

TRACY CITY COUNCIL

REGULAR MEETING AGENDA

**Tuesday, October 16, 2012, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

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

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

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

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

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

**Presentations to Council** - Persons who wish to make presentations which may exceed the time limits are encouraged to submit comments in writing at the earliest possible time to ensure distribution to Council and other interested parties. Requests for letters to be read into the record will be granted only upon approval of the majority of the Council. Power Point (or similar) presentations need to be provided to the City Clerk's office at least 24 hours prior to the meeting. All presentations must comply with the applicable time limits. Prior to the presentation, a hard copy of the Power Point (or similar) presentation will be provided to the City Clerk's office for inclusion in the record of the meeting and copies shall be provided to the Council. Failure to comply will result in the presentation being rejected. Any materials distributed to a majority of the Council regarding an item on the agenda shall be made available for public inspection at the City Clerk's office (address above) during regular business hours.

**Notice** - A 90 day limit is set by law for filing challenges in the Superior Court to certain City administrative decisions and orders when those decisions or orders require: (1) a hearing by law, (2) the receipt of evidence, and (3) the exercise of discretion. The 90 day limit begins on the date the decision is final (Code of Civil Procedure Section 1094.6). Further, if you challenge a City Council action in court, you may be limited, by California law, including but not limited to Government Code Section 65009, to raising only those issues you or someone else raised during the public hearing, or raised in written correspondence delivered to the City Council prior to or at the public hearing.

Full copies of the agenda are available at City Hall, 333 Civic Center Plaza, the Tracy Public Library, 20 East Eaton Avenue, and on the City's website [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)

CALL TO ORDER  
PLEDGE OF ALLEGIANCE  
INVOCATION  
ROLL CALL  
PRESENTATIONS – Swearing In – Lt. Mark Duxbury  
Proclamation – “Carbon Monoxide Awareness Month”

1. CONSENT CALENDAR

- A. Minutes Approval
- B. Authorize Federal Fiscal Year 2013 Grant Application for Section 5307 U.S. Department of Transportation Federal Transportation Administration Funds in the Amount of \$1,296,554 for Tracer Public Transportation Services and for Replacement Fixed Route Buses; Certification of Application Assurances; and the City Manager or Designee to Execute the Grant Documents
- C. Approval of 4 Resolutions to Reflect the New Employer Paid Member Contribution Rate (Including Reporting the Value) to PERS as Recently Negotiated in Labor Contracts and Employment Resolutions and Agreements
- D. Authorization to Enter into Discussion and Negotiations for a New Agreement Between the City of Tracy and Tracy Material Recovery and Solid Waste Transfer Inc. and Approve a Supplemental Appropriation of \$50,000 from The Solid Waste Fund for a Financial Consultant
- E. Adopt a Resolution Authorizing a Specialized Aeronautical Services Operator and Leased Facility Agreement With Skyview Aviation, LLC, at Tracy Municipal Airport and Authorizing the Mayor to Execute the Agreement

2. ITEMS FROM THE AUDIENCE

- 3. RECEIVE PUBLIC TESTIMONY FROM PUBLIC HEARING FOR ANNUAL UNMET TRANSIT NEEDS, CITY OF TRACY, FISCAL YEAR 2012-13
- 4. ADOPTION OF A RESOLUTION REVISING THE IMPLEMENTATION GUIDELINES OF THE RESIDENTIAL GROWTH MANAGEMENT ORDINANCE (GMO)
- 5. PROVIDE DIRECTION ON TRACY BALL PARK PROPERTY
- 6. RECEIVE UPDATE AND PROVIDE INPUT ON AIRPORT IMPROVEMENT OPTIONS
- 7. SECOND READING AND ADOPTION OF ORDINANCE 1175 AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 2.08.060(c) AND 2.08.070(b) OF CHAPTER 2.08 OF TITLE 2 OF THE TRACY MUNICIPAL CODE VESTING IN THE CITY MANAGER THE AUTHORITY TO APPOINT THE CITY CLERK AND ADDING A NEW SECTION 2.12.125 TO ARTICLE 2 OF CHAPTER 2.12 OF TITLE 2 OF THE TRACY MUNICIPAL CODE TRANSFERRING CERTAIN DUTIES OF THE CITY CLERK TO THE ADMINISTRATIVE SERVICES DIRECTOR

8. STAFF ITEMS

- A. Introduction of an Ordinance Amending Sections 9.02.050, 9.06.050 and Chapter 9.44 entitled Board of Appeals, and Deleting Section 9.44.050, of the Tracy Municipal Code to Provide that the Building Board of Appeals Will be Appointed and Convene Only When Necessary Due to the Filing of an Appeal

9. ITEMS FROM THE AUDIENCE

10. COUNCIL ITEMS

11. ADJOURNMENT

**June 19, 2011, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

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

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

The invocation was offered by Deacon Jack Ryan.

Roll call found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel and Mayor Ives present.

Leon Churchill, Jr., City Manager, presented the Employee of the Month award for June 2012, to Nathan Howell of the Fire Department.

Mayor Ives presented a proclamation to Linda Jimenez, Chairperson, Parks & Community Services Commission, recognizing July as "Parks & Recreation Month."

Sean Butler, Fire Engineer, provided a presentation on Drowning Prevention.

Arch Bakerink, Chairperson of the Measure E Residents Oversight Committee, provided the Measure E Residents Oversight Committee Report.

1. CONSENT CALENDAR -Following the removal of item 1-J, it was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
  - A. Minutes Approval – Regular meeting minutes of March 6, 2012, and closed session minutes of June 5, 2012, were approved.
  - B. Approval of Amendments to Professional Services Agreements with Various Consultants for Additional Services Required to Complete the City's Infrastructure Master Plans – Resolution 2012-116 approved the amendments.
  - C. Approval of Amendment One to the Professional Services Agreement with Design, Community and Environment, Inc. for the Preparation of an Environmental Impact Report, Assistance with the Preparation of a Specific Plan and Annexation for the Cordes Ranch Specific Plan Project – Resolution 2012-117 approved the amendment.
  - D. Report on the City's Local Vendor Preference – Report accepted
  - E. Approval of Resolutions: (1) Initiating Proceedings for the Annual Levy for Tracy Consolidated Landscape Maintenance District, (2) Preliminarily Approving the Engineer's Report for the Tracy Consolidated Landscape Maintenance District and (3) Declaring the Intention to Levy Annual Assessments and Setting the Date for the Public Hearing - Resolution 2012-118 initiated proceedings for the annual

levy and collection of assessments for the Tracy Consolidated Landscape Maintenance District (TCLMD) FY 2012/2013. Resolution 2012-119 preliminarily approved the engineer's report for the TCLMD. Resolution 2012-120 declared the City's intention to levy annual assessments. Council Member Abercrombie abstained from voting on Zone 9 and Mayor Ives abstained from voting on Zone 24.

- F. Find that it is in the Best Interest of the City to Forego the Formal Bid Process and Authorizing the Award of the Purchase of Ten Crown Victoria Police Interceptor Vehicles to Wondries Ford of Alhambra, California – Resolution 2012-121 authorized the award in the amount of \$265,288.
- G. Find that it is in the Best Interest of the City to Forego the Formal Request for Proposal Process and Authorization of the City of Tracy to Enter into a Professional Services Agreement with Delta Wireless, Inc. for Police Communications Maintenance and for the Mayor to Sign the Agreement – Resolution 2012-122 approved the award of a three-year contract with Delta Wireless.
- H. Approve and Authorize the Mayor to Execute the Amended Memorandum of Understanding between the City of Tracy and the Sister City Association of Tracy – Resolution 2012-123 approved the Memorandum of Understanding. Council Member Elliott abstained.
- I. Authorize Amendment of the City's Classification and Compensation Plans and Position Control Roster by Approving the Establishment of a Classification Specification and Salary Range for Administrative Services Director – Resolution 2012-124 approve the amendment.
- J. Approve an Agreement with Willie Nelson – Valentine Road Corporation for the Grand Theatre Presenting Season's Opening Concert and Authorize the City Manager to Sign the Agreement – Jeffrey Haskett, Cultural Arts Manager, Performing Arts, gave an update on the proposed event.

Mayor Ives invited member of the public to address Council.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2012-125 approving an agreement with Willie Nelson, Valentine Road Corporation, for the Grand Theatre presenting Season's Opening Concert. Voice vote found all in favor; passed and so ordered.

- 2. ITEMS FROM THE AUDIENCE - Kelly Hendrix, on behalf of the Tracy Repertory Theatre, thanked Council for the opportunity to be a partner in the presenting group. Ms. Hendrix stated that the Repertory Theatre had over 150 participants, volunteers, actors, production staff, and over 4,300 patrons who appreciated the arts at the Grand Theatre. Ms. Hendrix thanked Council for the vote of confidence and the opportunity to be involved with the Grand Theatre and the arts in Tracy.

Sue Rainey, Redbridge resident, asked for an update on the plans for Lammers Road. Ms. Rainey indicated there are school traffic issues causing dangerous situations.

3. PUBLIC HEARING TO HEAR AN APPEAL BY SURLAND COMMUNITIES, LLC ("SURLAND") OF TRACY GROWTH MANAGEMENT BOARD'S MAY 22, 2012 DECISION TO ALLOCATE 125 RESIDENTIAL GROWTH ALLOTMENTS ("RGAS") TO SURLAND FOR THE ELLIS PROJECT LOCATED AT THE NORTHWEST CORNER OF CORRAL HOLLOW AND LINNE ROADS (APPLICATION NUMBER RGA11-0001 AND APPEAL NUMBER APL12-0001) - Victoria Lombardo, Senior Planner, presented the staff report. On January 28, 2009, the City and Surland entered into a Development Agreement for the Ellis project. The Development Agreement contains provisions for the allocation of RGAs each year for a number of years beginning in 2009. The Tracy Growth Management Board ("GMB") allocated 125 RGAs to the Ellis project in 2009, 2010, and 2011, per the requirements of the Development Agreement.

On December 15, 2011, Surland submitted an application for the 2012 RGA Allocation Cycle, requesting 125 (RGA11-0001). On May 22, 2012, the GMB voted to approve the allocation of 125 RGAs to the Ellis project. However, this decision never became final.

On June 5, 2012, the City received two letters from Surland - one letter was a notice of appeal of the GMB's decision of May 22, 2012 to allocate RGAs to the Ellis project; the other letter formally requested withdrawal of Surland's application for RGAs.

Under the Tracy Municipal Code ("TMC"), any applicant dissatisfied with a decision of the GMB may submit a written notice of appeal to the City Clerk, (TMC, § 10.12.120). The written notice of appeal must be filed within 10 working days from the date written notice of the decision is sent (or personally delivered) to the person. A hearing must be held within 30 days of the date the notice of appeal is filed.

The decision of the City Council on the appeal is final. An RGA is not considered to be allocated until all administrative action with respect to the application (including resolution of any appeal) has been completed. Surland submitted a notice of appeal on June 5, 2012, which was within 10 working days of when Surland received notice of the GMB's decision (May 22, 2012).

Staff recommended Council adopt a resolution that: (1) acknowledges Surland has withdrawn its RGA application (RGA11-0001); (2) grants Surland's appeal (APL12-0001); and (3) determines that no RGAs will be allocated to the Ellis project during the 2012 RGA Allocation Cycle.

Mayor Ives opened the public hearing.

Les Serpa, 1024 Central Avenue, stated he supported the staff report.

Mark Connolly, 121 E. Eleventh Street, on behalf of TRAQC, stated TRAQC filed an Order to Show Cause and that was why Surland filed the appeal. Mr. Connolly provided a copy of the judgment that indicated issuing RGA's would be in contempt of the court and TRAQC would take additional action.

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

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2012-126 acknowledging that Surland Communities, LLC. has withdrawn its application for Residential Growth Allotments; granting the appeal by Surland of Tracy Growth Management Board's decision to allocate 125 RGA's to the Ellis project; and determining that no RGA's will be allocated to the Ellis project during the 2012 RGA allocation (Application Number RGA11-0001 and Appeal Number APL 12-0001). Voice vote found all in favor; passed and so ordered.

4. CITY COUNCIL DIRECTION RELATED TO PROPOSED TERMS FOR A DEVELOPMENT AGREEMENT WITH SURLAND COMMUNITIES FOR THE ELLIS PROJECT LOCATED AT THE NORTHWEST CORNER OF LINNE ROAD AND CORRAL HOLLOW ROAD, APPLICATION DA11-0002 - Bill Dean, Assistant Development Services Director, presented the staff report. Mr. Dean stated that Surland Communities recently submitted applications to begin work on approvals related to the Ellis Specific Plan project and Development Agreement (DA). On March 20, 2012, the Council directed staff to begin negotiations for proposed terms and to return to Council for further discussion and direction. The purpose of the DA is as a mechanism for the City to obtain land and financial contributions in the amount of \$10 million for construction of a family swim center in exchange for development rights for Surland to construct the Ellis project.

Negotiations have reached a point where Council direction is necessary. Upon direction from the Council staff will conclude negotiations and publish a draft DA along with an Environmental Impact Report (EIR) prior to scheduling Surland's applications for Planning Commission review and City Council consideration.

The following table provides a comparison of the basic DA terms. A heightened focus has been placed on devising a DA that enables upfront public benefit payment for swim center facilities.

#	Original DA	Proposed DA	Change
1	16 acres of land for swim center	16 acres of land for swim center	No change
2	\$10 million paid to City upon annexation for swim center	\$10 million paid to City for the swim center, with \$2 million paid upon annexation and \$8 million paid in installments no later than three years	Payment is spread over three years to coincide with cash flow needs of actual swim center construction
3	Reservation of existing wastewater treatment capacity for 500 homes	Reservation of existing wastewater treatment capacity for 800 homes	An increase of 300 homes of existing wastewater treatment capacity reservation
4	Surland pays for the existing wastewater treatment capacity	Surland does not pay for the existing wastewater capacity for 800 homes	This is a savings of approximately \$5,453,600 to Surland (800 homes x \$6,817)
5	Reservation of 500 units of existing	Reservation of 800	This is a savings of

	wastewater conveyance capacity in Corral Hollow sewer line	units of existing wastewater conveyance capacity in both Corral Hollow sewer line and Peony sewer line (temporary to eastside system)	approximately \$1,053,450 to Surland (550 homes in Corral Hollow sewer line x \$744) plus (250 homes x \$2,577)
6	Water supply from existing City supplies for the entire Ellis project	Water supply from existing supplies for the entire Ellis project	No change
7	Surland pays for the existing water supplies, water treatment and distribution system	Surland pay for the existing water treatment and for the distribution system	This is a savings of approximately \$1,700,000 to Surland (cost of water supply)
8	Recycled Water – no requirements for recycled water at Ellis	Ellis will be required to install “purple pipe” and fund fair share of new recycled water system	This represents a new added cost of approximately \$8 million dollars to the project.
9	2250 Residential Growth Allotments (RGAs) with no expiration date and 2250 Building Permits to be used at Ellis or other Surland projects.	225 RGAs and BPs annually up to 2250, with provisions to allow reductions (not below 150/year) in order to share access to RGAs by Infill and other areas. All RGAs must be used at Ellis	Very Similar to existing DA. The RGA “ramping” schedule would be replaced with a “floor” of 150/year and a “ceiling” of 225/year, with provisions to reduce allocations (not below 150/year) to help accommodate Infill and other areas. Additionally, all RGAs must be used at Ellis.
10	Term of 25 years	Term of 25 years	No change

Any application related to the Ellis project, including applications related to development agreements is funded by the applicant in accordance with a City approved Cost Recovery Agreement dated February 12, 2012.

Staff recommended that City Council discuss the proposed terms and provide direction to staff.

Council Member Abercrombie asked if based on the handout received from Mark Connolly would the Council be able to continue discussions.

Rick Jarvis, the City’s legal counsel representing the City in litigation on the Ellis project, stated in his opinion continuing consideration of the DA would not violate any injunction

issued by the court, as long as the purpose is to come into compliance with the court order.

Council Member Elliott asked if the City had received feedback from the development community regarding this proposal, and if they felt they could proceed with their individual developments given these terms.

Mr. Dean stated he had spoken with representatives from Tracy Hills and another project on Corral Hollow Road who do have concerns.

Mayor Ives clarified that the request was for Council to provide staff with direction regarding particular aspects of the DA. Mr. Dean outlined possible next steps and a timeline.

Council Member Elliott asked if this was an amended or a new agreement. Mr. Jarvis stated from a legal perspective, whether it was labeled new or amended didn't matter. Mr. Jarvis stated the court's judgment requires the City to set aside the previous approval and a revised/new agreement would have to be adopted in its entirety.

Council Member Abercrombie stated he had concerns regarding the appeal. Mr. Jarvis stated in his opinion the judge's ruling was incorrect.

Council Member Abercrombie asked if a new DA could be challenged. Mr. Jarvis stated yes and explained why.

Council Member Elliott referred to a previous effort to identify the real cost of operating the facility and an updated financial analysis and asked when that analysis would be provided to Council. Leon Churchill, City Manager, stated there was no specific date or timetable, but acknowledged that a study would be necessary. Mr. Churchill stated if and when the City is ready to move the project forward, the market study and financial analysis should be updated to the City's current economic situation.

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

Les Serpa, 1024 Central Avenue, on behalf of Surland, outlined the revised terms of the proposed DA which includes 16 acres dedicated to the City; a \$10 million contribution stretched over a longer period of time than previously committed; recycled water; and agreement to a new process to issue residential growth allotments through the Growth Management Ordinance. Mr. Serpa indicated he wanted to make one change regarding sewer capacity and would work with staff on that change.

Jerry Finch, 2406 Merced Street, San Leandro, one owner of 45 acres of property known as Kagehiro, stated he understood he would receive priority under the existing Growth Management Ordinance and sewer conveyance for up to 220-250 properties. Mr. Finch added if that was accurate his group would not have any objections to the DA that was being developed.

Mayor Pro Tem Maciel referred to the table contained in the staff report and asked if the City was bound by those figures or if they were proposed. Mayor Pro Tem Maciel asked

staff if Mr. Finch's understanding was accurate. Mr. Dean stated it was accurate, but would not necessarily agree to the sequence of events.

Council Member Elliott asked if Mr. Finch was correct when he stated he would retain priority for wastewater conveyance and whatever RGA number he needed to finish his project. Mr. Dean stated the Kagehiro Phase III project had never received any allocation of sewer capacity; however, the infrastructure, related to size, was contemplated for the project.

Council Member Elliott asked if there was sufficient capacity if that project wanted to move forward. Mr. Dean stated yes. Mr. Sharma, City Engineer, explained the infrastructure capacity on Corral Hollow Road which included oversizing in certain areas. Mr. Sharma further stated the capacity is owned by the City and has not been allocated to any project. Mr. Malik added that staff believes there is capacity for a number of projects to move forward.

John Palmer, 672 W. Eleventh Street, representing Tracy Hills, commended Council for continuing to provide facilities for the community. Mr. Palmer indicated he did not oppose the DA and was solely concerned about impacts to the Tracy Hills project. Mr. Palmer indicated staff had been diligent in responding to inquiries and asked for an additional 30 days which would not negatively impact the City or its ability to provide a swim center for the community. Mr. Palmer stated at this point he could not completely support the proposal.

Mayor Ives asked if Council provided direction, would others be included in the broader sense of the impacts of any development agreement. Mr. Dean stated development agreement negotiations were usually between one developer and the City; however, as it related to infrastructure planning, discussion is open to all parties.

Mayor Ives stated it seemed that the concerns were not about the DA, but the impacts it may have on the Growth Management Ordinance. Mr. Dean stated the DA contemplates growth allotments to this project.

Mr. Palmer suggested that Council provide explicit direction to staff to update the Growth Management Ordinance Guidelines in a way that allows others to understand the guidelines prior to adoption of a development agreement.

Celeste Garamendi, 139 W. Twelfth Street, addressed Council regarding policy issues. Ms. Garamendi suggested that direction needed to be delayed while a public hearing process occurs regarding amending the Growth Management Ordinance Guidelines.

Mayor Ives asked if the capacity and conveyance being expressed in the DA would have any impact on economic development. Mr. Malik stated staff was working on a development agreement with Cordes Ranch and that this would not impact economic development.

Arch Bakerink, 1030 Central Avenue, suggested that the Council was not in a position to provide direction on a project with so many moving parts.

Steve Nicolaou, 1060 Atherton Drive, indicated the smart thing to do would be to put off acting on the DA.

Marsha McCray, 540 W. Schulte, voiced her frustration because of seven years of delay.

Jeff Morri, 2186 Lighthouse Circle, stated he didn't believe anything that happened tonight would make Mr. Connolly happy. Mr. Morri stated it's about families and an aquatic center.

Sue Rainey, Hamlet Court, stated the former speaker said it all; build this for our families.

Mr. Bakerink asked Council to wait for the appellate decision.

Dave Helm referred to page 2 which showed a savings and asked if that was in favor of the developer. Mr. Malik stated that was correct.

Mr. Helm asked several questions regarding the appeal and summarized by stating if the City needs a pool, build it and find out how to run it.

Mayor Ives asked Mr. Jarvis to address the questions presented and specifically what time frame the City can anticipate if the court finds in the City's favor. Mr. Jarvis stated he did not expect an opinion from the court for over one year. Mr. Jarvis stated a number of different scenarios could play out and explained some of them.

Mayor Ives asked about a new Environmental Impact Report (EIR). Mr. Jarvis stated the court declared the EIR inadequate and, therefore, a new EIR would be required. Mr. Dean stated the process has begun but it would take a month or more to get it out.

Mayor Ives asked Mr. Churchill to respond to the idea if there was any voracity to the idea of letting all the developers build an aquatic center. Mr. Churchill stated there are benefits and costs that would take time to achieve. The cost is in the delay in processing the proposed DA. Mr. Churchill added as a general policy staff tries to respond to the timetables presented in the development process.

Mayor Ives asked if there was consensus among the relevant developers, what would be the next steps and what time frame would be involved. Mr. Malik indicated if there was a fee to the developer, a nexus study would be required, and if the City reaches out to a larger group of developers, it would require additional development agreements if they were asked to pay more than their fair share.

Council Member Rickman asked about assessment fees. Mr. Malik stated it was a 30 year program for build out. A Community Facilities District could be formed but the City would be limited on how much could be assessed, it might be risky to bond holders, and it could take a year or so to put together.

Council Member Rickman asked if the Growth Management Ordinance would be opened up for discussion. Mr. Dean stated yes.

Council Member Elliott asked when the financial study was done. Mr. Churchill stated his best recollection was late 2006. Council Member Elliott indicated it would be wise to update the analysis. Council Member Elliott further indicated it would be beneficial for the development community to have assurances that their projects could move forward.

Mayor Pro Tem Maciel stated the appeal process takes a long time and it made sense to have a parallel plan. Mayor Pro Tem Maciel added he had talked with staff and the development community and the feedback received is that a great deal has been achieved.

Mayor Pro Tem Maciel asked Mr. Serpa what a 30 day delay would mean. Mr. Serpa outlined delays that have occurred since January and added legal and consultant charges for one month could total \$300,000.

Council Member Abercrombie stated that no matter which way the Council goes, there was going to be litigation. Council Member Abercrombie stated the Council has always discussed having money set aside for operational costs and that the aquatic center would not be a burden on the general fund.

Mayor Ives stated this is a classic community project and a number of Council's have indicated it is a great offer. The problem is that the amenity is attached to the project and there are people opposed to the project. Mayor Ives further stated the City doesn't have another viable option to build this project and if the City doesn't look for other options, it may never get an aquatic center.

Mayor Ives recommended that Council give direction to staff to pursue both options; negotiating a DA with Surland, and looking for other ways to build an aquatic center.

Council Member Rickman indicated he agreed that the project needed to be looked at as a land issue.

Mr. Dean reiterated Council's direction to staff was to pursue a dual tract; pursue the DA as outlined and amended for the purposes of moving the Surland project as a viable option while working on the Growth Management Ordinance update and make it a policy structure that is amenable to as many people as possible. Mr. Dean further stated that staff will simultaneously work on an idea on how the swim center can emerge through other avenues with other developers.

Mayor Ives agreed that was his direction. Council Member Rickman agreed; Council Member Elliott agreed in part stating other options need to be explored, but disagreed with the direction to go ahead with the proposal as written. Council Member Elliott indicated Council should give the development community another month to discuss it.

Council Member Elliott stated the City should go ahead with a study on the financial viability of the project.

Mayor Pro Tem Maciel stated he was concerned that if other alternatives were considered it would take too much time. Mayor Pro Tem Maciel indicated he would consider two weeks, but didn't want to undermine getting support of the DA.

Mayor Ives called for a recess at 9:56 p.m. The meeting was reconvened at 10:04 p.m.

Mr. Dean stated based on his understanding, staff would pursue 3 items:

1. Pursue the development agreement terms as modified at the microphone, write an EIR and specific plan with the expectation that the suite of entitlements would come back in November/December;
2. Work on the Growth Management Ordinance Guidelines update involving a public process;
3. Find alternative options for funding a capital project returning in September/October.

Council Member Abercrombie asked if the DA would include talking with the development community. Mr. Dean stated the DA negotiation would occur between Surland and the City.

Council Member Elliott asked what happened to the financial update.

Mr. Palmer stated he was concerned with Council giving staff direction to move forward with the DA and an EIR not knowing if it works or not.

Council Member Rickman asked what would happen to the DA if another way is found to fund the swim center. Mr. Dean stated it would present Council with an option as to whether it wants to pursue the DA.

Council Member Abercrombie indicated he was good with the three-pronged approach.

Council Member Elliott stated if productive conversations were occurring with the development community, Council should give them time to come to some type of agreement.

Council Member Abercrombie asked Mr. Serpa for assurances that he would continue to work with AKT. Mr. Serpa stated he was committed to working with AKT and other developers.

Mr. Churchill indicated staff could come back in September with an updated financial report.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman that staff pursue the three-pronged approach including:

1. Pursue the DA with terms as modified at the microphone and put together an EIR and specific plan with the expectation that that suite will come back in December;
2. Work on the Growth Management Ordinance Guidelines update involving a public process returning in October; and
3. Find alternative options for funding of a capital project (aquatic center) returning in September/October; along with other financial options and a financial feasibility update.

Roll call found Council Members Abercrombie, Elliott, Rickman and Mayor Ives in favor; Mayor Pro Tem Maciel opposed. Motion carried 4:1.

5. CITY COUNCIL APPROVAL OF A RESOLUTION OF INTENT TO ADOPT A SPECIFIC PLAN FOR THE NORTHEAST INDUSTRIAL AREA (NEI) - Victoria Lombardo, Senior Planner, presented the staff report. The NEI is one of the City's major employment areas. It is 870 acres and is half built-out. The entire NEI planning area is zoned Planned Unit Development (PUD), which contains development standards that have guided development since its inception.

Prior to construction, all development within a PUD must be approved through a two-step process, including a Preliminary Development Plan (PDP) and a Final Development Plan (FDP). Typically bundled for approval, PDP/FDPs must be approved by the Council, with consideration of the Planning Commission's recommendation.

Because development standards have already been adopted for the NEI area through Planning Commission and City Council review, and in an effort to streamline the process and eliminate the two steps of Planning Commission and City Council public hearings, staff proposed that the NEI project area be rezoned from PUD to "NEI Specific Plan." This would enable the NEI Specific Plan zoning designation to be written to include a Development Review approval process that could be completed at staff level by the Development Services Director. The Development Review process is used throughout the City that is not zoned PUD. This approval process would still require a public hearing for the benefit of surrounding property owners with a ten-day notice period, but could be scheduled quickly during normal working hours. This would allow the hearings and overall processes to be streamlined.

The NEI Concept Development Plan was written and adopted in 1995 in a format very similar to that of a typical Specific Plan. Staff proposed the Concept Plan be re-produced with the necessary edits (including all previous amendments) and adopted by Ordinance through a rezoning action. Adoption of the project area as a Specific Plan will not change any of the existing descriptive requirements (such as building design standards, allowable land uses, parking requirements, etc.) as those requirements have proven to be effective in creating consistently successful projects. The only exception might be to raise building height maximums by a few feet in order to accommodate current height demands. The Specific Plan will serve to streamline the approval process for these projects.

The fiscal impact of the adoption of NEI as a Specific Plan would be the cost of staff time to complete the Specific Plan document and accompanying zoning amendment, which would take approximately one month. Staff recommended that the Council approve a resolution of intent to adopt a Specific Plan for the Northeast Industrial Area (NEI).

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

Mayor Ives stated a specific plan allows for fewer minutiae as to how the area will develop, and dictates that the whole area must adhere to these guidelines.

Mayor Ives asked if there was an appeal process under the specific plan. Ms. Lombardo stated yes.

Council Member Rickman asked if Council could change the zoning process. Mr. Dean stated that zoning regulates the development standards and land use, and outlines the process to obtain permits. Mr. Malik added that having a specific plan, reduces and streamlines the process to move a project forward.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2012-127 approving a Specific Plan for the NEI. Voice vote found all in favor; passed and so ordered.

6. LABOR AGREEMENTS:

- A. ADOPT THE COMPENSATION AND BENEFITS PLAN FOR
  - i. THE LIMITED SERVICE EMPLOYEES
  - ii. THE CONFIDENTIAL MANAGEMENT GROUP
  - iii. THE TECHNICAL AND SUPPORT SERVICES UNIT (TSSU)

Leon Churchill offered a power point presentation outlining the labor agreements for consideration.

- i. LIMITED SERVICE EMPLOYEES - The budget message presented to Council on June 5, 2012, described the City's implementation of an eight point fiscal strategy over four years in an effort to equal or exceed the revenue from Measure E prior to its sunset in April 2016. This eight point plan includes: (1) Implementation of technological efficiencies, (2) Improved Economy, (3) Elimination or reduction in non-essential services or duplicated services, (4) Reprioritization of existing expenditures, (5) Continued change to the City's organizational structure, (6) Contracting of services or service redesign, (7) Reduction in number of City Departments, and (8) New labor contracts and Compensation and Benefit plans. Thus far, the City has realized approximately \$3 million in savings and generated \$1 million in increased revenue due to an improved economy and implementing four of the eight points delineated above.

This Limited Service Employee Compensation and Benefits Plan contributes to one of the City's eight point fiscal strategies: New labor contracts and Compensation and Benefits plans. It is anticipated that the City will save approximately \$1,398,247 during the term of this and the five other labor contracts.

Two key elements in the Limited Service Employee Compensation and Benefits Plan contribute to the overall target as described above. These include:

1. Shift from City to Employee Payment of the Employee Portion of CalPERS Retirement Benefit. To date, the City of Tracy has paid the full cost of the employee share of the California Public Employees Retirement System (CalPERS) benefit. The City's goal is to phase in employees paying the full share of the employee portion of the CalPERS benefit, which was previously paid by the City on behalf of the employee as an additional employee benefit. This Limited Service Employee Compensation and Benefits Plan shifts the share of the payment from the City to the employee increasing each year over the three year term of the agreement. It is anticipated that beginning July 2015, if employees of all labor groups pay the full employee contribution for the CalPERS

benefit, an ongoing annual savings of \$3 million can be realized each subsequent year.

2. No Cost of Living Adjustments (COLAs): No Cost of Living Adjustments are offered to employees during the term of this Compensation and Benefits plan. It is anticipated that the City will save approximately \$1,398,247 during the term of this and the five other labor contracts on tonight's agenda. It is anticipated that beginning July 2015, if employees of all labor groups pay the full employee contribution for the CalPERS benefit, an ongoing annual savings of \$3 million can be realized each subsequent year. This fiscal impact was considered in the FY 12/13 budget.

Staff recommended that City Council adopt the Compensation and Benefits Plan for the Limited Service Employees.

- ii. THE CONFIDENTIAL MANAGEMENT GROUP - The Confidential Management Unit Compensation and Benefits Plan relates and contributes to one of the City's eight point fiscal strategies: New labor contracts and Compensation and Benefits plans. It is anticipated that the City will save approximately \$1,398,247 during the term of this and five other labor contracts.

There are three key elements in the Confidential Management Unit Compensation and Benefits Plan that contribute to the overall target as described above. These include the following:

1. Shift from City to Employee Payment of the Employee Portion of CalPERS Retirement Benefit: To date, the City of Tracy has paid the full cost of the employee share of the California Public Employees Retirement System (CalPERS) benefit. The City's goal is to phase in employees paying the full share of the employee portion of the CalPERS benefit, which was previously paid by the City on behalf of the employee as an additional employee benefit. This Confidential Management Unit Compensation and Benefits Plan shifts the share of the payment from the City to the employee increasing each year over the three year term of the agreement. It is anticipated that beginning July 2015, if employees of all labor groups pay the full employee contribution for the CalPERS benefit, an ongoing annual savings of \$3 million can be realized each subsequent year. A one-time allocation of Flexible Leave hours is offered to employees during the three year term in exchange for the increased share of employees' contribution for the CalPERS retirement benefit.

The total savings during this three year term by having the 12 employees in this Unit contribute to CalPERS is \$304,443, an average of \$25,370 per employee. The total cost of Flexible Leave hours provided back to employees is \$195,880, an average of \$16,323 per employee. The net savings after distribution of the Flexible Leave hours is \$108,563 at the end of the contract term.

2. Continuation of Second tier CalPERS Retirement formula: On September 7, 2010, the City adopted a second tier retirement formula for employees hired on or after December 17, 2010. This second tier retirement formula assists with long

term (*i.e.* 10 years or more) efforts to reduce benefit costs. The second tier formula is 2% @ 55, and average of three consecutive highest years.

3. No Cost of Living Adjustments (COLAs): No Cost of Living Adjustments are offered to employees during the term of this Compensation and Benefits plan. The last COLA received by the Confidential Management Unit was April 1, 2009. At the end of this Plan's term, June 30, 2015, employees in this group will have gone six years without a COLA.

In addition to the three key elements of the Plan, there are two provisions of this Confidential Management Unit Compensation and Benefits Plan that should be noted - the increase in the employee contribution to future health care premium increases and the discontinuation of unpaid furloughs.

Each January, adjustments to health care premiums are made, depending on the amount of the increase. To date, the employer/employee cost split of premium increases has been 85/15; 85% City paid and 15% employee paid. Effective January 2013, the City's share will decrease to 75% of the total premium increases and the employee contribution of any future premium increases will increase to 25%.

It is estimated that during the past three years, City employees saved the City \$1.9 million through the implementation of unpaid furloughs (*one year at \$400,000, two additional years x \$600,000 for non-public safety employees, and one year of Fire employee furloughs at \$300,000*). When implementation of unpaid furloughs began three years ago, it was anticipated that this strategy was a short term solution to address the structural budget deficit.

Discontinuation of unpaid furloughs will result in an increase in the budget deficit. Lastly, a provision related to overtime Assistance By Hire /Strike Team related specifically to the Division Fire Chiefs, is added to this contract at no cost to the City and can be found on page 2 of the Compensation and Benefits Plan. The provision allows for any Division Fire Chief assigned to work with other entities in response to task force, strike team, or for "Assistance By Hire" assignments on behalf of a third party and/or Division Fire Chiefs backfilling for Division Fire Chiefs on assignment to work with other entities, are eligible for overtime compensation if the contract for such assignment, or the conditions of reimbursement from the third party, provide for reimbursement of overtime costs. The intent of this provision is to provide the Division Fire Chiefs compensation where reimbursement to the City by a third party is available. The City will not incur, nor is responsible for, payments not reimbursed by a third party.

There are no COLAs in this Compensation and Benefit plan. The total savings during this three year term by having the 12 employees in this unit contribute to CalPERS is \$304,443, an average of \$25,370 per employee. The total cost of Flexible Leave hours provided back to employees is \$195,880, an average of \$16,323 per employee. The net savings after distribution of the Flex Leave hours is \$108,563 at the end of the contract term. The City will save approximately \$1,398,247 during the term of this and the five other labor contracts. It is also anticipated that beginning July 2015, if employees of all labor groups pay the full employee contribution for the CalPERS benefit, an ongoing annual savings of \$3 million can be realized each

subsequent year. Discontinuation of unpaid furloughs from the non-public safety units will result in an increase to the budget deficit of \$600,000 per year. This fiscal impact was considered in the FY 12/13 budget.

- iii. THE TECHNICAL AND SUPPORT SERVICES UNIT (TSSU) - This TSSU Compensation and Benefits Plan relates and contributes to one of the City's eight point fiscal strategies: New labor contracts and Compensation and Benefits plans. It is anticipated that the City will save approximately \$1,398,247 during the term of this and the five other labor contracts.

There are three key elements in the TSSU Compensation and Benefits Plans that contribute to the overall target as described above. These include:

1. Shift from City to Employee Payment of the Employee Portion of CalPERS Retirement Benefit: To date, the City has paid the full cost of the employee portion of the California Public Employees Retirement System (CalPERS) benefit. The City's goal is to phase in employees paying the full share of the employees' portion of the CalPERS benefit, which was previously paid by the City on behalf of the employee as an additional employee benefit. This TSSU Compensation and Benefits Plan shifts the share of the payment from the City to the employee increasing each year over the three year term of the agreement. It is anticipated that beginning July 2015, if employees of all labor groups pay the full employee contribution for the CalPERS benefit, an ongoing annual savings of \$3 million can be realized each subsequent year.

A one-time allocation of Flexible Leave hours is offered to employees during the three year term in exchange for the increased share of employees' contribution for the CalPERS retirement benefit.

The total savings during this three year term by having the 60 employees in this Unit contribute to CalPERS is \$662,471, an average of \$11,041 per employee. The total cost of Flex Leave hours provided back to employees in this Unit during this three year term is \$447,482; an average of \$7,458 per employee. The net savings after distribution of Flex Leave hours is \$214,989 at the end of the contract term.

2. Continuation of Second tier CalPERS Retirement formula: On September 7, 2010, the City adopted a second tier retirement formula for employees hired on or after December 17, 2010. This second tier retirement formula assists with long term (*i.e.* 10 years or more) efforts to reduce benefit costs. The second tier formula is 2% @ 55, and the average of three consecutive highest years.
3. No Cost of Living Adjustments (COLAs): No Cost of Living Adjustments are offered to employees during the term of this Compensation and Benefits Plan. The last COLA received by TSSU was April 1, 2009. At the end of this Plan's term on June 30, 2015, employees in this group will have gone six years without a COLA.

In addition to the three key elements of the Plan described above, there are two provisions of this TSSU Compensation and Benefits Plan that should be noted -

the increase in the employee contribution to future health care premium increases and the discontinuation of unpaid furloughs.

Increase in Employee Contribution to Future Health Care Premium Increases: Each January, adjustments to health care premiums are made, depending on the amount of the increase. Health care costs continue to rise year after year. To date, the employer/employee cost split of premium increases has been 85/15; 85% City paid and 15% employee paid. Effective January 2013, the City's share will decrease to 75% of any future premium increases and the employee contribution will increase to 25% of the total premium increases.

It is estimated that during the past three years, City employees saved the City \$1.9 million through the implementation of unpaid furloughs (*one year at \$400,000, two additional years x \$600,000 for non-public safety employees, and one year of Fire employee furloughs at \$300,000*).

When implementation of unpaid furloughs began three years ago, it was anticipated that this strategy was a short term solution to address the structural budget deficit. Discontinuation of unpaid furloughs will result in an increase in the budget deficit.

Lastly, a \$100 increase to the Uniform allowance for the Records Assistant I and II classifications (approximately seven FTEs in the TSSU Unit) is recommended.

There are no COLA increases in this Compensation and Benefits plan. The total savings during this three year term by having the 60 employees in this Unit contribute to CalPERS is \$662,471; an average of \$11,041 per employee. The total cost of Flexible Leave hours provided back to employees in this Unit during this three year term is \$447,482; an average of \$7,458 per employee. The net savings after distribution of Flexible Leave hours is \$214,989 over the three year period. The City will save approximately \$1,398,247 during the term of this and the five other labor contracts on tonight's agenda. It is anticipated that beginning July 2015, if employees of all labor groups pay the full employee contribution for the CalPERS benefit, ongoing annual savings of \$3 million can be realized each subsequent year.

Discontinuation of voluntary unpaid furloughs from the nonpublic safety units will result in an increase to the budget deficit of \$600,000 per year. This fiscal impact was considered in the FY 12/13 budget.

Staff recommended that City Council adopt the Compensation and Benefits Plan for the Technical and Support Services Unit.

Mayor Ives opened the public comment period.

Dan Hafkis, President of Tracy Fire Fighters Association, stated he believed it was a fair contract.

Bill Dean, a member of the Confidential Mid-managers Unit, thanked staff and commented on the parity and consistency across all bargaining units.

Scott Claar, representing the Mid-managers Bargaining Unit, stated the group was agreeable to the terms and appreciated the equitable treatment of all groups.

Mayor Ives closed the public comment section.

Council Member Elliott referred to the "overall savings to six units" slide regarding the annual cost of unpaid furloughs. Council Member Elliott stated that while it is a good thing that the City has put some of the structural elements in place that will get us to a better financial situation, he believed it was a missed opportunity to have gotten us closer to a balanced budget.

Mayor Pro Tem Maciel stated the plan equated to a step toward pension reform. Mayor Pro Tem Maciel indicated there are three fundamental issues with pension reform: 1) second tiers; 2) medical, and 3) employees taking over their share of pension costs. Mayor Pro Tem Maciel indicated he wished the City was saving a little more, a little faster, but the overall goal that the pension cost be assumed by the employee is a major step in that direction. Mayor Pro Tem Maciel applauded staff and the bargaining units on having reached this point.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2012-128 approving the Compensation and Benefits Plan for the Limited Service Employees. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2012-129 approving the Compensation and Benefits Plan for the Confidential Management Unit. Voice vote found Council Member Abercrombie, Rickman, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Elliott opposed. Motion carried 4:1.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2012-130 approving the Compensation and Benefits Plan for the Technical and Support Services Unit (TSSU). Voice vote found Council Member Abercrombie, Rickman, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Elliott opposed. Motion carried 4:1.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2012-131 approving the Memorandum of Understanding between the City and the Tracy Mid-Managers Bargaining Unit. Voice vote found Council Member Abercrombie, Rickman, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Elliott opposed. Motion carried 4:1.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2012-132 approving the Memorandum of Understanding between the City and the Tracy Firefighters Association, IAFF Local 3355. Voice vote found Council Member Abercrombie, Rickman, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Elliott opposed. Motion carried 4:1

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2012-133 rescinding Resolution Nos. 2007-262, 2010-039,

2010-152, and 2011-092 and adopting the Compensation and Benefits Plan for Department Heads. Voice vote found Council Member Abercrombie, Rickman, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Elliott opposed. Motion carried 4:1.

Mayor Ives asked Council if they were amenable to proceeding. Council Member Abercrombie proposed that Council consider continuing item 15A. It was Council consensus to continue consideration of item 15A.

7. APPROVAL OF AMENDMENT NO. 5 TO THE SOUTH COUNTY FIRE AUTHORITY JOINT POWERS AGREEMENT TO REVISE THE COST SPLIT BETWEEN THE CITY AND THE TRACY RURAL FIRE PROTECTION DISTRICT (DISTRICT) AND TO POSTPONE THE COMMENCEMENT DATE OF THE DISTRICT'S OBLIGATION TO FUND A THIRD PERSON AT NEW FIRE STATION 92, APPROVAL OF AN AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF TRACY AND THE DISTRICT RELATED TO PAYMENT OF LEAVE ACCRUALS OF THE DISTRICT'S FORMER EMPLOYEES, AND APPROVAL OF A COST SHARING AGREEMENT BETWEEN THE CITY AND THE DISTRICT FOR CONSTRUCTION OF NEW FIRE STATION 92 - Zane Johnston, Finance and Administrative Services Director, presented the staff report. Mr. Johnston stated that the Tracy Rural Fire Protection District (District) has experienced a decline in property taxes over the past several years. The District was able to fund its full share of fire services through FY 10-11 but expects to face continued financial challenges in FY 11-12 and for the next several years. City Staff met with a subcommittee of the Tracy Rural Board of Directors to discuss ways that the District could meet its financial obligations during this time. Staff and the District subcommittee were able to come to agreement on several important matters that will resolve this situation to the satisfaction of both the City and the District without a resulting financial burden on either party. Specifically three matters, all currently governed by certain agreements, need to be amended to implement the resolution of this issue.

The current formula for cost distribution of fire services is expressed in fixed terms. However, the fixed amount is arrived at through a formula based on minimum staffing at each station in the South County Fire Authority. If minimum staffing changes the fixed formula must be restated. Due to fiscal constraints, the District has requested two person engine companies at each of its three stations beginning July 1, 2012.

Formerly, the District requested one three person company but that station has rarely been staffed with three as the District has not been able to fund its share of overtime. Thus, the District station was reduced to two people and the District received a credit back against its overtime obligation. For FY 12-13, the District has requested the station be staffed with a two person company to avoid the complicated process of determining credit back amounts when the station has had a "defacto" staffing of two people.

To reflect this change in staffing, the formula can be used to arrive at the correct cost split. Because the cost split between the City and the District is "net of Mt. House", first the cost for Mt. House needs to be computed.

Number of stations staffed with 3 person crew (4) x 3 people x 3 (shifts) = 36  
 Number of stations staffed with 2 person crew (3) x 2 people x 3 (shifts) = 18  
 Total number of minimum staffing for FY 12-13 54

Mt. House has 9 (one station staffed by 3 people for 3 shifts) of the 54 minimum staffing and their costs for FY 12-13 will be determined accordingly. Deducting for the 9 Mt. House minimum staffing leaves 45 minimum staffing of which 27 are the City's and 18 are the District's. Therefore, the City has 60% of the minimum staffing net of Mt. House (27/45) and Rural has 40% (18/45). From this split an adjustment of 7% to the City and 7% from the Tracy Rural has historically been added to allow for variable costs associated with the City having more calls. As such, the new costs split between the City and Tracy Rural will be 67% City and 33% Rural (City 60% + 7% = 67%). The Split of 67%/33% is after deducting for Mt. House's expenses.

Because the District had previously requested a 3 person crew at one of its stations, the previous minimum staffing was 57 for the entire authority and 48 net of Mt. House. With the 7% adjustment the costs were previously split 64% City and 36% District. Because Tracy Rural is requesting a decrease in minimum staffing, 3 fire fighter positions would need to be eliminated. Staffing is determined by the total needed to serve the minimum staffing as requested by the various agencies (City, Rural and Mt. House). Currently, two firefighter positions are vacant and these have not been funded in the FY 12-13 budget. It is anticipated that the additional firefighter position can be used to offset overtime needs until attrition results in one additional vacancy. Although the City is paying a higher percentage in FY 12-13 than it did in FY 11-12 (67% vs. 64% net of Mt. House), it is not disproportionately burdened with additional costs because the 67% is being applied to a lower budget (NOT funding 2 positions) than if it had been paying 64% of a higher budget (funding the 2 positions). However, the economies of scale have been reduced because Fire Department overhead costs are now being spread over 54 positions instead of 57. The cost formula for Mt. House automatically takes into consideration any decreases or increases to the overall staffing of the Fire Authority. However, the resulting costs split net of Mt. House expenses between the City and Tracy Rural has to be recalculated and restated as it is currently expressed in a specified percentage. This requires the JPA agreement be amended to reflect the 67/33 split.

The District's share of FY 11-12 actual expenditures is expected to be greater than it has current resources to pay, if the District must also fund in FY 11-12 a payment of \$100,000 toward "smoothing" the cost of accumulated leave of its former employees. When the District and the City formed the South County Fire Authority in September 1999, the District employees became City employees. The accumulated leave (vacation and sick) of the District employees was carried forward when they became City employees. As such, the District has always been responsible for the cost of this leave.

The largest expense of this leave is associated with sick leave balances being converted to a medical insurance bank upon retirement. Prior to the current "smoothing" agreement, the District was responsible to fund the portion of the medical insurance bank of an employee which was represented by the amount of sick leave hours an employee had on the books as of September 16, 1999. This caused large swings in the amount the District had to fund each year in that years where one or more former District employee retired, the District would have to pay a much larger amount than in a year when no former District employees retired. To make this a more predictable figure, the City and the District entered into a "smoothing arrangement where the District would pay an annual amount of \$100,000 toward this liability.

The District has approximately \$1 million in leave liability for employees who have not yet retired. However, as money is paid out monthly for health insurance for a retired employee from their medical insurance bank (until their bank is exhausted), actual cash will be paid out over many years. As such, a suspension of the annual \$100,000 for FY 11-12 is not a burden upon the City nor will the City be harmed financially. This one year suspension is anticipated to be needed for FY 11-12 only, and will resume in FY 12-13.

Another area of concern for the District related to its current financial challenge is the ability to fund a 3 person crew at the new relocated Station 92 when it opens. The new Station 92 will be built on Grant Line Road east of MacArthur. At the same time, a new Station 96 will be relocated to a site on Grant Line, just east of Corral Hollow. This will enable the area from Banta to West Valley Mall to be serviced by two stations and reach calls within the City response time of minutes.

Previously, the City entered into a pre-paid services agreement with the District related to staffing at Station 92 upon its relocation. As this Station will now serve more City of Tracy residents than from its current location in Banta, the City should be responsible for more of the cost of this station. However, the District was in debt to the City and this debt was converted to a pre-paid services agreement by which the District will be responsible for the full operational costs of this station – with a three person crew – for a period of 7.5 years from the date the Station opens. Construction bids are ready for both stations and it is now expected both will be ready for occupancy on January 1, 2014.

The District is concerned it will not have the financial resources to fund a three person station by that date (having just dropped down from three people to two people at all of its stations). The City has proposed to fund the third person at this station upon its opening until July 1, 2015, at which time the District will be responsible. The 7.5 years will then start from July 1, 2015. This proposal works well for the City and the District in that the City will still have Measure E funds during this period. By postponing the start of the 7.5 year period until July 1, 2015, the City will then have the benefit of the 7.5 year period landing in years when the City no longer has Measure E funds. This will help the City financially during this time while also assisting the District during the next two years as the District's revenues are expected to increase. All new development (outside of infill) is within the District boundaries.

The final item is approval of a cost sharing agreement for construction of the new Fire Station 92. That proposed agreement has the District paying approximately 22% of the costs of building (including land acquisition costs) in exchange for the District gaining a similar percentage ownership interest in the new Fire Station 92.

Staff recommended Council adopt the attached resolutions: (1) authorizing Amendment No. 5 to the JPA Agreement revising the cost split between the City and the Tracy Rural Fire Protection District to be 67% City and 33% Rural (net of Mt. House) and setting the start date of the 7.5 year period of pre-paid services for the District to supply at a relocated Station 92 to begin July 1, 2015, (2) authorizing an Amendment to the Agreement between the City of Tracy and the Tracy Rural Fire Protection District (District) related to payment of leave accruals of the District's former employees and suspending the \$100,000 annual "smoothing" payment from the District for FY 11-12, and (3) authorizing a cost sharing agreement between the City and the District for construction of new Fire Station 92.

Council Member Abercrombie asked if Station 92 was being moved into the City why is it not the City's responsibility. Mr. Johnston stated because it will also be in the District.

Council Member Elliott asked if the new fire building had any practical effect on fire service. Mr. Johnston stated only to the effect that you would have to divide assets in the future.

Mayor Ives invited members of the public to address Council.

Robert Tanner, 1371 Rusher Street, asked about the \$100,000 suspension and what would keep the District from requesting it every year. Mr. Johnston stated the District request it reluctantly and do not have any intention to request it in the future.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2012-134 approving Amendment No. 5 to the South County Fire Authority Joint Powers Agreement to revise the cost split between the City and the Tracy Rural Fire Protection District and to postpone the commencement date of the District's obligation to fund a third person at new Fire Station 92. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2012-135 approving an amendment to the agreement between the City and the District related to payment of leave accruals of the District's former employees. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2012-136 approving the Fire Station 92 Cost Sharing Agreement between the City and Tracy Rural Fire Protection District. Voice vote found all in favor; passed and so ordered.

8. SECOND READING AND ADOPTION OF ORDINANCE 1170 AN ORDINANCE OF THE CITY OF TRACY: (1) ADDING A NEW SECTION 1.08.140 TO CHAPTER 1.08 OF THE TRACY MUNICIPAL CODE RELATING TO COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW; AND (2) ADDING A NEW SECTION 10.08.3195 TO CHAPTER 10.08 OF THE TRACY MUNICIPAL CODE CLARIFYING THAT MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION ARE NOT PERMITTED USES

The Clerk read the title of proposed Ordinance 1170.

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

A member of the public read a letter in opposition of the Council's adoption of the Ordinance.

A Tracy resident addressed Council regarding his residence that is in close proximity to another home that grows medical marijuana and its impact on his neighborhood. The resident indicated they are in danger because their neighbor grows marijuana. The resident asked that Council amend the Municipal Code thereby removing the criminal activity out of their backyard.

Another resident spoke in opposition to the Ordinance.

Amir Bushe, 933 S. Tracy Boulevard, indicated he was a medical patient who uses marijuana to control pain. Mr. Bushe stated he cannot afford to purchase his marijuana from a dispensary and needs to be able to grow his own.

Another speaker suggested alternatives such as registering grow sites thereby reducing crime.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to waive reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Ordinance 1170. Roll call vote found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel and Mayor Ives in favor. Motion carried 5:0.

Council Member Abercrombie thanked the person who respectfully presented his comments.

9. SECOND READING AND ADOPTION OF ORDINANCE 1171 AN ORDINANCE OF THE CITY OF TRACY ADDING NEW SECTIONS 10.08.255, DAY CARE HOME AND 10.08.3195, DAY CARE, TO THE TRACY MUNICIPAL CODE AND AMENDING SECTION 10.08.650, NURSERY SCHOOL OR DAY CARE CENTER, OF THE TRACY MUNICIPAL CODE

The Clerk read the title of proposed Ordinance 1171.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to waive reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Ordinance 1171. Roll call vote found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel and Mayor Ives in favor. Motion carried 5:0.

10. SECOND READING AND ADOPTION OF ORDINANCE 1172 AN ORDINANCE OF THE CITY OF TRACY AMENDING THE TRACY MUNICIPAL CODE BY AMENDING ARTICLE 35, SECTION 10.08.4440, [SIGN] DEFINITIONS; SECTION 10.08.4450 GENERAL REQUIREMENTS; SECTION 10.08.4460 STANDARDS BY SIGN TYPE; AND SECTION 10.08.4510(h), PROHIBITED SIGNS, REGARDING CITY CIVIC ORGANIZATION SIGNS

The Clerk read the title of proposed Ordinance 1172.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to waive the reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Ordinance 1172. . Roll call vote found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel and Mayor Ives in favor. Motion carried 5:0.

11. SECOND READING AND ADOPTION OF ORDINANCE 1173 AN ORDINANCE OF THE CITY OF TRACY RELATING TO REQUIREMENTS FOR CANDIDATES IN GENERAL MUNICIPAL ELECTIONS AND RESCINDING ORDINANCE 506

The Clerk read the title of proposed Ordinance 1173.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to waive the reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Ordinance 1173. Roll call vote found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel and Mayor Ives in favor. Motion carried 5:0.

12. APPOINT THREE APPLICANTS TO THE BUILDING BOARD OF APPEALS - Mayor Pro Tem Maciel stated he and Rickman interviewed three candidates and recommended that James Caling and Dennis Alegre be appointed and Jerry Yerian be reappointed to the Building Board of Appeals.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to approve the subcommittee's recommendations and appoint three applicants to the Building Board of Appeals to serve four year terms which will expire on June 16, 2016. Voice vote found all in favor; passed and so ordered.

13. APPOINT ONE APPLICANT TO THE SAN JOAQUIN COUNTY COMMISSION ON AGING - It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to approve the subcommittee's recommendation and appoint Terry Sonnefeld to the San Joaquin County Commission on Aging to serve a three year term which will expire on June 30, 2015. Voice vote found all in favor; passed and so ordered.

14. ITEMS FROM THE AUDIENCE – None.

15. COUNCIL ITEMS

A. Discuss and Provide Direction on the Establishment of a City Council Procedures and Protocol Manual, a City Council Communications Policy, and a City Council Code of Conduct – To be rescheduled.

B. Discuss Whether to Cancel the Regular City Council Meeting Scheduled for Tuesday, July 3, 2012, and Provide Direction to Staff - Maria Hurtado, Assistant City Manager, presented the staff report. Ms. Hurtado stated that there were no agenda items scheduled for the July 3, 2012, City Council meeting. Therefore, staff suggested the meeting be cancelled.

The next regularly scheduled Council meeting will be held on July 17, 2012. Should a situation arise prior to July 17, 2012, which requires Council action, a special meeting could be scheduled.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to cancel the July 3, 2012, Council meeting due to lack of agenda items. Voice vote found all in favor; passed and so ordered.

16. ADJOURNMENT - It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adjourn. Voice vote found all in favor; passed and so ordered. Time 11:45 p.m.

The above agenda was posted at the Tracy City Hall on June 14, 2012. The above are summary minutes. A recording is available at the office of the City Clerk.

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Mayor

ATTEST:

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City Clerk

AGENDA ITEM 1.B

REQUEST

**AUTHORIZE FEDERAL FISCAL YEAR 2013 GRANT APPLICATION FOR SECTION 5307 U.S. DEPARTMENT OF TRANSPORTATION FEDERAL TRANSPORTATION ADMINISTRATION FUNDS IN THE AMOUNT OF \$1,296,554 FOR TRACER PUBLIC TRANSPORTATION SERVICES AND FOR REPLACEMENT FIXED ROUTE BUSES; CERTIFICATION OF APPLICATION ASSURANCES; AND THE CITY MANAGER OR DESIGNEE TO EXECUTE THE GRANT DOCUMENTS**

EXECUTIVE SUMMARY

The City of Tracy is applying for Federal Transportation Administration Grant Funding. This request is for the amount of \$1,296,554 for Tracer public transportation services and for replacement fixed route buses. The application has been presented to San Joaquin Council of Governments (SJCOG), which is the Designated Recipient for these funds. Approval of this application is necessary to ensure FTA 5307 funding of the TRACER Public Transportation System and Capital Improvement Program (CIP) Transit Projects.

DISCUSSION

Annually, the City of Tracy can apply for Federal Transportation Administration (FTA) 49 U.S.C. Section 5307 Grant Funding. The available funds to the City of Tracy from FTA Section 5307, for Federal Fiscal Year 2013 (FY13) appropriation and allocation, are \$1,296,554. The Section 5307 grant funding requested in this action for Fiscal Year 2013 appropriation is the allocation of \$1,296,554.

This grant application (CA90Z006) requires certain assurances from the City that funds will be used in a manner which complies with all federal statutes, regulations, executive orders and administrative procedures applicable to the grant. Application is being made to provide grant assistance for TRACER operating assistance and for replacement fixed route buses. Operating assistance will be used to pay for 50% of the Transit Fund operating costs in FY11/12, with TDA funds making up the difference. The City will also use these funds to replace two fixed route buses.

The application has been presented to San Joaquin Council of Governments (SJCOG), which is the Designated Recipient for these funds. SJCOG, acting as the regional transportation coordinator, assures the State that total County Section 5307 funds have been programmed, that the local funding has been committed to transit operation, that needs of the elderly and handicapped have been met, and that the City has coordinated with other transportation providers and users within the Tracy area.

Approval of this application is necessary to ensure FTA 5307 funding of the TRACER Public Transportation System and Capital Improvement Program (CIP) Transit Projects. Transportation Development Act funds will be used as the matching funds for the City's portion on all projects listed below. A breakdown of the funding sources for these projects is shown below:

<b>PROJECT</b>	<b>TOTAL COST</b>	<b>FTA / 5307</b>	<b>TDA</b>
TRACER FY12 Operating Expense	\$1,753,108	\$876,554	\$876,554
Replacement Fixed Route Buses	\$525,000	\$420,000	\$105,000
<b>TOTALS</b>	<b>\$2,278,108</b>	<b>\$1,296,554</b>	<b>\$981,554</b>

STRATEGIC PLAN:

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

FISCAL IMPACT

There is no impact to the General Fund. The City's public transit services and related CIP projects for this application will be funded from the Transit Fund.

RECOMMENDATION

That the City Council, by Resolution, authorizes the Federal Fiscal Year 2013 Grant application for Section 5307 U.S. Department of Transportation Federal Transportation Administration funds in the amount of \$1,296,554 for TRACER Public Transportation Services and for replacement Fixed Route Buses; certification of application assurances; and authorize the City Manager or designee to execute the grant documents.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Rod Buchanan, Director of Parks and Community Services

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

RESOLUTION \_\_\_\_\_

AUTHORIZING FEDERAL FISCAL YEAR 2013 GRANT APPLICATION FOR SECTION 5307 U.S. DEPARTMENT OF TRANSPORTATION FEDERAL TRANSPORTATION ADMINISTRATION FUNDS IN THE AMOUNT OF \$1,296,554 FOR TRACER PUBLIC TRANSPORTATION SERVICES AND FOR REPLACEMENT FIXED ROUTE BUSES; CERTIFICATION OF APPLICATION ASSURANCES; AND THE CITY MANAGER OR DESIGNEE TO EXECUTE THE GRANT DOCUMENTS

WHEREAS, As required by 49 U.S.C. Section 5307, the Section 5307 grant application identifies the need for and use of funds to assist in transit operations, bus security cameras, and for replacement paratransit buses; and

WHEREAS, For Federal Fiscal Year 2013 appropriation and allocation, the available funds from Federal Transportation Administration Section 5307 source are \$1,296,554 and the application (CA90Z006) seeks the amount of \$1,296,554; and

WHEREAS, The San Joaquin County Council of Governments, acting as the regional transportation coordinator and Designated Recipient, assures the State that total County Section 5307 funds have been programmed, that local funding has been committed to transit operation, that needs of the elderly and disabled have been met, and that the City has coordinated with other transportation providers and users within the Tracy area; and

WHEREAS, The grant application requires the City to make certain assurances that the grant funds will be used in compliance with applicable laws, regulations and administrative or executive orders.

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy does hereby authorize the following:

1. The Federal Fiscal Year 2013 (FY13) grant application for Section 5307 U.S. Department of Transportation Federal Transportation Administration funds in the amount of \$1,296,554 for TRACER public transportation services and for replacement fixed route buses; and
2. Certification of application assurances; and
3. The City Manager or designee to execute the grant documents.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the \_\_\_\_\_ day of \_\_\_\_\_ 2012, 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

**APPROVAL OF 4 RESOLUTIONS TO REFLECT THE NEW EMPLOYER PAID MEMBER CONTRIBUTION RATE (INCLUDING REPORTING THE VALUE) TO PERS AS RECENTLY NEGOTIATED IN LABOR CONTRACTS AND EMPLOYMENT RESOLUTIONS AND AGREEMENTS**

EXECUTIVE SUMMARY

This action will approve 4 resolutions stating the amount the City will pay towards the employee share of PERS contributions. The amount the City will pay will decrease each fiscal year over three years resulting in the employee paying the entire share. This was recently negotiated with all employee groups. PERS requires updated resolutions to reflect such.

DISCUSSION

The City recently approved a number of labor contracts and employment resolutions by where employees of various bargaining groups will begin a three year phase in of paying the their full portion of the employee share of PERS. PERS requires a resolution by the governing body for each arrangement (like arrangements can be put on one resolution) to reflect the amount of the Employer Paid Member Contribution (EPMC) and value of it reported to PERS. Attached are the necessary 4 resolutions.

Group	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Police	9.0%	6.0%	3.0%	0%
Fire	9.0%	6.0%	3.0%	0%
Miscellaneous Employees	8.0%	5.34%	2.67%	0%
City Manager, City Attorney	8.0%	5.34%	2.67%	0%

FY 11-12 is listed to show that the City as an employment benefit used to pay the employee's entire share of PERS and report the value of it. The Teamsters unit is not listed on a resolution because the value of EPMC is not reported to PERS. Although identical in rate, the FY 12-13 effective date for Police (and Police Chief) was 8/22/12 vs. 7/1/12 for Fire (due to completion of negotiations)

STRATEGIC PLAN

Although this implementation item is routine in nature, the resulting savings from the previously negotiated labor contracts reflecting employee participation in PERS meets one of the City Council's Strategic Plans specifically, Organizational Efficiency Strategy, Goal 1 Advance City Council's Fiscal Policies

FISCAL IMPACT

As previously indicated when City Council approved each labor agreement, there will be savings to the City resulting from the employee paying a portion of their PERS. City wide the savings are estimated to be \$428,409 in FY 12-13, \$860,837 in FY 13-14, \$1,283,429 in FY 14-15 and then \$3,448,402 beginning in FY 15-16 when the employee will be responsible to pay all of the employee share of PERS.

RECOMMENDATION

It is recommended the City Council adopt the attached 4 resolutions which reflect the new employer paid member contribution rates to PERS as were recently negotiated in labor contracts, employment resolutions and agreements.

Prepared by: Zane Johnston, Finance Director  
Approved by: Leon Churchill, Jr., City Manager

RESOLUTION \_\_\_\_\_

RESOLUTION FOR PAYING AND REPORTING THE VALUE OF EMPLOYER PAID MEMBER CONTRIBUTIONS

WHEREAS, the governing body of the City of Tracy has the authority to implement Government Code Section 20636(c) (4) pursuant to Section 20691, and

WHEREAS, the governing body of the City of Tracy has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer, and reported as additional compensation, and

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the governing body of the City of Tracy of a Resolution to commence paying and reporting the value of said Employer Paid Member Contributions (EPMC), and

WHEREAS, the governing body of the City of Tracy has identified the following conditions for the purpose of its election to pay EPMC,

- This benefit shall apply to the City Manager and the City Attorney
- Effective 8/22/12 this benefit shall consist of paying 5.34% of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable\*\*{excluding Government Code Section 20636(c)(4)} as additional compensation
- Effective 7/1/13 this benefit shall consist of paying 2.67% of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable\*\*{excluding Government Code Section 20636(c)(4)} as additional compensation
- Effective 7/1/14 this benefit shall consist of paying 0% of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable\*\*{excluding Government Code Section 20636(c)(4)} as additional compensation

NOW, THEREFORE, BE IT RESOLVED that the governing body of the City of Tracy elects to pay and report the value of EPMC, as set forth above.

Resolution 2012-

The foregoing Resolution 2012-        was adopted by the Tracy City Council on the 16th day of October 2012, by the following vote:

AYES:            COUNCIL MEMBERS

NOES:            COUNCIL MEMBERS

ABSENT:        COUNCIL MEMBERS

ABSTAIN:       COUNCIL MEMBERS

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Mayor

ATTEST:

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City Clerk

RESOLUTION \_\_\_\_\_

RESOLUTION FOR PAYING AND REPORTING THE VALUE OF EMPLOYER PAID MEMBER CONTRIBUTIONS

WHEREAS, the governing body of the City of Tracy has the authority to implement Government Code Section 20636(c) (4) pursuant to Section 20691, and

WHEREAS, the governing body of the City of Tracy has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer, and reported as additional compensation, and

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the governing body of the City of Tracy of a Resolution to commence paying and reporting the value of said Employer Paid Member Contributions (EPMC), and

WHEREAS, the governing body of the City of Tracy has identified the following conditions for the purpose of its election to pay EPMC, and

- This benefit shall apply to all employees of the Tracy Mid-Managers Bargaining Unit, Confidential Management Unit, Technical and Support Unit and Department Heads (except the Police Chief, Fire Chief, City Manager and City Attorney)
- Effective 7/1/12 this benefit shall consist of paying 5.34% of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable\*\*{excluding Government Code Section 20636(c)(4)} as additional compensation
- Effective 7/1/13 this benefit shall consist of paying 2.67% of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable\*\*{excluding Government Code Section 20636(c)(4)} as additional compensation
- Effective 7/1/14 this benefit shall consist of paying 0% of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable\*\*{excluding Government Code Section 20636(c)(4)} as additional compensation

NOW, THEREFORE, BE IT RESOLVED that the governing body of the City of Tracy elects to pay and report the value of EPMC, as set forth above.

Resolution 2012-

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the 16th day of October, 2012, by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

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Mayor

ATTEST:

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City Clerk

RESOLUTION \_\_\_\_\_

RESOLUTION FOR PAYING AND REPORTING THE VALUE OF EMPLOYER PAID MEMBER CONTRIBUTIONS

WHEREAS, the governing body of the City of Tracy has the authority to implement Government Code Section 20636(c) (4) pursuant to Section 20691, and

WHEREAS, the governing body of the City of Tracy has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer, and reported as additional compensation, and

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the governing body of the City of Tracy of a Resolution to commence paying and reporting the value of said Employer Paid Member Contributions (EPMC), and

WHEREAS, the governing body of the City of Tracy has identified the following conditions for the purpose of its election to pay EPMC, and

- **This benefit shall apply to all employees of the Tracy Police Officers Association, the Tracy Police Managers Association, and the Chief of Police**
- **Effective August 22, 2012 this benefit shall consist of paying 6% of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable\*\*{excluding Government Code Section 20636(c)(4)} as additional compensation**
- **Effective July 1, 2013 this benefit shall consist of paying 3% of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable\*\*{excluding Government Code Section 20636(c)(4)} as additional compensation**
- **Effective July 1, 2014 this benefit shall consist of paying 0% of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable\*\*{excluding Government Code Section 20636(c)(4)} as additional compensation**

**NOW, THEREFORE, BE IT RESOLVED** that the governing body of the City of Tracy elects to pay and report the value of EPMC, as set forth above.

Resolution 2012-

The foregoing Resolution 2012-      was adopted by the Tracy City Council on the 16<sup>th</sup> day of October, 2012, by the following vote:

AYES:            COUNCIL MEMBERS

NOES:            COUNCIL MEMBERS

ABSENT:        COUNCIL MEMBERS

ABSTAIN:       COUNCIL MEMBERS

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Mayor

ATTEST:

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City Clerk

RESOLUTION \_\_\_\_\_

RESOLUTION FOR PAYING AND REPORTING THE VALUE OF EMPLOYER PAID MEMBER CONTRIBUTIONS

WHEREAS, the governing body of the City of Tracy has the authority to implement Government Code Section 20636(c) (4) pursuant to Section 20691, and

WHEREAS, the governing body of the City of Tracy has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer, and reported as additional compensation, and

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the governing body of the City of Tracy of a Resolution to commence paying and reporting the value of said Employer Paid Member Contributions (EPMC), and

WHEREAS, the governing body of the City of Tracy has identified the following conditions for the purpose of its election to pay EPMC, and

- This benefit shall apply to all employees of the Tracy Fire Union, Fire Division Chiefs and the Fire Chief
- Effective July 1, 2012 this benefit shall consist of paying 6% of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable\*\*{excluding Government Code Section 20636(c)(4)} as additional compensation
- Effective July 1, 2013 this benefit shall consist of paying 3% of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable\*\*{excluding Government Code Section 20636(c)(4)} as additional compensation
- Effective July 1, 2014 this benefit shall consist of paying 0% of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable\*\*{excluding Government Code Section 20636(c)(4)} as additional compensation
- 

NOW, THEREFORE, BE IT RESOLVED that the governing body of the City of Tracy elects to pay and report the value of EPMC, as set forth above.

Resolution 2012-

The foregoing Resolution 2012 - was adopted by the Tracy City Council on the 16th day of October, 2012, by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

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Mayor

ATTEST:

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City Clerk

AGENDA ITEM 1.D

REQUEST

**AUTHORIZATION TO ENTER INTO DISCUSSION AND NEGOTIATIONS FOR A NEW AGREEMENT BETWEEN THE CITY OF TRACY AND TRACY MATERIAL RECOVERY AND SOLID WASTE TRANSFER INC. AND APPROVE A SUPPLEMENTAL APPROPRIATION OF \$50,000 FROM THE SOLID WASTE FUND FOR A FINANCIAL CONSULTANT**

EXECUTIVE SUMMARY

The City of Tracy (City) entered into an agreement with Tracy Material Recovery and Solid Waste Transfer Inc. (Tracy MRF) on August 1, 1994. This agreement will expire May 1, 2015. For the Tracy MRF to secure financing for the future operation of the Tracy MRF, an agreement needs to be in place prior to the expiration of the current contract. Staff is requesting authorization to move forward with discussions and negotiations for a new agreement and approve a supplemental appropriation of \$50,000 for a financial consultant to evaluate the agreement. Once the negotiations are completed, staff will return to Council for approval.

DISCUSSION

The City maintains a Service Agreement with Tracy Material Recovery and Solid Waste Transfer Inc. (Tracy MRF) for the recycling, composting, processing, and disposal of solid waste. The City bills for all Tracy Disposal and Tracy MRF services within the City and maintains a Solid Waste Fund that receives all revenues from collection rates. The bonds that were issued to finance the material recovery operation will be expiring August 1, 2014. The bonds were secured by a rate covenant of the City even though the material recovery facility is owned and operated by Tracy MRF.

The current 20 year agreement expires on May 1, 2015. In order for Tracy MRF to secure private financing for capital investment in the facility that will be needed to update the facility and insure its operation for many years into the future, Tracy MRF is requesting negotiations to begin now which would conclude with a new agreement. A new agreement would enable Tracy MRF to then secure financing without the City having to pledge rates for debt service as was the case with the original bond financing used to fund the construction of the MRF.

The City entered into the current Service Agreement nearly 20 years ago. At that time, the City Council had desired that Tracy MRF be given the ability to be the owner and operator of the MRF to be constructed. But Tracy MRF was a brand new company having been formed separately from Tracy Disposal although owned by the same principals. Dealing with a new company embarking on a new horizon (the recovery and recycling of materials as opposed to the collection of solid waste) and tasked with financing the construction of a new MRF facility had challenges. The resulting Service Agreement reflected the necessity of the City to be involved in certain key areas such as the rate covenant and approving the annual operating budget of the facility. But now after nearly 20 years of efficient operation of the MRF, the company has the ability to enter into a new agreement which will be much more traditional private sector in nature as evidenced by the company's ability to secure private financing.

There are options for the City rather than entering into a new Service Agreement with Tracy MRF. The City could decide to build its own MRF and operate or contract out its operations as such. The City could invite proposals from other companies to build and operate a MRF and the City would enter into a service agreement with the selected company. However, due to the complexities of a myriad of environmental laws plus the huge capital costs to start up a brand new facility and time constraints, Staff believes entering into a new Service Agreement with Tracy MRF, would likely result in the lowest cost and best service alternative. Securing the terms of a new Service Agreement with Tracy MRF would also ensure the continued and uninterrupted ability of the City to have solid waste from its citizens and businesses continued to be processed at a MRF and ensure the ability to meet diversion goals.

When proceeding with exclusive negotiations with one company (Tracy MRF), it is important that the proposed rate to process solid waste generated from within the City of Tracy be examined for its reasonableness and competitiveness with similar operations in other like communities. In addition, the financial information resulting from the complexity of the current Service Agreement will need to be broken down and recomposed into a cost per ton or other type of ratio in order to evaluate the cost proposal of any new Service Agreement. For these reasons, Staff is also requesting a supplemental appropriation from the Solid Waste Fund of \$50,000 to hire a financial consultant, with solid waste background.

#### STRATEGIC PLAN

This agenda item supports the Organizational Efficiency Priority by continuing to provide added customer value in the customer service provided by this contract for our community.

#### FISCAL IMPACT

The fiscal impact to the Solid Waste Fund will be approximately \$50,000.

#### RECOMMENDATION

It is recommended that the City Council authorize staff to move forward with negotiations of a new agreement with Tracy Material Recovery and Solid Waste Transfer Inc. and approve a supplemental appropriation of \$50,000 for a solid waste/financial consultant.

Prepared by: Jennifer Cariglio, Management Analyst I  
Reviewed by: Kevin Tobeck, Director of Public Works  
Zane Johnston, Director of Finance  
Approved by: R. Leon Churchill, Jr., City Manager

RESOLUTION \_\_\_\_\_

AUTHORIZING STAFF TO MOVE FORWARD WITH NEGOTIATIONS OF A NEW AGREEMENT WITH TRACY MATERIAL RECOVERY AND SOLID WASTE TRANSFER INC. AND APPROVING A SUPPLEMENTAL APPROPRIATION OF \$50,000 FROM THE SOLID WASTE FUND FOR A FINANCIAL CONSULTANT

WHEREAS, The City maintains a Service Agreement with Tracy Material Recovery and Solid Waste Transfer Inc. (Tracy MRF) for the recycling, composting, processing, and disposal of solid waste, and

WHEREAS, The City bills for all Tracy Disposal and Tracy MRF services within the City and maintains a Solid Waste Fund that receives all revenues from collection rates, and

WHEREAS, The bonds that were issued to finance the material recovery operation will be expiring August 1, 2014. The bonds were secured by a rate covenant of the City even though the material recovery facility is owned and operated by Tracy MRF, and

WHEREAS, The current 20 year agreement expires on May 1, 2015, and

WHEREAS, A supplemental appropriation from the Solid Waste Fund of \$50,000 to hire a financial consultant, with solid waste background is needed, and

WHEREAS, The fiscal impact to the Solid Waste Fund will be approximately \$50,000;

NOW, THEREFORE, BE IT RESOLVED, That City Council authorizes staff to move forward with negotiations of a new Agreement with Tracy Material Recovery and Solid Waste Transfer Inc. and approves a supplemental appropriation of \$50,000 for a solid waste/financial consultant.

\*\*\*\*\*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the Tracy City Council on the 16<sup>th</sup> day of October, 2012, 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

**ADOPT A RESOLUTION AUTHORIZING A SPECIALIZED AERONAUTICAL SERVICES OPERATOR AND LEASED FACILITY AGREEMENT WITH SKYVIEW AVIATION, LLC AT TRACY MUNICIPAL AIRPORT AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT**

EXECUTIVE SUMMARY

Skyview Aviation, LLC has been operating as Specialized Aeronautical Services Operator (SASO) at the Tracy Municipal Airport since November 2007. Its current lease with the City expires December 31, 2012. Staff desires to continue in a lease agreement with Skyview Aviation, LLC and recommends that Council adopt a resolution authorizing the Mayor to execute the agreement.

DISCUSSION

On January 31, 2007, the Fixed Base Operator (FBO)<sup>1</sup> at Tracy Municipal Airport (Airport) formally vacated the City of Tracy (City) owned hangar and office facility (Leased Facility) mid-lease. The departure of the FBO presented the City with the opportunity to commence a search for a business entity to provide commercial aeronautical services at the Airport Leased Facility. The City then sent out a Request For Proposals for a Specialized Aeronautical Services Operator (SASO)<sup>2</sup> business entity to enter into a long-term contract to lease the hangar and office facility at the Airport and to also provide commercial aeronautical services at the Airport.

Staff determined that Skyview Aviation, LLC's (Skyview) proposal was the most responsive and Skyview was the most qualified proposer. Skyview has been operating at the Tracy Municipal Airport since November 2007.

Skyview's current lease expires on December 31, 2012. Both staff and Skyview desire to continue with a lease agreement to operate at the airport. A copy of the negotiated proposed lease is attached as Exhibit A.

LEASE HIGHLIGHTS

An outline of major lease points follows:

**PURPOSE:** Skyview will assume full responsibility for the operation of a SASO at the existing City-owned hangar and office facility and provide a quality and cost efficient service for airport users.

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<sup>1</sup> Fixed Base Operator (FBO): A FBO is a commercial operator who typically offers their customers a wide spectrum of aviation services, including but not limited to aircraft mechanical and repair services, instructional aircraft and pilot training, charter services, retail product services, pilot lounge, and aircraft leasing, selling, rental and management, and aviation fuel services.

<sup>2</sup> Specialized Aeronautical Services Operator (SASO): A SASO provides their customers with aviation services similar to a FBO (see footnote 1 above) but with specific limitations and exclusions relating to aviation fuel services.

TERM: Initial term from January 1, 2013, running to December 31, 2017, with the option of two five-year contract extensions. Should the City elect to lease any portion of the undeveloped land at the Airport, the City is no longer required to negotiate with Skyview before issuing Requests for Proposals.

RENT: Skyview will pay on a monthly basis:

Monthly Rent

\$ 2,150 (beginning on January 1, 2013)  
\$ 2,215 (beginning on January 1, 2014)  
\$ 2,281 (beginning on January 1, 2015)  
\$ 2,349 (beginning on January 1, 2016)  
\$ 2,419 (beginning on January 1, 2017)

HOURS: Monday thru Friday: 9:00 AM to 5:00 PM  
Saturday and Sunday: 10:00 AM to 5:00 PM

REQUIRED AND PERMITTED ACTIVITIES: Skyview is required to undertake airframe and power plant repair, flight school, and aircraft rental. Skyview is permitted to undertake such services as avionics and instrument repair, air charter, aircraft sales, air cargo, and sport plane assembly. Skyview will make itself reasonably available as a resource in the event of a disaster and actively plan to provide fuel and equipment to support emergency medical evacuation flights and other relief flight activities as available.

CITY'S RESPONSIBILITIES: The City Council has the final authority to determine Airport policy, funding levels, grant management, services, improvement projects, capital purchases, and hangar rentals. The City has an agreement with Tracy Air Center who will be responsible for maintaining the City-owned fueling plant, and the sale of aviation fuel.

FUEL: Should Skyview decide to sell MOGAS (automotive fuel) for aviation use, they will pay the City seven cents for each gallon of MOGAS delivered to its fuel truck.

BREACH AND REMEDIES: The AGREEMENT is subject to termination by CITY in the case a number of events of breach by LESSEE that are included in Section 24 of the lease.

STRATEGIC PLAN

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

FISCAL IMPACT

The General Fund is not impacted. Lease revenues to the Airport Enterprise Fund from this agreement will continue to increase on an annual basis.

RECOMMENDATION

That the City Council adopt a Resolution authorizing a Specialized Aeronautical Services Operator and Leased Facility Agreement to Skyview Aviation, LLC, at Tracy Municipal Airport and authorize the Mayor to execute the agreement.

ATTACHMENTS

Exhibit A: Specialized Aeronautical Services Operator and Leased Facility Agreement

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Rod Buchanan, Director of Parks and Community Services Department

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

**SPECIALIZED AERONAUTICAL SERVICES OPERATOR  
AND LEASED FACILITY AGREEMENT**

1. **PARTIES:** The parties to this Specialized Aeronautical Services Operator and Lease Agreement (hereinafter "AGREEMENT") are the CITY OF TRACY, a California Municipal Corporation, ("CITY") and Skyview Aviation, LLC, a California Limited Liability Company ("LESSEE").
2. **PURPOSE:** CITY owns and operates Tracy Municipal Airport ("AIRPORT"); a public Airport located at 5749 S. Tracy Blvd., Tracy, California, as shown on the Airport Layout Plan, which plan is on file in the office of the Director of the City of Tracy Public Works Department.

The CITY's primary objective for this AGREEMENT is to have a SPECIALIZED AERONAUTICAL SERVICES OPERATOR ("SASO") at an existing City-owned hangar facility located at the AIRPORT that will, at a minimum, have full responsibility for the operations of the SASO, present a positive image for the AIRPORT, maximize revenue to the CITY, and provide a quality and cost efficient service for Airport users.

3. **DEFINITIONS:** In addition to the defined capitalized terms in quotes above and below, as used in this AGREEMENT, the following terms, shall have the following meanings:

**Air Cargo Operator:** An Entity that provides the carriage of Property under the appropriate FARs and operates Aircraft that are within the Weight Limitations established for the AIRPORT.

**Air Charter Operator:** An Entity that provides on-demand, non-scheduled passenger services and operates under the appropriate FARs (for common or private carriage) with Aircraft that are within the Weight Limitations established for the AIRPORT.

**Aircraft:** Any contrivance, now known or hereafter invented, used, or designed for navigation of or flight in the air.

**Aircraft Sales Facility:** An Entity engaged in the sale of new or used Aircraft through franchises or licensed dealership or distributorship (either on a retail or wholesale basis) of an Aircraft manufacturer or otherwise; and provides such repair, services and parts as necessary to meet any guarantee or warranty on new or used Aircraft sold by it.

**Airport Layout Plan (ALP):** A scaled graphic presentation of existing and proposed AIRPORT facilities and includes such elements as the physical AIRPORT features, wind data tabulation, location of airfield facilities and existing general aviation development. Also presented on the ALP are the runway safety areas, AIRPORT Property boundary, and revenue support areas. The

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ALP is used for planning, verifying AIRPORT data, obstruction evaluation, project coordination, and by the FAA to determine funding eligibility for future capital projects. The ALP includes the location of the existing SASO hangar and office facility (as shown on **Figure 1**, dated June 2007, which is attached hereto). The ALP is subject to change.

**Airport Operations Area (hereinafter "AOA"):** Any area of the AIRPORT used or intended to be used for landing, taking-off, or surface maneuvering of Aircraft.

**Airport Manager:** The AIRPORT shall be under the supervision of an Airport Manager appointed by the City Manager in accordance with the laws of the CITY.

**Apron:** Those paved areas of the AIRPORT within the AOA designated by the AIRPORT for the loading and unloading of passengers, servicing, fueling, or parking of Aircraft.

**Aviation Fuels:** Aviation Fuels are those specialized types of petroleum-based fuels used to power Aircraft.

**Commercial Aeronautical Activity:** Any activity that involves, makes possible, or relates to the operation of Aircraft, the purpose of such activity being to secure earnings, income, compensation, or profit, whether or not such objective(s) is accomplished. However, Commercial Aeronautical Activity at the AIRPORT shall not include any activity that does not serve General Aviation users. Commercial Aeronautical Activity does not include scheduled passenger services.

**Courtesy Vehicle:** Any vehicle used in Commercial Aeronautical Activity, other than a taxicab or vehicles regulated by the Public Utilities Commission, to transport persons, baggage, or goods, or any combination thereof, between the AIRPORT and off-AIRPORT businesses such as hotels, motels, or other attractions, and the business establishment owning or operating such vehicle, the operation of which is generally performed as a service without direct costs to the passenger.

**DOT:** The United States Department of Transportation.

**Entity:** A person, firm, corporation, association, Limited Liability Company, or partnership.

**Equipment:** All machinery, together with the necessary supplies, tools, and apparatus necessary to the proper conduct of the activity being performed.

**FAA:** The Federal Aviation Administration.

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FAR: Federal Aviation Regulation.

Fixed Based Operator (FBO): A business granted the right by the Airport sponsor to operate on an Airport and provide aeronautical services such as fueling, hangaring, Tie-Down and parking, Aircraft rental, Aircraft maintenance, and flight instruction.

Fixed Wing Airframe and Power Plant Repair: An Airframe and Power Plant Repair Facility is an Entity operating under FAR Parts 43 and 91, or Part 145, and/or certified as an FAA Repair Station, as applicable, and providing one or a combination of airframe and power plant repair services. This category of services includes the sale of Aircraft parts and accessories.

General Aviation: That portion of civil aviation that encompasses all facets of aviation except scheduled air carriers.

Hazardous Materials: Any hazardous or toxic substance, hazardous or radioactive material, or hazardous waste, pollutant or contaminant at any concentration that is or becomes regulated by the United States, the State of California, or any local government authority having jurisdiction over the AIRPORT or the LEASED FACILITY located thereon.

Improvements: All buildings, structures, and facilities, including pavement, signs and landscaping, constructed, installed or placed on, under or above any leased area by or with the concurrence of a LESSEE. Plans and specifications for all Improvements by SASO must be approved by the CITY for conformity with building, construction, and AIRPORT standards. All permits required for the Improvements must be obtained prior to construction.

MOGAS: An abbreviation for "Motor Gasoline" which is the everyday gasoline typically used in cars, but is also suitable for those Aircraft that have been specially certified for its use.

Non-exclusive: Not having the right to be the sole provider of a use or service

Personal Property: All property other than Real Property.

Real Property: Land, including all structures and Improvements on it.

Rules and Regulations: Those Rules and Regulations governing the operations of the AIRPORT, properly adopted by ordinance of the City Council, and as may be amended from time to time.

SASO: Sometimes known as single-service providers or special FBOs performing less than full services. These types of companies differ from a full-service FBO in that they typically do not operate a public fueling system and offer

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only specialized aeronautical service such as Aircraft sales, flight training, Aircraft maintenance and avionics services, for example. A “SASO” as defined in this AGREEMENT is the Entity that is authorized and required by this AGREEMENT to maintain facilities at the AIRPORT for the purpose of providing the Commercial Aeronautical Services defined in this AGREEMENT.

Sublease: A lease granted by a LESSEE to another Entity of all or part of the Property.

Tie-down: A clearly marked and paved area suitable for the parking and mooring of a single Aircraft wherein suitable Tie-Down points have been located.

Weight Limitations: The maximum allowable weight limits as of September 1, 2012, established for the AIRPORT relating to the maximum gross takeoff weight of any Aircraft. The published Weight Limitations at the AIRPORT are: (1) single wheel landing gear: 50,000 pounds gross weight capacity; (2) dual-wheel landing gear: 70,000 pounds gross weight capacity; and (3) dual-tandem landing gear: 120,000 pounds gross weight capacity. Weight limitations are subject to change.

4. **AGREEMENT:** CITY hereby leases to LESSEE, and LESSEE leases from CITY, the existing CITY-owned hangar and office facility at the AIRPORT (the “LEASED FACILITY”) as described herein subject to the rights, covenants, terms, and conditions set forth herein.

This SASO and Leased Facility Agreement (“AGREEMENT”) expressly permits the LESSEE operating as a SASO to provide certain aeronautical services as defined in Section 11. The LEASED FACILITY is located on the east side of the AIRPORT, more particularly identified in the Airport Layout Plan, attached hereto, and made a part hereof, as **Figure 1**. LESSEE’S rights under this AGREEMENT are strictly limited to the defined premises. LESSEE shall, at a minimum: (i) assume full responsibility for the operations of the SASO; (ii) present a positive image for the AIRPORT; and (iii) provide a quality and cost efficient service for AIRPORT users.

5. **INSPECTION OF PROPERTY:** LESSEE has carefully and completely examined the LEASED FACILITY, is fully informed of the condition of the premises, and is satisfied as to the suitability of the premises “AS IS” for the proposed purposes. LESSEE expressly waives any and all claims against CITY relative to the nature, condition, or suitability of the premises. Any tenant Improvements that LESSEE may desire or find necessary shall be completed at LESSEE’S sole cost and only after CITY’S prior written approval. To allow CITY to make a decision as to whether to grant such approval, LESSEE shall provide CITY with plans that show contemplated tenant Improvements with reasonably sufficient detail to allow CITY

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to fully understand the nature and scope of the proposed changes to the LEASED FACILITY.

6. **LEASED PROPERTY:** The LEASED FACILITY consists of the real Property situated in the City of Tracy, County of San Joaquin, State of California, more particularly described and shown on the Airport Layout Plan (**Figure 1**), Floor Plan (**Figure 2**), and Apron Plan (**Figure 3**), which are attached hereto and incorporated herein by reference.
  - 6.1 LESSEE, upon approval of the Airport Manager, has the right to temporary use of a portion of the Apron area, designated on the Apron Plan in red and yellow dashed lines (**Figure 3**). LESSEE may use the designated Apron area for the temporary storage of up to four fifty-three-foot long or shorter cargo containers on the surface of the Apron in the yellow dashed area only. Any Aircraft under the control of LESSEE positioned on the Apron area enclosed in red dashed lines in **Figure 3** will only be done on a temporary basis except for Aircraft owned or operated by LESSEE. LESSEE is not allowed to lease, rent, or otherwise permit any portion of the leased Apron area to be used by any third party or for any other purpose without the express written consent of the Airport Manager. LESSEE's use of the designated area shall not: (i) obstruct or impede the normal movement of Aircraft in the vicinity of the SASO Facility, Fuel Island, or (ii) prevent convenient access to the office area or restrooms by customers, or visitors. Trailers, RVs and personal motor vehicles are not allowed within the designated areas.
  - 6.2 LESSEE has the right to use of ten designated Tie-Downs as shown in the Apron Plan (**Figure 3**) within the red dashed lines. The Tie-Downs will provide sufficient space to store Aircraft, and maneuver such Aircraft into and out of each Tie-Down space, that are within the weight restrictions of the AIRPORT. The CITY reserves the right to modify, upon ten days notice, the location of the Tie-Downs due to construction, maintenance, or for reasonable cause. The designated Tie-Downs may be used by LESSEE only for the storage of Aircraft owned or operated by LESSEE, or temporary storage of Aircraft under control of LESSEE. LESSEE is not allowed to lease, rent, or otherwise permit any designated Tie-Downs to be used by any third party or for any other purpose without the express written consent of the Airport Manager.
7. **TERM:** The initial AGREEMENT period shall commence on the 1st day of January, 2013 ("COMMENCEMENT DATE"), and run through the 31st day of December, 2017.

If CITY has not notified LESSEE of any breach to this AGREEMENT which remains uncured as of the last day prior to the expiration of the initial term or an extended term, as appropriate, and upon timely request by LESSEE to CITY of its intent to extend the term prior to an option of extension hereunder, CITY shall

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grant up to two five-year term extension periods. The criteria to be used by the CITY in evaluating satisfactory performance of this agreement shall include but not be limited to LESSEE's performance of those sections of this AGREEMENT dealing with rent payment, hazardous waste management, LEASED FACILITY maintenance, insurance, compliance with laws, and effectuation of LESSEE's general responsibilities. The first extension period shall be from the 1st day of January, 2018, and run through the 31st day of December, 2022. The second extension period shall be from the 1st day of January, 2023, and run through the 31st day of December, 2027.

LESSEE shall provide CITY with written notification of LESSEE's interest in having LESSOR consider entering into any extension period contemplated under this section at least six months prior to the lease expiration date.

During such extension periods, the annual rent amount shall automatically adjust each year. The amount of such adjustment in the annual rent shall be the greater of three percent or the annual percentage increase in the Consumer Price Index ("CPI") for all urban consumers in the San Francisco-Oakland-San Jose, California area, or the Western Index, whichever is greater, for the prior calendar year. CITY shall determine the CPI and provide an invoice reflecting the adjusted amount to LESSEE by October 1st of each year. Lessee shall pay the amount of the increase beginning on January 1 of the following year.

8. **HOLDING OVER:** In the event LESSEE remains in possession of the LEASED FACILITY after the expiration of the term of this AGREEMENT, such holding over shall not be deemed to operate as a renewal or extension of this AGREEMENT, but shall only create a tenancy from month to month, which may be terminated at any time by CITY or LESSEE upon thirty days written notice. All terms and conditions of this AGREEMENT then in place shall govern the month-to-month tenancy.
9. **COMPLIANCE WITH LAWS:** In its use and operation of the LEASED FACILITY, LESSEE shall comply with all applicable statutes, ordinances, or regulations now or hereafter adopted.

**10. USE OF LEASED FACILITY:**

**10.1** LESSEE agrees that the use of the LEASED FACILITY, the development thereof, and any construction or Improvements thereon, shall be in accordance with the applicable provisions of the City of Tracy Municipal Code. Plans and specifications for all Improvements by SASO must be approved by the CITY for conformity with building, construction, and AIRPORT standards. All permits required for the Improvements must be obtained prior to construction.

**10.2** LESSEE shall use the LEASED FACILITY for the operation of a SASO as defined in this AGREEMENT. The LEASED FACILITY shall not be used for any other business or purpose without the prior written consent of the CITY. To assist CITY in making its decision whether to provide such prior written consent, LESSEE shall provide, and CITY shall review, LESSEE's business plan updates or proposals indicating any new services to be offered by SASO, including performance measures and timelines. The proposal should specify the major components, budget by major component or phase, and the expected time of completion for each component based on the scope of services outlined in the proposal. CITY may grant or deny providing such prior written consent at CITY's sole discretion; however, such consent shall not be unreasonably withheld.

**10.3** LESSEE's use of the premises shall be in accordance with all laws concerning LESSEE's use of the premises, including, without limitation, the obligation at LESSEE's cost to alter, maintain, or restore the premises, or construct Improvements in or to the premises, in compliance and conformity with all laws and government requirements relating to the condition, use, or occupancy of the premises during the term, whether foreseen or unforeseen, regardless of the cost, and regardless of when during the term the work is required.

**10.4** LESSEE shall provide all non-exclusive required and permitted activities pursuant to section 11.1 at least eight hours daily, five days a week. During non-operating hours, the LESSEE shall post or make otherwise known a telephone number or other contact provisions to permit an emergency call out.

LESSEE shall maintain at a minimum the following business hours open to the public (although not all services are required to be provided at all such times):

Monday through Friday: 9:00 AM to 5:00 PM  
Saturday and Sunday: 10:00 AM to 5:00 PM

**10.5** LESSEE may close on the following four holidays: New Year's Day, Independence Day, Thanksgiving Day, and Christmas Day.

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**10.6** A Fee Schedule describing all charges and hourly rates for services for AIRPORT patrons is to be posted at the LEASED FACILITY in plain view and kept up to date. All rates and charges will be filed with the Airport Manager.

**11. NON-EXCLUSIVE REQUIRED AND PERMITTED ACTIVITIES:** In addition to complying with any other applicable laws and regulations, LESSEE shall follow Federal Aviation Regulations for each permissible Commercial Aeronautical Activity as well as minimum acceptable qualifications and requirements of participants, level and quality of service, and other conditions, which will be required of LESSEE to conduct Commercial Aeronautical Activities at the AIRPORT. This requirement relates to the public interest in that it is intended to provide protection from irresponsible, unsafe, or inadequate service, and to ensure that those individuals or entities engaged in Commercial Aeronautical Activities at the AIRPORT are reasonably fit, willing, and able to discharge both their service obligations to their patrons.

In addition to the non-exclusive required and permitted activities, the LESSEE also may provide additional non-exclusive activities, when appropriate, such as ancillary Aircraft ground services, commercial activity support services, and air transportation services for hire. Ancillary Aircraft ground services include, but are not limited to, Aircraft services such as washing, detailing, upholstery, or other miscellaneous activities related to Aircraft services and support. If LESSEE intends to wash Aircraft, LESSEE shall submit a wash plan to Airport Manager. The wash plan will become effective in thirty days after submittal unless the Airport Manager disapproves the plan with notification prior to it becoming effective by providing notice, and such plan will be strictly adhered to. Such notification shall include a description of denial with remedies for acceptance.

Commercial activity support services include, but are not limited to, such services as ground school, simulator training, charter flight coordinators, aircrew or aviation management, or any other miscellaneous activities directly related to supporting or providing support services for a commercial activity.

Air transportation services for hire include, but are not limited to, such services as non-stop sightseeing flights (airplane or helicopter flights that begin and end at AIRPORT); aerial photography or survey; power line, underground cable or pipeline patrol; banner towing; fire fighting; crop dusting; or any other miscellaneous activities directly related to air transportation service for hire (for example, helicopter operations in construction or repair work).

Pursuant to this AGREEMENT and all applicable AIRPORT Rules and Regulations, which Rules and Regulations are subject to change during the term of this AGREEMENT, LESSEE is required to undertake and pursue, on a regular basis and consistent with industry practices, the following Commercial Aeronautical Activities:

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- 11.1 Fixed Wing Airframe and Power Plant Repair:** In addition to the general requirements in this AGREEMENT, the following minimum requirements must be met:
- 11.1.1 Ground Space, Facilities, and Accommodations:** LESSEE shall provide adequate hangar space for airframe and power plant repair services. The LESSEE shall provide sufficient paved Aircraft parking space to accommodate customer Aircraft awaiting repair without inhibiting on the AIRPORT's Aircraft movement areas.
  - 11.1.2 Environmental:** LESSEE must comply with the requirements of the CITY's Hazardous Materials Permit or any other agency requirements.
  - 11.1.3 Equipment:** LESSEE shall use commercially reasonable efforts to provide all Equipment, supplies and parts necessary to accommodate those Aircraft for which repair services will be provided.
  - 11.1.4 Licenses & Certifications:** If LESSEE applies to the FAA for Repair Station Certification under FAR Part 43 and Part 91, evidence of such application shall be submitted to the CITY.
  - 11.1.5** If LESSEE (i) engages in the overhaul and repair of turbine power plants and (ii) FAR Part 145 requires certification then within six months of initiation of operation evidence of such certification shall be filed with the Airport Manager.
  - 11.1.6** Repair personnel must be currently and properly certificated as required by the FAA with ratings appropriate to the work being performed. LESSEE shall have and provide to the AIRPORT evidence of all federal, state, and local licenses, certificates, and permits that are required to conduct the activity.
  - 11.1.7 Personnel:** LESSEE shall employ sufficient personnel who are appropriately rated by the FAA for the work being performed and who hold airframe, power plant, or Aircraft inspection ratings.
- 11.2 LESSEE shall provide Fixed Wing Flight School / Aircraft Rental.** In addition to the general requirements in this AGREEMENT, the following minimum requirements must be met:
- 11.2.1 GROUND SPACE, FACILITIES, AND ACCOMMODATIONS:** LESSEE shall provide a paved area with adequate Tie-Down facilities to park all Aircraft available for flight training and/or rental

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and adequate vehicle parking to accommodate all activities of the LESSEE and all approved sublessee(s), employees and customers.

- 11.2.2** LESSEE shall provide adequate floor space for a classroom, administrative office, and/or pilot briefing room and a lounge.
  - 11.2.3** Aircraft: LESSEE shall have available for use in flight training, either owned or under written agreement to LESSEE, at least two certificated Aircraft, maintained in an airworthy condition, appropriate to the flight training to be conducted.
  - 11.2.4** Licenses and Certifications: LESSEE shall conduct the flight school activities under FAR Part 61 or Part 141 or as permitted under other authority. If LESSEE is a FAR Part 141 approved flight school, LESSEE shall provide and display evidence of such FAA certification.
  - 11.2.5** Personnel: LESSEE shall make available sufficient flight and ground instructors who meet the standards expressed under FAR Part 91, Part 141, or as otherwise permitted for the contemplated operation. If renting Aircraft, the LESSEE shall make available a person or persons having current flight instructor ratings for the contemplated operation.
  - 11.2.6** Flight School Security: LESSEE shall comply with Department of Homeland Security (DHS) and Transportation Security Administration (TSA) requirements.
- 11.3** Pursuant to this AGREEMENT and all applicable AIRPORT Rules and Regulations, during the term of this AGREEMENT LESSEE is allowed to undertake and pursue, on a regular basis and consistent with industry practices, the following commercial aeronautical activities:
- 11.3.1** Airframe and power plant sale, installation, and repair (other than fixed wing Aircraft)
  - 11.3.2** Flight training/Aircraft rental (other than fixed wing Aircraft)
  - 11.3.3** Avionics and instrument sale, installation, and repair
  - 11.3.4** Air Charter Operator
  - 11.3.5** Aircraft Sales Facility
  - 11.3.6** Air Cargo Operator

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11.3.7 Sport Plane Assembly

11.3.8 Transient Aircraft Services: LESSEE may, but is not required to, collect and retain daily tie-down fees charged to operators of Transient Aircraft desiring overnight tie-downs at the Airport in the Transient Parking Area only. Daily tie-down fees shall not exceed \$15 per 24 hour period. Transient Aircraft do not include any Aircraft being left for more than 14 days in any calendar month as the operators of such Aircraft must obtain a Tie-Down Rental Agreement from the CITY.

Additionally, other commercial or non-commercial aeronautical or non-aeronautical activities may be proposed. In any such cases, minimum acceptable qualifications and requirements shall be developed on a case-by-case basis for such activities and incorporated into the AGREEMENT as an addendum by letter. Suitability of LESSEE being able to meet the minimum qualifications to engage in such proposed activities, and the appropriateness of the proposed activities occurring in the areas proposed, shall be determined by CITY, on a case-by-case basis, in the CITY's sole but reasonable discretion. In any such case, LESSEE shall make available sufficient personnel who are appropriately rated as may be required by the FAA for the work being performed for each activity.

12. **OPERATION OF LEASED FACILITY:** LESSEE shall continuously use the premises for the uses specified in this AGREEMENT. If the premises are destroyed or partially condemned or full use by LESSEE is unavailable, to the extent not caused in any part by LESSEE, (i) LESSEE shall be entitled to a pro rata reduction in rent during all such periods for the destroyed areas only, and (ii) LESSEE shall continue operation of its business at the premises to the extent reasonably practical during any period of reconstruction.

The maintenance and operation of facilities on the LEASED FACILITY shall at all times during the term of this AGREEMENT be under the direct supervision of LESSEE or a competent representative of LESSEE, who shall be subject at all times to the direction and control of LESSEE.

13. **IDENTIFICATION AND PERIODIC REPORTING OF STORED AIRCRAFT:** LESSEE shall, at all times, maintain a current list of all Aircraft based, hangared, inside or outside the LEASED FACILITY, containing for each Aircraft the name and address of the Aircraft owner, the Aircraft type (make, model and year), and the Aircraft registration number. LESSEE shall provide the CITY with a copy of such a list at any time the City Manager's designee tasked with managing the AIRPORT ("Airport Manager") requests same.

14. **AIRPORT DISASTER RELIEF SUPPORT:** LESSEE shall, on commercially reasonable term, make itself available as a resource in the event of a disaster and

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actively plan, within its capabilities, to provide fuel and Equipment to support emergency medical evacuation flights and other relief flight activities.

**15. CITY’S RESPONSIBILITIES:** The CITY’s responsibilities are as follows:

**15.1 Administration:** The City Council has the final control and authority to determine policy, including but not limited to funding levels, the scope of services the AIRPORT should provide, planning requirements, improvement projects and all capital purchases, including:

**15.1.1** Oversight of all AIRPORT improvements.

**15.1.2** Oversight of the AGREEMENT to monitor compliance by LESSEE.

**15.1.3** Complete all required governmental and regulatory documents required as AIRPORT sponsor.

**15.1.4** Set goals, objectives and standards for AIRPORT, including Airport Rules and Regulations and City ordinances.

**15.1.5** Oversee capital improvements and other AIRPORT projects.

**15.1.6** Installation of FAA required AIRPORT radio communication devices and maintenance and repair of all FAA required AIRPORT radio communication systems.

**15.1.7** Manage AIRPORT grants and hangar rentals.

**15.2 Maintenance of Aircraft Fueling Operation:** The CITY has a Fuel Service Operator (FSO) Agreement in effect. The FSO is responsible for maintaining the CITY-owned fueling plant and self-service fuel island including maintenance of pumps, fuel management, fuel sales and maintenance of fuel filters. LESSEE shall, to the extent reasonably possible, not interfere with the FSO or the FSO’s business operations at the AIRPORT. LESSEE’s unreasonable interference with the FSO or FSO’s business operations at the AIRPORT shall constitute a material breach of this AGREEMENT.

**16. NOISE ABATEMENT PROVISIONS:** LESSEE shall make an effort to aid in the mitigation of noise complaints, especially those resulting from night operations (between 2200 hours and 0600 hours local time), and help foster good public relations by requesting Aircraft operators to adhere to any noise abatement procedures now in existence or which may be subsequently adopted by the City Council, other jurisdictional authority, and/or promulgated by the Airport Manager.

**17. AIRPORT AIRSHOWS AND STATIC DISPLAY EVENTS:** LESSEE is hereby notified that an airshow, an AIRPORT open house, and similar static display

events may be conducted from time to time at the AIRPORT, and in the proximity of hangar portions of the LEASED FACILITY, which may cause an inconvenience to LESSEE. CITY agrees to provide reasonable advance notice of such planned events to LESSEE. During the day or days of these events, LESSEE or their customers may have limited Aircraft access to the AIRPORT or the LEASED FACILITY. If so, arrangements must be made to relocate Aircraft if LESSEE or LESSEE's customers wish to operate Aircraft during those times.

**18. SPECIAL STANDARDS OF OPERATION REGARDING AVIATION FUELS AND LUBRICANTS:**

**18.1 Aviation Fuel:** LESSEE will be allowed to operate Fuel Trucks containing automotive fuel (MOGAS) to sell to retail customers in Aircraft that are certified for automotive fuel. Any fuel trucks will be the sole responsibility of the LESSEE. Such operation is permitted when LESSEE is in compliance with all required licenses, permits and applicable regulations. LESSEE agrees to pay CITY the amount of seven cents per gallon (to be adjusted upon exercise of first option to extend AGREEMENT, with such adjustment to reflect the actual percentage increase in wholesale fuel prices between January 1, 2013, and the time of the AGREEMENT extension and then each January 1st thereafter for the remainder of the first extension and throughout the second extension) for each gallon of fuel delivered to a fuel truck whose operation is permitted herein. This fee must be remitted to CITY within ten days of the time of delivery. LESSEE agrees to allow CITY, but CITY shall not be obligated, to verify records of fuel deliveries within ten days of delivery. Unless otherwise provided herein, LESSEE shall otherwise have no right to store, offer for sale, sell or deliver any other aviation fuels or propellants, from the CITY-owned fueling concession, on the LEASED FACILITY or at the AIRPORT.

Parties hereby acknowledge that the LESSEE may, in the normal course of business, need to provide minimal short-term fuel storage which will comply with applicable Rules and Regulations.

**18.2 Aviation Lubricants:**

**18.2.1** LESSEE may store, offer for sale, sell and deliver aviation lubricants within the LEASED FACILITY.

**18.2.2** LESSEE may store, offer for sale, sell and deliver lubricants to customers for use in Aircraft stored or parked on the AIRPORT. LESSEE shall not enter into agreements with others whereby others share in the services authorized in Section 18.2.2 without the prior written consent of CITY.

**18.2.3** LESSEE shall adhere to all requirements of the Industrial Relations Department of the State of California covering requirements for the storage and dispensing of lubricants, as well as all applicable local, state, and federal regulations. LESSEE shall perform its services in a manner consistent with industry practices and in accordance with all applicable AIRPORT Rules and Regulations.

**18.2.4** The services performed under this AGREEMENT shall be provided on a fair, equal, non-discriminatory and commercially reasonable basis to all users of the AIRPORT and at commercially reasonable prices. Reasonable and non-discriminatory discounts, rebates, and other similar types of price reductions may be made, if otherwise lawful.

**18.3 Hazardous Materials Permit and Spill Plan:** LESSEE shall comply with the requirements of the San Joaquin County Hazardous Materials Permit. LESSEE shall prepare and maintain a written Spill Prevention Contingency and Control Plan. The Plan shall be subject to approval by the Fire Chief of the City of Tracy Fire Department (and the South County Fire Authority). The approved Plan shall be kept current and a copy of the most current version shall be submitted to the Airport Manager to be kept on file. LESSEE shall be liable to, and indemnify, defend, and hold harmless, the CITY for all leaks, spills, or other damage that may result through the LESSEE's handling and dispensing of Hazardous Materials.

LESSEE will always operate in a responsible manner, report all spills, leaks, or other damage related to this section. CITY agrees that the LESSEE has no liability for Hazardous Materials related damages or costs to bring the premises into compliance with Hazardous Materials regulations, whether such regulations currently exist or are later put into effect, relating to events that occurred prior, or the state of the premises prior, to LESSEE's original occupancy date (which original occupancy date includes the dates during the prior lease agreement between LESSEE and CITY).

**18.4 Safety Training for Personnel Performing Fueling Operations:** LESSEE is required to provide training for all employees performing fueling operations in LESSEE's Aircraft and in delivery of MOGAS in the proper handling of fuel products, including but not limited to proper testing of fuel products for contamination, proper grounding procedures, proper handling of different types of nozzles in use, safety and emergency shut-down procedures, and fire response. LESSEE shall further develop and maintain Standard Operating Procedures for fueling and ground handling services to include a training plan, record keeping, and emergency response procedures to fuel fires and spills.

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19. **RENT:** LESSEE shall pay to CITY all rent as set forth herein (collectively referred to as “RENT”) in accordance with the following provisions:

**19.1 Rent for Year 1:** Beginning on January 1, 2013, the RENT payment shall be **Two Thousand One Hundred Fifty and No/100 Dollars (\$2,150)** payable in advance and without demand on or before the first day of each month. RENT for any partial month shall be prorated at the rate of 1/30th of the applicable monthly RENT per day.

**19.2 Rent for Following Years:** RENT is detailed on the schedule below:

<u>Year</u>	<u>Monthly Rent</u>
2	\$ 2,215 (beginning on January 1, 2014)
3	\$ 2,281 (beginning on January 1, 2015)
4	\$ 2,349 (beginning on January 1, 2016)
5	\$ 2,419 (beginning on January 1, 2017)

**20. ADDITIONAL PAYMENT PROVISIONS:**

**20.1 Late Rent Payments:** In the event LESSEE fails to pay CITY any amount due under this AGREEMENT within five business days after such amount is due, LESSEE shall pay to CITY a liquidated damages late fee of One Hundred and No/100 Dollars (\$100) per occurrence, plus interest on said unpaid balance at a rate of one percent simple interest (1.0%) per month, from the date said payment was due and payable until paid in full. LESSEE shall pay said late fee on or before next installment of RENT is due. CITY and LESSEE hereby agree that it is and will be impracticable and extremely difficult to ascertain and fix CITY’s actual damage from any late payments and, thus, that LESSEE shall pay as liquidated damages to CITY the late fee specified in this section, which is the result of the parties’ reasonable endeavor to estimate fair average compensation therefore. Acceptance of any late fee shall not constitute a waiver of LESSEE’s default with respect to the overdue amount, nor prevent the CITY from exercising any of the other rights and remedies available to the CITY. If LESSEE fails to pay its monthly rent within ten days after the first day of the month, LESSEE shall be in default of, and in material breach of, this AGREEMENT.

**20.2 Form and Place of Payment:** All RENT shall be paid in cash or by check, certified check, or money order, payable to the City of Tracy, and must be received on or before the due date at the City of Tracy Finance Office, 333 Civic Center Plaza, Tracy, California, 95376, or at such other place as CITY may designate in writing from time to time.

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- 20.3 Returned Checks:** If a check written by LESSEE is returned for insufficient funds, CITY may impose the late fee plus a reasonable service charge in addition to any charges imposed by the bank. CITY may require LESSEE to pay RENT by certified check or money order if LESSEE's bank or banks have returned one or more personal checks in a twelve month period.
- 20.4 Security Deposit:** Upon execution of this AGREEMENT, LESSEE shall pay to CITY the sum of **Five Thousand and No/100 Dollars (\$5,000)** in cash as security ( "SECURITY DEPOSIT") for the faithful performance of the terms, covenants, and conditions of this AGREEMENT. If LESSEE is in default of this AGREEMENT, CITY may in its sole discretion use the SECURITY DEPOSIT, or any portion of it, to cure the default or compensate CITY for damages sustained by CITY resulting from LESSEE's default. Upon demand by CITY, LESSEE shall immediately pay to CITY a sum equal to the portion of the SECURITY DEPOSIT expended or applied by CITY as provided in this subsection so as to maintain the SECURITY DEPOSIT in the sum initially deposited. Upon final accounting by CITY, any balance of said deposit shall be refunded to LESSEE, without interest.
- 20.5 No Partnership or Joint Venture:** Nothing in this AGREEMENT shall be construed to render the CITY in any way or for any purpose a partner, joint venturer, or associate in any relationship with LESSEE other than that of lessor and LESSEE, nor shall this AGREEMENT be construed to authorize either to act as agent for the other.

**21. MAINTENANCE, REPAIRS AND HAZARDOUS MATERIALS:**

- 21.1 Maintenance and Repair by LESSEE:** At all times during the term of this AGREEMENT, LESSEE shall, at LESSEE's own cost and expense, keep and maintain the LEASED FACILITY and all improvements, fixtures and Equipment which may now or hereafter exist on the LEASED FACILITY, in good order and repair and in a safe and clean condition consistent with good business practices. LESSEE hereby waives the benefits of Sections 1932, 1941, and 1942 of the California Civil Code and all rights to make repairs at the expense of CITY, as provided therein. If, after thirty days notice from CITY, LESSEE fails to maintain, repair, or keep clean any part of the LEASED FACILITY or any improvements, landscaping, fixtures, or Equipment thereon as required herein, CITY may, but shall not be obligated to, enter upon the LEASED FACILITY and perform such maintenance, repair, or clean-up and LESSEE agrees to pay the costs thereof to CITY upon demand. Any unpaid sums under this section will bear simple interest at the prevailing statutory interest rate until paid in full.
- 21.2 Hazardous Materials Provisions:** As used in this AGREEMENT, the term "Hazardous Materials" shall mean any substance or material which has been determined by any state, federal or local governmental agency to be capable

of posing risk of injury to health, safety, and Property, including petroleum and petroleum products, and including, but not limited to all those materials and substances designated as hazardous or toxic presently or in the future by the U.S. Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Health Services, the California Health and Welfare Agency in connection with the Safe Water and Toxic Enforcement Act of 1986, the U.S. Department of Transportation, the U.S. Department of Agriculture, the U.S. Consumer Product Safety Commission, the U.S. Department of Health, Education and Welfare, the U.S. Food and Drug Administration or any other governmental agency now or hereafter authorized to regulate materials and substances defined as "Toxic Materials" in section 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time.

**21.2.1 LESSEE's Operations:** In conducting its operations on the AIRPORT, LESSEE shall abide and be bound by all of the following requirements:

**21.2.1.1** LESSEE shall comply with all federal, state, and local laws, requirements, and policies now or hereinafter in effect relating to Hazardous Materials and environmental conditions on, under or about the AIRPORT including, but not limited to, soil and groundwater conditions, and shall not contaminate the AIRPORT or the subsurface with any hazardous material.

**21.2.1.2** LESSEE shall restrict the use of Hazardous Materials on the LEASED FACILITY to those kinds of materials that would be normally expected in conducting the activities permitted under this AGREEMENT in a safe and prudent manner. Storage or disposal of any Hazardous Materials on the LEASED FACILITY must be done in accordance with prevailing applicable regulations.

**21.2.1.3** LESSEE shall be solely and fully responsible for the reporting of known hazardous material releases to the appropriate public agencies, when such releases are caused by or result from LESSEE's activities on the AIRPORT. LESSEE shall immediately notify CITY of any such release of Hazardous Materials, whether or not the release is in quantities that would otherwise be reportable to a public agency.

**21.2.1.4** LESSEE shall be solely and fully responsible and liable in the event LESSEE causes or permits Hazardous Materials to be released at the AIRPORT, or to enter the CITY'S sewerage or storm drainage system, soil, air, groundwater or any Improvements. LESSEE shall take all reasonable precautions to prevent any Hazardous Materials from entering into the CITY'S sewerage or storm drainage system, soil, air, groundwater, or any Improvements, or from otherwise being released on the AIRPORT. If at any time a release of such Hazardous Materials is discovered on the LEASED FACILITY, the AIRPORT, CITY'S sewerage or storm drainage system, soil, air, groundwater or any Improvements, which was caused or permitted in whole or in part by LESSEE, LESSEE's officers, agents, employees, contractors, permittees or invitees or there is the danger of such release of Hazardous Materials, LESSEE, at LESSEE's sole cost and expense, shall remove such Hazardous Materials from the AIRPORT or the groundwater underlying the AIRPORT, or the CITY'S soil, air, storm drainage and sewerage system, in accordance with requirements of all appropriate governmental authorities. In addition to all other rights and remedies of CITY hereunder, if such release of Hazardous Materials is not removed from the AIRPORT or the subsurface or groundwater underlying the AIRPORT by LESSEE within ninety days of being put on notice thereof after LESSEE, CITY, or other third party discovers such Hazardous Materials, CITY, in its discretion, may pay to have same removed and LESSEE shall reimburse CITY within ninety days of CITY'S demand for payment.

**21.2.1.5** LESSEE shall indemnify, defend, and hold CITY harmless from and against all loss, damage, liability (including all foreseeable and unforeseeable consequential damages) and expenses (including, without limitation, the cost of any required cleanup and remediation of the Hazardous Materials) which CITY may sustain as a result of the presence or clean-up of Hazardous Materials on the AIRPORT or the subsurface caused by LESSEE subsequent to the COMMENCEMENT DATE. After notice from CITY, and at the discretion of CITY, LESSEE shall cease its activities on the AIRPORT until such release or danger of release of Hazardous Materials is cured, without abatement of any fees or charges due under this

AGREEMENT, until such release or the danger of release of Hazardous Materials is cured.

**21.2.1.6** LESSEE's obligations under this section shall survive the expiration or earlier termination of this AGREEMENT for ten years after such termination for requirements in place at the time of such termination.

**21.2.2** **Records and Inspections:** LESSEE shall maintain for a period of not less than four years after the expiration or termination of this AGREEMENT, or for any longer period of time required by any applicable law, regulation, policy, and order or decree, separate and accurate daily records pertaining to the use, handling, and disposal of all Hazardous Materials at the AIRPORT.

After the expiration of said four year period, LESSEE shall notify CITY no later than sixty days prior to any proposed destruction of any of said documents; upon request by CITY, copies of all said records, documents, and information shall be delivered to CITY at CITY's cost. In addition, LESSEE shall furnish CITY with such records and such other documentation or reports as the Airport Manager, from time to time, and at any time during or after the term of this AGREEMENT, may reasonably require, at CITY's cost.

**21.3** **Stormwater Provisions:** LESSEE shall prevent its petroleum products and its other deleterious waste from entering into the sewage, runoff and storm water drainage systems serving the AIRPORT. LESSEE shall comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) of the Federal Clean Water Control Act regarding permits for stormwater discharges associated with industrial activity. LESSEE is responsible for ensuring full compliance with the California and federal stormwater laws and regulations.

**21.4** **LESSEE Leased Facility Maintenance Responsibilities:** LESSEE shall be responsible for the aspects of the maintenance of the SASO facility (a floor plan showing the approximate dimensions of the SASO is shown in **Figure 2**), including, but not limited to:

**21.4.1** Establishing an inspection program including but not limited to checking heating and air-conditioning systems, roof, emergency equipment including a first aid kit, and electrical, water, and septic systems.

**21.4.2** Maintaining the LEASED FACILITY (as designated in the yellow lines in **Figure 3**) in an organized, clean and debris-free condition at all times, including exterior and interior cleaning as needed including

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sweeping, mopping, vacuuming, replacement of restroom supplies, light bulbs, and certified fire extinguishers.

**21.4.3** Maintaining and paying monthly service fee for any LESSEE-owned security and fire alarm systems.

**21.4.4** Providing for timely maintenance.

**21.4.5** Maintaining an inventory of replacement light bulbs, and cleaning and restroom supplies, sufficient to assure timely repairs or replenishment.

**21.4.6** Maintaining relevant maintenance inspection logs.

**21.4.7** Notifying the CITY of necessary repairs not the responsibility of LESSEE.

**21.4.8** Completing all required applicable governmental and regulatory documents.

**21.4.9** Providing pest control services for in and around the LEASED FACILITY.

**21.5 CITY Leased Facility Maintenance Responsibilities:** CITY shall be responsible for the following:

**21.5.1** Any CITY-owned or installed intrusion and fire detection system.

**21.5.2** Roof.

**21.5.3** Structural components.

**21.5.4** City owned electrical and telecommunications system, including any meters.

**22. TAXES AND UTILITIES:**

**22.1 Taxes to be Paid by LESSEE:** During the term of this AGREEMENT, LESSEE shall pay or cause to be paid, prior to delinquency, any and all taxes, including possessory interest taxes, personal Property taxes, and any assessments, licenses, and fees levied or assessed as follows:

**22.1.1** On the LEASED FACILITY; against any building or other structure, land and/or Improvements or personal Property on the premises and/or LESSEE's activities.

**22.1.2** On all possessory interests subject to taxation hereunder or in the LEASED FACILITY, LESSEE recognizes and understands that this AGREEMENT may create a real Property possessory interest in LESSEE that may be subject to real Property taxes levied on such interest. CITY shall not be responsible for payment of any such tax. No such tax shall in any way reduce or substitute for the charges or fees required to be paid as a condition of this AGREEMENT or such charges or fees as may otherwise be required by the CITY.

**22.1.3** On any Improvements, fixtures, and Equipment now or hereafter existing on the LEASED FACILITY and on any personal Property situated in, on, or about the LEASED FACILITY, or in, on, or about any buildings or Improvements on the LEASED FACILITY.

It is understood, however, that LESSEE may pay any such taxes and assessments under protest without liability, cost, or expense to CITY, and in good faith contest the validity or amount thereof.

**22.1.4** The City of Tracy will be the point of sale for all of LESSEE's business transactions.

**22.2 Utilities, Trash and Refuse:** LESSEE shall pay or cause to be paid, and hold CITY free and harmless from, all charges for the installation, connection, maintenance and furnishing of utilities, utility facilities and services, including but not limited to gas, water, electricity, telephone service, cable television, sewage and other public utilities to the LEASED FACILITY during the term of this AGREEMENT and for the removal of garbage and rubbish from the LEASED FACILITY during the term of this AGREEMENT.

LESSEE shall arrange for the quick and efficient collection and disposal of recyclables, waste products, trash, clippings and refuse from the LEASED FACILITY at LEASED FACILITY at LESSEE's expense in accordance with all applicable laws and ordinances. LESSEE shall not allow recyclables, waste products, clippings, trimmings, cans, cartons, barrels, used Equipment, scrap or other debris to collect in any way on or about the LEASED FACILITY; provided, however, that same may be stored in a suitable screened and protected enclosure acceptable to CITY pending collection and removal as long as the storage does not generate odors, or attract rodents or insects. Upon failure of LESSEE to comply with the provisions of this section, the CITY may enter upon the premises, and undertake any necessary clean-up and maintenance activities. LESSEE agrees to pay reasonable and necessary costs incurred in connection therewith.

**23. INDEMNIFICATION, INSURANCE AND BONDS:**

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**23.1 Hold Harmless:** Unless caused by the CITY's sole active negligence or willful misconduct, LESSEE shall defend, indemnify and hold the CITY, its officials, directors, employees, volunteers, and agents harmless from and against any or all loss, liability, expense, claim, cost, suits, and damages of every kind, nature and description, including reasonable attorney's fees, for or on account of damage to Property or injury to persons arising from anything done or performed, or omitted to be done or performed, on the premises by LESSEE, or any activity carried on by LESSEE, LESSEE's officers, directors, employees, agents, sublessees, volunteers, or for anyone for whom LESSEE has custody and control in connection with the premises. Approval of the insurance required by this AGREEMENT does not relieve the LESSEE from liability under this hold harmless clause. Other sections of this AGREEMENT referring to defense, indemnity and hold harmless provisions shall not be construed as limiting the language of this section in any manner whatsoever.

**23.2 Insurance:** LESSEE shall procure and maintain for the duration of the AGREEMENT insurance against claims for injuries to persons or damage to Property, which may arise from, or in connection with, the LESSEE's operation, use of the Premises, which shall provided by an insurance provider as defined in Section 23.2.7. The cost of such insurance shall be borne by the LESSEE.

**23.2.1 Sublease:** LESSEE shall carry commercial general liability insurance for all sublessees or provide a certificate of insurance naming the CITY and sublessee as additional insured.

**23.2.2 Insurance Disclosure Requirement:** To the extent LESSEE, or any sublessee, conducts rental, sales, or flight training, LESSEE shall state within its rental agreements the coverages and limits provided to the student or renter by LESSEE, as well as a statement advising that additional coverage may be available to such student/renter through the purchase of an individual non-ownership liability policy. LESSEE shall provide a copy of such notice to the Airport Manager.

**23.2.3 Minimum Scope of Insurance:** Coverage shall be at least as broad as:

**23.2.3.1** Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

**23.2.3.2** Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

**23.2.3.3** Workers Compensation Insurance as required by the State of California and Employer's Liability Insurance.

**23.2.3.4** Property Insurance against all risks of loss to any tenant Improvements or betterments, excluding flood and earthquake.

**23.2.4** **Minimum Limits of Insurance:** LESSEE shall maintain limits no less than:

**23.2.4.1** **General Liability:** \$2,500,000 per occurrence for bodily injury, personal injury and Property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to LESSEE and LEASED FACILITY or the general aggregate limit shall be twice the required occurrence limit. Coverage shall include but not be limited to: blanket contractual; products/completed operations; hangar-keepers' liability, and broad form Property damage.

**23.2.4.2** **Automobile Liability:** \$1,000,000 per occurrence for bodily injury and Property damage.

**23.2.4.3** **Employer's Liability:** \$1,000,000 per occurrence for bodily injury or disease.

**23.2.4.4** **Property Insurance:** Full replacement cost.

**23.2.5** **Deductibles and Self-Insured Retentions:** Any deductibles, self-insured retentions, or sub-limits must be declared to and approved by the Airport Manager.

**23.2.6** **Other Insurance Provision:** The general liability policy is to contain, or be endorsed to contain, the following provisions:

**23.2.6.1** The CITY, its officers, elected and appointed officials, employees, agents, and volunteers are to be covered as additional insureds as respects: liability arising out of premises owned, occupied, or used by LESSEE. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, elected and appointed officials, employees, agents, or volunteers.

**23.2.6.2** LESSEE's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees,

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agents, or volunteers shall be excess of LESSEE's insurance and shall not contribute with it.

- 23.2.6.3** Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees, agents, or volunteers.
- 23.2.6.4** Coverage shall state that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 23.2.6.5** Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty days prior written notice by certified mail, return receipt requested, has been given to the CITY by the carrier.
- 23.2.7 Acceptability of Insurers:** Insurance is to be placed with insurers with a current A.M. Bests rating of no less than A: VII, licensed to do business in California.
- 23.2.8 Verification of Coverage:** LESSEE shall furnish a copy of these requirements to LESSEE's insurance agent. The agent shall furnish the Airport Manager with certificate(s) of insurance and original endorsements evidencing coverage required by this clause. By sending the requisite documents, the agent is certifying LESSEE maintains the appropriate coverage. The documents are to be signed by a person authorized by that insurer to bind coverage and endorse policies on its behalf. All documents are to be received by the Airport Manager before LESSEE takes possession, or begins work on the Premises. The CITY may for any reason require LESSEE to provide complete, certified copies of all required insurance policies affecting the coverage required by these specifications no more frequently than reasonable to verify insurance coverage. LESSEE, or its insurance agent, shall furnish the CITY with evidence of insurance thirty days prior to expiration of the current certificate(s), and direct those to:

CITY OF TRACY  
Human Resources Department  
333 Civic Center Plaza  
Tracy, CA 95376  
Attn: Risk Manager

**24. BREACH AND REMEDIES:**

**24.1 Events of Breach by LESSEE:** This AGREEMENT shall be subject to termination by CITY in the case of any one or more of the following events of breach by LESSEE:

- 24.1.1** LESSEE's failure to pay the RENT herein provided at the time fixed for payment.
- 24.1.2** LESSEE's failure to pay any taxes, including possessory interest taxes or assessments agreed to be paid by LESSEE in accordance with the terms of this AGREEMENT.
- 24.1.3** LESSEE's failure after thirty days written notice from CITY to keep, perform, or observe any term, covenant or condition of this AGREEMENT to be kept, performed or observed by LESSEE unless otherwise agreed to in writing by the CITY.
- 24.1.4** LESSEE's failure to replace any CITY provided Improvements in place on the COMMENCEMENT DATE on the LEASED FACILITY which have been destroyed due to a cause attributable to LESSEE within six months after destruction or later date if it is not reasonably commercially feasible to complete such work within such time.
- 24.1.5** LESSEE's filing of a voluntary petition in bankruptcy that will not allow for the continuation of LESSEE's business or the assignment of all or substantially all of LESSEE's assets for the benefit of LESSEE's creditors or the institution of proceedings in bankruptcy against LESSEE that will not allow for the continuation of LESSEE's business or the appointment of a receiver of the assets of LESSEE that will not allow for the continuation of LESSEE's business; provided, however, that if any such proceedings or appointments are involuntary, then they shall not be considered an event of default by LESSEE unless LESSEE fails to procure a dismissal thereof within sixty days after the institution of involuntary bankruptcy proceedings or the appointment of a receiver.
- 24.1.6** LESSEE's failure to permit inspection of the premises, after five (5) calendar days advance written notice thereof, or immediately to the

extent necessary in the event of an emergency or other urgent condition.

- 24.2 Immediate Right of Re-entry Upon Default:** Upon the issuance of an unlawful detainer by a court of competent jurisdiction, CITY, in addition to any other rights or remedies it may have, shall have the immediate right of re-entry and may remove or cause to be removed all persons and Property from the LEASED FACILITY; such Property may be removed and stored in a public warehouse or elsewhere at the cost of, with cost not exceeding the marked rate cost charged by public storage facilities and reasonable moving expenses in the city of Tracy, and for the account of, LESSEE. Should CITY elect to re-enter as provided herein, or should it take possession pursuant to legal proceedings or any notice provided for by law, it may either terminate this AGREEMENT or relet the LEASED FACILITY and Improvements thereon or any part thereof for such term or terms (which may extend beyond the term of this AGREEMENT) and such rental or re-rental and upon such other terms and conditions as CITY in its sole discretion may deem advisable, with the right to make alterations and repairs to LEASED FACILITY and Improvements.
- 24.3 Liens:** LESSEE shall keep the LEASED FACILITY and all Improvements which constitute fixtures thereon free from any and all liens arising out of any work performed, materials furnished, or obligation incurred and to pay to CITY, upon demand, the cost of discharging such liens with interest at the prevailing statutory rate from the date of such discharge, together with reasonable attorneys' fees in connection with the settlement, trial, or appeal of any such lien matter.
- 24.4 Waiver of Defaults:** No provision of this AGREEMENT may be waived except by the written consent of CITY. Any waiver by CITY of any breach by LESSEE of any of the provisions of this AGREEMENT shall not constitute a continuing waiver or a waiver of any subsequent breach by LESSEE of either the same or a different provision of this AGREEMENT. Forbearance or indulgence by CITY, in any regard, shall not constitute a waiver of any requirement under this AGREEMENT, and CITY shall be entitled to invoke any remedy available to it in equity or by law, despite such forbearance or indulgence.
- 24.5 Removal and Ownership of Improvements at Termination:** Upon the termination of this AGREEMENT for any reason, CITY shall be entitled upon its specific written request, to have the LEASED FACILITY returned to CITY in its original condition, excepting normal wear and tear, and clear of all tenant Improvements. CITY may at its option and at no cost to the CITY, take possession of all such tenant Improvements in lieu of removal by or for LESSEE. If CITY requests the removal of all tenant Improvements as described above, LESSEE shall complete the removal within ninety days

after the date of CITY'S request. If LESSEE fails to remove said Improvements within the ninety day time period, the tenant Improvements may be removed thereafter by CITY, and LESSEE agrees to pay CITY the cost of removal upon demand with interest at the highest allowable statutory rate until paid in full.

LESSEE shall have the right to remove any and all trade fixtures which LESSEE may have placed or installed upon the LEASED FACILITY; provided, however, that upon removal, LESSEE, at LESSEE's own expense, shall repair any damage resulting there from and leave the LEASED FACILITY in a clean and neat condition.

**24.6 Abandonment:** LESSEE shall not vacate or abandon the LEASED FACILITY at any time during the term of this AGREEMENT, and if LESSEE shall abandon, vacate or surrender the LEASED FACILITY or be dispossessed by process of law or otherwise, any personal Property belonging to LESSEE and left upon the LEASED FACILITY and any or all of LESSEE's Improvements and facilities thereon shall, at the option of CITY, be deemed to be abandoned by LESSEE and shall, at the option of CITY, become the Property of CITY. If LESSEE fails to claim the personal Property within forty-five days following receipt of written notice by CITY of personal Property, the personal Property shall be disposed of by any lawful means available to CITY. LESSEE shall not be deemed to have vacated or abandoned the LEASED FACILITY unless notified, under the notice provisions contained in this AGREEMENT, that CITY believes LESSEE has vacated or abandoned the LEASED FACILITY and LESSEE does not cure within thirty days.

**25. ASSIGNMENT AND SUBLEASING:**

**25.1 Assignment:** This AGREEMENT, or any part thereof, shall not be assigned or transferred by LESSEE other than to an Entity controlled by LESSEE, by process or operation of law or in any other manner, without the prior written consent of CITY, which consent shall not be unreasonably withheld. No assignee for the benefit of LESSEE's creditors, and no trustee, receiver or referee in bankruptcy shall acquire any rights under this AGREEMENT by virtue of this section. LESSEE agrees that CITY may hypothecate, pledge, assign, or transfer this AGREEMENT for any lawful purpose. Any assignment, encumbrance, or Sublease without CITY'S consent shall be voidable and, at CITY's election, shall constitute a default. No consent to any assignment, encumbrance, or Sublease shall constitute a further waiver of the provisions of this paragraph.

If LESSEE requests CITY to consent to a proposed assignment, the proposed assignee must demonstrate at least comparable professional competence and qualifications as LESSEE, and LESSEE shall pay to CITY,

whether or not consent is ultimately given, CITY's reasonable administrative costs, including costs for staff and attorney review incurred in connection with each such request.

In addition to RENT, LESSEE shall pay one percent (1%) of any sums to be paid by an assignee to LESSEE, other than to an Entity controlled by LESSEE, as consideration for the assignment of this AGREEMENT.

**25.2 LESSEE's Right to Sublease:** LESSEE shall have the right to Sublease a portion of the LEASED FACILITY, with CITY's written consent which shall not be unreasonably withheld; provided however, that the term of any Sublease shall not extend beyond the term of this AGREEMENT; any and all Subleases shall be expressly made subject to all of the terms, covenants, and conditions of this AGREEMENT, and any sublessee shall be required to comply with the AIRPORT Rules and Regulations, or any subsequent resolutions passed by the City Council. LESSEE may sublease space only for the purposes to which CITY agrees in writing. The Commercial Aeronautical Activities and business purpose shall be clearly stated in the Sublease and the sublessee shall be limited to those activities and business purposes. In the case of a partial Sublease, LESSEE shall further specify that the operation is under the direct supervision and guidance of LESSEE and subject to the terms and conditions of the AGREEMENT in effect between LESSEE and the CITY. LESSEE shall provide ground space, facilities, and accommodations sufficient for each of its permitted activities.

LESSEE immediately and irrevocably assigns to CITY, as security for LESSEE's obligations under this AGREEMENT, all rent from any subletting of all or a part of the premises as permitted by this AGREEMENT, and CITY, as assignee and as attorney-in-fact for LESSEE, or a receiver for LESSEE appointed on CITY's application, may collect such rent due subsequent to LESSEE's default and apply it toward LESSEE's obligations under this AGREEMENT with any excess amounts collected returned to LESSEE; except that, until the occurrence of an act of default by LESSEE or sublessee, LESSEE shall have the right to collect such rent.

**26. LEGAL ACTION AND MEDIATION:**

**26.1 Legal Action and Alternative Dispute Resolution:** If any dispute arises between the parties related to the interpretation or enforcement of, or compliance with, the terms and provisions of this AGREEMENT, the parties will first attempt to resolve the dispute through informal discussions. In the event a dispute cannot be resolved in this manner within fifteen days, the aggrieved party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this AGREEMENT.

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No action arising out of or relating to this AGREEMENT shall include, by consolidation, joinder or in any other manner, any person or Entity not a party to this AGREEMENT unless the United States of America is a necessary party.

In the event of litigation, the prevailing party shall recover reasonable costs of such proceedings from the non-prevailing party.

**27. GRANT AGREEMENT COVENANTS:**

**27.1 Grant Agreement Covenants:** LESSEE, its heirs, personal representatives, successors-in-interest, and assigns, as a part of the consideration hereof, shall operate under the following conditions:

**27.1.1** This AGREEMENT shall be subordinate and subject to any Grant Agreements, and Amendments thereto, by and between the United States of America, Federal Aviation Administration, and CITY, and subsequent grants and leases.

**27.1.2** LESSEE acknowledges that the CITY is subject to Federal Grant Agreement obligations (“Airport Sponsor Assurances”) as a condition precedent to granting of funds for improvement of the AIRPORT, and accordingly agrees to, and agrees to be bound by, the applicable Airport Assurances provided by the FAA. LESSEE shall comply with the most recent applicable Airport Sponsor Assurances available in the Airport Manager’s office and which may be amended from time to time, and incorporated by reference.

**27.1.3** LESSEE and sublessees shall not, on the grounds of race, color, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by applicable Federal Aviation Regulations.

**27.1.4** LESSEE shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided, that the LESSEE may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

**27.1.5** LESSEE shall comply with the requirements of the Americans with Disabilities Act, including Title III, Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities, codified as 28 Code of Federal Regulations, Part 36.

**27.1.6** LESSEE shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin,

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age, disability, or veteran status. LESSEE shall, in all solicitations or advertisements for employees placed by or on behalf of LESSEE; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, disability, or veteran status.

**27.1.7** LESSEE will send each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or worker's representative of the LESSEE's commitments under this paragraph and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**27.1.8** LESSEE agrees that if facilities are constructed, maintained, or otherwise operated on the Premises, LESSEE shall comply with all other requirements imposed pursuant to applicable Federal Regulations relating to Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and any amendments to the Regulations.

**27.1.9** LESSEE's non-compliance with any applicable Governmental Agency's or Agencies' Airport Assurance provisions shall constitute a material breach. In the event of a breach of any of the nondiscrimination covenants, the CITY or the United States shall have the right to terminate this AGREEMENT, or seek judicial enforcement of said covenants. LESSEE acknowledges that it has received and reviewed copies of the current Airport Assurance provisions. CITY shall provide, from time to time, future such Assurances for LESSEE's review.

**28. MISCELLANEOUS PROVISIONS:**

**28.1 Compliance with Laws and Regulations:** LESSEE, at LESSEE's own cost and expense, shall comply with all present and future statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state, and county or municipal, including those requiring capital Improvements to the LEASED FACILITY, relating to LESSEE's use and occupancy of the LEASED FACILITY whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of LEASED FACILITY or any portion of the LEASED FACILITY, LESSEE shall procure and maintain such license, permit, or other authorization throughout the term of this AGREEMENT. The judgment of any court of competent jurisdiction, or the admission by LESSEE in a proceeding brought against LESSEE by any government Entity, that LESSEE has violated any such statute, ordinance, regulation, or

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requirement shall be conclusive of that fact as between CITY and LESSEE and shall constitute grounds for termination of this AGREEMENT by CITY.

Notwithstanding the foregoing provisions of this section, except as hereafter provided, LESSEE shall have the right to contest by appropriate legal proceedings, but without cost or expense to CITY, the validity of any governmental charge, law, ordinance, rule, regulation or requirement of the nature set forth in this section, provided LESSEE furnishes CITY with such assurances or security (having in mind the risk involved) against loss or injury to CITY in connection therewith as they may require to CITY's sole discretion and provided LESSEE prosecutes such contest with due diligence and dispatch.

**28.2 Right to Enter (Inspection of LEASED FACILITY and Improvements):**

The parties agree that it is a material term of the AGREEMENT that CITY shall have the right, by its officers, employees, agents and contractors, to enter into and upon the LEASED FACILITY to the extent necessary giving rise to the purpose of entry and only for as long as necessary for said purpose, while the business is open and, at any time during emergencies giving rise to the necessity for entry while the business is not open, subject to giving notice to LESSEE and attempting to contact LESSEE's or its designates by telephone and providing the purpose of entry specifying which provision of this AGREEMENT CITY wants to determine compliance with or the nature of the emergency:

- 28.2.1 To make any inspection the Airport Manager in his or her sole discretion may deem expedient or desirable for the proper enforcement of the covenants, conditions, restrictions, limitations and provisions of this AGREEMENT, or any other matter relevant to this AGREEMENT;
- 28.2.2 To maintain the LEASED FACILITY, or to do repair, maintenance, alteration, clean-up, or removal under the conditions set forth herein; and
- 28.2.3 To post notices of non-responsibility for Improvements, alterations or repairs, if and when CITY shall desire to do so; provided that CITY acts reasonably to minimize any interference to LESSEE's use or occupancy of the LEASED FACILITY, all without abatement of rent to LESSEE for any loss of occupancy or quiet enjoyment of the LEASED FACILITY or said buildings, works and Improvements, and without liability on the part of CITY, its officers, agents, employees or contractors for loss or damage that may be sustained by LESSEE thereby, provided that CITY acts reasonably to minimize any interference to LESSEE's use or occupancy of the LEASED FACILITY. CITY shall provide five calendar days written notice,

prior to the inspection discussed herein. No advance notice is required to the extent necessary due to emergency circumstances.

Upon the time set for inspection, or an emergency inspection, the parties agree that the CITY may use all reasonable means to effect entry into any structure, which shall first include use of any keys provided by LESSEE, or onto any portion of the LEASED FACILITY, and that furthermore, any unavoidable damage or cost to repair arising by virtue of such entry shall be born by LESSEE, and not CITY, only if LESSEE fails to appear and cooperate in arranging entry and inspection as provided for in a notice received by LESSEE at least one business day in advance of such inspection. If any repair, maintenance, alteration, clean-up, or removal required under the terms of this AGREEMENT to be done by LESSEE is deemed by the Airport Manager to be necessary under the provisions of this AGREEMENT, the Airport Manager may demand by written notice that LESSEE do the same forthwith; and if LESSEE fails, refuses or neglects to commence and complete the same with reasonable diligence, then CITY may, but shall have no obligation to, re-enter the LEASED FACILITY and cause such repair, maintenance, alteration or removal to be done; and LESSEE agrees to pay to CITY on demand the cost thereof. The notice provisions relating to inspections, above, shall apply to this section.

LESSEE shall provide CITY the ability to gain entry into the LEASED FACILITY as provided hereunder. LESSEE shall not change or add locks without notifying CITY and will provide CITY with duplicates of any added or changed locks.

**28.3 Prevention of Trespass:** LESSEE agrees to use LESSEE's reasonable efforts to prevent unauthorized persons from gaining access to the Public AIRPORT areas through the LEASED FACILITY by installing adequate lighting, gates, doors and locks, and maintain those in good condition. LESSEE also agrees to ensure the AIRPORT's main access gate located on Tracy Blvd. is opened at the beginning of each business day and closed at the end of each business day. For the purposes of this section, the times at which a business day begins and ends are those times specified in Sections 10.4 and 10.5 of this AGREEMENT. LESSEE may, at its option, extend the hours of any business day providing that LESSEE's staff is available during those extended hours to provide an appropriate level of customer service to airport visitors entering the LEASED FACILITY. LESSEE shall develop positive key control and Apron access procedures for its staff and customers while at LESSEE's premises and comply with the pertinent reporting requirements to the FAA, the Department of Homeland Security and law enforcement agencies.

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LESSEE shall ensure that gates allowing access onto the Apron area are not left open unless staffed at all times. When opening a gate for deliveries, the gate shall be immediately closed upon entrance or exit of the delivery vehicle.

**28.4 Aircraft Leaseback, Sublease, or other Aircraft Operating Agreements:**

All Aircraft leases, leasebacks, Subleases or other Aircraft operating agreements involving Commercial Aeronautical Activity between an Aircraft owner/operator and other parties operating at the AIRPORT shall conform to minimum acceptable qualifications and requirements as described in this AGREEMENT for the respective commercial aeronautical activities being performed under the subject agreement.

All Aircraft leases, leasebacks, Subleases or other Aircraft operating agreements involving commercial Aircraft activity at or from the AIRPORT shall include the following: *“This agreement shall not violate terms and conditions of the Specialized Aeronautical Services Operator and Leased Facility Agreement between the City of Tracy and Skyview Aviation, LLC, nor shall this instrument be used for the purpose of evading any of the Tracy Municipal Airport Rules and Regulations as they currently exist or as modified in the future.”*

**29. LESSEE GENERAL RESPONSIBILITIES:** The general responsibilities of the LESSEE shall include, but not be limited to, the following:

- 29.1** Provide a manager throughout the term of the contract, who is available during periods of business operations and who has authority to independently make decisions required for the safe and efficient operation of services.
- 29.2** Manager should have at least two years experience in the management and supervision of a SASO or FBO, or comparable experience.
- 29.3** Hire all ancillary staff needed to properly operate commercial aeronautical activities, including, but not limited to management personnel, flight training and mechanics.
- 29.4** Assure that all staff present a neat appearance and conduct themselves in a courteous and professional manner at all times.
- 29.5** Maintain records regarding all accidents and injuries, subject to such accident and injury being directly related to LESSEE’s staff or customers, including contacting the CITY within one business days of any such noteworthy accident/incident, or immediately for any such accident/incident involving bodily injury or death, or such damage to moving Aircraft. One

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business day notice to the CITY is required for all such accidents involving damage to Property or non-moving Aircraft of which the LESSEE is aware.

- 29.6** Assist the CITY with marketing efforts and events as reasonably required and requested, Monday through Saturday. Comply with CITY's reasonable demands for the use of the LEASED FACILITY for CITY events.
- 29.7** If necessary, provide for an orderly transition to a different LESSEE, including providing data necessary to accomplish a smooth turnover.
- 29.8** Provide assurance of compliance, certification and verification regarding Equal Employment Opportunity policy, non-discriminatory hiring practices and all requirements imposed by the U.S. Department of Transportation, California Department of Transportation (CalTrans), and the CITY.
- 29.9** Obtain a business license from the CITY.
- 29.10** Maintain automobile insurance throughout the duration of the AGREEMENT, in an amount not less than that identified in the AGREEMENT, and naming the CITY as an additional insured, for revenue and non-revenue services, to cover LESSEE, its agents, representatives, employees and any other users of LESSEE's vehicles used in connection with the performance of commercial aeronautical activities as outlined in this Scope of Work.
- 29.11** Maintain professional liability coverage throughout the duration of the AGREEMENT to cover damages as defined herein, in an amount not less than that identified in the AGREEMENT, and naming the City of Tracy as an additional insured.
- 29.12** Maintain Workers Compensation coverage as required by the State of California.
- 29.13** Ensure that all insurance companies providing coverage to LESSEE required hereunder are insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 29.14** Post or otherwise making known telephone number(s) or other contact information sufficient to permit an emergency call to LESSEE and its designees.
- 29.15** Provide at least one representative from an Entity under control of LESSEE at the SASO premises at all times during operating hours.

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- 29.16** Make reasonable efforts to protect CITY-owned Equipment under LESSEE's control, the SASO facility, and any other AIRPORT facility under LESSEE's control from harm or damage.
- 29.17** Ensure that pets within the LEASED FACILITY are on a leash at all times per section 2.28.190 of the Tracy Municipal Code.
- 29.18** At least once per calendar quarter, attend a regular Transportation Advisory Commission (TAC) meetings subject to CITY providing notice to LESSEE of the date and location of such meetings at least seven days in advance of such meetings, and provide written monthly activity reports for presentation to the TAC. LESSEE will notify the TAC Staff Liaison of which meetings LESSEE will attend.
- 29.19 Licenses and Certifications:** LESSEE shall comply with all federal, state, county, and/or municipal laws and regulations concerning its proposed operation and if requested, provide copies of all pertinent FAA, DOT and other related permits, licenses, and certifications. LESSEE shall keep in effect and post in a prominent place all necessary or required license, permits, certifications, or ratings.

LESSEE and its personnel shall obtain and comply with, at LESSEE's sole expense, all necessary licenses, permits, certifications, or ratings required for the conduct of LESSEE's activities at the AIRPORT as required by the CITY or any other duly authorized agency prior to engaging in any activity at the AIRPORT. Upon request, LESSEE shall provide copies of such licenses, permits, certifications, or ratings to the Airport Manager not already in its or CITY's possession or control, within ten business days.

- 29.20 Personnel:** LESSEE shall make available suitable staff to be on duty during operating hours, sufficient and trained personnel in such number as are required to meet qualifications and requirements set forth herein. LESSEE shall also provide a responsible person on the leased premises to supervise the operations during all business hours.

Personnel providing services regulated under FARs shall hold all applicable Federal Aviation Administration Certificates and ratings required thereunder. LESSEE shall make available to appropriate staff all Equipment, supplies and parts necessary to accommodate applicable services. LESSEE's managers shall have sufficient experience managing a comparable activity to that proposed and shall be authorized to represent and act for and on behalf of LESSEE during all hours of activities with respect to the method, manner, and conduct of the LESSEE and LESSEE's activities. When such responsible person is not on the leased premises, such individual shall be available by telephone or pager. LESSEE shall have in LESSEE's employ, on duty, and on premises during hours of

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activity, properly trained, qualified and courteous personnel in such numbers as are required to meet these minimum acceptable qualifications and requirements and to meet the reasonable demands of the aviation public for each activity being conducted in a safe, efficient, courteous, and prompt manner. Upon request of CITY, subject to compliance with State and Federal privacy protection regulations, LESSEE shall provide information in its possession on employees such as resumes along with their experience and qualifications, contact information, photos, and descriptions.

LESSEE shall train all employees on safe driving practices while on airport property.

- 29.21 Security:** LESSEE shall designate a responsible person for the coordination and communication of all security procedures and provide the Airport Manager with the names of both the primary and secondary contacts along with twenty-four hour telephone numbers for both persons. If requested by the Airport Manager, LESSEE shall develop and maintain a security plan.
- 29.22 Motor Vehicles:** LESSEE may, at its sole discretion, provide Aircraft-to-lounge ground transportation for transient passengers and pilots, and provide a courtesy vehicle(s) to provide transportation of passengers, crews, and baggage to and from destinations on the AIRPORT and to and from local destinations.
- 29.23 Right to Amend:** In the event that the Federal Aviation Administration or the State of California requires modifications or changes in this AGREEMENT as a condition precedent to the granting of funds for the improvement of the AIRPORT or lands and Improvements, LESSEE agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions or requirements of this AGREEMENT as may be reasonably required to obtain such funds; provided, however, that in no event will LESSEE be required, pursuant to this section, to agree to an increase in rents provided for this AGREEMENT or to a change in the use to which LESSEE has put the LEASED FACILITY.
- 29.24 Consent Not to be Unreasonably Withheld:** Whenever consent is required under the terms of this AGREEMENT by either LESSEE or CITY, such consent is not to be unreasonably withheld.
- 29.25 Governing Law:** This AGREEMENT, and all matters relating to this AGREEMENT, shall be governed by the laws of the State of California, or other applicable and superseding federal law, in force at the time any need for interpretation of this AGREEMENT or any decision or holding concerning this AGREEMENT arises.

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**29.26 Headings:** The headings used in this AGREEMENT are intended for convenience of reference only and do not define or limit the scope or meaning of any provision of this AGREEMENT.

**29.27 Attorneys' Fees and Costs:** In the event that either party shall commence any legal action or proceedings against the other party concerning the LEASED FACILITY, this AGREEMENT, or the rights and duties of either in relation to the AGREEMENT, the party prevailing in that action or proceeding shall be entitled to recover, in addition to any other relief that may be granted in the litigation, all fees, expenses, costs, court costs and a reasonable sum as and for that party's attorneys' fees that shall be determined by the court in that litigation or in a separate action brought for that purpose. Such recovery shall include court costs and attorneys' fees on appeal, if any. The court will determine who the "prevailing party" is, and whether or not the suit proceeds to final judgment. However, if an action is voluntarily dismissed, or dismissed pursuant to a settlement of the case, neither party shall be entitled to recover its attorneys' fees. LESSEE hereby waives the benefit of the provisions of Section 1161 of the California Code of Civil Procedure.

**29.28 Notices:** Notice shall be effective from the date of mailing. Notwithstanding anything to the contrary herein or elsewhere, any and all notices to be given under this AGREEMENT, or otherwise, shall be sent via certified mail with postage prepaid to the addresses shown below. City will also use reasonable efforts to hand-deliver any notice to LESSEE's primary address shown below. Either party make changes to its notification addresses by providing written notice to the other party:

LESSOR

City Clerk  
City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

LESSEE

Richard Ortenheim, President/CEO  
Skyview Aviation, LLC  
5749 S. Tracy Blvd.  
Tracy, California 95377

With a copy to:

Director  
Public Works  
520 N. Tracy Blvd  
Tracy, California 95376

With a copy to:

Richard Ortenheim  
7057 St. Andrews Lane  
Tracy, California 95377

And an additional copy to:

City Attorney  
City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

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- 29.29** LESSEE shall reasonably cooperate with any operator or lessee of the CITY-owned fuel and shall allow reasonable access to any fuel-plant related electrical or control devices located within the LEASED FACILITY. LESSEE shall also not interfere in any manner whatsoever with the normal operation of the fuel facility. Furthermore, LESSEE shall protect fueling and electrical systems contained within the LEASED FACILITY from any actions that would interfere with the normal operations with the fuel facility.
- 30. 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.
- 31. 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.
- 32. SIGNATURES:** IN WITNESS WHEREOF, the parties to this AGREEMENT have caused it to be executed by their officers thereunto duly authorized so to do on or about this \_\_\_\_ day of \_\_\_\_\_, 2012.

CITY OF TRACY

SKYVIEW AVIATION, LLC

\_\_\_\_\_  
Brent H. Ives, Mayor

  
\_\_\_\_\_  
Richard Ortenheim, Managing  
Member

ATTEST:

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

APPROVED AS TO FORM:

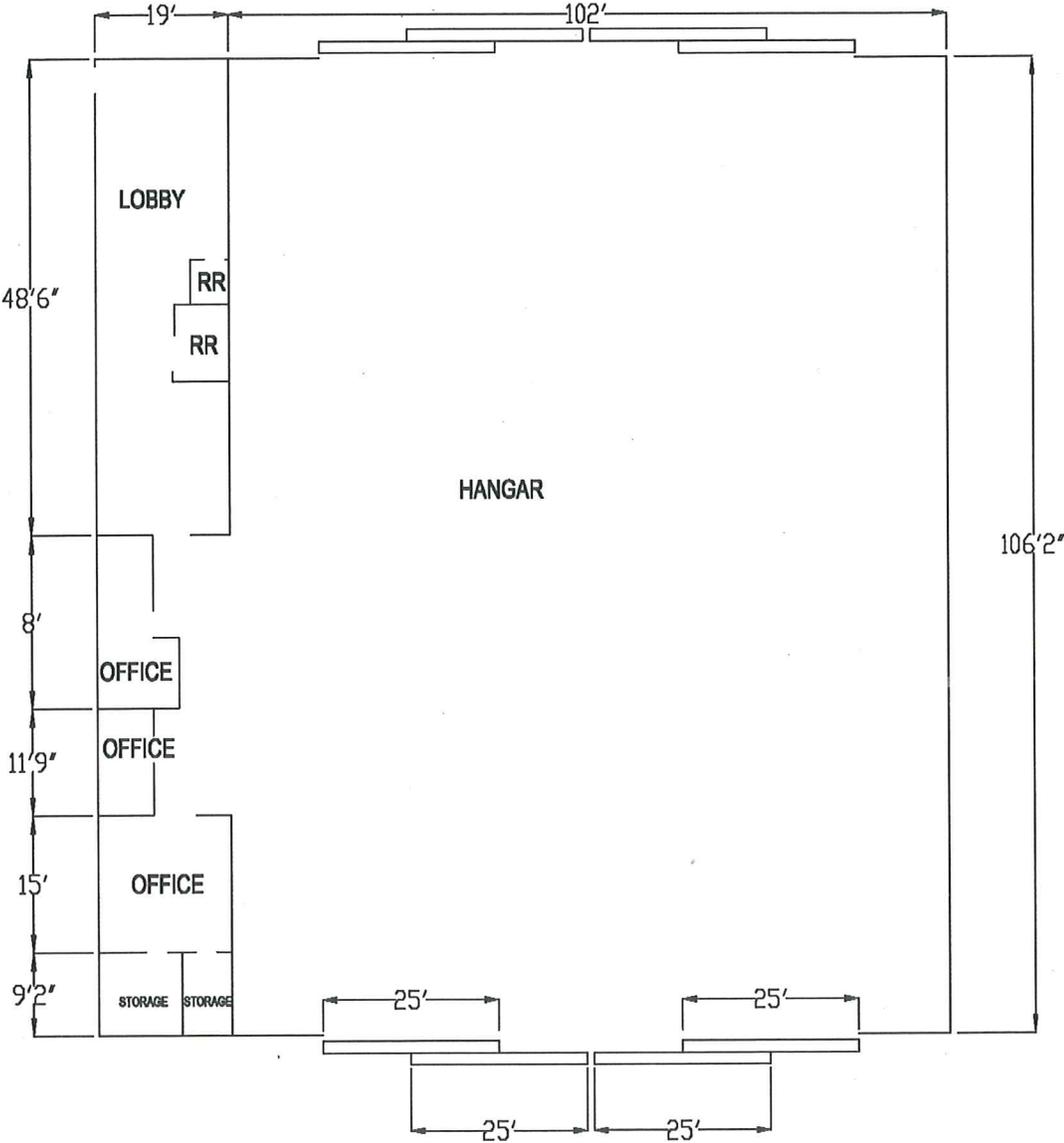
\_\_\_\_\_  
City Attorney



**Figure 2**

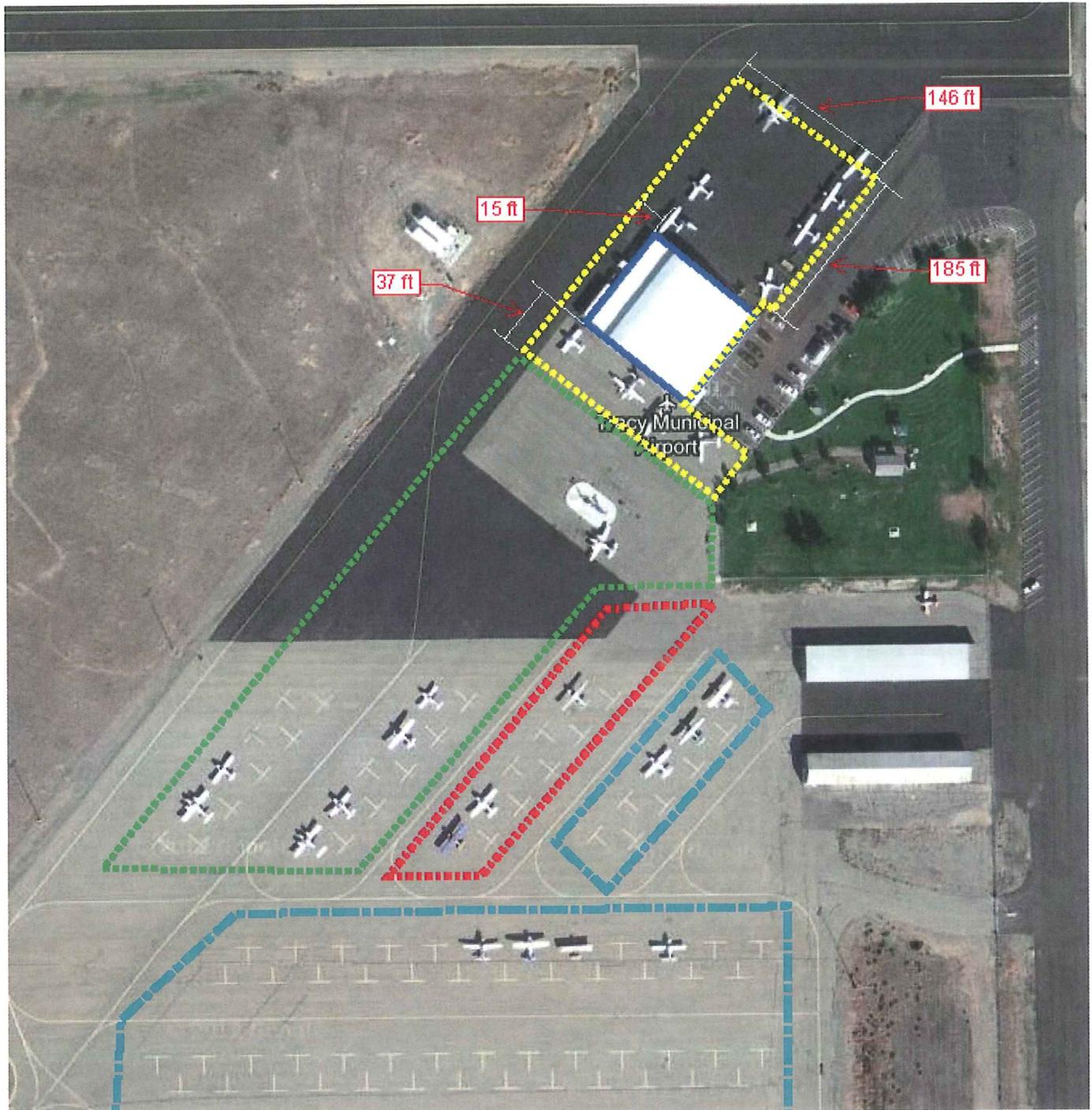
**FLOOR PLAN SHOWING APPROXIMATE DIMENSIONS  
OF THE LEASED FACILITY**

Approximately 12,826 sq. ft.



\*all dimensions are approximate

**Figure 3**  
**APRON PLAN**  
(Not to scale)



RESOLUTION \_\_\_\_\_

AUTHORIZING A SPECIALIZED AERONAUTICAL SERVICES OPERATOR AND LEASED FACILITY AGREEMENT WITH SKYVIEW AVIATION, LLC, AT TRACY MUNICIPAL AIRPORT AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, Since November 15, 2007, Skyview Aviation, LLC has been operating as a Specialized Aeronautical Services Operator at the Tracy Municipal Airport; and

WHEREAS, The current lease agreement with Skyview Aviation, LLC expires after December 31, 2012; and

WHEREAS, Both the City staff and Skyview Aviation, LLC desire to enter into another lease agreement; and

WHEREAS, The City and Skyview Aviation, LLC, have negotiated a 5-year lease agreement for the leased facility at the Tracy Municipal Airport.

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby authorizes a Specialized Aeronautical Services Operator and Leased Facility Agreement with Skyview Aviation, LLC, at Tracy Municipal Airport, and authorizes the Mayor to execute the agreement.

\*\*\*\*\*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the City Council of the City of Tracy on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor

ATTEST:

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

AGENDA ITEM 3

REQUEST

**RECEIVE PUBLIC TESTIMONY FROM PUBLIC HEARING FOR ANNUAL UNMET TRANSIT NEEDS, CITY OF TRACY, FISCAL YEAR 2012-13**

EXECUTIVE SUMMARY

The City of Tracy (City) annually receives funds from the Transportation Development Act (TDA). Under provisions of the TDA, a local public hearing must be held annually to review any unmet transportation needs prior to allocation of TDA funds. Staff recommends that City Council receive public testimony concerning any unmet transportation needs. Comments will be forwarded to the San Joaquin Council of Governments to substantiate the validity of proposed unmet transit needs.

DISCUSSION

Under provisions of the State of California Transportation Development Act (TDA), local public hearings must be held annually to review any unmet transit needs prior to the allocation of TDA funds. The hearings will be held on October 16, 2012, at 1:30 p.m. in the Tracy Transit Station Conference Room 105, and again at 7:00 p.m. in City Hall Council Chambers during the regularly-scheduled City Council meeting.

The City of Tracy requested TDA funds for Fiscal Year 2011-12 for the following purposes:

1. Public Transportation Operating Costs	\$ 726,690
2. Public Transportation Capital Costs	\$ 524,967
3. Roads and Streets Projects	\$1,546,636
4. Pedestrian and Bicycle Projects	\$ 44,364
5. TDA Administration	\$ <u>66,076</u>

TOTAL 2011-12 CLAIM: \$2,908,733

The TRACER Public Transit System provides Fixed Route and Paratransit Bus services Monday through Friday from 7:00 a.m. until 7:00 p.m., and Saturdays from 9:00 a.m. to 5:00 p.m. The Paratransit Subsidized Taxi service operates during the days and hours that the Paratransit Bus service is not in operation.

The purpose of the public hearing is for the City Council to receive public testimony concerning any unmet transportation needs which may exist for the Tracy community. No decision as to the sufficiency of local transit services is requested from the Council.

The minutes of the public hearing on October 16, 2012, shall be forwarded to the San Joaquin County Council of Governments (SJCOG) which has the responsibility of determining whether transit needs remain unmet and would be reasonable to meet by the applicable jurisdiction. Staff members from SJCOG will attend the Tracy public

hearings to witness the community responses and to answer specific questions concerning the TDA process.

Attached are copies of the Notice of Public Hearing relative to the Unmet Transit Needs Hearings (Exhibit "A") published in the TriValley Herald newspaper, as well as the circular (Exhibit "B") that was delivered to over forty social services/activity agencies within the Tracy community.

### STRATEGIC PLAN

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

### FISCAL IMPACT

The public hearing does not require any direct expenditure of City funds and will not impact the General Fund.

### RECOMMENDATION

There is no action required other than the public hearing.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Rod Buchanan, Director of Parks and Community Services

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

Attachments:

Exhibit "A" – Public Hearing Notice  
Exhibit "B" – Circular

NOTICE OF PUBLIC HEARING  
CITY OF TRACY

A public hearing will be held on October 16, 2012, at 1:30 p.m. at the Tracy Transit Station, 50 East Sixth Street, Conference Room 105, for the purpose of inviting discussion and statements relative to unmet public transportation needs. Additionally, at 7:00 p.m., or as soon thereafter as possible, the Tracy City Council will hold a public hearing in the Council Chambers, at Tracy City Hall, 333 Civic Center Plaza, to hear statements relative to unmet public transportation needs which can reasonably be met (required by Section 6656, California Administrative Code), prior to allocation of TDA funds for roads and street purposes.

All interested persons are invited to be present and to submit statements orally or in writing, before or during the meeting.

Information concerning this matter may be obtained at the Tracy Transit Station, 50 E. Sixth Street, Tracy, CA 95376.

Sandra Edwards  
City Clerk

Publish: 9/13, 10/4, 10//11 2012



Think Inside the Triangle™

# UNMET TRANSIT NEEDS HEARING

## PUBLIC HEARING

**TRACER Fixed Route  
SJRTD Bus Service  
Park-N-Ride  
Car Pooling**

**TRACER Paratransit  
Taxi Service  
Ride Sharing  
Rail Service / ACE**



**DATE:** Tuesday, October 16, 2012

**HEARING 1:** 1:30 p.m. - 2:30 p.m.  
Room # 105  
Tracy Transit Station  
50 E. Sixth Street

**HEARING 2:** 7:00 p.m.  
City Council Chamber  
City Hall, Tracy

***Need a ride? Do you (or others in your community) believe that you would benefit from having public transportation in your area? Your concerns are important to us.***

***Can't make it? Have questions or comments?  
Contact Jayne Pramod, Transportation Coordinator,  
City of Tracy, at (209) 831-6214, Jayne.pramod@ci.tracy.ca.us***

## UNMET TRANSIT NEEDS SUGGESTIONS

***Drop off or mail to : ATTN: Jayne Pramod, Transportation Coordinator  
Tracy Transit Station, 50 E. Sixth Street, Tracy, CA-95376***

Parks & Community Services Department  
333 Civic Center Plaza, Tracy, CA-95376  
(209) 831-6200

*Creating Community through People, Parks and Programs*

AGENDA ITEM 4

REQUEST

**ADOPTION OF A RESOLUTION REVISING THE IMPLEMENTATION GUIDELINES OF THE RESIDENTIAL GROWTH MANAGEMENT ORDINANCE (GMO)**

EXECUTIVE SUMMARY

This item involves adoption of a resolution revising the GMO Guidelines to revise the methodology for the distribution of Residential Growth Allotments (RGAs) and Building Permits (BPs). These revisions will facilitate distribution of RGAs and Building Permits in compliance with the City's General Plan policies and recent City Council direction regarding residential growth.

DISCUSSION

Background

The GMO, established in 1987, has been amended several times in response to General Plan updates, new and amended Specific Plans, changing demands for residential housing units, and Measure A. The GMO Guidelines were developed to provide implementation direction to the development community, staff and the Growth Management Board (GMB)<sup>1</sup> in administering the GMO, as amended by Measure A. The most recent amendment to the GMO Guidelines was completed in 2009, but very little building has occurred in accordance with those regulations since that time due to decreased demand for new homes resulting from the Great Recession.

On June 19, 2012, City Council directed staff to prepare options to amend the GMO Guidelines. On October 1, 2012, City Council conducted a workshop on the GMO Guidelines, and evaluated various options to prioritize growth areas. City Council directed staff to implement a methodology that would sequence residential growth for specific projects, recognizing that not all projects would have the ability to develop concurrently given the limitations of Measure A and the expense associated with funding infrastructure. The proposed changes to the GMO Guidelines are consistent with the concepts discussed with the public at that workshop and the direction to City staff from City Council.

Proposed Changes to the GMO Guidelines

The proposed amendments to the GMO Guidelines mainly address the provisions for RGA issuance, including (1) the sequencing of projects within the City limits and Sphere

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<sup>1</sup> The Growth Management Board is established in order to manage and enforce the requirements of the Growth Management Ordinance. All decisions of the Board shall be made by the City Manager in consultation with appropriate department heads, particularly including the Development Services Director and the Public Works Director, or their respective designees. The Board may meet as necessary to implement the GMO and GMO Guidelines.

of Influence, (2) the initial timing of RGA allocations, and (3) their potential re-allocation each year should an RGA not be used to obtain a Building Permit by October 1, of each year. The main changes to the GMO Guidelines are enumerated below.

#### 1) Prioritizing the Allocation of RGAs

RGAs/BPs will be issued in accordance with the following priority system:

##### Prioritization by Area:

- First, RGAs shall be allocated to Primary Areas (infill) projects as shown below;
- Second, RGAs shall be allocated to projects with an approved Development Agreement;
- Third, RGAs shall be allocated to projects located within the “Ellis” and “Tracy Hills” projects as shown below;
- Fourth, RGAs shall be allocated to the Kagehiro Phase III project, (and next to successor projects upon its completion) as shown below;
- Fifth, should any RGAs not be requested by the projects as shown below, they shall be available to any other project that meets the minimum RGA eligibility requirements as identified in the GMO Guidelines

##### Years of 750

Tracy Hills 406  
Ellis 194  
Kagehiro III/Sequenced Project 50  
Primary Areas (Infill) 100

##### Years of 600

Tracy Hills 325  
Ellis 155  
Kagehiro III/Sequenced Project 40  
Primary Areas (Infill) 80

The GMO (as amended by Measure A) allows an average of up to 600 RGAs or BPs per year, and up to a maximum of 750 RGAs or BPs per year. Therefore, the two categories, “Years of 750” and “Years of 600” are identified. The proportionate number of RGAs and BPs available in each of these two categories is identical.

In the event that RGAs are available in amounts other than 600 and 750 annually, they will be generally shared proportionately (in accordance with the numeric splits shown above) across these four identified areas.

#### 2) Timing of RGA Allocations, Re-Allocations

The current GMO Guidelines (approved in 2009) set the application due date for RGAs as the first Thursday of September of each year. Staff recommends retaining that timeframe, with additional deadlines to be added in the process to ensure that all of the RGAs that are allocated each year can be either used by the initial recipient or re-allocated to another project that is ready for building permits.

The timelines for RGA applications and allocations is proposed as follows:

- September—Application deadline for RGAs
- October/November—Allocation of RGAs by the GMB

- December—Appeals (if any) heard by the City Council
- No later than March 31<sup>st</sup> —GMB to compare the number of RGAs allocated with the number of lots (or units) shown on the projects' final maps (Tracy Hills and Ellis have the first right of refusal on any RGAs that are not to be used on other projects)
- September 30<sup>th</sup> —All RGAs allocated must be used for the issuance of a Building Permit, or they become available to other projects
- October 1<sup>st</sup> —Any unused RGAs are made available to other projects for the issuance of Building Permits that calendar year

#### Future Option for Urban Reserve 9

At the workshop on October 1, 2012, City Council requested that staff provide future options related to the sequencing of a development area identified in the General Plan as Urban Reserve 9. Urban Reserve 9 is approximately 130 acres located within San Joaquin County on the south side of Valpico Road and immediately east of a collection of large lot residential homes fronting the east side of Corral Hollow Road. This is an area identified in the General Plan for future residential development and is identified on the General Plan *Secondary Residential Growth Areas Map*, meaning it is identified to develop with residential land uses. Due to the numeric limitations of permits, this project area was not selected at the October 1<sup>st</sup> workshop to have the same priority status as other projects mentioned above. Nonetheless, below are several options for City Council and the property owner to consider as it relates to developing.

- 1) Make no changes to the proposed GMO Guidelines at this time: The project could begin entitlement processing, and develop when other projects conclude or if other projects do not progress to the tentative subdivision mapping stage;
- 2) Local Ballot Initiative: Pursue a ballot initiative (election of registered Tracy voters) to exempt the project from the limitations of the GMO (Measure A), which could be done either by a generic exemption or an exemption specific to this project. The limitations of the GMO can only be modified by ballot initiative because the GMO was the subject of a ballot initiative in the year 2000 (Measure A);
- 3) Adjust proposed numbers in the Draft GMO Guidelines: City Council could re-direct staff to adjust the RGA numbers of any of the development areas staff was directed to pursue on October 1<sup>st</sup> (Primary/Infill, Kagehiro Phase III/Others in Sequence, Tracy Hills, and or Ellis). This option would require additional discussions with the development community and may not be feasible due to staff's understanding of the financing requirements of the larger projects to fund necessary infrastructure.

Staff is recommending Option 1.

#### Environmental Review

Pursuant to Section 15183 of the California Environmental Quality Act Guidelines, adoption of the amendment to the GMO Guidelines is exempt because there will be no significant on or off-site impacts as a result of the amended GMO Guidelines, (CEQA Guidelines, 14 Cal. Code of Regs. §15061(b)(3).) All development projects are required to comply with CEQA as a part of their project approvals, and all of the potential

environmental impacts are studied and mitigated through the development process, not through the administration of the GMO. These GMO Guidelines simply provide procedures related to future land use applications, which must first undergo CEQA review.

Furthermore, in accordance with CEQA Guidelines Section 15162, no further environmental assessment of the GMO Guidelines is required. An analysis of the project shows that no substantial changes are proposed that would require major changes to any existing environmental documentation, including the General Plan EIR SCH #2008092006, or cause any increase in severity of previously identified significant effects or any new significant effects. Also, no new information of substantial importance shows that there will be additional significant effects not discussed in the previous environmental documentation of the General Plan EIR, or that any previously identified significant effects will be substantially more severe, or that any potential mitigation measures are now considered feasible that weren't previously, nor are any new mitigation measures identified but not implemented. The GMO Guidelines add no new development areas, remove no development areas, or modify any development areas. The GMO Guidelines provide procedures for future land use applications.

#### FISCAL IMPACT

There will be no fiscal impact as a result of the proposed revisions to the GMO Guidelines, aside from significant staff time associated with its development, drafting, and implementation. The City charges \$1,719 per application for RGAs. The proposed revisions to the GMO Guidelines will assist in the implementation of the City's program for issuing RGAs and Building Permits, but will not alter the income generated or expenses incurred as a result of that implementation.

#### STRATEGIC PLAN

This agenda item does not implement any of the City's strategic plans, but rather supports and implements the goals and objectives of the City's General Plan.

#### RECOMMENDATION

Staff recommends that City Council adopt, by resolution, the proposed amendments to the GMO Guidelines.

Prepared by: Bill Dean, Assistant Development Services Director  
Victoria Lombardo, Senior Planner

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

Approved by: Leon Churchill Jr., City Manager

ATTACHMENTS

- A –GMO
- B – Current GMO Guidelines
- C – Proposed GMO Guidelines

**10.12.010 - Authority and reference to chapter.**

This chapter 10.12 of the Tracy Municipal Code may be referred to as the "Growth Management Ordinance" or "GMO", and is adopted pursuant to article XI, sections 7 and 9 of the California Constitution.

*(Ord. No. 1136, § 1, 2009)*

**10.12.020 - Purpose.**

The purpose and intent of this chapter is to:

- (a) Achieve a steady and orderly rate of annual residential growth in the City, and to encourage diverse housing opportunities for the region in which the City is situated, and to balance these needs with the City's obligation to provide public facilities and services to the City's residents with available fiscal resources; and
- (b) Regulate the timing and annual amount of new development projects, so that necessary and sufficient public facilities and services are provided, and so that new development projects will not diminish the City's level of service standards; and
- (c) Encourage concentric growth of the City by promoting efficient residential development patterns and orderly expansion of residential areas to maximize the use of existing public services and infrastructure; and
- (d) Encourage development which will efficiently utilize existing and planned future, public facilities; and
- (e) Encourage a balance of housing types in the City which will accommodate a variety of persons, including affordable housing projects which will accommodate persons of very low, low, and moderate income, and persons on limited or fixed incomes; and
- (f) Implement and augment the City policies related to the regulation of new development as set forth in the general plan, specific plans, City

ordinances and resolutions, master plans, finance and implementation plans and design documents.

(Ord. No. 1136, § 1, 2009)

### 10.12.030 - Definitions.

Unless otherwise provided in this chapter, the definitions set forth in [chapter 10.08](#) (Zoning Regulations), [chapter 12.08](#) (Subdivision Ordinance), [title 9](#) (Building Regulations), and [title 13](#) (Impact Fee Ordinance) of this Code shall apply to this chapter. In the event that the definitions or provisions of the Zoning Regulations, the Subdivision Ordinance, the Impact Fee Ordinance, or any other provisions of this Code conflict with any provisions of this chapter, then this chapter shall control to the extent necessary to administer and effectuate the purpose of this chapter. As used in this chapter:

*"Affordable dwelling unit"* means either a "moderate income dwelling unit", or a "low income dwelling unit", or a "very low income dwelling unit", as defined by the State Department of Housing and Community Development. In general, an affordable dwelling unit means a dwelling unit for rent or sale with a rental rate or consumer purchase cost which enables persons to rent or purchase that dwelling unit, if their gross household income is within the following percentages of the San Joaquin County area median income (as adjusted for family size): (a) for a moderate income dwelling unit, more than eighty percent (80%) , but not more than one hundred twenty percent (120%); (b) for a low income dwelling unit, more than fifty percent (50%), but not more than eighty percent (80%); and (c) for a very low income dwelling unit, not more than fifty percent (50%).

*"Applicant"* means "developer", as defined below.

*"Board"* means "Growth Management Board".

*"Developer"* means a person, or other legal entity, who applies to the City to divide or cause to be divided real property into a development project, or who applies to the City to improve (into a development project) any existing parcel of real property.

*"Development project"* means any project undertaken for the purpose of development, as defined in the Subdivision Map Act (Government Code § 66410 et seq.), and shall specifically include any tentative parcel map, tentative subdivision map, final parcel map, final subdivision map, preliminary development plan, final development plan or building permit.

"Growth Management Board" or "Board" means the Board as established and defined by section 10.12.040.

"Public facilities and services" is as described in this chapter and the GMO guidelines.

"Reasonable certainty" means that the applicant has provided documentation, to the satisfaction of the Board, which establishes that the financing necessary for the public facilities and services required to serve the development project is secured, and is described in a finance and implementation plan, approved by the City Council, which feasibly provides the required public facilities and services in a timely manner. In analyzing "reasonable certainty", the Board shall consider: (a) the availability of capacity in public facilities; (b) the availability of financing for the public facilities which will serve the applicant's development project, including an analysis of financing from the applicant and financing which will come from other development projects which benefit from the public facilities; and (c) the anticipated date of completion of construction of the permanent public facilities which will serve the applicant's development project.

"RGA" means "residential growth allotment", and is an allotment made by the City in accordance with this chapter which must be obtained by a developer (by allocation or conveyance) before each residential building permit is issued by the City, unless the subdivider obtains an exemption in accordance with this chapter. One RGA is required for each dwelling unit to be constructed.

*(Ord. No. 1136, § 1, 2009)*

#### **10.12.040 - Establishment of the Growth Management Board.**

The Growth Management Board ("Board") is hereby established in order to manage and enforce the requirements of this chapter. All decisions of the Board shall be made by the City Manager in consultation with appropriate department heads, particularly including the Development and Engineering Services Director and the Public Works Director, or their respective designees. The Board may meet as necessary to implement the GMO and GMO guidelines.

*(Ord. No. 1136, § 1, 2009)*

#### **10.12.050 - GMO guidelines.**

The City Council shall adopt GMO guidelines, in order to implement the requirements of this chapter. In the event that the provisions of this chapter conflict with any provisions of the GMO guidelines, then this chapter shall control.

*(Ord. No. 1136, § 1, 2009)*

## 10.12.060 - Exemptions.

A project shall be exempt from further compliance with this chapter if the developer includes (in addition to the requirements of this chapter and the GMO guidelines) documentation, to the satisfaction of the Development and Engineering Services Director, which establishes that the development project which is the subject of the application meets the requirements of one of the following subsections:

- (a)

The development project is a rehabilitation or remodeling of, or a minor addition to, an existing structure, or a conversion of apartments to condominiums; or
- (b)

The development is replacing legally established dwelling units that have been demolished and do not exceed the number of legally established dwelling units demolished. Where the number of new dwelling units exceeds the number of legally established dwelling units demolished, an allocation of RGAs must be obtained for the additional dwelling units; or
- (c)

To the extent the development project includes "model homes" (structures used as an advertisement for housing sales and not used as dwellings), the model homes shall not be required to obtain an allocation of RGAs; provided, however; (1) the number of model homes shall be limited to the lesser of twenty percent (20%) of the total dwelling units identified in the application, or seven (7) dwelling units per project; (2) prior to the issuance of each building permit, the subdivider shall pay all required fees, including impact fees required by [title 13](#) of this Code; and (3) model homes may be converted and occupied as dwellings only after RGAs are allocated for each dwelling unit as required by this chapter; or
- (d)

The development project is either a four-plex or lesser number of dwelling units on a single existing lot; provided, however; (1) the dwellings are not part of a larger eligible parcel that will result in more than four (4) dwelling units at build-out of the project; (2) the exemption is limited to no more than a total of four such dwelling units per subdivider per calendar year; and (3) prior to the issuance of each building permit, the subdivider shall pay all required fees, including impact fees required by [title 13](#) of this Code.
- (e)

The development is a secondary residential unit.

## RESOLUTION No. 2009-084

ADOPTING REVISED GROWTH MANAGEMENT ORDINANCE GUIDELINES  
AND NOTICE OF INTENT TO PERIODICALLY REVISE THE GUIDELINES

WHEREAS, On June 16, 1987, the City Council adopted by ordinance a Residential Growth Management Plan, (commonly referred to as the Growth Management Ordinance "GMO"), which has been amended from time to time and which is codified in Tracy Municipal Code Chapter 10.12, and

WHEREAS, On February 20, 2001, the City Council adopted Resolution No. 2001-067, GMO Guidelines to aid in the implementation of the Growth Management Ordinance, and

WHEREAS, Measure A, which became effective December 22, 2000 caused a change in the growth rate and patterns of the City, thus creating a need to review and update the GMO and GMO Guidelines to most effectively implement the intentions of the Residential Growth Management Plan, and

WHEREAS, On April 5, 2005, the City Council adopted Resolution No. 2005-092 which amended the GMO Guidelines, and

WHEREAS, It is the intent of the City Council to substantially modify the GMO Guidelines from time-to-time to implement the General Plan; and

WHEREAS, on July 15, 2008, the City Council held a workshop to consider and receive comments on proposed revisions to the GMO and the GMO Guidelines; and

WHEREAS, on May 19, 2009, the City Council held a duly noticed public hearing to consider City Initiated Revisions to the Growth Management Ordinance and Guidelines; and

WHEREAS, The revised GMO Guidelines, which implement the requirements of the GMO, are set forth below.

NOW, THEREFORE, BE IT RESOLVED, by the Tracy City Council as follows:

**SECTION 1.** Resolution No. 2005-092 is hereby repealed.

**SECTION 2.** In accordance with the Growth Management Ordinance ("GMO"), Tracy Municipal Code chapter 10.12, specifically section 10.12.050, the Tracy City Council hereby adopts the "Growth Management Ordinance Guidelines," as set forth below.

**Growth Management Ordinance ("GMO") Guidelines**

**A. Overview; Purpose of Guidelines.**

The Guidelines are intended to contemporize the City's residential growth management program by addressing the following components:

- Residential Growth Allotment and Building Permit activities including tracking and forecasting of all RGAs and Building Permits

- RGA Exemptions
- RGA Issuance including application requirements, deadlines, expirations, extensions
- System for Allocation of RGAs/Building Permits

B. Annual Report on Residential Building Activity and Projections/Forecast.

An Annual Report, and a preliminary, and final RGA allocation, shall be prepared by staff and presented to the Growth Management Board ("GMB"). This Annual Report shall serve as the official tracking system for the GMO and shall include historic information as well as update the annual average/maximums of the GMO. In addition, the Annual Report shall serve as the official forecast for the purposes of planning the next calendar year's RGA allocation by identifying various residential projects in process. The Annual Report shall also establish the list of residential projects for the purposes of building permit allocation splits. The Board shall provide its' preliminary list of allocations after all applications have been submitted.

C. Applications. All applications for RGAs shall meet all requirements of the GMO, and these Guidelines.

1. Applicability; Application Contents. Every project is subject to these Guidelines unless specifically exempted under GMO. Each application shall identify, at a minimum, (1) the project which is the subject of the application; (2) the applicant; (3) all property owners; (4) the purpose of the application; (5) each development project which is the subject of the application; (6) the total number of dwelling units included in the project which is the subject of the application for which: (i) the City has previously allocated RGAs, (ii) the applicant has received building permits, (iii) the applicant has received certificates of occupancy or approved final building inspection, and (iv) the applicant's RGA has expired; and (7) compliance with all requirements of the GMO and the GMO Guidelines relevant to the application.

2. Determination of "Complete" Application.

(a) After any application pursuant to the GMO is submitted to the Development and Engineering Services Department ("DES"), the application shall be stamped with a "received" stamp, and the Director of DES shall determine whether or not the application is complete in accordance with the requirements of GMO. To the extent that more than thirty (30) days elapses between the date the application is "received" and the date that the Director of DES determines whether or not the application is complete, the applicant's filing deadline shall be extended an equal number of days.

(b) In order to apply for an RGA a project must demonstrate *all of the following components*:

- be identified in the City's General Plan ("GP") as an area for residential growth consistent with all GP growth policies (i.e. Secondary Residential Growth Areas Map as shown on Figure 2-3 of the GP)
- be within an approved specific plan/PUD, or within a zoning district that permits residential uses
- be subject to an approved Finance and Implementation Plan (FIP) based on approved infrastructure master plans

- (iv) be annexed into the City
- (v) have an approved TM, VTM, or if no map is required, development review approval

3. Amended Applications. If the Director of DES determines that an application is incomplete, an applicant may amend and resubmit the application in accordance with GMO. After an application is submitted to the Development and Engineering Services Director, the application may be amended only if the amended application complies with all requirements of this chapter (including timing requirements for filing a complete application, but excluding the requirement for an additional processing fee), and it is clearly labeled as an amendment. Multiple amendments of an application may be subject to an additional processing fee if the Development and Engineering Services Director determines that additional costs will be incurred by the City in processing the amendment.

4. Application dates for specific applications. The term "application date" shall mean the deadline for filing any complete application pursuant to the GMO (including applications for RGAs, exceptions, and residential building permits). Unless otherwise established in these Guidelines, the application for RGAs, other than Affordable Housing Project RGAs, shall be the first Thursday in September each year for the following calendar year.

5. Application dates for Affordable Housing Project exception applications. In accordance with the GMO, the application date for filing Affordable Housing Project exception applications shall be at any time during normal working hours of DES Department. (Also see GMO section 10.12.100(d))

6. Affordable Housing Project exceptions. The Board shall determine, and allocate, the number of RGAs which are subject to the Affordable Housing Project exception set forth in the GMO. The allocation of RGAs for Affordable Housing Project Exceptions may occur at any time, regardless of the allocation cycles established in the GMO. These applications will be processed as they are received, and RGAs shall be allocated to the qualifying applicants in accordance with the GMO. Affordable housing exceptions count against the GMO average/maximum for affordable housing but not against GMO average of 600 for market rate. Affordable housing exceptions do count against the GMO maximum of 750 per calendar year.

D. Timeframes for RGA allocations, expirations, extensions.

1. Allocations timeframes. Based on the information set forth in the Annual Report, as described in Section B above, the GMB shall issue a preliminary allocation, hold a public hearing, and issue final allocations. RGAs shall be allocated concurrently with the Board approval of the Annual Report including the preliminary and final allocation recommendation.

2. Expirations. RGAs shall be valid only for the calendar year for which they are allocated, and shall expire concurrently with building permit expiration.

3. Extensions. Extensions for RGAs shall be in accordance with the timelines for building permit extensions as set forth in the Uniform Building Code.

E. Evaluation of RGA Applications.

In order to obtain an RGA allocation, the applicant shall provide documentation to the satisfaction of the Board, that the public facilities and services required to serve the development project, including each of the elements set forth below. A project with an approved Vesting Tentative Subdivision Map, Tentative Subdivision Map, Development Review approval, or Finance and Implementation Plan is deemed to have complied with the public facilities obligations of this section. The public facilities and services to be analyzed by the Board for each RGA application shall include, at a minimum: (1) the water system (including supply, storage, treatment, distribution); and (2) the wastewater system (including conveyance and treatment); and (3) the storm drainage system (including permanent facilities and interim ponds prior to construction of the permanent facilities); and (4) the roadway system (including regional streets and interchanges, transit, bikeways, local streets, traffic signals, and other public right-of-way improvements); and (5) the parks system (including mini parks, neighborhood parks, and community parks); and (6) public buildings (including but not limited to buildings for city hall, police, fire, public works maintenance, community meeting facilities, libraries, and aquatics); and (7) police protection services and facilities; and (8) fire protection services and facilities. Any application which does not meet all of the minimum requirements shall not receive any RGA allocations.

F. Allocations of RGAs.

The GMB shall evaluate RGA applications in accordance with these Guidelines. Primary Growth Areas are defined in Exhibit "A", attached hereto and incorporated herein by this reference, and Secondary Growth Areas, are as shown on Figure 2-3 of the GP and depicted on Exhibit "A" to these Guidelines.

1. No competition for RGAs (for those application periods where supply exceeds demand in each area): 100% DA project applications; 2<sup>nd</sup> – 100% applications from projects in Primary Areas, 3<sup>rd</sup> – 100% of applications in Secondary Residential Growth Areas.

2. Competition for RGAs (for those application periods where demand exceeds supply in each area): 1<sup>st</sup> – 100% DA project applications; 2<sup>nd</sup> – 100% of applications from projects in Primary Areas - applications from Primary areas shall follow the Primary Areas Criteria set forth in Section F(3) below; 3<sup>rd</sup> – applications from Secondary Residential Growth Areas shall follow the Secondary Growth Areas Procedures set forth in Section F(4) below.

3. Primary Areas Criteria. These Primary Areas criteria will apply to all Primary Areas Projects in competition for RGAs. The following criteria can be used to determine which projects will have priority to receive RGAs in the event that the number of RGAs requested exceeds the number available in any allocation cycle. Within these categories, projects that meet more of the criteria listed are considered preferred to receive RGAs. Based on the following criteria, staff will make a recommendation to the Board as to which proposed projects have best achieved the criteria.

- (a) Housing Type, in order of importance
  - (i) High Density—12.1 dwelling units per gross acre or more
  - (ii) Medium Density—5.9-12 dwelling units per gross acre
  - (iii) Low Density—5.8 dwelling units per gross acre or less
  - (iv) Projects with an affordable component, including moderate and low to very low income categories (RGAs for the affordable component come from the

- “Affordable Housing Exception” category in the GMO)
- (v) Innovative housing types—Mixing products in a single project, cluster housing, mixed-use developments
- (b) Geographic Area, in order of importance
  - (i) Within Redevelopment Area
  - (ii) In a Village Center, as established in the General Plan
  - (iii) Connects incomplete infrastructure (streets, water, sewer, etc.)
  - (iv) Projects that combine several smaller parcels
  - (v) Fit and compatibility with the surrounding area
- (c) Project Size and Proximity to Existing Development, in order of importance
  - (i) Small infill (less than 5 acres surrounded by development on 3 sides)
  - (ii) Large infill (over 5 acres surrounded by development on 3 sides)
  - (iii) Project in progress that needs additional RGAs to complete construction
- (d) Project Design
  - (i) High level of connectivity, vehicular and pedestrian, both internally and externally to the project
  - (ii) Amenities—public or private, parks, schools, etc.
  - (iii) Architecture—compatible with, enhances, and/or improves neighborhood
  - (iv) Energy efficient design, using recycled or green/sustainable materials
  - (v) Walkability and high intersection density
  - (vi) Building type and building frontage type variation

4. Secondary Growth Areas Procedures.

The Secondary Growth Areas Procedures shall be utilized if the applications for RGAs/BPs exceed available supply in any given year based on the Annual Report described in Section B. BPs will be split based on a two-step process.

(a) Step One: RGAs/BPs will be allocated between projects (Tracy Hills and other Secondary Residential Growth Areas properties) based on the percentage of the total number of approved tentative mapped units.

(b) Step Two: RGAs/BPs within each project (as defined in Step One) would be divided across property owners based on the percentage of the number of approved tentative mapped units per owner.

Any Development Agreement RGAs/BPs “returned” or “not used” will be available in accordance with that same calendar year’s forecast/projection from the Annual Report.

5. Final Allocations.

In accordance with the preparation and process for the Annual Report, as described in Section B above, the GMB shall issue a written recommendation of preliminary allocations, hold a public hearing for input on the proposed allocations, and issue final allocations. At the public hearing, the Board shall address written and oral comments regarding the Annual Report and the proposed RGA allocation. The purpose of the Board’s consideration of written and oral comments at the public hearing shall be for applicants to provide information which was not included in the application. The public hearing may be continued by the Board, as necessary, to obtain additional information. After the conclusion of the public hearing, the Board shall provide written notice to each applicant of the Board’s final RGA allocations. After the appeal period has expired pursuant to section 10.12.160, and after the City Council has acted on any relevant

appeals, the Board shall issue a final determination of RGA allocations. The allocations of the GMB shall be final unless appealed to the City Council in accordance with the GMO. Allocations shall be lot-specific.

G. Processing Fees. The fees for processing all applications pursuant to the GMO shall be as set forth in a separate Resolution of the City Council.

H. 1994 GMO Guidelines for Pre-Measure A Projects. The Board shall award RGAs to any applications for Pre-Measure A Vested Projects in accordance with the provisions of the 1994 GMO.

I. Surland Development Agreement Exemption. The City and Surland Communities, LLC entered into that certain "Development Agreement By and Between the City of Tracy and Surland Communities, LLC" ("Surland Development Agreement") effective February 5, 2009. These 2009 GMO Guidelines shall not apply to property subject to the Surland Development Agreement. The Surland Development Agreement sets forth all of the rules and procedures for the applicability of the 2009 GMO and these 2009 GMO Guidelines to such property.

J. Building Permit Issuance. The City shall evaluate applications for residential building permits (and, for each approved application, issue the building permit) in the order in which the City receives them, except as modified by any development agreements. The City shall not issue any building permits in excess of the limitations set forth in the GMO, except the limit Measure A and the GMO impose on the average number of building permits issued each year does not, by its terms, apply to affordable housing projects.

K. Periodic Revisions. The City Council shall undertake periodic revisions of these GMO Guidelines to reflect changes in the General Plan, the GMO, or land use decisions as necessary to implement City policies. Each City approval of a tentative subdivision map or vesting tentative subdivision map shall contain a provision stating that these Guidelines are subject to change and those in effect at the time of application for Residential Growth Allotment/building permit shall control.

SECTION 3. CEQA Guidelines Section 15378 excludes from the definition of a project continuing administrative activities including general policy and procedure making. As these GMO Guidelines are established to implement the General Plan and the GMO and simply provide procedures of other land use decisions, the adoption of these guidelines are not a project requiring environmental review. Furthermore, in accordance with CEQA Guidelines Section 15183, no further environmental assessment of the GMO Guidelines is required. An analysis of the project shows that there will be no significant on or off-site impacts as a result of the amended GMO Guidelines that were not already discussed in the General Plan EIR, as the location of future residential growth within the Sphere of Influence remains unchanged. There is also no evidence of any significant impacts to occur off-site as a result of amended GMO Guidelines, as any 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 the amendments to the GMO Guidelines.

SECTION 4. The City Council intends to regularly update and revise these GMO Guidelines and hereby provides notice, pursuant to Government Code 66474, of that intent. As set forth in these Guidelines, each City approval of a tentative subdivision map or vesting tentative subdivision map shall contain a provision stating that these Guidelines are subject to change

and those in effect at the time of application for Residential Growth Allotment/building permit shall control.

SECTION 5. This resolution shall be effective on the effective date of Ordinance No. 1136 amending Chapter 10.12 of the Tracy Municipal Code.

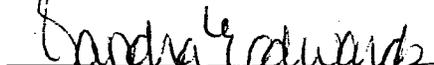
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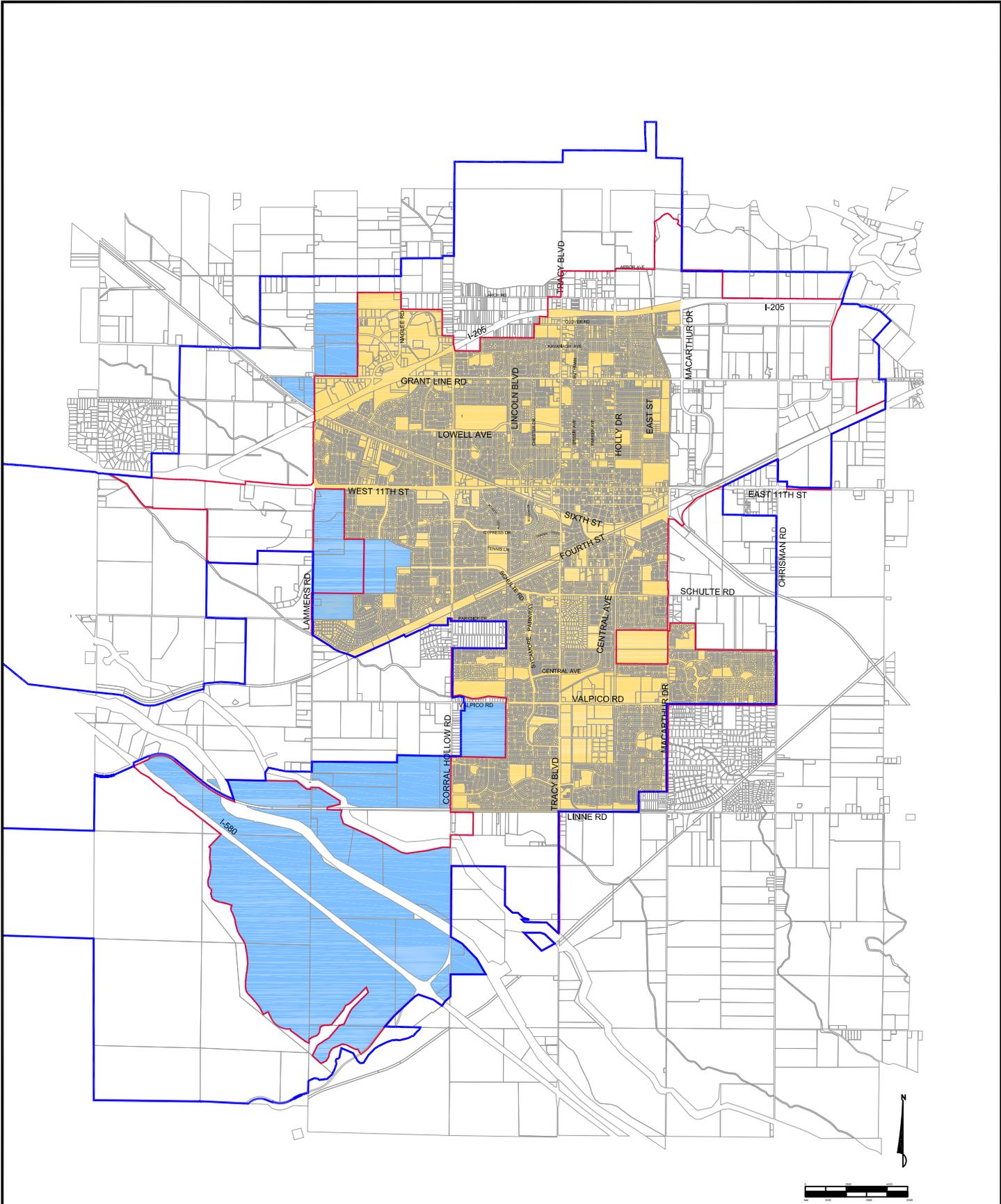
The foregoing Resolution No. 2009-084 was adopted by the Tracy City Council on the 19th of May, 2009, by the following vote:

AYES:	COUNCIL MEMBERS:	ABERCROMBIE, MACIEL, TOLBERT, TUCKER, IVES
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE
ABSTAIN:	COUNCIL MEMBERS:	NONE

  
\_\_\_\_\_  
Mayor

ATTEST:

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



# Residential Growth Areas

- City Limits
- Sphere of Influence
- Primary Residential Growth Areas
- Secondary Residential Growth Areas

RESOLUTION 2012 - \_\_\_\_\_

ADOPTING REVISED GROWTH MANAGEMENT ORDINANCE GUIDELINES  
AND NOTICE OF INTENT TO PERIODICALLY REVISE THE GUIDELINES

WHEREAS, On June 16, 1987, the City Council adopted by ordinance a Residential Growth Management Plan, (commonly referred to as the Growth Management Ordinance "GMO"), which has been amended from time to time and which is codified in Tracy Municipal Code Chapter 10.12; and

WHEREAS, On February 20, 2001, the City Council adopted Resolution 2001-067, GMO Guidelines to aid in the implementation of the Growth Management Ordinance; and

WHEREAS, Measure A, which became effective December 22, 2000, caused a change in the growth rate and patterns of the City, thus creating a need to review and update the GMO and GMO Guidelines to most effectively implement the intentions of the Residential Growth Management Plan; and

WHEREAS, On April 5, 2005, the City Council adopted Resolution 2005-092 which amended the GMO Guidelines; and

WHEREAS, It is the intent of the City Council to substantially modify the GMO Guidelines from time-to-time to implement the General Plan; and

WHEREAS, On May 19, 2009, the City Council adopted Resolution 2009-084 which amended the Growth Management Ordinance Guidelines; and

WHEREAS, On October 1, 2012, the City Council held a workshop to consider and receive comments on proposed revisions to the GMO Guidelines; and

WHEREAS, On October 16, 2012, the City Council held a regular meeting to consider Revisions to the Growth Management Ordinance Guidelines; and

WHEREAS, The revised GMO Guidelines, which implement the requirements of the GMO, are set forth below;

NOW, THEREFORE, BE IT RESOLVED, by the Tracy City Council as follows:

SECTION 1. Resolution 2009-084 is hereby repealed.

SECTION 2. In accordance with the Growth Management Ordinance ("GMO"), Tracy Municipal Code Chapter 10.12, specifically section 10.12.050, the Tracy City Council hereby adopts the "Growth Management Ordinance Guidelines," as set forth below.

**Growth Management Ordinance ("GMO") Guidelines**

A. Overview: Purpose of Guidelines.

The Guidelines are intended to contemporize the City's residential growth management program by addressing the following components:

- Residential Growth Allotment and Building Permit activities including tracking and forecasting of all RGAs and Building Permits
- RGA Exemptions
- RGA Issuance including application requirements, deadlines, expirations
- System for Allocation of RGAs/Building Permits

B. Annual Report on Residential Building Activity and Projections/Forecast.

An Annual Report, and a preliminary, and final RGA allocation, shall be prepared by staff and presented to the Growth Management Board ("GMB"). This Annual Report shall serve as the official tracking system for the GMO and shall include historic information as well as update the annual average/maximums of the GMO. In addition, the Annual Report shall serve as the official forecast for the purposes of planning the next calendar year's RGA allocation by identifying various residential projects in process.

C. Applications. All applications for RGAs shall meet all requirements of the GMO, and these Guidelines.

1. Applicability; Application Contents. Every project is subject to these Guidelines unless specifically exempted by the GMO. Each application shall identify, at a minimum, (1) the project which is the subject of the application; (2) the applicant; (3) all property owners; (4) the purpose of the application; (5) each development project which is the subject of the application; (6) the total number of dwelling units included in the project which is the subject of the application for which: (i) the City has previously allocated RGAs, (ii) the applicant has received building permits, (iii) the applicant has received certificates of occupancy or approved final building inspection, (iv) the applicant's RGA has expired; and (7) compliance with all requirements of the GMO and the GMO Guidelines relevant to the application.

2. Application and Eligibility Requirements.

(a) In order to apply for an RGA a project must demonstrate *all of the following components*:

- (i) be within the City limits,
- (ii) be identified in the City's General Plan ("GP") as an area for residential growth consistent with all GP growth policies set forth in Object LU 1.4,
- (iii) be within an approved specific plan/PUD, or within a zoning district that permits residential uses,
- (iv) be subject to an approved Finance and Implementation Plan (FIP) based on approved infrastructure master plans,
- (v) have an approved Tentative Subdivision Map, Vesting Tentative Subdivision Map, or if no map is required, Development Review approval in accordance with Tracy Municipal Code ("TMC") Section 10.08.3920 et seq., or a Final Development Plan in accordance with Tracy Municipal Code ("TMC") Section 10.08.1760, et seq.

3. Application due dates. The term "application date" shall mean the deadline for filing any complete application pursuant to the GMO (including applications for RGAs, exceptions, and residential building permits). Unless otherwise established in these Guidelines, the application for RGAs, other than Affordable Housing Project RGAs, shall be the first Thursday in September each year for RGAs to be used to obtain building permits in the following calendar year. See paragraph D below for Timeframes for Allocations.
4. Application dates for Affordable Housing Project exception applications. In accordance with the GMO, the application date for filing Affordable Housing Project exception applications shall be at any time during normal City working hours. (Also see GMO section 10.12.100(d)).
5. Affordable Housing Project exceptions. The GMB shall determine, and allocate, the number of RGAs which are subject to the Affordable Housing Project exception set forth in the GMO. The allocation of RGAs for Affordable Housing Project exceptions may occur at any time, regardless of the allocation cycles established in the GMO. These applications will be processed as they are received, and RGAs shall be allocated to the qualifying applicants in accordance with the GMO. Affordable housing exceptions count against the GMO average/maximum for affordable housing but not against GMO average of 600 for market rate. Affordable housing exceptions do count against the GMO maximum of 750 per calendar year.

D. Timeframes for RGA allocations; expirations.

1. Allocations timeframes. The following timeframes shall apply to the allocations of RGAs:

1 <sup>st</sup> Thursday in September:	Application date per C 3 above
October-November:	GMB Public hearing to allocate RGAs
December:	Appeals (if any) to City Council
October-March:	Staff verification of project Final Map
No later than March 31:	GMB verifies number of RGAs allocated against number of lots on Final Map
2. Calendar years 2013 and 2014. The application date for an RGA application in calendar years 2013 and 2014 shall be at any point during this period. The GMB shall meet as needed in response to complete RGA applications in calendar years 2013 and 2014 to allocate RGAs.
3. Expirations. RGAs shall be valid only for the calendar year for which they are allocated, and shall expire concurrently with building permit expiration. RGAs must be used to obtain a building permit no later than September 30<sup>th</sup> of the year following the allocation in accordance with GMB action. For RGAs allocated in years 2013 and 2014, the RGA must be used by September 30<sup>th</sup> in the year it was allocated. In the event an RGA has not been used to obtain a building permit by September 30<sup>th</sup>, then such RGAs automatically revert back to the City and shall be available for the GMB

to allocate to projects with complete applications filed on a first come, first serve basis. The GMB shall meet as needed to address such RGA allocations.

E. Evaluation of RGA Applications and Final RGA Allocations.

1. In order to obtain an RGA allocation, the applicant shall provide documentation to the satisfaction of the Board, that the public facilities and services required to serve the development project are available to the project, including each of the elements set forth below. A project with an approved Vesting Tentative Subdivision Map, Tentative Subdivision Map, Development Review approval, or Finance and Implementation Plan is deemed to have complied with the public facilities obligations of this section. The public facilities and services to be analyzed by the Board for each RGA application shall include, at a minimum: (1) the water system (including supply, storage, treatment, distribution); and (2) the wastewater system (including conveyance and treatment); and (3) the storm drainage system (including permanent facilities and interim ponds prior to construction of the permanent facilities); and (4) the roadway system (including regional streets and interchanges, transit, bikeways, local streets, traffic signals, and other public right-of-way improvements); and (5) the parks system (including mini parks, neighborhood parks, and community parks); and (6) public buildings (including but not limited to buildings for city hall, police, fire, public works maintenance, community meeting facilities, libraries, and aquatics); and (7) police protection services and facilities; and (8) fire protection services and facilities. Any application which does not meet all of the minimum requirements shall not receive any RGA allocations.
2. In accordance with the preparation and process for the Annual Report, as described in Section B above, the GMB shall issue a recommendation of preliminary allocations, hold a public hearing for input on the proposed allocations, and issue final allocations. At the public hearing, the Board shall address written and oral comments regarding the Annual Report and the proposed RGA allocation. The purpose of the Board's consideration of written and oral comments at the public hearing shall be for applicants to provide information which was not included in the application. The public hearing may be continued by the Board, as necessary, to obtain additional information. After the conclusion of the public hearing, the Board shall provide written notice to each applicant of the Board's final RGA allocations. After the appeal period has expired pursuant to Tracy Municipal Section 10.12.160, and after the City Council has acted on any relevant appeals, the Board shall issue a final determination of RGA allocations. The allocations of the GMB shall be final unless appealed to the City Council in accordance with the GMO. Allocations shall be lot-specific.

F. RGA allocation criteria, order of priority for allocations of RGAs; proportionate allocation of previously unallocated RGAs.

The GMB shall evaluate RGA applications, and allocate RGAs, in accordance with these criteria. A project may not receive more RGAs than on its approved Tentative Subdivision Map or Development Review Approval, or Final Development Plan. In any year, the GMB shall not allocate more RGAs than the anticipated number of available building permits for that same year. RGAs shall be issued on a first come first serve basis based when the City receives a complete application and in accordance with the following order of priority:

1. Vested Projects: RGA applications from projects vested under a previous GMO Guidelines shall be process in accordance with such guidelines.
2. Primary Growth Areas. Primary Growth Areas are defined in Exhibit "A", attached hereto and incorporated herein by this reference. Subject to the criteria in paragraph 8 below, Primary Area projects may receive allocations as follows:
  - (a) In years where 750 RGAs may be allocated, 100 RGAs
  - (b) In years where 600 RGAs may be allocated, 80 RGAs
  - (c) In years where more than 750 may be allocated due to compliance with the General Plan Housing Element and to meet the RHNA, up to the RHNA limits as applied to RGAs
3. Development Agreements. Notwithstanding # 4 below, Development Agreement projects may receive allocations as specifically set forth in the applicable development agreement subject to the provisions in these Guidelines. In any conflict between the development agreement and these Guidelines, the development agreement provisions shall control.
4. Tracy Hills and Ellis Specific Plan Projects. The following specific plan projects, more fully described in the General Plan and subject to the requirements of the GMO, may receive RGAs as follows:
  - (a) In years where 750 RGAs may be allocated, Tracy Hills may receive 406 and Ellis may receive 194 RGAs
  - (b) In years where 600 RGAs may be allocated, Tracy Hills may receive 325 and Ellis may receive 155 RGAs
  - (c) To address any necessary adjustments resulting from the March GMB meeting described in section D above, The Tracy Hills project has a right of first refusal to apply for unallocated RGAs for the Ellis project identified in sections F 3a and 3b above. Additionally, the Ellis project has a right of first refusal to apply for unallocated RGAs for the Tracy Hills project identified in sections F 3a and 3b above.
5. Other Projects. "Other Projects" is defined as initially beginning with the Kagehiro Phase III project (Assessor's Parcel Number 242-040-360) and then commencing with development sites identified in the General Plan Objective LU 1.4 that are not within the Primary Areas as defined in these GMO Guidelines.
  - (a) In years where 750 RGAs may be allocated, 50 RGAs per year
  - (b) In years where 600 RGAs may be allocated, 40 RGAs per year
6. If the number of RGAs allocated does not exceed the number of RGAs available, the remaining RGAs shall be available on a proportionate basis in accordance with the criteria set forth in F 1-5 to other projects identified in Sections F 1-5, for which a complete application has been submitted. The GMB can meet as needed to allocate such RGAs.

7. During years when a number of RGAs other than 600 or 750 are available, the RGAs shall be issued in proportionate amounts as established in section F 1-5.
8. Additional Primary Areas Criteria. These Primary Areas criteria will apply to all Primary Areas Projects in competition for RGAs. The following criteria can be used to determine which projects will have priority to receive RGAs in the event that the number of RGAs requested exceeds the number available in any allocation cycle for the Primary Areas numeric parameters established in section F 2 above. Within these categories, projects that meet more of the criteria listed are considered preferred to receive RGAs. Based on the following criteria, staff will make a recommendation to the Board as to which proposed projects have best achieved the criteria.
  - (a) Housing Type, in order of importance
    - (i) High Density—12.1 dwelling units per gross acre or more
    - (ii) Medium Density—5.9-12 dwelling units per gross acre
    - (iii) Low Density—5.8 dwelling units per gross acre or less
    - (iv) Projects with an affordable component, including moderate and low to very low income categories (RGAs for the affordable component come from the “Affordable Housing Exception” category in the GMO)
    - (v) Innovative housing types—Mixing products in a single project, cluster housing, mixed-use developments
  - (b) Geographic Area, in order of importance
    - (i) In a Village Center, as established in the General Plan
    - (ii) Connects incomplete infrastructure (streets, water, sewer, etc.)
    - (iii) Projects that combine several smaller parcels
    - (iv) Fit and compatibility with the surrounding area
  - (c) Project Size and Proximity to Existing Development, in order of importance
    - (i) Small infill (less than 5 acres surrounded by development on 3 sides)
    - (ii) Large infill (over 5 acres surrounded by development on 3 sides)
    - (iii) Project in progress that needs additional RGAs to complete construction
  - (d) Project Design
    - (i) High level of connectivity, vehicular and pedestrian, both internally and externally to the project
    - (ii) Amenities—public or private, parks, schools, etc.
    - (iii) Architecture—compatible with, enhances, and/or improves neighborhood
    - (iv) Energy efficient design, using recycled or green/sustainable materials
    - (v) Walkability and high intersection density
    - (vi) Building type and building frontage type variation
- G. Processing Fees. The fees for processing all applications pursuant to the GMO shall be as set forth in a separate Resolution of the City Council.
- H. 1994 GMO Guidelines for Pre-Measure A Projects. The Board shall award RGAs to any applications for Pre-Measure A Vested Projects in accordance with the provisions of the 1994 GMO.
- I. Building Permit Issuance. The City shall evaluate applications for residential building permits (and, for each approved application, issue the building permit) in the order in which the City receives them. The City shall not issue any building permits in excess of the limitations set forth in the GMO, except the limit Measure A and the GMO impose on

the average number of building permits issued each year does not, by its terms, apply to affordable housing projects.

SECTION 3. Pursuant to Section 15183 of the California Environmental Quality Act this amendment to the GMO Guidelines is exempt because there will be no significant on or off-site impacts as a result of the amended GMO Guidelines (CEQA Guidelines, 14 Cal. Code of Regs. §15061(b)(3).) All development projects are required to comply with CEQA as a part of their project approvals, and all of the potential environmental impacts are studied and mitigated through the development process, not through the administration of the GMO. These GMO Guidelines simply provide procedures related to future land use applications, which must first undergo CEQA review.

Furthermore, in accordance with CEQA Guidelines Section 15162, no further environmental assessment of the GMO Guidelines is required. An analysis of the project shows that no substantial changes are proposed that would require major changes to any existing environmental documentation, including the General Plan EIR SCH #2008092006, or cause any increase in severity of previously identified significant effects or any new significant effects. Also, no new information of substantial importance shows that there will be additional significant effects not discussed in the previous environmental documentation of the General Plan EIR, or that any previously identified significant effects will be substantially more severe, or that any potential mitigation measures are now considered feasible that weren't previously, nor are any new mitigation measures identified but not implemented. The GMO Guidelines add no new development areas, remove no new development areas, or modify any development areas. The GMO Guidelines provide procedures for future land use applications.

SECTION 4. In the event any provision of the Guidelines is held invalid by a court of competent jurisdiction, the Guidelines shall be construed as not containing that provision, and the remainder of the Guidelines shall remain in full force and effect.

SECTION 5. The City Council finds that these GMO Guidelines will not be detrimental to the health safety and welfare of the residents of Tracy because they aid only in the administration (i.e. timing and distribution of RGAs) of the existing regulations within the GMO.

This resolution shall be effective upon adoption.

\* \* \* \* \*

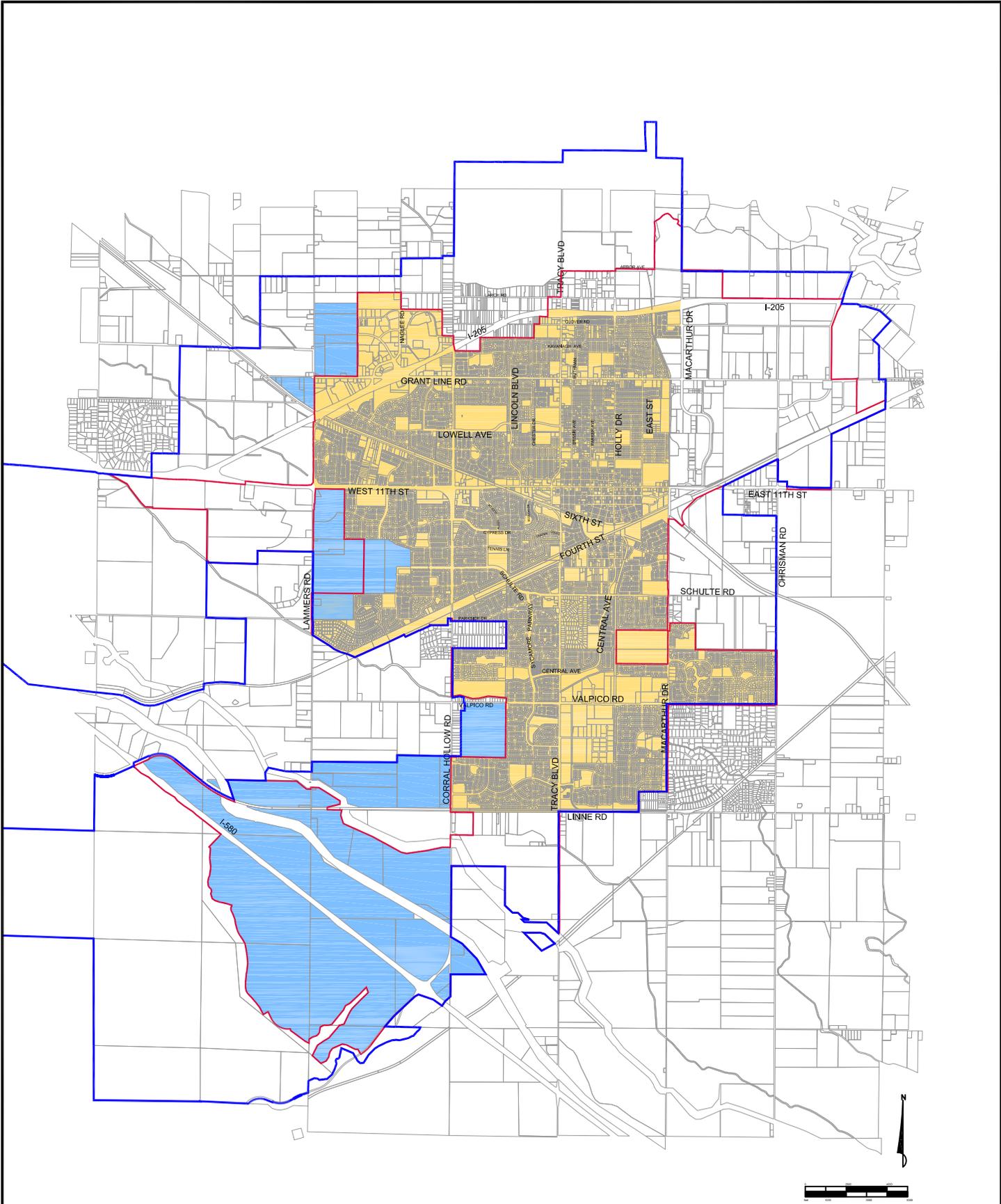
The foregoing Resolution 2012-\_\_\_\_\_ was adopted by the Tracy City Council on the 16<sup>th</sup> of October 2012, by the following vote:

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

\_\_\_\_\_  
Mayor

ATTEST:

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



# Residential Growth Areas

- City Limits
- Sphere of Influence
- Primary Residential Growth Areas
- Secondary Residential Growth Areas

AGENDA ITEM 5

REQUEST

**PROVIDE DIRECTION TO STAFF ON TRACY BALL PARK PROPERTY**

EXECUTIVE SUMMARY

Staff seeks direction from City Council on whether or not to pursue options for revitalizing the Tracy Ballpark neighborhood area; including relocating the Tracy Ball Park to the youth sports field area at Holly Sugar.

DISCUSSION

At the September 18, 2012 Council meeting, staff presented Council with three real estate options, one of which was the Tracy Ballpark. At that meeting, staff presented the option of exploring ways to revitalize that neighborhood, explore the possibility of relocation the fields from Tracy Ballpark to Holly sugar, and explore other uses for the Tracy Ballpark. Council directed staff to cease any further community outreach and bring back additional information. This staff report provides information relative to: (1) results of the title search for the Tracy Ballpark property, (2) an explanation of the process for disposition of parkland under State law, and (3) a summary of the community meetings presented to Council at the September 18<sup>th</sup> Council meeting.

**Tracy Ballpark Parcel Title Search Results:**

The primary piece of property that makes up Tracy Ball Park (10.83 acres) was acquired in 1944 from C.E. and Margaret Ritter for \$10.00. This conveyance does not specify any particular use of the property or any limitations on use. According to a preliminary title report, the property is subject to Exceptions, including in particular:

- 1963 Agreement of Lease, whereby the City leased 154 acres to Sunray DX Oil Company. (Recorded July 16, 1963 in Book 2711 Page 21 Official Records.) which has since expired; and
- 1990 Redevelopment Plan.

Although there are no restrictions on the property, a member of the Ritter family has expressed a desire that the City continue to use the Tracy Ballpark as a park, as that was the original vision of the family in 1944.

**Process for Disposition of Parkland:**

If the City were to consider disposing of the Tracy Ballpark property for a use other than a park, there are State law requirements relative to conveyance of park land that would have to be followed if the property were to be sold. This includes a CEQA review, Planning Commission confirmation that the proposed action is consistent with the General Plan; special election procedures; offers to other public agencies; and sale through a competitive bidding process (unless the City Council by resolution determines other procedures are in the best interest of the City.)

**Summary of Community Outreach:**

In preparation for the September 18<sup>th</sup> staff report presented to Council, and in an effort to glean community sentiment relative to the idea of revitalizing the Tracy Ballpark neighborhood and possibly relocating the fields at Tracy Ballpark, staff held two community meetings. The purpose of the meetings was to begin a dialogue with interested stakeholders (i.e. residents/sports leagues) and gauge the sports leagues perspectives regarding the idea of relocating the fields and from residents about revitalizing their neighborhood. The results of the first two meetings are summarized below.

**Summary of the Community Meeting with Sports Leagues:**

This meeting was held at the Tracy Transit Center on Thursday September 13<sup>th</sup>. There were 15 persons representing various sports leagues that currently utilize the Tracy Ballpark. A brief presentation of the analysis of the existing site was given, including discussion of the shortcomings of the location of a sports facility in close proximity to neighborhood residential such as noise, lighting, parking and heavy use issues.

A discussion exercise was facilitated with the group, where four questions were asked. The summary of the feedback is listed below:

1. What are your top “likes” about the existing park?

The top four things the group liked about the Tracy Ballpark were:

- that the Tracy Ballpark is lighted;
- that the Tracy Ballpark is in a convenient location;
- that the Tracy Ballpark provides opportunities for multi-sports and different age ranges, and
- that the Tracy Ballpark is open later in the fall/winter season after many fields are not playable.

2. What are your major “dislikes” of the existing park?

The top three major things the group disliked about the park were:

- the low maintenance level,
- the inadequate parking and bathrooms, and
- that the Tracy Ballpark is not usable for tournaments.

3. What are your major issues in redeveloping the park and moving fields to Holly Sugar?

The top five issues the group had with redeveloping the park and moving the fields to Holly Sugar were:

- the timing: the group did not want to lose fields for a season,
- any potential cost overruns impacting commitment to replace field for field and acre for acre,
- the travel distance to Holly Sugar site,
- the potential for increase in use fees at the new site, and
- compatibility of the new development with neighbors.

4. What are your perceived needs/desires for field replacement?

The top five perceived needs/desires for field replacement were:

- lighting for the entire site,
- on-site storage and scoreboards,
- ample parking and bathrooms in central location,
- multi-use overlays with baseball/softball/soccer/practice football/cricket,
- ample shade trees & structures, and
- a wind block.

Summary of Community Meeting with Tracy Ballpark Neighbors:

This meeting was held at the Tracy Community Center Monday September 17<sup>th</sup>. There were 12 persons participating. An introduction of the process was given, along with a presentation of site information and planning criteria, as well as, existing issues with the active lighted sports fields adjacent to the residential neighborhood.

The group was divided into two tables of 6 persons each and the following four questions were asked of each person individually and then discussed at each table to form a consensus list. These lists were then compared between the two tables to see where the overall consensus was agreed. The following is the consensus of this community meeting.

1. What are the major characteristics the group “likes” about the existing park?

The top three major characteristics identified by the group are:

- the historic location and legacy of the site,
- the multi-sport & recreation uses; and
- the central location.

2. What are the major “dislikes” about the park?

The top three major dislikes identified by the group are:

- the lack of maintenance,
- the dated, shabby appearance and lack of trees, and
- the parking issues with the one-way circulation pattern on 23<sup>rd</sup> Street.

3. What are the consensus “issues for potential redevelopment” perceived by the group?

The top two issues for potential redevelopment perceived by the group are:

- increased traffic congestion; and
- the potential sense of community outrage over selling land that was donated for park use.

4. What are the consensus “priorities” for redevelopment?

The top two priorities for redevelopment identified by the group are:

- to memorialize the Ritter family’s donation; and
- that the integrity of the City be maintained by continuing the debate over the highest and best use for the public.

Additionally, on October 4<sup>th</sup>, at the regularly scheduled Parks and Community Services Commission meeting, under Items from the Audience, a number of residents and community members addressed the Commission, where there was clear and unanimous opposition to the concept of moving the fields and re-purposing the property. Some of the main points stated by the public include the following:

- the Holly sugar Sports Complex should be additive to the City’s system and it was not intended to replace any parks;
- once open space is gone, its gone;
- older neighborhoods aren’t like new ones where park land is required as development occurs, and this neighborhood would have less open space than newer ones if the park was taken away;
- the park is used for open space enjoyment (even contemplative enjoyment) as much as for active sports;
- the park has incredible historical roots and serves as a statement of the City’s commitment to its citizens;
- the park has been used by generations for sports and is important as a cultural icon;
- changes in land use will likely increase neighborhood concerns related to parking.

#### Options

There may be more options however two immediate options are:

1. **Maintain the status quo.**

Continue to maintain the Tracy Ball Park as is and compete with other Capital Improvement Projects (CIP) for field renovation/ improvements at Tracy Ballpark as funds become available.

Options: (continued)

2. **Continue Community Outreach & Explore Neighborhood Revitalization Options and/or Relocation of the fields from Tracy Ballpark.**

Continue to have a dialogue with the neighbors and sports leagues to ascertain if there is interest to move forward with the idea of relocating the fields at Tracy Ball Park and continue exploring options on potential re-uses for the Tracy Ballpark to revitalize the neighborhood.

Given the overwhelming response from the Community expressing their concerns about redeveloping the Tracy Ballpark, staff recommends that Council consider Option 1 as the preferred direction.

**STRATEGIC PLAN**

This agenda item supports the City Council approved Organizational Efficiency Strategy:

Goal 1: Advance City Council's Fiscal Policies

1. To change the City's organizational and fiscal structure, and
2. To take advantage of funding and revenue generation opportunities

**FISCAL IMPACT**

There is no General Fund fiscal impact for this item at this time.

**RECOMMENDATION**

Staff recommends that City Council provide direction to staff on the Tracy Ballpark property.

Prepared by: Rod Buchanan, Director of Parks and Community Services

Reviewed by: Kevin Tobeck, Public Works Director  
Andrew Malik, Director of Development Services  
Kul Sharma, City Engineer  
William Dean, Assistant Director of Development Services

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

AGENDA ITEM 6

REQUEST

**RECEIVE UPDATE AND PROVIDE INPUT ON AIRPORT IMPROVEMENT OPTIONS**

EXECUTIVE SUMMARY

On October 18, 2011, the City Council and Transportation Advisory Commission held a joint meeting to discuss future improvements for the Tracy Municipal Airport. Twenty five items were identified as the top priorities in the short term list and all of the items on the Short Term list and two items from the Medium Term list were to be brought back to Council for further vetting and approvals as necessary. As staff proceeds to bring back updates to Council on the status of the various projects, only the items that are being worked on in the current quarter will be reported. Because each of the projects has many segments, current status, immediate next steps, and timelines are included in the update. An update and status of the following projects are being reported to Council: (S-1) Installation of T-hangars, (S-12) Construction of a Restaurant/Café, (S-14) Runway Repairs and Fencing at New Jerusalem Airport, (S-17) Seal coat on Runways and Taxiways, (S-21) Confirm Runway Lengths on Runway 12/30 and (S-22) Balance Airport Operating Budget.

DISCUSSION

On October 18, 2011, the City Council and Transportation Advisory Commission held a joint meeting to discuss future improvements for the Tracy Municipal Airport. During that meeting, a list of items was presented to Council for consideration to address various issues at the airport. Many of the Airport Improvement Options on the Short Term list were presented with the Airport Fund as the potential funding source. In its present state, the Airport Fund would not be able to support any of the options listed without having a negative impact on the operating budget.

Attachment A shows an update of the current projected timeline of each of the Short Term projects and the two Medium Term projects that Council asked to be brought back to them for further vetting and approvals as necessary. Each item shows a range of time that the project may be started and completed depending on other factors that may or may not occur such as funding availability or the completion of other projects.

**S-1: Install T-hangars: On Hold – Design Completed**

Working with the Federal Aviation Administration (FAA), staff has been able to complete the design work for the hangar project using funds in an existing grant. Since the pavement at the airport is a high priority, the construction of this project will be put on hold until after the pavement project is complete and additional funding is secured. Concurrently, staff will continue to seek alternative funding options for construction.

**S-12: Construction of a Restaurant/Café: Lease Negotiation in Progress**

Staff has met with Tracy Air Center (TAC), the current fuel operator at the airport, and discussed a preliminary design concept for a restaurant at the Tracy Municipal Airport.



FAA Approval to Award Project:	June 2013
Start Project	June/July 2013
Project Completed	July/August 2013

Additionally, staff has repaired and remarked the runway ends restoring it to its proper length of 4,000 feet and removed the previous NOTAM regarding the runway length.

**S-22: Balance Airport Operating Budget by FY15/16**

This item is key to realizing any future growth and sustainability at the airport. When this item was first presented at the January 17<sup>th</sup>, 2012 Council meeting, Council gave approval to move forward with a five step financial strategy to help the airport achieve financial stability. Updates to each of the five strategies are outlined below.

**STEP 1: Debt Service Reconciliation: Completed**

At the January 17, 2012 City Council meeting, Council approved the consolidation of four loans from the Water Fund to the Airport Fund. This action allows the Water Fund to be made whole and for the Airport Fund to make reasonable payments in order to do so.

**STEP 2: FTE Evaluation: Ongoing**

The Airport Operating Budget consists of the following positions: Airport Coordinator (1 FTE), Senior Maintenance Worker (0.5 FTE), Management Analyst II (0.1 FTE), and Transportation Commissioners (0.12 FTE). A total of 1.72 FTEs are currently in the Airport Operating Budget. This is down from 1.92 FTEs in FY11/12. A continual analysis of FTEs within the Airport Operating Budget will occur annually during budget preparation.

**STEP 3: Hangar Development: On Hold**

As mentioned earlier in the report, the construction of 42 new T-hangars will be temporarily postponed. Once the pavement issues are addressed, the Airport can then again utilize saved entitlement funds to assist with the construction of the T-hangars.

**STEP 4: Capital Improvements: In Progress**

Staff is currently working with Tracy Air Center on negotiating a ground lease for the construction of a restaurant. Tracy Air Center is also interested in building corporate hangars at the airport. Once construction is underway on the restaurant, staff will explore options for a corporate hangar ground lease.

**STEP 5: Future Planning: Not Started**

The medium term items M-1 and M-2 (as described on page 5) are being considered to be combined to conduct a comprehensive study that will identify the optimal runway length that will maximize economic opportunities for the Airport as well as locations that could accommodate an airport with such a runway length. Subsequent actions may include evaluating the feasibility of airport development opportunities and creating a business plan for the airport. The first step in this process was to identify current runway lengths (See S-21) which has been completed. Staff is currently working with the FAA to further

define the study that would be appropriate for Tracy to conduct to achieve this purpose.

### **OTHER PROJECTS**

#### **FBO Repairs: Under Construction**

Roof repairs on the FBO building have been completed. The drainage issues along the office side of the FBO building have also been addressed. An RFP is currently being prepared for release to address the drainage issues in front of the hangar doors of the FBO building.

### **FUTURE PROJECTS**

The following projects are scheduled to be worked on by staff during FY 12/13. Completion of these items will be dependent on the availability of funding.

#### **S-5: Install Taxiway reflectors or lights**

During the latest inspection by Caltrans, it was suggested to install either reflectors or lights on the taxiways in order to increase visibility at night. The estimated cost for this item is \$6,000 and the potential funding source is Caltrans.

#### **S-7: Investigate LED Test Beacon**

Determine if there is an LED manufacturer who would be willing to provide an airport beacon which utilizes LED lights for testing purposes at the Tracy Airport. This would be funded by the private company should one be found who would be willing to design such a beacon.

#### **S-8: Remote Control to Open the Gates**

Installation of a device which would allow for the opening of the airport gate from inside the airport. This would allow pilots who are landing after business hours to open the gates and allow those who may be coming to meet them to get into the airport. Estimated cost is \$750 and the potential funding source is the Airport Fund.

#### **S-9: Shorten 3 and Remove 1 Obstruction Light**

As part of the latest inspection by Caltrans, it was suggested to shorten 3 and remove one of the obstruction lights in the south hangar area. Estimated cost is \$2,000 and the potential funding source is Caltrans.

#### **S-10: Investigate Advertising on Hangars**

As a means of generating revenue for the airport, staff will investigate options to solicit advertising space on the hangars at the airport. There is no cost for staff to investigate this item.

#### **S-13: Install a Speaker to Listen to Pilots Over the Radio**

Installation of a device that allow for visitors to listen to what pilots say over their radios. The estimated cost for this is approximately \$300. The Tracy Airport Association (TAA) has agreed to pay for the installation of this.

**S-16: Relocate Taxiway Adjacent to Fuel Farm**

Caltrans recommendation. This would give larger aircraft a wider taxiway around the fuel farm. Estimated cost is \$3,000 and the potential funding source is Caltrans.

**S-18: Additional Security Fencing North of Runway 26**

There is a gap in the fencing of approximately 600 feet which needs to be closed off for security purposes. Estimated cost is \$9,000 and the potential funding source is Caltrans.

**S-19: Removal of Aligned Taxiway**

The FAA has required that the aligned taxiways at both ends of runway 08/26 be eliminated. The estimated cost for this is \$100,000 and the potential funding source is the FAA.

**S-25: Investigate Installation of a Water Connection from the Water Treatment Plant to the South Side of the Airport**

There is currently no water access on the south side of the airport. It is recommended that staff investigate the cost to install a water connection from the Water Treatment Plant in order to provide water to the south side of the airport. There is no cost to investigate this item.

**M-1: Update Airport Master Plan (including a Business Plan and Minimum Standards Document)**

See Step 5 under item S-22 above. The City Council approved the Airport Master Plan in 1998. The Airport Master Plan projects aviation activities and facility requirements through 2016. This would result in the hiring of a consultant to update the Airport Master Plan, including a Business Plan for future airport investment strategies. Additionally, adoption of standards for design, rates, and private and general ground lease structure, would assist in setting standards for future development at the airport. The estimated cost for this item is \$400,000 and the potential funding source is from an FAA grant, State grant and the Airport Enterprise Fund.

**M-2: Airport Site Study**

See Step 5 under item S-22 above. The current airport is somewhat limited in its growth due to the surrounding development. A site study would take into consideration an ideal location for a new airport which could grow much larger and accommodate larger airplanes than the current one. The estimated cost for this item is \$200,000 and the potential funding source is the FAA.

STRATEGIC PLAN

This agenda item supports the Organizational Efficiency strategic priority and specifically contributes to the following goal:

**Goal 1:** Advance City Council's fiscal policies

FISCAL IMPACT

There are no impacts to the General Fund for this item. Any project that has the Airport Fund identified as the funding source will be carefully evaluated to determine the fiscal impact it may have on that fund.

RECOMMENDATION

That City Council accept this report and provide input on Airport Improvement Options.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Rod Buchanan, Director of Parks and Community Services

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

Attachment "A" – Airport Improvement Options Timeline



AGENDA ITEM 7

REQUEST

**SECOND READING AND ADOPTION OF ORDINANCE 1175 AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 2.08.060(c) AND 2.08.070(b) OF CHAPTER 2.08 OF TITLE 2 OF THE TRACY MUNICIPAL CODE VESTING IN THE CITY MANAGER THE AUTHORITY TO APPOINT THE CITY CLERK AND ADDING A NEW SECTION 2.12.125 TO ARTICLE 2 OF CHAPTER 2.12 OF TITLE 2 OF THE TRACY MUNICIPAL CODE TRANSFERRING CERTAIN DUTIES OF THE CITY CLERK TO THE ADMINISTRATIVE SERVICES DIRECTOR**

EXECUTIVE SUMMARY

Ordinance 1175 was introduced at the Council meeting held on October 2, 2012. Ordinance 1175 is before Council for a second reading and adoption.

DISCUSSION

On November 2, 2010, voters in the City of Tracy approved Measure D, which changed the City Clerk position from an elected to an appointed position, upon the expiration of the City Clerk's current term. Currently the authority to appoint the City Clerk is vested in the City Council. Proposed Ordinance 1175 will amend Sections 2.08.060(c) and 2.08.070(b) of Chapter 2.08 of Title 2 of the Tracy Municipal Code (TMC) vesting in the City Manager the authority to appoint the City Clerk. Proposed Ordinance 1175 will also add new Section 2.12.125 to Article 2 of Chapter 2.12 of Title 2 of the TMC transferring various financial and accounting duties to the Administrative Services Director.

Ordinance 1175 is before Council for a second reading and adoption.

STRATEGIC PLAN

This agenda item does not relate to the Council's four strategic plans.

FISCAL IMPACT

None.

RECOMMENDATION

That Council adopts Ordinance 1175 following its second reading.

Attachment

Prepared by: Adrienne Richardson, Deputy City Clerk  
Reviewed by: Carole Fleischmann, Assistant City Clerk  
Approved by: Leon Churchill, Jr., City Manager

ORDINANCE 1175

AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 2.08.060(c) AND 2.08.070(b) OF CHAPTER 2.08 OF TITLE 2 OF THE TRACY MUNICIPAL CODE VESTING IN THE CITY MANAGER THE AUTHORITY TO APPOINT THE CITY CLERK AND ADDING A NEW SECTION 2.12.125 TO ARTICLE 2 OF CHAPTER 2.12 OF TITLE 2 OF THE TRACY MUNICIPAL CODE TRANSFERRING CERTAIN DUTIES OF THE CITY CLERK TO THE ADMINISTRATIVE SERVICES DIRECTOR

WHEREAS, On November 2, 2010, voters in the City of Tracy approved Measure D, which changed the City Clerk position from an elected to an appointed position, upon the expiration of the City Clerk's current term. The City Clerk's term will end effective December 4, 2012, or upon earlier vacancy of the office, and

WHEREAS, Currently, the authority to appoint the City Clerk is vested in the City Council, and

WHEREAS, Government Code section 36510 grants to the City Council the authority to vest in the City Manager its authority to appoint the City Clerk, and

WHEREAS, The City Council wishes to vest in the City Manager the authority to appoint the City Clerk;

The City Council of the City of Tracy does ordain as follows:

Section 1: Section 2.08.060(c) of Chapter 2.08 of Title 2 of the Tracy Municipal Code is amended to read as follows:

"It shall be the duty of the City Manager and he or she shall have the power to appoint, remove and demote any and all officers and employees of the City, except the City Attorney and the City Treasurer."

SECTION 2: Section 2.08.070(b) of Chapter 2.08 of Title 2 of the Tracy Municipal Code is amended to read as follows:

"It shall be the duty of all subordinate officers, including the City Attorney and the City Treasurer, to cooperate with and assist the City Manager in administering the affairs of the City most efficiently, economically and harmoniously so far as may be consistent with their duties as prescribed by law and ordinances of the City."

SECTION 3: A new section 2.12.125 is added to Article 2 Chapter 2.12 of Title 2 of the Tracy Municipal Code to read as follows:

"2.12.125 Administrative Services Director – Duties transferred from City Clerk

For the purposes of Government Code section 40805.5, the Administrative Services Director shall serve as the Director of Finance. The financial and accounting duties imposed upon the City Clerk under Government Code sections 40802 through 40805 are hereby transferred to the Administrative Services Director."

SECTION 4: This Ordinance shall take effect 30 days after its final passage and adoption, or on December 4, 2012, whichever is later.

SECTION 5: This Ordinance shall be published once in the TriValley Herald, a newspaper of general circulation, within 15 days from and after its final passage and adoption.

\* \* \* \* \*

The foregoing Ordinance 1175 was introduced at a regular meeting of the Tracy City Council held on the 2nd day of October, 2012, and was finally adopted by the Council at the regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

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

AGENDA ITEM 8.A

REQUEST

**INTRODUCTION OF AN ORDINANCE AMENDING SECTIONS 9.02.050, 9.06.050 AND CHAPTER 9.44 ENTITLED BOARD OF APPEALS, AND DELETING SECTION 9.44.050 OF THE TRACY MUNICIPAL CODE TO PROVIDE THAT THE BUILDING BOARD OF APPEALS WILL BE APPOINTED AND CONVENE ONLY WHEN NECESSARY DUE TO THE FILING OF AN APPEAL**

EXECUTIVE SUMMARY

City staff is recommending that the ordinance creating the Building Board of Appeals be revised to provide for appointment only at the time of an appeal, when the Board is needed. The City Clerk would maintain a list of potentially interested and qualified candidates.

DISCUSSION

The City long ago established a Building Board of Appeals, as required by the California Building Codes and Fire Code. The purpose is to hear appeals by anyone aggrieved by any administrative decision in the application of the California Housing, Building, Mechanical, Electrical, Plumbing, Abatement of Dangerous Buildings, Residential, Green Building Standards, Historical Building, Energy, Existing Building and Fire Codes.

Even though it is established, and members appointed, the Board of Appeals has never had a matter appealed to it. There is some administrative burden for both City staff and Board members in maintaining an ongoing board, with required re-appointments and annual disclosure statements.

The Staff is recommending that the ordinance establishing this Board be revised so that the Board is formally appointed *only* if there is an appeal. The “term” of the Board would only be for the duration of the matter appealed. Under the proposed change, the City clerk would maintain a list of potentially interested and qualified candidates, so that the Mayor and Council could make a prompt appointment if necessary. Rather than having very specific, numerical qualifications (two contractors, two lay members, one engineer or architect), the proposed ordinance would require more generally that members be “qualified by experience and training to pass on matters pertaining to building construction (such as licensed contractors, engineers and architects).” Other qualifications would apply if the matter appealed involved the Fire Code, or access for disabled persons.

Section 9.44.050, Bylaws, is proposed to be deleted, as Bylaws are not normally a part of the Municipal Code and appear to have been placed in the Code inadvertently in this case.

Finally, the name is proposed to be changed from Building Board of Appeals to Board of Appeals.

STRATEGIC PLAN

This is a routine operational item which does not relate to the City's four strategic plans.

FISCAL IMPACT

Some savings to City Clerk's administrative costs, by not having to process annual disclosure statements for all of the (inactive) Board members.

RECOMMENDATION

Introduce an ordinance amending Sections 9.02.050, 9.06.050 and Chapter 9.44, entitled Board of Appeals, and Delete Section 9.44.050, of the Tracy Municipal Code to provide that the Building Board of Appeals will be appointed and convene only when necessary due to the filing of an appeal.

Prepared by: Carole Fleischmann, Assistant City Clerk  
Kevin Jorgensen, Chief Building Official  
Reviewed by: Maria Hurtado, Assistant City Manager  
Approved by: R. Leon Churchill, Jr., City Manager

ORDINANCE \_\_\_\_\_

AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 9.02.050, 9.06.050 AND CHAPTER 9.44, BOARD OF APPEALS, AND DELETING SECTION 9.44.050, OF THE TRACY MUNICIPAL CODE

WHEREAS, the City long ago established a Building Board of Appeals, as required by the California Building Codes and Fire Code.

WHEREAS, though established, and members appointed, the Building Board of Appeals has never had a matter appealed to it. There is some administrative burden for both City staff and Board members in maintaining an ongoing board, with required re-appointments and annual disclosure statements.

WHEREAS, City staff is recommending that the ordinance creating the Building Board of Appeals be revised to provide for appointment only at the time of an appeal, when the Board is needed. The City Clerk would maintain a list of potentially interested and qualified candidates.

NOW, THEREFORE, the Tracy City Council hereby ordains as follows:

SECTION 1: Section 9.02.050, Building Board of Appeals, of the Tracy Municipal Code is renamed "Board of Appeals."

SECTION 2: Section 9.06.050, Appeals [for Fire Protection and Prevention] of the Tracy Municipal Code, is amended to read as follows:

**"9.06.050 Appeals.**

Any person aggrieved by any decision or action of the Chief, may appeal to the Board of Appeals, by filing a written notice of appeal with the City Clerk within 30 from the date the decision or action was taken."

SECTION 3. Chapter 9.44, Building Board of Appeals, of the Tracy Municipal Code is renamed and amended to read as follows:

**"BOARD OF APPEALS**

**9.44.010 - Name and purpose.**

The Board of Appeals is created in order to hear appeals by persons aggrieved by any administrative decisions in the City's application of the Uniform Housing, Building, Mechanical, Electrical, Plumbing, Abatement of Dangerous Buildings, Residential, Green Building Standards, Historical Building Code, Energy Code, Existing Building Code and Fire Codes, or regulations adopted under them. (See TMC Chapter 9; and TMC §§9.02.050 and 9.06.050.) It will also serve as the appeal board when determinations are made regarding special conditions for persons with disabilities, under California Building Code section 1.9.1.5 or California Health and Safety Code section 19957.5.

**9.44.020 - Definitions.**

In this chapter, unless otherwise apparent from the context:

"Board" means the Board of Appeals.

"Building Official" means the Chief Building Official or his or her designee.

"Member" means a member of the Board of Appeals.

**9.44.030 - Organization and membership.**

(a) Time of appointment; Term. The Board will be appointed promptly whenever the city receives an appeal requiring a hearing by the Board. The Board shall be comprised of five members appointed by the Mayor with the advice and consent of the Council. Members shall serve only until the matter appealed has been concluded and the Board's participation is no longer required.

(b) Qualifications. The Board will be appointed from a list of potentially interested and qualified candidates maintained by the City Clerk. The Board shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction (such as licensed contractors, engineers and architects). When the appeal concerns the Fire Code, at least two of the members shall be qualified by experience with the Fire Code. When the appeal concerns access for persons with disabilities, at least two members shall be disabled individuals.

A member may not be an employee or elected officer of the City, but may be a member of another City board or commission. A member need not be a resident of the City. A member may not have any interest in property which is the subject of the appeal to the Board.

(c) Officers; Procedures. Once appointed, the Board shall meet to elect a chair and vice-chair, and to set the time and place of its meetings. The Board shall function in accordance with the standard commission by-laws which apply to other city commissions and boards.

(d) Secretary; Ex officio members. The Chief Building Official shall be the ex officio Secretary of the Board but shall not vote. When an appeal is heard regarding the Fire Code, the Fire Chief or his or her designee shall sit as an ex officio member."

**9.44.040 - Powers and duties.**

(a) Functions. The functions of the Board shall be as follows:

(1) To hear appeals of administrative decisions regarding the use of alternative materials, interpretations pertaining to the enforcement of any of the Codes and related regulations listed in TMC Section 9.44.010; and

(2) To hear appeals of administrative decisions in the application of the Uniform Housing Code, the Uniform Code for the Abatement of Dangerous

Buildings, and related sections of this Code in actions declaring certain building structures or conditions therein substandard, unsanitary, or hazardous and requiring their consideration, rehabilitation, reconstruction, correction, or abatement as applicable.

- (b) Limitation on appeals. An application for appeal must be based on a claim that:
- (1) the true intent of the applicable code or the related regulations has been incorrectly interpreted;
  - (2) the provisions of the applicable code do not fully apply;
  - (3) an equally good or better form of construction is proposed.

The Board does not have the authority to waive requirements of the code. (California Building Code Section 113.2.)

(c) Conduct of appeals.

- (1) The Board shall exercise its powers in such a manner that substantial justice is done most nearly in accord with the intent and purpose of this Code.
- (2) The Board shall follow fair procedural rules, including giving adequate notice of hearings to all parties, providing hearings open to the public, assuring that the hearing is commenced within 60 days after the date of the filing of the petition for an appeal, recording minutes of its proceedings, and providing copies of minutes for inspection as a public record.

(d) Procedure of petitions for hearing of appeals. Upon the filing of a petition and appointment of the Board under Section 9.44.030, the secretary shall set the matter on the Board's agenda for consideration. The secretary shall give written notice of at least seven days to the applicant or petitioner, specifying the time and place of the hearing. At the hearing, the petitioner shall be given an opportunity to be heard and present any evidence to support the request. If necessary, the hearing may be continued.

(e) Decisions. In rendering its decision, the Board has no authority to waive requirements of any code. (California Building Code Section 113.2.) No later than 10 days after the close of the hearing(s) the Board shall formally report its decision in writing, including its findings of fact and reasons for the decision. The report shall either approve, approve with modifications or deny the appeal, and shall specify any conditions or limitations imposed. A copy of the report shall be forwarded to the petitioner or his or her representative at the address shown on the petition within 10 days after the decision. The secretary shall provide a copy of the report to the administrative office whose decision was appealed, and shall maintain a copy in the Board's permanent records.

(f) Appeals to the Council. The decision of the Board in granting or denying an appeal shall become final and effective unless timely appealed to the City Council under section 1.12.020. Upon the receipt of a written appeal filed with the Council, the

secretary of the Board shall transmit to the Council the Board's complete record of the case.

Within 10 days after the council adopts a resolution ordering that an appeal be granted or denied, or modified subject to conditions, the secretary shall mail a copy of the resolution to the appellant, and one copy shall be attached to the Board's file of the case."

SECTION 3. Section 9.44.050, Bylaws, of Chapter 9.44 (Building Board of Appeals) of Title 9 (Building Regulations) of the Tracy Municipal Code is deleted.

SECTION 4. Because of the unique circumstances, the Board of Appeals is not subject to Council Resolution 2004-152 (or any successor resolution) Establishing the Council Selection Process and Defining Residence Requirements, for Appointee Bodies.

SECTION 5. This Ordinance shall take effect 30 days after its final passage and adoption.

SECTION 6 . This Ordinance shall be published once in the Tri-Valley Herald, a newspaper of general circulation, within 15 days from and after its final passage and adoption.

\* \* \* \* \*

The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, and finally adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the following vote:

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

\_\_\_\_\_  
Mayor

ATTEST:

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

ORDINANCE \_\_\_\_\_

AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 9.02.050, 9.06.050 AND CHAPTER 9.44, BOARD OF APPEALS, AND DELETING SECTION 9.44.050, OF THE TRACY MUNICIPAL CODE

WHEREAS, the City long ago established a Building Board of Appeals, as required by the California Building Codes and Fire Code.

WHEREAS, though established, and members appointed, the Building Board of Appeals has never had a matter appealed to it. There is some administrative burden for both City staff and Board members in maintaining an ongoing board, with required re-appointments and annual disclosure statements.

WHEREAS, City staff is recommending that the ordinance creating the Building Board of Appeals be revised to provide for appointment only at the time of an appeal, when the Board is needed. The City Clerk would maintain a list of potentially interested and qualified candidates.

NOW, THEREFORE, the Tracy City Council hereby ordains as follows:

SECTION 1: Section 9.02.050, Building Board of Appeals, of the Tracy Municipal Code is renamed "Board of Appeals."

SECTION 2: Section 9.06.050, Appeals [for Fire Protection and Prevention] of the Tracy Municipal Code, is amended to read as follows:

**"9.06.050 Appeals.**

Any person aggrieved by any decision or action of the Chief, may appeal to the ~~Building~~ Board of Appeals, by filing a written notice of appeal with the City Clerk within ~~thirty (30)~~ from the date ~~such the~~ decision or action was taken."

SECTION 3. Chapter 9.44, Building Board of Appeals, of the Tracy Municipal Code is renamed and amended to read as follows:

~~"BUILDING~~-BOARD OF APPEALS

**9.44.010 - Name and purpose.**

The ~~Building~~ Board of Appeals is created in order to hear appeals by persons aggrieved by any administrative decisions in the ~~City's~~ application of the Uniform Housing, Building, Mechanical, Electrical, Plumbing, Abatement of Dangerous Buildings, Residential, Green Building Standards, ~~Historical Building Code, Energy Code, Existing Building Code~~ and Fire Codes, or regulations adopted ~~pursuant thereto, of the City under them.~~ (See TMC Chapter 9: and TMC §§9.02.050 and 9.06.050.) It will also serve as the appeal board when determinations are made regarding special conditions for persons with disabilities, under California Building Code section 1.9.1.5 or California Health and Safety Code section 19957.5.

**9.44.020 - 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:~~

"Board" means the ~~Building~~ Board of Appeals.

"Building Official" means the ~~designated Building Official or his/her deputy, the Chief Building Inspector~~ Chief Building Official or his or her designee.

"Member" means a member of the ~~Building~~ Board of Appeals.

**9.44.030 - Organization and membership.**

(a) ~~Time of appointment; Term. The Board will be appointed promptly whenever the city receives an appeal requiring a hearing by the Board.~~ The ~~Board~~ Board shall be comprised of five (5) members appointed by the Mayor with the advice and consent of the Council. ~~The Members shall serve only until the matter appealed has been concluded and the Board's participation is no longer required.~~

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(b) ~~Qualifications. The Board will be appointed from a list of potentially interested and qualified candidates maintained by the City Clerk. The Board shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction (such as licensed contractors, engineers and architects). When the appeal concerns the Fire Code, at least two of the members shall be qualified by experience with the Fire Code. When the appeal concerns access for persons with disabilities, at least two members shall be disabled individuals.~~

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~~A member may not be an employee or elected officer of the City, but may be a member of another City board or commission. A member need not be a resident of the City. A member may not have any interest in property which is the subject of the appeal to the Board.~~

(c) ~~Officers; Procedures. Once appointed, the Board shall meet to elect a chair and vice-chair, and to set the time and place of its meetings. The Board shall function in accordance with the standard commission by-laws which apply to other city commissions and boards.~~

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(d) ~~Secretary; Ex officio members. The Chief Building Official shall be the ex officio Secretary of the Board but shall not vote. When an appeal is heard regarding the Fire Code, the Fire Chief or his or her designee shall sit as an ex officio member.~~

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~~(1) Two (2) members shall be licensed contractors.~~

~~(2) Two (2) members shall be selected from the lay community.~~

~~(3) One member shall be an engineer or architect.~~

~~(b) The term of office for each member shall be four (4) years, with staggered terms. Vacancies occurring during a term shall be filled for the unexpired period of the term by the appointing authority.~~

~~Members shall serve at the pleasure of the Council and may be removed from office without cause upon an affirmative vote for four (4) council members.~~

**9.44.040 - Powers and duties.**

(a) Functions. The functions of the Board shall be as follows:

(1) To hear appeals of administrative decisions regarding the use of alternative materials, interpretations pertaining to the enforcement of any ~~provision of the Building, Plumbing, Mechanical, Electrical and Fire Codes of the Codes~~ and related regulations ~~of the City listed in TMC Section 9.44.010;~~ and

(2) To hear appeals of administrative decisions in the application of the Uniform Housing Code, the Uniform Code for the Abatement of Dangerous Buildings, and related sections of this Code in actions declaring certain building structures or conditions therein substandard, unsanitary, or hazardous and requiring their consideration, rehabilitation, reconstruction, correction, or abatement as applicable.

(b) Limitation on appeals. An application for appeal must be based on a claim that:  
(1) the true intent of the applicable code or the related regulations has been incorrectly interpreted;  
(2) the provisions of the applicable code do not fully apply;  
(3) an equally good or better form of construction is proposed.

The Board does not have the authority to waive requirements of the code. (California Building Code Section 113.2.)

(c) Conduct of appeals.

(1) The Board shall exercise its powers in such a manner that substantial justice is done most nearly in accord with the intent and purpose of this Code.

(2) The Board shall ~~adopt follow fair procedural rules, including of procedure for the conduct of appeals, make provisions for giving~~ adequate notices of hearings to all parties, ~~providing provide for a~~ hearings open to the public, ~~of all appeals assuring that the hearing to be~~ commenced ~~not less than ten (10) nor more than sixty (within 60)~~ days after the date of the filing of the petition for an appeal, recording minutes of ~~all~~ its proceedings, and ~~provide providing~~ copies of ~~such~~ minutes for inspection as a public record.

(ed) Procedure of petitions for hearing of appeals. (1) Upon the filing of a petition and appointment of the Board under Section 9.44.030, the secretary shall set the matter on the Board's agenda for consideration ~~by the Board.~~ (2) The secretary shall give written notice in writing of not less than of at least seven (7) days ~~shall be given to~~ the applicant or petitioner, specifying the time and place of the hearing. (3) At the hearing,

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the petitioner shall be given an opportunity to be heard and present any evidence to support the request. If necessary, the hearing may be continued.

~~(de) Decisions. (4) In rendering its decision, the Board has no authority to waive requirements of any code. (California Building Code Section 113.2.) No later than ten (10) days after the close of the hearing, (s) the Board shall formally report its decision in writing, including its findings of fact and reasons for the decision, together with the reasons, its decision in writing. (2) The formal report shall either approve, approve with modifications or deny the appeal, and shall specify order the petition or application either granted, denied, or modified and specify any conditions or limitations imposed. (3)~~

A copy of the ~~findings and decisions report~~ shall be forwarded to the petitioner or ~~their his or her~~ representative at the address shown upon the petition ~~on file~~ within ~~ten~~ (10) days after the decision. The secretary shall provide a copy of the report to the administrative office whose decision was appealed, and shall maintain a copy in the Board's permanent records.

~~(e) Reports Forwarding. A copy of the report shall be forwarded to the administrative office whose decision has been appealed.~~

~~(f) Reports Filing. The Board shall file the original of its report in its permanent records.~~

~~(gf) Appeals to the Council. The decision of the Board Board in granting or denying an appeal shall become final and effective unless timely appealed to the City Council under section 1.12.020. Upon the receipt of a written appeal filed with the Council, the Secretary secretary of the Board Board shall thereupon transmit to the Council the Board's Board's complete record of the case.~~

~~Not later than ten (Within 10) days following the after the council adoption of adopts a resolution ordering that an appeal be granted or denied, or modified subject to conditions, a the secretary shall mail a copy of such the resolution shall be mailed to the appellant, and one copy shall be attached to the Board's Board's file of the case and such file returned to the Secretary of the Board for permanent filing."~~

**SECTION 3.** Section 9.44.050, Bylaws, of Chapter 9.44 (Building Board of Appeals) of Title 9 (Building Regulations) of the Tracy Municipal Code is deleted.

**SECTION 4.** Because of the unique circumstances, the Board of Appeals is not subject to Council Resolution 2004-152 (or any successor resolution) Establishing the Council Selection Process and Defining Residence Requirements, for Appointee Bodies.

**SECTION 5.** This Ordinance shall take effect 30 days after its final passage and adoption.

**SECTION 6 .** This Ordinance shall be published once in the Tri-Valley Herald, a newspaper of general circulation, within 15 days from and after its final passage and adoption.

Ordinance \_\_\_\_\_  
Page 5

\* \* \* \* \*

The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, and finally adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the following vote:

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

\_\_\_\_\_  
Mayor

ATTEST:

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

