern the land uses that may be allowed on a particular project and provide vested rights to project proponents.

The concept of development agreements arose after *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785. In *Avco*, a new land use requirement was enacted after prebuilding permit construction work had been done on a project. The Supreme Court held that a developer has no vested right to complete a project before building permits are issued. In so ruling, the court stated that any change in the rule that a developer has no vested rights in existing zoning must come from the Legislature.

In 1979, the Legislature accepted the Supreme Court's invitation and responded by enacting a statute that allows the use of development agreements. ("Development Agreement Statute") (Government Code, §§ 65864 – 65869.5.) A copy of the Development Agreement Statute is attached as Attachment A.

As reflected in the legislative declarations contained in the Development Agreement Statute, both parties to a development agreement receive benefits. The City is afforded greater latitude to advance City planning policies, and has greater flexibility in imposing conditions and requirements on proposed projects. At the same time, the applicant is afforded greater assurances that, once the project is approved, it can be built.

**B. The City's Development Agreement Procedures**

The Development Agreement Statute requires that cities establish procedures and requirements for the consideration of development agreements. (Government Code, § 65865(c).)

The City's current Development Agreement Procedures were adopted in 2004. (Resolution 2004-368.) A copy of the Development Agreement Procedures is included as Attachment B.

The Development Agreement Procedures contain a two-step process. First, the applicant submits an application with required information including the "proposed public benefit offered to the City as an incentive for consideration of the application." City staff reviews the application and accepts it for filing if it is complete and accurate and presents it to the City Council for initial consideration. Specifically, the Development Agreement Procedures provide as follows:

Staff shall review the application and shall prepare a report and recommendation to the City Council. The Council shall consider the application and determine whether the proposed public benefit warrants undertaking negotiations with the applicant. The Council shall either reject the request or authorize staff to negotiate and process the development agreement application.

The second step in the two-step process involves negotiating the development agreement and submitting it to the Planning Commission and City Council for final consideration.

**C. Public Benefit Requirement**

In return for receiving vested rights, the Development Agreement Statute and the City's Development Agreement Procedures contemplate the offer of a "public benefit" from the developer.

There are only two references in the Development Agreement Statute that indirectly address this public benefit requirement.

First, the statute declares that:

The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing. Whenever possible, applicants and local governments may include provisions in agreements whereby applicants are reimbursed over time for financing public facilities.

(Government Code § 65864(c).) This provision relates to "fronting" public infrastructure, as described below.

Second, the Development Agreement Statute requires among other things that a development agreement specify ". . . provisions for reservation or dedication of land for public purposes." (Government Code, § 65865.2.)

As described above, the City's Development Agreement Procedures require the applicant to propose the public benefit. The Procedures do not specify what the public benefit may be.

Most cities, like Tracy, negotiate appropriate public benefits in development agreements on a case-by-case basis depending on the nature of the project and its location. The most common public benefits include: requirements to construct public facilities and/or infrastructure; the dedication of land; and requirements to provide low and moderate income housing.

However, some cities provide examples of appropriate public benefits in their development agreement procedures. For example, provisions of the City of Carlsbad's development agreement procedures, included as Attachment C.

Taking the Carlsbad example, Tracy could amend its development agreement procedures to include desired public amenities. Aside from the current Capital Improvement Program (CIP) identified in the budget, over the last several years the City completed an infrastructure master planning process to design infrastructure for future developments that are identified in the City's General Plan. That infrastructure not only includes streets and utilities, but also includes public buildings, parks and similar recreation related amenities such as pools and a recreation center (gymnasium). This infrastructure represents the City's approved list of utilities and amenities that over time will be necessary to help maintain a high quality of life and resilient community. New development pays proportionate shares for this infrastructure through development impact fees paid to the City, typically at building permit issuance (for certain facilities that also benefit current residents, the City has a fair share as well). By way of example, the City Council could identify a particularly desirable amenity/facility (a gymnasium, for example) and seek to have that gymnasium constructed ahead of when development impact fee revenue would normally accumulate. In other words, the gymnasium would be "fronted". A development agreement could be negotiated with a willing partner of the development community to front the gymnasium and receive reimbursements by the City over time as the City receives development impact fee revenue (and other City-share revenue) for that gymnasium. The public benefit is that the gymnasium is constructed far ahead of when it would otherwise be constructed.

#### **D. Existing Development Agreements**

A description of the City's existing development agreements is attached as Attachment D.

#### **E. Options**

The following are options for the City Council to consider:

1. Maintain Existing Public Benefit Provisions

The City Council could choose not to make changes to the City's Development Agreement Procedures as it relates to public benefits.

2. Provide General Examples of Desired Public Benefits

Like the City of Carlsbad, described above, the City Council could choose to amend the City's Development Agreement Procedures to include general examples of desired public benefits. If City Council decides to pursue this option, staff recommends that the Council provide direction as to which types of benefits should be included in a proposed amendment.

3. Provide Specific Examples of Desired Public Benefits

The City Council could choose to amend the City's Development Agreement Procedures to provide that the City Council adopt and regularly update a list of specific benefits it desires in development agreement applications. Such benefits could include fronting important Capital Improvement Program projects or other needs currently desired in the community, which could change over time.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no direct fiscal impact associated with this item.

RECOMMENDATION

That the City Council discuss and provide direction on possible amendments to the City's Regulations and Requirements for Consideration of Development Agreements including provisions related to required public benefits.

Prepared by: William Dean, Interim Development Services Director  
Daniel G. Sodergren, City Attorney

Reviewed by: Andrew Malik, Interim Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS:

- A. Development Agreement Statute
- B. City's Development Agreement Procedures
- C. Excerpt from City of Carlsbad Development Agreement Procedures
- D. Description of Existing Development Agreements

**GOVERNMENT CODE  
SECTION 65864-65869.5**

65864. The Legislature finds and declares that:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.

(c) The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing. Whenever possible, applicants and local governments may include provisions in agreements whereby applicants are reimbursed over time for financing public facilities.

65865. (a) Any city, county, or city and county, may enter into a development agreement with any person having a legal or equitable interest in real property for the development of the property as provided in this article.

(b) Any city may enter into a development agreement with any person having a legal or equitable interest in real property in unincorporated territory within that city's sphere of influence for the development of the property as provided in this article. However, the agreement shall not become operative unless annexation proceedings annexing the property to the city are completed within the period of time specified by the agreement. If the annexation is not completed within the time specified in the agreement or any extension of the agreement, the agreement is null and void.

(c) Every city, county, or city and county, shall, upon request of an applicant, by resolution or ordinance, establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of, the property owner or other person having a legal or equitable interest in the property.

(d) A city, county, or city and county may recover from applicants the direct costs associated with adopting a resolution or ordinance to establish procedures and requirements for the consideration of development agreements.

(e) For any development agreement entered into on or after January 1, 2004, a city, county, or city and county shall comply with Section 66006 with respect to any fee it receives or cost it recovers pursuant to this article.

65865.1. Procedures established pursuant to Section 65865 shall include provisions requiring periodic review at least every 12

months, at which time the applicant, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of the agreement. If, as a result of such periodic review, the local agency finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with terms or conditions of the agreement, the local agency may terminate or modify the agreement.

65865.2. A development agreement shall specify the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The development agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time.

The agreement may also include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

65865.3. (a) Except as otherwise provided in subdivisions (b) and (c), Section 65868, or Section 65869.5, notwithstanding any other law, if a newly incorporated city or newly annexed area comprises territory that was formerly unincorporated, any development agreement entered into by the county prior to the effective date of the incorporation or annexation shall remain valid for the duration of the agreement, or eight years from the effective date of the incorporation or annexation, whichever is earlier. The holder of the development agreement and the city may agree that the development agreement shall remain valid for more than eight years, provided that the longer period shall not exceed 15 years from the effective date of the incorporation or annexation. The holder of the development agreement and the city shall have the same rights and obligations with respect to each other as if the property had remained in the unincorporated territory of the county.

(b) The city may modify or suspend the provisions of the development agreement if the city determines that the failure of the city to do so would place the residents of the territory subject to the development agreement, or the residents of the city, or both, in a condition dangerous to their health or safety, or both.

(c) Except as otherwise provided in subdivision (d), this section applies to any development agreement which meets all of the following requirements:

(1) The application for the agreement is submitted to the county prior to the date that the first signature was affixed to the petition for incorporation or annexation pursuant to Section 56704 or the adoption of the resolution pursuant to Section 56800, whichever occurs first.

(2) The county enters into the agreement with the applicant prior to the date of the election on the question of incorporation or annexation, or, in the case of an annexation without an election

pursuant to Section 57075, prior to the date that the conducting authority orders the annexation.

(3) The annexation proposal is initiated by the city. If the annexation proposal is initiated by a petitioner other than the city, the development agreement is valid unless the city adopts written findings that implementation of the development agreement would create a condition injurious to the health, safety, or welfare of city residents.

(d) This section does not apply to any territory subject to a development agreement if that territory is incorporated and the effective date of the incorporation is prior to January 1, 1987.

65865.4. Unless amended or canceled pursuant to Section 65868, or modified or suspended pursuant to Section 65869.5, and except as otherwise provided in subdivision (b) of Section 65865.3, a development agreement shall be enforceable by any party thereto notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the city, county, or city and county entering the agreement, which alters or amends the rules, regulations, or policies specified in Section 65866.

65865.5. (a) Notwithstanding any other law, after the amendments required by Sections 65302.9 and 65860.1 have become effective, the legislative body of a city or county within the Sacramento-San Joaquin Valley shall not enter into a development agreement for property that is located within a flood hazard zone unless the city or county finds, based on substantial evidence in the record, one of the following:

(1) The facilities of the State Plan of Flood Control or other flood management facilities protect the property to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(2) The city or county has imposed conditions on the development agreement that will protect the property to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(3) The local flood management agency has made adequate progress on the construction of a flood protection system that will result in flood protection equal to or greater than the urban level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas for property located within a flood hazard zone, intended to be protected by the system. For urban and urbanizing areas protected by project levees, the urban level of flood protection shall be achieved by 2025.

(4) The property in an undetermined risk area has met the urban level of flood protection based on substantial evidence in the record.

(b) The effective date of amendments referred to in this section shall be the date upon which the statutes of limitation specified in subdivision (c) of Section 65009 have run or, if the amendments and any associated environmental documents are challenged in court, the



validity of the amendments and any associated environmental documents has been upheld in a final decision.

(c) This section does not change or diminish existing requirements of local flood plain management laws, ordinances, resolutions, or regulations necessary to local agency participation in the national flood insurance program.

65866. Unless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent a city, county, or city and county, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent a city, county, or city and county from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.

65867. A public hearing on an application for a development agreement shall be held by the planning agency and by the legislative body. Notice of intention to consider adoption of a development agreement shall be given as provided in Sections 65090 and 65091 in addition to any other notice required by law for other actions to be considered concurrently with the development agreement.

65867.5. (a) A development agreement is a legislative act that shall be approved by ordinance and is subject to referendum.

(b) A development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.

(c) A development agreement that includes a subdivision, as defined in Section 66473.7, shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of Section 66473.7.

65868. A development agreement may be amended, or canceled in whole or in part, by mutual consent of the parties to the agreement or their successors in interest. Notice of intention to amend or cancel any portion of the agreement shall be given in the manner provided by Section 65867. An amendment to an agreement shall be subject to the provisions of Section 65867.5.

65868.5. No later than 10 days after a city, county, or city and county enters into a development agreement, the clerk of the legislative body shall record with the county recorder a copy of the agreement, which shall describe the land subject thereto. From and after the time of such recordation, the agreement shall impart such

notice thereof to all persons as is afforded by the recording laws of this state. The burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

65869. A development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Public Resources Code, unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action.

65869.5. In the event that state or federal laws or regulations, enacted after a development agreement has been entered into, prevent or preclude compliance with one or more provisions of the development agreement, such provisions of the agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

RESOLUTION 2004-368

REPEALING RESOLUTION NO. 90-355 AND ESTABLISHING REVISED PROCEDURES AND REQUIREMENTS FOR THE CONSIDERATION OF DEVELOPMENT AGREEMENTS

WHEREAS, On September 4, 1990, pursuant to authorization granted in Government Code sections 65864 et seq., the City Council adopted Resolution No. 90-355 establishing procedures and requirements for consideration of development agreements; and

WHEREAS, the City Council wishes to revise the procedures and requirements for future applications.

NOW, THEREFORE, the City Council of the City of Tracy resolves as follows:

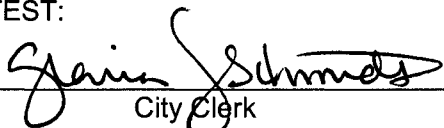
1. Resolution No. 90-355 is repealed in its entirety.
2. The Procedures and Requirements for Consideration of Development Agreements, set forth in Exhibit "A", attached hereto and incorporated herein by this reference, are hereby adopted.

\* \* \* \* \*

The foregoing Resolution 2004-368 was passed and adopted by the Tracy City Council on the 16th day of November, 2004, by the following vote:

AYES:	COUNCIL MEMBERS:	HUFFMAN, IVES, TOLBERT, TUCKER, BILBREY
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE
ABSTAIN:	COUNCIL MEMBERS:	NONE

  
 \_\_\_\_\_  
 Mayor

ATTEST:  
  
 \_\_\_\_\_  
 City Clerk

## EXHIBIT "A"

### REGULATIONS AND REQUIREMENTS FOR CONSIDERATION OF DEVELOPMENT AGREEMENTS

#### PART I – APPLICATION

##### A. Authority for Adoption; Purpose; Consistency with State Law

These regulations are adopted under the authority of Government Code Sections 65864 et seq. The purpose of considering and approving a development agreement is to facilitate large, phased projects for which there is significant private participation in infrastructure, public facilities, open space and amenities and other programs of benefit to the City and its residents. The City of Tracy, at its sole discretion, may enter into a binding agreement with any qualified applicant for the development of property within the City of Tracy pursuant to and in accordance with state law and these regulations and requirements. In any conflict or interpretation issue between these provisions and requirements of state law, state law shall control.

##### B. Applications

1. All applications for development agreements shall be submitted to the Development and Engineering Services ("DES") Department. The minimum requirements for the application and the information and data are set forth herein. The DES Director may require an applicant to submit such additional information and data as considered necessary to process the application.
2. The application shall include:
  - a. signatures of property owner(s);
  - b. proposed public benefit offered to the city as an incentive for consideration of the application;
  - c. proposed term of development agreement;
  - d. a map drawn to scale showing the property for which the development agreement is requested and the property lines for the properties within three hundred (300) feet of the exterior boundary lines of the subject property;
  - e. a clear indication of the names of all the streets and of the assessor's parcel numbers (APNs) of each parcel shown on said map;
  - f. the names and mailing addresses as listed on the latest assessment roll of the owners of the property shown on the map;
  - g. the legal description of the subject property;
  - h. the assessor's parcel number or numbers and the street address of the subject property;
  - i. the proposed use or uses, density or intensity of use of the property, the maximum height and size of any proposed buildings, the proposed duration of the agreement, and any proposed covenants, conditions and restrictions or tract restrictions; and
  - j. a list of other applications filed concurrently with the development agreement application.

3. A separate application shall be filed for each project or property for which a development agreement is requested.

C. Reimbursement of Costs

Each application shall be accompanied by a reimbursement agreement for city recovery of staff time and out-of-pocket costs. A sample reimbursement agreement is attached hereto, and incorporated herein by this reference, as Attachment "1".

D. Qualified Applicants

Only a qualified applicant may file an application to enter into a development agreement. A qualified applicant is a person who has legal or equitable interest in the real property which is the subject of the development agreement. The City Manager, or designee, may require an applicant to submit proof of his or her interest in the real property. The City Manager may also require that all persons having a legal or equitable interest in the real property be made parties to the application and signatories to the development agreement or otherwise assure to the City, in form approved by the City Attorney, that they will be legally bound to comply with the terms and conditions of the development agreement, provided that this requirement shall not apply to owners or claimants of interests in easements, or other interests not deemed material by the City Manager, unless the City Attorney determines that their agreement or undertaking to be bound by the development agreement is necessary for the development agreement to be effective in achieving the City's objectives. The qualified applicant and any successors in interest are hereinafter referred to as "developer," which term shall include the plural in the case of an applicant consisting of more than one party. The City Manager may obtain the opinion of the City Attorney as to the sufficiency of the applicant's interest in the real property to enter into the agreement. The City may require an applicant or agent to submit a title report or other evidence to verify the applicant's legal or equitable interests in the subject property.

E. Qualified Property

The property to be the subject of the development agreement shall be situated within the City limits and shall represent an appropriate parcel or parcels, as to ownership and parcel configuration, size and location, as determined by the City Manager, or designee, to assure the development of the property consistent with the policies, goals, standards and objectives of City's General Plan and City ordinances, laws, rules, regulations and policies pertaining thereto. Property not within the City limits but within the City's sphere of influence may be the subject of a development agreement conditioned upon the annexation of the property to the City within a specified time. With respect to property to be annexed to the City, the content of the development agreement may differ from those otherwise required to the extent deemed warranted by the City under the circumstances.

F. Review of Application

1. The City shall review the application and shall accept it for filing if it is complete and accurate.
2. Staff shall review the application and shall prepare a report and recommendation to the City Council. The Council shall consider the application and determine whether the proposed public benefit warrants undertaking negotiations with the applicant. The Council shall either reject the request or authorize staff to negotiate and process the development agreement application.

PART II - HEARINGS AND OFFICIAL ACTIONS

G. Notice of Hearings

1. Notice of hearings before the Planning Commission and the City Council to consider a development agreement shall be given in the manner provided in Government Code Section 65864 et seq.
2. The public hearing on the development agreement, and the notice thereof, may be combined with the public hearing and notice for an application for rezoning, special permit, subdivision map or other land use entitlement pertaining to the property which is to be subject to the development agreement.

H. Environment Review

A development agreement, if it qualifies as a project under the California Environmental Quality Act and implementing regulations, shall be subject to environmental review as required by applicable law.

I. Planning Commission

The proposed development agreement shall be submitted to the Planning Commission for a public hearing when all of the necessary reports and recommendations are complete. The development agreement may be considered concurrently with other discretionary permits or approvals for the project.

The Planning Commission shall serve as the planning agency on applications as required by Government Code Section 65867, including its consistency with the General Plan, city ordinances and regulations. Planning Commission review shall be limited to land use matters and specifically shall not include fiscal or budgetary implications which shall be the exclusive jurisdiction of the City Council. After a public hearing, noticed in accordance with Government Code Sections 65090 and 65091, has been held by the Planning Commission, it shall render its decision in the form of a written recommendation to the City Council. The report and recommendation shall include proposed findings as required by J (4). The report and recommendation shall be forwarded to the City Council.

J. City Council

1. After its public hearing, the City Council in the exercise of its legislative discretion shall determine whether or not to approve, modify or disapprove the development agreement.
2. Even if the findings set forth in subsection (4) below, can be made, the City Council, in its sole discretion, may deny approval of the development agreement on the grounds that the development agreement is not in the public interest.
3. The City Council may add, modify or delete any provisions of the development agreement as a condition of approval. Such action may, but need not be, referred back to the Planning Commission for its review and recommendation, without the necessity for a further public hearing before the Planning Commission.
4. The Council shall not approve the development agreement unless it make findings that the development agreement:
  - a. is consistent with the objectives, policies, general land uses and programs specified in the City General Plan and any applicable community and specific plan;
  - b. is in conformity with public convenience, general welfare, and good land use practices;
  - c. will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area, nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole;
  - d. will not adversely affect the orderly development of property or the preservation of property values; and
  - e. is consistent with the provisions of Government Code Sections 65864 et seq.

K. Irregularity in Proceedings

No action, inaction or recommendation regarding the proposed development agreement shall be held void or invalid or be set aside by a court by reason of any error, irregularity, informality, neglect or omission ("error") as to any matter pertaining to petition, application, notice, finding, record, hearing, report, recommendation or any matters of procedure whatever unless after an examination of the entire case, including the evidence, the court is of the opinion that the error complained of was prejudicial and that by reason of the error the complaining party sustained

and suffered substantial injury and that a different result would have been probable if the error had not occurred or existed. There is no presumption that error was prejudicial or that injury was done if error was shown.

L. Ordinance Approving the Development Agreement

1. If the City Council approves the development agreement, it shall do so by the adoption of an ordinance setting forth the required findings and authorizing the Mayor to execute the development agreement.
2. After the ordinance approving the development agreement takes effect, the Mayor shall execute the development agreement on behalf of the City. The effective date of the development agreement shall be the effective date of the ordinance approving the agreement.

M. Limitations on Actions

1. No action attacking or otherwise questioning the validity of any development agreement or amendment to a development agreement, or the adoption or approval of such development agreement or amendment, or any of the findings or determinations of the Planning Commission or City Council in connection with such development agreement or amendment, shall be brought at any time after the elapse of sixty (60) days from and after the date of adoption of the ordinance adopting or approving the development agreement or amendment, as the case may be.
2. A development agreement may provide that it constitutes a financing agreement within the meaning and scope of Government Code Section 53511.

PART III- CONTENTS; PERIODIC REVIEW

N. Contents

In addition to the requirements of Government Code Section 65865.2, the following shall be included:

1. Every development agreement shall be for a specified initial term. Such terms may be extended, from time to time, as provided in the development agreement.
2. The development agreement shall specify (in the development agreement itself or by reference to other project approvals) the permitted uses of the property which is subject to the development agreement, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land for public purposes, the location of public improvements and other applicable terms and conditions.



3. The development agreement may contain a requirement that construction be commenced within a specified period of time or that the project or any phase thereof be completed within a specified time. If the development agreement expressly does not specify the timing of the commencement or completion of the project, or any phase thereof, the development agreement may specify that it is deemed nevertheless to have dealt with the issue of timing; provided, however, that specific time requirements of any subsequent special permit, subdivision map or other land use entitlement shall govern.
4. The development agreement may contain a hold harmless agreement and an agreement to indemnify the City from suits and actions arising in connection with the development agreement, to the satisfaction of the City Attorney.

O. Periodic Review

The City Manager, or designee, shall on an annual basis and at any other time that the City Manager determines to be appropriate, review the extent of good faith substantial compliance by the developer with the terms and conditions of the development agreement. Such periodic review shall be limited in scope to compliance with the terms and conditions of the development agreement. The costs of notice and related costs incurred by the City for such annual review shall be borne by the developer. Failure of the City to conduct a periodic review shall not constitute a waiver by the City of its rights to enforce the provisions of a development agreement, nor shall a developer have or assert any defense to such enforcement by reason of such failure to conduct a periodic review.

Attachment 1 – Sample Reimbursement Agreement

Attachment "1"  
[SAMPLE]

REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF TRACY  
AND  
[APPLICANT FOR DEVELOPMENT AGREEMENT]  
[Application No. \_\_\_\_\_]

This Reimbursement Agreement (hereinafter "Agreement") is made by and between the CITY OF TRACY ("City") and \_\_\_\_\_, a [type of entity] ("Developer").

RECITALS

WHEREAS, Developer owns in fee, or has an agreement to purchase, the real property listed in Exhibit "A", attached hereto and incorporated herein by this reference (the "Subject Property"); and

WHEREAS, Developer has applied for a development agreement pursuant to California Government Code sections 65864 et seq. and City Council Resolution No. 2004- \_\_\_\_ for a project generally referred to as \_\_\_\_\_ (the "\_\_\_\_\_ Project") (Applications \_\_\_\_\_); and

WHEREAS, The \_\_\_\_\_ Project consists of a proposal to develop a [summarized project description and general location]; and

WHEREAS, The City and Developer desire to enter into this Reimbursement Agreement to specifically provide for City to recover all related to the negotiation and processing of the development agreement application including any legal challenges to any project approvals.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Purpose of Agreement. The purpose of this Agreement is to provide for payments by Developer of all "out-of-pocket" costs, including city staff and overhead costs, of the City directly or indirectly related to the negotiations and processing of the \_\_\_\_\_ Project development agreement application. Developer acknowledges that in addition to city staff time, consultants will be necessary to assist City in the negotiation and processing of the proposed development agreement. Consultants' shall be retained by the City, shall report to the City, and shall remain independent of Developer. Developer and City shall agree in writing as to the scope of work and amount of required deposit. "City Service" shall refer to services provided by the City regarding the negotiation and processing of the proposed development agreement. Developer shall provide the City with a deposit, in an amount to be determined by mutual agreement, as the minimum deposit for the cost of the City Service. Developer shall maintain said minimum deposit amount throughout the period that services are being, or are projected to be, provided

within an agreed upon length of time. In addition, the Developer shall be required to pay any and all of the actual costs within fifteen (15) days of receiving the billing statement(s) for same. The City shall have no obligation, and may cease to process or to perform any work on any Project Approval in the event that the Developer have not made timely payments of any required deposit and timely payment(s) of any and all of the actual costs as herein provided.

2. Term of Agreement. The term of this Agreement shall commence on execution by City and shall continue until terminated, or modified by, as provided for in other sections herein.

3. No Approvals. Nothing in this Agreement shall be construed as preliminary or final approval of any development agreement, development application, land use or related decision. This Agreement specifically does not commit the City to any decisions or approvals not yet authorized by the City.

4. No General Fund Liability. It is understood and agreed that all costs shall be borne by Developer. It is further understood that such obligations are not obligations of the City or any of its departments, and the City shall not be liable for any of said costs from its general fund, or any other fund, except for funds obtained from Developer.

5. Defense of Legal Challenges. In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization challenging the validity of the proposed development agreement or any Project Approval (as defined in Paragraph 9 herein) or the sufficiency of any environmental review under the California Environmental Quality Act ("CEQA"), processed concurrently with the proposed development agreement, the parties shall agree to mutually cooperate with each other in the defense of any such challenge. City, at its sole option, may tender the complete defense of any third party challenge to any Approval, and upon any acceptance of such tender by Developer, the Developer shall indemnify City against any and all fees and costs arising out of the defense of such challenge, including the fees and costs of City's own in house or special counsel if, in City's sole discretion, is necessary to protect its interests.

6. Tender of Defense. If Developer should fail to accept City's tender of defense, City may defend such challenge and control the defense and/or settlement of such challenge as City decides, in its sole discretion, and City may take any and all actions it deems necessary and appropriate, in its sole discretion, in connection therewith.

7. 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.

8. Project Approvals. For the purposes of the Agreement, "project approvals" shall mean the

proposed development agreement as well as any applications considered concurrently with (a) provisions of the City's UMP that relate to or affect the \_\_\_\_\_ Project, (b) annexation and zoning approvals, (c) CEQA review, mitigation measures and approvals, (d) infrastructure master plans, (e) finance plans, and any other discretionary or ministerial permits or approvals necessary or appropriate for processing of related development entitlements.

9. Selection of Counsel. Each party shall be entitled to legal counsel of its choice, at the sole expense of Developer, in the litigation, which counsel shall be mutually obligated to work cooperatively with other counsel.

10. Termination. If Developer are in default or breach of their obligations under this Agreement, the City shall give Developer ten (10) days written notice of such default. If the Developer do not commence to cure the default with ten (10) days of such notice and continue to cure such default to completion, then the City may terminate this Agreement and the City shall have no further obligation under this Agreement or statute to process pending applications. If the Agreement is terminated by the City, the City shall bill Developer for any payments or costs to be paid to the date of termination.

11. Counterparts. This Agreement may be signed in counterparts and when signed by all parties hereto shall constitute a binding agreement on the parties.

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

13. 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.

14. 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.

15. 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.

16. Entire Agreement. This Agreement, including all documents incorporated herein by reference, 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.

17. Notices. All notices to be given hereunder shall be in writing and may be served, either personally or by certified or registered mail, return receipt requested, postage prepaid, to the persons and addresses set forth below or to any other address provided by one to the other from time to time in writing.

CITY:           Development and Engineering Services Director  
                  City of Tracy  
                  520 Tracy Boulevard  
                  Tracy, CA 95376

With a copy to:

                  City Attorney  
                  City of Tracy  
                  325 East Tenth Street  
                  Tracy, CA 95376

DEVELOPER:

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18. 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 Developer 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

[NAME OF DEVELOPER]

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: Mayor

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

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

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

Attest:

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: City Clerk

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

Approved As To Form:

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: City Attorney

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

Exhibit "A" - Subject Property

## EXCERPT FROM CARLSBAD'S DEVELOPMENT AGREEMENT PROCEDURES

Additional Public Benefits. A Development Agreement shall obligate the applicant to provide such additional public benefits in connection with the proposed project as the City may deem necessary or appropriate. Such additional public benefits shall be in addition to any fees, exactions or conditions which the City otherwise requires of the applicant as a condition of project approval, and may include those which, in the absence of a Development Agreement, would require compliance with Government Code Section 66000 *et seq.* Such additional public benefits may include, but not be limited to, the following, or monetary contributions to the City which may be applied by the City to accomplish one or more of the following:

- a) Construction, installation and/or ongoing maintenance or public facilities and/or public improvements other than those required as a condition of approval of the project;
- b) Acquisition and/or transfer or dedication of land to the City (or other public agency) for public use;
- c) Acquisition and/or transfer or dedication to the City of land for, development or subsidization of public parking;
- d) Monetary contributions for sand replenishment programs, ocean water quality testing and research or other programs relating to environmental quality of beach and ocean-front areas of the City;
- e) Acquisition and/or transfer or dedication to the City of land for, development and/or long-term maintenance of public safety facilities, and/or support for public safety programs and operating costs;
- f) Acquisition and/or transfer or dedication to the City of land for, development and/or long-term maintenance of public parks and recreational areas or facilities, and/or support for park or recreational programs and operating costs;
- g) Acquisition and/or transfer or dedication to the City of land for, development and/or long-term maintenance of libraries, and/or support for library programs and operating costs;
- h) Other similar public benefits not specifically designated in this Policy.

The list of particular public benefits, and the amount to be required as contributions to the City, shall be determined on a case-by-case basis with respect to each Development Agreement, and shall be subject to the approval of the City Council. The amount shall be based on factors such as, but not limited to, the economic feasibility of the proposed project and the incremental economic benefit to be obtained by the applicant by reason of the Development Agreement.

### Current and Previous Development Agreements in the City of Tracy

- 1) **Prologis, LP:** This DA dates to 2013 and pertains to property within the Cordes Ranch Specific Plan.
 

Public benefit: \$5 million community benefit payment, made over 4 years (\$1.25 million per year beginning 2016)

Developer benefit: vesting rights, development impact fee phasing
- 2) **Surland Communities, LLC:** This DA dates to 2011 and pertains to property within the Ellis Specific Plan
 

Public benefit: \$10 million payment to City for swim center, 16 acres of property at Ellis for a swim center (currently \$2 million received to date)

Developer benefit: vesting rights, utility provisions, rights to growth allotments under current Growth Management Guidelines
- 3) **Tracy Gateway, LLC:** This DA dates to 2004 and pertains to property within the Tracy Gateway Planned Unit Development.
 

Public benefit: concurrent construction of a 200 bedroom hotel, public play, par 36 golf course, a new shopping center, 200 bedroom hotel and a 200,000 sf Class A office building.  
Construction of Lammers Road ahead of required timeframes

Developer benefit: vesting rights, creation of a phase for development impact fee phasing, reservations for utility provisions for phase 1
- 4) **BA Properties, Inc.:** This DA dates to 1999 and pertains to property on the east side of Tracy Boulevard and north of Linne Road.
 

Public benefit: construction of a specified amount of office and light industrial development, tied to phasing of residential development.

Developer benefit: vesting rights, utility provisions.
- 5) **Presidio Land Company, LLC:** This DA dates to 1999 and pertains to property on the south side of Eleventh Street.
 

Public Benefit: Construction of a 27-acre public park ahead of required timeframes.

Developer Benefits: vesting rights, reservation of 550 growth allotments
- 6) **Seecon Financial and Construction Company, Inc.:** This DA dates to 1990 and pertains to property on the east side of Corral Hollow Road, south of Lowell Avenue.
 

Public benefit: participation in implementing a planning concept to provide housing diversity, encouragement of region-serving jobs, provision of infrastructure for orderly growth

Developer benefit: vesting rights, sewer utility provisions