

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

City Council Chambers, 333 Civic Center Plaza

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

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

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

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

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

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

PRESENTATIONS - Certificate of Appointment – Transportation Advisory Commission

1. CONSENT CALENDAR

- A. Approval of Minutes
- B. Authorize Amendment of the City's Classification and Compensation Plans and Position Control Roster by Approving the Establishment of a Classification Specification and Salary Range for Utilities Director
- C. A Resolution of the City of Tracy Accepting Placement of the Tracy Sports Hall of Fame Plaque in City Hall
- D. Acceptance of Offsite Improvements Constructed by McDonald's USA, LLC, Related to Street and Utility Improvements on Eleventh Street and F Street
- E. Acceptance of the Holly Sugar Sports Complex Project (Legacy Park) – CIP 78115, Completed by Desilva Gates Construction of Dublin, California, and Authorization for the City Clerk to File the Notice of Completion
- F. Acceptance of the Police Firearms Practice Range Waterline – CIP 71072D, Completed by Extreme Excavation of Tracy, California, and Authorization for the City Clerk to File a Notice of Completion
- G. Authorization of Purchase of Wildlife Habitat Mitigation Credits for the Effluent Outfall Pipeline and Diffuser Improvement Project from the Westervelt Ecological Services, LLC, and Authorization for the Mayor to Execute the Agreement
- H. Award a Construction Contract to the Lowest Responsive Bidder for the Slurry Seal Project (FY 2012-13), CIP 73130B, and Authorize the Mayor to Execute the Contract
- I. Award a Construction Contract for the Tracy Boulevard Overlay Project – CIP 73130A to the Lowest Responsive Bidder, and Authorize the Mayor to Execute the Contract
- J. Minor Amendment to the Chevrolet Final Development Plan to Modify the Façade at 3400 Auto Plaza Way - Applicant and Owner is Golden Bears III LLC
- K. Approving the 2014 Calendar Year Budget for the Operation of the Tracy Material Recovery Facility and Solid Waste Transfer Station

2. ITEMS FROM THE AUDIENCE

3. PUBLIC HEARING TO HEAR OBJECTIONS TO AND APPROVE THE FINAL COSTS OF WEED ABATEMENT AND AUTHORIZE A LIEN ON THE LISTED PROPERTIES IN THE COSTS OF ABATEMENT AMOUNT PLUS 25 PERCENT

4. AWARD A CONSTRUCTION CONTRACT TO THE LOWEST RESPONSIVE BIDDER FOR THE VALPICO ROAD SIDEWALK IMPROVEMENT PROJECT – CIP 73133, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONSTRUCTION CONTRACT

5. APPROVE AN APPROPRIATION FROM UNSPENT 301 FUNDS IN THE AMOUNT OF \$550,000 FOR COSTS ASSOCIATED WITH REMOVAL OF USE RESTRICTIONS AND FEDERAL REVERSIONARY RIGHTS ON THE 150-ACRE SCHULTE ROAD PARCEL FROM GENERAL SERVICES ADMINISTRATION, AUTHORIZE THE MAYOR TO EXECUTE ANY NECESSARY DOCUMENTS TO COMPLETE THE TRANSFER, AND APPROPRIATE \$100,000 FOR A PROFESSIONAL SERVICES AGREEMENT WITH URS CORPORATION FOR CONSULTANT SERVICES TO SERVE AS THE CITY'S REPRESENTATIVE IN ASSESSING AND NEGOTIATING A RENEWABLE ENERGY PROJECT AT THE SCHULTE ROAD PROPERTY
6. RECEIVE AND DISCUSS ITEMS REFERENCED IN THE MEMORANDUM DATED APRIL 26, 2013, FROM SURLAND COMPANIES TO THE CITY OF TRACY
7. ITEMS FROM THE AUDIENCE
8. STAFF ITEMS
 - A. Receive and Accept the City Manager Informational Update
9. COUNCIL ITEMS
10. ADJOURNMENT

October 15, 2013, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

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

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

Mayor Ives presented Certificates of Appointment to new adult Youth Advisory Commissioners Lori Souza and Laura Hall-Tsirelas, and reappointed Commissioner Wes Huffman.

1. CONSENT CALENDAR - Following the removal of item 1-B by Council Member Rickman, it was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Approval of Minutes – Regular meeting minutes of August 20, 2013, were approved.
 - C. Acceptance of Yosemite Vista Unit 2, Phase 2, Tract 3495, for Bright Development – Resolution 2013-161 accepted the project.
 - D. Authorize Amendment of the City's Classification and Compensation Plans and Position Control Roster by Approving the Establishment of a Class Specification and Pay Range for a Part-Time, Limited Service Police Range Master in the Police Department – Resolution 2013-162 authorized amendment of the plan.
 - B. Approve a Minor Amendment to the Aspire (formerly Tracy Sierra Development) Apartment Project Planned Unit Development Final Development Plan and Off-Street Parking Space Reduction – The Project is Located on Approximately 10.8 Acres on the North Side of Pavilion Parkway, Northeast of the Intersection of Pavilion Parkway and Power Road – Application Number PUD13-0005 – Applicant is Tracy 300 L.P. – Council Member Rickman indicated he pulled the item because he opposed the project when it was originally presented to Council, and would still oppose the item. It was moved by Mayor Pro Tem Maciel and seconded by Council Member Young to adopt Resolution 2013-163 approving the minor amendment. Voice vote found Council Members Manne, Young, Mayor Pro Tem Maciel and Mayor Ives in favor Council Member Rickman opposed.
2. ITEMS FROM THE AUDIENCE – Tim Heinrich, on behalf of Circle B. Ranch neighbors, addressed Council regarding traffic and safety concerns while entering and exiting the subdivision. Mr. Heinrich asked that the vegetation be trimmed to increase visibility at the two access intersections of the subdivision and that Council consider improvements including lighted crosswalks and traffic signals.

Steve Nicolaou provided Council with a handout from the Secretary of State showing the California Franchise Tax Board suspended Turlock Air Center's powers, rights and privileges on March 1, 2013. Mr. Nicolaou stated based on that suspension, Turlock Air Center is not authorized to do business in the State of California.

Steve Stuhmer, Turlock Air Center, stated he had spoken with the State Board of Equalization and they show him in good standing.

Paul Miles addressed Council regarding allegations of an illegal agreement with Surland Companies and referenced documents he provided at the October 1, 2013, Council meeting. Mr. Miles stated that denial by staff of an agreement between the City of Tracy and Surland was unacceptable.

Dave Helm provided Council with a document that included a newspaper article, copies of Statements of Economic Interest filed by Mayor Ives, and a copy of a complaint filed with the Fair Political Practices Commission concerning Mayor Ives. Mr. Helm stated he objected to Mayor Pro Tem Maciel's characterization of individuals provided at the October 1, 2013, Council meeting. Mr. Helm provided a history of various Council actions including funds paid to rename a street near the auto dealers, Surland Communities given free wastewater facility usage, Growth Management Ordinance and Residential Growth Allotment process being changed, and fuel sales rates changing.

3. PUBLIC HEARING TO RECEIVE PUBLIC TESTIMONY FOR ANNUAL UNMET TRANSIT NEEDS, CITY OF TRACY, FISCAL YEAR 2013-14 – Ed Lovell, Management Analyst, provided the staff report. 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 City of Tracy requested TDA funds for Fiscal Year 2012-13 for the following purposes:

1. Public Transportation Operating Costs	\$ 687,450
2. Public Transportation Capital Costs	\$ 410,227
3. Roads and Streets Projects	\$2,175,484
4. Pedestrian and Bicycle Projects	\$ 52,316
5. TDA Administration	<u>\$ 76,100</u>

TOTAL 2012-13 CLAIM: \$3,401,577

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.

No decision as to the sufficiency of local transit services is requested from the Council. The minutes of the public hearing on October 15, 2013, 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. The Notice of Public Hearing relative to the Unmet Transit Needs Hearings was published in the TriValley Herald newspaper, as well as a circular

that was delivered to over 40 social services/activity agencies within the Tracy community.

Staff recommended that Council open the public hearing to record any unmet transit needs.

Mayor Ives opened the public hearing.

Cindy Gustafason, Tracy Senior Advocacy Association, stated they have identified an unmet Transit need for seniors at the Moorehead Mobile Home Park on Chrisman Road, indicating residents are no longer served by the County or City bus system.

Wanita Thibault, a Tracy resident, addressed Council regarding City staff warning her not to call City offices, concerns about bus stops and disabled access by the DMV, Winco grocery store, and the Boys and Girls Club. Ms. Thiabault expressed concerns regarding buses not having a diamond E license plate, drivers going too fast and slamming on the brakes, mistreatment of ADA passengers, and the inconsistent application of rules for riders.

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

Mayor Ives asked if the operational items would be dealt with internally. Mr. Lovell stated yes.

Council Member Young asked if once all concerns are documented, is there any follow up that Council receives regarding improvements or changes. Mr. Lovell stated staff can provide feedback to Council regarding the operational items. Mr. Lovell added that the unmet needs are forwarded to SJCOG who then determines whether the needs are reasonable to meet or not and provides a final report.

Council Member Young asked how long before Council would receive an update on the operational items. Mr. Lovell stated staff can bring an update back to Council as part of the annual transit report.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to accept the report for Annual Unmet Transit Needs for FY 2013-14. Voice vote found all in favor; passed and so ordered.

Mayor Ives asked Mr. Lovell to provide Council with a list of the operational needs when the annual transit report is given.

4. PUBLIC HEARING TO APPROVE AN AMENDMENT TO THE SAN JOAQUIN COUNTY MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN (SJMSCP) DEVELOPMENT FEE, RESULTING IN AN INCREASE IN FEES FOR 2014 – Victoria Lombardo, Senior Planner, provided the staff report. In 2001, City Council approved a resolution to establish the authority to collect a development fee for the SJMSCP. That fee was established in 2001, and subsequently updated in 2005, 2007, 2008, 2009, 2010, 2011, 2012 and 2013.

The formula for updating the fee was categorized into three distinct components to better calculate an accurate fee per acre [FEE = Category A (acquisition) + Category B (assessment & enhancement) + Category C (management & admin)]. The final

mitigation fees reflect true costs in each category and other real costs associated to fulfill the goals of the plan.

Category A (acquisition) – Comparables - This category is directly related to land valuation based on comparables, which occur in specific zones of the plan. The category is evaluated annually by taking all qualified comparables in each zone, including San Joaquin Council of Governments, Inc. (SJCOG) easements, to set a weighted cost per acre using the same methodology as in the Financial Analysis Update in 2006 as amended in mid-2012 by the Habitat Technical Advisory Financial Sub-Committee and SJCOG, Inc. The SJCOG, Inc. easements are evaluated using the appraised value of the property in the before condition included with the fee title sales of other property occurring in San Joaquin County. The final weighted cost per acre of each zone is calculated into a blended rate under Category A (acquisition) figure for each habitat type.

The criteria to determine valid comparables used in the weighted calculation are:

1. All SJCOG transactions (fee title and appraised value of unencumbered property)
2. Sales not less than 40 acres
3. Sales not greater than 500 acres
4. No parcels with vineyard or orchard (except SJCOG transactions for special needs)
5. Must be land which would fulfill mitigation under the plan
6. Comparable sales reviewed by the Habitat Technical Advisory Financial Sub-committee
7. Not greater than two years old from the date of June 30, each year with all acceptable comparables included (criteria 1-5). A minimum of ten acceptable comparables are required for analysis. If a minimum of ten transactions are not available, the time period will extend at three month intervals prior to the beginning date until ten comparables are gathered.

The calculation results in an increase to the Agricultural/Natural Habitat type of Category A component from \$7,788.41 to \$8,288.74.

Category B (assessment & enhancement) - Consumer Price Index - This category is an average of the California Consumer Price Index (CPI), as reported by the California Department of Finance, for a 12 month period following a fiscal year (July – June) to keep up with inflation on a yearly basis. The CPI has been deemed appropriate regarding the cost of inflation for this category. The California CPI calculation increased 1.7%. The calculation results in an increase of the Category B component to be \$3,189.59, up from last year's \$3,136.27.

Category C (management & administration) - Consumer Price Index - This category is an average of the California CPI, as reported by the California Department of Finance, for a 12 month period following a fiscal year (July – June) to keep up with inflation on a yearly basis. The CPI has been deemed an appropriate measure regarding the cost of inflation for this category. The California CPI calculation increased 1.9%. The calculation results in an increase of the Category C component to be \$1,816.28, up from \$1,785.92 in 2013.

SJCOG staff calculated the fees using the SJMSCP Financial Analysis formula model [FEE= Category A (acquisition) + Category B (assessment & enhancement) + Category C (management & Admin)]. The overall result in the calculations was an increase in the fees from 2013 to 2014.

All of the land within and adjacent to the current City limits are classified as Open Space or AG/Natural, as there are no vernal pools near the City of Tracy. The current (2013) per-acre fees in the relevant categories are \$6,364 per acre for Open Space and \$12,711 for AG/Natural.

Monitoring Plan Funding - Along with the annual index adjustment, the SJMSCP is required to monitor the plan to address funding shortfalls as stated in Section 7.5.2.1 of the plan. SJCOG shall undertake an internal review of the SJMSCP funding plan every three years to evaluate the adequacy of each funding source identified in the plan, identify existing or potential funding problems, and identify corrective measures, should they be needed in the event of actual or potential funding shortfalls. This will be reported to the permitting agencies for review in Annual Reports. A review of the Financial Analysis Plan, similar to the process undertaken in the 2006 review, will occur every five years to ensure the adopted methodology is fulfilling the goals of the plan.

Staff recommended that Council approve the amended development fees for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan.

Ms. Lombardo pointed out a couple of errors in the table, but indicated that the proposed fees column to be adopted were correct.

Council Member Young asked Ms. Lombardo to recheck the final numbers for Category C.

Council Member Rickman asked if paying this fee was an option for the developers. Ms. Lombardo stated yes, it was the developer's option.

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

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Young to adopt Resolution 2013-164, approving the amended development fees for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan. Voice vote found all in favor; passed and so ordered.

5. PUBLIC HEARING TO INTRODUCE AN ORDINANCE AMENDING THE TRACY MUNICIPAL CODE (ZONING REGULATIONS) REGARDING TIME LIMITS AND EXTENSIONS FOR DEVELOPMENT REVIEW PERMITS (TMC CHAPTER 10.08, ARTICLE 30) – APPLICATION NUMBER ZA13-0002 – Alan Bell, Senior Planner, provided the staff report. The proposal is a City-initiated request to amend the Tracy Municipal Code (TMC) Development Review process to (1) create flexibility in the duration of a Development Review approval and (2) allow for extensions of time if the applicant does not obtain a building permit prior to Development Review expiration.

Development Review is the typical, discretionary process in the City of Tracy a developer follows to obtain approval of a site plan, building architecture, utility connections, and other development details. Development Review typically occurs after (or concurrent with) zoning for a site and prior to (or concurrent with) building permit approval.

TMC Section 10.08.4080 prescribes a one-year time limit for a Development Review approval. No provisions are made for longer periods of time, when appropriate, for an

applicant to obtain a building permit or to obtain an extension of the Development Review approval.

The proposal establishes a two-year, initial time limit for Development Review approval and allows the City to grant an approval for a greater period of time, up to three years, if the size, complexity, or other characteristics of the project warrant a longer time period. For example, a project may have multiple phases, each of which may take two or more years to complete. For a project with multiple buildings or phases, the City may find it reasonable to grant an approval to last more than two years.

The proposed amendment adds a provision for an applicant to seek an extension of their approval, in the event they have not obtained building permits prior to Development Review expiration. This provision recognizes that an applicant may not always accurately forecast the time they need to obtain a building permit due to unforeseen circumstances such as market demand, financing, or other issues.

The proposed amendment also includes a few clean-up items, such as updating the definition of "Director" and clarifying that the Director may refer Development Review applications to the Planning Commission for decision.

This minor amendment to the City's development process will increase flexibility for property owners and the City. It makes the entitlement process more predictable and is consistent with the City's on-going efforts to make Tracy more business friendly.

On September 25, 2013, the Planning Commission conducted a public hearing to review the project. No speakers addressed the Commission regarding the proposal.

This item will not require any specific expenditure from the General Fund. Project applicants pay application processing fees to help off-set costs associated with processing Development Review applications and extensions.

Staff and the Planning Commission recommended that City Council approve the proposed amendments regarding time limits and extensions for Development Review applications.

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

Council Member Young stated she was concerned that this action not create any unnecessary delay on the City's part.

The Clerk read the title of proposed Ordinance 1189.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to waive the reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to introduce revised Ordinance 1189. Voice vote found all in favor; passed and so ordered.

6. DISCUSS AND PROVIDE DIRECTION ON THE (1) AIRPORT IMPROVEMENTS AND TIMELINE PRIOR TO FINALIZING THE AIRPORT DESIGN AND LAYOUT PLAN, AND (2) REVIEW ITEMS RELATED TO SAN JOAQUIN COUNTY AIRPORT LAND USE COMMISSION'S DETERMINATION THAT AN APPLICATION TO AMEND THE ELLIS

SPECIFIC PLAN FROM SURLAND COMMUNITIES, LLC. IS NOT CONSISTENT WITH THE SAN JOAQUIN COUNTY AIRPORT LAND USE COMMISSION'S AIRPORT LAND USE COMPATIBILITY PLAN – Leon Churchill, Jr., City Manager, stated there were two components and two issues; The first item regarding runway length is based on feedback from the Federal Aviation Administration (FAA), which is definitive, the runway length needs to be as it is currently; 2) The option/decision still remains with the Council whether to pursue the overrule process.

Ed Lovell, Management Analyst, provided information relating to Airport improvements and repavement grant timeline. A longstanding City goal has been to repave the Airport runway. Over the years, staff has taken steps necessary to secure FAA funding. The most recent step was completion of a Pavement Maintenance and Management Plan that delineated the necessary pavement improvements at the Airport. On June 18, 2013, staff presented Council with an update on the Airport Pavement Project and recommended changes to both the runway width and length. Staff recommended adjusting the runway width from 100 feet to 75 feet and the taxiway width from 40 feet to 35 feet. This recommendation was made in order to meet FAA standards and receive full funding. Additionally, because the City had an opportunity to complete a revised Airport design, staff also recommended reducing the runway length from 4,002 feet to 3,997 feet, which was estimated to be compatible with existing operations and planned development at the airport. Subsequent to the June 18, 2013, recommendations on runway width and length, staff better understands the FAA's grant review and grant award timeline.

The total cost for a complete re-pavement of the Airport is estimated at \$15,589,000. The FAA requires a 10% match. The City will submit an FAA pavement grant application in the amount of \$13,255,740 (90% of funding), which requires a City funding match of \$2,333,260 (a 10% match is an approved Capital Improvement Project). The improvements would be completed over four years, as FAA funding is received on an annually proportioned basis.

Mr. Lovell outlined the necessary timeline in order to meet the FAA 2014 funding cycle. Because the City's goal is to ensure timely submittals of required documents to meet the 2014 funding cycle and because changing the runway length in the Airport Land Use Plan (ALP) would add an additional three months to the FAA review, staff recommends leaving the runway length at 4,002 feet.

The Airport Land Use Compatibility Plan (ALUCP) restricts land use within a safety zone that covers a portion of the Ellis project. Surland submitted applications to amend the City's General Plan and Ellis Specific Plan, which the Airport Land Use Commission (ALUC) determined to be inconsistent with the ALUCP. As a result, City Council must decide whether to overrule the ALUC's determination. The overruling allows denser housing within the safety zone than is currently permitted.

The State Aeronautics Act (Act) establishes Airport Land Use Commissions for the purpose of "...protect public health, safety, and welfare, by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards with areas around public airports to the extent that these areas are not already devoted to incompatible uses." In San Joaquin County, the San Joaquin Council of Governments (SJCOG) serves as the ALUC.

The ALUC is required to adopt an ALUCP for the Airport and the surrounding area. By law, the City must submit to the ALUC any amendments to the General Plan or a Specific Plan, or adoptions or approvals to a zoning ordinance or building regulation within the area covered by the ALUCP. If the ALUC determines that an action, regulation, or permit is inconsistent with the ALUCP, the City may, after a public hearing, overrule the determination by a two-thirds vote of the City Council.

If Council chooses to overrule the ALUC, the City must provide the ALUC and the State Division of Aeronautics (Division) a copy of the proposed decision and findings at least 45 days prior to the decision to overrule. The ALUC and the Division may provide comments to City Council within 30 days of receiving the proposed decision and findings. The comments by the Division and the ALUC serve as advisories to the City Council.

Andrew Malik, Development Services Director, provided information regarding Ellis approval timelines. In January 2013, Council approved a General Plan Amendment and a Specific Plan for the Ellis project (current approvals). The current approvals allow 2,250 houses at Ellis, however only four or five houses are permitted in the area currently restricted by the ALUCP safety zones.

In July 2013, Surland submitted applications requesting a General Plan Amendment and Specific Plan Amendment to the Ellis project, which were revised in August, 2013 (proposed amendments). The proposed amendments would allow density in this area of Ellis at approximately four to nine units per every acre of land.

Subsequently, in a letter dated September 30, 2013, the City received notification from SJCOG regarding a determination that the proposed amendments are not consistent with the ALUCP. The notification provides three options:

- 1) Do not approve the application;
- 2) Request a revision to the project for consistency with the Airport Land Use Plan;
- 3) As provided within the State Aeronautics Act PUC Sections 21676 and 21676.5 overrule the ALUC determination by a two-thirds vote of the governing body.

City Council has the authority to overrule the ALUC. Staff is seeking direction from the Council as to whether or not staff should begin work on determining findings for an overruling. Council has the following two options:

- 1) **Direct staff to not pursue an overruling** - Under this option, staff is unable to recommend approval of the proposed amendments unless they are changed to conform to the ALUCP;
- 2) **Direct staff to pursue an overruling** - This option is a three-step process. First, staff would seek an airport consultant and recommend Council approval of a contract relating to making findings (one month). Second, a draft of the findings will be presented to the ALUC and the Division of Aeronautics for comment (two-three months). Third, the application for amendments to the Ellis project would proceed to Planning Commission for a hearing to make a recommendation to Council and then Council for a hearing and action on the overrule and the applications (three months). This

option would ultimately require a two-thirds vote of the Council, which equates to a four-fifths vote of five members, as mentioned above.

With regard to the Airport Pavement Design, the City currently has a contract with a consultant for the ALP update. At this time it is not known whether that contract would have to be amended to address FAA related processes if Council directs staff to shorten the runway to less than 4,002 feet.

With regard to the Ellis Specific Plan Amendment, if Council chooses to pursue an override, these costs would be paid by Surland under the City's Cost Recovery Agreement, therefore there is no impact to the General Fund.

Staff recommended that Council discuss and provide direction on the (1) Airport improvements and timeline, maintaining runway length at 4,002 feet, prior to finalizing the airport design and layout plan, and (2) review items related to San Joaquin County Airport Land Use Commission's determination that the application to amend the Ellis Specific Plan from Surland Communities, LLC is not consistent with the San Joaquin County Airport Land Use Commission Compatibility Plan.

Mayor Pro Tem Maciel referred to Attachment A which presents a historical timeline on runway length and asked staff to review the timeline. Mr. Lovell indicated the timeline was a graphical depiction of what the runway length has been since approximately 1975 which has been approximately 4,000-4,002 feet. Mr. Lovell stated there were a couple instances where the runway appears at a shorter length which was due to displaced thresholds.

Mayor Pro Tem Maciel stated the attachment provides a detailed breakdown and at one point references an actual measurement when the runway length became questionable. Mr. Lovell stated that incident occurred after a slurry seal project in 2007, due to paving and re-stripping issues. At that point the runway was surveyed and determined that due to discrepancies at the end of the runway it was a few feet shorter than 4,000 feet and subsequently restored to 4,000 feet in 2012.

Mayor Pro Tem Maciel asked if staff had detail on how that process occurred. Mayor Pro Tem Maciel indicated the runway length numbers, over the years, has been nebulous.

Council Member Rickman, referring to an FAA document, stated that at the June 18, 2013, Council meeting he asked a question if the length of the runway had anything to do with funding and the answer received was "no". Council Member Rickman stated this document from the FAA indicates it does have to do with funding. Mr. Lovell stated that on June 18, 2013, the funding issue was related to the width of the runway, not the length. Subsequent, staff received information from the FAA indicating if the City were to change the runway length without significant justification, that it could put the City's funding in jeopardy. Council Member Rickman stated if the City reduces the runway under 4,002 it could jeopardize funding. Mr. Lovell stated that is what the FAA has communicated.

Council Member Rickman asked if the runway length was at 3,997 feet, Surland could build between four and nine dwellings per acre in the safety zone. Mr. Malik stated yes. Council Member Rickman asked what the density would be with a runway length at 4,002 feet. Mr. Malik stated one house per five acres or approximately five homes.

Council Member Rickman, referring to runway length and the types of planes that can land, stated he has heard several answers. Council Member Rickman asked if the runway length was left at 3,997 versus 4,002 feet, did it have an effect on the planes that can land now. Mr. Lovell stated it was the opinion of the City's Airport consultant that the difference of five feet will not make a difference in the type of planes that can land at the City's airport.

Council Member Rickman asked if a pilot's insurance would be affected with a runway length of 3,997 feet. Mr. Lovell stated he has not been given a definitive answer if there is an insurance requirement, but has been told that landing on a certain runway length is at the pilot's discretion.

Council Member Rickman asked what about liability. Mr. Lovell stated staff did not have a definitive answer.

Council Member Rickman referred to an Airport Agreement Memorandum dated April 26, 2013, from Les Serpa to Rod Buchanan, which agreement states if the City reduces the runway length to 3,997 feet, Surland will perform certain acts. Mr. Churchill stated he was familiar with the document.

Council Member Rickman indicated he had spoken with Mr. Churchill at the last Council meeting and it was stated that the City did not enter into the agreement. Mr. Churchill stated that was correct.

Council Member Rickman asked if the City offered any formal denial. Mr. Churchill stated no formal denial was provided; what was communicated to Mr. Serpa was that the process contained contingencies that should not be done through an agreement but rather through a normal application process including an amended Specific Plan. Mr. Churchill indicated Surland is in the middle of the Specific Plan Amendment process.

Council Member Rickman asked what the check for \$50,000 payable to the City of Tracy from Surland or Les Serpa was about. Mr. Churchill stated he would answer once Council was done providing comments.

Council Member Young asked why the runway length was now an issue when Council was told the runway length would not have an impact on receiving grant funding. Mr. Lovell stated nothing has been officially submitted to the FAA as part of the Airport Layout Plan. Mr. Lovell added that staff was recommending that the runway length remain as listed at 4,002 feet.

Council Member Young asked when the last report was completed that showed the runway length at 4,002 feet. Mr. Lovell stated in 2001, the last ALP was approved by the FAA showing runway 1230 at 4,002 feet, which is the document that has been used for the Airport ever since.

Council Member Young asked how often the ALP is updated. Mr. Lovell stated the ALP was typically updated when significant changes are made at the Airport or upon FAA request.

Council Member Young asked if the City made an amendment to the plan in 2007. Mr. Lovell stated when staff realized that the Airport runway was shorter than 4,002 feet a notice to airmen was issued stating that the runway was actually 3,996 feet versus what was stated on the ALP.

Council Member Young stated she needed clarity regarding the various dates and runway lengths that have been given. Mr. Churchill stated the ALP from 2001, is the governing document; to deviate from that would require amending the Airport Layout Plan which would jeopardize the federal funding process. Mr. Churchill added that additional and more recent information since June 2013, received from FAA regarding reducing the runway length indicated it would jeopardize that funding.

Council Member Manne asked for the difference between the Airport Master Plan and the Airport Layout Plan. Mr. Lovell stated the Airport Layout Plan was a document that is on record with FAA which shows what the Airport currently is, including length, safety areas around the runways, and a little bit about the Airport's future. Mr. Lovell stated the Airport Master Plan is a document that shows the vision for the Airport and what the City wants it to become in the future.

Council Member Manne asked if it was a City document. Mr. Lovell stated it was a City document, which is funded by the FAA.

Council Member Manne asked if the runway length was measured back in 2001 when the ALP was approved. Mr. Lovell stated he did not know.

Council Member Manne indicated the base line for the runway length appears to have changed over years. Council Member Manne asked if the runway length is shortened below 4,002 feet, would the City lose federal funding. Mr. Lovell stated the FAA has provided an opinion stating if the City changes the runway length, that it would put our funding in jeopardy.

Council Member Manne asked if that information was provided in the staff report. Mr. Churchill stated the information was provided to Council in correspondence sent on Friday, November 1, 2013.

Council Member Manne stated he received information from a handout which states adjusting and shortening airport runway 1230 without justification and approval "may" violate grant assurances. Mr. Churchill stated there are two threats to funding. Mr. Churchill added what was presented in the agenda summary was a timing concern; changing the runway length requires changing the layout plan which adds time which will cause the City to miss the funding cycle with the FAA. Mr. Churchill further stated that very late on Thursday he received correspondence from the FAA which stated substantively changing the runway length is of great concern and could jeopardize funding.

Council Member Manne stated he understood that timelines could affect the timing of the funding, not necessarily that the City would not receive funding. Mr. Churchill stated that was correct. Mr. Churchill added that it was also communicated that it could violate grant assurances.

Mayor Ives asked if the City had received FAA grants since 2001, using the ALP or was a specific runway length provided. Mr. Lovell stated the last major airport project done in 2007 referred to the current ALP.

Mr. Churchill stated there were two significant issues before the City: 1) There have been questions raised related to a proposal staff received by Surland this year. Mr. Churchill, stated staff receives a number of proposals, some in writing and some

verbally. Staff then reviews the proposals to see if they are in the best interests of the City and ready for Council consideration. Mr. Churchill added that many proposals do not make it to Council because they are deemed not in the best interests of the City. The City did receive a proposal from Les Serpa offering to pay various fuel flowage guarantee fees to the airport for several years if the City took several actions related to the Airport Layout Plan including safety zones and other Ellis related actions. In this case, it was determined that the process to obtain the contingencies listed in the proposal was not through an agreement, but rather through the normal application submittal process for an amended Specific Plan. 2) There has been inquiry relating to the \$50,000 payment to the City received from the Tracy Airport Center (TAC) for its fuel flowage guarantee outlined in the facility lease agreement. Under the lease, TAC is obligated to submit payments to the City of Tracy's Finance office. The City Attorney's Office received a payment from TAC and forwarded it to the Finance department for processing. The TAC payment was made by way of payment from Surland Companies. While a third party agreement may exist between TAC and Surland, the City is not aware of any details of any such agreement.

Council Member Rickman asked for confirmation that the agreement Mr. Churchill referred to was between Surland and the TAC, not the City. Mr. Churchill stated staff could only speculate.

Council Member Rickman asked Mr. Churchill if he knew for certain that a deal exists between Surland and the TAC. Mr. Churchill stated the City can surmise that there was enough of an agreement that Surland made the payment on behalf of the TAC.

Council Member Rickman asked about the \$.07 for the fuel flowage. Mr. Churchill stated that does not exist. Council Member Rickman asked Mr. Churchill if he had any knowledge of an agreement regarding the \$.07 fuel flowage. Mr. Churchill stated no.

Council Member Rickman asked why the City did not issue a denial after the proposal was received since it is so volatile. Mr. Churchill stated in retrospect a formal notice in writing may have been in the best interest of the City, however, the City made its opinion very clear to Surland Companies.

Council Member Rickman asked why Council was not informed that a \$50,000 check had been received following the June 18, 2013, Council meeting. Dan Sodergren, City Attorney, stated staff does not normally notify Council of lease payments made.

Council Member Rickman asked if the City knew about this payment prior to the June 18, 2013, Council meeting, or that a possible agreement was taking place. Mr. Churchill stated no, but the City did know that TAC had an obligation to meet its lease obligations, but knew of no third party agreements. Council Member Rickman asked Mr. Churchill if he was aware of any agreement between Surland and TAC. Mr. Churchill stated no.

Les Serpa, on behalf of Surland Communities, provided a background on the Ellis project which started over ten years ago. Mr. Serpa stated in approximately 2005, a new City Manager was brought on board, as well as new operators at the Airport. At that time, Surland was asked by the then City Manager to halt processing their application and the City hired a consultant to determine runway length. Mr. Serpa stated there have been continued issues with the airport.

Mr. Serpa stated the FAA has concerns with the design of the airport and the aircraft that can use the airport. Mr. Serpa stated Surland was confused with what the City was

trying to do at the airport regarding runway length. Mr. Serpa suggested the improvements at the airport be core sampled to ensure they comply with FAA standards, a survey done on the length of the runway, and the City should send their consultant and staff to the FAA to determine what the appropriate length of the runway should be. Mr. Serpa further stated that if Council determined that the runway length should be 4,002 feet, Surland could live with that. Mr. Serpa stated there should be some process to determine the correct length. Mr. Serpa stated they had a differing opinion, stating the airport length does not change what the safety zone should be. Regarding land use, Mr. Serpa asked Council to hire a consultant to bring back findings regarding what is being proposed. Mr. Serpa added that the findings should tell Council if an overrule is pursued, would the City be violating any grant assurances, which Surland was not proposing.

George Williams, Williams Aviation, stated he has reviewed the email from Mr. Robert Lee, an airport specialist, indicating the correspondence should have come from the regional director. Mr. Williams stated the Tracy Airport, as shown by the FAA shows an airport at 4,002 feet. Mr. Williams stated an aeronautical survey was needed. Regarding an override and incompatible development, Mr. Williams stated if an agency pursues an override and allows incompatible development, it could be in violation of grant funding. Mr. Williams outlined various rules regarding incompatible development.

Tom Cannon, Williams Aviation, clarified that the category of the airport is based on a critical design aircraft. Mr. Cannon stated that the 1998 Master Plan indicated that in 2016 the critical (design) aircraft for Tracy would be a King Air 200, which is a B2 aircraft. Mr. Cannon stated the only problem with Tracy being a B2 airport was the separation distance between the runway and the parallel taxiway. Mr. Cannon stated the FAA concerns involve noise which is not an issue for the Ellis project.

Mayor Ives asked if there was a future critical aircraft for a B1 airport. Mr. Cannon stated that has not been determined.

Mayor Pro Tem Maciel asked how far away does the runway have to be from a road or perimeter fence before it is considered usable runway. Mr. Cannon stated the approach of runway 30, because of a road or fencing, has a displaced threshold for landing.

Barbara Lynchman, Counsel to Surland, addressed Council regarding aviation issues. Ms. Lynchman stated the FAA has preemptive authority over airport design and safety issues, while Council has local land use jurisdiction and complete allocation of land use issues. Ms. Lynchman stated the FAA has funding authority and can make life difficult for the City under prescribed circumstances; in this case, the Surland proposal does not affect the areas of concern. Ms. Lynchman added that the ALUC has modified authority to prescribe safety zones for arrival and departure of aircraft. Ms. Lynchman stated if Council chooses to pursue an overrule, they must show that the City meets the purposes of the Act. Ms. Lynchman further stated it was her opinion that the Council may act in a manner they find to be proper based on consultation with knowledgeable consultants, and the City will not lose funding from the FAA and can justifiably override the decision of the ALUC.

Dave Helm addressed Council regarding documents he previously provided at the last Council meeting. Mr. Helm stated he submitted a public records request for all checks received from the TAC in 2013, and one check in the amount of \$25 was provided. Mr. Helm provided the Clerk with a copy of the check. Mr. Helm asked Council why they would jeopardize funding if Surland did not have a problem with the runway length of

4,002 feet. Mr. Helm suggested Council leave the runway alone, get the grant funding, and let Surland build their homes.

Richard Ortenheim, referring to Mayor Pro Tem Maciel's question regarding runway length, stated the FAA has the runway length recorded at 4,002 feet which has to be maintained by the operator until it is requested to change.

Steve Nicolaou stated when the Draft Environment Impact Report was circulated, an Alternative 10 was circulated which envisioned a shorter runway which he opposed. Mr. Nicolaou stated he has met on two occasions with Mr. Serpa requesting that he protect the airport. Mr. Nicolaou urged Council to keep the runway length at 4,002 feet and not pursue an override.

Paul Miles seconded Mr. Helm's comment and asked Council to focus on what the benefit is to Tracy. Mr. Miles asked when the determination was made that Surland should not have proposed an agreement but rather submit an application for a Specific Plan amendment. Mr. Churchill stated shortly after it was proposed.

Mr. Miles asked if there was some documentation regarding the determination and it has been provided to Mr. Helm through a public records request. Mr. Churchill stated the feedback was verbal. Mr. Miles commented that it was inappropriate for a Council Member to criticize a citizen who expresses concern at a Council meeting.

Mayor Pro Tem Maciel stated his previous comment was not directed at any particular individual.

Marsha McCray stated each person brings a different perspective to issues because of what is important to them. Ms. McCray stated if the airport has been inaccurately reported, the City should conduct a survey to determine the exact length of the runway and report it to the FAA.

Mayor Ives called for a recess at 9:27p.m., reconvening at 9:38 p.m.

Dave Anderson, President of the Tracy Airport Association, provided a presentation to Council regarding the Tracy Airport. Mr. Anderson stated he was in support of staff's recommendation to keep the runway length at 4,002 feet. Mr. Anderson asked Council to not pursue the path of an override of the ALUC.

Andy Wilson, Director at large for the CA Pilots Association, requested that Council not pursue an overrule and approve the land use as is.

Mike Souza, representing the Tracy Hills project owner, stated accusations have been made that the Tracy Hills owners have used thug tactics indicating it was untrue and that they will be sending a letter to the City asserting that they have nothing to do with what is going on.

Steve Herum, representing Surland Companies, addressed Council regarding the ALUC and its relation to City Council. Mr. Herum stated the ALUC is responsible to adopt an airport plan but does not have the final say. Mr. Herum further stated local officials/City Council has the ability to reverse the decision which is a right that is expressly given by State law. Mr. Herum asked that Council exercise their right.

Ms. Lynchman responded regarding a comment made about runway length and the degradation of insurance by pilots. Mr. Lynchman stated the length of the runway is a non-issue for insurance purposes.

Mark Connolly stated he does not believe Mr. Churchill or Mr. Buchanan engaged in contract making without direct knowledge of the Mayor or Council. Mr. Connolly stated the airport has always been, is today, and always shall be, 4,002 feet. Mr. Connolly stated the City of Tracy hired a contractor who botched a paving job and the airport was not properly repaired which resulted in the airport runway being shortened. Those mistakes did not change any of the official records of any parties. Mr. Connolly stated Surland documented an agreement between Surland and the City of Tracy stating it will pay \$50,000 on behalf of the airport operator, and Surland is going to get \$.07 of gas revenue and the City will then go to the San Joaquin Council of Government to reduce the runway to 3,996 feet. Mr. Connolly stated he has not heard Mr. Serpa explain why Surland paid \$50,000 to the City of Tracy. Mr. Connolly stated he did not believe that Mr. Churchill or Mr. Sodergren knew what was going on regarding the check. Mr. Connolly stated the City will not accept the land dedication from Surland and the pool will never be built.

Dave Anderson asked if staff indicated the runway length does not limit the type of aircraft that can land. Mr. Lovell stated the City's airport consultant has indicated shortening the runway length by four or five feet does not affect the type of plane that can land. Mr. Anderson read from a May 25, 2012, document where Mr. Churchill reported that 4,000 feet is the magic number for the type of planes that can land.

Art Coon, an attorney representing Surland, stated there was never an agreement between the City of Tracy and Surland, which has been confirmed by the City Manager. Mr. Coon further stated at the October 1, 2013, Council meeting, Mr. Connolly made a series of false, fraudulent and defamatory accusations about the Surland Companies. Mr. Coon explained the events surrounding the alleged agreement and the \$50,000 check submitted by Surland.

Dave Helm asked if there is an agreement between Surland and the airport operator. Mr. Helm asked what happened to the \$.17 per gallon due to the City of Tracy. Mr. Helm indicated there seemed to be a quid pro quo situation.

Mr. Serpa stated there is no agreement between the City of Tracy, the airport operator, or the TAA. Mr. Serpa stated his goal is to work in harmony with the airport.

John Favors stated the City needed to look at this as an opportunity. Mr. Favors asked staff and Council to look at what aviation will look like in 20 years. Mr. Favors suggested the City look at purchasing property around the New Jerusalem Airport so it does not become land-locked like the Tracy Airport.

Council Member Rickman asked Mr. Churchill if he could comment regarding the \$.17 per gallon. Mr. Sodergren stated Amendment One of Lease Agreement with TAC does require a fuel flowage fee of \$.07 per gallon on all fuel sold. Council Member Rickman asked if the City is receiving the \$.07. Mr. Churchill stated yes, pursuant to the agreement with TAC.

Mayor Pro Tem Maciel stated the agenda item addresses two specific areas: to provide direction to staff regarding maintaining the runway length; and the San Joaquin Council of Government's Land Use Commission determination. Mayor Pro Tem Maciel clarified

that at the last meeting he did not refer to any single person regarding flinging noodles. Mayor Pro Tem Maciel stated that there have been too many personal attacks, and encouraged those commenting on an issue other than what was on the agenda, was not productive. Mayor Pro Tem Maciel stated he was tired of being accused of lying and now being accused of criminal acts.

Regarding runway length, Mayor Pro Tem Maciel stated it appears that historically there are documents reflecting a runway length of 4,002 feet. Mayor Pro Tem Maciel stated it is important to move forward and get the runway repaved so it works. Regarding the override, Mayor Pro Tem Maciel stated the overrule process is a legal process that the law allows. Mayor Pro Tem Maciel stated he needs clarification regarding the safety zone and was in favor of giving direction to staff that considers an overrule process. Mayor Pro Tem Maciel stated growth must be kept compatible with Airport; the benefit is that this development and any development in town should be able to move forward as long as it meets the necessary criteria.

Council Member Young stated safety is always important and must be kept in mind. Council Member Young stated no information regarding a proposal or a check was provided to Council. Regarding a boutique airport, Council Member Young stated she looked for the best in every project to help Tracy grow forward. Council Member Young referred to Attachment A in the staff report that provided a history of the runway length, stating she was concerned about the runway length. Council Member Young suggested Council direct staff to begin the process of an overrule to see if it is viable.

Council Member Rickman stated he has done a lot of research on the airport, including reviewing Council minutes, newspaper articles, etc., dating back to 2009. Council Member Rickman discussed the discrepancies Council has received regarding runway lengths, small airports, medium airports, boutique airports, etc. Council Member Rickman stated he was concerned about the memorandum/agreement from Surland stating it was unfortunate that there was not something in writing where the City denied the agreement and the fact that Council was not notified of the agreement. Council Member Rickman stated he still had an uneasy feeling regarding the issue. Council Member Rickman stated he believed the right choice is to keep the runway length at 4,002 feet. Regarding the overrule, Council Member Rickman stated Council does need to take into account the vote by the SJCOG. Council Member Rickman stated he was not in favor of pursuing an overrule.

Council Member Manne stated he agrees with many comments made by his colleagues. Council Member Manne further stated he reached out to members of the public and stakeholders for their input on the airport. Council Member Manne stated the City needed a baseline on the runway length. Council Member Manne stated a runway length of 4,002 feet doesn't hurt anyone. Regarding the overrule Council Member Manne stated he still had unanswered questions. Council Member Manne stated the only question that has to be answered for him is the safety question.

Mayor Ives stated it was about interfaces between uses. Mayor Ives stated the City has to have a staff member who knows the FAA and is really smart. Mayor Ives further stated the FAA had to do better than communicating formally through e-mail and asked staff to ask for a formal letter. Mayor Ives stated it was hard for him to see that the Airport was an asset; 20 years ago an Airport Master Plan was developed and 20 years it has operated without the Ellis project. Mayor Ives stated the airport is still a loser, it is not a winner, and airport advocates have had a lot of time to prove it. Mayor Ives stated if the runway is 4,002 feet, then the City has to mitigate the safety zone; the question is,

what is the correct safety zone. Mayor Ives stated he does not mind going with an airport runway length of 4,002 feet as long as the City continues to study it. Mayor Ives stated he was in favor of moving forward on an overrule which will allow the City to study the issue.

Council Member Rickman asked Mayor Ives to clarify the overrule process. Mayor Ives stated the process would likely involve a consultant. Mr. Sodergren stated if Council chooses to overrule the determination of the ALUC, the City will have to find that the overrule is consistent with the purposes of the Act, including health and safety, noise, and compatibility. Mr. Sodergren further stated the City would have to hire a consultant to study those issues and bring back substantial evidence to the Council in order for the Council to make the determination that the overrule is consistent with the purposes of that Act.

Council Member Rickman asked where would it leave the safety zone if Council chose not to pursue the overrule. Mr. Sodergren stated if Council chose not to pursue an overrule, staff would continue to process the Specific Plan Amendment application with a recommendation of denial because it was inconsistent with the Act.

Council Member Young asked if that denial would be for the Specific Plan Amendment. Mr. Sodergren stated yes.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to provide direction to staff regarding Airport improvements and timeline maintaining the runway length at 4,002 feet prior to finalizing the airport design and layout plan. Voice vote found all in favor; passed and so ordered.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Young that Council direct staff to pursue an overrule process regarding the San Joaquin County Airport Land Use Commission's determination that the application to amend the Ellis Specific Plan from Surland Communities, LLC is not consistent with the San Joaquin County Airport Land Use Commission Compatibility Plan. Roll call vote found Council Members Manne, Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Rickman opposed.

7. ITEMS FROM THE AUDIENCE – None.
8. STAFF ITEMS
 - A. RECEIVE AND ACCEPT THE CITY MANAGER INFORMATIONAL UPDATE – Leon Churchill, Jr., City Manager, provided the staff report. Council accepted the City Manager's informational update.
9. COUNCIL ITEMS - Council Member Manne announced that the Pregnancy Resource Center's Annual Fundraising Banquet and silent action was being held Thursday, October 17, 2013, at 6:30 p.m., at the Holy Family Center at 12100 W. Valpico Road.

Council Member Rickman wished everyone a safe and happy Halloween.

Council Member Young voiced thankfulness that she would not have to wear the Tracy High School jersey any longer.

10. ADJOURNMENT - It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adjourn. Voice vote found all in favor; passed and so ordered. Time: 11:48 p.m.

The above agenda was posted at the Tracy City Hall on October 10, 2013. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk

AGENDA ITEM 1.B

REQUEST

AUTHORIZE AMENDMENT OF THE CITY'S CLASSIFICATION AND COMPENSATION PLANS AND POSITION CONTROL ROSTER BY APPROVING THE ESTABLISHMENT OF A CLASSIFICATION SPECIFICATION AND SALARY RANGE FOR UTILITIES DIRECTOR

EXECUTIVE SUMMARY

Given the size and complexity of the City's water and wastewater services, coupled with the pace of current and anticipated development, it is recommended that a Utilities Director classification be established. Responsibilities for this position would include ensuring the timely completion of the City's planned wastewater treatment expansion project which will span multiple years.

DISCUSSION

Given the highly complex and technical nature of water and wastewater services, a Utilities Director classification is recommended to lead and direct the City's water and wastewater utilities, including short and long term capital projects. In particular, capable leadership is needed to manage the City's planned wastewater treatment expansion project which must be coordinated appropriately with current and future commercial and residential development activity.

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

Establish Classification Specification and Salary Range: Utilities Director

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

The proposed Utilities Director classification would be a Department Head position and would direct and participate in all activities of the Utilities Department including short and long-range planning and would be responsible for reviewing and approving final plans and specifications for utility capital improvement projects. This classification would report to the

City Manager or his/her designee and would be an "at will" position. It would also be reflected as a new position in the Department Heads Compensation and Benefits Plan.

Staff reviewed the salaries and benefits for seven agencies with Utilities Directors, including Daly City, Pittsburg, Roseville, Sacramento, Santa Cruz, Santa Maria, and Santa Rosa. While these cities are not the typical comparable cities used for Tracy's compensation studies, these cities were found most similar due to a combination of their size and/or the scope of services provided. Staff recommends that the annual salary range for the Utilities Director be established at \$145,561.20 to \$176,899.68. This range is similar to the existing Development Services Director salary range and accounts for competitive market rates as well as internal equity issues with respect to other Department Head positions within the City.

STRATEGIC PLAN

This agenda item supports the City's Governance Strategy and Business Plan and specifically implements the following goal and objectives:

- Goal 1:** Further develop an organization that attracts, motivates, develops and retains a high-quality, engaged, informed and high-performing workforce.
- Objective 1b:** Affirm organizational values.

FISCAL IMPACT

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

RECOMMENDATION

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

Prepared by: Midori Dearborn, Senior Human Resources Analyst
Reviewed by: Jenny Haruyama, Administrative Services Director
 Maria A. Hurtado, Assistant City Manager
Approved by: Leon Churchill, Jr., City Manager

ATTACHMENTS

Exhibit A – Utilities Director Classification

Exhibit A

City of Tracy

UTILITIES DIRECTOR

Class Title: Utilities Director
Department: Utilities
EEO Code: 75
FLSA Status: Exempt

Class Code: 20XXX
Bargaining Unit: Department Head
Effective Date: December 17, 2013

DESCRIPTION

Under administrative direction, plans, organizes, manages, and provides administrative direction and oversight for all functions and activities of the Utilities Department, including water distribution, wastewater collection, and water and wastewater treatment operations and maintenance, storm water and water conservation, and facilities maintenance; fosters cooperative working relationships among City departments and with intergovernmental and regulatory agencies and various public and private groups; provides highly responsible and complex professional assistance to City management staff in areas of expertise; and performs related work as required.

DISTINGUISHING CHARACTERISTICS

This department head classification oversees, directs, and participates in all activities of the Utilities Department, including short- and long-range planning and development. This class provides assistance to the City Manager in a variety of administrative, coordinative, analytical, and liaison capacities. Successful performance of the work requires knowledge of public policy, municipal functions and activities, including the role of an elected City Council, and the ability to develop, oversee, and implement projects and programs in a variety of areas. Responsibilities include coordinating the activities of the department with those of other departments and agencies and managing and overseeing the complex and varied functions of the department. The incumbent is accountable for accomplishing departmental planning and operational goals and objectives and for furthering City goals and objectives within general policy guidelines. Appointment to the Utilities Director is an "at-will" appointment.

SUPERVISION RECEIVED AND EXERCISED

Receives administrative direction by the City Manager. Exercises general direction and supervision over management, supervisory, professional, technical, and clerical staff through subordinate levels of supervision.

EXAMPLES OF ESSENTIAL FUNCTIONS (Illustrative Only)

Management reserves the rights to add, modify, change, or rescind the work assignments of different positions and to make reasonable accommodations so that qualified employees can perform the essential functions of the job.

Develops, directs, and coordinates the implementation of goals, objectives, policies, procedures, and work standards for the Utilities Department; establishes, within City policy, appropriate service and

staffing levels.

Assumes full management responsibility for all Utilities Department services and activities, including water distribution, sewer collection, wastewater treatment operations and maintenance, storm water and water conservation, and facilities maintenance.

Manages and participates in the development and administration of the department's budget; directs the forecast of additional funds needed for staffing, equipment and supplies; directs the monitoring of and approve expenditures; directs the preparation and implementation of budgetary adjustments.

Reviews and approves final plans and specifications for Utilities capital improvement projects.

Negotiates contracts and agreements; coordinates with legal counsel and City department representatives to determine needs and requirements for contractual services.

Contributes to the overall quality of the department's service by developing, reviewing, and implementing policies and procedures to meet legal requirements and City needs; monitors and evaluates the efficiency and effectiveness of service delivery methods and procedures; assesses and monitors the distribution of work, support systems, and internal reporting relationships; identifies opportunities from improvement; directs the implementation of change.

Plans, organizes, administers, reviews, and evaluates the work of professional, technical, and office support staff, directly or through subordinate levels of supervision.

Selects, trains, motivates, and directs Utilities Department personnel; evaluates and reviews work for acceptability and conformance with department standards, including program and project priorities and performance evaluations; provides or coordinates staff training; works with employees to correct deficiencies; implements discipline and termination procedures; responds to staff questions and concerns.

Explains and interprets Utilities Department programs, policies, and activities; negotiates and resolves sensitive, significant, and controversial issues.

Plans, directs, and coordinates the Utilities Department's work plan; meets with management staff to identify and resolve problems; assigns projects and programmatic areas of responsibility; reviews and evaluates work methods and procedures.

Conducts a variety of organizational studies, investigations, and operational studies; recommends modifications to Utilities Department programs, policies, and procedures as appropriate; directs the formulation of long term programs of public improvements; give overall direction to Utilities engineering activities and projects.

Participates with and makes presentations to the City Council and a variety of boards and commissions; attends and participates in professional group meetings; stays abreast of new trends and innovations in the field of Utilities.

Represents the Utilities Department to other City departments, elected officials, and outside agencies; coordinates department activities with those of other departments and outside agencies and organizations; explains and interprets department programs, policies, and activities; negotiates and

resolves sensitive, significant and controversial issues.

Prepares, reviews, and completes various reports, including special management reports requested by the City Manager, City Council, and related documentation.

Receives, investigates, and responds to the most complex citizen complaints, inquiries, and requests for services.

Maintains and directs the maintenance of working and official departmental files.

Monitors changes in laws, regulations, and technology that may affect City or departmental operations; implements policy and procedural changes as required.

Performs other duties as assigned.

MINIMUM QUALIFICATIONS

Demonstrated Knowledge of:

Administrative principles and practices, including goal setting, program development, implementation and evaluation, and supervision of staff, either directly or through subordinate levels of supervision.

Public agency budgetary, contract administration, citywide administrative practices; and general principles of risk management related to the functions of the assigned area.

Principles and practices of Utilities development, maintenance, and management in a municipal setting.

Principles and practices of employee supervision, including work planning, assignment, review and evaluation, and the training of staff in work procedures.

Concepts and practices associated with Utilities programs and private development projects.

Technical, legal, financial, and public relations problems associated with the management of Utilities programs.

Applicable federal, state, and local laws, codes, and regulations.

Modern and complex principles and practices of program development and administration.

Organizational and management practices as applied to the analysis and evaluation of projects, programs, policies, procedures, and operational needs; principles and practices of municipal government administration.

Geographic, socio-economic, political, and other elements related to Utilities.

Modern office practices, methods, and computer equipment; related software application methods and procedures.

Safe driving principles and practices. Safe work practices.

Techniques for effectively representing the City in contacts with government agencies, community groups, and various business, professional, regulatory, and legislative organizations.

Methods and techniques for writing and presentations, contract negotiations, business correspondence, and information distribution; research and reporting methods, techniques, and procedures.

Techniques for dealing effectively with the public, vendors, contractors, and City staff, in person, in writing, and over the telephone.

Ability to:

Develop and implement goals, objectives, policies, procedures, work standards, and internal controls for the department and assigned program areas.

Provide administrative and professional leadership and direction for the Utilities Department.

Prepare and administer large and complex budgets; allocating limited resources in a cost effective manner.

Interpret, apply, and ensure compliance with federal, state, and local policies, procedures, laws, and regulations.

Plan, organize, direct, and coordinate the work of management, supervisory, professional, and technical personnel; delegating authority and responsibility.

Select, train, motivate, and evaluate the work of staff and training staff in work procedures.

Effectively administer special projects with contractual agreements and ensuring compliance with stipulations; effectively administer a variety of City programs and administrative activities.

Conduct effective negotiations and effectively represent the City and the department in meetings with governmental agencies, contractors, vendors, and various businesses, professional, regulatory, and legislative organizations.

Effectively and fairly negotiate appropriate solutions and contracts; deal effectively in situations requiring diplomacy and tact; gain cooperation through discussion and persuasion.

Analyze problems, identify alternative solutions, project consequences of proposed actions, and implement recommendations in support of goals.

Research, analyze, and evaluate new service delivery methods, procedures, and techniques.

Prepare clear and concise reports, correspondence, policies, procedures, and other written materials.

Make accurate arithmetic, financial, and statistical computations.

Direct the maintenance of and maintain accurate records and files.

Operate modern office equipment including computer equipment; operate related software applications, including word processing, spreadsheet operations, and other related areas including research and statistical analysis.

Operate a motor vehicle safely.

Use English effectively to communicate in person, over the telephone, and in writing.

Use tact, initiative, prudence, and independent judgment within general policy and legal guidelines in politically sensitive situations.

Establish and maintain effective working relationships with those contacted in the course of the work.

EXPERIENCE, EDUCATION, AND TRAINING:

Any combination of training and experience which would provide the required knowledge, skills, and abilities is qualifying. A typical way to obtain the required qualifications would be:

Equivalent to a Bachelor's degree from an accredited college or university with major coursework in civil engineering, business administration, or a related field and seven years of responsible Utilities services experience, including water and wastewater planning and financing and five years of management experience.

LICENSES AND CERTIFICATES:

Possession of, or ability to obtain, an appropriate valid California's driver's license.

TOOLS

Requires frequent use of personal computer, including word processing, database and spreadsheet programs; electronic scheduling; calculator, telephone, copy machine and fax machine.

PHYSICAL DEMANDS

Must possess mobility to work in a standard office setting and use standard office equipment, including a computer; to inspect various City infrastructure, development, field operations, and work sites, to operate a motor vehicle, and to visit various City and meeting sites; vision to read printed materials and a computer screen; and hearing and speech to communicate in person, before groups, and over the telephone. This is primarily a sedentary office classification although standing in work areas and walking between work areas may be required. Finger dexterity is needed to access, enter, and retrieve data using a computer keyboard, typewriter keyboard, or calculator and to operate standard office equipment. Positions in this classification occasionally bend, stoop, kneel, reach, push, and pull drawers open and closed to retrieve and file information.

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodation may be made to

enable individuals with disabilities to perform the essential functions.

ENVIRONMENTAL ELEMENTS

Employees work in an office environment with moderate noise levels and controlled temperature conditions, although there may be occasional exposure to inclement weather conditions, noise, dust, and potentially hazardous materials. Employees may interact with upset staff and/or public and private representatives in interpreting and enforcing departmental policies and procedures.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The job description does not constitute an employment agreement between the City of Tracy and employee and is subject to change by the City as the needs of the City and requirements of the job change.

RESOLUTION _____

AMENDING THE CITY'S CLASSIFICATION AND COMPENSATION PLANS AND POSITION CONTROL ROSTER BY APPROVING THE ESTABLISHMENT OF A CLASSIFICATION SPECIFICATION AND SALARY RANGE FOR UTILITIES DIRECTOR

WHEREAS, The City has a Classification and Compensation Plan, and a Position Control Roster

WHEREAS, The City has completed classification reviews to establish a new class specification and salary range, and

WHEREAS, It, is necessary to amend the City Classification and Compensation Plans and the Position Control Roster effective December 17, 2013, as follows:

Establish Classification and Compensation
Utilities Director: \$145,561.20 - \$176,899.68 annually

NOW, THEREFORE, BE IT RESOLVED, That the City Council authorizes the Administrative Services Director to amend the City's Classification Plan for the established classification; and the Budget Officer to amend the Compensation Plan and Position Control Roster to reflect the approved changes shown in the above Recitals.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 17th day of December, 2013, by the following votes:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.C

REQUEST

A RESOLUTION OF THE CITY OF TRACY ACCEPTING PLACEMENT OF THE TRACY SPORTS HALL OF FAME PLAQUE IN CITY HALL

EXECUTIVE SUMMARY

This agenda item involves City Council's acceptance, by resolution, of the Tracy Sports Hall of Fame plaque, to be displayed in Tracy City Hall for public viewing.

DISCUSSION

On April 16, 2013, Wayne Schneider of the Tracy Sports Hall of Fame approached the City Council with a proposal to consider City Hall as the location to display plaques for individuals inducted into the Tracy Sports Hall of Fame. City Council then requested that staff coordinate such efforts with Mr. Schneider.

On November 19, 2013, Tracy Sports Hall of Fame committee members presented the City Council with the commemorative plaque. The plaque recognizes contributors to sports and athletics in the Tracy community.

In order for the City of Tracy to formally accept the plaque, a resolution of acceptance must be approved by City Council. The City may later choose to remove the plaque for safety or maintenance reasons. Before removal, the City shall notify the Tracy Sports Hall of Fame. If the plaque is removed, it will be preserved to the degree possible, and then returned to Tracy Sports Hall of Fame or its successor.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact for acceptance of the Tracy Sports Hall of Fame plaque.

RECOMMENDATION

That City Council, by resolution, accept placement of the Tracy Sports Hall of Fame plaque in City Hall.

Prepared by: Vanessa Carrera, Management Analyst

Reviewed by: Maria A. Hurtado, Assistant City Manager

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

RESOLUTION _____

ACCEPTING PLACEMENT OF THE TRACY SPORTS HALL OF FAME PLAQUE
IN CITY HALL

WHEREAS, On April 16, 2013, Wayne Schneider of the Tracy Sports Hall of Fame approached the City Council with a proposal to consider City Hall as the location to display plaques for individuals inducted into the Tracy Sports Hall of Fame, and

WHEREAS, On November 19, 2013, Tracy Sports Hall of Fame committee members presented the City Council with the commemorative plaque, and

WHEREAS, In order for the City of Tracy to formally accept the plaque, a resolution of acceptance must be approved by City Council, and

WHEREAS, The City may later choose to remove the plaque for safety or maintenance reasons. Before removal, the City shall notify the Tracy Sports Hall of Fame;

NOW, THEREFORE, BE IT RESOLVED, That City Council accepts placement of the Tracy Sports Hall of Fame plaque in City Hall.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 17th day of December, 2013, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.D

REQUEST

ACCEPTANCE OF OFFSITE IMPROVEMENTS CONSTRUCTED BY MCDONALD'S USA, LLC, RELATED TO STREET AND UTILITY IMPROVEMENTS ON ELEVENTH STREET AND F STREET

EXECUTIVE SUMMARY

McDonald's USA, LLC for the McDonald's Restaurant project located at the southeast corner of Eleventh Street and F Street has completed offsite street frontage improvements in accordance with the approved Offsite Improvement Agreement, project plans, and specifications. Staff recommends Council accept the improvements, as completed, to enable the City to release the developer's bond.

DISCUSSION

On July 2, 2013, City Council approved the Offsite Improvement Agreement with McDonald's USA, LLC, the developer of the McDonald's Restaurant project located at the southeast corner of Eleventh Street and F Street.

The frontage improvements on Eleventh Street and F Street included the removal and replacement of asphalt concrete pavement, concrete curb, gutter and sidewalk, signing and striping, installation of domestic, irrigation and fire services, fire hydrant, sanitary sewer lateral with sewer cleanout, sewer manhole, storm drain, landscaping incorporating an automatic irrigation system, and other improvements as shown on the Improvement Plans and Specifications.

McDonald's USA, LLC has completed all work required to be performed in accordance with the agreement and has requested acceptance of the off-site public improvements. The estimated cost of the improvements is as follows:

Item Description	Cost
Road Ways	\$ 127,913.15
Water Line	\$ 2,500.00
Street Drainage	\$ 375.00
Sanitary Sewer	\$ 5,000.00
Landscape and Misc.	<u>\$ 3,225.00</u>
Total	\$139,013.15

The project carries a one-year warranty bond for all public improvements.

FISCAL IMPACT

There will be no fiscal impact to the General Fund. The improvements were completed by McDonald's USA, LLC.

STRATEGIC PLAN

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

RECOMMENDATION

That City Council, by resolution, accept the improvements completed by McDonald's USA, LLC, the developer for the McDonald's restaurant project located at the southeast corner of Eleventh Street and F Street. The Development Services Department will notify the Developer when to prepare and record a Notice of Completion with San Joaquin County. The City Engineer will release all bonds in accordance with the terms of the Offsite Improvement Agreement.

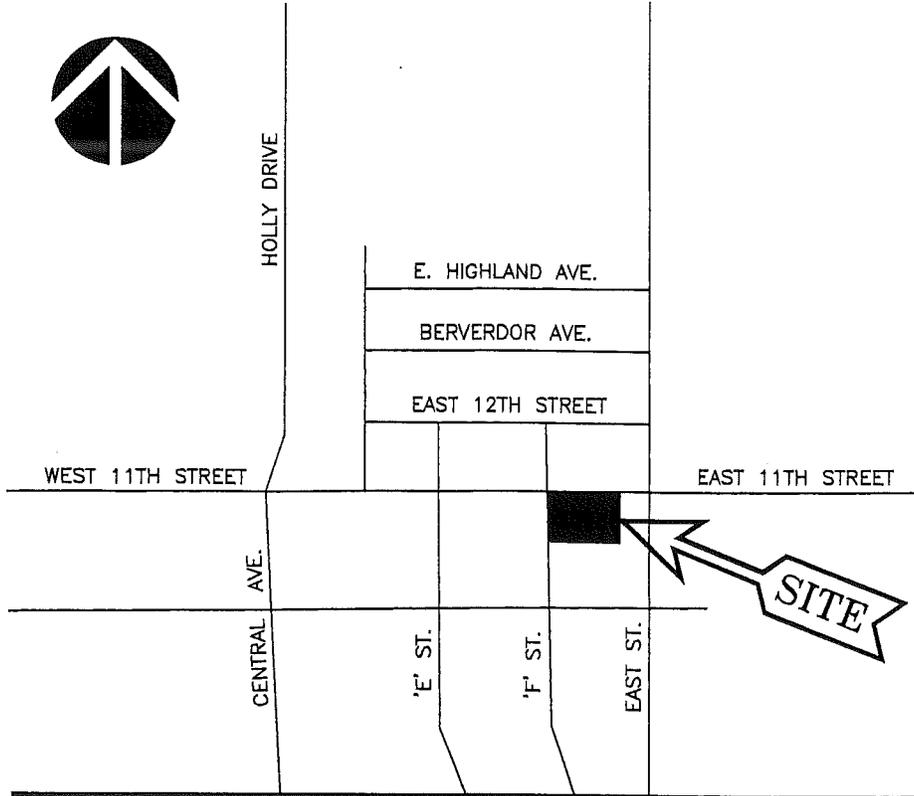
Prepared by: Paul Verma, Senior Civil Engineer

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

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

ATTACHMENT

Attachment A: Vicinity Map



VICINITY MAP N.T.S.

RESOLUTION 2013 - _____

ACCEPTING OFFSITE IMPROVEMENTS CONSTRUCTED BY MCDONALD'S USA, LLC,
RELATED TO STREET AND UTILITY IMPROVEMENTS ON ELEVENTH STREET AND F
STREET

WHEREAS, On July 2, 2013, City Council approved the Offsite Improvement Agreement with McDonald's USA, LLC a limited liability company, developer of the McDonald's Restaurant project located at the southeast corner of Eleventh and F Streets, and

WHEREAS, McDonald's USA, LLC a limited liability company, has completed all work required to be performed in accordance with the agreement, and has requested acceptance of the off-site public improvements, and

WHEREAS, The estimated cost of infrastructure improvements is as follows:

Item Description	Cost
Road Way	\$127,913.15
Water	\$ 2,500.00
Street Drainage	\$ 375.00
Sanitary Sewer	\$ 5,000.00
Landscape and Misc.	<u>\$ 3,225.00</u>
Total	\$139,013.15

NOW, THEREFORE, BE IT RESOLVED, That City Council accepts the improvements completed by McDonald's USA, LLC, a limited liability company, the developer for the McDonald's Restaurant project located at the southeast corner of Eleventh and F Streets. The Development Services Department will notify the Developer to prepare and record a Notice of Completion with San Joaquin County. Lastly, the City Engineer will release all bonds in accordance with the terms of the Subdivision Improvement Agreement.

The foregoing Resolution 2013 – _____ was passed and adopted by the Tracy City Council on the 17th day of December 2013, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.E

REQUEST

ACCEPTANCE OF THE HOLLY SUGAR SPORTS COMPLEX PROJECT (LEGACY PARK) – CIP 78115, COMPLETED BY DESILVA GATES CONSTRUCTION OF DUBLIN, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

The contractor has completed construction of the infrastructure to serve the proposed Holly Sugar Sports Complex (Legacy Park) located north of Larch Road, south of Sugar Road between Tracy Boulevard and Corral Hollow Road, in accordance with plans, specifications, and contract documents. Project costs are within the available budget.

DISCUSSION

On January 3, 2012, City Council awarded a construction contract to DeSilva Gates Construction of Dublin, California, in the amount of \$6,966,966 for the Holly Sugar Sports Complex - CIP 78115.

The infrastructure was sized to serve the entire 166 acre site but the scope of work is limited to the first 72 acres under Phase One of the Sports Complex Project. The scope of work also includes grading the 72 acre site for the construction of 20 sports fields (12 baseball fields and 8 soccer fields) by the youth leagues

This project included construction of infrastructure and site grading on 72 acres including improvements on Tracy Boulevard. The infrastructure improvements included four unpaved parking lots (786 parking stalls) with landscaping and lighting, entrance road, widening of Tracy Boulevard, site drainage including storm drain channels, sanitary sewer system, water systems (fire and domestic), a sewer lift station at the intersection of Tracy Boulevard and the entrance road, chain link fencing, directional signage, soil preparation, landscaping, irrigation system and conduit for future lighting. The scope of work also included construction of a storage pond and pump station for irrigating the sports fields. The irrigation water is available on site from the Sugar Cut the irrigation ditches.

Three change orders totaling \$519,327.39 were issued for the project. One change order in the amount of \$303,352.86 was issued to install electrical power cables in the conduits installed under the original scope of work to serve areas designated for each sports league. Electrical cable extensions to these fields were not included as a part of the original plan. However, to facilitate the onsite construction of the fields and based upon the availability of funds, the electrical cables for the various leagues and requests from leagues areas were designed and installed in the existing conduits.

Two additional change orders were issued for the extra work needed to install electrically operated gates for site security, install additional piping to flush the irrigation pond for reducing the boron concentration and additional work required to address the unforeseen conditions.

The project construction contract unit prices are based on estimated engineering quantities. Actual payment is based on field measured quantities installed by the contractor. According to the City's inspection records, actual field measurement quantities exceeded the contract quantities in the amount of \$10,946.80. These quantities were generally in the post construction hydro seeding to stabilize the exposed dirt areas, install additional dumpster enclosure, etc. These quantities were paid in accordance with the bid unit prices of the contract and are listed as over run quantities.

Status of budget and project costs is as follows:

A.	Construction Contract Amount	\$ 6,966,966.00
B.	Approved Change orders	\$ 519,327.39
C.	Over run of Quantities	\$ 10,946.80
D.	Design, construction management, inspection, Testing, SJ COG Habitat Fee , Miscellaneous Expenses including permit fees	\$ 3,528,289.00
E.	Project Management Charges	<u>\$ 304,340.00</u>
	Total Project Costs	\$11,329,869.19
	Budgeted Amount	\$11,727,100.00

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

STRATEGIC PLAN

This agenda item supports the organizational effectiveness strategic plan and specifically implements the following goal and objectives:

Community Amenities Priority

Goal 1: Create a community with a wide range of amenities

FISCAL IMPACT

CIP 78115 is an approved Capital Improvement Project with sufficient funding and there will be no fiscal impact to the General Fund. All remaining unused funds will be transferred back into Fund 301 – CIP General Fund Projects.

RECOMMENDATION

That City Council, by resolution, accept the Holly Sugar Sports Complex CIP 78115, as completed by DeSilva Gates Construction, of Dublin, California, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bond and retention payment.

Agenda Item 1.E
December 17, 2013
Page 3

Prepared by: Paul Verma, Senior Civil Engineer

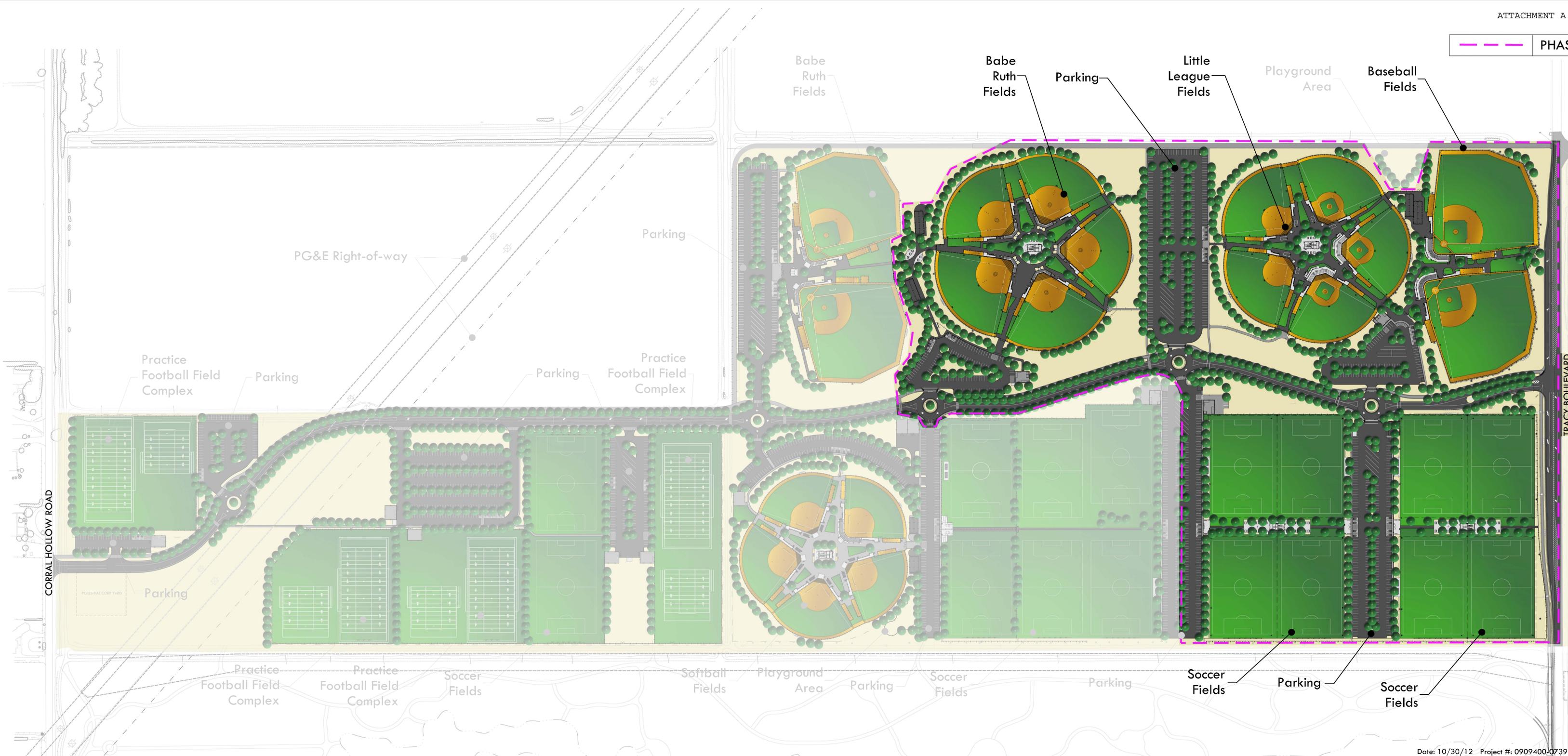
Reviewed by: Kuldeep Sharma, City Engineer
Andrew Malik, Development Services Director
Maria A. Hurtado, Assistant City Manager

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

ATTACHMENTS

Attachment A – Master Site Plan Graphic

PHASE 1 LIMIT



Date: 10/30/12 Project #: 0909400-0739



Site Master Plan - Phase 1
 Holly Sugar Sports Complex
 City of Tracy
 Tracy, CA



LANDSCAPE ARCHITECTURE
 CIVIL ENGINEERING & DESIGN
 2455 The Alameda, Ste. 200
 Santa Clara, CA 95050
 Tel: 408.985.7200
 Fax: 408.985.7260
 www.verdedesigninc.com

RESOLUTION 2013- _____

ACCEPTING THE HOLLY SUGAR SPORTS COMPLEX PROJECT (LEGACY PARK) -
CIP 78115, COMPLETED BY DESILVA GATES CONSTRUCTION OF DUBLIN,
CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF
COMPLETION

WHEREAS On January 3, 2012, City Council awarded a construction contract to DeSilva Gates Construction of Dublin, California, in the amount of \$6,966,966 for the Holly Sugar Sports Complex - CIP 78115, and

WHEREAS, The contractor has completed construction of the infrastructure to serve the proposed Holly Sugar Sports Complex (Legacy Park) located north of Larch Road, south of Sugar Road between Tracy Boulevard and Corral Hollow Road, in accordance with plans, specifications, and contract documents, and

WHEREAS, Three change orders were received in the net amount of \$519,327.39, and

WHEREAS, Status of budget and project costs are estimated to be as follows:

A.	Construction Contract Amount	\$ 6,966,966.00
B.	Approved Change orders	\$ 519,327.39
C.	Over run of Quantities	\$ 10,946.80
D.	Design, construction management, inspection, testing, SJ COG Habitat Fee, miscellaneous expenses including permit fees	\$ 3,528,289.00
E.	Project Management Charges	<u>\$ 304,340.00</u>
	Total Project Costs	\$11,329,869.19
	Budgeted Amount	\$11, 727,000.00

WHEREAS, CIP 78115 is an approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund. All remaining funds will be transferred back into General Fund Projects 301;

NOW, THEREFORE BE IT RESOLVED That City Council, accepts the Holly Sugar Sports Complex CIP 78115, as completed by DeSilva Gates Construction, of Dublin, California, and authorizes the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

* * * * *

The foregoing Resolution 2013-_____ was adopted by City Council on the 17th day of December, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

The foregoing Resolution 2013-_____ was adopted by City Council on the 17th day of December, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.F

REQUEST

ACCEPTANCE OF THE POLICE FIREARMS PRACTICE RANGE WATERLINE – CIP 71072D, COMPLETED BY EXTREME EXCAVATION OF TRACY, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE A NOTICE OF COMPLETION

EXECUTIVE SUMMARY

The contractor, Extreme Excavation, has completed construction of the Police Firearms Practice Range Waterline Improvements Project – CIP 71072D, in accordance with project plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends Council accept the project to enable the City to release the contractor's bond and retention.

DISCUSSION

The project scope of work included installation of approximately 2,300 linear feet of 2.5 inch PVC waterline from the Water Treatment Plant to the police firearms practice range. The installation was along the Tracy Boulevard shoulder. Project plans and specifications were prepared in-house by engineering staff.

Public Contract Code Section 22032 and 22036 allows a public agency to procure informal bids for projects with an anticipated cost less than \$50,000. Since this project falls under this category, it was advertised for informal bids on the City of Tracy website and builder's exchanges on July 11, 2013; five bids were received on July 25, 2013.

On August 16, 2013, the City Manager, in accordance with TMC 2.20.260 executed the agreement with the lowest monetary bidder, Extreme Excavation of Tracy, California, in the amount of \$45,700 for the Police Firearms Practice Range Waterline Improvements Project CIP71072D.

One change order was issued in the amount of \$8,668 for this project which consisted of supply and installation of two new 2.5 inch ball valves and valve boxes, and extra pot holing to locate the existing water line for tie-in.

Status of budget and project costs is as follows:

A. Construction Contract Amount	\$ 46,354
B. Change order	\$ 8,668
C. Design, Construction Inspections	\$ 6,899
D. Citywide Project Management	<u>\$ 5,849</u>
Total Project Costs	\$ 67,770
Budgeted Amount	\$ 68,000

The project has been completed within the available budget, on schedule, per plans, specifications, and City of Tracy standards.

STRATEGIC PLAN

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

FISCAL IMPACT

CIP 71072 is an approved Capital Improvement Project with sufficient funding to cover the total project costs. There is no fiscal impact to the General Fund.

RECOMMENDATION

That City Council accept, by resolution, the Police Firearms Practice Range Waterline Improvement Project – CIP 71072D, completed by Extreme Excavation of Tracy, California, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

Prepared by: Paul Verma, Senior Civil Engineer

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

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

RESOLUTION _____

ACCEPTING THE POLICE FIREARMS PRACTICE RANGE WATERLINE CIP 71072D,
COMPLETED BY EXTREME EXCAVATION OF TRACY, CALIFORNIA, AND
AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS, On August 16, 2013, the City Manager, in accordance with TMC 2.20.260 executed the agreement with the lowest monetary bidder, Extreme Excavation of Tracy, California, in the amount of \$45,700 for the Police Firearms Practice Range Waterline Improvements Project – CIP 71072D, and

WHEREAS, The contractor has completed construction of the Police Firearms Practice Range Waterline Improvement Project – CIP 71072D, in accordance with project plans, specifications, and contract documents, and

WHEREAS, One change order was received in the net amount of \$ 8,668.00, and

WHEREAS, Status of budget and project costs are estimated to be as follows:

A. Construction Contract Amount	\$46,354.00
B. Change order	\$ 8,668.00
C. Design, Construction Inspections	\$ 6,899.00
D. Citywide Project Management	<u>\$ 5,849.00</u>
Total Project Costs	\$67,770.00
Budgeted Amount	\$68,000.00

WHEREAS, CIP 71072D is an approved Capital Improvement Project and there will be no impact to the General Fund;

NOW, THEREFORE BE IT RESOLVED, That City Council accepts the Police Firearms Practice Range Waterline Improvement Project - CIP 71072D, completed by Extreme Excavation of Tracy, California, and authorizes the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

* * * * *

The foregoing Resolution 2013 - _____ was adopted by the City Council on the 17th day of December, 2013, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.G

REQUEST

AUTHORIZATION OF PURCHASE OF WILDLIFE HABITAT MITIGATION CREDITS FOR THE EFFLUENT OUTFALL PIPELINE AND DIFFUSER IMPROVEMENT PROJECT FROM THE WESTERVELT ECOLOGICAL SERVICES, LLC, AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

The permit for construction of the wastewater effluent outfall project obtained from the California Department of Fish and Wildlife (CA DFW) requires purchase of wildlife habitat mitigation credits. The agreement with Westervelt Ecological Services provides for the purchase of the needed credits at a cost of \$69,000.

DISCUSSION

Construction of the proposed effluent outfall pipeline and diffuser project will disturb 0.3 acres of riparian wildlife habitat and 0.1 acres of fish habitat. The project permit with the CA DFW requires mitigation of these impacts. The City negotiated with Westervelt Ecological Services for credits through the Cosumnes Floodplain Mitigation Bank. This mitigation meets the CA DFW requirements.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact to the General Fund. The cost for the mitigation credits is included in the outfall project and is budgeted in the FY 13/14 Capital Improvement Project - CIP 74083.

RECOMMENDATION

That City Council, by resolution, authorize purchase of wildlife habitat mitigation credits for the effluent outfall pipeline and diffuser project from the Westervelt Ecological Services, LLC, and authorize the Mayor to execute the agreement.

Prepared by: Steve Bayley, Project Specialist
Reviewed by: David Ferguson, Director of Public Works
Maria A. Hurtado, Assistant City Manager
Approved by: R. Leon Churchill, Jr., City Manager

ATTACHMENTS

Attachments: A – Agreement for Sale of Mitigation Credits

Cosumnes Floodplain Mitigation Bank
AGREEMENT FOR SALE OF MITIGATION CREDITS
(1600-2011-0399-R3)

This Agreement is entered into this _____ day of _____, 2013, by and between WESTERVELT ECOLOGICAL SERVICES (Bank Sponsor) and the CITY OF TRACY (Project Applicant), jointly referred to as the "Parties," as follows:

RECITALS

A. The Bank Owner has developed the Cosumnes Floodplain Mitigation Bank located in Sacramento County, California; and

B. The Bank was approved by the U.S Army Corps of Engineers (USACE), U.S Environmental Protection Agency (USEPA), National Marine Fisheries Service (NMFS) and California Department of Fish and Wildlife (CDFW) (jointly referred to as "Agencies") on September 30, 2009, and is currently in good standing with these agencies; and

C. The Bank has received approval from the Agencies to offer riparian wetlands and seasonal wetlands under the Clean Water Act and riparian forest, Scrub Shrub, and Shaded Riverine Aquatic (SRA) credits through the *Cosumnes Floodplain Mitigation Bank Enabling Instrument* (Bank Agreement); and

D. Project Applicant is seeking to implement the CITY OF TRACY EFFLUENT OUTFALL PIPELINE AND DIFFUSER IMPROVEMENT PROJECT, described on Exhibit "A" attached hereto (Project), which would unavoidably and adversely impact of 0.3 Riparian Habitat (Brush Rabbit) and 0.1 acres of fish habitat and seeks to compensate for the loss of riparian and fish habitat by purchasing Credits from the Bank; and

E. Project Applicant has been authorized by the California Department of Fish & Wildlife (Permit No. 1600-2011-0399-R3), to purchase from the Bank **0.3 Floodplain Mosaic Wetland and 0.63 Floodplain Riparian (Enhanced) Habitat credits** upon confirmation by the Bank Owner of credit availability/adequate balance of credits remaining for sale; and

F. Project Applicant desires to purchase from Bank and Bank desires to sell to Project Applicant **0.3 Floodplain Mosaic Wetland and 0.63 Floodplain Riparian (Enhanced) Habitat credits;**

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Bank hereby sells to Project Applicant and Project Applicant hereby purchases from Bank **0.3 Floodplain Mosaic Wetland and 0.63 Floodplain Riparian (Enhanced) Habitat credits** for the purchase price of **\$69,000**. The Bank will then deliver to Project Applicant an executed Bill of Sale in the manner and form as attached hereto and marked Exhibit "B". The purchase price for said credits shall be paid by cashier's check or, at the option of Bank, wire transfer of funds according to written instructions by Bank to Project Applicant.

2. The sale and transfer herein is not intended as a sale or transfer to Project Applicant of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.

3. Project Applicant shall have no obligation whatsoever by reason of the purchase of the Credits, to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the credits sold, or the Bank. Pursuant to the Bank Agreement and any amendments thereto, Bank shall monitor and make reports to the appropriate agency or agencies on the status of any Credits sold to Project Applicant. Bank shall be fully and completely responsible for satisfying any and all conditions placed on the Bank or the Credits by all state or federal jurisdictional agencies.

4. The Credits sold and transferred to Project Applicant shall be non-transferable and non-assignable, and shall not be used as compensatory mitigation for any other Project or purpose, except as set forth herein.

5. Project Applicant hereby commits to purchase the Credits and in association therewith shall tender payment for the Credits no later than 30 days from the date of this Agreement.

6. Upon purchase of the credits specified in paragraph D above, the Bank shall submit to the parties listed in the Notices section of the Bank Agreement / Bank Enabling Instrument, copies of the: a) Agreement for Sale of Credits; b) Bill of Sale; c) Payment Receipt; and d) an updated ledger. The updated inventory / ledger must detail: i) Project Applicant; ii) Project Name; iii) Status (sale complete/sale not complete); iv) Credit Sale Date; v) Service File Number; vi) U.S. Army Corps of Engineers File Number (if applicable); vii) Total Number of Credits Authorized to Sell; viii) Total Number of Credits Sold to Date (inclusive); and ix) Balance of all Credits Available. The inventory / ledger should include all sales data from bank opening/establishment to the present.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

BANK:

WESTERVELT ECOLOGICAL SERVICES, LLC
Cosumnes Floodplain Mitigation Bank Sponsor

By: _____ Date: _____

PROJECT APPLICANT:

CITY OF TRACY

By: Brent Ives
Title: Mayor
Date: _____

Attest:

By: Sandra Edwards
Title: CITY CLERK
Date: _____

Approved As To Form:

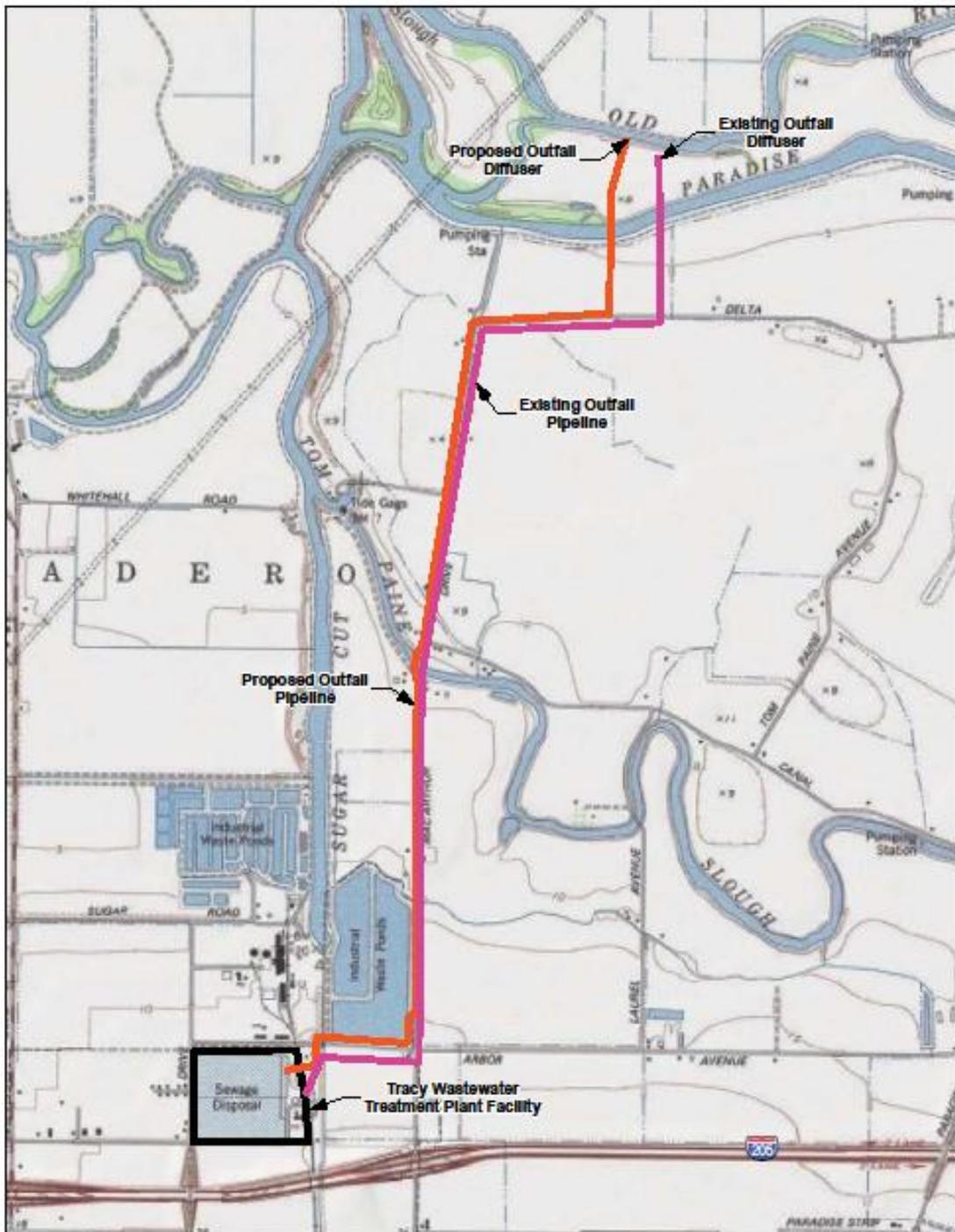
By: Daniel G. Sodergren
Title: CITY ATTORNEY
Date: _____

Exhibit "A"

**DESCRIPTION OF PROJECT
TO BE
MITIGATED****CITY OF TRACY EFFLUENT OUTFALL PIPELINE AND DIFFUSER IMPROVEMENT PROJECT
(Permit # 1600-2011-0399-R3)**

The Tracy Wastewater Treatment Plant (WWTP) is located at 3900 Holly Drive in the City of Tracy, CA 95376 at the northern end of the existing City of Tracy limits, in San Joaquin County, north of Interstate 205, between MacArthur Drive and Holly Drive. The new effluent outfall pipeline will be tied into the existing WWTP southeast of Arbor Avenue. From there, the pipeline alignment exits the WWTP and crosses Arbor Road. The pipeline then continues east on the north side of Arbor Road crossing the Holly Sugar/UPRR tracks and the Sugar Cut Drain. After crossing the drainage channel, the pipeline alignment continues east, paralleling the City's overflow ponds to the intersection of Arbor Road and MacArthur Drive. From there, the pipeline alignment heads north on the west side of MacArthur Drive and continues to parallel City's overflow ponds before the pipeline alignment turns slightly east and down the steep embankment on the east side of MacArthur Drive off the City's storage pond property. The pipeline continues north in existing roadway rights-of way along Mac Arthur Drive and west along Delta Avenue. It will parallel the alignment of the existing outfall pipeline. The proposed pipeline will then head north through existing farmland, cross Paradise Cut and end at Old River, the location of the outfall diffuser, approximately 800 feet west of the existing outfall as shown in next page.

Most of the proposed pipeline alignment from the intersection of Arbor Road and MacArthur Drive will be in San Joaquin County right-of-way and adjacent to two-lane county roads and active farmland. To the extent possible, the pipe centerline was placed approximately 10 feet off the edge of pavement. A temporary construction easement will be required for the contractor along the pipeline alignment and has been identified primarily as a 50-foot easement outside the existing right-of-way mainly utilizing active farmlands.



LEGEND

- Existing Outfall
- Proposed Outfall
- Wastewater Treatment Plant Boundary

Source: CH2M HILL, Outfall location 2010 and Tracy WWTP Facility Plan 2003

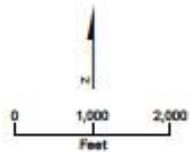


Figure 3-2
Current and Proposed Outfall Locations

City of Tracy Outfall Project Biological Assessment
City of Tracy

Exhibit "B"

BILL OF SALE

In consideration of **\$69,000** receipt of which is hereby acknowledged, *Cosumnes Floodplain Mitigation Bank* Sponsor does hereby bargain, sell and transfer to the CIT OF TRACY **0.3 Floodplain Mosaic Wetland and 0.63 Floodplain Riparian (Enhanced) Habitat credits** in the *Cosumnes Floodplain Mitigation Bank* in Sacramento County, California, developed, and approved by the U.S. Army Corps of Engineers, U. S. Environmental Protection Agency, California Department of Fish and Game, and National Marine Fisheries Service.

Westervelt Ecological Services represents and warrants that it has good title to the credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

Westervelt Ecological Services covenants and agrees with the buyer to warrant and defend the sale of the credits hereinbefore described against all and every person and persons whomsoever lawfully claiming or to claim the same.

DATED: _____

Cosumnes Floodplain Mitigation Bank Sponsor

By: _____

Exhibit "C"

**Cosumnes Floodplain Mitigation Bank
PAYMENT RECEIPT**

PARTICIPANT INFORMATION

Name: CITY OF TRACY

Address: 333 Civic Center Plaza
Tracy, California, 95376

Telephone: (209) 831-6356

Contact: Mr. Steve Bayley, Department of Public Works

PROJECT INFORMATION

Project Description: City of Tracy Effluent Outfall Pipeline & Diffuser Improvement Project

Project File Number: ITP Permit #

Species/Habitat Affected: 0.3 acres of riparian (Brush Rabbit) & 0.1 acres of fish habitat

Credits to be Purchased: 0.3 Floodplain Mosaic Wetland and 0.63 Floodplain Riparian (Enhanced) Habitat credits

Payment Amount: \$69,000

Project Location: City of Tracy

County/Address: San Joaquin

PAYMENT INFORMATION

Payee: Westervelt Ecological Services, LLC

Payer: City of Tracy

Amount: Sixty Nine Thousand (\$69,000)

Method of payment: Cash Check No. Money Order No.

Received by: _____ Date: _____
(Signature)

Name:

Title:

RESOLUTION _____

AUTHORIZING THE PURCHASE OF WILDLIFE HABITAT MITIGATION CREDITS FOR THE EFFLUENT OUTFALL PIPELINE AND DIFFUSER IMPROVEMENT PROJECT FROM THE WESTERVELT ECOLOGICAL SERVICES, LLC, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The permit for construction of the wastewater effluent outfall project obtained from the California Department of Fish and Wildlife (CA DFW) requires purchase of wildlife habitat mitigation credits, and

WHEREAS, The agreement with Westervelt Ecological Services provides for the purchase of the needed credits at a cost of \$69,000, and

WHEREAS, The City negotiated with Westervelt Ecological Services for credits through the Cosumnes Floodplain Mitigation Bank, and

WHEREAS, This mitigation meets the CA DFW requirements;

NOW, THEREFORE, BE IT RESOLVED, That City Council authorizes the Purchase of Wildlife Habitat Mitigation Credits for the Effluent Outfall Pipeline and Diffuser Improvement Project from the Westervelt Ecological Services, LLC, and authorizes the Mayor to execute the Agreement.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 17th day of December, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.H

REQUEST**AWARD A CONSTRUCTION CONTRACT TO THE LOWEST RESPONSIVE BIDDER FOR THE SLURRY SEAL PROJECT (FY 2012-13), CIP 73130B, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT**EXECUTIVE SUMMARY

In conjunction with the Slurry Seal of Various Streets Project (FY 2012-13), City Council is requested to award a slurry seal street resurfacing project as part of the City's ongoing commitment to maintain its roadway network. The project is defined in the plans and specifications to include the application of approximately 70,150 square yards of slurry seal and the installation of temporary and permanent striping to replace the existing pavement markings and striping on 24 residential street segments in the Presidio Subdivision, located just south of the Sports Complex on Eleventh Street.

DISCUSSION

This project is part of the City's annual street improvement program and consists of the application of slurry seal on 24 residential street segments in the Presidio Subdivision, including Wagner Court, Taylor Way, Kennedy Place, Mason Court, Jackson Avenue, Young Court, Bay Court, Lyon Court, Funston Court, Stafford Avenue, Girard Drive, Compton Place, Ralston Way, Presidio Place, Merchant Court, Shofield Lane and Shofield Court, Brooks Lane, Marshall Lane, Marshall Court, Doyle Court, Magazine Lane, General Lane, McDowell Way, and Jefferson Parkway. These candidate streets were selected on the basis of recommendations from the City's Pavement Management Program, which performs life-cycle and cost-benefit analysis to identify those streets most in need of improvement. Street selection has also been coordinated with the City's Public Works Department Street Maintenance Division.

Public Works staff has sealed the cracks on all the streets in advance in preparation for the slurry seal application. The slurry seal project includes the application of a slurry seal and the installation of new pavement markings.

The project plans and specifications were prepared in-house by engineering staff. The project was advertised for competitive bids on October 4 and October 11, 2013. Eight bids were received and publicly opened at 2:00 p.m. on Thursday, October 24, 2013, with the following results:

<u>Contractor</u>	<u>Base Bid</u>
Telfer Oil Company dba Windsor Fuel Company, Pittsburg	\$152,031.00
American Asphalt Repair & Resurfacing Company, Inc., Hayward	\$153,419.00
Central Valley Engineering & Asphalt, Inc., Roseville	\$154,465.00
VSS International, Inc., West Sacramento	\$162,533.00
Calif. Pavement Maintenance Company, Inc., Sacramento	\$168,514.50
Graham Contractors, Inc., San Jose	\$170,288.50
Intermountain Slurry Seal, Inc., Elk Grove	\$178,178.00
Bond Blacktop, Inc., Union City	\$200,938.00

Telfer Oil Company dba Windsor Fuel Company of Pittsburg, California is the lowest monetary bidder. A bid analysis indicates the lowest bid is responsive and the bidder is responsible. Windsor Fuel Company has the appropriate contractors license in current and active standing with the State and has completed numerous similar projects for other public agencies.

Based upon the available budget, it is recommended that the construction contract be awarded for the base bid amount. The total recommended construction cost of this project, if awarded to Telfer Oil Company dba Windsor Fuel Company is as follows:

	<u>Base Bid</u>
Construction Bid	\$152,031
Construction Testing & Inspection	\$ 5,000
Design Support during Construction	\$ 3,500
Contingency (15%)	<u>\$ 22,800</u>
Total Construction Cost	\$ 183,331

If the project is awarded to Windsor Fuel Company, construction of the project will not proceed until April or May of 2014 or when the pavement or air temperature is above 55 degrees Fahrenheit and the road surface is dry.

STRATEGIC PLAN

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

FISCAL IMPACT

This is an approved CIP project – 73130B and there is no impact to the General Fund. The cost of the contract is \$152,031; the total project cost is anticipated to be approximately \$183,331 and is funded through gas tax revenue.

RECOMMENDATION

That City Council, by resolution, award a construction contract for the Slurry Seal Project (FY 2012-13) - CIP 73130B, to Telfer Oil Company dba Windsor Fuel Company of Pittsburg, California, in the amount of \$152,031 and authorize the Mayor to execute the construction contract.

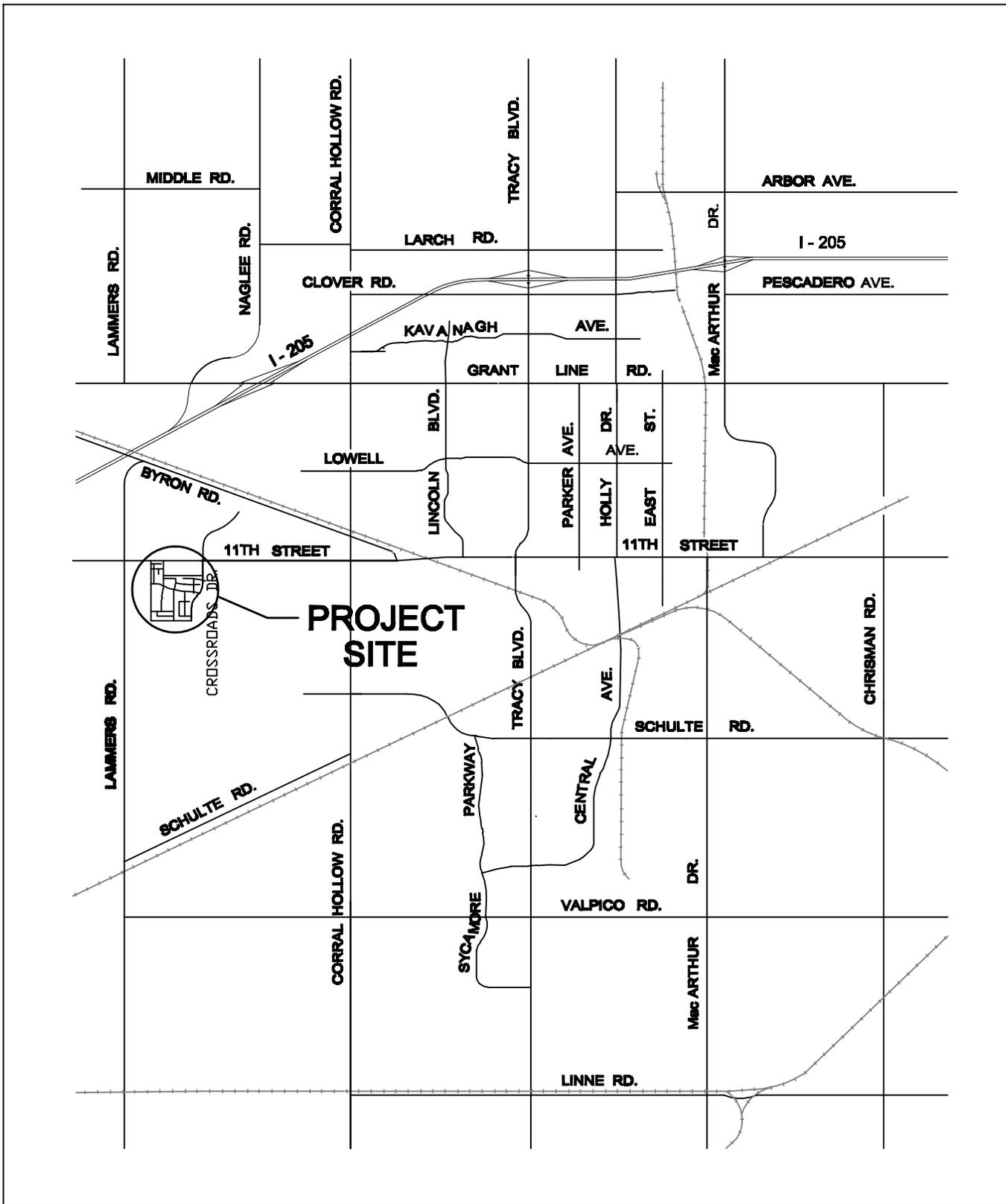
Prepared by: Khoder Baydoun, Associate Civil Engineer/Zabih Zaca, Senior Civil Engineer

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

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

ATTACHMENT

Attachment A – Location Map



PRESIDIO SUBDIVISION - SLURRY SEAL

LOCATION MAP

N.T.S.



RESOLUTION _____

AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$152,031 FOR THE SLURRY SEAL PROJECT FY 2012-13 – CIP 73130B, TO TELFER OIL COMPANY DBA WINDSOR FUEL COMPANY, OF PITTSBURG, CALIFORNIA, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

WHEREAS, This project is part of the City’s annual street improvement program and consists of the application of slurry seal on 24 street segments in the Presidio Subdivision adjacent to the Sports Complex on Eleventh Street, and

WHEREAS, Candidate streets were selected based on recommendations from the City’s Pavement Management System, and

WHEREAS, The project was advertised for competitive bids on October 4 and October 11, 2013, and eight bids were received and publicly opened at 2:00 p.m., on October 24, 2013, and

WHEREAS, Telfer Oil Company dba Windsor Fuel Company, is the lowest monetary bidder, bid analysis indicates their bid is responsive and the bidder is responsible, and

WHEREAS, This is an approved Capital Improvement Project for FY 2012-13, funded by gas tax and as such, there will be no impact to the General Fund;

NOW, THEREFORE BE IT RESOLVED, That City Council awards a construction contract for the Slurry Seal Project (FY 2012-13) - CIP 73130B, to Telfer Oil Company dba Windsor Fuel Company, of Pittsburg, California, in the amount of \$152,031, and authorizes the Mayor to execute the construction contract.

* * * * *

The foregoing Resolution 2013-_____ was adopted by the City Council on the 17th day of December 2013, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.I

REQUEST

AWARD A CONSTRUCTION CONTRACT FOR THE TRACY BOULEVARD OVERLAY PROJECT – CIP 73130A TO THE LOWEST RESPONSIVE BIDDER, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT

EXECUTIVE SUMMARY

As part of the City's ongoing commitment to maintain and improve its roadway network, City Council is requested to award a construction contract for the overlay of rubberized asphalt concrete on Tracy Boulevard between Schulte Road and Steinbeck Way, including the replacement of the traffic signal loops on Tracy Boulevard at Central Avenue and at Schulte Road – CIP 73130A.

DISCUSSION

The asphalt overlay project consists of the application of Rubberized Asphalt Concrete (RAC) overlay on Tracy Boulevard between Schulte Road and Steinbeck Way. RAC contains crumb rubber derived from recycled tires that enhance the life cycle and minimize road noise. The street segment on Tracy Boulevard was selected based on recommendations from the City's Pavement Management System, which performs a life-cycle and cost-benefit analysis to identify the streets most in need of the asphalt overlay, including slurry seal and reconstruction.

The scope of work for this project also includes grinding the existing pavement, removing existing striping and pavement markings, replacing traffic signal loop detectors at Central Avenue and Schulte Road, patching, paving and repairing distressed pavement sections, and adjusting existing manholes, water valves, and survey monuments to grade. The replacement of the traffic signal loop detectors are necessary in every asphalt overlay project due to the unavoidable damage to the loops during the asphalt pavement grinding and overlay application.

Initially, the scope of this project included slurry seal applications at various other streets. Since this RAC overlay project is receiving federal funds which require environmental clearance from the State Department of Transportation (Caltrans), the original CIP 73130 was split into two CIP's: CIP 73130A for the Tracy Boulevard Overlay, and CIP 73130B for the Slurry Seal Project.

Engineering staff prepared the plans and specifications for the project. The stringent and time consuming federal funding requirements by the Regional Surface Transportation Program (RSTP) carried the bidding process into the rainy season and prompted staff to advertise for competitive bids on September 27 and October 4, 2013 to avoid the risk of forfeiting the federal funds. The actual construction of this project will start after the rainy season.

The following six bids were received and publicly opened at 2:00 p.m., on October 22, 2013, with the following results:

<u>Contractor</u>	<u>Base Bid</u>
DSS Company dba, Knife River Construction, Stockton	\$472,690
George Reed, Inc., Modesto	\$499,330
Chester Bross Construction Company., Springfield	\$521,326
Teichert Construction Company, Stockton	\$530,998
Martin Brothers Construction Company, Sacramento	\$543,177
Granite Construction Company, Sacramento	\$612,345

DSS Company dba, Knife River Construction of Stockton, California, is the lowest monetary bidder. The bid analysis indicates their bid is responsive and the bidder is responsible. DSS Company dba, Knife River Construction has the appropriate contractors license in current and active standing with the State of California, and has completed numerous similar projects for the City of Tracy and other public agencies.

The total estimated cost of this project if awarded to DSS Company dba, Knife River Construction is as follows:

<u>Construction Cost</u>	<u>Base Bid</u>
Contractor's Bid for Construction	\$472,690
Contingency @ 15%	\$ 70,900
Design	\$ 47,000
Design Support During Construction	\$ 10,500
Inspection (5%)	<u>\$ 23,600</u>
Total Construction Cost	\$ 624,690

Based on the anticipated weather conditions after award of this contract, the work may not proceed until April or May 2014, when the atmospheric and pavement temperatures are above 55 degrees Fahrenheit and rising, should the project be awarded to DSS Company dba, Knife River Construction. Further, the RAC cannot be placed on wet pavement or if there is a possibility of freezing temperatures at the project location within 24 hours after placement. Hence, completion of construction is expected by early June 2014.

STRATEGIC PLAN

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

FISCAL IMPACT

This is an approved CIP project and there will be no impact to the General Fund. The cost of the contract is \$472,690; the total project cost is anticipated to be approximately

\$624,690. Sources of funding for the construction project include transportation sales tax, gas tax and an RSTP grant in the amount of \$480,000.

RECOMMENDATION

That City Council, by resolution, award a construction contract for the Tracy Boulevard Overlay Project – CIP 73130A to DSS Company dba, Knife River Construction of Stockton, California, in the amount of \$472,690 and authorize the Mayor to execute the construction contract.

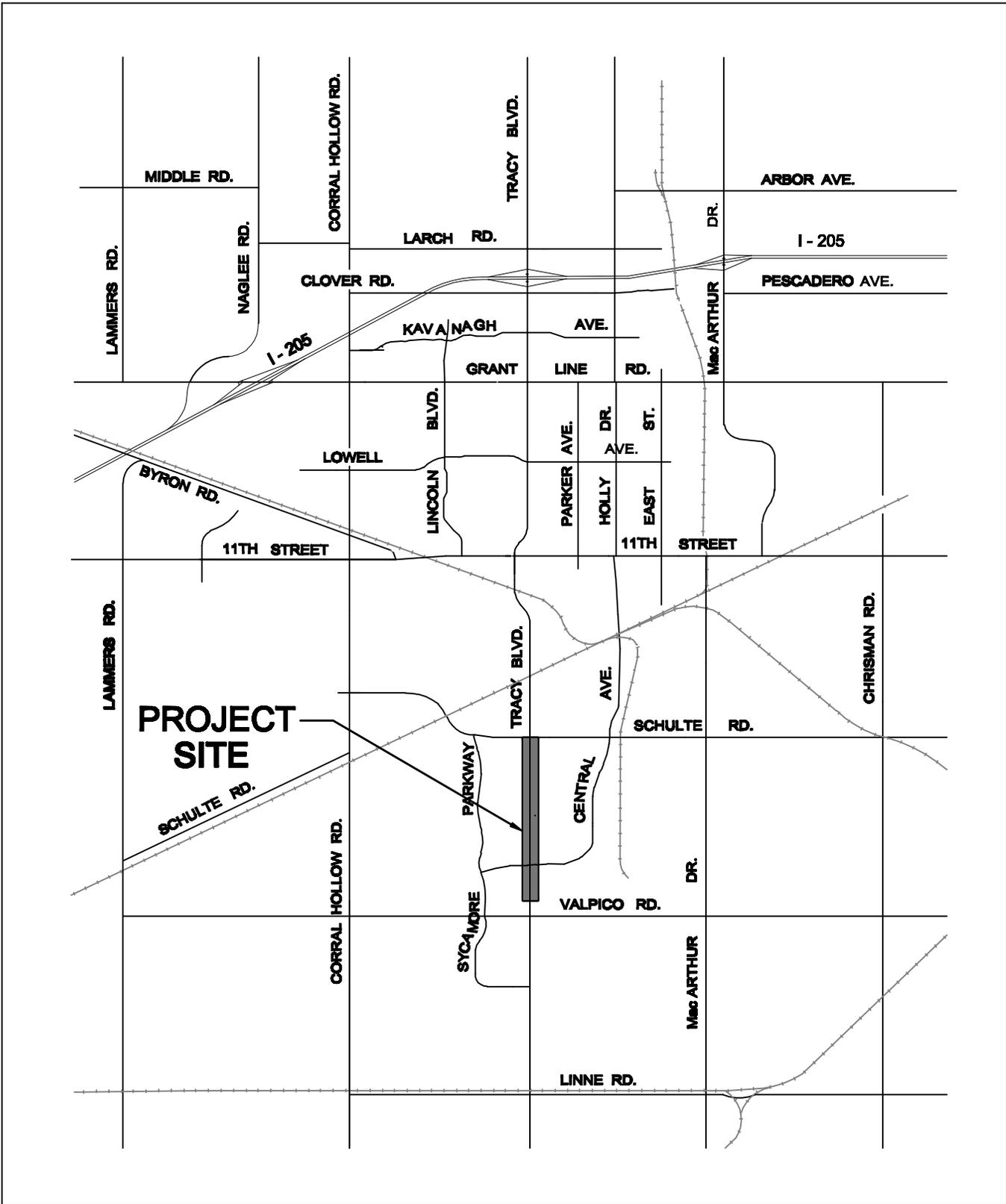
Prepared by: Khoder Baydoun, Associate Civil Engineer
Zabih Zaca, Senior Civil Engineer

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

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

ATTACHMENT

Attachment A – Location Map



TRACY BLVD. - OVERLAY

LOCATION MAP

N.T.S.



RESOLUTION _____

AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$472,690 FOR THE TRACY BOULEVARD OVERLAY PROJECT – CIP 73130A, TO DSS COMPANY DBA, KNIFE RIVER CONSTRUCTION, OF STOCKTON, CALIFORNIA, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

WHEREAS, This project is part of the City’s annual street improvement program and consists of rubberized asphalt concrete overlay on Tracy Boulevard between Schulte Road and Steinbeck Way, and

WHEREAS, Candidate streets were selected based on recommendations from the City’s Pavement Management System, and

WHEREAS, The project was advertised for competitive bids on September 27 and October 4, 2013, and six bids were received and publicly opened at 2:00 p.m., on October 22, 2013 as follows:

WHEREAS, DSS Company dba, Knife River Construction, is the lowest monetary bidder, bid analysis indicates their bid is responsive and the bidder is responsible, and

WHEREAS, This is an approved Capital Improvement Project. There is no impact to the General Fund. The Regional Surface Transportation Program (RSTP) is contributing \$480,000 toward this project with Measure K funds making up the balance of the total construction cost;

NOW, THEREFORE BE IT RESOLVED, That City Council awards a construction contract for the Tracy Boulevard Overlay Project - CIP 73130A, to DSS Company dba, Knife River Construction, of Stockton, California, in the amount of \$472,690, and authorizes the Mayor to execute the construction contract.

* * * * *

The foregoing Resolution 2013- _____ was adopted by the City Council on the 17th day of December 2013, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.J

REQUEST

**MINOR AMENDMENT TO THE CHEVROLET FINAL DEVELOPMENT PLAN TO
MODIFY THE FACADE AT 3400 AUTO PLAZA WAY - APPLICANT AND OWNER IS
GOLDEN BEARS III LLC**

EXECUTIVE SUMMARY

This agenda item involves a minor amendment to a Final Development Plan for the Tracy Chevrolet building to allow for facade modifications.

DISCUSSION

Background

On August 15, 1995, the City Council approved a Preliminary and Final Development Plan (PDP/FDP) for the Chevrolet project, which was described as 31,239 square foot Chevrolet dealership in the I-205 Specific Plan area located at 3400 Auto Plaza Drive (Attachment A). The building has been occupied by Chevrolet since its construction. Chevrolet has submitted an application to make slight revisions to the façade for corporate re-imaging.

Proposed Amendment

The entry facade of the showroom (main building entry for customers) on the east side of the building facing Naglee Road is currently comprised of standing seam metal roofing over metal panels textured to look like stucco, with a gabled (peaked) roof over the front door and a shed roof adjacent to it (see photos in Attachment A). This entry feature also includes a covered walkway that provides shade and visual interest to the building's façade.

The proposed change to the facade includes replacing the peaked and shed standing seam metal rooflines and materials to smooth Aluminum Composite Material (ACM) panels that will form a parapet roofline with varying height over the entry (see Attachment A, Proposed Exterior Elevations). The colors of the proposed ACM panels are consistent with the colors on the existing building, and include "Chevrolet Blue", white, and shades of silver/gray. The remainder of the building's architecture is not proposed to change, and will only be painted. The colors will be very similar to the building's existing colors, with the exception of the trims changing from blue to gray. The intent of this change in color is to de-emphasize the more utilitarian rear and sides of the building, where service areas are located, to allow for the blue entry feature to stand out. The proposal also includes minor changes to the signage, and the proposed new signage is consistent in size and location with the existing signs.

The project also includes one minor change to the site plan, with the addition of a sidewalk along Naglee Road creating an accessible pathway from the corner of Auto

Plaza Way and Naglee Road to the dealership's entry (Attachment A, Site Plan). This sidewalk will be constructed in a manner where it will not cause the removal of any of the existing trees on the site, and will only displace some existing grass within the landscape strip adjacent to the street.

Planning Commission Discussion

The Planning Commission met and discussed the proposed amendment on December 4, 2013, and recommended approval of the minor amendment.

Environmental Document

The proposed PDP/FDP amendment is categorically exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15301, pertaining to minor alterations to existing structures where there is no expansion to the structure. In accordance with CEQA Guidelines, no further environmental assessment is required.

FISCAL IMPACT

This agenda item will not require any expenditure of funds. The staff time spent processing the application was funded by the receipt of the required application processing fees.

STRATEGIC PLAN

This agenda item supports the Economic Development Strategic Plan, related to retail retention. The ability to retain existing businesses that generate sales tax is essential to the economic vitality of the I-205 retail area.

RECOMMENDATION

Staff and the Planning Commission recommend that the City Council approve the minor amendment to the Chevrolet Final Development Plan to reface the façade at the eastern entry of the building, based on the findings contained in the City Council Resolution dated December 17, 2013.

Prepared by: Victoria Lombardo, Senior Planner

Reviewed by: Bill Dean, Assistant Development Services Director
Maria A. Hurtado, Assistant City Manager

Approved by: R. Leon Churchill, City Manager

ATTACHMENTS

A—Location Map, Elevations, Site Plan, Floor Plan

TRACY CHEVROLET

3400 AUTO PLAZA WAY, TRACY, CA 95304

EXTERIOR FACADE RENOVATION

ATTACHMENT A

PLANNING DEPARTMENT SUBMITTAL SET

9/25/2013

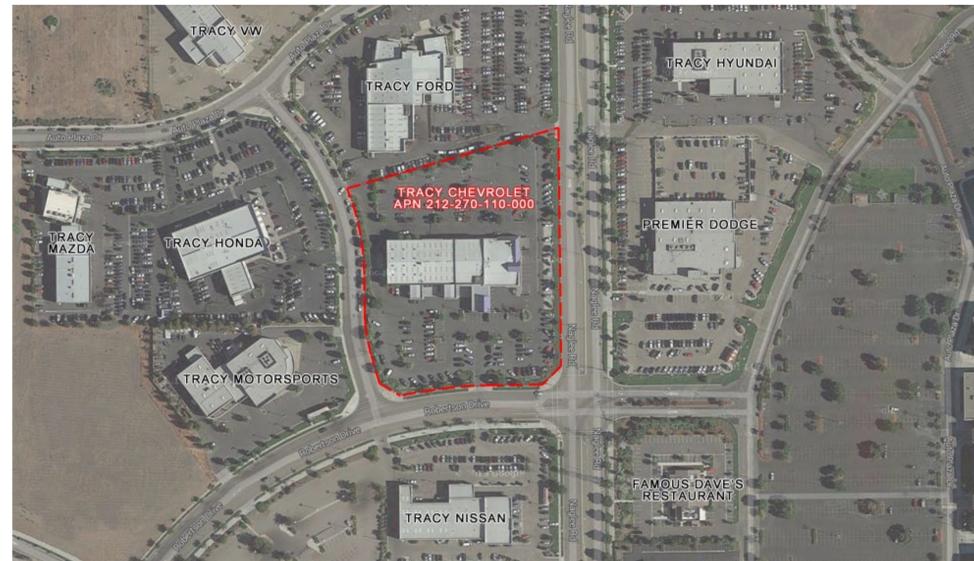
SHEET INDEX

- COVER SHEET
- SITE PLAN
- OVERALL FLOOR PLAN
- ENLARGED FLOOR PLAN
- DEMOLITION EXTERIOR ELEVATIONS
- PROPOSED EXTERIOR ELEVATIONS
- BUILDING MOUNTED SIGNAGE

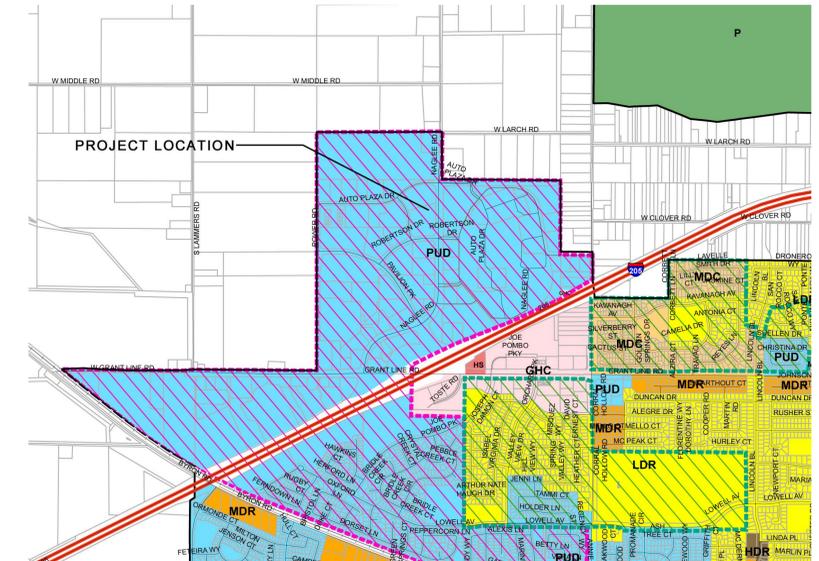
VICINITY MAP



AERIAL MAP



ZONING MAP



SITE PHOTOGRAPHS



VIEW FROM SOUTHEAST



VIEW FROM EAST



VIEW FROM EAST



VIEW FROM NORTHEAST

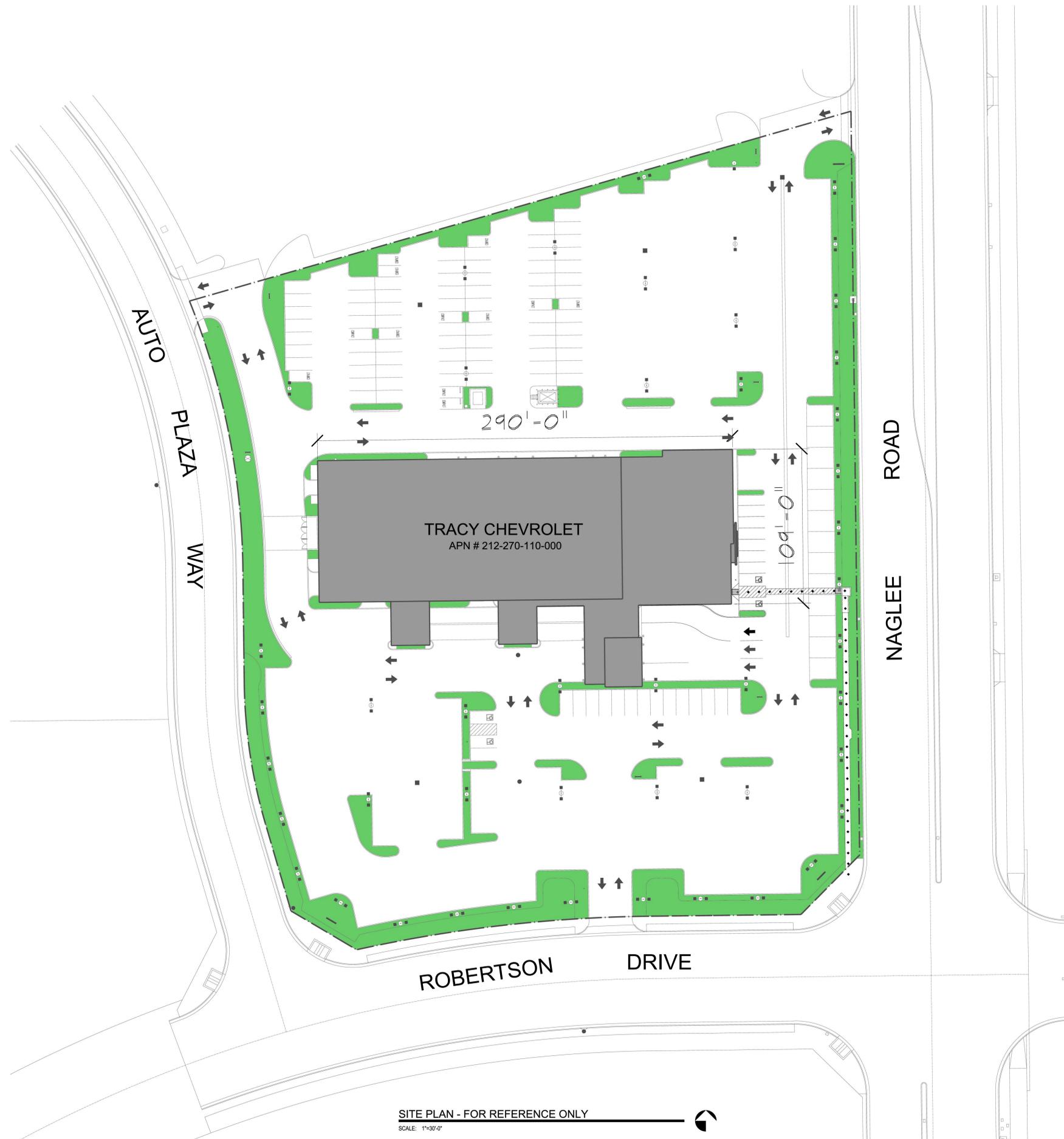


VIEW FROM NORTHWEST

COVER SHEET

TRACY CHEVROLET EXTERIOR FACADE RENOVATION

SEPTEMBER 25, 2013



LEGEND

- • • ACCESSIBLE PATH OF TRAVEL TO PUBLIC WAY

SHEET GENERAL NOTES

1. A NEW EXTERIOR ACCESSIBLE PATH OF TRAVEL WILL BE CONSTRUCTED AS PART OF THE EXTERIOR FACADE RENOVATION PROJECT.

PARKING COUNT

CUSTOMER	26 STANDARD PARKING STALLS
STAFF	70 STANDARD PARKING STALLS
VEHICLE DISPLAY	12 COMPACT PARKING STALLS
	240 PARKING STALLS (APPROX)
TOTAL	348 PARKING STALLS

STANDARD PARKING STALL	9'-0" x 18'-0"
COMPACT PARKING STALL	8'-0" x 16'-0"

SITE PLAN - FOR REFERENCE ONLY

SCALE: 1"=30'-0"

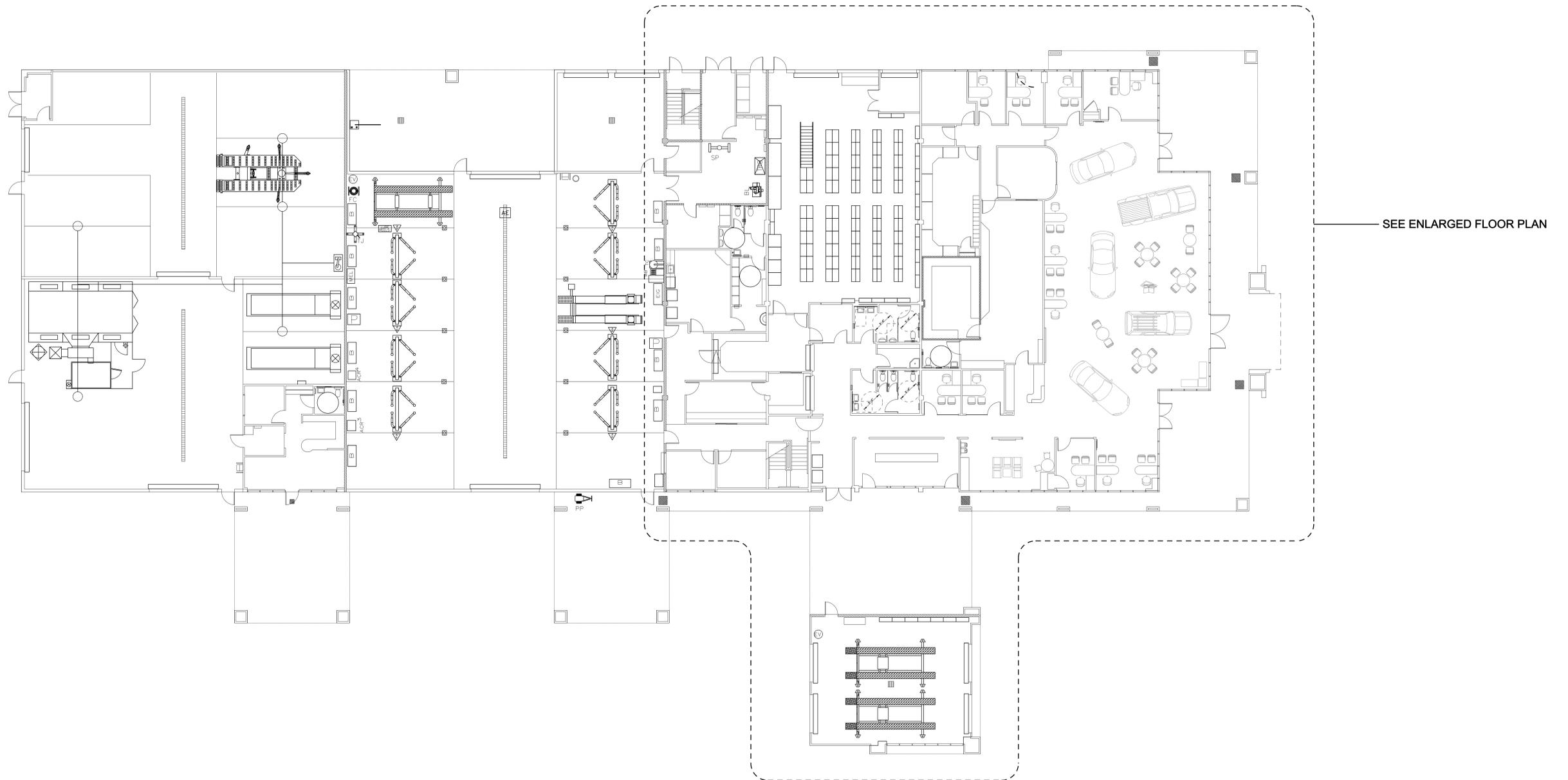


WEST VALLEY
MALL
ENTRANCE
No. 3

SITE PLAN

TRACY CHEVROLET EXTERIOR FACADE RENOVATION

SEPTEMBER 25, 2013



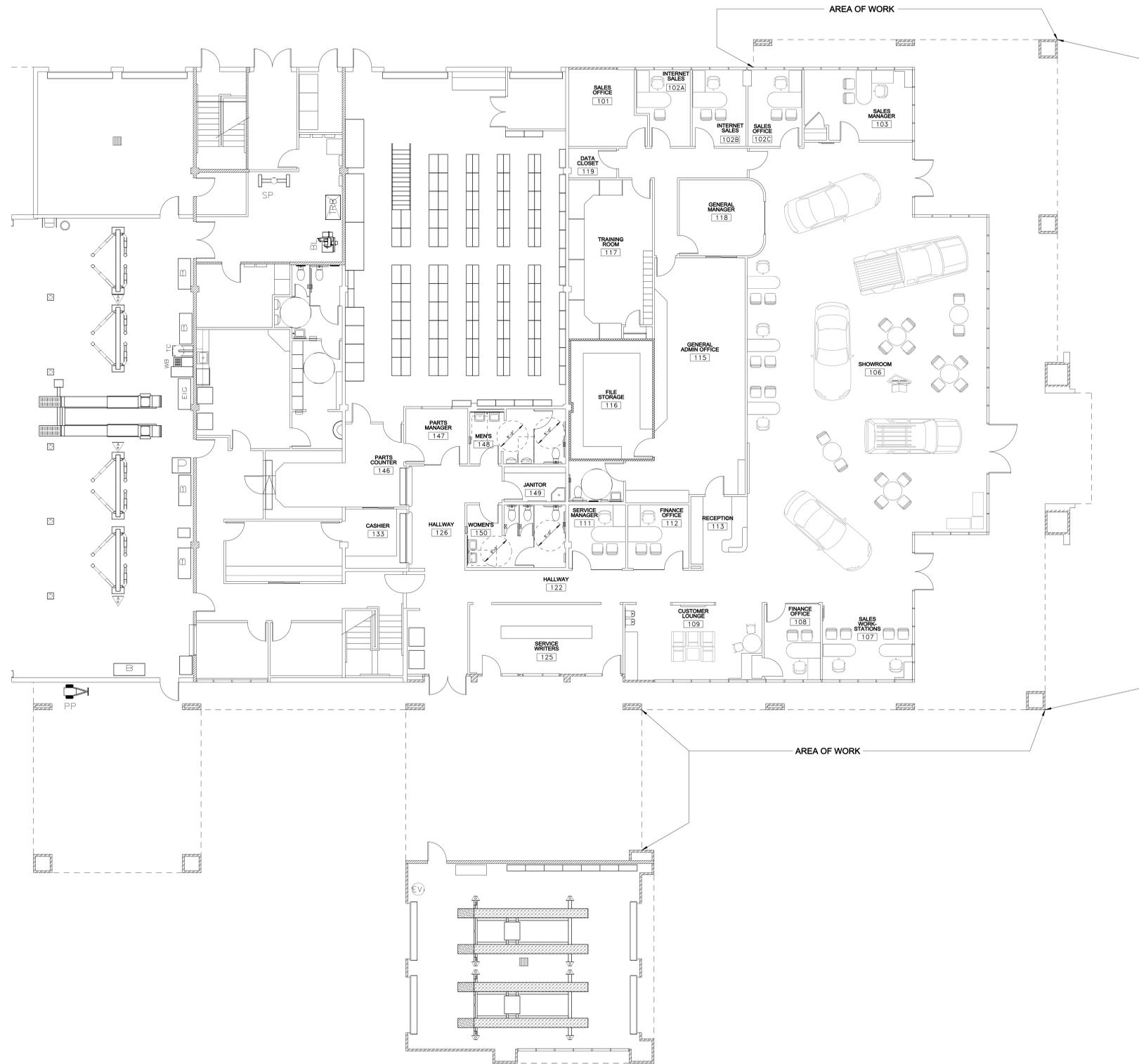
OVERALL FLOOR PLAN - FOR REFERENCE ONLY
SCALE: 3/32"=1'-0"



OVERALL FLOOR PLAN

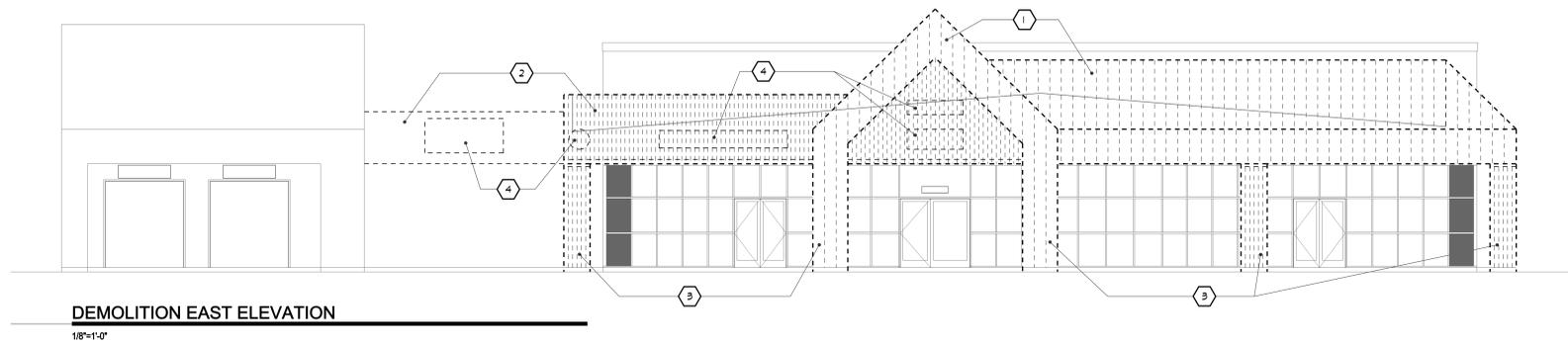
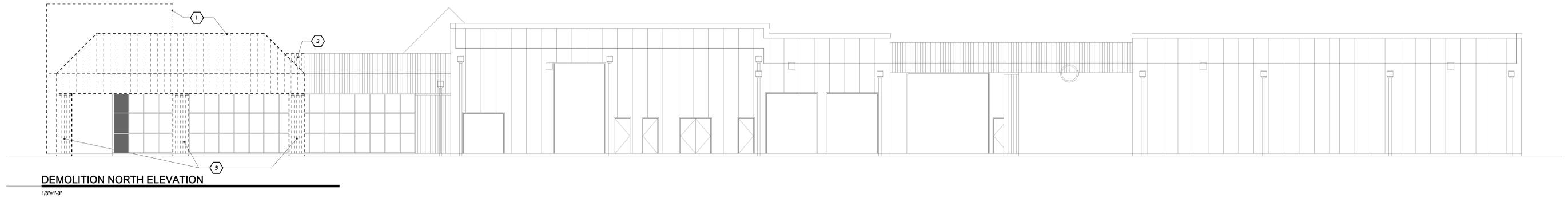
TRACY CHEVROLET EXTERIOR FACADE RENOVATION

SEPTEMBER 25, 2013



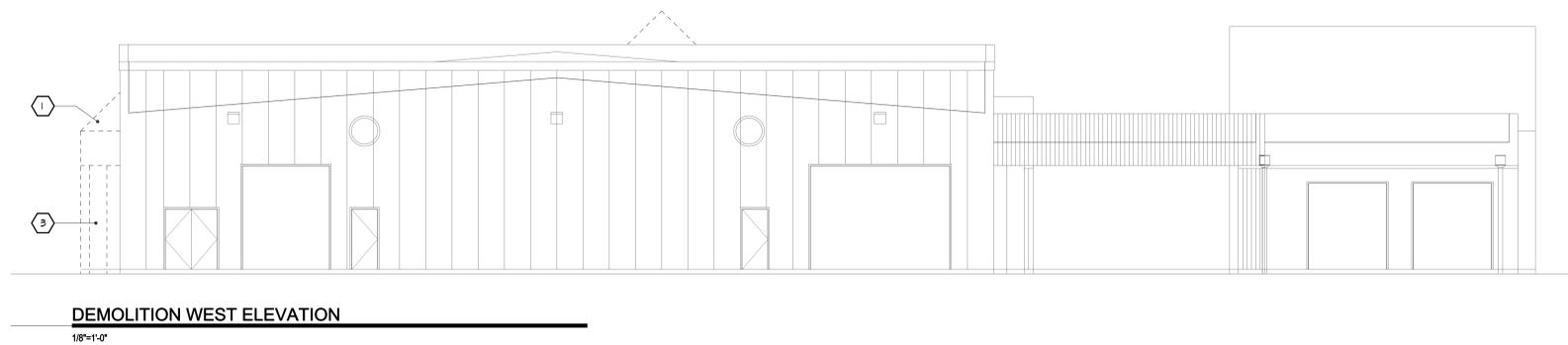
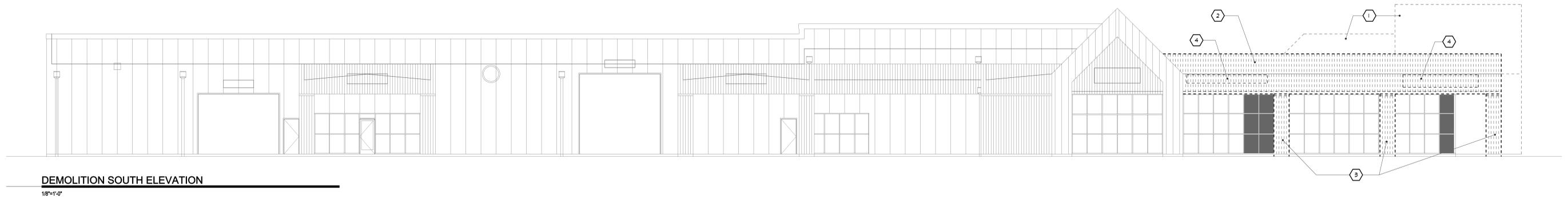
ENLARGED FLOOR PLAN - FOR REFERENCE ONLY
 SCALE: 1/8"=1'-0"





SHEET KEYNOTES

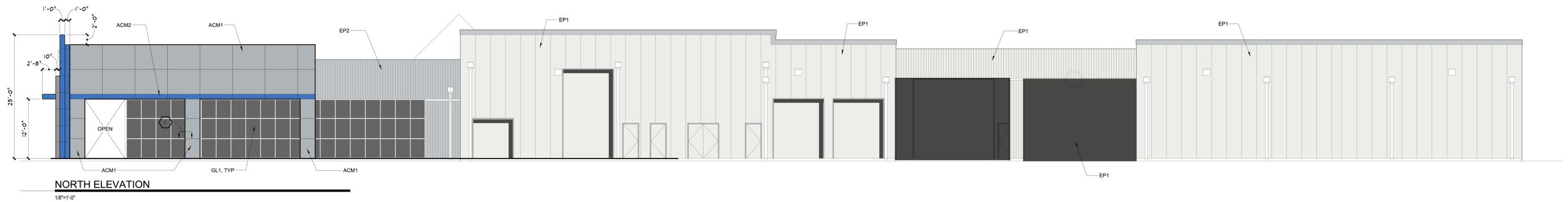
- ① DEMOLISH (E) STANDING SEAM METAL ROOF. ALSO DEMOLISH SUPPORTING FRAMING AS NECESSARY TO PREPARE ROOF FOR NEW FRAMING AND FINISHES.
- ② DEMOLISH (E) METAL PANEL FASCIA AND SUPPORTING FRAMING AS NECESSARY TO PREPARE FOR NEW FINISHES.
- ③ DEMOLISH (E) METAL PANEL COLUMN WRAPS AND SUPPORTING FRAMING AS NECESSARY TO PREPARE FOR NEW FINISHES.
- ④ DEMOLISH (E) BUILDING SIGNAGE.



DEMOLITION EXTERIOR ELEVATIONS

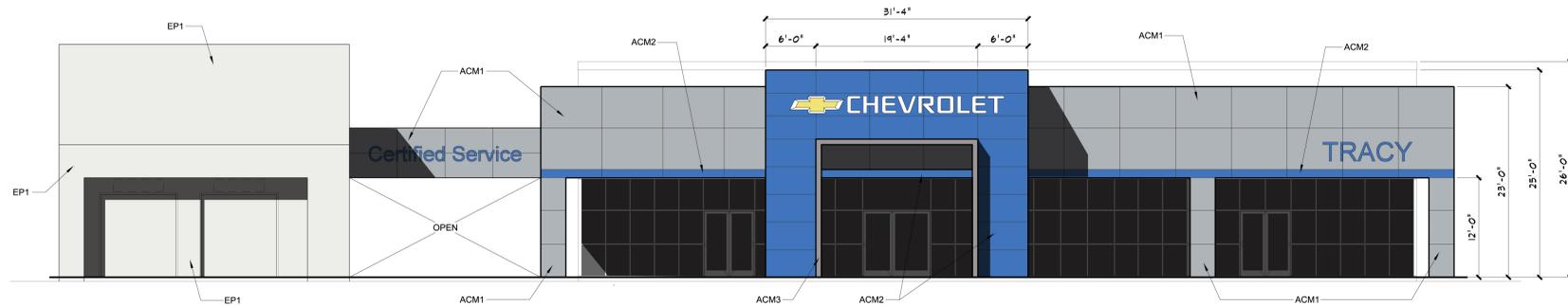
TRACY CHEVROLET EXTERIOR FACADE RENOVATION

SEPTEMBER 25, 2013



NORTH ELEVATION

18'-11-0"

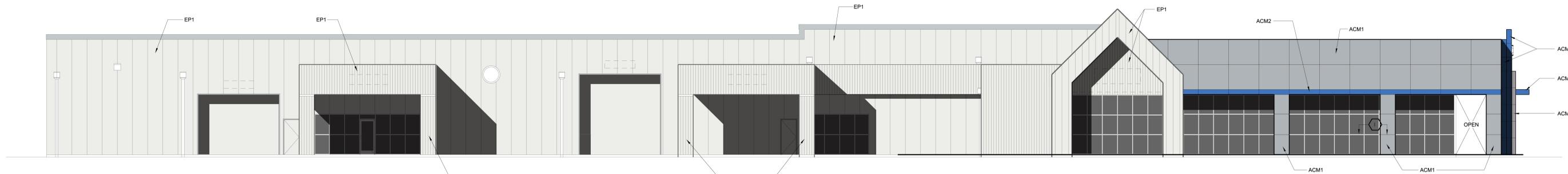


EAST ELEVATION

18'-11-0"

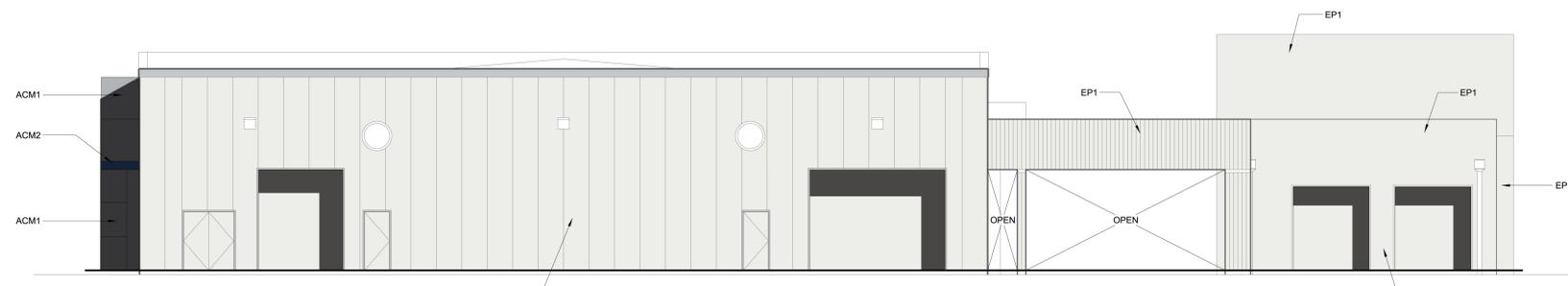
SHEET KEYNOTES

1 ALIGN ACM JOINTS AT COLUMNS W/ CENTERLINE OF HORIZONTAL MULLIONS, TYP



SOUTH ELEVATION

18'-11-0"



WEST ELEVATION

18'-11-0"

EXTERIOR MATERIAL SCHEDULE			
ABBR	DESCRIPTION	MANUFACTURER	NOTES
ACM1	ALPOLIC TBX BRIGHT ALUMINUM METALLIC	ALPOLIC OR EQUAL	DRY JOINT, ROUT AND RETURN SYSTEM W/ 1/2" WIDE REVEALS. ACM SYSTEM SHALL NOT BE FIELD CUT.
ACM2	ALPOLIC CVB, BLUE COLOR TO MATCH PMS 300 CHEVROLET BLUE	ALPOLIC OR EQUAL	DRY JOINT, ROUT AND RETURN SYSTEM W/ 1/2" WIDE REVEALS. ACM SYSTEM WILL NOT BE FIELD CUT.
ACM3	ALPOLIC DM HLZ ALUMINUM BRUSHED HAIRLINE	ALPOLIC OR EQUAL	DRY JOINT, ROUT AND RETURN SYSTEM W/ 1/2" WIDE REVEALS. ACM SYSTEM WILL NOT BE FIELD CUT.
EP1	OC-61 WHITE DIAMOND	BENJAMIN MOORE	EXTERIOR GRADE PAINT
EP2	2121-40 SILVER HALF DOLLAR	BENJAMIN MOORE	EXTERIOR GRADE PAINT
GL1	CLEAR ANNOXIDIZED ALUMINUM FRAME W/ TINTED GLAZING	N/A	EXISTING SYSTEM TO REMAIN

PROPOSED EXTERIOR ELEVATIONS

TRACY CHEVROLET EXTERIOR FACADE RENOVATION

SEPTEMBER 25, 2013



TOTAL AREA OF "HOMETOWN" SIGN: 2'-4" x 10'-8" = 24.88 SF

"HOMETOWN" SIGNAGE

1/4"=1'-0"



TOTAL AREA OF "CHEVROLET" SIGN: 2'-1" x 23'-10 3/4" = 49.78 SF

"CHEVROLET" SIGNAGE

1/4"=1'-0"



TOTAL AREA OF "SERVICE" SIGN: 1'-10" x 18'-2" = 33.31 SF

"SERVICE" SIGNAGE

1/4"=1'-0"

SIGNAGE SCHEDULE			
NAME	TYPE	ILLUMINATED	AREA
HOMETOWN	BLDG WALL MOUNT	YES	+/- 25 SF
CHEVROLET	BLDG WALL MOUNT	YES	+/- 50 SF
SERVICE	BLDG WALL MOUNT	YES	+/- 33 SF
TOTAL AREA			+/- 108 SF

RESOLUTION _____

APPROVING A MINOR AMENDMENT TO CHEVROLET FINAL DEVELOPMENT PLAN TO
MODIFY THE FAÇADE AT 3400 AUTO PLAZA DRIVE ASSESSOR'S PARCEL NUMBER
212-270-11 APPLICATION NUMBER D13-0012

WHEREAS, The City Council adopted the I-205 Corridor Specific Plan and certified its Environmental Impact Report on August 21, 1990, and approved a subsequent Negative Declaration on July 6, 1999,

WHEREAS, Golden Bears III, LLC, submitted an application to amend the Chevrolet Final Development plan to modify the façade (Application Number D13-0012) on September 25, 2013, and

WHEREAS, The subject property is located within the I-205 Corridor Specific Plan area, with a land use designation of Service Commercial, which allows automobile sales and service as a permitted land use, and

WHEREAS, The Planning Commission conducted a public hearing to review and consider the application on December 4, 2013 and recommended project approval;

NOW, THEREFORE BE IT RESOLVED, The Tracy City Council does hereby approve a minor amendment to the Chevrolet Final Development plan to modify the façade, Application Number D13-0012, subject to the conditions contained in Exhibit 1 to this Resolution, and based on the findings below.

1. The establishment, maintenance, and operation of the proposed façade improvements is compatible with the land use, design, and operational characteristics of the neighboring properties. It will not, under the circumstances of the particular case or as conditioned, be injurious or detrimental to the health, safety, or general welfare of persons or property in the vicinity of the proposed use and its associated structures, or to the general welfare of the City because the project is consistent with the land use, design, and other elements of the I-205 Specific Plan, the City of Tracy General Plan, and applicable requirements of Chapter 10.08 of the Tracy Municipal Code, including, but not limited to, Article 26, Off-Street Parking Requirements, and Article 30, Development Review.
2. The project will not adversely affect or impair the benefits of occupancy, most appropriate development, property value stability, or the desirability of property in the vicinity because the site design and architectural elements of the project as designed and conditioned, are an architecturally compatible addition to the parcel, and will not adversely visually impair the benefits of the properties in the vicinity, as the project design is consistent with adjacent building design within the West Valley Mall Complex.
3. The project, as designed and conditioned, will not cause any significant environmental impact, because it is categorically exempt from the California Environmental Quality Act Pursuant to CEQA Guidelines Section 15301, pertaining to minor alterations to existing structures where there is no expansion to the structure.

* * * * *

The foregoing Resolution 2013-_____ was adopted by the City Council on the 17th day of December, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

Exhibit 1 - Conditions of Approval

**Conditions of Approval for Chevrolet Façade Improvements
Application Number D13-0012
December 4, 2013**

1. These Conditions of Approval shall apply to the real property described as 3400 Auto Plaza Drive, Assessor's Parcel Number 212-170-11 Application Number D13-0012 (hereinafter "Project"),.
2. The following definitions shall apply to these Conditions of Approval:
 - a. "Applicant" means any person, or other legal entity, defined as a "Developer".
 - b. "City Engineer" means the City Engineer of the City of Tracy, or any other duly licensed engineer designated by the City Manager, or the Development Services Director, or the City Engineer to perform the duties set forth herein.
 - c. "City Regulations" means all written laws, rules, and policies established by the City, including those set forth in the City of Tracy General, the Tracy Municipal Code, I-205 Corridor Specific Plan, ordinances, resolutions, policies, procedures, and the City's Design Documents (including the Standard Plans, Standard Specifications, Design Standards, and relevant Public Facility Master Plans).
 - d. "Development Services Director" means the Development Services Director of the City of Tracy, or any other person designated by the City Manager or the Development Services Director to perform the duties set forth herein.
 - e. "Conditions of Approval" shall mean the conditions of approval applicable to the façade improvements and loading dock, Application Number D13-0012.
 - f. "Project" means the real property consisting of the building located at 3400 Auto Plaza Drive, Assessor's Parcel Number 212-170-11.
 - g. "Subdividor" means any person, or other legal entity, who applies to the City to divide or cause to be divided real property within the Project boundaries, or who applies to the City to develop or improve any portion of the real property within the Project boundaries. The term "Developer" shall include all successors in interest.
3. The Developer shall comply with all laws (federal, state, and local) related to the development of real property within the Project, including, but not limited to: the Planning and Zoning Law (Government Code sections 65000, et seq.), the Subdivision Map Act (Government Code sections 66410, et seq.), the California Environmental Quality Act (Public Resources Code sections 21000, et seq., "CEQA"), and the Guidelines for California Environmental Quality Act (California Administrative Code, title 14, sections 1500, et seq., "CEQA Guidelines").

4. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all City Regulations.
5. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all mitigation measures identified in the General Plan Environmental Impact Report, dated February 1, 2011, and the I-205 Corridor Specific Plan Negative Declaration dated July 6, 1999.
6. Except as otherwise modified herein, all construction shall be consistent with the site plan and architectural renderings received by the Development Services Department on November 26, 2013.
7. Prior to the issuance of a building permit, the applicant shall provide a detailed site and landscape plan showing the new sidewalk and any necessary irrigation system modifications consistent with City landscape and irrigation standards, including, but not limited to Tracy Municipal Code Section 10.08.3560, I-205 Corridor Specific Plan, and Water Efficient Landscape Guidelines on private property, to the satisfaction of the Development Services Director.
8. All improvements shall be consistent with the Tracy Municipal Code, Standard Plans, and other applicable City Regulations.

AGENDA ITEM 1.K

REQUEST

APPROVING THE 2014 CALENDAR YEAR BUDGET FOR THE OPERATION OF THE TRACY MATERIAL RECOVERY FACILITY AND SOLID WASTE TRANSFER STATION

EXECUTIVE SUMMARY

Approve the 2014 calendar year budget for the operation of the Tracy Material Recovery Facility and Solid Waste Transfer Station in the amount of \$9,827,500.

DISCUSSION

The Service Agreement between the City of Tracy and Tracy Material Recovery and Solid Waste Transfer, Inc., for the operation of the Material Recovery Facility (MRF), requires that the MRF budget be approved annually by the City of Tracy. The MRF has been in operation since May 1, 1995. The attached 2014 budget has been submitted by Tracy Material Recovery and Solid Waste Transfer, Inc. and requires City Council approval.

The total MRF budget is forecasted to be \$9,827,500 for 2014. Key factors for the proposed budget requirements include:

- Foothill Sanitary Landfill, the ultimate repository for the residual waste coming from the MRF, increased its tipping fee by \$1.00 a ton January 1, 2012, \$.80 a ton January 1, 2013, and \$.57 a ton January 1, 2014. The MRF has increased its tipping fees accordingly.
- The MRF processed 110,074 tons for 2012, revised forecast of 107,000 tons for 2013, and estimated 107,900 tons for 2014.
- Reduction in MRF budget from 2013 and the 2014 proposed budget by \$412,600.
- The final payment on the Solid Waste Refunding Revenue Bonds (Tracy Material Recovery Facility Project) series 1999A is due August 1, 2014. The debt service fund will be utilized to fund the majority of the payment. Therefore the debt service requirement for 2014 is \$789,000 lower than 2013.

A summary of the Tracy Material Recovery and Solid Waste Transfer Station expenditures for the 2014 MRF budget:

**Tracy Material Recovery and
Solid Waste Transfer Station 2014 Budget**

Debt Service Requirements	\$ 57,223
Operating and Maintenance	6,472,000
Landfill disposal	2,858,500
Property taxes	157,000
Operators fee	<u>282,777</u>
	<u>\$9,827,500</u>

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact to the General Fund.

RECOMMENDATION

That City Council, by resolution, approve the Tracy MRF budget of \$9,827,500 submitted by Tracy Material Recovery and Solid Waste Transfer, Inc. for the operation of the Tracy Material Recovery Facility and Solid Waste Transfer Station for calendar year 2014.

Prepared by: Jennifer Cariglio, Management Analyst I, Public Works Department

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

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

ATTACHMENTS

Exhibit A: Tracy Material Recovery and Solid Waste Transfer, Inc. Forecasted Service Fee Budget

Exhibit A
Tracy Material Recovery and Solid Waste Transfer, Inc.
Forecasted Service Fee Calculation (Budget)
For the year ending December 31, 2014

(See Independent Accountants' Compilation Report and Summary of Significant Forecast Assumptions)

Debt Service		
Bond Principal	\$	44,610
Bond Interest		27,432
Interest Earned-Trustee funds		(14,799)
Rounding		(20)
	\$	57,223
Coverage Requirements - Covenant Requirements		
Additional Funding - City of Tracy Enterprise Fund		
Deposit from the City of Tracy		-
Operating and Maintenance		
Salaries		2,430,000
Employee Benefits		
Payroll Taxes		212,000
Health Insurance		439,272
Dental Insurance		44,389
Life Insurance		2,339
Workers' Compensation		193,000
401K Employers Match		20,000
Hauling Expenses		
Fuel (Hauling and onsite)		715,000
Repairs and Maintenance		
Transfer Trucks		84,000
Transfer Trailers		44,100
Secondary Haul		63,000
Maintenance		
Shop Equipment		5,200
MRF Equipment		310,000
Buildings		137,210
Janitorial		3,000
Landscape		39,375
Utilities		
Gas, Electric, and Propane		190,050
Water		-
Sewer		2,205
Telephone		24,150
Insurance - Liability/Pollution/Property		190,000
Plant Generated Waste Hauling/Disposal		18,375
Plant Supplies - MRF and Shop		143,000
Office Supplies		
Printed Materials		6,300
Other (Software, Shop, MRF, Visitor Center)		10,100
Accounting Services		118,650
Payroll/Human Resources		15,015
Audit		13,650
Legal		15,750
Engineer		4,200
Computer and Software Support (Network Admin.)		25,725
Security		82,950
Education and Training		1,400
Public Awareness		5,670
Equipment Rental - Tractor		-
Equipment Rental - Shop/MRF		5,250
Equipment Rental - Copier		6,300
License Renewals		39,000
Compliance, Permits, Bit Program		69,000
Bank Fees-BNY		26,250
Travel/Meetings/Conventions		1,050
Arbitrage Services		1,250
Interest Expense - Finance Ins. (Pollution/general liab policy)		-
Interest Expense - Loan		45,000
Property taxes - non pass through		200
Dues and subscriptions		6,825
Disposal Fees - non pass through		
CRT Disposal - E-waste		2,900
Freon		8,500
Tires		8,500
Concrete		14,000
Wood		6,000
Compost Testing/Issues		29,400
Equipment Replacement Reserve		550,000
Traffic Mitigation Fee - new req.		6,500
Solid Waste Permit Related Costs		37,000
		6,472,000

Tracy Material Recovery and Solid Waste Transfer, Inc.

Forecasted Service Fee Calculation (Budget)

For the year ending December 31, 2014

(See Independent Accountants' Compilation Report and Summary of Significant Forecast Assumptions)

Continued

Pass Through Costs

Landfill Disposal Costs	2,858,500	
Property Taxes	157,000	3,015,500

Operators Fee 282,777 282,777

Revenue from Recycled Materials (1,100,000) (1,100,000)

Other Revenues

Public Revenue - Self-haul - Weighed - refuse	(915,300)	
Public Revenue - Self-haul - Weighed - greenwaste	(50,400)	
Public Revenue - Self-haul - Wood	(151,200)	
Public Revenue - Self-haul - Minimum Fee	(283,500)	
San Joaquin County - Service Area F	(812,500)	
Mountain House	(374,950)	
Interest Revenue		
Bond Reserve Fund - applied to debt service	-	
Equipment Replacement Reserve/Operating Account	(7,650)	
Miscellaneous (sale of equipment)	-	
Rental income	(108,000)	
		<u>(2,703,500)</u>

Service Fee \$ 6,024,000

Allocate revenue requirements based on tonnage

Tonnage Forecasted

Municipal	71,800
County Service Area F	12,100
Mountain House	6,000
Self-haul - refuse	11,300
Self-haul - greenwaste	800
Self-haul - wood	2,400
Self-haul - minimum fee	3,500
	<u>107,900</u>

Operating and maintenance costs	<u>\$ 6,472,000</u>
Forecasted tonnage	<u>107,900</u>
Forecasted operating and maintenance costs per ton	<u>\$ 59.98</u>

Debt Service Coverage Ratio

Total Revenues	9,827,500	
Operating and maintenance costs	(6,472,000)	
Pass through costs	(3,015,500)	
Debt Service coverage requirement - City of Tracy Dep.		
Net divided by debt service	<u>340,000</u> / 72,042 =	<u>\$ 4.72</u>

Debt Service

Principal Bonds	\$ 44,610
Interest Bonds	27,432
	<u>\$ 72,042</u>

Revenue from Current Rates

Municipal	
Forecasted revenue-current rates	\$ 7,879,992
Forecasted revenue required	6,024,000
Revenue excess	<u>\$ 1,855,992</u>

RESOLUTION _____

APPROVING THE 2014 CALENDAR YEAR BUDGET FOR THE OPERATION OF THE TRACY MATERIAL RECOVERY FACILITY AND SOLID WASTE TRANSFER STATION IN THE AMOUNT OF \$9,827,500

WHEREAS, The "Service Agreement" between the City of Tracy and Tracy Material Recovery and Solid Waste Transfer, Inc., (MRF) for the operation of the MRF requires that the MRF budget be approved annually by the City of Tracy, and

WHEREAS, The total MRF budget is forecasted to be \$9,827,500 for January 1, 2014 to December 31, 2014, and

WHEREAS, There is no fiscal impact to the General Fund;

NOW, THEREFORE, BE IT RESOLVED, That City Council hereby approves the Tracy MRF budget of \$9,827,500 submitted by Tracy Material Recovery and Solid Waste Transfer, Inc. for the operation of the Tracy Material Recovery Facility and Solid Waste Transfer Station for calendar year 2014.

* * * * *

The foregoing Resolution _____ was adopted by City Council on the 17th day of December 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 3

REQUEST

PUBLIC HEARING TO HEAR OBJECTIONS TO AND APPROVE THE FINAL COSTS OF WEED ABATEMENT AND AUTHORIZE A LIEN ON THE LISTED PROPERTIES IN THE COSTS OF ABATEMENT AMOUNT PLUS 25 PERCENT

EXECUTIVE SUMMARY

The Fire Department's weed abatement contractor has completed the abatement of all fire hazards on designated properties. Since the properties have been abated, the contractor has submitted invoices to be paid. A public hearing is scheduled for appropriation for payment of abatement services.

DISCUSSION

Pursuant to Tracy Municipal Code Section 4.12.260, properties were identified by the Fire Department that required weed abatement. The property owners were given notice to abate and a public hearing was conducted July 2, 2013 and October 1, 2013, to hear any objections to abatement. The Tracy Municipal Code provides that upon failure of the owner, or authorized agent, to abate within 20 days from the date of notice, the City will perform the necessary work by private contractor and the cost of such work will be made a personal obligation of the owner, or become a tax lien against the property. The City Council authorized the abatement.

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

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

STRATEGIC PLAN

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

FISCAL IMPACT

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

RECOMMENDATION

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

Prepared by: Gina Rodriguez, Administrative Assistant II

Reviewed by: Steve Hanlon, Division Chief
Alford Nero, Fire Chief
Maria A. Hurtado, Assistant City Manager

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

ATTACHMENTS

Attachment A - 2013 Weed Abatement Costs

**TRACY FIRE DEPARTMENT
WEED ABATEMENT FINAL COST 2013**

APN	Property Owner	Site Address	ABATEMENT COST	ADMIN FEE 25%	TOTAL COST
240-220-57	Liwayway Syo	490 Clarence Bromell	\$ 315.00	\$ 78.75	\$ 393.75
232-200-05	Federal National Mortgage	1507 Madison Avenue	\$ 292.00	\$ 73.00	\$ 365.00
235-360-35	Kiper Development	Vacant Lot Mt. Oso	\$ 1,450.00	\$ 362.50	\$ 1,812.50
212-170-31	Chevron USA	3733 N. Tracy Blvd	\$ 665.00	\$ 166.25	\$ 831.25
214-320-83	James Tong Inc.	321 E. Grant Line Road	\$ 457.50	\$ 114.37	\$ 571.87
235-260-29	Covenant & Assoc. Inc.	445 Cecilio Way	\$ 200.00	\$ 50.00	\$ 250.00
235-082-08	Resham Singh	235 W. South Street	\$ 625.00	\$ 156.25	\$ 781.25
235-200-23	Philip Yick	230 S. Central Avenue	\$ 445.00	\$ 111.25	\$ 556.25
213-340-06	Clark Richardson	445 Royal Court	\$ 290.00	\$ 72.50	\$ 362.50
235-370-20	Jaqueline Davenport	231 Versailles Court	\$ 368.50	\$ 92.12	\$ 460.62
242-040-49	Meritage Homes	Vacant Lot Dove & Mits Way	\$ 915.00	\$ 228.75	\$ 1,143.75
235-040-12	Harman Management Corp.	430 W. Eleventh Street	\$ 365.50	\$ 91.37	\$ 456.87
232-100-62	Ronald Mullins	2200 Martin Road	\$ 1,135.00	\$ 283.75	\$ 1,418.75
		TOTAL	\$ 7,523.50	\$ 1,880.86	\$ 9,404.36

RESOLUTION _____

APPROVING THE FINAL COSTS OF WEED ABATEMENT AND AUTHORIZING A LIEN ON THE PROPERTIES FOR WHICH THE CITY CONDUCTED WEED ABATEMENT

WHEREAS, Pursuant to Tracy Municipal Code, Title 4, Article 6, Section 4.12.260, property was identified that required weed abatement, and

WHEREAS, The property owners were given notice to abate and a public hearing was conducted on July 2, 2013, and October 1, 2013 and

WHEREAS, The Tracy Municipal Code provides that upon failure of the owner, or authorized agent, to abate within 20 days from the date of notice, the City will perform the necessary work by private contractor and the cost of such work will be made a personal obligation of the owner, or become a tax lien against the property, and

WHEREAS, The City Council authorized the abatement by resolution and the Fire Department designated 13 parcels that would require the City contractor Baylor Services, to abate, and

WHEREAS, The abatement was completed at a cost to the City of \$7,523.50 and

WHEREAS, Fire Department staff notified property owners of this public hearing where Council considered the reports of costs for abatement and any objections of the property owners liable for the cost of abatement, and

WHEREAS, The cost of abatement assessed to the property owner is the actual cost of the City contractor plus a 25% administrative charge, per the Tracy Municipal Code;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the final abatement costs in the amounts set forth in Attachment A to the staff report accompanying this item and authorizes a lien on each of the properties shown on said Attachment A in those amounts.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 17TH day of December 2013, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 4

REQUEST

AWARD A CONSTRUCTION CONTRACT TO THE LOWEST RESPONSIVE BIDDER FOR THE VALPICO ROAD SIDEWALK IMPROVEMENT PROJECT – CIP 73133, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONSTRUCTION CONTRACT

EXECUTIVE SUMMARY

This project includes installation of a new sidewalk on the south side of Valpico Road to connect existing sidewalks between MacArthur Drive and Tracy Boulevard. The new sidewalk is a missing link for pedestrians on Valpico Road connecting the residential community to the east with the shopping centers at the intersection of Valpico Road and Tracy Boulevard.

DISCUSSION

The new five-foot sidewalk is approximately 680 linear feet long that will be installed in the public right-of-way and no additional property acquisition is required for this project. The new sidewalk will transition into existing driveways of adjacent businesses to meet existing grades with minimal disruption of access to businesses. A full-scale sidewalk with new driveways, curbs and gutters will be installed as part of the widening of the Valpico Road Project – CIP 73095, between MacArthur Drive and Tracy Boulevard, which is currently in the design stage, and will be awarded construction when funds become available within the next three years.

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

The project was advertised for competitive bids on September 20, and September 27, 2013; nine bids were received and publicly opened on October 15, 2013, with the following results:

Contractors	Base Bid
Taylor Backhoe Service, Inc.	\$110,231.25
Dunton Construction Company	\$115,501.50
Sinclair General Engineering	\$123,407.50
F. Loduca Company	\$125,641.00
B & M Builders, Inc.	\$140,507.25
BC Construction	\$158,187.27
Robert A. Bothman, Inc.	\$179,798.00
Extreme Excavation	\$186,168.00
Sposeto Engineering, Inc.	\$194,649.00

Taylor Backhoe Service, Inc. of Merced, California, was the lowest monetary bidder;

however, this bid was considered non-responsive as it did not acknowledge receipt of the second addendum as required by the project specifications. Consequently, the contract needed to be awarded to the next lowest monetary bidder, Dunton Construction Company. The bid analysis indicates that this bid is responsive and the bidder is responsible. Dunton Construction Company of Anderson, California, has the appropriate contractor's license in current and active standing with the State and has completed similar projects with other public agencies in a satisfactory manner.

The total recommended construction cost for this project, if awarded to Dunton Construction Company, is as follows:

	Base Bid
Construction Bid	\$115,501.50
Contingency at 10%	\$ 11,550.00
Design	\$ 12,000.00
Inspection at 5%	\$ 5,500.00
Support During Construction	<u>\$ 5,000.00</u>
Total Construction Cost	\$149,551.50

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

STRATEGIC PLAN

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

FISCAL IMPACT

This is an approved CIP project – 73133, which has no fiscal impact on the General Fund. The contract cost is \$115,501.50 with a total anticipated project cost of \$149,551.50. Approximately \$150,000 has been budgeted for this capital project from the Gas Tax Fund.

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

RECOMMENDATION

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

Agenda Item 4
December 17, 2013
Page 3

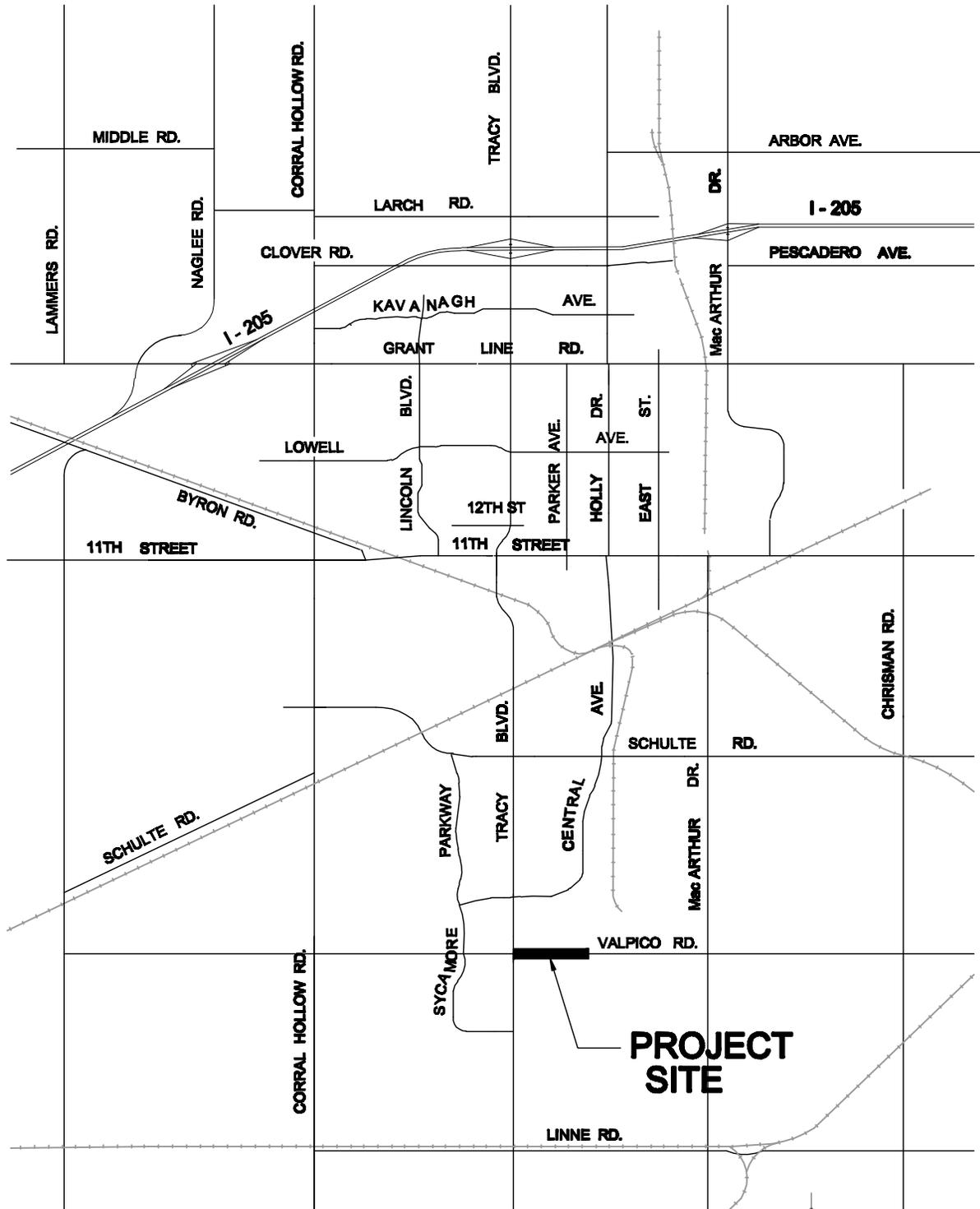
Prepared by: Khoder Baydoun, Associate Civil Engineer
Zabih Zaca, Senior Civil Engineer

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

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

ATTACHMENT

Attachment A – Location Map



LOCATION MAP
N.T.S.



RESOLUTION _____

AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$115,501.50 FOR THE VALPICO ROAD SIDEWALK IMPROVEMENT PROJECT – CIP 73133, TO DUNTON CONSTRUCTION COMPANY, OF ANDERSON, CALIFORNIA, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

WHEREAS, This project consists of installing approximately 680 linear foot of five-foot sidewalk on the south side of Valpico Road, connecting the existing sidewalks on both sides of the street from the Glenbriar Residential Development to the Walgreen shopping center, and

WHEREAS, The project was advertised for bids on September 20, and September 27, 2013, in which nine bids were received and publicly opened, and

WHEREAS, Taylor Backhoe Service, Inc. of Merced, California, is the lowest monetary bidder; however, this bid is considered non-responsive since it did not acknowledge receipt of the second addendum as required by the project specifications, and

WHEREAS, Dunton Construction Company, of Anderson, California, is the next lowest responsive monetary bidder and is responsive and responsible, and

WHEREAS, This is an approved CIP project with \$150,000 from the Gas Tax Fund, and

WHEREAS, This sidewalk project is part of the overall Valpico Road Widening Project CIP – 73095, and

WHEREAS, The cost of completion of this project will be reimbursed from CIP – 73095, after completion of construction and acceptance of the project, thus releasing the amount for use on other projects;

NOW, THEREFORE BE IT RESOLVED, That City Council awards a construction contract for the Valpico Road Sidewalk Improvement Project - CIP 73133, to Dunton Construction Company, of Anderson, California, in the amount of \$115,501.50 and authorizes the Mayor to execute the construction contract and City Council further authorizes reimbursement of the total cost of this project from CIP – 73095, after completion of construction and acceptance of this sidewalk project.

* * * * *

The foregoing Resolution 2013-_____ was adopted by the City Council on the 17th day of December 2013, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 5

REQUEST

APPROVE AN APPROPRIATION FROM UNSPENT 301 FUNDS IN THE AMOUNT OF \$550,000 FOR COSTS ASSOCIATED WITH REMOVAL OF USE RESTRICTIONS AND FEDERAL REVERSIONARY RIGHTS ON THE 150-ACRE SCHULTE ROAD PARCEL FROM GENERAL SERVICES ADMINISTRATION, AUTHORIZE THE MAYOR TO EXECUTE ANY NECESSARY DOCUMENTS TO COMPLETE THE TRANSFER, AND APPROPRIATE \$100,000 FOR A PROFESSIONAL SERVICES AGREEMENT WITH URS CORPORATION FOR CONSULTANT SERVICES TO SERVE AS THE CITY'S REPRESENTATIVE IN ASSESSING AND NEGOTIATING A RENEWABLE ENERGY PROJECT AT THE SCHULTE ROAD PROPERTY

EXECUTIVE SUMMARY

Staff requests approval of an appropriation from unspent General Fund 301 monies in the amount of \$550,000 for costs associated with removal of use restrictions and Federal reversionary rights on the 150-acre Schulte Road parcel from General Services Administration, authorize the Mayor to execute any necessary documents to complete removal of the restrictions, and appropriate \$100,000 for a Professional Services Agreement with URS Corporation for consultant services to serve as the City's representative in assessing and negotiating a renewable energy project.

DISCUSSION

A. Background

The Schulte Road property is approximately 200 acres in total and is located on the south side of Schulte Road, west of Lammers Road (see Attachment A).

The City acquired fee title to the Schulte Road property by way of Federal legislation enacted in 1998 (Public Law 105-277, section 140) ("authorizing legislation"). The authorizing legislation was amended in 1999 and 2004. The authorizing legislation permits the City to acquire 150 acres of the property for educational or recreation purposes and 50 acres of the property for economic development.

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

To allow the City to pursue solar uses on the 150-acre site, new legislation was enacted in 2012 to allow the removal of the restrictions on the 150-acre parcel upon the City paying the fair market value of the parcel ("recent legislation"). The recent legislation authorizes the General Services Administration ("GSA") to offer to enter into a binding

agreement with the City for removal of the restrictions.

Since the enactment of recent legislation, the City has undergone an extensive process with the Federal Government through the GSA to find a viable use for the Schulte Road property. The City is now at the same juncture experienced approximately one year ago. Several options remain for the City, but the basic decision is whether to invest more resources into the property to remove the use restrictions on the 150-acre parcel that could lead to a return on investment, or to abandon such efforts and leave the property's outcome to the Federal Government as threatened 15 years ago with a prison.

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

On September 18, 2012, the City Council considered appropriating \$1,105,250 from the RSP Fund for costs associated with the removal of use restrictions and Federal reversionary rights on the 150-acre Schulte Road parcel (see Attachment B for an excerpt from September 18, 2012, Regular City Council Meeting, Agenda Item 4). Council approved the appropriation and directed staff to request that GSA grant a two month extension of its offer to enter into an agreement to remove the restrictions while the City performed due diligence on the viability of a renewable energy project on the site. Staff requested the extension from GSA and received a response from GSA (see Attachment C).

GSA agreed to grant the City a six-month extension of its offer with two conditions:

1. The City pay a \$50,000 deposit by November 14, 2012, which would be applied to the purchase price; and
2. The City complete its purchase by April 1, 2013

The deadline was later extended to August 1, 2013, and subsequently to October 30, 2013.

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

URS finalized the Schulte Road Renewable Energy Development Options report in February 2013. The report stated that several development pathways could be pursued to implement a viable renewable energy project on the Schulte site. Given the many potentially feasible solar development options at the Schulte Road site, URS recommended that the City request bids from solar developers for pursuing one or more

of the development options addressed in the report, and two proposals were received in response to the RFP (see Attachment D). Both proposals offered reasonable return on investment although many variables have to be addressed.

The City also received two additional and separate unsolicited proposals from Energy and Financial Consulting and Surland Companies. The proposal from Energy and Financial Consulting offered a turnkey project using a Certificate of Participation ("COP") to secure long-term zero down, low-cost funding for a 20 MW solar PV "FIT" (Feed in Tariff) project, on 100 acres (See Attachment D). Under this proposal, the rate would yield approximately 3.55% for 20 years (final cost set at offering time). The proposal stated that the City's margin would be guaranteed from the utility, by means of a FIT agreement, for up to 25 years. An excerpt from the proposal is also included in Attachment D.

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

The City has wrestled with the Schulte Road property for 13 years consumed by attempts to develop it for educational and recreational uses to no avail. Additionally, the last four years have focused on removing the land use restrictions to enable renewable energy development. These efforts included a private effort by GWF and proposed public-private partnership with Surland Companies. Both efforts had the potential to use private investment for the purchase, and preserve the City's ability to use or obtain credit for alternative energy power. In addition, the preservation of an additional \$1.6 million in capital funding would have enabled the City to address other capital needs in the community.

B. Current Recommendation

The development possibilities described above did not materialize for various reasons, and the City is now at the juncture to complete the process to remove the use restrictions with an additional investment or stop, preserve capital resources, but forgo the opportunity for any return on investment.

The City requested a time extension from the GSA, which resulted in the GSA's proposal outlined in Attachment E. The GSA gives the City two options which allow the 150 acres to revert back to the Federal Government, or commit to a five-year payment plan for the purchase. The City is essentially at the same milestone as it experienced one year ago – whether to go forward with paying to have the restrictions removed.

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

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

C. Reverting the Property

If the City Council chooses not to remove the use restrictions by making payments to the GSA, staff recommends that the City Council not agree to revert the property to the Federal Government at this time.

An apparent conflict exists between the authorizing legislation and the deed granting the property to the City. Therefore, staff will need additional time to clarify whether the City has the legal right to maintain its ownership of the property for possible future recreational or educational use.

As to the Federal Government's power to revert the property, the authorizing legislation, as amended, provides in relevant part that:

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

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

This language assumes that the property is first put to use for educational or recreational uses and then such uses are abandoned. The City has yet to put the property to use for educational or recreational uses.

Furthermore, the deed from the Federal Government to the City provides in relevant part that:

The Property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in an amendment to an application submitted by the Grantee dated September 15, 2005, which program and plan may be amended from time to time at the written

request of either the Grantor or Grantee, with the written concurrence of the other party, and such amendments will be added to and become a part of the original application.

City staff is unable to locate such a program or plan and is uncertain as to whether one exists. Staff has requested that the GSA provide a copy of the program or plan. GSA has yet to provide the City with a copy of the program or plan. If and when the City receives this information, it will have to be determined whether the program or plan is consistent with the authorizing legislation.

Therefore, if the City Council chooses not to remove the use restrictions by making payments to the GSA, staff recommends that the City Council not agree to revert the property to the United States at this time until staff obtains more information regarding this specific issue. This option has the benefit of saving expenditures of \$1.6 million, but presumes no viable use for the Schulte Road property for the foreseeable future if not perpetuity.

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

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

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

A \$50,000 deposit made to the GSA may be refundable in the event the City does not move forward with paying to remove the restrictions and allows the property to revert to the Federal Government. However, as described above, staff is recommending that the City not agree to allow the property to revert at this time.

RECOMMENDATION

Staff recommends Council approve an appropriation from unspent 301 funds in the amount of \$550,000 for costs associated with removal of use restrictions and Federal reversionary on the 150-acre Schulte Road parcel from General Services Administration, authorize the Mayor to execute any necessary documents to complete

the transfer, and appropriate \$100,000 for a Professional Services Agreement with URS Corporation for consultant services for a renewable energy project at the Schulte Road property.

If City Council chooses not to remove the use restrictions by making payments to the GSA, staff recommends that the City Council not agree to revert the property to the United States at this time.

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

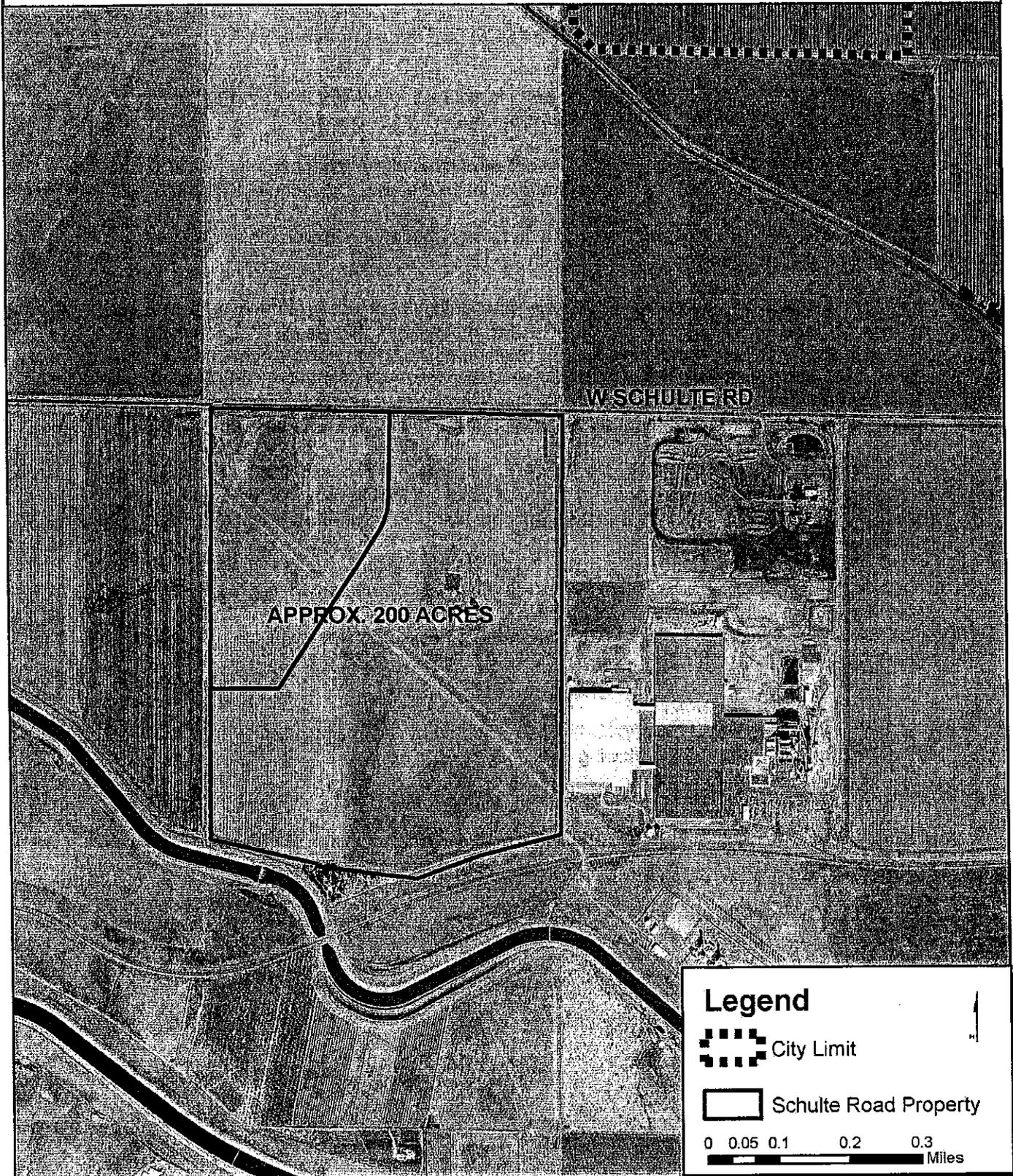
ATTACHMENTS:

- Attachment A: Map of Schulte Road Property
- Attachment B: Excerpt from September 18, 2012, Regular City Council Meeting, Agenda Item 4
- Attachment C: Letter from GSA dated October 3, 2012
- Attachment D: Summary of Solar Proposals: Ecoplexus, SunPower, and Energy and Financial Consulting
- Attachment E: Letter from GSA dated November 21, 2013
- Attachment F: URS Corporation Proposal for Renewable Energy Development

Schulte Road Property

Location Map

Attachment A



ATTACHMENT B:

Excerpt from September 18, 2012, Regular City Council Meeting, Agenda Item 4

The United States Congress authorized the General Services Administration (“GSA”) to convey 200-acres to the City via special legislation originally enacted in 1998¹. The special legislation conveyed 50-acres to the City at fair market value for “economic development” purposes and the remaining 150-acres at no cost to the City, but specifically for recreational and/or educational “public benefit” purposes.

The City proceeded to purchase the 50-acres with no restrictions and has land banked the 50-acres for the past 14 years. The City explored several projects over the years, which focused on recreational and educational activities on the remaining 150-acres, but no viable project emerged from those efforts.

On October 7, 2008, through Council direction, staff began to work with Congressional Delegates to amend the existing property conveyance legislation to allow for renewable and/or alternative energy uses and began exploring a City project that involved renewable and/or alternative energy uses. Consequently, over the next two years, the City began negotiations to sell or lease the site to GWF for a private project that involved renewable and/or alternative energy uses.

Ultimately, on November 16, 2010, a Purchase and Lease Option Agreement with GWF to develop the 200-acre site as a solar farm was executed and included the option for GWF to acquire the property. Over the course of the next couple of years, GWF proceeded with renewable and alternative energy development plans on the site, however, on June 27, 2012, GWF informed the City that after an exhaustive and expensive effort to secure a mutually acceptable Power Purchase Agreement with a utility provider, they were unable to obtain the agreement. Although a solar project was not a viable option for GWF, they stated that their research showed that the property still had good potential for a smaller renewable energy project² and GWF agreed to transfer their solar resource data and analysis, including engineering studies and environmental reports to the City for use by the City or a new development partner in order to explore a similar, but smaller, project on the site.

On May 15, 2012, Congress enacted Public Law 112-119 authorizing GSA to offer the City of Tracy the option to acquire the 150-acres at appraised fair market value, thereby releasing any reversionary interest retained by the United States on the property. The June 27, 2012 letter from GSA to the City requested that the City consider acquiring the property for \$1,115,250 (*these costs include the appraised value of \$1,100,000 and the appraisal expense of \$5,250*). GSA also informed the City that delaying acquisition of the property could result in an increase to the appraised value amount as well as additional administrative fees. If the Council determined it did not want to acquire the 150-acre property or develop it for recreation or educational purposes, the property would revert back to GSA.

¹ Public Law 105-277 §140 (October 21, 1998), as amended by Public Law 106-31 §3034 (May 21, 1999) and Public Law 108-199 §4119 (January 23, 2004)

² The GWF proposed project was a 50 Mega-Watt development and included the acquisition of property in addition to the Schulte property.

Attachment B

Page 2

Because the City has committed to the Federal government to explore renewable energy projects on the site and because doing so is congruent with the City's sustainability and economic development goals, staff recommends continued pursuit of viable renewable energy project options and moving forward with the acquisition of the 150-acre site at Schulte Road.

If Council determines to move forward with the acquisition, staff will issue a Request for Proposal for a solar consultant to assist the City in assessing the feasibility and best options for development of renewable energy on the site.

ATTACHMENT C



GSA Pacific Rim Region

October 3, 2012

Mr. R. Leon Churchill, Jr.
City Manager
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Re: 150 Acres in Tracy, CA (GSA Control No. 9- CA-1533-AC)

Dear Mr. Churchill:

Thank you for your letter dated September 26, 2012 requesting a 6 month extension for the City of Tracy (City) to determine the feasibility of a renewable energy project on the property referenced above. As you are aware, GSA has been working with the City for over 14 years and through 4 congressional actions to accommodate the City with the conveyance of the 150 acre property. GSA is willing to grant the City a 6 month extension at the agreed upon \$1,105,250 total price on the following two conditions:

- 1) The City agrees to pay a \$50,000 deposit by November 14, 2012. The deposit would be applied towards the total purchase price.
- 2) The City agrees to expedite their schedule to complete the abrogation action by April 1, 2013. The City would need to obtain City Council approval of the resolution to purchase the property and complete the purchase by April 1, 2013.

As you know the City has been in non-compliance with the intended use of the property since it was conveyed in 2007. If the City cannot complete the purchase by April 1, 2013 and voluntarily reverts the property, the \$50,000 deposit will be refunded. If you have any questions, please contact Monica Pech of my staff at 415-522-3261 or monica.pech@gsa.gov

Sincerely,

A handwritten signature in black ink that reads "Clark Van Epps".

Clark Van Epps
Director
Office of Real Property Utilization & Disposal

U.S. General Services Administration
450 Golden Gate Avenue
San Francisco, CA 94102-3434
www.gsa.gov

SUMMARY OF SOLAR PROPOSALS: ECOPLEXUS, SUNPOWER AND ENERGY AND FINANCIAL CONSULTING

Two proposals were received from reputable companies. A brief description of each of the companies, and a summary of their proposals, follow, including an analysis by URS.

It is important to note that negotiations with a firm has not yet been initiated and therefore a final agreement, including revenue projections, could substantially change when presented to City Council for final approval.

ECOPLEXUS **(EXCERPTS AND SUMMARY FROM THE ECOPLEXUS PROPOSAL)**

Ecoplexus has proven expertise in developing and operating large-scale turnkey solar PV systems. The company has completed over 40 municipal and commercial projects over the last three years. Ecoplexus has demonstrated expertise in design, engineering, structured finance, land acquisition, project management and construction execution. If awarded the contract with the City of Tracy, Ecoplexus will partner with Swinerton Renewable Energy for the construction of the project.

Ecoplexus project team members have designed, engineered, and constructed more than 750 solar PV projects in California. Key clients in the last eighteen months include eight (8) municipalities in California including Santa Clara County, Sutter County, the City of Milpitas, and the City of Watsonville and six (6) of the largest multi-family housing developers in the country. The Company also operates and maintains thirty six (36) solar PV systems for investors including two Fortune 500 investors.

Ecoplexus has significant experience in the critical areas that will maximize usage and financial value to the City of Tracy for the proposed site. Ecoplexus' experience includes being the leading solar developer in California and the United States for 'virtual solar' programs and tariffs such as RES BCT. The company is a leading developer of distributed generation size wholesale utility projects in PG&E territory, with more than fifty (50) MWs of one to three Megawatt size project sites currently in PG&E's interconnection process with PPAs.

The Proposals

Ecoplexus is proposing a combination of strategies and use of the site to maximize the financial return to the City of Tracy. Ecoplexus is proposing to use all 200 acres of the site (150-acres of the Schulte site in question plus the 50 adjacent acres already in City possession) but with an ability to cut that down to just 150-acres without losing the strategic benefit of the mixed use approach.

Ecoplexus proposes multiple 20 year leases for the parcel and potential engagement of several potential project stakeholders including the City of Tracy, Tracy School District, nearby commercial/industrial off-takers, PG&E direct off-take, and potential 'community renewable energy' projects via pending legislation.

In summary:

- City RES-BCT ~ 3.4MWdc
- School District RES-BCT ~ 3MWdc
- Community solar and wind; SB32 wholesale REMAT ~ 15MWdc solar and 3MW wind farm
- Adjacent factory (or other commercial/industrial) direct NEM ~ 4MWdc

The financial proposal to the City of Tracy, based on direct utility bill savings and land lease rates, has a potential twenty year total value of \$33,746,969 should all of the project types be successfully implemented and final use and building permits can accommodate them. Proposed land lease amounts are \$20,844,000, there is \$1,250,000 in proposed interim during construction payments, and projected bill savings of \$11,652,969. The estimated project completion date is June, 2014.

Ecoplexus endeavors to maintain a high level of transparency while cultivating relationships with the surrounding communities to increase support for the Company's projects. For that matter, outreach is an iterative process, and Ecoplexus seeks to build in adequate time and resources for multiple outreach events throughout the planning and construction phases of a project.

It is estimated that this project will create more than 330 jobs from a variety of fields, including general labor, electricians, ironworkers, and masons over the duration of the project development phase with some spillover into operations and maintenance.

CONSULTANT COMMENTS ON ECOPLEXUS PROPOSAL

URS has identified numerous points in the Ecoplexus proposal which need further information and clarification. Below is a summary. Specific points will be issued to Ecoplexus in a request for additional information.

As summarized above, Ecoplexus proposes essentially 5 potentially independent projects on the site, each of which has its own set of stakeholders, variables, and terms. While this shows an ambitious thought process on potential development options, it is unlikely that all projects proposed would come to fruition as exactly outlined. For purposes of comparison, attention can be directed to the 'City RES-BCT' project option. This, and the project proposed by SunPower (outlined below) are nearly the same in size and scope. The terms achieved through negotiation of this project option could decide the awardee for that project and may serve as a basis of comparison in general between the two bidders. Ecoplexus goes above and beyond by offering the other project options. And while each on its own is potentially viable, all others involve additional stakeholders other than the City which presents additional layers of negotiation and logistics needed to make them happen. For example, the Tracy School District RES-BCT project is an option for the site, but may not be the best option for the school district to develop solar. In fact, it probably is not if they have sufficient space to develop projects on school sites. The 'City RES-BCT' project alone is likely not a large enough project to justify on its own the purchase of the additional 150-acres, so it is notable that other potential projects have been identified that together can more completely build out the site. Numerous questions arise due to these issues, which will be posed to Ecoplexus in order to get a better outlook on project viability and risk.

The proposal aims to interconnect 9.416 MW into the Lammers 1101 circuit. The proposal does not address the technical feasibility and potential cost of system upgrades that may be required for this amount of interconnected generation. Likewise, other project options aim to interconnect to the Lammers substation and potential interconnection costs are not addressed in the proposal.

Additional detail is needed regarding the terms of the \$1,250,000 proposed in interim during construction payments.

Additional detail is needed on potential tariff changes to City accounts to benefit from the RES-BCT program under the proposal. Also, PG&E savings to the City under RES-BCT as compared to business as usual will have to be examined.

References and details for previous RES-BCT projects successfully implemented will be requested.

Specific equipment is not mentioned in Ecoplexus' proposal, so URS cannot comment on the quality, optimal arrangement, etc. of equipment proposed. This is a point for future negotiation, and assurance to the City that high quality and bankable equipment be used on the projects. Since Ecoplexus would presumably own and operate the equipment, this may not be a point of great concern.

SUNPOWER **(EXCERPTS AND SUMMARY FROM THE SUNPOWER PROPOSAL)**

SunPower is headquartered in San Jose, CA, and has developed and constructed some of the most notable solar projects in the San Francisco Bay Area and California Central Valley, including the nearby 25 MW McHenry Solar Farm for the Modesto Irrigation District.

Founded in 1985, SunPower designs, manufactures, and delivers the planet's most powerful solar technology broadly available today. Residential, business, government, education, nonprofit, and utility customers rely on SunPower's experience and proven technology to give them the best economic value for their solar investment.

For the Schulte Road Solar Project, SunPower proposes to develop and construct a 3.5 MWac photovoltaic project on 20-acres of land, with the electricity output to be sold to the City of Tracy through a 25-year power purchase agreement (PPA) utilizing the PG&E RES-BCT tariff. SunPower is also open to leasing the additional 130-acres available under this RFP and, should this be of interest to the City, could enter into an option agreement with the City for the additional land.

The project is expected to generate 8,959,970 kWh and offset 100% of the generation component of the City's total electricity use in its first year of operation. The following information provides a summary of the expected project parameters and financial benefits to the City:

Project Size	3.5 MWac
Land Area Required	20 acres
1 st Year Expected Electricity Production	8,959,970 kWh
1 st Year Lease Payment to City	\$63,171
1 st Year Net Utility Bill Savings to City	\$180,147
Cumulative 25 year Net Income to City	\$243,318
Net Present Value of 25 Year Net Income to City (assuming 3% annual discount rate)	\$9,683,899

SunPower, as a design-build contractor, will be the single source of responsibility for the complete design and construction of the system. SunPower partners with local suppliers and contractors for all construction projects, providing local employment and enhancing local workers' skills for the emerging green economy. Similarly, for the proposed project at Schulte Road, SunPower will work closely with the City to identify local subcontractors and recruit a local workforce.

SunPower is a publicly traded company on NASDAQ (SPWR), with reported revenues in excess of \$2.5 billion in 2012. SunPower has regularly been a revenue leading solar company with strong control over its future revenue streams. In 2011, the French energy company Total S.A. acquired a 66 percent equity stake in SunPower, providing SunPower with support from one of the strongest balance sheets in the energy industry. Total S.A. is one of the top twenty largest companies in the world, with a current market capitalization in excess of \$100 billion.

CONSULTANT COMMENTS ON SUNPOWER PROPOSAL

URS has identified numerous points in the SunPower proposal which need further information and clarification. Below is a summary. Specific points will be issued to SunPower in a request for additional information.

SunPower proposes a project very similar in size and nature to Ecoplexus for a RES-BCT development pathway to offset some of the City's existing building loads under a PPA agreement. This project alone however, is not likely large enough to justify purchase of the 150-acres in question. SunPower does mention that they may be interested in entering into an option agreement for the remaining acreage, but does not make a direct offer in their proposal. SunPower should be questioned for additional details regarding an option on the additional acreage.

Additional details and references for previous RES-BCT projects successfully implemented in PG&E territory will be requested.

Additional detail is needed such that SunPower describe how they calculated RES-BCT avoidable cost of \$0.122/kWh, and how they intend to 'optimize' the RES-BCT rate structure as proposed. URS is familiar with SunPower and their proposed OEM equipment. It is of high quality and has been proven to deliver high performance as advertised.

SunPower states numerous times throughout their proposal that certain potential development costs are 'not included' and will be later handled via change order. This introduces considerable risk to the City of unforeseen costs later in the development cycle, and could potentially result in a less favorable PPA rate. These items will be identified in the RFI and SunPower will be asked to thoroughly address them in their proposal.

CONSULTANT ANALYSIS OF ECOPLEXUS AND SUNPOWER AND GENERAL RECOMMENDATIONS

Both Ecoplexus and SunPower are reputable bidders in the industry, and both are capable of delivering projects similar to those being proposed. The fact that two reputable, and capable, bidders have been engaged by this process confirms that a renewable energy project is potentially viable both in technical and financial nature on the Schulte site, and could potentially meet the City's objectives for beneficial use and financial gain. However, prior to being able to adequately recommend potential award, additional information is required from both bidders.

For purposes of comparison, attention can be directed to the Ecoplexus 'City RES-BCT' project option. This, and the project proposed by SunPower are nearly the same in size and scope. The terms achieved through negotiation of this project option could decide the awardee for that project and may serve as a basis of comparison in general between the two bidders.

The importance and purpose of the 'interim payments' item in the RFP will be emphasized. Both proposals may contain contingencies on forward movement of projects prior to payment to the City. It will be made clear that interim or 'site control' payments should be necessary for engagement, regardless of the potential in the future for the projects to never reach fruition. This is the nature of option agreements, and the bidders should be expected to agree to favorable interim payments to the City. This will also protect the City with guaranteed minimum revenue from the site and provide some incentive for speedy development.

It should be noted that it may be possible to ultimately engage both bidders for projects on the Schulte site. For example, if the SunPower proposal for the ~3MW City RES-BCT project is ultimately negotiated at a more favorable rate for the City, they could move forward while still retaining the ability to engage Ecoplexus in some or all of the other project options they are suggesting. This could benefit the City by essentially playing to the strengths of both developers, and could lead to favorable lease/option rates for the highest percentage of the total site acreage.

Logical next steps could include parallel engagement of both bidders in good faith negotiations to terms, financials, and additional information that could lead to an award for project development. URS has itemized details and points from both proposals that require further due diligence. Requests for further information from both bidders will be requested by URS on behalf of the City. The request for additional information and clarifications is planned to be issued to the bidders on 4-19-2013 as indicated in the timeline table below. Bidders will have two weeks to respond with supplemental information, by 5-3-2013. Responses to this follow-up request for information will lead to a final analysis of proposals which URS will deliver to the City by 5-27-2013. Based on the findings, the City may elect to further engage one or both bidders in detailed contract negotiations for development(s) on the site.

The City may also consider its own independent due diligence on the site to ensure that there are not any pitfalls or fatal flaws associated with the site itself that may surface later in the project development cycle which could result in delays, additional costs, or the inability to develop the site as planned. If the City is already reasonably assured via prior knowledge of the absence of such issues, this may not be necessary.

ENERGY AND FINANCIAL CONSULTING (EXCERPTS FROM PROPOSAL)

Energy and Financial Consulting submitted a non-solicited tentative private offering that proposed a turnkey project using a Certificate of Participation (COP) to secure long term, zero down, low cost funding for a 20 MW solar PV "FIT" (Feed In Tariff) project, on 100-acres. When secured, the rate should be approximately 3.44% for 20 years (final cost is set at offering time). The proposal states that the City's margin would be guaranteed from the utility by means of a FIT agreement, for up to 25 years.

This proposal claims to ensure that all costs including the land purchase (150 acres), operations and maintenance, fees, inter connection to the grid, annual insurance costs and total revenues would be defined in advance and covered in the agreement. The utility FIT agreement would require the solar company to guarantee the system performance for up to 25 years. The project proposal assumes typical energy production for this size of system in this geographic location. Variables that could raise or lower the energy production (1% to 2%) include maintenance schedule and type, weather, sunlight and shading. The cost of the project would be approximately \$50,000,000. The City should realize an estimated profit of \$20,516,895 over the 25 year term of the "FIT" agreement. It was noted, that substantially more revenue might be realized under a potential Power Purchase Agreement structure, which would have to be further explored.

The annual revenue varies by year with a majority of the profit realized in years 21 to 25. After the 25 years, the City could start using the energy created to offset the city's facility energy bills, via "virtual net metering". This could add up to many more millions of dollars over the remaining 5 to 15 years life of the solar PV system. After the system is no longer financially viable, the city would have to scrap value of the modules and redevelop or repurpose the 100-acres.



GSA Pacific Rim Region

NOV 21 2013

Mr. R. Leon Churchill, Jr.
City Manager
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Re: 150 Acres in Tracy, CA (GSA Control No. 9- CA-1533-AC)

Dear Mr. Churchill:

Thank you for your letter expressing the City of Tracy's ("City") commitment to purchase and develop the property. GSA has been patiently working with the City of Tracy ("City") to complete the purchase authorized by Public Law 112-119. The City has not utilized the property for a public park or public recreational purpose as set forth in the 2007 Quitclaim Deed. We have given the City multiple extensions to comply with the use restrictions or abrogate the restrictions (April 1, 2013, August 1, 2013, November 1, 2013). It is now time to move forward to allow for a practical re-use of the property. If the City still wants to pursue the purchase, we need a firm plan to complete the payment of the remaining balance of \$1,550,000.

GSA will offer the City the opportunity to either: 1) revert the property to the United States within 30 days by signing the enclosed reconveyance deed or 2) agree to installment payments over a period not to exceed five (5) years from the date of installment plan acceptance. If the City elects an installment payment plan, the City will be required to make periodic payments and to pay interest on the unpaid balance (please see enclosed payment options). The park covenant use restrictions will not be abrogated until the final payment is made but the buyer will have beneficial use of the property during the payment period. The City may pre-pay their entire balance with no penalty. However if the City agrees to an installment plan and no longer wants to proceed mid-plan, any payments paid to date will not be refunded.

GSA is open to discussing either option in further depth. Please contact Monica Pech of my staff at 415-522-3261 or monica.pech@gsa.gov for any questions.

Sincerely,

A handwritten signature in black ink that reads "Clark Van Epps". The signature is written in a cursive, flowing style.

Clark Van Epps
Director, Office of Real Property Utilization & Disposal

Enclosures

RECORDING REQUESTED BY:

U.S. General Services Administration

WHEN RECORDED, MAIL DOCUMENT
AND TAX STATEMENT TO:

Mr. Clark Van Epps
U.S. General Services Administration
Real Property Utilization & Disposal
450 Golden Gate Avenue, 4th Floor East
San Francisco, CA 94102

DEED

DEED, made as of _____ 2013, by the CITY OF TRACY, a municipality created, operation, and existing under and by virtue of the laws of the State of California, (hereinafter referred to as "GRANTOR") to the UNITED STATES OF AMERICA (hereinafter referred to as "GRANTEE" or the "USA"):

WHEREAS, by Quitclaim Deed executed on April 26, 2007, and recorded on June 4, 2007, in the Official Records of San Joaquin County as Document No. 2007-104234 (hereinafter referred to as the "Quitclaim Deed"), the USA, acting by and through the Administrator of General Services, under and pursuant to the powers and authority contained of Section 140 of Public Law No. 105-277, as amended by Public Law No. 106-31 and Public Law No, 108-199, conveyed certain real property located in the County of San Joaquin, California, consisting of approximately 150 +/- acres, more particularly described in Exhibit A of the Quitclaim Deed, to the City of Tracy (the "Property").

WHEREAS, the Quitclaim Deed was executed subject to certain covenants, restrictions, and conditions subsequent that the City of Tracy expressly assumed and agreed to observe.

WHEREAS, GRANTOR wishes to voluntarily reconvey the Property and is authorized to execute this Deed by resolution number _____, on _____, and attached hereto as Exhibit B.

150 Acres at Schulte Rd.
GSA Control Number: 9-J-CA-1533-AC

NOW THEREFORE:

1. The GRANTOR warrants that it has not alienated, conveyed, or encumbered any interest in the Property, and that on the date of execution of this Deed, the Property are free and clear from any claim, demand, lien or other encumbrance.
2. The GRANTOR warrants that there are no knowingly placed hazardous materials on the Property during our period of ownership.
3. The GRANTOR warrants that it shall provide protection to and maintenance of the Property at all times until such time as the title is actually returned to and accepted by the USA, in conformance with 41 CFR § 102-75.545.
4. Until such time as the title is actually returned to and accepted by the USA, GRANTOR is not released from any of the unexpired agreements, conditions subsequent, or covenants of the Quitclaim Deed that attach to and run with the land, and the GRANTOR by its execution of this Deed reaffirms those unexpired agreements, conditions subsequent, and covenants of the Quitclaim Deed as to the Property.
5. Except as provided in Paragraph 4 above, the UNITED STATES of AMERICA, by its acceptance and recordation of this Deed hereby releases GRANTOR from all of the obligations imposed by the Quitclaim Deed with respect to the Property.

BY REASON OF THE FOREGOING, GRANTOR hereby grants to GRANTEE the real property situated in the County of San Joaquin, California, and more particularly described in Exhibit A.

IN WITNESS WHEREOF, GRANTOR caused this instrument to be executed on its behalf by its duly authorized officers and its seal affixed on this ____ day of ____ 2013.

City of Tracy

By: _____

150 Acres at Schulte Rd.
GSA Control Number: 9-J-CA-1533-AC

CERTIFICATE OF ACKNOWLEDGEMENT

State of California)
(ss:)
County of _____)

On _____, before me, _____, a notary public in and for the State of California, personally appeared _____, who proved to me on the basis of satisfactory evidence to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public
in and for the County of
_____, State of California

150 Acres at Schulte Rd.
GSA Control Number: 9-J-CA-1533-AC

ACCEPTANCE of DEED

GRANTEE, hereby accepts title to the conveyed property in the DEED set forth above.
Executed on behalf of the GRANTEE on XXXXX X, 20XX, in San Francisco County.

UNITED STATES OF AMERICA
Acting by and through the
ADMINISTRATOR OF GENERAL SERVICES

BY: _____

CLARK VAN EPPS
Director,
Property Utilization and Disposal Division
U.S. General Services Administration

Doc #: 2007-104234
8/4/07 10:15 AM
Page: 1 of 9 Fee: \$0
Gary W. Freeman
San Joaquin County Recorders
Paid By: SHOWN ON DOCUMENT

**RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:**

Debra Corbett, Esq.
City Attorney
City of Tracy
325 East Tenth Street
Tracy, CA 95376



QUITCLAIM DEED AND ENVIRONMENTAL RESTRICTION

THIS QUITCLAIM DEED is made as of this the 26 day of April, 2007, by the **UNITED STATES OF AMERICA**, ("Grantor") acting by and through the General Services Administration, under and pursuant to the powers and authority contained in the provisions of Section 140 of Public Law No. 105-277 §140, as amended by Pub. L. No 106-31 (the "Act") and Pub. L No. 108-199 and the **CITY OF TRACY**, a municipality created, operating, and existing under and by virtue of the laws of the State of California, ("Grantee") acting by and through the City Council of the City of Tracy.

NOW, THEREFORE, Grantor, for and in consideration of the sum of one (\$1) dollar, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby remises, releases, and quitclaims unto Grantee, and to its successors and assigns, all of Grantor's right, title, and interest in that certain real property situated in the County of San Joaquin, State of California, together with all the improvements and fixtures located thereon and more particularly described in attached Exhibit A (the "Property").

This conveyance is made subject to the following:

A. CONDITION OF PROPERTY. The Property is conveyed "As Is" and "Where Is" without representation, warranty, or guaranty of any kind (except as expressly stated below in Paragraph C, Hazardous Substance Activity, hereinbelow), as to any matter related to the conveyance including, but not limited to, the quantity, quality, character, condition (including patent and latent defects), size, habitability, or kind of the Property or that the same is in a condition or fit to be used for the purpose for which intended by Grantee. Grantee covenants that it has inspected, is aware of, and accepts the condition and state of repair of the Property.

B. THIS CONVEYANCE IS MADE SUBJECT to all existing covenants, reservations, easements, restrictions, and rights, recorded or unrecorded, for public roads, highways, streets, railroads, power lines, telephone lines and equipment, pipelines, drainage, sewer and water mains and lines, public utilities, and other rights-of-way, and to the easements, reservations, rights and covenants reserved by Grantor herein, and to any facts which a physical inspection or accurate survey of the **PROPERTY** may disclose.

C. NOTICE REGARDING HAZARDOUS SUBSTANCE ACTIVITY

Pursuant to 40 CFR 373.2 and Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA)(42 U.S.C. §9620(h)(3)(A)(i)), and based upon a complete search of agency files, the United States gives notice that no hazardous substances have been released or disposed of or stored for one year or more on the Property.

(a) Grantor warrants that all remedial action necessary to protect human health and the environment has been taken before the date of this conveyance. Grantor warrants that it shall take any additional response action found to be necessary after the date of this conveyance regarding hazardous substances located on the Property on the date of this conveyance.

This covenant shall not apply:

(1) In any case in which Grantee, its successor(s) or assign(s), or any successor in interest to the Property or part thereof is a Potentially Responsible Party (PRP) with respect to the Property immediately prior to the date of this conveyance; or

(2) To the extent that such additional response action or part thereof found to be necessary is the result of an act or failure to act of the Grantee, its successor(s) or assign(s), or any party in possession after the date of this conveyance that either:

(i) Results in a release or threatened release of a hazardous substance that was not located on the Property on the date of this conveyance; or

(ii) Causes or exacerbates the release or threatened release of a hazardous substance the existence and location of which was known and identified to the applicable regulatory authority as of the date of this conveyance.

(b) In the event Grantee, its successor(s) or assign(s), seeks to have Grantor conduct any additional response action, and, as a condition precedent to Grantor incurring any additional cleanup obligation or related expenses, the Grantee, its successor(s) or assign(s), shall provide Grantor at least 45 days written notice of such a claim. In order for the 45 day period to commence, such notice shall provide credible evidence that:

(1) The associated contamination existed prior to the date of this conveyance; and (2) the need to conduct any additional response action

or part thereof was not the result of any act or failure to act by the Grantee, its successor(s) or assign(s), or any party in possession.

(c) Grantor reserves a right of access to all portions of the Property for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to Grantor. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of this conveyance, or in which access is necessary to carry out a remedial action, response action, or corrective action on adjoining property. Pursuant to this reservation, the United States of America, and its respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

D. COVENANTS RUNNING WITH THE LAND. Grantee covenants, for itself and its successors and assigns, that all covenants described in this Quitclaim Deed shall run with the land and bind Grantee and any successors and assigns of Grantee to the restrictions, agreements, and promises made in such covenants in perpetuity. Grantee further covenants for itself and its successors and assigns, to be bound by these covenants. Grantor shall be deemed to be a beneficiary of all covenants and warranties without regard to whether it remains the owner of any land or interest therein in the locality of the Property, and shall have the right to enforce these covenants and warranties in any court of competent jurisdiction.

E. FAA COVENANT

The Grantee, its successors and assigns, and every successor in interest to the property herein described, or any part thereof, must prohibit any construction or alteration of the property unless a determination of no hazard to air navigation is issued by FAA under 14 CFR Part 77, Objects Affecting Navigable Airspace, or under the authority of the Federal Aviation Action of 1958, as amended.

G. PARK COVENANT

1. The Property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in an amendment to an application submitted by the Grantee dated September 15, 2005, which program and plan may be amended from time to

time at the written request of either the Grantor or Grantee, with the written concurrence of the other party, and such amendments will be added to and become a part of the original application.

2. The Grantee shall, within 6 months of the date of the deed of conveyance, erect and maintain a permanent sign or marker near the point of principal access to the conveyed area indicating that the property is a park or recreation area and has been acquired from the Federal Government for use by the general public.
3. The Property shall not be sold, leased, assigned or otherwise disposed of except to another eligible governmental agency that the Secretary of the Interior approves in writing. Any such disposition shall assure the continued use and maintenance of the property for public park or public recreational purposes subject to the same terms and conditions in the original instrument of conveyance. Any mortgage, lien, or any other encumbrance not wholly subordinate to the reverter interest of the Grantor shall constitute an impermissible disposal. However this provision shall not preclude the Grantee, its heirs, successors and assigns from using revenue or other bonds related to the use of the property to the extent that such bonds shall not in any way restrict, encumber, or constitute a lien on the property. Furthermore, this provision shall not preclude the Grantee from providing related recreation facilities and services compatible with the approved application through concession agreements, permits, and licenses entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Department of Interior.
4. From the date of this conveyance, the Grantee, its heirs, successors and assigns, shall submit biennial reports to the Secretary of the Interior, setting forth the use made of the property during the preceding two-year period, and other pertinent data establishing its continuous use for the purposes set forth above, for ten consecutive reports or as further determined by the Secretary of the Interior.
5. The Grantee, its heirs, successors and assigns, shall indemnify, defend, protect, save and hold harmless the Grantor, its employees, officers, attorneys, agents, and representatives from and against any and all debts, duties, obligations, liabilities, law suits, claims, demands, causes of action, damages, losses, costs, and expenses (including without limitation attorneys' fees and expenses, consultant fees and expenses, expert fees and expenses, and court costs) arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to real or personal property or economic loss) that relates to the Grantee's failure to comply with the terms of this deed or from the use or occupancy of the property by the Grantee, its heirs, successors, assigns, transferees, or agents.
6. In the event that there is a breach by the Grantee, its heirs, successors or assigns, of any of the covenants, conditions or restrictions set forth herein,

whether caused by the legal or other inability of the Grantee, its heirs, successors or assigns, to perform said covenants, conditions or restrictions, the Grantor will give written notice, with a reasonable time stated therein, for the elimination, rectification or cure of said breach. Upon failure to eliminate, rectify or cure said breach within the time set forth in the notice, all right, title, and interest in and to said premises shall, at the Grantor's option, revert to and become the property of the Grantor. In addition to all other remedies for such breach, the Grantee, its heirs, successors and assigns, at the Grantor's option, shall forfeit all right, title, and interest in any and all of the tenements, hereditaments, and appurtenances thereunto belonging.

7. The failure of the Grantor to require in any one or more instances complete performance of any of the conditions or covenants shall not be construed as a waiver or relinquishment of such future performance, but obligation of the Grantee, its heirs, successors and assigns, with respect to such future performance shall continue in full force and effect.
8. The Department of Interior and any representative it may so delegate shall have the right of entry upon said premises at all reasonable times to conduct inspections of the property for the purposes of evaluating the Grantee's compliance with the terms and conditions of the conveyance.
9. The Grantee, by its acceptance of this deed, covenants and agrees for itself, its heirs, successors and assigns, that in the event the Grantor exercises its option to revert all right, title, and interest in the property to the Grantor, or the Grantee voluntarily returns title to the property in lieu of a reverter, then the Grantee shall provide protection to and maintenance of said property at all times until such time as the title is actually reverted or returned to and accepted by the Grantor, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed by the General Services Administration in its regulations 41 CFR 102-75.690 as such may be amended.

H. ASBESTOS-CONTAINING MATERIALS.

1. Notice. Grantee, its successors and assigns, are warned that the Property may contain asbestos-containing materials. No warranties, either express or implied, are given with regard to the quantity, location, or condition of the asbestos-containing material. Grantee, its successors and assigns, shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the Property, including any asbestos hazards or concerns. Grantee acknowledges that Grantee was given every opportunity to inspect the PROPERTY to assess the risk, if any, from asbestos-containing materials.

2. No Liability. Grantor assumes no liability for damages for personal injury, illness, disability, or death to Grantee or to Grantee's successors, assigns,

employees, invitees, or any other person subject to Grantee's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos-containing materials on the Property, whether Grantee, or its successors and assigns, has or have properly warned or failed to properly warn the individual(s) injured. Grantee, its successors and assigns, further agree, that in its use and occupancy of the Property, it will comply with all federal, state, and local laws relating to asbestos-containing materials. Grantee agrees to defend, protect, indemnify and hold Grantor harmless from any and all liabilities, damages, losses, expenses, or judgments arising out of or related to the remediation, monitoring, removal, transport, and disposal of any asbestos-containing materials located on the Property.

I. LEAD BASED PAINT WARNING AND DISCLOSURE. Grantee is hereby informed and acknowledges that the structure on the Property was constructed prior to 1978 and, as with all such property, a lead-based paint hazard may be present. Grantee shall not permit the use of the structure for residential habitation unless and until Grantee shall have eliminated the hazards of lead-based paint by treating any defective lead-based paint surface in accordance with all applicable laws and regulations. According to the Consumer Product Safety Commission and the President's Council on Environmental Quality, lead is a special hazard to small children. Grantor has not tested and does not intend to test for lead-based paint. The Property is being sold "as is" and Grantee agrees to defend, protect, indemnify and hold Grantor harmless from any and all liabilities, damages, losses, expenses, or judgments arising out of or related to health problems which may result from lead-based paint.

IN WITNESS WHEREOF, Grantor has caused this indenture to be executed as of the day and year first written above.

UNITED STATES OF AMERICA

Acting by and through the
General Services Administration

BY: 

CLARK VAN EPPS
Contracting Officer
General Services Administration
Property Disposal Division, 9PR
San Francisco, California

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

)
)ss:
)

On this 26 day of April, 2007, before me Rock Southward, a Notary Public in and for said County and State, personally appeared Clark Van Epps, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed in the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


Notary Public



CERTIFICATE OF ACCEPTANCE:

This is to certify that the interest in real property conveyed by this Quitclaim Deed from the UNITED STATES OF AMERICA, acting by and through the administrator of General Services, is hereby accepted at this time by the undersigned City Clerk of the City of Tracy, pursuant to authority conferred by Resolution No. 1670 of the Tracy City Council, adopted on August 6, 1968, and recorded with the San Joaquin County Recorder on August 14, 1968, Book 3231, pages 581 through 583, and the grantee consents to recordation thereof by its duly authorized officer.



Carole Fleischmann

May 15, 2007

Carole Fleischmann, Assistant City Clerk, City of Tracy, California Dated

Pursuant to Section 66477.5 of the California Government Code, the local agency shall re-convey the property to the Grantor if the local agency makes a finding that the same purpose for which the property was dedicated does not exist or any portion thereof is not needed for public use, as specified in Subdivision (c) of the Section.

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that real property situate in the City of Tracy, County of San Joaquin, State of California, and described as follows:

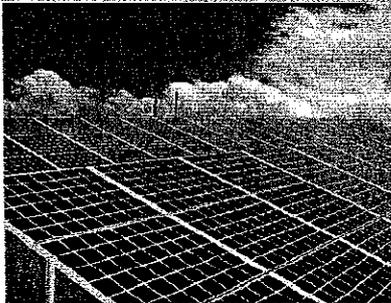
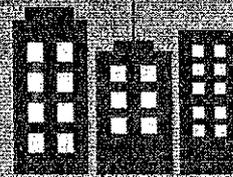
BEING a portion of the east one-half of Section 35, Township 2 South, Range 4 East, Mount Diablo Base and Meridian, being also a portion of the 200.183 acres of land, more or less, acquired by the United States of America in the Final Judgment recorded June 2, 1966, in Book 3053 at Page 680, Official Records of San Joaquin County, said portion being more particularly described as follows:

BEGINNING at the northeast corner of said Section 35 as shown on that certain Record of Survey filed May 11, 1961, in Volume 11 of Records of Survey at Page 95, San Joaquin County Records; **THENCE** southerly along the easterly boundary of said Section 35 South $00^{\circ}01'47''$ East 3105.88 feet to a point on a curve, concave southerly, having a radius of 5929.60 feet, from which the center bears South $10^{\circ}09'14''$ East to the southerly line of said lands (3053 O.R. 680); **THENCE** westerly along said southerly line the following three (3) courses: 1) along said curve through a central angle of $12^{\circ}06'33''$, an arc distance of 1253.19 feet; 2) North $81^{\circ}20'51''$ West 685.74 feet; 3) North $75^{\circ}38'03''$ West 779.30 feet to the westerly boundary of the east one-half of said Section 35; **THENCE** northerly along said westerly boundary North $00^{\circ}07'40''$ West 1121.88 feet; **THENCE** leaving said westerly boundary North $89^{\circ}52'20''$ East 497.71 feet; **THENCE** North $32^{\circ}27'52''$ East 1367.13 feet; **THENCE** along a curve to the left having a radius of 500.00 feet through a central angle of $31^{\circ}54'24''$, an arc distance of 278.44 feet; **THENCE** North $00^{\circ}33'28''$ East 631.40 feet to the northerly boundary of said Section 35; **THENCE** easterly along said northerly boundary South $89^{\circ}26'32''$ East 1319.15 feet to the **POINT OF BEGINNING**. Containing an area of 150.183 acres, more or less.

Subject to any existing easements of record.

Exhibit B: Resolution

Payment Plan Options			
5 years	Year	Quarterly payment due	Annual balance (including interest)
20 payments	1	\$93,484.38	\$373,937.50
	2	\$94,143.73	\$376,574.92
	3	\$94,830.29	\$379,321.14
	4	\$95,545.16	\$382,180.63
	5	\$96,289.52	\$385,158.09
Total			\$1,897,172.28
4 years	Year	Quarterly payment due	Annual balance (including interest)
16 payments	1	\$112,859.38	\$451,437.50
	2	\$113,518.73	\$454,074.92
	3	\$114,205.29	\$456,821.14
	4	\$114,920.16	\$459,680.63
Total			\$1,822,014.19
3 years	Year	Quarterly payment due	Annual balance (including interest)
12 payments	1	\$145,151.04	\$580,604.17
	2	\$145,810.40	\$583,241.59
	3	\$146,496.95	\$585,987.81
Total			\$1,749,833.56
2 years	Year	Quarterly payment due	Annual balance (including interest)
8 payments	1	\$209,734.38	\$838,937.50
	2	\$210,393.73	\$841,574.92
Total			\$1,680,512.42
1 year	Year	Quarterly payment due	Annual balance (including interest)
4 payments	1	\$403,484.38	\$1,613,937.50



PROPOSAL

OWNER'S ENGINEERING SERVICES

SCHULTE ROAD

RENEWABLE ENERGY DEVELOPMENT

DECEMBER 5, 2013

URS



December 5, 2013

Mr. Leon Churchill
City Manager
City of Tracy
333 Civic Center Drive
Tracy, CA 95376

Re: Schulte Road Renewable Energy Development - Owner's Engineering Services

Dear Mr. Churchill:

URS Corporation (URS) is pleased to present this proposal to provide professional assistance in determining the best options to maximize revenue to the City of Tracy (City) for a renewable energy project by a private developer on the Schulte Road site. URS will act as the City's engineering and project development consultant in obtaining and evaluating project information, refreshing a Request for Proposals, evaluating responses, and ultimately defining the best option for the City to maximize its revenue and economic benefit.

BACKGROUND

The Schulte Road property is approximately 200 acres in total area. The site is located on the south side of Schulte Road, west of Lammers Road, in the City of Tracy, CA.

Using data obtained via a previously proposed solar project lead by GWF (which did not proceed), with consideration for subsequent land acquisition opportunities between the City and the Federal General Services Administration, the City wishes to evaluate opportunities for development of renewable energy on the site directly or via third-party developers to maximize economic benefit to the City.

In early 2013, URS assisted the City in assessing development options and issued a report with recommendations on 2/21/2013 titled *Schulte Road Renewable Energy Development Options*. An RFP was developed to solicit proposals from prospective developers to partner with the City in acquiring or leasing the land and developing a mutually beneficial project. The City's initial selection for developer engagement did not ultimately move forward.

Since these activities have transpired, the initial proposals received through the RFP process have expired. Some regulations and interconnection programs have also been revised, which may warrant an update to the previously submitted Development Options report.

URS Corporation
1333 Broadway, Suite 800
Oakland, CA 94612
Tel: 510.893.3600
Fax: 510.874.3288



Mr. Leon Churchill
City of Tracy
December 5, 2013
Page 2 of 9

PROJECT APPROACH & SCOPE

Task 1

Update Development Options Memorandum; Determination of Optimal Project

Following project kickoff, URS will work with the City to analyze project readiness of developing the Schulte Road site for renewable energy generation. This assessment will be based largely upon existing data available from URS' prior engagement with the City related to this project and parcel.

URS will re-visit the prior Renewable Energy Development Options Technical Memorandum prepared for the City, and will update the memorandum in light of any pertinent changes or new considerations as discussed below.

URS will review various project finance and ownership structures. Potential may exist for the City to pursue implementation of a project under City ownership. Alternatively, the City may lease the site to a private developer which may sell power to the City or to the wholesale market. These economic structures will be compared in light of available project financial incentives and current utility interconnection programs.

URS will work with the City to determine the most appropriate project development approach. Available options include Net Energy Metering (NEM), Renewable Energy Self-generation Bill Credit Transfer (RES-BCT), Feed-in Tariff (FIT), and merchant (wholesale) generation. NEM is only viable in instances where there is demand for energy at the project site and is most likely not applicable to the Schulte Road site. RES-BCT authorizes all local governments in California to generate energy on a Generation Account and provide a bill credit to a Benefiting Account(s). This would allow the City to generate energy at the Schulte Road site and credit accounts at other City facilities. Under the FIT, Pacific Gas & Electric (PG&E) will purchase power from customers who install eligible renewable generation up to 3 MW in size. Larger merchant or wholesale generation projects may also be viable. URS will evaluate these options and summarize applicability for the Schulte Road site with respect to the optimal project approach. URS will recommend the option(s) that is most likely to meet the City's goals.



Mr. Leon Churchill
City of Tracy
December 5, 2013
Page 3 of 9

Deliverable:

1. Updated Development Options Technical Memorandum describing project readiness, identifying pros and cons of potential development options, and defining the optimal project development pathway.

Task 2

Prospective Developer Re-engagement

URS will work with the City to re-engage developers who previously submitted proposals for the Schulte Road site. A request will be made to submit updated offers in light of any updated utility program or site-specific project information.

Alternate:

URS will work closely with the City to refresh and recirculate an RFP for the development of a renewable energy generation system. The RFP will detail the expectations of the project developer (Offeror). URS will work with the City Attorney in the development of contractual terms and conditions for Offerors. The RFP will include provisions for safety specifications, quality specifications, schedule and major milestone specifications, reporting specifications, payment terms, payment schedule, and close-out requirements. Recirculating an open RFP would provide opportunity for additional prospective developers to submit proposals, and would perhaps generate additional competition and options for the City to consider.

Upon acceptance by the City, the RFP will be circulated to solicit bids from qualified Offerors. The RFP will include a mandatory pre-bid site walk, which will be hosted by the City and one URS representative onsite. There will also be a question and answer period, during which time URS will support the City in responding to bidder questions about the project.

Deliverable:

1. An updated engagement discussion from previous Offerors and/or Request for Proposals from eligible Offerors for the development of the Schulte Road site for solar energy generation.



Mr. Leon Churchill
City of Tracy
December 5, 2013
Page 4 of 9

Task 3

Selection of Project Developer Partner(s)

After the bid period has closed, URS will assist the City in reviewing the bids received in order to select an Offeror to develop the renewable energy project. URS will review and provide feedback on the proposed project approach, deal structure, equipment and construction methods. URS will make recommendations for selecting the Offeror, which will be used by the City in its award decision.

Deliverables:

1. A brief memorandum detailing URS' evaluation and recommendations on the most highly qualified Offeror best able to deliver a solar energy project that will maximize value of the Schulte Road site to the City.
2. URS will also provide technical input to the City's formal engagement of the selected developer. This input may be in the form of review and comment on technical provisions and scope for the agreement between the City and developer.

Task 4

Technical Support through Project Permitting and Design

URS will review the project permitting requirements with the City and assist in defining the requirements for successful project permitting by applicable agencies having jurisdiction (AHJs). URS will assist the City in defining roles (and respective scope) for permitting responsibilities between the City and Offeror. As needed, URS will assist the City in reviewing permit document submittals, and will provide technical input and review of permit material submittals prepared by the Offeror and their subcontractors.

URS will provide technical support to the City through review of project design development milestones. URS will review project documents and plans for AHJ and code compliance, technical accuracy, and industry best practices.

Deliverables:

1. Supplemental memoranda detailing permit and design-related comments and input throughout the permitting and design phases of project development.



Mr. Leon Churchill
City of Tracy
December 5, 2013
Page 5 of 9

Recommendations will be made with respect to recommended revision and subsequent acceptance of permit, design and construction documents.

Task 5

Technical Support through Project Construction and Startup

The URS team will provide support to the City through construction and commissioning of the project to help ensure quality and compliance with project requirements. Construction progress will be assessed on a monthly basis and compiled in monthly progress reports to the City summarizing construction progress, schedule, and items needing review and follow up.

URS will coordinate with the City and AHJs during required inspections and key construction milestones. Punchlist items will be compiled and tracked for satisfactory completion.

URS will review commissioning documents and observe the commissioning and startup process and report back to the City. URS will conduct an independent performance audit of the project upon completion and commercial operation.

Deliverables:

1. Monthly progress reports during the construction process documenting progress, schedule, quality, recommended items for review and follow up, and acceptance.

URS PROJECT TEAM

Dustin Jolley, LEED® AP BD&C – Project Manager

Mr. Jolley is a civil/environmental engineer currently working on a diverse mix of civil and sustainable design projects including facilities, mixed developments, power plants, and infrastructure. His training includes mechanical, electrical, and environmental engineering, as well as construction. He specializes in renewable energy, energy management, and hydraulic systems, with more than 12 years working with and leading multidisciplinary teams in sustainable development and green-building design, construction and business development initiatives. He serves as the URS Power Business Line Solar Power Practice Leader. He provides team coordination and general go-to subject matter expertise, and has performed due diligence, technology evaluation, feasibility analyses, design, and installation of a diversity of stand-alone and grid-connected renewable energy power systems including solar



Mr. Leon Churchill
City of Tracy
December 5, 2013
Page 6 of 9

PV and thermal, hydroelectric, tidal/wave power, wind, fuel cells, and biomass/biofuels. His civil infrastructure background includes power generating facilities, utilities, and water transmission, pumping, and storage systems. His perspective benefits from having worked in the academic, R&D, public service, and private sectors.

Mark Weeks – Renewable Energy Specialist

Mr. Weeks specializes in energy generation, transmission, and distribution project development with experience across a diverse range of generation technologies including solar photovoltaic, solar thermal, wind, hydrokinetic, biomass, and natural gas. He has managed multi-disciplinary teams to successfully navigate the full project delivery lifecycle and bring complex projects through the planning, design, interconnection, permitting, engineering, and construction phases to commercial operation.

URS, via our Project Manager, will add key resources to the project efforts such as permitting specialists, appropriate discipline-specific engineering reviewers, and others as needed.

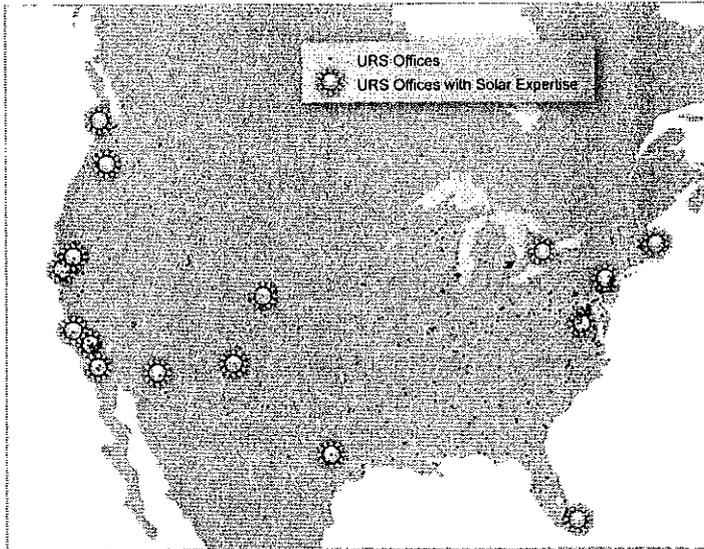
URS EXPERIENCE AND QUALIFICATIONS

URS is a leading global supplier of multidisciplinary engineering, construction management, and environmental services. URS has an exceptional range of current, state-of-the-art project experience in the renewable energy industry. These projects cover all aspects of renewable energy development, from feasibility studies through detailed engineering to construction and commissioning. Headquartered in San Francisco, and with regional offices in San Francisco, Oakland, San Jose, Sacramento, and Concord, URS has over 900 professionals in the local area with expertise ranging from planning and permitting to engineering and construction management.

As a global company, URS applies both international best practices and local expertise to meet the needs of our clients. With more than 220 offices in North America, URS has offices and personnel located throughout the United States. URS has renewable energy engineering centers-of-excellence strategically located in every major domestic renewable energy market.



Mr. Leon Churchill
City of Tracy
December 5, 2013
Page 7 of 9



URS is currently working for many of the public and private leaders in the solar and renewable energy market. Owner's Engineer and Program Management services are core competencies of URS. On the utility side, clients like Southern California Edison (SCE), Austin Energy, Sacramento Municipal Utility District (SMUD), PacifiCorp Energy, and Public Service Electric and Gas Company (PSE&G) are working with URS to build flagship renewable energy portfolios. Private energy developers like QCELLS, GE Energy, First Solar, NextEra, NRG, SunPower, BrightSource, and SunEdison have also turned to URS to assist in permitting and feasibility review through detailed design and startup activities. Public and Private sector companies and jurisdictions recognize URS as a leader in renewable and solar energy.

URS has assisted in solar and renewable energy development in locations including nearly every climate type and in applications including rooftops, carport/shade structures, industrial facilities, ground-mount, greenfield, brownfield, landfills, building-integrated applications and others.

URS has a strong reputation in the renewable energy market in part due to our "one-stop-shop" planning, permitting, engineering design, and construction capabilities. URS regularly provides economic analysis, interconnection, permitting, site survey, civil engineering, geotechnical engineering, structural engineering, electrical engineering, construction management, and commissioning and acceptance testing supervision. In addition to the core services listed above, URS has performed feasibility/due-diligence, and O&M planning



Mr. Leon Churchill
City of Tracy
December 5, 2013
Page 8 of 9

services for numerous solar PV and other renewable energy projects ranging in size from 200kW to over 550MW.

ASSUMPTIONS AND LIMITATIONS

URS will work with City staff to develop procurement materials. URS will provide technical input to be included in the City's procurement template. The City will make resources available to work with URS team members, aid in obtaining documents, provide City document templates, and provide collaborative assistance as appropriate.

URS will utilize available background documentation for the project and site, and the City will assist in obtaining any relevant information and coordinate with any stakeholders within their sphere of influence or responsibility. Should significant additional pre-development work be necessary to conduct the development options analysis due to unforeseen unavailability of these documents, URS will assess the scope and fee required to conduct such work.

SCHEDULE

URS will work with the City in developing a mutually agreeable schedule based on the projected development schedule established upon engagement of a developer partner. URS will commit resources to the project as required for the duration of the project per the scope outlined above.

Contingent upon the City executing an agreement and issuing a Notice to Proceed (NTP), URS will provide the services described herein on a Time and Materials (T&M) basis.

URS will provide draft deliverables as indicated in Tasks 1 through 3 above within four weeks of NTP and Final deliverables for Tasks 1 through 3 within two weeks of receipt of comments on draft deliverables.

Should circumstances or conditions result in a schedule change, URS will provide the Scope of Work on a mutually agreed upon schedule.

COST ESTIMATE

URS' fee for as-needed Owner's Engineering Services shall be on a T&M basis with a not-to-exceed (NTE) amount of \$100,000.00. Hourly rates for URS staff shall be based on a 2.7 multiplier on the raw rate. The City will be notified in advance if any work is proposed or



Mr. Leon Churchill
City of Tracy
December 5, 2013
Page 9 of 9

deemed necessary beyond the current scope and budget, and URS will only proceed with the City's approval.

A budget with staff rates is provided as an attachment to this proposal. Additional scope may be negotiated and amended on an as-needed basis.

CONTRACTUAL BASIS

URS is reviewing the City's contract terms used in our prior engagement of this work, and will respond with any proposed revisions should the City wish to proceed toward contract negotiation and award.

CONCLUSION

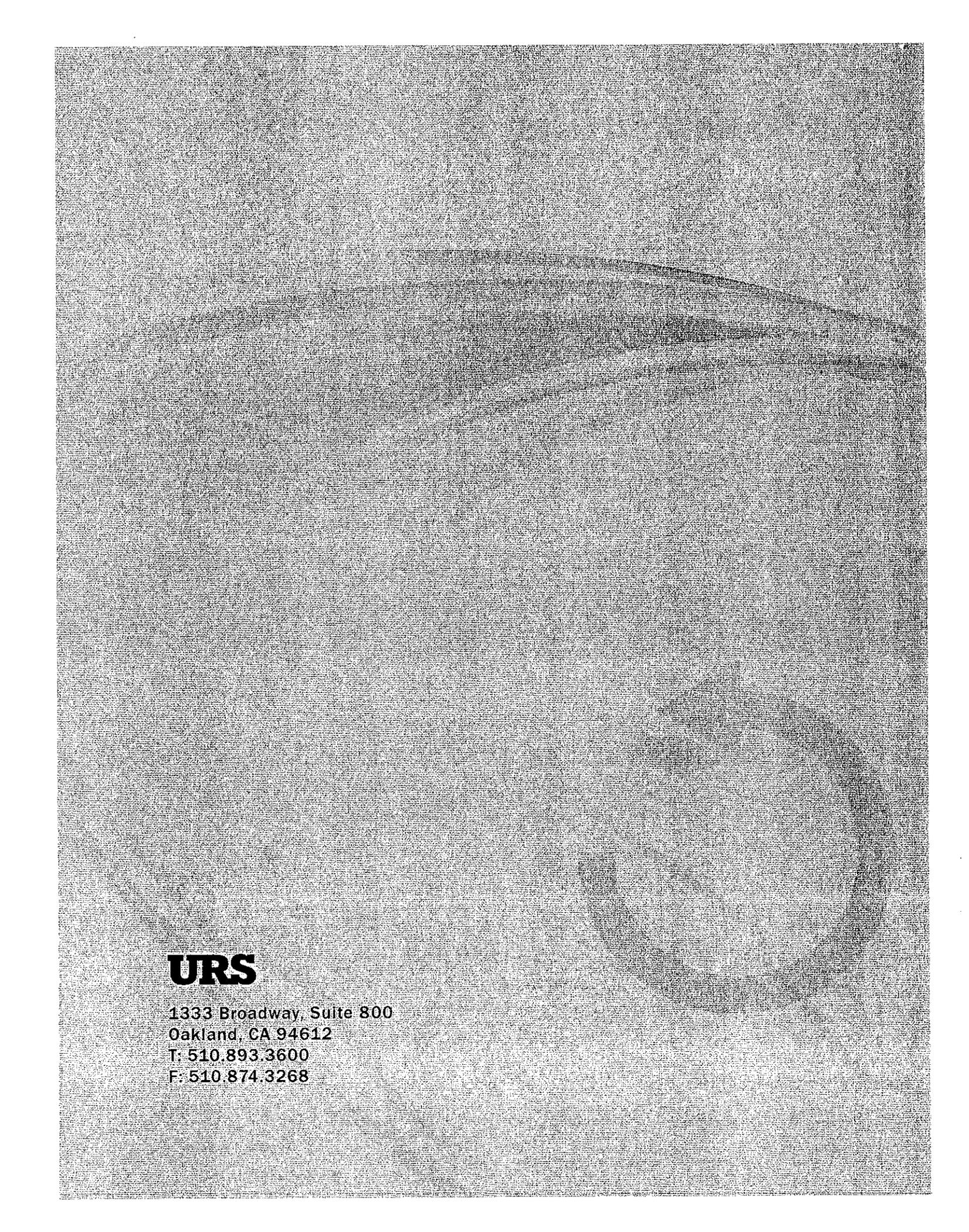
URS appreciates the opportunity to submit this proposal to the City of Tracy. Please contact Dustin Jolley at 510.874.1788 or dustin.jolley@urs.com should you have any questions or require additional information.

Sincerely,
URS Corporation Americas

Dustin Jolley LEED® AP BD&C
Project Manager

Said Salah-Mars, PhD, PE
Vice President and Oakland Office Manager

Attachments:
Project Cost Estimate & Rates



URS

1333 Broadway, Suite 800
Oakland, CA 94612
T: 510.893.3600
F: 510.874.3268

RESOLUTION 2013-_____

APPROVING AN APPROPRIATION FROM UNSPENT 301 FUNDS IN THE AMOUNT OF \$550,000 FOR COSTS ASSOCIATED WITH REMOVAL OF USE RESTRICTIONS AND FEDERAL REVERSIONARY RIGHTS ON THE 150-ACRE SCHULTE ROAD PARCEL FROM GENERAL SERVICES ADMINISTRATION, AUTHORIZING THE MAYOR TO EXECUTE ANY NECESSARY DOCUMENTS TO COMPLETE THE TRANSFER, AND APPROPRIATING \$100,000 FOR A PROFESSIONAL SERVICES AGREEMENT WITH URS CORPORATION FOR CONSULTANT SERVICES FOR A RENEWABLE ENERGY PROJECT AT THE SCHULTE ROAD PROPERTY

WHEREAS, 150 acres of the Schulte property was authorized by the United States Congress, by special legislation enacted in 1998, to be conveyed at no cost to the City for educational and/or recreational "public benefit" purposes, and the City concluded in 2007 that educational and/or recreational "public benefit" purposes was no longer viable, and

WHEREAS, On May 15, 2012, Congress gave the GSA direction to offer to the City of Tracy conveyance of the 150 acres, releasing any reversionary interest for an amount not less than the appraised fair market value, which GSA has determined that the fair market value and appraisal costs are \$1,105,250, and

WHEREAS, On July 26, 2013, GSA determined that the fair market value and appraisal costs had increased to \$1,550,000, and

WHEREAS, On November 21, 2013, GSA provided the City with two options which allow the 150 acres to revert back to the Federal Government, or commit to a five-year payment plan for the purchase, and

WHEREAS, The City of Tracy intends to explore a potential renewable energy project for the site which will require consulting services in the amount of \$100,000 to assess a renewable energy project on the Schulte site, including obtaining and evaluating necessary project development information, development and execution of a Request for Proposals, evaluation of the submitted proposals, and representing the City in any negotiations with the solar developers and other related stakeholders;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves an appropriation from unspent 301 funds in the amount of \$550,000 for costs associated with removal of use restrictions and Federal reversionary rights on the 150-acre Schulte Road parcel from General Services Administration, authorizes the Mayor to execute any necessary documents to complete the transfer, and appropriates \$100,000 for a Professional Services Agreement with URS Corporation for consultant services to assess the viability and best options for a renewable energy project at the Schulte Road property.

* * * * *

The foregoing Resolution _____ was passed and adopted by the City Council on the 17th day of December, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 6

REQUEST

RECEIVE AND DISCUSS ITEMS REFERENCED IN THE MEMORANDUM DATED APRIL 26, 2013, FROM SURLAND COMPANIES TO THE CITY OF TRACY

EXECUTIVE SUMMARY

This staff report outlines the various actions taken on each item listed in the April 26, 2013, memorandum from Surland Companies to the City of Tracy.

DISCUSSION

On October 15, 2013, Council discussed an agenda item related to the Airport improvements and the San Joaquin County Airport Land Use Commission's (ALUC) determination that an application to amend the Ellis Specific Plan from Surland Communities was found not consistent with the San Joaquin County Airport Land Use Commission's Airport Land Use Compatibility Plan. Among a number of items, the April 26, 2013, memorandum from Surland Companies (Surland) (Attachment A: April 26, 2013, memorandum from Surland Companies to the City of Tracy) to the City was a topic of interest. Subsequently, on December 3, 2013, Council Member Rickman requested, and Council agreed, to agendize an item for discussion related to the status of the proposed actions outlined in the memorandum from Surland to the City.

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

Proposed Deal Point 1: Fund Airport Shortfall for 10 years:

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

Year 2013	June 1 st :	\$50,000
Year 2014-2017	Jan 1 st :	\$50,000 (each year)
Year 2018	Jan 1 st :	\$45,000
Year 2019	Jan 1 st :	\$40,000
Year 2020	Jan 1 st :	\$35,000
Year 2021	Jan 1 st :	\$30,000
Year 2022	Jan 1 st :	\$25,000"

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

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

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

On June 18, 2013, the City Council approved an amendment to the agreement ("amendment"). Among other things, the amendment revised the fuel flowage fee to a flat \$0.07 fee per gallon on all aviation fuel sold. The amendment also revised the required annual \$50,000 payment guarantee by making it due to the City by April 1, of each year (Attachment B: June 18, 2013, Agenda Item 1.E Approving Amendment Number 1 to Fuel Sales Operator and Fuel Facility Lease Agreement Between the City of Tracy and Turlock Air Center, LLC Doing Business as Tracy Air Center).

On July 1, 2013, the City received a letter from TAC remitting payment of the \$50,000 annual payment guarantee. Attached to the letter were a memorandum and a check to the City from Surland for \$50,000 as described below. (Attachment C: July 1, 2013, letter to the City of Tracy from Stephen S. Stuhmer, Turlock Air Center related to the \$50,000 Minimum Annual Payment Guarantee outlined in the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center).

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

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

Agreement between the City and TAC. The City accepted the \$50,000 payment submitted by TAC pursuant to the existing contractual obligations between TAC and the City.

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

Proposed Deal Point 2: Fuel Flowage Fee:

This proposal suggested that *“the Fuel Flowage Fee shall be 7 cents per gallon of all fuel pumped and or sold at TCY. The gross Fuel Flowage Fee shall be paid directly to Surland, without any offset, credit or administrative fee, monthly as a reimbursement.”*

Summary: City staff did not agree to this proposal and verbally informed Surland it would not enter into the proposed agreement between Surland and the City nor would it enter into a three party agreement with Surland, the City, and TAC. (See above for more detail related to the fuel flowage fee provision outlined in the agreement between the City and TAC).

Proposed Deal Point 3: Specific Contingency Language Shall be Part of the Agreement between Surland and the City

Summary: The City did not enter into Surland’s proposed agreement. However, actions related to the specific contingency language proposed in the Surland memo are shown below and the status of each item is provided.

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

Summary: The City did not revise the ALP nor did the City submit the ALP to the FAA showing runway 12/30 to be a maximum of 3,996 feet.

A longstanding City goal has been to repave the airport runway. Over the years, staff has taken several steps necessary to secure FAA funding for airport improvements, the most recent step was the completion of a Pavement Maintenance and Management Plan (PMMP) that delineated the necessary pavement improvements at the airport. This PMMP was approved by Council on October 2, 2012, and completed in March 2013.

On June 18, 2013, staff presented Council with an update on the Airport Pavement Project and recommended changes to both the runway width and length. At that Council meeting, staff recommended adjusting the runway width from 100 feet to 75 feet and the taxiway width from 40 feet to 35 feet. This recommendation was made to meet the FAA standards and receive full funding. In retrospect, staff could have provided greater clarity that the runway length was not tied to receiving full funding and meet FAA standards; only the runway width and the taxiway width.

Because the City had an opportunity to complete a revised airport design, staff recommended reducing the runway length from 4,002 feet to 3,997 feet as it was estimated to be compatible with existing operations and planned development at the airport. Subsequent to the June 18, 2013, recommendations on runway width and length, staff received direction from the FAA that the ALP for the Tracy Municipal Airport would need to be updated prior to any construction due to the extensive changes the reconstruction of the runways and taxiways required.

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

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

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

The proposed language in Contingency 1C contains three separate and specific actions, each of which are outlined below.

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

Summary: The City of Tracy did not request an amendment to the Airport Land Use Compatibility Plan (ALUCP). City staff contacted COG staff to update and facilitate review of a subsequent application, because COG, acting as the Airport Land Use Commission, would be involved in the review process for Surland's Specific Plan Amendment.

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

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

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

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

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

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

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

As stated in page 2 of this staff report, the fuel flowage fee in the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock

Air Center is currently at \$0.07 per gallon. The fuel flowage fee is to be paid to the City by the Lessee (Turlock Air Center) after the Lessee surpasses \$50,000 in fuel sales for the year.

Surland Contingency 1E: *The City of Tracy agrees to generate and process amendments to the Ellis Specific Plan and City of Tracy General Plan to reflect a Safety Compatible Zone consistent with the 2011 California Transportation Safety Compatibility Zone for a Short General Aviation Runway (Short Runway), and changes in zoning to TR Ellis in the General Plan from Commercial and from Limited Use in the Ellis Specific Plan that are no longer in the Safety Compatibility Zone noted above, and to Zone any property that is in the Outer Approach/Departure Compatibility Zone to Commercial in the General Plan, and Limited Use in the Ellis Specific Plan that is not already zoned such, and schedule for hearing dates in December, 2013.*

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

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

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

In summary, the City did not enter into the agreement proposed in the Surland memo. Four of the ten deal points proposed in the Surland memo related to the current lease agreement between the City and TAC and no action was taken by staff or the City Council regarding those proposed deal points. One of the ten proposed deal points was related to the development application process and no action was taken by staff or the City Council regarding that deal point. The remaining five of the ten proposed deal points were related to the airport, four of which had no action taken by staff, the ALUC or the City Council. The other proposed deal point was related to the Airport runway length. The City Council did change the proposed airport runway length from 4,002 feet to 3,997 feet on June 19, 2013, but subsequently reverted the proposed runway length back to 4,002 feet due to staff's greater understanding of the FAA's grant review and grant award timeline and FAA's concerns related to changes to runway length and impact on funding

and review timeline (Attachment D: April 26, 2013, Memorandum from Surland Companies to the City of Tracy Summary of Actions).

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact with Council's discussion of this item.

RECOMMENDATION

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

Prepared by: Maria A. Hurtado, Assistant City Manager

Reviewed by: William Dean, Assistant Development Services Director
Ed Lovell, Management Analyst
Andrew Malik, Development Services Director
David Ferguson, Public Works Director

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

ATTACHMENT

- Attachment A: April 26, 2013, Memorandum from Surland Companies to the City of Tracy
Attachment B: June 18, 2013, Agenda Item 1.E Approving Amendment Number 1 to Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center
Attachment C: July 1, 2013, letter to the City of Tracy from Stephen Stuhmer, Turlock Air Center related to the \$50,000 Minimum Annual Payment Guarantee outlined in the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center
Attachment D: Summary of Actions: April 26, 2013, Memorandum from Surland Companies to the City of Tracy

AIRPORT AGREEMENT MEMORANDUM

TO: ROD BUCHANAN
FROM: LES SERPA
SUBJECT: SURLAND AIRPORT ADVANCE FUNDING AGREEMENT
DATE: APRIL 26, 2013
CC:

Rod,

We initially committed to funding an Airport shortfall for 5 years; however we have adjusted that commitment based on recent negotiations with the parties. There are a few important aspects that need to be addressed in the agreement between the City and Surland.

First:

Surland would submit amounts to the City on the following dates:

Year	2013	June 1 st :	\$50,000
Years	2014-2017	Jan 1 st :	\$50,000 (each year)
Year	2018	Jan 1 st :	\$45,000
Year	2019	Jan 1 st :	\$40,000
Year	2020	Jan 1 st :	\$35,000
Year	2021	Jan 1 st :	\$30,000
Year	2022	Jan 1 st :	\$25,000

Second:

The Fuel Flowage Fee shall be 7 cents per gallon of all fuel pumped and or sold at TCY.

The gross Fuel Flowage Fee shall be paid directly to Surland, without any offset, credit or administrative fee, monthly as a reimbursement.

Third:

The following language shall be part of the agreement between Surland and the City:

Contingencies.

- I. The obligations contained in this agreement are contingent upon the following events occurring on or before August 1, 2013:
 - A. The City of Tracy shall on or before June 30th 2013 revise the ALP and submit this ALP to the FAA showing runway 12/30 to be a maximum length of 3,996 feet, and shall physically re-mark the runway to conform to the new ALP depicting a runway 12/30 to be a maximum length of 3,996 feet.
 - B. The City of Tracy shall reflect runway 12/30 designated as a Safety Compatible Zone consistent with the 2011 California Transportation Safety Compatibility Zone for a Short General Aviation Runway (Short Runway) as attached when adopting/updating the Tracy Airport Master plan.
 - C. The City of Tracy shall notify the San Joaquin County ALUC on or before July 15, 2013 of the new information (revised ALP, reflecting change in 12/30 runway length) and request for Economic rationale or other rationale as agreed to amend the ALUCP to reflect runway 12/30 designated as a Safety Compatible Zone consistent with the 2011 California Transportation Safety Compatibility Zone for a Short General Aviation Runway (Short Runway), in conformance with the City of Tracy newly adopted ALP. The ALUC shall amend the 2009 ALUCP on or before November 30th, 2013 to reflect runway 12/30 designated as a Safety Compatible Zone consistent with the 2011 California Transportation Safety Compatibility Zone for a Short General Aviation Runway (Short Runway)), in conformity with the City of Tracy newly adopted ALP. If the ALUC does not amend the 2009 ALUCP on or before November 30th, 2013, at the request of Surland, the City agrees it will notify the ALUC of the City's intent to override any ALUCP that does not reflect a Safety Compatible Zone consistent with the 2011 California Transportation Safety Compatibility Zone for a Short General Aviation Runway (Short Runway), and City will then proceed with override hearings per State Law.
 - D. The Fuel Flowage Fee shall not be less than \$0.07 per gallon reimbursed to Surland for all fuel pumped or sold at the Tracy Municipal Airport.
 - E. The City of Tracy agrees to generate and process amendments to the Ellis Specific Plan and City of Tracy General Plan to reflect a Safety Compatible Zone consistent with the 2011 California Transportation

Safety Compatibility Zone for a Short General Aviation Runway (Short Runway), and changes in zoning to TR Ellis in the General Plan from Commercial, and from Limited Use in the Ellis Specific Plan that are no longer in the Safety Compatibility Zone noted above, and to Zone any property that is in the Outer Approach/Departure Compatibility Zone to Commercial in the General Plan, and Limited Use in the Ellis Specific Plan that is not already zoned such, and schedule for hearing dates in December 2013.

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

June 18, 2013

AGENDA ITEM 1.E

REQUEST

APPROVE AMENDMENT NUMBER 1 TO FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT BETWEEN THE CITY OF TRACY AND TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER, AND AUTHORIZE THE MAYOR TO SIGN THE AMENDMENT

EXECUTIVE SUMMARY

The City of Tracy currently has a Fuel Sales Operator and Fuel Facility Lease Agreement (Agreement) with Turlock Air Center, LLC doing business as Tracy Air Center. The Agreement contains terms and conditions related to selling aviation fuel and the leasing of the city-owned fuel facility at the Airport. The Agreement was approved by City Council on October 18, 2011 pursuant to Resolution No. 2011-195.

This amendment modifies specific terms of the Agreement for the purpose of clarifying certain sections of the agreement and modifying certain payment terms.

DISCUSSION

This amendment establishes a new increased fuel flowage fee, which is the rate for which the minimum annual payment of \$50,000 is based. This amendment also removes the City established requirement to have fuel prices at a certain level in relation to surrounding airports.

The amendment modifies the lease extension option so that the lessee has the option to extend the agreement so long as there is no uncured default. A deadline was also set for the lessee to pay for the recoverable fuel that was transferred from the City at the beginning of the lease. The language for returning a portion of the security deposit was also changed so that the lessee will get a portion of the deposit back as long as there is no uncured default by December 31, 2013. The portion of the security deposit returned back to the lessee will be used to pay for a portion of the recoverable fuel that was transferred at the beginning of the lease. The lessee will also have a deadline in which to pay the \$3,000 owed for installation of an electrical meter.

Added to the amendment was a section stating that if the City decides to move the fuel facility to another location, that the City would be responsible for all costs of doing so.

STRATEGIC PLAN

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

FISCAL IMPACT

The changes in this agreement do not change the minimum annual payment of \$50,000 to the City which is part of the budgeted revenue for the Airport Fund.

RECOMMENDATION

That City Council, by resolution, approves Amendment Number 1 to the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center, LLC doing business as Tracy Air Center, and authorizes the Mayor to sign the Amendment.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Rod Buchanan, Interim Director of Public Works

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

ATTACHMENT:

Exhibit "A" – Amendment Number 1 to the Fuel Sales Operator and Fuel Facility Lease Agreement

**CITY OF TRACY
AMENDMENT NO. 1 TO
FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT
BETWEEN THE
CITY OF TRACY
AND
TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER**

This Amendment No. 1 (hereinafter "Amendment") to the FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT BETWEEN CITY OF TRACY AND TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "City"), and Turlock Air Center, LLC doing business as Tracy Air Center (hereinafter "Lessee").

RECITALS

A. City and Lessee entered into a FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT BETWEEN CITY OF TRACY AND TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER (hereinafter "AGREEMENT") which was approved by the City Council on October 18, 2011, pursuant to Resolution No. 2011-195;

B. City and Lessee recognize that changes have occurred at the Airport and that additional changes will likely occur in the future, and wish to amend certain sections of the Agreement to accommodate the mutual needs of the parties; and

C. This Amendment therefore modifies specific terms of the Agreement for the purpose of clarifying certain sections of the Agreement and modifying certain payment terms, to facilitate the continued performance of the Agreement by both parties.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. Incorporation By Reference.** This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.
- 2. Terms of Amendment.** The Agreement is modified as stated herein, effective upon all parties executing this Amendment.

Section 3 of the Agreement, DEFINITIONS, Fuel Services, is hereby amended to read as follows: "Fuel Services: All activities associated with the purchasing, receiving, storage and sale of Aviation Fuel, and when requested by a fuel customer, the dispensing of Aviation Fuel into Aircraft."

CITY OF TRACY
Amendment No. 1 to
FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT
Page 2 of 9

The following definitions are hereby added to Section 3:

Default – Failure without legal excuse to perform any promise or obligation in this Agreement within the time or in the manner set forth herein. Any DEFAULT that is not timely remedied or cured pursuant to the provisions of Section 24 shall be deemed a BREACH.

Breach – Doing any act or failing without legal excuse to perform the duties and obligations in the Agreement. A DEFAULT that has not been cured pursuant to Section 24 constitutes a BREACH.

Section 7 of the Agreement is hereby amended to read as follows: “**TERM:** The Agreement period is twenty-five years and shall commence on the 1st day of January 2012 (hereinafter “Commencement Date”), and run through the 31st day of December 2036.

Lessee may, so long as it is not in uncured default under Section 24, extend the agreement up to three times for a period of ten years each time with the first option extension period running from the 1st day of January 2037, through the 31st day of December 2046; the second option extension period running from the 1st day of January 2047, through the 31st day of December 2056; and the third option extension period running from the 1st day of January 2057, through the 31st day of December 2066. Lessee shall provide City with written notification of the Lessee's election to extend this Agreement as set forth herein at least six months prior to the lease expiration date.”

Section 12 of the Agreement is hereby amended to read as follows: “**OPERATION OF FUEL FACILITY:** Lessee shall continuously use the Fuel Facility for the uses specified in this Agreement. If the premises are totally or partially relocated, destroyed, or condemned, or if full use by Lessee is unavailable, to the extent not caused in any part by the Lessee, (1) Lessee shall be entitled to a pro rata reduction in Rent during all such periods for the affected areas only, and (2) Lessee shall continue operation of its business at the premises to the extent reasonably practical during any period of reconstruction.

If the City decides to move or relocate the Fuel Facility to any other location on the Airport, the City will be responsible for all the costs and expenses for such relocation.

The maintenance and operation of the Fuel Facility shall at all times during the term of this Agreement be under the direct supervision of Lessee or a competent representative of the Lessee, who shall be subject at all times to the direction and control of the Lessee.”

CITY OF TRACY

Amendment No. 1 to

FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT

Page 3 of 9

Section 18.1 of the Agreement is hereby amended to read as follows: “Non-exclusive Privileges: The following shall apply to the operation and maintenance by Lessee of the Fuel Facility. Lessee shall have the non-exclusive privilege of offering for sale, selling and dispensing Aviation Fuels and lubricants on the Airport. The City shall not grant another operator the right to provide the same or similar services except on the same or substantially the same terms, indexed and adjusted for changes in inflation and prevailing economic conditions at the time.”

Section 18.4 “Fuel Prices” is hereby deleted from the Agreement.

Section 18.6 of the Agreement is hereby amended to read as follows: “Fuel Handling and Equipment: In regards to delivery of Aviation Fuel to customers, Lessee shall provide Self-Service Fueling from the existing dispensers located on the Fuel Island. Lessee may also provide Pilot-Assisted Fueling from the existing dispensers and Full-Service Jet-A and AvGas Fueling from fuel trucks, and any such fuel trucks will be the sole responsibility of the Lessee. Such operation is permitted when Lessee is in compliance with currently required licenses, permits, and applicable regulations. Each fuel truck shall have an operating two-way VHF radio permitting communication with Aircraft on the ground, and such vehicles shall be operated on the Airport only under the procedures and controls established by the Airport Manager. Aircraft fuel trucks shall be equipped with metering devices that meet all applicable regulatory measures. Each fuel truck shall be equipped and maintained to comply with all applicable safety and fire prevention requirements, standards, and regulatory measures including without limitation, those prescribed by: State of California Fire Code and local Fire Department, National Fire Protection Association (NFPA) Codes, local and state environmental and health departments, and applicable FAA Advisory Circulars (AC) including AC00-34 “Aircraft Ground Handling and Servicing” and AC 150/5210-5 “Painting, Marking and Lighting of Vehicles Used on an Airport”.

Section 19.1 of the Agreement is hereby amended to read as follows: “19.1 Fuel Facility Use Fee: In consideration for the continuous maintenance, operation, repairs, and upgrades by Lessee of the City owned Fuel Facility, Lessee shall not be required to pay to City a Fuel Facility Use Fee.

Section 19.2 of the Agreement is hereby amended to read as follows: “Fuel Flowage Fee: For the privilege of selling Aviation Fuel at the Airport, Lessee shall pay the City a Fuel Flowage Fee of seven cents (\$0.07) per gallon on all Aviation Fuel sold. Payment due City in this Section shall be credited monthly against Lessee’s prepaid Minimum Annual Payment Guarantee (Section 20.1), and after the aggregate amount of the rent and fees required under this Agreement in any given year exceeds Lessee’s prepaid Minimum Annual Payment Guarantee, Lessee shall without demand, pay such excess amount on or before fifteen days following the end of the preceding month throughout the term of this Agreement and any

CITY OF TRACY
Amendment No. 1 to
FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT
Page 4 of 9

extensions. Lessee shall also provide, on a monthly basis, a report of Lessee's fuel flowage during the preceding month, which shall include a copy of all BOE sales tax reports filed with the State of California during the preceding month, and a copy of each delivery receipt or bill of lading from Lessee's fuel distributor, showing the gravity-corrected and recalibrated net quantity delivered during the preceding month. Any disputes or controversies between the parties with respect to this Section shall be resolved in accordance with the provisions of Section 26 LEGAL ACTION AND MEDIATION of this Agreement."

Section 20.1 of the Agreement is hereby amended to read as follows: "Minimum Annual Payment Guarantee: Lessee will pay the greater of either the total of the Fuel Flowage Fees described in 19.2 above, or a minimum annual payment of \$50,000, paid on or before of April 1 of the current year for each 12 month period beginning January 1, 2013. In the event the total of all payments specified in 19.2 is less than \$50,000 in any given 12 month period beginning on January 1 of any given year, Lessee shall be allowed to accrue the difference between the actual payment and \$50,000 and recoup that difference in future years to the extent that the actual Fuel Flowage Fee exceeds \$50,000. But in no case shall the City receive less than \$50,000, paid in advance, in any single period, nor will the City have any responsibility to pay Lessee for un-recouped fees at the end of the term of the Agreement. It shall be the responsibility of Lessee to provide the City with a report of the prior year's payments made during the preceding calendar year within fifteen days following the end of the preceding year."

Section 20.2 of the Agreement is hereby amended to read as follows: "Late Payment of Rent and Fees: In the event Lessee fails to pay City any Rent or Fees due under this Agreement within five business days after such Rent or Fee is due, regardless of notification from City, Lessee shall pay to City a late charge of One Hundred and No/100 Dollars (\$100) per occurrence, plus interest on said unpaid balance at a rate of one percent simple interest per month, from the date said payment was due and payable until paid in full. Lessee shall pay said late charge on or before the next installment of Rent or Fee is due. City and Lessee hereby agree that it is and will be impracticable and extremely difficult to ascertain and fix the City's actual damage from any late payments and, thus, that Lessee shall pay as liquidated damages to City the late charge specified in this section, which is the result of the parties' reasonable endeavor to estimate fair average compensation therefore. Acceptance of any late charge shall not constitute a waiver of the Lessee's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to the City. If Lessee fails to pay its monthly or annual payments within 10 calendar days after such payment is due, regardless of notification from City, Lessee shall be in default of this Agreement."

CITY OF TRACY
Amendment No. 1 to
FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT
Page 5 of 9

Section 20.5 of the Agreement is hereby amended to read as follows: "Security Deposit: Upon execution of this Agreement, Lessee shall pay to City the sum of Twenty Thousand and No/100 Dollars (\$20,000) in cash as security (hereinafter "Security Deposit") for the faithful performance of the terms, covenants, and conditions of this Agreement. If Lessee performs without uncured default for the entire first two years, \$14,000 of the deposit will be refunded subject to Section 20.6. 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 the Lessee's default. Upon demand by the 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."

Section 20.6 of the Agreement is hereby amended to read as follows: "Transfer of Inventory at Beginning and End of Lease: On January 1, 2012, 8,510 gallons of recoverable Aviation Fuel was transferred to Lessee at a total value, based on Last-In-First-Out (LIFO), of \$34,953.80. In addition, 3,712 gallons of unrecoverable Aviation Fuel was transferred to Lessee at a total value of \$14,910.51. Recoverable fuel is the Aviation Fuel inside the fuel tanks that is above the fuel tank outlets and can be pumped out of the tanks and sold. Unrecoverable fuel is the Aviation Fuel that is below the fuel tank outlets and cannot be pumped out of the tanks. Lessee agrees to allow the City to use the deposit refund in the amount of \$14,000, as stated in Section 20.5, as the Aviation fuel payment when it is due Lessee. Lessee agrees to pay the remaining amount \$20,953.81 at time of entering into a restaurant or corporate hangar lease agreement, or by January 1, 2023, whichever occurs sooner. Upon termination of the Agreement, the City shall purchase the existing Aviation Fuel inventory levels from Lessee, less 3,712 gallons of unrecoverable fuel, with payment due to Lessee within thirty days. The price of the recoverable Aviation Fuel inventory will be based on the LIFO price, but in no event shall the purchase price exceed the wholesale price of fuel on the date of transfer. After termination, and after final accounting by the City, any balance remaining of such payment shall be paid to the Lessee, without interest."

Section 21.4.2 of the Agreement is hereby amended to read as follows: "City installed an electric meter for Lessee and Lessee agrees to pay City \$3,000 (three-thousand dollars), for modification to the electrical service as described above at time of entering into a restaurant or corporate hangar lease agreement with City, or by January 1, 2018, whichever occurs sooner."

Section 21.4.10 of the Agreement is hereby amended to read as follows: "Lessee may install an additional 12,000 gallon fuel tank, at Lessee's sole option and expense. If installation of the additional fuel tank requires use of Airport land other

CITY OF TRACY
Amendment No. 1 to
FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT
Page 6 of 9

than that shown on the Fuel Facility Diagram, Lessee shall pay an additional Fuel Facility Ground Lease Fee on a per square foot basis as described in Section 19.3.

Section 24 of the Agreement is hereby amended to change its heading to the following: "DEFAULT AND REMEDIES:"

Section 24.1 of the Agreement is hereby amended to change its heading to the following: "Default by Lessee:"

Section 24.1.1 of the Agreement is hereby amended to read as follows: "The Lessee's failure to pay the Rent or Fees in accordance with the terms of this Agreement.

Section 24.2 of the Agreement is hereby amended to read as follows: "**Right of Reentry Upon Uncured Default:** Upon the issuance of an unlawful detainer by a court of competent jurisdiction, the 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 Fuel Facility; such Property may be removed and stored in a public warehouse or elsewhere at the cost of, with cost not exceeding the market rate cost charged by public storage facilities and reasonable moving expenses in the City of Tracy, and for the account of, the Lessee. Should City elect to re-enter as provided herein pursuant to legal proceedings, it may either terminate this Agreement or relet the Fuel 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 Fuel Facility and Improvements."

Section 24.4 of the Agreement is hereby amended to read as follows: "**Waiver of Default:** No default of this Agreement may be waived except by the written consent of the City. Any waiver by City of any default by Lessee of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent default by Lessee of either the same or a different provision of this Agreement. Forbearance or indulgence by the 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."

Section 24.1.7 of the Agreement is hereby amended to read as follows: "The Lessee's failure, after five calendar days written notice thereof, to repair mechanical or other problems which prevent customers from obtaining Fuel Services (either AvGas or Jet Fuel) in accordance with the terms of this Agreement."

CITY OF TRACY

Amendment No. 1 to

FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT

Page 7 of 9

Section 24.7 is added to the Agreement to read as follows: "Lessee's Right to Cure Defaults: If Lessee is in default of any provision of this Agreement, City shall provide Lessee with a written notice of default wherein City must describe the specific default and advise Lessee to cure the same within 30 calendar days after receipt of the notice. Should Lessee fail to cure the default within 30 calendar days after the written notice is sent by City, City may elect to terminate this Agreement. However, if the subject default cannot be cured within 30 calendar days by the exercise of due diligence by Lessee, City may elect to not terminate this Agreement if City agrees that Lessee has taken all necessary steps to begin the cure of such default so as to effect said cure as soon as feasible after the expiration of such 30 calendar day period."

Section 25.1 of the Agreement is hereby amended to read as follows:

"Assignment: This Agreement, or any part thereof, shall not be assigned or transferred by Lessee other than to an Entity controlled by the Lessee, by process or operation of law or in any other manner, without the prior written consent of City. No assignee for the benefit of the 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. Lessee shall not enter into agreements with others whereby others share in the fueling privileges or the services herein authorized without the prior written consent of the City. Any assignment, encumbrance, or Sublease without the City's consent shall be voidable and, at the 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 the Lessee, and Lessee shall pay to the City, whether or not consent is ultimately given, the City's reasonable administrative costs, including costs for staff and attorney review incurred in connection with each such request. One percent (1%) of any sums to be paid by an assignee to the Lessee, other than to an Entity controlled by the Lessee, in consideration of the assignment of this Agreement shall be paid to the City."

Section 25.2 of the Agreement is hereby amended to read as follows: "The Lessee's Right to Sublease: Lessee shall have the right to Sublease a portion of the Fuel Facility space, subject to the City's written consent, which will not unreasonably be 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 City Council. Lessee may sublease space only for the purposes to which City agrees in writing. The Commercial Aeronautical Services and business purpose shall be clearly stated in the Sublease and the

CITY OF TRACY
Amendment No. 1 to
FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT
Page 8 of 9

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 the City, as security for the 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 the City, as assignee and as attorney in- fact for the Lessee, or a receiver for Lessee appointed on the City's application, may collect such Rent due subsequent to the Lessee's default and apply it toward the Lessee's obligations under this Agreement with any excess amounts collected returned to the Lessee; except that, until the occurrence of an act of default by Lessee or sublessee, Lessee shall have the right to collect such Rent."

Section 26.1 of the Agreement is hereby amended to read as follows: "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 30 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. 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."

Section 28.7 of the Agreement is hereby amended to read as follows: "Lessee Office: For the purposes of providing fuel truck services as identified in the Agreement, City will provide Lessee with the use of Airport office "4-6", in an AS IS condition (as shown on Figure 3), for up to two Lessee employees for a period of five years from the Commencement Date. The cost of installing and/or providing utilities will be at Lessee's expense."

Section 28.8 "Hangar Rental Services" is deleted from the Agreement.

3. **Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.
4. **Severability.** In the event any term of this Amendment is held invalid by a court of competent jurisdiction, the Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in full force and effect.
5. **Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute

CITY OF TRACY
Amendment No. 1 to
FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT
Page 9 of 9

this Amendment on behalf of the respective legal entities of the Lessee and the City.
This Amendment shall inure to the benefit of and be binding upon the parties
thereto and their respective successors and assigns.

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

CITY OF TRACY

Turlock Air Center, LLC

By: _____

By: _____

Brent H. Ives

Stephen S. Stuhmer

Title: Mayor

Title: Managing Member

Date: _____

Date: 6-13-13

Attest:

By: _____

Sandra Edwards

Title: City Clerk

Date: _____

Approved as to form

By: _____

Daniel G. Sodergren

Title: City Attorney

Date: _____

RESOLUTION _____

APPROVING AMENDMENT NUMBER 1 TO FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT BETWEEN CITY OF TRACY AND TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER, AND AUTHORIZING THE MAYOR TO SIGN THE AMENDMENT

WHEREAS, The City of Tracy has entered into a Fuel Sale Operator and Fuel Facility Lease Agreement (Agreement) with Turlock Air Center, LLC doing business as Tracy Air Center, which expires December 31, 2036; and

WHEREAS, the parties wish to amend the Agreement to clarify same and modify payment and other terms,

NOW, THEREFORE, BE IT RESOLVED, That City Council approves Amendment No. 1 to the Fuel Sales Operator and Fuel Facility Lease Agreement with Turlock Air Center, LLC doing business as Tracy Air Center, and authorizes the Mayor to sign the Amendment.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the _____ day of _____, 2013, by the following vote:

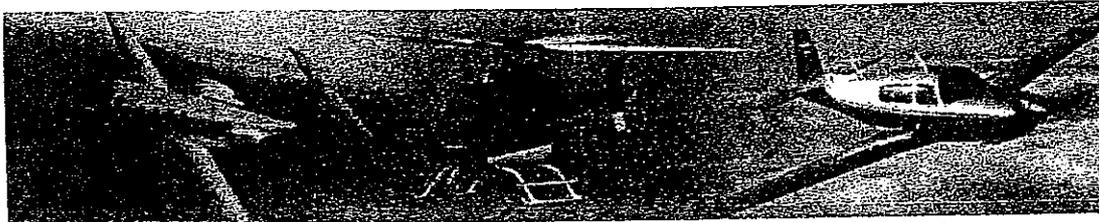
- AYES: COUNCIL MEMBERS:
- NOES: COUNCIL MEMBERS:
- ABSENT: COUNCIL MEMBERS:
- ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

ATTACHMENT C



HAND DELIVERED

July 1, 2013

Daniel G. Sodergren
City Attorney
City of Tracy
333 Civic Center Plaza
Tracy, CA. 95376

Re: Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center, LLC doing business as Tracy Air Center

Dear Mr. Sodergren,

With this letter and attached check, and according to the terms of Section 20.1 of Amendment No. 1 to the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center, LLC doing business as Tracy Air Center, payment of the Minimum Annual Payment Guarantee in the amount of \$50,000 (Fifty Thousand Dollars) for calendar year 2013, is hereby remitted and delivered to the City of Tracy.

Please contact me if you have any questions.

Sincerely,

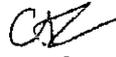
A handwritten signature in black ink, appearing to read "Stephen S. Stuhmer". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Stephen S. Stuhmer
Turlock Air Center, LLC
Title: Managing Member

Transmittal

DATE: July 2, 2013

TO: Jenny Haruyama
Director of Finance and Administrative Services
City of Tracy Finance Department
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

FROM: Chris Long 
Surland Companies

RE: Fuel Sales Operator and Fuel Facility Lease Agreement
between the City of Tracy and Turlock Air Center

THE FOLLOWING DOCUMENT(S) ARE ENCLOSED:

Enclosed is a check for \$50,000 (Fifty Thousand Dollars) to the City of Tracy, as payment for the Minimum Annual Payment Guarantee for calendar year 2013, per the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center.

SURLAND COMMUNITIES, LLC
1634 EYE STREET, N.W., SUITE 205
WASHINGTON, DC 20006

65-329/550

1083

DATE

June 19 2013

PAY TO THE
ORDER OF

City of Troy

\$ 50,000.00

Fifty thousand

DOLLARS

Security Features
Detailed on back

EAGLEBANK BETHESDA, MD 20814
www.eaglebank.com

[Handwritten Signature]

AUTHORIZED SIGNATURE

Security Features
Detailed on back

IS FOR

ALUCP 2009

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Surland - Turlock Air ✓

Fuel Flawage Fee

Jan. 1 - Dec. 31 2013

561-24013-024-05801

RTP

ATTACHMENT D

April 26, 2013 Memorandum from Surland Companies to the City of Tracy Summary of Actions

TYPE	#	PROPOSED ACTION	SUMMARY OF ACTION	AUTHORIZING ENTITY
Lease Agreement	Proposal 1	Fund Airport Shortfall	No Action	Tracy City Council
Lease Agreement	Proposal 2	Fuel Flowage Fee	No Action	Tracy City Council
<u>Airport:</u> Runway length	Proposal 3: Contingency 1A	Revise ALP & change runway length to 3,997	6/18/13 ¹ 10/15/13 ²	Tracy City Council
<u>Airport:</u> Safety Compatible Zone	Proposal 3: Contingency 1B	Safety Compatible Zone designation	No Action	ALUCP
<u>Airport:</u> Airport Land Use Compatibility Plan (ALUCP)	Proposal 3: Contingency 1C	Inform ALUC re: proposed change to ALUCP	No Action	Tracy City Council
<u>Airport:</u> Amendment to 2009 ALUCP		Amend 2009 ALUCP	No Action	ALUCP
<u>Airport:</u> Override ALUC's decision		Override ALUC's decision and amend ALUCP	No Action	Tracy City Council
Lease Agreement		Fuel Flowage Fee Price and Reimbursement to Surland	No Action	Tracy City Council
Development Application Processing (Land Use)		Specific Plan & General Plan changes to include 2011 Safety Compatible Zones and other Zoning changes	No Action	Tracy City Council
Lease Agreement		Proposal 3: Contingency 2	If current Fuel Operator ceases operations, Surland's payment obligation terminates	No Action

¹ Runway length changed from 4,002 feet to 3,997 feet due to compatibility with existing operations and planned development at the airport.

² Runway length changed from 3,997 feet back to 4,002 feet due to staff's greater understanding of FAA's grant review and grant award timeline and FAA's concerns related to changes to runway length and impact on funding and review timeline.

AGENDA ITEM 8.A

REQUEST

RECEIVE AND ACCEPT THE CITY MANAGER INFORMATIONAL UPDATE

EXECUTIVE SUMMARY

This agenda item will update the Council on newsworthy events.

DISCUSSION

The City Manager will provide Council with an informational report on various items, including upcoming special events, status on key projects, or other items of interest in an effort to keep Council, staff, and residents abreast of newsworthy events.

STRATEGIC PLAN

This agenda item does not relate to the Council's strategic plans.

FISCAL IMPACT

There is no fiscal impact with this informational item.

RECOMMENDATION

That Council receive and accept the City Manager's informational update.

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