

Tuesday, February 18, 2014, 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 – Swearing in Police Lieutenants/Sergeants

– D.A.R.E. Certificates

– YAC Annual Report

1. CONSENT CALENDAR

A. Approval of Minutes

B. Acceptance of the Downtown Plaza Project CIP - 78117, Completed by Knife River Construction of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion

C. Acceptance of the Installation of Fiber Optics from City Hall to the Transit Station - CIP 77543, Completed by Kertel Communication Incorporated (dba Sebastian) of Fresno, California, and Authorization for the City Clerk to File the Notice of Completion

D. Acceptance of Muirfield 7 – Phase Four, Tract 3779, for Standard Pacific Corporation

E. Acceptance of the Police Firearms Practice Range Restroom Building - CIP 71072C, Completed by Southland Construction of Pleasanton, California, and Authorization for the City Clerk to File the Notice of Completion

F. Approve Various Amendments to the Professional Services Agreements with Kimley-Horn and Associates for Completion of Roadway Analysis for Cordes Ranch and Tracy Hills Developments, and Authorize the Mayor to Execute the Agreements

G. Approve Various Professional Services Agreements with West Yost and Associates Related to Water Analysis for Cordes Ranch and Tracy Hills Developments and Authorize the Mayor to Execute the Agreements

H. Approve Amendment Number Three to the Professional Services Agreement with Kimley-Horn and Associates, for the Tracy Hills Specific Plan Amendment Subsequent Environmental Impact Report and Authorize the Mayor to Execute the Amendment

I. Approval of Four Master Professional Services Agreements with Kimley-Horn, First Carbon Solutions, Ascent Environmental, and De Novo Planning Group for Environmental Analysis (CEQA) Services and Planning Assistance for Various Projects and Authorize the Mayor to Execute the Agreements

2. ITEMS FROM THE AUDIENCE

3. ACCEPT CONSULTANT FINAL REPORT ON CITY COST ALLOCATION PLAN AND CONSIDER NEW SINGLE HOURLY BILLING RATE METHODOLOGY AND MODIFICATION OF COST RECOVERY AGREEMENT (CRA) OVERHEAD RECOVERY LEVELS

4. FISCAL YEAR 13/14 GENERAL FUND MID-YEAR BUDGET PERFORMANCE REPORT
5. DISCUSS AND PROVIDE DIRECTION ON A COUNCIL COMMUNICATION POLICY
6. SECOND READING AND ADOPTION OF ORDINANCE 1193 AN ORDINANCE OF THE CITY OF TRACY REZONING ASSESSOR'S PARCEL NUMBERS 235-070-64 & 66 FROM LIGHT INDUSTRIAL (M-1) TO MEDIUM DENSITY RESIDENTIAL (MDR). THE APPLICANT IS ANDRE STAMBUK AND THE PROPERTY OWNERS ARE JAVIER AND JUANA DIAZ. APPLICATION NUMBER R13-0001
7. ITEMS FROM THE AUDIENCE
8. STAFF ITEMS
 - A. Receive and Accept the City Manager Informational Update
9. COUNCIL ITEMS
10. ADJOURNMENT

December 17, 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 a Certificate of Appointment to new Transportation Advisory Commissioner, Tim Silva.

1. CONSENT CALENDAR - Following the removal of item 1-B by a member of the audience, it was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered. Council Member Manne abstained from item 1-J.
 - A. Approval of Minutes – Regular meeting minutes of October 15, 2013, were approved.
 - C. A Resolution of the City of Tracy Accepting Placement of the Tracy Sports Hall of Fame Plaque in City Hall - Resolution 2013-190 accepted placement of the plaque.
 - D. Acceptance of Offsite Improvements Constructed by McDonald's USA, LLC, Related to Street and Utility Improvements on Eleventh Street and F Street - Resolution 2013-191 accepted the improvements.
 - 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 - Resolution 2013-192 accepted the project.
 - 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 - Resolution 2013-193 accepted the project.
 - 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 - Resolution 2013-194 authorized the purchase of mitigation credits.
 - 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 - Resolution 2013-195 awarded the construction 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 - Resolution 2013-196 awarded the construction 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 - Resolution 2013-197 approved the amendment.
- K. Approving the 2014 Calendar Year Budget for the Operation of the Tracy Material Recovery Facility and Solid Waste Transfer Station - Resolution 2013-198 approved the budget.
- 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 - Leon Churchill, Jr., City Manager, provided the staff report. 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. 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, 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.

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. Many of the existing Utilities Departments in the surrounding area included Water and Wastewater Treatment Plants and some are even electricity providers. Given the 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.

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 recommended 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.

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 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.

Staff recommended that Council 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.

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

Robert Tanner asked if the Deputy Director position was vacant and therefore the funds from that position would be used to fund this new position. Mr. Churchill stated yes. Mr. Tanner asked if the additional funds would come from the Wastewater Fund. Mr. Churchill stated funds would come from the Water and Wastewater fund.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2013-199, authorizing 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. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Veronica Vargas thanked staff and the City for moving forward with the sidewalk improvements on Valpico Road.

Steve Nicolaou addressed Council regarding the status of the investigation of the acts against Council Member Young and her family during the summer. Mr. Nicolaou requested that the community be informed whether they should be concerned about the presence of any hate groups that may have taken hold in the City of Tracy. Mr. Nicolaou wished everyone happy holidays and a safe and prosperous 2014.

Paul Miles addressed Council responding to Police Chief Hampton's remarks made at the December 3, 2013, Council meeting and stated Police Chief Hampton deceived the people of Tracy. Mr. Miles provided a letter dated December 17, 2013, and a handout titled "Definitions: What constitutes criminal behavior?" asking that they be made part of the record. Mr. Miles verbally submitted a formal complaint against Police Chief Hampton for dishonesty, violation of oath, and obstruction of

justice. Mr. Miles further stated that Dan Sodergren, City Attorney, and Leon Churchill, Jr., City Manager, cannot be a part of any investigation of Mr. Hampton. Mr. Miles requested a copy of the procedures that will be followed in the investigation of his complaint stating he expected to receive a copy of the procedures at the January 7, 2014, Council meeting.

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 – Steve Hanlon, Division Fire Chief, provided the staff report. 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. 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 that required abatement by Baylor Services, the contractor for the City. 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.

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.

Staff recommended that 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%.

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 asked if the City has spent part of the \$12,100 allocated for this fiscal year. Division Chief Hanlon stated this was the first time those funds were used.

Council Member Rickman thanked the Division Chief and Fire Department for watching out for fire hazards.

It was moved by Mayor Pro Tem Maciel and seconded Council Member Manne to adopt Resolution 2013-200 approving the final costs of weed abatement and authorizing the lien on the properties for which the City conducted weed abatement. Voice vote found all in favor; passed and so ordered.

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 – Andrew Malik, Development Services Director, provided the staff report. The new five-foot sidewalk is approximately 680 linear feet long and will be installed in the public right-of-way. 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 was advertised for competitive bids on September 20, and September 27, 2013; nine bids were received and publicly opened on October 15, 2013. 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.

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.

This is an approved CIP project 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 Gas Tax funds from the sidewalk project for other projects using Gas Tax funds in the City.

Staff recommended that Council 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.

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

Mayor Ives asked for clarification regarding alignment of the sidewalks. Mr. Malik stated the sidewalks will align once the widening of Valpico Road is completed.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2013-201 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. Voice vote found all in favor; passed and so ordered.

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 – Leon Churchill, Jr., City Manager, provided the staff report. The Schulte Road property is approximately 200 acres and is located on the south side of Schulte Road, west of Lammers Road. 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. The 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 the 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.

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, 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. 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. 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, 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 Road 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. 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. 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.

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.). 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.

The development possibilities discussed 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 a proposal from GSA. 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.

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

Consultant services will be necessary 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.

If 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. 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 Council chooses not to remove the use restrictions by making payments to the GSA, staff recommends that 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.

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.

The City's investment into the Schulte Road property totals \$3.2 million. 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. Staff recommended that the City not allow the property to revert at this time.

Staff recommended 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.

Council Member Rickman outlined various options including spending \$650,000 or pursuing a public/private partnership. Mr. Churchill stated any private partnership would lessen the City's outlay. Council Member Rickman asked what would happen if the City did nothing. Mr. Churchill stated the collective opinion is that the land will stay in its current state with land use restrictions but not revert to the Federal Government. Dan Sodergren, City Attorney, stated there seemed to be some inconsistency between the authorizing legislation and the deed that was granted by the Federal Government. Mr.

Sodergren recommended if Council chooses to not buy off the restrictions, that staff return at a later date and do further analysis of the status of the reversionary clause.

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

Robert Tanner asked for clarification regarding Surland's request to delay payment because they were going to spend \$2 million to purchase this property.

Paul Miles asked for information regarding the \$3.2 million prior investment in the property. Andrew Malik, Development Services Director, stated funds were used on the environmental process for a school and ball fields and construction of a well on the site. Mayor Ives stated there were also poles and an underground storage tank removed.

Mr. Miles stated he did not see any previous proposals for partnerships in the material provided. Mayor Ives explained that the intent was for the City to own the property and a private company to develop the property, creating a public/private partnership.

Mr. Miles asked if the City pursued development of the property, would it have to be annexed into the City. Mr. Malik stated if a solar project was proposed, the property could remain in the County as a conditional use under agricultural zoning; if the property was developed for anything else, it would have to go through environmental review including zoning, general plan amendment, and annexation, which would ultimately lead to annexation by LAFCO.

Mr. Miles asked if Council could direct staff to show him a letter where GWF indicates that a high power plant was not viable. Mayor Ives asked staff to provide the letter, if available, to Mr. Miles.

Dave Helm asked if the City owned the land. Mayor Ives stated the City owned 50 acres outright and 150 acres with restrictions. A discussion ensued regarding the City's efforts to date for developing the land and funds spent. Mr. Helm asked for clarification regarding Surland's request to delay a payment due to the City because Surland intended to purchase this property. Mr. Helm stated it seemed like a poor investment and suggested doing nothing with the property until someone comes up with a viable offer that will get the City its money back.

Dave Anderson suggested Council consider the alternative provided by the City Attorney and consider sitting on the property until the loose ends are tied up. Mr. Anderson stated if the City does consider a solar project, to look at partnering with the Department of Energy.

Paul Miles reminded Council that real property sales are required to go out to bid and that he hoped the City will seek the bid process as required by Code.

Council Member Manne asked if the majority of the \$3.2 million spent to date was on environmental work. Mr. Malik stated some improvements were done on the 50 acres the City owns and that two environmental impact reports were completed for two large proposed projects.

Mayor Ives asked if the \$3.2 million included the cost of purchasing the 50 acres. Mr. Malik stated he would have to check. Mayor Ives stated he believed it did include the price for the 50 acres.

Council Member Rickman asked for clarification regarding the property restrictions. Mr. Sodergren explained that the original legislation stated if the City used the property for education or recreation use and later abandon that use, the Federal government could revert the property. Mr. Sodergren further stated the City went back to Congress and received permission to buy back the revisionary rights which allows the GSA greater flexibility to buy these restrictions. Mr. Sodergren added that GSA has greater control and that staff would have to go back and negotiate with GSA.

Council Member Rickman asked if the City could save money by negotiating with GSA. Mr. Sodergren stated if Council directed, staff could request that GSA grant the City an extension of time. Council Member Rickman asked if that happened, could the City sit on the property. Mr. Sodergren stated yes.

Council Member Young asked if the government had proposed a use for the land before it was deeded to the City. Mr. Churchill stated a prison was proposed for the land. Council Member Young stated it would be a good idea to negotiate for a longer time frame. Mr. Churchill stated GSA indicated the City had 30 days from the end of November, 2013 to make a decision.

Council Member Young stated she did not believe there was enough information to make a decision, but that it would be beneficial for the City to have control over the property.

Mayor Pro Tem Maciel stated 15 years is enough and that the Schulte Road property has become a white elephant. Mayor Pro Tem Maciel provided a brief history of acquiring and developing the property. Mayor Pro Tem Maciel stated it would be worthwhile to eliminate the government restrictions and put the City in a position to take advantage of any investment possibilities. Mayor Pro Tem Maciel indicated the Cordes Ranch property may increase the property value. Mayor Pro Tem Maciel suggested Council authorize funding, put staff in a position to move forward and to continue negotiating to find the best deal for the City.

Council Member Manne stated the property was a big loser and was tempted to cut the City's loses. Council Member Manne stated he was in favor of lifting the restrictions in order to pursue investment opportunities.

Mayor Ives stated the \$3.2 million must include the \$950,000 cost to purchase the property. Mayor Ives also stated there were many places where the City could use \$550,000 rather than putting it in this project and did not believe the Federal Government can do anything with the property without going back to Congress.

Council Member Rickman stated he agreed with comments made by Mayor Ives. Council Member Rickman indicated the City should hold off spending additional funds and continue negotiations with GSA.

Mayor Pro Tem Maciel stated he was committed to not spend additional funds until more information is provided.

It was moved by Council Member Rickman and seconded by Council Member Manne to direct staff to enter into renegotiations with GSA regarding the 150-acre Schulte Road

property for additional time and a lower price. Voice vote found all in favor; passed and so ordered.

6. RECEIVE AND DISCUSS ITEMS REFERENCED IN THE MEMORANDUM DATED APRIL 26, 2013, FROM SURLAND COMPANIES TO THE CITY OF TRACY – Maria Hurtado, Assistant City Manager, provided the staff report. 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) 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 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'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. Ms. Hurtado detailed each of Surland's proposed deal points and provided information regarding the authorizing entity and where any action was taken.

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

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, the agreement requires TAC to pay the City a \$50,000 annual payment guarantee due by January 1, 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 to Turlock Air Center.

On June 18, 2013, the City Council approved an amendment to the agreement. 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.

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.

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 whether or not an agreement between Surland and TAC exists, other than the public statement made by Mr. Serpa at the October 15, 2013, Council meeting that Surland has no agreement with Stuhmer. This statement was during the public comment portion 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 - 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."

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.

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.

Surland Contingency 1A: *The City of Tracy shall on or before June 30, 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.*

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.*

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 ALUCP'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 as proposed by Surland in Contingency 1B. At the October 15, 2013, Council meeting, Council asked staff to return with information to evaluate what the override process would entail, which will be agendaized at a Council meeting in early 2014.

The proposed language in Contingency 1C contains three separate and specific actions.

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.*

The City of Tracy did not request an amendment to the Airport Land Use Compatibility Plan (ALUCP). Staff contacted San Joaquin Council of Government (SJCOG) staff to

update and facilitate review of a subsequent application, because SJCOG, 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 30, 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.*

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 30, 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.*

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.*

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.

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.

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.

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 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.

Staff recommended Council receive and discuss the items referenced in the memorandum dated April 26, 2013, from Surland Companies to the City of Tracy.

Council Member Rickman asked when City Manager or Assistant City Manager became aware of the agreement. Leon Churchill, Jr., stated in the spring of 2013. Council Member Rickman asked if there was a meeting to discuss the agreement. Mr. Churchill stated no meeting was held, the agreement was denied on the spot. Council Member Rickman asked who was aware of the agreement. Ms. Hurtado stated the normal review process that staff has taken is that a development team meets on a regular basis with developers. Ms. Hurtado added that the team has met with Tracy Hills and Surland to trouble shoot issues. Ms. Hurtado added that on at least three occasions the development team discussed the concepts with Surland and told Surland that an agreement was not the appropriate venue to amend the Ellis Specific Plan and suggested they submit an application to amend their plan. Ms. Hurtado stated therefore,

Surland was verbally informed that the concepts outlined in his memorandum would not be considered and subsequently Surland submitted an application to amend their Specific Plan.

Council Member Rickman asked if there were any negotiations before the memorandum was sent to the City. Ms. Hurtado stated during the weekly team meetings ideas are vetted.

Council Member Rickman asked how many public records act requests have been received pertaining to the airport in the last six months. Ms. Hurtado stated she did not know the exact number of requests, but stated there was a significant amount.

Council Member Rickman referred to a condition of the proposed agreement dated April 26, 2013, and the accompanying \$50,000 check from Surland, asking if Surland met the guarantee instead of the lease. Ms. Hurtado stated the City received a letter on July 1, 2013, from Mr. Stuhmer with the \$50,000 payment that was due based on the amended agreement; attached to Mr. Stuhmer's letter was a letter and check from Surland dated July 2, 2013, stating the payment enclosed was for the obligation in the fuel sales agreement with the City and Turlock Air Center (TAC). Ms. Hurtado added that the City accepted the \$50,000 payment submitted by TAC based on existing contractual obligations between the City and TAC.

Council Member Rickman asked if this would be considered a contract modification. Ms. Hurtado stated no, because the letter and payment was received from TAC.

Council Member Rickman referred to contingency 1a of the proposed agreement regarding revising the Airport Land Use Plan by modifying runway 12/30 to a maximum length of 3,996 feet. Council Member Rickman asked if the Council action on June 18, 2013, modifying the runway length would qualify it as a short general aviation runway based on the 2011 Cal Transportation Compatibility Zone. Ms. Hurtado stated yes, but only if the Airport Land Use Commission (ALUC) would have made that adjustment. Ms. Hurtado added that Council has oversight on the Airport Layout Plan, but the Council decision was not enough; the City would have had to update the Airport Layout Plan, file it with the FAA and have FAA acceptance of the plan. Ms. Hurtado stated the Council action was step one of four; the process was stopped at step one when the City learned shortening the runway could jeopardize funding.

Council Member Rickman stated on September 26, 2013, Council voted to have staff send an amendment of the Ellis Specific Plan to the SJCOG. Ms. Hurtado stated what Council voted on was for staff to bring back more information regarding the overrule process before a decision was made whether or not to go through that process.

Council Member Rickman asked if part of contingency C was met since the City sent the amendment to the ALUC. Andrew Malik, Development Services Director, added it was part of the normal application review process.

Council Member Rickman asked if an agent of the City entered into an oral agreement and the City Council became aware of the agreement and did nothing, can the agreement be ratified by non-action. Dan Sodergren, City Attorney, stated unless the City Manager had authority via City resolution or ordinance, it would be void. The Council could consider the agreement and would have to act on it.

Council Member Rickman asked if there was an oral agreement entered into and the Council did nothing and the item went to court, could the agreement be ratified because of non-action. Mr. Sodergren stated there could not be an oral agreement unless it was approved by Council or its delegate; the court would find that there was no agreement.

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

Robert Tanner stated it seemed that the City provided a verbal rejection but never followed up with a written notice and asked why a written notice did not take place. Mr. Tanner stated it alludes to the fact that the City did have an agreement because a check was written on Surland's account and not on TAC's account. Mr. Tanner further stated it seems there might have been an agreement between Surland and TAC and the City should have rejected the check.

Mayor Ives asked staff if a verbal rejection was normal policy and if accepting a third party check was normal. Ms. Hurtado stated typically proposals and ideas are discussed during the review process and prior to an application being submitted. During those discussions ideas are vetted out, and staff works with the applicant. In this case, no written response was given because the entire proposal was rejected and staff directed Surland to the proper process. Ms. Hurtado added that the City Manager could consider establishing an administrative policy requiring staff to provide written notice of rejections. Ms. Hurtado, referring to third party checks, provided an example of water bills being paid at the front desk, where a person brings in a relative to pay for their bill; the City doesn't question where it comes from, but applies it to the person's account. Ms. Hurtado stated in this case, the letter from TAC and the attached letter from Surland stated they were making a payment for the obligation between the City of Tracy and TAC for their annual payment that was due.

Dave Helm stated he recalled that Council was advised that the grant proposal limitations specifically dealt with runway width, not length, and that Council Members Manne and Rickman asked whether a runway length of 3,997 feet or 4,002 feet mattered, which seems to be in conflict with Ms. Hurtado's comments. Mr. Helm further stated he previously submitted an e-mail from Mr. Stuhmer dated April 12, 2013, directed to Rod Buchanan and Andrew Malik, where Mr. Stuhmer indicates that TAA, Skyview, Surland, and TAC were all in accord with the overall direction and vision for the development of TCY as a boutique general aviation airport. Mr. Helm asked if there was an FSO agreement already in place. Mr. Helm provided background on various emails between airport personnel, staff, Mr. Stuhmer and subsequent actions by City Council.

Mr. Helm asked who verbally told Mr. Serpa that their proposal was rejected. Mr. Helm stated it could be argued that the City did make an agreement based on the memo accompanying the check. Mr. Helm stated it was time for more transparency and a little less doublespeak.

Mayor Ives asked staff to respond regarding negotiating the agreement in April 2013. Ms. Hurtado stated the amendment to the agreement that Council approved earlier this year resulted in two major adjustments. One adjustment was a renegotiation of the flowage fee to \$.07 per gallon of fuel sales to be paid by TAC to the City of Tracy. Ms. Hurtado continued that the proposal in the Surland memo stated that the \$.07 per gallon fuel flowage should be paid by the City of Tracy to Surland, which is a very different proposal. Ms. Hurtado stated the other significant change was that the date of TAC's annual \$50,000 obligation payment was renegotiated to be due in April versus February.

Those adjustments were made in an effort by the City to receive payment from TAC and to continue doing business with them. Ms. Hurtado added that the City was not aware that TAC was not in proper legal standing at the time of the amendment and that the City Attorney's office was researching the issue.

Mayor Ives asked who can reject a proposal and in what manner. Ms. Hurtado stated the presentation was provided in a point by point manner based on previous direction by Council. Ms. Hurtado stated there was one memo from Surland to the City that contained ten points. Ms. Hurtado further stated the City rejected the entire memo.

Trina Anderson asked for clarification regarding the date that the runway was to be shortened to 3,997 feet, the discrepancy between the date of the cover letter and the date on the Surland check, and the \$.07 per gallon for flowage fee due from TAC. Ms. Anderson stated TAC has not paid the fuel flowage fee, the \$50,000 due since 2012, and has a suspended license. Ms. Anderson asked why the City accepted a check from Surland for a TAC obligation. Ms. Anderson stated SJCOG would have considered shortening the runway if this issue had not been brought up.

Ms. Hurtado stated on June 18, 2013, Council directed staff to reduce the runway length from 4,002 feet. to 3,997 feet; and on October 15, 2013, Council directed staff to revert that decision and return the runway length back to 4,002 feet once the FAA indicated shortening the runway length could impact potential funding. Mayor Ives asked how the check related to the letter from Mr. Stuhmer. Ms. Hurtado stated the City received a letter from Mr. Stuhmer indicating he was enclosing payment for his annual obligation to the City. In addition, attached to Mr. Stuhmer's letter was a memo and check from Surland. Ms. Hurtado stated the City accepted the payment as TAC's obligation to the City.

Mayor Ives asked if the City is receiving the flowage fee payment from TAC. Ms. Hurtado referred to page three of nine of the contract with TAC, section 19.2 and 20.1, which explains the relationship between the per gallon flowage fee and the \$50,000 annual payment. Ms. Hurtado provided a brief history of the fuel sales and the basis for the contract. Ms. Hurtado stated the City is not getting a separate check of \$.07 per gallon for fuel sales; the City is receiving an annual payment of \$50,000. Ed Lovell, Management Analyst II, added that the \$50,000 is an upfront payment and if there were sales beyond \$50,000, TAC would have to pay the City.

Mayor Ives asked if TAC was in arrears for 2012. Mr. Lovell stated no, TAC was current for 2012.

Dave Anderson, President of the Tracy Airport Center, stated it was clear from the airport memorandum that it was not the first discussion on the matter. Mr. Anderson presented information including dates, emails, and various actions taken related to changing the runway length. Mr. Anderson provided a packet of information titled "Item 7a dated September 2013". Mr. Anderson suggested that Council go through the list and the documentation he provided.

Mayor Ives asked staff for clarification regarding the request to COG and Council direction on June 18, 2013. Ms. Hurtado stated on June 18, 2013, Council directed staff to reduce the runway length to 3,997. Staff informed SJCOG of the action and indicated an application would be submitted. Ms. Hurtado further stated on July 18, 2013, the applicant submitted an application which went to ALUC who found that the application

was not consistent with their compatibility plan. Staff returned to Council on October 15, regarding the ALUC determination. On that same date, Council directed staff to return to Council on a subsequent date with more information on the overrule process before Council decided whether or not to pursue an overrule.

Council Member Rickman asked what did not take place on Item C. Ms. Hurtado stated the ALUC did not re-designate the runway as a short runway; they found that it was inconsistent. Ms. Hurtado added that Council did not overrule ALUC's decision, but asked for additional information before making a decision.

Robert Tanner asked if minutes of the meetings were taken with the developers. Ms. Hurtado stated not typically.

Mayor Ives called for a recess at 9:38 p.m., reconvening at 9:43 p.m.

George Riddle asked why Surland felt he was entitled to the \$.07 fuel flowage fee and if it was discussed by staff. Mr. Riddle indicated they did not see any evidence of a 2012 check from Mr. Stuhmer. Mr. Riddle asked why the runway was referred to as a "short" runway when the 2011 ALUCP designates it as "medium" for runway length. Mr. Riddle added that there was no spill kit around the fuel area.

Ms. Hurtado stated staff could only speculate that the reason Surland believed they would be entitled to the fuel flowage fee was if the City accepted the \$50,000 check.

Mayor Ives asked if Mr. Stuhmer made the \$50,000 payment for 2012. Mr. Lovell stated the check was received at the end of 2011. Mayor Ives asked for clarification regarding a short and medium runway. Bill Dean, Assistant Development Services Director, stated the runway was a hybrid cone.

Dave Helm asked if the City accepted check 1063 in the amount of \$25 for rent at the fuel service operation. Mr. Helm asked if notes are taken when the development team meets, and if not, why. Mr. Helm asked if the City was evicting Mr. Stuhmer and TAC at the airport. Mr. Helm asked for clarification regarding meetings with Surland and/or their representatives.

Mayor Ives asked if the City received a check for \$25. Mr. Lovell explained the \$25 represented the difference between what was paid and what was due.

Mayor Ives asked for clarification regarding how the development team meets and if any notes or minutes are taken. Ms. Hurtado stated typically minutes are not taken, the attendees vary depending on the issue, and there is no tracking of who attends.

Mayor Ives asked if Surland and others represent the same team. Ms. Hurtado stated yes, including Surland's consultants and lawyers.

Mayor Ives asked if there was some direction to the consultant to shorten the runway prior to Council direction. Mr. Lovell stated it was done in preparation of the application.

Les Serpa, Surland Companies, indicated a survey was done that found the airport runway was 3,996 feet. Mr. Serpa stated Surland has always disagreed with the ALUCP regarding the hybrid cone. Mr. Serpa stated whenever Surland presents a proposal, it goes to staff, who forwards it to legal and then it is brought to Council. Mr. Serpa stated

in this case a concept was presented that went nowhere; nothing was implemented or processed. Mr. Serpa stated staff is obligated to process applications; their application was forwarded to ALUC who found that the application was inconsistent. Mr. Serpa stated there is no agreement with staff, the City or the Council.

A discussion ensued regarding runway lengths and runway designations.

Council Member Rickman asked if the \$50,000 condition was met. Ms. Hurtado stated no.

Council Member Rickman asked if the contingency to shorten the runway length to 3,997 feet was met. Ms. Hurtado stated on June 18, 2013, yes; that decision was reversed by Council on October 15, 2013.

Council Member Rickman asked if condition b was met. Ms. Hurtado stated no; that the City does not have the authority to change the runway length.

Council Member Rickman asked for clarification regarding the determination of inconsistency. Ms. Hurtado stated it was not rejected, it was found to be inconsistent.

Council Member Rickman referred to condition c, indicating the action taken by City Council on June 18, 2013, was for economic purposes. Ms. Hurtado stated the action taken on June 18, was to take advantage of future changes at the airport including the reduction in runway width which would make it compatible with current operations at the airport. Ms. Hurtado stated staff did not realize until further negotiations with the FAA that it could jeopardize funding.

Council Member Young stated it appears that it was communicated during a development meeting that any proposal would have to be approved by Council. Council Member Young stated it was not clear if Council was making decisions because staff was twisting their arms. Council Member Young stated this was a good exercise in transparency.

Council Member Rickman stated the main goal is to be transparent and there were still questions that have not been answered for him. Council Member Rickman stated the whole process has been frustrating and was unfortunate that there had to be a third party to bring it to Council's attention. Council Member Rickman thanked Ms. Hurtado for bringing the item forward.

Council Member Manne thanked those who asked questions tonight and in the past. Council Member Manne agreed that it was best to discuss these items in public and thanked staff for preparing the report and answering all the questions. Council Member Manne stated if anything was to be learned from this, was to make the choice to respond to all proposals in writing. Council Member Manne stated the answer is to be transparent and be grateful that we can have these types of conversations.

Mayor Pro Tem Maciel thanked staff, especially Ms. Hurtado, for preparing the report. Mayor Pro Tem Maciel stated the report was prepared item by item, just as Council directed. Mayor Pro Tem Maciel further stated he believed the questions were answered, specifically that there was no agreement or anything to strongly suggest there was an agreement. Mayor Pro Tem Maciel added that there was never an attempt to

cover up anything, and stated he hoped that the City does not get caught up in this type of whirlwind in the future.

Mayor Ives thanked staff for indulging the Council in this exercise. Mayor Ives added that there will always be people that take exception to direction Council makes. Mayor Ives stated there were lessons to be learned and a cost to what some call transparency and others call suspicion.

Council accepted the report.

7. ITEMS FROM THE AUDIENCE – Paul Miles stated he welcomed the opportunity to air his concerns openly with Police Chief Hampton, but would rather have had time to prepare.

Trina Anderson asked that staff contact her regarding an Automated Weather Observation Service that was promised by GWF, and for information regarding City vehicles that claim they are a clean air vehicle provided by the GWF Tracy Peaker Plant Oversight Committee.

8. STAFF ITEMS

- A. Receive and Accept the City Manager Informational Update – R. Leon Churchill, Jr., City Manager, provided the report. Council accepted the informational update.

Police Chief Hampton addressed Council responding to comments made by Mr. Miles during Items from the Audience. Police Chief Hampton stated Mr. Miles has received copies of the complaint policy on several occasions and stated the policy relates to all police personnel, including the Police Chief. Police Chief Hampton indicated he would be willing, if the City believed it was necessary, to provide the results of any investigation conducted into his performance over the last 36 months of employment with the City.

Paul Miles responded that there needed to be policy change regarding individuals being recorded in their own home, and a policy that allows the public to review internal affairs investigations. Mr. Miles apologized to Police Chief Hampton for being harsh.

Chief Hampton accepted the apology.

9. COUNCIL ITEMS – Council Member Rickman announced that the new Parks and Recreation Guide was available. Council Member Rickman wished everyone a Merry Christmas and a safe and happy New Year.

Council Member Young requested future agenda items regarding 1) a citizen's committee to address complaints; 2) individuals being recorded in their homes and surveillance; and 3) the Van Lehn report.

Council Member Manne wished everyone a Merry Christmas and a happy New Year.

10. ADJOURNMENT – It was moved by Council Member Manne and seconded by Council Member Young to adjourn. Voice vote found all in favor; passed and so ordered. Time 10:46 p.m.

The above agenda was posted at the Tracy City Hall on December 12, 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

ACCEPTANCE OF THE DOWNTOWN PLAZA PROJECT CIP - 78117, COMPLETED BY KNIFE RIVER CONSTRUCTION OF STOCKTON, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

The contractor, Knife River Construction of Stockton, California, has completed the construction of Downtown Plaza Project CIP - 78117, in accordance with plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends Council accept the project to enable the City Clerk to release the contractor's bonds and retention.

DISCUSSION

On June 24, 2011, City Council awarded a construction contract to Knife River Construction of Stockton, California for construction of the Downtown Plaza Project CIP - 78117, in the amount of \$2,300,200.

The scope of work for this project involved reconfiguration of the existing street and landscaping, installation of a water feature, and a traffic circle on the City's right-of-way along Sixth Street between the Tracy Transit Center and existing restaurant buildings to the north east of Central Avenue.

The City's in-house engineering staff completed the street design, landscaping, specifications and contract documents. The specialty design for the water feature and traffic circle were completed by consultants after approval of Professional Services Agreements (PSAs) by City Council.

Seven change orders were issued in the total amount of \$732,581.43 for this project.

One change order in the amount of \$243,559.70 was executed to construct an additional roundabout at the intersection of Sixth Street and D Street to address traffic circulation by separating the Sixth Street traffic from the Frontage Street traffic. The change order work also included landscaping, concrete paving, cobble paving, removal, and replacement of existing sidewalk, curbs, gutters, and asphalt concrete.

A second change order, in the amount of \$242,347, was executed for the installation of a sculpture in the roundabout at the intersection of Central Avenue and Sixth Street and a kiosk in the plaza area. Total funding allocated to this project included the estimated cost of the statue and the kiosk. However, the cost of fabrication, delivery and installation of both statue and kiosk were not included in the original bid documents of the project pending finalization and approval of details.

A third change order in the amount of \$66,355.49 was executed to reconstruct the existing eastbound Sixth Street between Central Avenue and D Street. Due to funding constraints, this portion of the street was scheduled for slurry sealing only. However, during construction, it was noticed that the existing street section was failing and needed to be reconstructed. Project contingency had adequate funding to do this additional work.

The remaining change orders were for extra work needed to resolve conflicts with numerous older, existing utilities at various locations due to lack of as built records.

Status of budget and project costs is as follows:

A. Construction Contract Amount	\$ 2,300,200.00
B. Change orders	\$ 732,581.43
C. Design, construction management, inspection, Testing, & miscellaneous expenses (Estimated)	\$ 728,207.00
D. Project Management Charges (Estimated)	<u>\$ 202,210.00</u>
Total Project Costs	\$ 3,963,198.43
Budgeted Amount	\$ 4,199,910.00

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 - 78117 is an approved Capital Improvement Projects with sufficient funding has no fiscal impact to the General Fund.

RECOMMENDATION

That City Council, by resolution, accept the Downtown Plaza Project CIP - 78117, completed by Knife River Construction of Stockton, 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 2014- _____

ACCEPTING THE DOWNTOWN PLAZA PROJECT CIP - 78117, COMPLETED BY KNIFE RIVER CONSTRUCTION OF STOCKTON, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS On June 24, 2011, City Council awarded a construction contract to Knife River Construction of Stockton, California for construction of the Downtown Plaza Project CIP - 78117, in the amount of \$2,300,200, and

WHEREAS, The contractor has completed the construction of the Downtown Plaza Project CIP - 78117, in accordance with plans, specifications, and contract documents, and

WHEREAS, Seven change orders were issued in the net amount of \$732,581.43, and

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

A. Construction Contract Amount	\$ 2,300,200.00
B. Change orders	\$ 732,581.43
C. Design, construction management, inspection, Testing, & miscellaneous expenses (Estimated)	\$ 728,207.00
D. Project Management Charges (Estimated)	<u>\$ 202,210.00</u>
Total Project Costs	\$ 3,963,198.43
Budgeted Amount	\$ 4,199,910.00

WHEREAS, CIP - 78117 is an approved Capital Improvement Project with sufficient funding allocated from the Redevelopment Agency and there will be no fiscal impact to the General Fund. All remaining funds will be transferred back into the CIP for future construction;

NOW, THEREFORE BE IT RESOLVED That City Council accepts the Downtown Plaza Project CIP - 78117, completed by Knife River Construction of Stockton, 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.

* * * * *

The foregoing Resolution 2014-_____ was adopted by City Council on the 18th day of February, 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.C

REQUEST

ACCEPTANCE OF THE INSTALLATION OF FIBER OPTICS FROM CITY HALL TO THE TRANSIT STATION - CIP 77543, COMPLETED BY KERTEL COMMUNICATION INCORPORATED (DBA SEBASTIAN) OF FRESNO, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

The contractor has completed construction of the installation of fiber optics from City Hall to the Transit Station - CIP 77543 in accordance with project plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends City Council accept the project to enable the City Engineer to release the contractor's bonds and retention.

DISCUSSION

On August 20, 2013, City Council awarded a construction contract to Kertel Communication Incorporated (dba Sebastian) of Fresno, California, in the amount of \$142,345 for the installation of fiber optics from City Hall to the Transit Station CIP - 77543.

The scope of this project involves installation of fiber optics from City Hall to the Transit Station. This installation will enable the Transit Station to have a WIFI network and enhance the communication system between City Hall and the Transit Station.

No change orders were issued.

Status of budget and project costs is as follows:

A. Construction Contract Amount	\$142,345
B. Change orders	\$ ----
C. Design, construction management, inspection, testing, & miscellaneous expenses (Estimated)	\$ 30,938
D. Project Management Charges (Estimated)	<u>\$ 17,490</u>
Total Project Costs	\$ 190,773
Budgeted Amount	\$ 250,000

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 is not related to the Council's Strategic Plans.

FISCAL IMPACT

This project is part of a larger project for various improvements scheduled for the Transit Station, and is funded from various Federal and State grants. The completion of this project will have no impact to the General Fund. All remaining unused funds will be transferred back in to CIP 77543 to complete other improvements for which grant funding was originally received.

RECOMMENDATION

That City Council accept, by resolution, the installation of fiber optics from City Hall to the Transit Station - CIP 77543, completed by Kertel Communication Incorporated (dba Sebastian) of Fresno, 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 2014- _____

ACCEPTING THE INSTALLATION OF FIBER OPTICS FROM CITY HALL TO THE TRANSIT STATION - CIP 77543, COMPLETED BY KERTEL COMMUNICATION INCORPORATED (DBA SEBASTIAN) OF FRESNO, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS, On August 20, 2013, City Council awarded a construction contract to Kertel Communication Incorporated (dba Sebastian) of Fresno, California, in the amount of \$142,345 for the installation of fiber optics from City Hall to the Transit Station CIP 77543, and

WHEREAS, The contractor has completed construction of the installation of fiber optics from City Hall to the Transit Station - CIP 77543 in accordance with project plans, specifications, and contract documents, and

WHEREAS, No change orders were received, and

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

A. Construction Contract Amount	\$142,345
B. Change orders	\$ ----
C. Design, construction management, inspection, testing, & miscellaneous expenses (Estimated)	\$ 30,938
D. Project Management Charges (Estimated)	<u>\$ 17,490</u>
Total Project Costs	\$ 190,773
Budgeted Amount	\$ 250,000

WHEREAS, CIP 77543 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 CIP 77543;

NOW, THEREFORE BE IT RESOLVED That City Council accepts the installation of fiber optics from City Hall to the Transit Station CIP 77543, completed by Kertel Communication Incorporated (dba Sebastian) of Fresno, 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 2014-_____ was adopted by City Council on the 18th day of February, 2014, 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 MUIRFIELD 7 – PHASE FOUR, TRACT 3779, FOR STANDARD PACIFIC CORPORATION

EXECUTIVE SUMMARY

Standard Pacific Corporation, a Delaware corporation, has completed Subdivision Improvements for Muirfield 7 – Phase Four, Tract 3779, in accordance with the Subdivision Improvement Agreement, project plans, and specifications. Staff recommends City 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 Subdivision Improvement Agreement for Muirfield 7 – Phase Four, Tract 3779. This subdivision is located east of Corral Hollow Road, north of Valpico Road and contains 61 single family dwelling lots constructed as part of the Muirfield 7 – Phase Four, Subdivision. Mackay & Soms Civil Engineers Incorporated, of Pleasanton, California prepared the improvement plans titled “Improvement Plans for Muirfield 7 – Phase Four, Tract 3779”.

Standard Pacific Corporation, the developer of Muirfield 7 – Phase Four, Tract 3779, has completed all work required in accordance with the agreement, and has requested acceptance of the subdivision public improvements. The estimated cost of infrastructure improvements is as follows:

Cost Breakdown:

Road	\$ 374,420
Water	\$ 116,910
Sewer	\$ 82,680
Street Drainage	\$ 45,870
Curbs/gutter/sidewalk	\$ 298,730
Street Lights	\$ 24,000
Miscellaneous & Contingency	<u>\$ 94,260</u>
Total	\$1,036,870

A total of 2.5027 acres (109,017 square feet) has been dedicated as part of the public right-of-way. The project carries a one-year warranty bond for all public improvements.

STRATEGIC PLAN

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

FISCAL IMPACT

This item is a routine operational item and there will be no fiscal impact to the General Fund.

RECOMMENDATION

That City Council, by resolution, accept the improvements as completed in accordance with the Subdivision Improvement Agreement for Muirfield 7 – Phase Four, Tract 3779, including the project plans and specifications. 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.

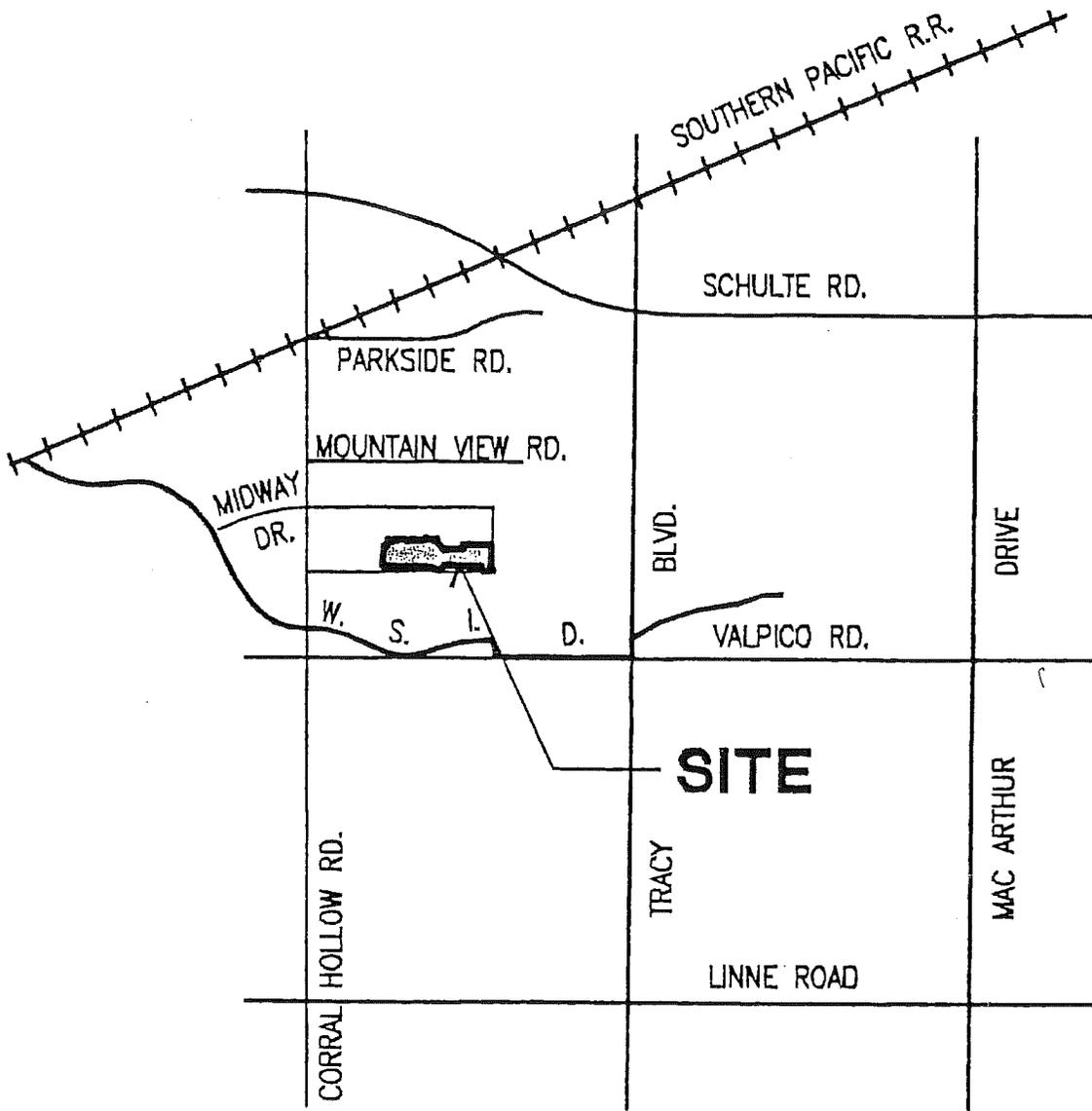
Prepared by: Paul Verma, Senior Civil Engineer

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 - Vicinity Map



LOCATION MAP

N.T.S.



NORTH

RESOLUTION 2014-_____

ACCEPTING MUIRFIELD 7 – PHASE FOUR, TRACT 3779, FOR STANDARD PACIFIC CORPORATION

WHEREAS, On July 2, 2013, City Council approved the Subdivision Improvement Agreement for Muirfield 7 – Phase Four, Tract 3779, and

WHEREAS, Standard Pacific Corporation, the developer of Muirfield 7 – Phase Four, Tract 3779, has completed all work required to be done in accordance with the agreement, and has requested acceptance of the subdivision public improvements, and

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

Cost Breakdown:

Road	\$ 374,420
Water	\$ 116,910
Sewer	\$ 82,680
Street Drainage	\$ 45,870
Curbs/gutter/sidewalk	\$ 298,730
Street Lights	\$ 24,000
Miscellaneous & Contingency)	<u>\$ 94,260</u>
Total	\$1,036,870

WHEREAS, A total of 2.5027 acres (109,017 square feet) has been dedicated as part of the public right-of-way;

NOW, THEREFORE, BE IT RESOLVED, That City Council accepts the improvements as completed in accordance with the Subdivision Improvement Agreement for Muirfield 7 – Phase Four, Tract 3779, including the project plans and specifications. 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 2014-_____ was passed and adopted by the Tracy City Council on the 18th day of February, 2014, 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 POLICE FIREARMS PRACTICE RANGE RESTROOM BUILDING - CIP 71072C, COMPLETED BY SOUTHLAND CONSTRUCTION OF PLEASANTON, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

The contractor has completed construction of the Restroom Building at the Police Firearms Practice Range Facility CIP - 71072C 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 Engineer to release the contractor's bonds and retention.

DISCUSSION

On June 18, 2013, City Council awarded a construction contract for the Restroom Building at the Police Firearms Practice Range Facility – CIP 71072C, to Southland Construction of Pleasanton, California in the amount of \$156,425. This is one of the sub projects of a larger improvement project to be completed at the facility.

The scope of work for this project included construction of a restroom facility with four unisex toilets consisting of prefabricated masonry walls and a steel roof.

One change order was issued in the amount of \$4,862.94 for this project which consisted of installation of underground conduit and a pull box from a PG&E pole to the rest room building, installation of a concrete pad for the booster pump station and other miscellaneous items to pay for unforeseen conditions.

Status of budget and project costs is as follows:

A. Construction Contract Amount	\$156,425.00
B. Change orders	\$ 4,862.94
C. Design, construction management, inspection, Testing, & miscellaneous expenses (Estimated)	\$ 10,000.00
D. Project Management Charges (Estimated)	<u>\$ 15,000.00</u>
Total Project Costs	\$186,287.94
Total Available Amount for Restroom and Other Improvements (to be completed later)	\$461,400.00

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 71072C is an approved Capital Improvement Project with sufficient funding and there will be no fiscal impact to the General Fund. All remaining funds will be transferred back into CIP 71072, for additional improvements to be completed at the Police Firearms Practice Range Facility.

RECOMMENDATION

That City Council by, resolution, accept construction of the Restroom Building at the Police Firearms Practice Range Facility - CIP 71072C, completed by Southland Construction of Pleasanton, 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 2014- _____

ACCEPTING THE POLICE FIREARMS PRACTICE RANGE RESTROOM BUILDING - CIP 71072C, COMPLETED BY SOUTHLAND CONSTRUCTION FROM PLEASANTON, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS On June 18, 2013, City Council awarded a construction contract for the Police Firearms Practice Range Restroom Building - CIP 71072C, to Southland Construction of Pleasanton, California in an amount not-to-exceed \$156,425, and

WHEREAS, The contractor has completed construction of the Restroom Building at the Police Firearms Practice Range Facility - CIP 71072C, in accordance with project plans, specifications, and contract documents. Project costs are within the available budget, and

WHEREAS, One change order in the amount of \$4,862.94 was received, and

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

A. Construction Contract Amount	\$156,425.00
B. Change orders	\$ 4,862.94
C. Design, construction management, inspection, testing, & miscellaneous expenses (Estimated)	\$ 10,000.00
D. Project Management Charges (Estimated)	<u>\$ 15,000.00</u>
Total Project Costs	\$186,287.94
Budgeted Amount	\$461,400.00

WHEREAS, CIP 71072C is an approved Capital Improvement Project with sufficient funding and there will be no fiscal impact to the General Fund. All remaining funds will be transferred back into CIP 71072 for additional improvements;

NOW, THEREFORE BE IT RESOLVED That City Council, accepts construction of the Restroom Building at the Police Firearms Practice Range Facility - CIP 71072C, completed by Southland Construction of Pleasanton, 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.

* * * * *

Resolution _____
Page 2

The foregoing Resolution 2014-_____ was adopted by City Council on the 18th day of February, 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.F

REQUEST

APPROVE VARIOUS AMENDMENTS TO THE PROFESSIONAL SERVICES AGREEMENTS WITH KIMLEY-HORN AND ASSOCIATES FOR COMPLETION OF ROADWAY ANALYSIS FOR CORDES RANCH AND TRACY HILLS DEVELOPMENTS, AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENTS

EXECUTIVE SUMMARY

During the processing of the Cordes Ranch Specific Plan, additional traffic analyses were requested by the California Department of Transportation (Caltrans) to address their concerns at the Mountain House Parkway interchanges with I-205 and I-580. In addition, the Cordes Ranch development has begun planning their initial projects and has requested the City to identify the trigger points of roadway improvements during various scenarios. Similarly, Tracy Hills is planning their Phase One development and has requested the City to review the traffic circulation. Approval of amendments to the existing Professional Service Agreements (PSAs) with Kimley-Horn and Associates will expedite the completion of the above tasks.

DISCUSSION

The City Council adopted a Roadways and Transportation Master Plan in November 2012, to facilitate new developments. Since then various developers have been working on planning their respective specific plans and projects. Owners of both Cordes Ranch and Tracy Hills developments have requested the City to continue using the services of Kimley-Horn and Associates to complete the various tasks associated with their specific plans and initial planning as discussed below.

Cordes Ranch Development

On June 4, 2013, City Council approved a PSA with Kimley-Horn and Associates to provide professional services to address traffic related issues for the Cordes Ranch Development. Amendments to this PSA are necessary to complete additional tasks required during the specific plan and initial planning phases.

1. Amendment One to PSA with Kimley-Horn and Associates for infrastructure improvements within the Cordes Ranch Project for a not to exceed amount of \$38,285.

Additional services are needed from Kimley-Horn and Associates to evaluate different scenarios of development within the Cordes Ranch development area. This analysis identifies the trigger of roadway improvements with proposed developments. Prologis, owner of a portion of Cordes Ranch, has reviewed the proposal and has requested the City to proceed with this task.

2. Amendment Two to PSA with Kimley-Horn and Associates for infrastructure improvements and development permits with the Cordes Ranch Project for a not to exceed amount of \$38,196.

During processing of the Cordes Ranch Specific Plan, additional services were needed from Kimley-Horn and Associates to provide various traffic analyses to address Caltrans' concerns. This included additional traffic analysis at interchanges of Mountain House Parkway with I-205 and I-580. Kimley-Horn and Associates have submitted amendments to their existing PSA to complete this task for a not to exceed amount of \$38,196. Prologis, a major developer within Cordes the Cordes Ranch area, has reviewed the proposal and requested the City to proceed with the work.

3. Amendment Two to PSA with Kimley-Horn and Associates for the Tracy Hills Specific Plan Amendment Environmental Impact Report and Technical Analysis related to tentative maps for a not to exceed amount of \$35,597.

Tracy Hills is planning the development of Phase One of their project and has requested the City to review the traffic circulation within the proposed development. Kimley-Horn and Associates has submitted a proposal to complete this task for a not to exceed amount of \$35,597.

STRATEGIC PLAN

This agenda item is consistent with the City's Economic Development Strategy and meets the goals to ensure physical infrastructure and systems necessary for development.

FISCAL IMPACT

Approval of these PSA amendments will have no impact to the General Fund. The cost of services for PSA amendments for Cordes Ranch will be paid through the existing Cost Recover Agreement (CRA) with the City. Integral Communities Development, the applicant for the Tracy Hills project will provide a cash deposit for the amendment related to their project before work commences.

RECOMMENDATION

It is, therefore, recommended that City Council, by resolution, approve the PSA amendments:

1. Amendment One to PSA with Kimley-Horn and Associates to provide additional services to evaluate roadway infrastructure trigger points in different planning areas within Cordes Ranch for a not to exceed amount of \$38,285, and
2. Amendment Two to PSA with Kimley-Horn and Associates to update the Roadways Master Plan and provide traffic analysis for the interchanges of Mountain House Parkway with I-205 and I-580 for a not to exceed amount of \$38,196, and
3. Amendment Two to PSA with Kimley-Horn and Associates for the Tracy Hills Specific Plan Amendment Environmental Impact Report and Technical Analysis related to tentative maps for a not to exceed amount of \$35,597, and authorize the mayor to execute the agreement.

Prepared by: Kuldeep Sharma, City Engineer

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

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

ATTACHMENTS

Attachment A – Amendment One to PSA with Kimley-Horn and Associates to evaluate roadway infrastructure trigger points in different planning areas within Cordes Ranch

Attachment B – Amendment Two to PSA with Kimley-Horn and Associates to update the Roadways Master Plan

Attachment C – Amendment Two to PSA with Kimley-Horn and Associates for the Tracy Hills Specific Plan Amendment Environmental Impact Report and Technical Analysis related to tentative maps in the Tracy Hills area.

CITY OF TRACY
AMENDMENT NO. 1 TO
PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
For Infrastructure Improvements Within the Cordes Ranch Project

This Amendment No. 1 (hereinafter "Amendment") to the Professional Services Agreement is made and entered into by and between the City of Tracy, a municipal corporation ("CITY"), and Kimley-Horn & Associates, Inc. (hereinafter "CONSULTANT").

and EN
RECITALS

- A. The CITY and CONSULTANT entered into Professional Services Agreement (hereinafter "Agreement") for Infrastructure Improvements within the Cordes Ranch Project.
- B. Additional services from CONSULTANT are required to complete the project.

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 that are not specifically modified by this Amendment shall remain in full force and effect.
2. **Terms of Amendment.** Section 1, "Scope of Services" of the Agreement is amended to provide additional technical analysis as described in detail under RECITAL A and Section 5, "Compensation", is amended to add **THIRTY EIGHT THOUSAND, TWO HUNDRED AND EIGHTY FIVE DOLLARS (\$38,285)** to the contract amount.
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 this Amendment on behalf of the respective legal entities of the CONSULTANT and the CITY. This Amendment shall inure to the benefit of and be binding upon the parties thereto and their respective successors and assigns.

CITY OF TRACY
AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT
for Infrastructure Improvements Within the Cordes Ranch Project
Page 2 of 2

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

CITY OF TRACY

By: _____
Brent H. Ives
Title: MAYOR
Date: _____
Attest: _____

By: _____
Sandra Edwards
Title: CITY CLERK
Date: _____

Approved as to form

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

CONSULTANT

By: 
Laura Worthington-Forbes
Title: Regional Vice President
Date: 12-16-2013

By: 
Enda Melvin
Title: Assistant Secretary/Senior Vice President
Date: 12-16-2013

EXHIBIT A
SCOPE OF SERVICES

For Infrastructure Improvements Within the Cordes Ranch Project

Amendment No.: 01

The undersigned hereby amend the Agreement between the City of Tracy and Kimley-Horn & Associates, Inc. for the reasons indicated in the manner indicated below:

Brief Description of Amendment:

Kimley-Horn assessed the proposed Delta Project for consistency with the Cordes Ranch Specific Plan. After the first assessment, the site plan changed and an additional driveway was added which resulted in a rerouting of traffic. Scenarios were added to the scope for consistency analysis and phasing of the project. In addition, the City requested that a trigger analysis be performed based on buildout of the surrounding land uses and the TMP identified improvements.

Kimley-Horn will prepare a technical memorandum for the City of Tracy to evaluate the proposed Delta Project (Area 1) in the context of the Cordes Ranch FEIR. In addition, KHA will assist the City staff in determining the required roadway and intersection improvements to accommodate the development of the Delta Project and potential adjacent projects as identified by the project team. This analysis will include the evaluation of several alternatives, all within the range of development described by the Cordes Ranch EIR. Each deliverable will be documented as a separate technical memorandum.

Task 1: Area 1 Phase 1 Traffic Analysis Consistency Memorandum – Kimley-Horn and Associates will obtain land use and trip generation information for Project Delta Phase I from the project team for buildout and Phase 1 conditions. In addition, the TRAFFIX file data and traffic distribution data will be obtained from Fehr and Peers for the Cordes Ranch EIR project. It is understood that the Project Delta site will have access from Old Schulte Road onto Hansen Road and onto Road I and Road E. EV access only will be provided from Hansen Road. KHA will extract the geometry and volume data from the DEIR and FEIR reports for Cordes Ranch. This project is understood to be planned for implementation in the short term (2016 for Phase 1) and thus only short term conditions will be analyzed.

Task 2a: Cordes Ranch Road Infrastructure Development - Using the trip generation determined for Project Delta as well as other information provided in the DEIR, peak-hour level of service (LOS) analysis will be conducted for weekday AM and PM peak-hours for the following scenarios:

- A. Existing Conditions without project (2013)
- B. Area 1- Project Delta (2013)
- C. A combination of Area 1 – Project Delta, Area 2, Area 3a/3b, and Area 4 (2018) through an iterative process.

The peak hour LOS analysis will be conducted for up to 15 driveways and the following intersections (total of up to 25 locations) for Scenarios A through C:

1. Mountain House Parkway / I-205 WB Ramps
2. Mountain House Parkway / I-205 EB Ramps
3. Mountain House Parkway / Old Schulte Road
4. Mountain House Parkway / I-580 WB Ramps
5. Mountain House Parkway / I-580 EB Ramps
6. Hansen Road / Road E
7. Hansen Road / New Schulte Road
8. Road E / Road I
9. New Schulte Road / Road I
10. Lammers Road / Old Schulte Road

LOS will be determined using methods defined in the Highway Capacity Manual, 2010, using appropriate traffic analysis software and mitigation improvements identified.

KHA will evaluate AM and PM peak-hour vehicle queuing for all study area intersections for which LOS analysis is completed

Task 2b: Technical Memorandum for Scenario Analysis Meetings - Graphics, tables and technical analysis will be prepared for the scenario analyses. This will include cross section, turn pocket, intersection control, turn lane storage, and road network connection recommendations as well as a determination of the proportionate share of traffic attributable to each project under each scenario. KHA will prepare and submit an electronic (PDF) version of the draft letter report to the Client.

KHA will address one set of consolidated, non-conflicting comments. If the comments require additional analysis or data collection beyond that provided for in this Scope of Services, this work will be billed on an hourly basis in accordance with the attached rate schedule. Subsequently, KHA will prepare and submit an electronic (PDF) version of the final letter report to the Client.

Reason for Amendment:

Services provided, and to be provided outside of the original scope of services.

Cost Adjustment:

Project	Estimated Fee
Delta TIA Phase 1, New Access and Implementation	\$10,089
Cordes Implementation Areas 1-4 Analysis	\$25,900
Expenses, travel, printing	\$2,296
Total Fee	\$38,285

Time/Schedule Adjustment: None

Revised Deliverables: Additional technical memorandums, graphics, and meetings

CITY OF TRACY
AMENDMENT NO. 2 TO
PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
CEQA Documentation for Infrastructure Improvements & Development Permits
Within the Cordes Ranch Project

This Amendment No. 2 (hereinafter "Amendment") to the Professional Services Agreement is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "CITY"), and Kimley-Horn & Associates, Inc. (hereinafter "CONSULTANT").

and EM

RECITALS

- A. The CITY and CONSULTANT entered into Professional Services Agreement (hereinafter "Agreement") for CEQA Documentation for Infrastructure Improvements and Development Permits Within the Cordes Ranch Project.
- B. Additional services from CONSULTANT are required to complete the project.

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 that are not specifically modified by this Amendment shall remain in full force and effect.
2. **Terms of Amendment.** Section 1, "Scope of Services" of the Agreement is amended to provide additional technical analysis as described in detail under RECITAL A and Section 5, "Compensation", is amended to add **THIRTY EIGHT THOUSAND, ONE HUNDRED AND NINETY SIX DOLLARS (\$38,196)** to the contract amount.
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 this Amendment on behalf of the respective legal entities of the CONSULTANT and the CITY. This Amendment shall inure to the benefit of and be binding upon the parties thereto and their respective successors and assigns.

CITY OF TRACY
AMENDMENT NO. 2 TO PROFESSIONAL SERVICES AGREEMENT
CEQA Documentation for Infrastructure Improvements & Development Permits
Within the Cordes Ranch Project
Page 2 of 2

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

CITY OF TRACY

CONSULTANT

By: _____
Brent H. Ives
Title: MAYOR
Date: _____

By: Laura Worthington-Forbes
Laura Worthington-Forbes
Title: Regional Vice President
Date: 12-13-2013

Attest:

By: _____
Sandra Edwards
Title: CITY CLERK
Date: _____

By: Enda Melvin PE (#4422)
Enda Melvin
Title: Assistant Secretary/Senior Vice President
Date: 12-16-2013

Approved as to form

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

**EXHIBIT A
SCOPE OF SERVICES**

**CEQA Documentation For Infrastructure Improvements & Development
Permits Within the Cordes Ranch Project**

Amendment No.: 02

The undersigned hereby amend the Agreement between the City of Tracy and Kimley-Horn & Associates, Inc. for the reasons indicated in the manner indicated below:

Brief Description of Amendment:

Kimley-Horn was retained to assist City staff in reviewing the CEQA technical studies for the Cordes Ranch Specific Plan Environmental Impact Report. The review, comments from Caltrans and initial analysis resulted in changes to site plan layouts and access for the project and off site traffic analysis included coordination with Fehr and Peers, Caltrans and City staff, as well as the addition of additional interchanges to the City Transportation Master Plan and the City Traffic Impact Fee Program.

Following is a detailed scope of work for the additional services: Kimley-Horn will prepare an addendum to the November 2012 Transportation Master Plan and the proposed 2013 Traffic Impact Fee program for the City of Tracy to include the revisions to the I-580/Patterson pass interchange and the I-205 Mountain House interchange.

In addition KHA will prepare a signal warrant analysis at three study intersections.

Task 1: TMP and TIF Update - KHA will develop conceptual layouts of the interchange improvements and prepare an estimate of probable engineering cost for the proposed improvements, for incorporation in the Citywide TIF and the Citywide TMP. The Layouts will be conducted on an aerial photo only, to scale. The improvements will be based on the mitigation language for the FEIR and include the most cost prohibitive alternative. The TIF document tables will be updated to include the two additional interchanges and submitted for review by the City, the developers and the public. In addition, this task includes support to technical team and City staff in discussions with Caltrans regarding the Buildout analysis for the two interchanges. The task also includes a full operational analysis of the I205/Mountain House Interchange for LOS, queues and ramp metering. The analysis will include the development of three alternatives for Caltrans review.

Task 2: Signal Warrants Analysis for 3 Study Intersections - KHA will conduct detailed signal warrants analysis per the MUTCD at the following four intersections to evaluate the installation of signals. Twenty four hour tubular counts and the peak hour turning volumes will be utilized with other factors and an Engineering Analysis conducted. The following intersections will be studied:

1. Hansen Road/Old Schulte Road
2. Hansen Road/Road E
3. Road I/Old Schulte Road

Reason for Amendment:

Services provided, and to be provided outside of the original scope of services

Cost Adjustment:

Project	Estimated Fee
Tracy TMP update and TIF update with I-205 Mountain House and I-580- Patterson Pass Interchanges.	\$22,500
Signal Warrants at 3 intersections (Old Schulte/Hanson, Old Schulte/Road I, and Hanson/Road E).	\$13,400
Expenses, travel, printing	\$2,296
Total Fee	\$38,196

Time/Schedule Adjustment: The Schedule will be adjusted to meet the target dates for finalizing the Cordes Ranch Specific Plan EIR, the TMP Addendum and adoption of the TIF program

Revised Deliverables: Additional technical memorandums, graphics, conceptual layouts, and meetings

**CITY OF TRACY
AMENDMENT NO. 2 TO
PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
Tracy Hills Specific Plan Amendment and Subsequent Environmental Review:
Phase 1 Tentative Map Review for Transportation, Traffic Circulation and
Roadway Network Layout**

This Amendment No. 2 (hereinafter "Amendment") to the Professional Services Agreement is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "CITY"), and Kimley-Horn & Associates, Inc. (hereinafter "CONSULTANT").

RECITALS

- A. The CITY and CONSULTANT entered into Professional Services Agreement S019796 (hereinafter "Agreement") for Tracy Hills Specific Plan Amendment a Subsequent Environmental Impact Report, which was approved by City Council on May 7, 2013, under Resolution No. 2013-063.
- B. Additional services from CONSULTANT are required to complete the project. The Project Developer has requested the City to hire the City's CONSULTANT to conduct a peer review of the report prepared by TJKM Consultants for the Phase 1 Tentative Map for the Specific Plan for Traffic Circulation and road network layout.

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 that are not specifically modified by this Amendment shall remain in full force and effect.
- 2. **Terms of Amendment.** Section 1, "Scope of Services" of the Agreement is amended to provide additional technical analysis as described in detail under RECITAL A and Section 5, "Compensation", is amended to add **THIRTY FIVE THOUSAND, FIVE HUNDRED AND NINETY SEVEN DOLLARS (\$35,597)** to the contract amount.
- 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.

CITY OF TRACY
AMENDMENT NO. 2 TO PROFESSIONAL SERVICES AGREEMENT
Tracy Hills Specific Plan : Phase 1 Tentative Map Review for Transportation,
Traffic Circulation and Roadway Network Layout
Page 2 of 2

5. **Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of the CONSULTANT and the CITY. This Amendment shall inure to the benefit of and be binding upon the parties 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

By: _____
Brent H. Ives
Title: MAYOR
Date: _____

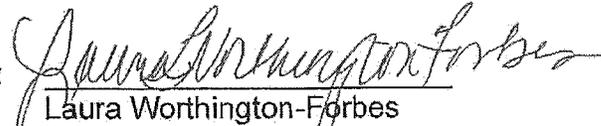
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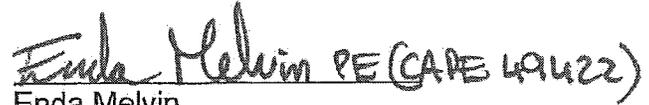
By: _____
Sandra Edwards
Title: CITY CLERK
Date: _____

Approved as to form

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

CONSULTANT

By: 
Laura Worthington-Forbes
Title: Associate
Date: 01-17-14

By: 
Enda Melvin
Title: Assistant Secretary
Date: 01-17-2014

KHACA
03

EXHIBIT A
SCOPE OF SERVICES

Tracy Hills Specific Plan Amendment a Subsequent Environmental Impact Report: Tentative Map Phase 1 Review

Brief Description of Amendment:

Kimley-Horn (KHA) was retained to assist City staff in compiling the EIR documentation for the proposed Amendments to the Tracy Hills Specific Plan. The project developer has subsequently submitted a tentative map application to the City, which closely relates to the Traffic Impact Analysis for the Specific Plan Amendment Analysis. The purpose of this change order is to conduct a review of the analysis performed by TJKM consultants and conduct additional review in collaboration with City Staff of the Phase 1 Tentative Map for the Tracy Hills Specific Plan. The following tasks are included in this amendment:

1. Develop and review Phase 1 turning movements during the AM and PM peak hours at the street intersections along Spine Road with only buildout of Phase 1.
2. Determine the need for turn pockets and storage length of the turn pockets from Spine Road to the local side streets and from the side streets onto Spine Road.
3. Develop and review Phase 1 turning movements during the AM and PM peak hours at the street intersections along Spine Road with buildout of the Tracy Hills Project and the extension of Spine Road to the future extension of Lammers Road: Note that the trip distribution patterns change significantly once the Lammers Road connection and interchange is constructed.
4. Review the placement, control and access of local street intersections: sight distance and potential queuing. Conduct an assessment of the placement of the proposed roundabouts.
5. Peer review school trip generation, travel patterns, traffic flow on site, and traffic flow on the surrounding residential neighborhood. KHA will prepare two site plan alternative reviews with the focus on the school site, neighboring residential and business park. These layouts will be submitted in red line format only, and include both on-site circulation for the proposed school, as well as minimize potential impacts to the adjacent residential neighborhood.
6. Assess access to the business park land uses off Spine Road for shared driveways, geometry, and limited turn movements.
7. Assess short block spacing and traffic operations on the local street connections to Spine Road.
8. Determine geometric detail for the Phase 1 and buildout of the intersection of Spine Road/Corral Hollow Road. This assessment will also determine the lane configuration along Corral Hollow Road between the I-580 interchange along the Specific Plan boundary for Phase 1 and Buildout conditions.
9. Prepare a layout of a potential Partial Clover Leaf interchange at I-580/Corral Hollow Road and intersection spacing to Spine road, including RIRO driveways to the adjacent retail and business park land uses.
10. Determine the need for additional ROW and lanes on Corral Hollow Road.
11. Coordinate our comments with City Comments on one combined Administrative Draft Technical Memorandum.
12. Prepare a Technical Memorandum in Draft and Final Format.
13. Meet with City Staff and Development Team to review the Comments (three meetings). The meetings also a face-t- face meeting to review (fourth meeting) the changed layout which will be prepared by the Project Developer's engineers based on the comments compiled by KHA and City staff.

Reason for Amendment:

Services provided, and to be provided is outside of the original scope of services.

Cost Adjustment:

Project Tasks	Estimated Fee
Review (Task 1-10 above)	\$26,247
Admin, Draft and Final Technical Memorandums	\$3,750
Meetings (four) and Project Management	\$5,100
Expenses, travel, printing	\$500
Total Fee	\$35,597

Time/Schedule Adjustment: The schedule will meet the target dates for submitting the Memorandum to the Developer within 3 weeks of receiving a Notice to Proceed.

Revised Deliverables: Additional technical memorandums, graphics, conceptual layouts, and meetings.

RESOLUTION 2014 - _____

APPROVING VARIOUS AMENDMENTS TO THE PROFESSIONAL SERVICES AGREEMENTS WITH KIMLEY-HORN AND ASSOCIATES FOR COMPLETION OF ROADWAYS ANALYSIS FOR CORDES RANCH AND TRACY HILLS DEVELOPMENTS, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENTS

WHEREAS, City Council adopted a Roadways and Transportation Master Plan in November 2012, to facilitate new developments, and

WHEREAS, Both the Cordes Ranch and Tracy Hills developments have begun planning their respective projects and have requested the City to continue using the services of Kimley-Horn and Associates, and

WHEREAS, On June 4, 2013, City Council approved a PSA with Kimley-Horn and Associates to provide professional services to address traffic related issues for the Cordes Ranch development, and

WHEREAS, Amendments to this PSA are necessary to complete additional tasks required during the specific plan and initial phases of development, and

WHEREAS, Additional services are also needed from Kimley-Horn and Associates to evaluate different scenarios of development within the Cordes Ranch and Tracy Hills development area, and

WHEREAS, Additional services from Kimley-Horn and Associates include completion of various traffic analyses to address Caltrans' for circulation at interchanges of Mountain House Parkway with I-205 and I-580

WHEREAS, Tracy Hills and Cordes Ranch developers have requested the City acquire the services of Kimley-Horn and Associates to complete these tasks, and

WHEREAS, Both Cordes Ranch and Tracy Hills developers have reviewed Kimley-Horn and Associates proposal and have consented to pay the cost of services, and

WHEREAS, Approval of this agenda item will have no impact to the City's General Fund and funding for PSA Number One (\$38,285) and PSA Number Two (\$38,196) will be paid by Cordes Ranch and PSA Number Three (\$35,597) will be paid for by Tracy Hills through the existing Cost Recovery Agreement;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the PSA amendments:

1. Amendment One to PSA with Kimley-Horn and Associates to provide additional services to evaluate roadway infrastructure trigger points in different planning areas within Cordes Ranch for a not to exceed amount of \$38,285, and
2. Amendment Two to PSA with Kimley-Horn and Associates to update the Roadways Master Plan and provide traffic analysis for the interchanges of Mountain House Parkway with I-205 and I-580 for a not to exceed amount of \$38,196, and
3. Amendment Two to PSA with Kimley-Horn and Associates for the Tracy Hills Specific Plan Amendment Environmental Impact Report and Technical Analysis related to tentative maps for a not to exceed amount of \$35,597, and authorize the mayor to execute the agreement.

* * * * *

The foregoing Resolution _____ was adopted by the City Council on the 18th day of February, 2014, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.G

REQUEST

APPROVE VARIOUS PROFESSIONAL SERVICES AGREEMENTS WITH WEST YOST AND ASSOCIATES RELATED TO WATER ANALYSIS FOR CORDES RANCH AND TRACY HILLS DEVELOPMENTS AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENTS

EXECUTIVE SUMMARY

City Council adopted the citywide Water Master Plan in January 2013, which identifies the major backbone infrastructure to serve new developments. The developers fund the cost of the Master Plan improvements through the Council adopted development impact fees. In addition, the developers are responsible to plan, design and construct the onsite water infrastructure within the constraints of the Master Plans. Since the initial developments can only fund a portion of the backbone infrastructure, both the Master Plans and the onsite infrastructure is further refined and updated as the development occurs. Alternate analyses are completed to identify various phases of construction to achieve the ultimate improvements. Both Cordes Ranch and Tracy Hills developments are now planning their initial phases of development and fund the respective phases of construction. Both developments have requested the City to enter into Professional Service Agreements (PSAs) with West Yost and Associates to identify the initial phases of improvements.

DISCUSSION

On January 15, 2013, City Council adopted the citywide water Master Plans to serve new developments. The Master Plan identifies the ultimate backbone infrastructure improvements to serve approximately 8,850 acres in various parts of the City. On January 7, 2014 the City Council adopted development impact fees to fund construction of the required improvements to serve the new developments. The water infrastructure improvements will be designed and constructed in multiple phases as more funding becomes available through the development impact fees.

Since the new developments will occur within the next twenty year horizon, the fair share development impact fees collected from the initial developments will not be sufficient to construct all infrastructure improvements identified in the Master Plan in a timely manner. As a result, the infrastructure improvements will be constructed in multiple phases within the confines of the approved Master Plans, with minor changes as warranted.

Tracy Hills and Cordes Ranch developments have started planning their initial phases and are working on the design of onsite infrastructure improvements to service the proposed projects. Since the initial projects do not generate enough fee revenue to construct the major infrastructure improvements, the City is working with them to make use of the modified existing capacities combined with the new infrastructure to serve initial projects on interim basis until the ultimate infrastructure improvements are completed. Both Cordes Ranch and Tracy Hills have requested the City to acquire the

services of West Yost and Associates to coordinate, review, analyze and complete certain tasks to identify the required improvements to serve their initial projects. In order to accommodate this request, the following PSAs require approval from City Council:

1. Professional Services Agreement with West Yost and Associates for the design, preparation of improvement plans and construction documents for John Jones Water Treatment Plant (JJWTP) booster pump station for a not to exceed amount of \$317,900.

The Citywide Water Master Plan requires construction of clear well number three (storage reservoir) and a booster pump station to serve new developments north of Linne Road. The Tracy Hills development, located on the south side of the City, is required to construct its own water storage facilities within the Tracy Hills Specific Plan area. However, due to existing environmental constraints, these storage facilities cannot be constructed in a cost effective manner and needs to be deferred. Tracy Hills has proposed to fund construction of clear well number three and the booster pump station at the City's JJWTP. Tracy Hills proposes to use part of the water storage capacity created from clear well three for interim use until the water storage is needed at the treatment plant by other developments. At that time, the temporary environmental restrictions for the construction of storage tanks in the Tracy Hills area are anticipated to be removed.

In addition to Tracy Hills, the use of the clear well number three and the booster pump station will be shared by other developments including infill and a portion of Plan C Development. The booster pump station will be designed to serve the proposed interim as well as the ultimate needs as specified in the Master Plan. The City awarded a PSA to Carollo Engineers for the design of clear well number three at the JJWTP last year. For completion of design and preparation of improvement plans and construction documents for the booster pump station, a request for proposal was posted on the City web site and three proposals were received. After careful review the proposal from West Yost and Associates was found to be the most qualified based upon their qualifications, experience and cost.

Out of the total cost of \$317,900 for this PSA, Tracy Hills will pay \$271,900 with an additional \$10,000 as contingency amount to be used on an as needed basis if agreed to by both the City and Tracy Hills. The remaining \$36,000 will be paid by Plan C and infill areas.

2. Professional Services Agreement with West Yost and Associates to complete the Tracy Hills water supply assessment for a not to exceed amount of \$20,900.

West Yost and Associates has completed the Tracy Hills water supply assessment in accordance with the original land uses. However, the developer has changed certain land uses within the Specific Plan area resulting in a need for an update of the water supply assessment with revised water demand. In addition, the SB 221 analysis needs to be completed to ensure compliance for the project. West Yost and Associates has submitted a proposal to complete this

task for a not to exceed amount of \$20,900. Tracy Hills has reviewed the proposal, agreed to pay this amount and has requested the City to proceed with the PSA.

3. Professional Services Agreement with West Yost and Associates for the water system re-analysis for the proposed Cordes Ranch project for a not to exceed amount of \$85,000.

After approval of the City's Water Master Plan, Prologis, the developer of Cordes Ranch, proposed to relocate a water tank and pump station to another site. In addition, the initial project is proposed to be served from the existing Patterson Pass booster station with minor modifications instead of a new water main line from JJWTP serving both Cordes Ranch and Ellis developments. Prologis hired their own consultant to rerun the water model with these changes and requested the City to review and approve the proposed improvements to their initial projects.

To ensure that the proposed changes do not impact other developments, the City needs to conduct an additional analysis of the water system model. Since West Yost and Associates completed the City's Water Master Plan and are the most familiar and has extensive knowledge of the water model, a proposal was solicited from them to complete this task. West Yost and Associates have submitted a proposal for a not to exceed amount of \$35,000 on hourly basis. Prologis has reviewed the proposal and the cost of services will be paid by the City through the existing Cost Recovery Agreement with Prologis.

In addition to the above work, Prologis has requested to include additional services from West Yost and Associates for a not to exceed amount of \$50,000 to be used on an as needed basis for time and materials. Additional services will be authorized after the City has received specific task requests from Prologis.

4. Professional Services Agreement with West Yost and Associates for water system evaluation for Ellis Program for a not to exceed amount of \$39,950.

The Ellis development will be served by the City's water distribution zones two and three. These water zones also serve other existing and new developments within the city. Since the water infrastructure for new developments, including the Ellis program area will be constructed in multiple phases; and as more development impact fees are collected, it will be crucial that the water infrastructure for each phase be identified and constructed systematically to assure that the development needs are properly met.

The Ellis development wants to identify the water infrastructure required for various scenarios of their development and has requested the City to hire the services of the City's Water Meter Plan Consultant to complete these analyses. West Yost and Associates submitted a proposal to complete this task for a not to exceed amount of \$39,950. Surland Companies, the developers of the Ellis Program area, have reviewed the proposal and concur with the cost amount.

STRATEGIC PLAN

This agenda item is consistent with the City's Economic Development Strategy and meets goals to ensure a physical infrastructure and system necessary for developments.

FISCAL IMPACT

Approval of this agenda item will have no impact to the City's General Fund. Through a Cost Recovery Agreement, Tracy Hills will pay for PSA Number One (\$281,900) and the remaining \$36,000 will be paid by Plan C and infill areas. Tracy Hills will pay for PSA Number Two (\$20,900). Prologis will cover the cost of PSA Number Three (\$85,000). Surland Companies will cover the PSA Number Four for the water system evaluation for the Ellis Program area (\$39,950).

RECOMMENDATION

It is, therefore, recommended that City Council, by resolution

1. Approve a PSA with West Yost and Associates for design, preparation of improvement plans and construction documents for JJWTP booster pump station for a not to exceed amount of \$317,900, and
2. Approve a PSA with West Yost and Associates to complete the Tracy Hills water supply assessment for a not to exceed amount of \$20,900, and
3. Approve a PSA with West Yost and Associates for a water system re-analysis of the Cordes Ranch project for a not to exceed amount of \$85,000, and
4. Approve a PSA with West Yost and Associates for the water system evaluation for the Ellis Program area for a not to exceed amount of \$39,950, and authorize the Mayor to execute the agreements.

Prepared by: Kuldeep Sharma, City Engineer

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

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

ATTACHMENTS

Attachment A – West Yost and Associates PSA for design, preparation and implementation plans and construction documents for JJWTP

Attachment B – West Yost and Associates PSA for Tracy Hills water supply assessment

Attachment C – West Yost and Associates PSA for the water system re-analysis for the Cordes Ranch Project

Attachment D – West Yost and Associates PSA for the water system re-analysis for the Ellis Program area Project

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
DESIGN OF BOOSTER PUMP STATION AT
JOHN JONES WATER TREATMENT PLANT**

This Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and West Yost Associates ("Consultant").

RECITALS

- A. Consultant is a registered professional engineer.
- B. Consultant's services are needed related to providing a water system model and flow-pressure verification, a preliminary design, a detailed design and inter-project coordination for the design of the City-side Zone 3, and Tracy Hills Zone 3 and 4 Booster Pump Stations.
- C. At the request of the City, in September 2013, Consultant submitted a proposal to perform the services described in this Agreement. After negotiations between City and Consultant, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Gerry Nakano. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use any subcontractors or subconsultants, without City's prior written consent.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN
PROFESSIONALS
DESIGN OF BOOSTER PUMP STATION AT JOHN JONES WATER TREATMENT
PLANT
Page 2 of 6**

- 3. INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant. Consultant is free to work for other entities while under contract with the City. Consultant is not entitled to City benefits.
- 4. CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.
- 5. COMPENSATION.**

 - 5.1 General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B," attached and incorporated by reference. Consultant's fee for this Agreement is Not to Exceed \$317,900. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without the City's prior written approval.
 - 5.2 Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3 Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
- 6. TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
- 7. OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
DESIGN OF BOOSTER PUMP STATION AT JOHN JONES WATER TREATMENT PLANT
Page 3 of 6**

8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning work under this Agreement, Consultant shall obtain a City of Tracy Business License.

10. **INSURANCE.**

- 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
- 10.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 10.3 **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.
- 10.5 **Professional Liability** claims made" coverage shall be maintained to cover damages from negligent errors, omissions, or acts of Consultant in an amount not less than \$2,000,000 per claim and in the aggregate.
- 10.6 **Endorsements.** Consultant shall obtain endorsements to the commercial general liability with the following provisions:

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
DESIGN OF BOOSTER PUMP STATION AT JOHN JONES WATER TREATMENT PLANT
Page 4 of 6**

- 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
- 10.6.2** For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
- 10.7** **Notice of Cancellation.** Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8** **Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9** **Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.
- 10.10** **Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11** **Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
DESIGN OF BOOSTER PUMP STATION AT JOHN JONES WATER TREATMENT PLANT
Page 5 of 6**

12. MISCELLANEOUS.

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

To City:

Mr. Kuldeep Sharma
City Engineer
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

Gerry Nakano
Vice President
West Yost Associates
7041 Koll Center Parkway, Suite 110
Pleasanton, CA 94566

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

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

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

12.4 Severability. If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

12.5 Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

12.6 Entire Agreement. This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
DESIGN OF BOOSTER PUMP STATION AT JOHN JONES WATER TREATMENT PLANT
Page 6 of 6**

12.7 Compliance with the Law. Consultant shall comply with all applicable and non-conflicting local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

12.8 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

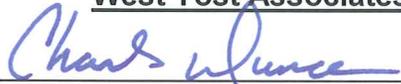
13. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

City of Tracy

Consultant
West Yost Associates

By: Brent H. Ives
Title: Mayor
Date: _____



By: Charles Duncan
Title: President
Date: 1-23-14
Fed. Employer ID No. _____
68-0370826

Attest:

By: Sandra Edwards
Title: City Clerk
Date: _____



By: Elizabeth M. Nilsen
Title: Chief Financial Officer
Date: 1/23/14

Approved As To Form:

By: Daniel G. Sodergren
Title: City Attorney
Date: _____



John Jones Water Treatment Plant

Booster Pump Station

Approach and Scope of Work

PROJECT UNDERSTANDING

The design of a new Booster Pump Station to serve the City-side Pressure Zone 3 and the Tracy Hills Pressure Zones 3 and 4 at the City's John Jones Water Treatment Plant is an extremely complex project with several specific design, timing, and operational needs and constraints that must be taken into account and integrated into the planning and design of the new facility.

Currently the City provides treated water to primarily two distribution system pressure zones: City-side Pressure Zone 1 (City-side PZ1) and City-side Pressure Zone 2 (City-side PZ2). The City also provides water service to some properties in City-side Pressure Zone 3 (City-side PZ3). However, as discussed in the City's recently completed Citywide Water System Master Plan (completed by West Yost in December 2012), several new pressure zones, including an expanded City-side PZ3, must be established to provide water service to proposed new developments located at elevations higher than those the City currently provides service to. For example, the proposed Tracy Hills project will have three new and distinct pressure zones: Tracy Hills PZ3 (which will be separate from the City-side PZ3), Tracy Hills PZ4 and Tracy Hills PZ5.

The City's existing JJWTP currently has three existing booster pump stations: one each to serve the City-side PZ1, City-side PZ2 and City-side PZ3. The expanded City-side PZ3, Tracy Hills PZ3 and PZ4 will be served from a new Booster Pump Station (BPS) to be located at the JJWTP (Tracy Hills PZ5 will be served from the Tracy Hills PZ4 via a new booster pump station to be designed in the future by others). It is assumed that the City's PZ3 and Tracy Hills PZ3 and PZ4 will be served by separate pumps located in a single BPS building at the JJWTP. The BPS building is being designed by others as part of the design of the new Clear Well No. 3 at the JJWTP. As described in the Citywide Water System Master Plan, the required water treatment capacity to serve these new pressure zones has already been accounted for at the JJWTP with the recently completed plant expansion.

With the on-going upturn in the economic climate statewide and in the Tracy area, development is moving forward and pumping facilities to serve the City-side PZ3 and the Tracy Hills PZ3 and PZ4 need to be constructed as soon as possible to meet the Phase 1 demands of several proposed projects (including Ellis, Tracy Hills and possibly Cordes Ranch, among others) starting in late 2014/early 2015. As discussed in the Citywide Water System Master Plan, the new JJWTP BPS will be designed to take supply (suction) from the new Clear Well No. 3, which will be constructed at the JJWTP site. However, it is anticipated that Clear Well No. 3 will not be constructed and available for use until mid to late 2015. Therefore, for the interim period before Clear Well No. 3 is completed, an interim BPS will have to be constructed to draw water from the existing Clear Well No. 2. It may be possible to utilize the pumps from this interim BPS as part of the permanent BPS pumping out of Clear Well No. 3. This interim solution will be designed in Task 3 as described in our proposed Scope of Work.

Another consideration for the design of the new BPS is that, ultimately, the Tracy Hills PZ3 pumps at the JJWTP will pump to a Tracy Hills PZ3 storage tank to be located in Tracy Hills. However, the Tracy Hills PZ3 storage tank is not anticipated to be constructed and operational until mid- to late-2016, which will require that the Tracy Hills PZ3 pumps at the JJWTP pump



John Jones Water Treatment Plant Booster Pump Station Approach and Scope of Work

continuously to meet demands and maintain minimum distribution system pressures at all times. This operational need will be taken into consideration in the design of the pumps to serve the initial Tracy Hills PZ3 demands, until the Tracy Hills Storage Tank can be constructed (anticipated completion mid- to late-2016).

DESIGN ASSUMPTIONS

Based on the Citywide Water System Master Plan completed by West Yost in December 2012, the ultimate capacities and approximate pressures for the new booster pumps serving these new pressure zones are summarized below:

CITY-SIDE ZONE 3	Firm capacity of 4,500 gallons per minute (gpm) at a TDH of 155 feet (total of 4 pumps; 2 @ 1,175 gpm plus 2 @ 2,150 gpm)
TRACY HILLS ZONE 3	Firm capacity of 2,400 gpm at a TDH of 230 feet (total of 3 pumps; 3 @ 1,200 gpm)
TRACY HILLS ZONE 4	Firm capacity of 1,700 gpm at a TDH of 390 feet (total of 3 pumps; 3 @ 850 gpm)

Both the flow rates and heads will need to be confirmed by additional hydraulic system modeling based on the most current information on planned projects to be served to properly select the required pumping equipment. It is anticipated that each of the flows to City-side PZ3 and Tracy Hills PZ3 will draw from Clear Well No. 2 for an interim period, and will then draw from the new Clear Well No. 3 (when completed). Clear Well No. 3 is being designed by others. Because of the disparity in required heads, it is anticipated that each of the pressure zones will be served by separate booster pumps. To take advantage of economies of scale and reduce the overall costs, the following are also anticipated:

- The booster pumps will be housed in a common building near the southeastern side of Clear Well No. 2;
- The structural design of the pump station building is being performed by others (West Yost has included budget to provide coordination of the design of the booster pumps with the structural design of the pump station building);
- For the interim period before Clear Well No. 3 is available, a single City-side PZ3 booster pump and a single Tracy Hills PZ3 booster pump could be installed in the existing wet well of Clear Well No. 2. It is assumed that these pumps could be eventually be relocated to the future BPS building to provide for pumping out of Clear Well No. 3;



John Jones Water Treatment Plant Booster Pump Station Approach and Scope of Work

- Until the Tracy Hills PZ3 storage tank can be constructed (anticipated to be completed by mid- to late-2016), the Tracy Hills PZ3 booster pump will need to be operated continuously to meet demands and maintain minimum distribution system service pressures in Tracy Hills PZ3;
- Electrical power distribution will be through a common feeder circuit;
- Power for all three booster pumps will be backed up by one standby generator;
- On-site discharge piping to the JJWTP property line will be made up of approximately 1,900 feet (each) of 20-inch, 24-inch and 16-inch diameter pipelines;
- The off-site transmission mains will be designed by others (West Yost has included budget to provide coordination of the design of on-site pipelines with the design of the off-site pipelines); and
- Clear Well No. 3 and other improvements at the JJWTP are being designed by others (West Yost has included budget to provide coordination of the design of booster pump station with the design of Clear Well No. 3).

PROPOSED SCOPE OF WORK

Task 1: Water System Model and Flow-Pressure Verification

West Yost will update the City's water distribution system hydraulic model to verify the required head conditions required for the new pumps to meet minimum water delivery pressures for peak hour, maximum day plus fire flow and average day flow conditions. West Yost will also confirm whether a single booster pump to serve the City-side PZ3 and a single booster pump to serve Tracy Hills PZ3 could be interimly installed in the wet well at Clear Well No. 2.

Assumptions

- Updated demands and specific development locations for any proposed development projects to be interimly served from Clear Well No. 2 (prior to the completed construction of Clear Well No. 3), will be confirmed by the City (e.g., Ellis, Tracy Hills and Cordes Ranch Projects)
- Any proposed phasing of each of these pressure zones will be provided to West Yost at the start of the project to assure that the number of pumps and the recommended sizes are identified as part of the pre-design report.

Deliverables

- No separate work product will be prepared for this task; however, the findings will be included in the Task 2 work product.

Estimated Fee for Task 1 Services = \$28,100

John Jones Water Treatment Plant Booster Pump Station Approach and Scope of Work



Task 2: Preliminary Design

The preliminary design establishes the design conditions, proposed piping and equipment configurations, general pump and site layout, and applicable models/manufacturers. The preliminary design is culminated in a Preliminary Design Report that will summarize the flow and pressure requirements (as established in Task 1), basis of design of the pump stations' elements and the routing and preliminary design of the three on-site pipelines serving each of the designated pressure zones and 25% complete drawing set.

Assumptions

- Previously conducted geotechnical engineering (conducted with the JJWTP expansions) will be suitable for use for the project
- Base plan with utility location indicated will be provided by the City

Deliverables

- Preliminary Design Report – Draft Report and Final Report

Estimated Fee for Task 2 Services = \$53,400

Task 3: Detailed Design for Interim BPS from Existing Clear Well No. 2

It is anticipated that the new Clear Well No. 3 will not be completed by the time water is needed to the new developments in Tracy Hills PZ3. To provide water to the new development, new pumps will be installed in the existing booster pump station at Clear Well No. 2. It is anticipated that Clear Well No. 2 has two pump slots available for this purpose and that the motor control center has space and capacity available to power the pumps. It is also anticipated that the conduits for power and control of the pumps is already in place at the Clear Well No. 2 Pump Station. The pumps will be sized for the use in the final project to be completed with Clear Well No. 3 (see Task 4). The pumps and motor starters will be reused in the final project.

West Yost will prepare a set of contract documents to modify the existing Clear Well No. 2 Pump Station to add two vertical turbine pumps with motor horsepower of approximately 125 horsepower each. The design will include the pump installation, piping and valving modifications, modifications to the motor control center, design of control and power cables, and modifications to the control system pumps.

The construction of the interim improvements for the Clear Well No. 2 pump station will be bid publically. West Yost will prepare contract drawings, technical specifications in CSI 16-division format, and modify the City's administrative and contract (front-end) documents as appropriate for the interim project.



John Jones Water Treatment Plant Booster Pump Station Approach and Scope of Work

Assumptions

- The existing pump station at Clear Well No. 2 has sufficient power and control capacity for two additional interim pumps for this project
- Technical Specifications will be in CSI 1-16 format
- Front end specifications (bidding requirements, contract and general conditions) will be provided by the City
- Our current scope assumes that the required pumps will not be pre-purchased by the City. If the City wants to pre-purchase the pumps to expedite the completion of the Interim BPS, pre-purchase bid documents will need to be prepared. Preparation of such pre-purchase documents is not included in this scope of work, but can be provided by West Yost upon approval of a budget augmentation by the City.

Deliverables

- 50% plans, specifications and construction cost estimate
- 90% plans, specifications, construction, cost estimate and responses to review comments
- 100% plans, specifications, construction, cost estimate and responses to review comments
- Final plans, specifications, construction cost estimate in photo-copy ready format for bidding

Estimated Fee for Task 3 Services = \$24,800

Task 4: Detailed Design for Permanent BPS from New Clear Well No. 3

West Yost will prepare construction documents consisting of plans, specifications and construction cost estimates for the permanent booster pump station project to pump out of the new Clear Well No. 3.

Assumptions

- Technical Specifications will be in CSI 1-16 format
- Front end specifications (bidding requirements, contract and general conditions) will be provided by the City

Deliverables

- 50% plans, specifications and construction cost estimate
- 90% plans, specifications, construction, cost estimate and responses to review comments



John Jones Water Treatment Plant Booster Pump Station Approach and Scope of Work

- 100% plans, specifications, construction, cost estimate and responses to review comments
- Final plans, specifications, construction cost estimate in photo-copy ready format for bidding

Estimated Fee for Task 4 Services = \$156,600

Task 5: Inter-Project Coordination

The BPS will need to serve the City-side PZ3 area and Tracy Hills PZ3 area prior to the completion of Clear Well No. 3. Ideally, interim pumps can be installed in existing slots in the existing wet well at Clear Well No. 2 to serve initial development in City-side PZ3 and Tracy Hills PZ3, and then be relocated to the final booster pump station location when Clear Well No. 3 is completed. The project will need to interface with changes at the JJWTP, including Clear Well No. 3 and the off-site transmission mains, both being designed by others. West Yost has included an allowance of \$18,200 to provide for the inter-project coordination that will be necessary on this project.

Assumptions

- Coordination following the completion of the design work described above (e.g., during bidding and during construction) is not included in our current scope and budget, but can be provided by West Yost upon approval of a budget augmentation by the City.

Deliverables

- No separate work product will be prepared for this task. The inter-project coordination will be reflected in correspondence, meetings, conference calls, and deliverables from other tasks.

Estimated Fee for Task 5 Services = \$18,200

Task 6: Project Management

All phases of the work will be managed by a single Project Manager (Elizabeth Drayer). The subtasks for project management consist of the following:

- **Budget Control and Progress Reporting:** Project Manager will monitor project progress, respond to City requests and concerns, and maintain communications with City staff to ensure satisfactory completion of the work on schedule and within budget.
- **Work Coordination:** Project Manager will be responsible to assign labor resources, review work products and coordinate with the City. Project Manager will keep a log of all decisions made on the project and the specific actions to be taken, and who is responsible to take those actions.

John Jones Water Treatment Plant Booster Pump Station Approach and Scope of Work



- **Meetings:** West Yost will conduct a project kickoff meeting and monthly project status meetings to discuss progress to date, and any issues that have come up. Meetings to discuss comments to the 50% and 90% design submittals are also planned and budgeted.
- **QA/QC:** West Yost will implement a quality assurance/quality control (QA/QC) program. Under this program, all work products and deliverables will be reviewed by senior staff. Additionally, design documents will be reviewed by West Yost's construction staff for constructability and bid ability.

Assumptions

- Progress reports, meeting agendas and notes will be in West Yost's standard format.

Deliverables

- Progress Reports
- Meeting agendas and notes
- QA/QC review comments

Estimated Fee for Task 6 Services = \$26,800

Task 7: Additional Services

As requested by the City, this additional services task has been included to provide for additional services as requested and authorized by the City related to the JJWTP Booster Pump Station Project.

Assumptions

- Approximately 50 hours of senior engineering effort has been assumed with a budget of \$10,000

Deliverables

- To be determined

Estimated Fee for Task 7 Services = \$10,000

Total Estimated Fee for Tasks 1 – 7 Services = \$317,900

PROJECT SCHEDULE

The schedule provided on the following page shows the projected timeline for the design and construction of the JJWTP Booster Pump Station in relation to the design and construction of Clear Well No. 3, off-site pipelines from the JJWTP to the Tracy Hills Project Area, and the anticipated future design and construction of a new storage reservoir in Tracy Hills.

City of Tracy
 Design of New Booster Pump Station at JWTP
 Proposed Schedule

	2013				2014				2015				2016							
	O	N	D		J	F	M	A	J	F	M	A	J	F	M	A	J	F	M	A
New Booster Pump Station at JWTP (design by West Yost Associates) (Assumes Notice to Proceed January 1, 2014) ^(a)																				
Task 1: Water System Model and Flow-Pressure Verification																				
Task 2: Preliminary Design																				
Task 3: Detailed Design for Interim BPS from Existing Clear Well No. 2																				
Bidding of Interim BPS from Existing Clear Well No. 2																				
Construction of Interim BPS from Existing Clear Well No. 2																				
Task 4: Detailed Design for Permanent BPS from New Clear Well No. 3																				
Bidding of Permanent BPS from New Clear Well No. 3																				
Construction of Permanent BPS from New Clear Well No. 3																				
Task 5: Inter-Project Coordination																				
Task 6: Project Management																				
Task 7: Additional Services (as requested and authorized by the City)																				
JWTP Cleanwell No. 3 (design by Carollo Engineers)																				
Preliminary Design																				
Final Design																				
Bidding																				
Construction																				
Off-Site Transmission Lines to City-side PZ3 and Tracy Hills PZ3 and PZ4 (design by CH2M Hill)																				
Design																				
Bidding																				
Construction																				
Tracy Hills PZ3 Storage Tank (Design by others)																				
Design																				
Bidding																				
Construction																				
Interim Operation of New BPS out of Clear Well No. 2^(a)																				
Permanent Operation of New BPS out of Clear Well No. 3^(b)																				

^(a) Pumping out of Clear Well No. 2 with continuous (24/7) pumping to serve TH PZ3.

^(b) Pumping out of Clear Well No. 3 with continuous (24/7) pumping to serve TH PZ3 until TH PZ3 storage tank is operational (mid-2016); then pumping from Clear Well No. 3 to fill TH PZ3 storage tank.

John Jones Water Treatment Plant Booster Pump Station Approach and Scope of Work



COST SCHEDULE

Tasks	Estimated West Yost Labor Hours	Estimated West Yost Labor Cost	Subconsultant Cost (A T.E.E.M) (includes 10% markup)	Direct Costs	Total
Task 1: Water System Model and Flow-Pressure Verification	139	\$27,600	\$-	\$500	\$28,100
Task 2: Preliminary Design	274	\$47,400	\$5,500	\$500	\$53,400
Task 3: Detailed Design for Interim BPS from Existing Clear Well No. 2	83	\$13,200	\$11,000	\$600	\$24,800
Task 4: Detailed Design for Permanent BPS from New Clear Well No. 3	588	\$94,600	\$60,500	\$1,500	\$156,600
Task 5: Inter-Project Coordination	87	\$18,200	\$-	\$0	\$18,200
Task 6: Project Management	124	\$26,800	\$-	\$0	\$26,800
Task 7: Additional Services	50	\$10,000	\$-	\$0	\$10,000
TOTAL	1,345	\$237,800	\$77,000	\$3,100	\$317,900

PROJECT PERSONNEL

West Yost shall assign the following person/persons to perform the tasks set forth in this Agreement:

- Charles Duncan (President, Authorized Representative);
- Gerry S. Nakano (Vice President)
- Dave Ewing (Engineering Manager)
- Dave Jones (Engineering Manager)
- Elizabeth Drayer (Engineering Manager)
- Patrick Fuss (Principal Engineer)
- Brad Friederichs (Principal Engineer)
- Jim Connell (Principal Engineer)
- Ty Tadano (Associate Engineer)
- Amy Kwong (Senior Engineer)
- Irene Suroso (Senior Engineer)
- Doug DeMaster (Senior Engineer)
- Steve Barber (Senior Designer)
- Brian Coox (Engineer I)
- Christine Encelan (Administrative IV);
- Angelica Perea (Administrative III);
- Nikki Pacheco (Administrative III); and
- Tracy Baker (Administrative III).



WEST YOST ASSOCIATES, INC.
2014 Billing Rate Schedule

Exhibit "B"

(Effective January 1, 2014 through December 31, 2014)*

Position	Labor Charges (dollars per hr)
Principal/Vice President	240
Engineering Manager	229
Principal Engineer/Scientist	207
Senior Engineer/Scientist/GIS Analyst	186
Associate Engineer/Scientist	169
GIS Analyst	164
Engineer II/Scientist II	147
Engineer I/Scientist I	126
Construction Manager III	186
Construction Manager II	169
Construction Manager I	158
Resident Inspector III	140
Resident Inspector II	129
Resident Inspector I	115
Sr. Designer/Sr. CAD Operator	120
Designer/CAD Operator	107
Technical Specialist III	120
Technical Specialist II	104
Technical Specialist I	87
Engineering Aide	71
Administrative IV	109
Administrative III	98
Administrative II	82
Administrative I	66

Hourly labor rates include Direct Costs such as general computers, system charges, telephone, fax, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.

Outside Services such as vendor reproductions, prints, shipping, and major West Yost reproduction efforts, as well as Engineering Supplies, Travel, etc. will be billed at actual cost plus 15%.

Mileage will be billed at the current Federal Rate.

Subconsultants will be billed at actual cost plus 10%.

Computers are billed at \$25 per hour for specialty models and AutoCAD.

Expert witness, research, technical review, analysis, preparation and meetings billed at 150% of standard hourly rates. Expert witness testimony and depositions billed at 200% of standard hourly rates.

A Finance Charge of 1.5% per month (an Annual Rate of 18%) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

*This schedule will be updated annually.

WEST YOST ASSOCIATES, INC.
2014 Billing Rate Schedule
(Cont'd.)

(Effective January 1, 2014 through December 31, 2014)*

SURVEYING AND EQUIPMENT CHARGES

Position	Labor Charges (dollars per hr)
GPS, 3-Person	366
GPS, 2-Person	317
GPS, 1-Person	246
Survey Crew, 2-Person	268
Survey Crew, 1-Person	202

EQUIPMENT CHARGES

Equipment	Billing Rate (dollars per day)	Billing Rate (dollars per week)
DO Meter	16	81
pH Meter	5	26
Automatic Sampler	128	698
Transducer/Data Logger	40	202
Hydrant Pressure Gage	11	49
Hydrant Pressure Recorder (HPR)	—	202
Hydrant Wrench	5	32
Pitot Diffuser	29	132
Well Sounder	29	132
Ultrasonic Flow Meter	—	264
Vehicle	87	437
Velocity Meter	11	64
Water Quality Multimeter	173	946
Thickness Gage	—	70

* This schedule will be updated annually.

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
TRACY HILLS WATER SUPPLY ASSESSMENT**

This Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("CITY"), and West Yost Associates ("CONSULTANT").

RECITALS

- A. CONSULTANT is a registered professional engineer.
- B. CONSULTANT services are needed for performing additional work related to the preparation of the Tracy Hills Water Supply Assessment.
- C. At the request of the CITY, in November 2013, CONSULTANT submitted a proposal to perform the services described in this Agreement. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Gerry Nakano. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use any subcontractors or subconsultants, without City's prior written consent.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN
PROFESSIONALS
TRACY HILLS WATER SUPPLY ASSESSMENT
Page 2 of 6**

- 3. INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant. Consultant is free to work for other entities while under contract with the City. Consultant is not entitled to City benefits.
- 4. CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.
- 5. COMPENSATION.**

 - 5.1 General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B," attached and incorporated by reference. Consultant's fee for this Agreement is Not to Exceed \$20,900.00. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without the City's prior written approval.
 - 5.2 Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3 Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
- 6. TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
- 7. OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
TRACY HILLS WATER SUPPLY ASSESSMENT
Page 3 of 6

8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning work under this Agreement, Consultant shall obtain a City of Tracy Business License.

10. **INSURANCE.**

- 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
- 10.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 10.3 **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.
- 10.5 **Professional Liability** "claims made" coverage shall be maintained to cover damages from negligent errors, omissions, or acts of Consultant in an amount not less than \$2,000,000 per claim and in the aggregate.
- 10.6 **Endorsements.** Consultant shall obtain endorsements to the commercial general liability with the following provisions:

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN
PROFESSIONALS
TRACY HILLS WATER SUPPLY ASSESSMENT
Page 4 of 6**

- 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
- 10.6.2** For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
- 10.7** **Notice of Cancellation.** Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8** **Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9** **Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.
- 10.10** **Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11** **Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
TRACY HILLS WATER SUPPLY ASSESSMENT
Page 5 of 6**

12. MISCELLANEOUS.

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

To City:

Mr. Kuldeep Sharma
City Engineer
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

Mr. Gerry Nakano
Vice President
West Yost Associates
7041 Koll Center Parkway, Suite 110
Pleasanton, CA 94566

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

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

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

12.4 Severability. If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

12.5 Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

12.6 Entire Agreement. This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
TRACY HILLS WATER SUPPLY ASSESSMENT
Page 6 of 6**

12.7 Compliance with the Law. Consultant shall comply with all applicable and non-conflicting local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

12.8 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

13. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

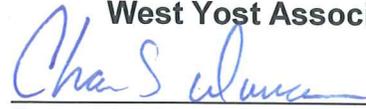
The parties agree to the full performance of the terms set forth here.

City of Tracy

Consultant

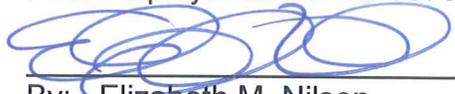
West Yost Associates

By: Brent H. Ives
Title: Mayor
Date: _____



By: Mr. Charles Duncan
Title: President
Date: 1-6-14
Fed. Employer ID No. 68-0370826

Attest:



By: Elizabeth M. Nilsen
Title: Chief Financial Officer
Date: 1/6/14

By: Sandra Edwards
Title: City Clerk
Date: _____

Approved As To Form:

By: Daniel G. Sodergren
Title: City Attorney
Date: _____

**Proposed Scope of Work for
Additional Work Related to the
Preparation of the Tracy Hills Water Supply Assessment**



Task 1: Revise Draft WSA to Incorporate Land Use Changes, Revised Water Demands and Revised Assumptions for Recycled Water Use

The Draft Water Supply Assessment (WSA) prepared by West Yost Associates (CONSULTANT) for the Tracy Hills Specific Plan (PROJECT), dated September 2013, was prepared based on land use information and water demand calculations prepared and provided by RJA in August 2013.

Based on discussions with RJA, we understand that there have been some changes to the proposed land uses for the PROJECT which changes the projected water demands for the PROJECT (e.g., changes in the number of residential dwelling units in the various residential land use categories, although the total number of proposed residential dwelling units has not changed). We also understand that PROJECT representatives would like to revise the assumptions for the future use of recycled water within the PROJECT (e.g., reducing or eliminating the use of recycled water for residential landscaping and appropriately accounting for the future use of recycled water for irrigation of roadway median landscaping).

CONSULTANT understands that RJA will provide the revised land use data along with a revised water demand spreadsheet indicating the calculated potable and recycled water demands in the various phases and zones of the PROJECT. The water demand locations provided by RJA will also need to be broken down based on their location relative to irrigation district use areas, so that the water demands can be assigned appropriately to the various "places of use" included in the Project area.

Based on this data to be provided by RJA, CONSULTANT will revise the Draft WSA text, tables and figures so that the WSA will be consistent with other documents being prepared for the PROJECT.

Task Deliverables: There are no specific deliverables for this task. Revised text, tables and figures based on this task will be incorporated into a Final Draft WSA (see Task 3).

Estimated Fee for Task 1 Services: \$5,400.00

Task 2: Revise Draft WSA to include Verification of Sufficient Water Supply in accordance with the requirements of SB 221 (California Government Code Section 66473.7)

Because the PROJECT will include more than 500 residential dwelling units, the PROJECT is also subject to the requirements of SB 221 (California Government Code Section 66473.7). SB 221 amended State law to require that approval by a city or county of certain residential subdivisions requires an affirmative written verification of sufficient water supply. SB221 was intended as a fail-safe mechanism to ensure that collaboration on securing the needed water supplies to serve a new large residential subdivision occurs before construction begins.

The SB 221 Verification can be conducted based on the analysis provided in the City's 2010 Urban Water Management Plan and the recently completed Draft SB 610 WSA, but has specific requirements of its own. The verification must demonstrate supply sufficiency by showing that



Proposed Scope of Work for
Additional Work Related to the
Preparation of the Tracy Hills Water Supply Assessment

water supplies available during Normal, Single Dry and Multiple Dry years within a 20-year projection will meet the projected demand associated with the Proposed Project, in addition to existing and planned future uses, including, but not limited to, agriculture and industrial uses. Per the requirements of SB 221, the following must be considered:

- The City's historical water deliveries for the previous 20 years;
- Urban water shortage contingency analysis prepared for the UWMP;
- Supply reduction for specific water use sectors; and
- Amount of water expected from specified supply projects.

For budgeting purposes, CONSULTANT is assuming that the SB 221 verification will be included in the SB 610 Water Supply Assessment report (as a separate section) to provide the necessary linkages between the requirements for SB 610 and SB 221. If the City determines that a stand-alone, separate SB 221 Report is required, additional budget and a time extension must be authorized.

Task Deliverables: There are no specific deliverables for this task. Revisions based on this task will be incorporated into a Final Draft WSA (see Task 3).

Estimated Fee for Task 2 Services: \$7,000.00

Task 3: Prepare and Submit Final Draft WSA for Review and Comment by the City and Project Representatives

Based on the new/changed information described in Tasks 1 and 2 above, and the associated required revisions to the Draft WSA, CONSULTANT will prepare a Final Draft WSA, in track changes mode, to reflect the changes made to the Draft WSA. This Final Draft will be provided to the City, for review and distribution to PROJECT representatives. Upon receipt of comments on this Final Draft WSA, the WSA will be finalized as described in our original Scope of Work.

Task Deliverables: Under this task, CONSULTANT will provide a PDF version of the Final Draft WSA in track changes mode for review and comment by City staff and distribution to PROJECT representatives for their review and comment. Based on comments received on this Final Draft, the Final WSA will be prepared and submitted per our original agreement with the City.

Estimated Fee for Task 3 Services: \$8,500.00

Total Estimated Fee for Tasks 1, 2 and 3: \$20,900.00

WEST YOST ASSOCIATES, INC.
2014 Billing Rate Schedule

(Effective January 1, 2014 through December 31, 2014)*

Position	Labor Charges (dollars per hr)
Principal/Vice President	240
Engineering Manager	229
Principal Engineer/Scientist	207
Senior Engineer/Scientist/GIS Analyst	186
Associate Engineer/Scientist	169
GIS Analyst	164
Engineer II/Scientist II	147
Engineer I/Scientist I	126
Construction Manager III	186
Construction Manager II	169
Construction Manager I	158
Resident Inspector III	140
Resident Inspector II	129
Resident Inspector I	115
Sr. Designer/Sr. CAD Operator	120
Designer/CAD Operator	107
Technical Specialist III	120
Technical Specialist II	104
Technical Specialist I	87
Engineering Aide	71
Administrative IV	109
Administrative III	98
Administrative II	82
Administrative I	66

Hourly labor rates include Direct Costs such as general computers, system charges, telephone, fax, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.

Outside Services such as vendor reproductions, prints, shipping, and major West Yost reproduction efforts, as well as Engineering Supplies, Travel, etc. will be billed at actual cost plus 15%.

Mileage will be billed at the current Federal Rate.

Subconsultants will be billed at actual cost plus 10%.

Computers are billed at \$25 per hour for specialty models and AutoCAD.

Expert witness, research, technical review, analysis, preparation and meetings billed at 150% of standard hourly rates. Expert witness testimony and depositions billed at 200% of standard hourly rates.

A Finance Charge of 1.5% per month (an Annual Rate of 18%) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

*This schedule will be updated annually.



WEST YOST ASSOCIATES, INC.
2014 Billing Rate Schedule
(Cont'd.)

(Effective January 1, 2014 through December 31, 2014)*

SURVEYING AND EQUIPMENT CHARGES

Position	Labor Charges (dollars per hr)
GPS, 3-Person	366
GPS, 2-Person	317
GPS, 1-Person	246
Survey Crew, 2-Person	268
Survey Crew, 1-Person	202

EQUIPMENT CHARGES

Equipment	Billing Rate (dollars per day)	Billing Rate (dollars per week)
DO Meter	16	81
pH Meter	5	26
Automatic Sampler	128	698
Transducer/Data Logger	40	202
Hydrant Pressure Gage	11	49
Hydrant Pressure Recorder (HPR)	—	202
Hydrant Wrench	5	32
Pitot Diffuser	29	132
Well Sounder	29	132
Ultrasonic Flow Meter	—	264
Vehicle	87	437
Velocity Meter	11	64
Water Quality Multimeter	173	946
Thickness Gage	—	70

* This schedule will be updated annually.

CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
WATER SYSTEM RE-ANALYSIS FOR THE PROPOSED CORDES RANCH
PROJECT

This Professional Services Agreement (“Agreement”) is entered into between the City of Tracy, a municipal corporation (“CITY”), and West Yost Associates (“CONSULTANT”).

RECITALS

- A.** CONSULTANT is a registered professional engineer.
- B.** CONSULTANT services are needed for performing a technical peer review and re-evaluation of the previously completed water system hydraulic analysis of the proposed Cordes Ranch Project (PROJECT) based on the CITY’s December 2012 Citywide Water System Master Plan and subsequent Tier 2 Infrastructure Evaluation. This technical peer review and re-analysis is required to evaluate possible alternative infrastructure configurations proposed by the PROJECT Proponents that are different than previously developed and evaluated by the City, and may include some other changed conditions since this PROJECT was previously analyzed (such as moving the potential location of the proposed storage tank and associated pump station to serve the proposed PROJECT).
- C.** At the request of the CITY, in August 2013, CONSULTANT submitted a proposal to perform the services described in this Agreement. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit “A” attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: Gerry Nakano. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit “A,” nor shall Consultant use any subcontractors or subconsultants, without City’s prior written consent.

CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS, WATER SYSTEM RE-ANALYSIS FOR THE PROPOSED CORDES RANCH PROJECT

Page 2 of 7

2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.
3. **INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant. Consultant is free to work for other entities while under contract with the City. Consultant is not entitled to City benefits.
4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.
5. **COMPENSATION.**
 - 5.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B," attached and incorporated by reference. Consultant's fee for this Agreement is Not to Exceed \$85,000.00. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without the City's prior written approval.
 - 5.2 **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3 **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.

CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS, WATER SYSTEM RE-ANALYSIS FOR THE PROPOSED CORDES RANCH PROJECT

Page 3 of 7

6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.
8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning work under this Agreement, Consultant shall obtain a City of Tracy Business License.
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 - 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.

CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS, WATER SYSTEM RE-ANALYSIS FOR THE PROPOSED CORDES RANCH PROJECT

Page 4 of 7

- 10.2 Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) “per occurrence” coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 10.3 Automobile Liability** (with coverage at least as broad as ISO form CA 00 01, for “any auto”) coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 10.4 Workers’ Compensation** coverage shall be maintained as required by the State of California.
- 10.5 Professional Liability** “claims made” coverage shall be maintained to cover damages from negligent errors, omissions, or acts of Consultant in an amount not less than \$2,000,000 per claim and in the aggregate.
- 10.6 Endorsements.** Consultant shall obtain endorsements to the commercial general liability with the following provisions:
- 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 10.6.2** For any claims related to this Agreement, Consultant’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.
- 10.7 Notice of Cancellation.** Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.
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- 10.10 Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.

CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS, WATER SYSTEM RE-ANALYSIS FOR THE PROPOSED CORDES RANCH PROJECT

Page 5 of 7

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

11. ASSIGNMENT AND DELEGATION. This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

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To City:

Mr. Kuldeep Sharma
City Engineer
City of Tracy
325 Civic Center Plaza
Tracy, CA 95376

To Consultant:

Mr. Gerry Nakano
Vice President
West Yost Associates
7041 Koll Center Parkway, Suite 110
Pleasanton, CA 94566

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

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

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

CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS, WATER SYSTEM RE-ANALYSIS FOR THE PROPOSED CORDES RANCH PROJECT

Page 6 of 7

- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all applicable and non-conflicting local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 12.8 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS, WATER SYSTEM RE-ANALYSIS FOR THE PROPOSED CORDES RANCH PROJECT

Page 7 of 7

13. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

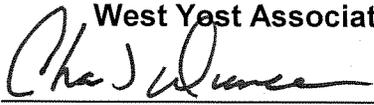
The parties agree to the full performance of the terms set forth here.

City of Tracy

Consultant

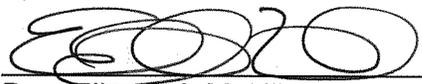
West Yast Associates

By: Brent H. Ives
Title: Mayor
Date: _____



By: Charles Duncan
Title: President
Date: 1-29-14
Fed. Employer ID No. 68-0370826

Attest:



By: Elizabeth M. Nilsen
Title: Chief Financial Officer
Date: 1/28/14

By: Sandra Edwards
Title: City Clerk
Date: _____

Approved As To Form:

By: Daniel G. Sodergren
Title: City Attorney
Date: _____

Exhibits:

- A Scope of Services, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 5.)

Proposed Scope of Work for Water System Re-Analysis Cordes Ranch Project



PROJECT UNDERSTANDING

West Yost Associates (CONSULTANT) has prepared the 2012 City of Tracy Citywide Water System Master Plan (WSMP) which includes a Tier 1 analysis of the proposed Cordes Ranch Project (Project). This 2012 WSMP utilized data provided to CONSULTANT by the City of Tracy (City) (with approval by the Cordes Ranch representatives). This information was then used by CONSULTANT to determine the buildout potable and recycled demands for the PROJECT, and to determine the infrastructure needs to support buildout of both potable water and recycled water systems throughout the City including the entire PROJECT. This information was then used in the City's 2012 WSMP. CONSULTANT also prepared a subsequent Technical Memorandum (TM) (Tier 2 Study) regarding the required potable and recycled water infrastructure required to serve Phase 1 of the proposed PROJECT (as identified by the Project Proponents), based on the backbone infrastructure identified in the 2012 WSMP and revised pipeline alignments provided by the Project Proponents.

The Project Proponents have now conducted their own hydraulic analysis of the City's recommended water and recycled water system infrastructure required to meet the PROJECT's Phase 1 demands, and have prepared a TM discussing assumptions made by the Project Proponents which are different than assumed by CONSULTANT, as contained in the City's 2012 WSMP and subsequent Tier 2 Study. The Project Proponents conducted the hydraulic analysis using the City's hydraulic model and included modifications to reflect alternate proposed water system infrastructure configurations.

CONSULTANT's proposed scope of work is described below.

PROPOSED SCOPE OF WORK

Task 1. Technical Peer Review

CONSULTANT will conduct a technical peer review of the results and findings provided in Project Proponents' TM and revised hydraulic model submitted to the City regarding required water system infrastructure to serve Phase 1 of the Project. Based on CONSULTANT's technical peer review, CONSULTANT will provide written responses to the findings and recommendations provided by the Project Proponents, identify issues of concern, if any, and re-run any hydraulic evaluations that are found to be necessary to hydraulically model the Project Proponents' proposed, revised infrastructure plans to serve Phase 1. CONSULTANT will document work in a TM to be provided to the City (to be clear, this scope does not assume that changes need to be made to the City's 2012 WSMP; however, if changes do need to be made, a budget augmentation and time extension will be required from the City).

CONSULTANT will also conduct a technical peer review of the Project Proponents' proposed water system infrastructure to serve the proposed Sub-Phase 1 service areas, and review of infrastructure plans to provide the Sub-Phase 1 area with fire flow during construction of the Sub-Phase 1 buildings, prior to occupancy. For budgeting purposes, it is assumed that the Project Proponents will be submitting a TM to the City to address how they propose to provide service to Sub-Phase 1 service areas, and for providing fire flow during construction (prior to



Proposed Scope of Work for Water System Re-Analysis Cordes Ranch Project

occupancy), and what existing water system infrastructure and supplies are being contemplated to be used. Again, CONSULTANT's work will include a technical review of the results and findings provided to the City by the Project Proponents in the form of a TM and revised hydraulic model, addressing how water service is being proposed to serve Sub-Phase 1 areas. Based on CONSULTANT's technical peer review of this TM and revised hydraulic model, we will provide written responses to the findings and recommendations provided by the Project Proponents, identify issues of concern, if any, and re-run any hydraulic evaluations that are found to be necessary to hydraulically model the Project Proponents proposed, revised infrastructure plans to serve Sub-Phase 1 areas. CONSULTANT will document work in a TM to be provided to the City.

Because of the critical need to consider the potential hydraulic impacts of any proposed Sub-Phase 1 PROJECT on the City's existing water system infrastructure and supplies (as described in the preceding paragraph), in conjunction with the other on-going development projects currently being processed throughout the City, and anticipated to be interimly drawing from (some portion of) the City's existing water system infrastructure and/or supplies within the next 2 to 3 year period, CONSULTANT must also evaluate the potential cumulative impacts of providing water service to any proposed Sub-Phase 1 Project service areas based on:

1. City prioritized interimly available storage in Clearwell #2,
2. Storage which will be available in the new Clearwell #3, currently being designed, and
3. Pumping capacity available under both interim and ultimate demand conditions from Zone 2 and Zone 3 interim and final booster pump stations that are also being currently designed.

The cumulative impacts of multiple projects all moving forward concurrently, particularly over the next two to three year period must be critically evaluated, coordinated and integrated to ensure that the City has sufficient hydraulic system capacity (by pressure zone), and supplies available to provide interim service, until the required buildout water system infrastructure and/or agreed upon Phase 1 PROJECT water system infrastructure is constructed and operational.

No infrastructure costs estimates or fee study will be developed as part of this proposed scope of services.

Estimated Fee for Task 1 = \$35,000.00



Proposed Scope of Work for Water System Re-Analysis Cordes Ranch Project

Task 2. Additional Services

In addition to the above work, Prologis has requested to include additional services from West Yost for a not to exceed amount of \$50,000 to be used on an as needed basis for time and materials. Additional services will be authorized after the City has received specific task requests from Prologis.

Estimated Fee for Task 2 = \$50,000.00

Total Estimated Fee for Tasks 1 and 2 = \$85,000.00

PROJECT SCHEDULE

CONSULTANT shall complete the Technical Memorandum identified in this Agreement within six weeks after receiving written authorization to proceed with this Agreement, and CONSULTANT's receipt of all requested information including the modified hydraulic water system model from Project Proponents.

PROJECT PERSONNEL

CONSULTANT shall assign the following persons to perform the tasks set forth in this Agreement:

- Charles Duncan (Principal in Charge);
- Gerry Nakano (Authorized Representative);
- Elizabeth Drayer (Engineering Manager);
- Irene Suroso (Senior Engineer);
- Amy Kwong (Senior Engineer);
- Brian Coox (Engineer I); and
- Christine Encelan (Administrative IV).



WEST YOST ASSOCIATES, INC.
2014 Billing Rate Schedule

Exhibit "B"

(Effective January 1, 2014 through December 31, 2014)*

Position	Labor Charges (dollars per hr)
Principal/Vice President	240
Engineering Manager	229
Principal Engineer/Scientist	207
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Associate Engineer/Scientist	169
GIS Analyst	164
Engineer II/Scientist II	147
Engineer I/Scientist I	126
Construction Manager III	186
Construction Manager II	169
Construction Manager I	158
Resident Inspector III	140
Resident Inspector II	129
Resident Inspector I	115
Sr. Designer/Sr. CAD Operator	120
Designer/CAD Operator	107
Technical Specialist III	120
Technical Specialist II	104
Technical Specialist I	87
Engineering Aide	71
Administrative IV	109
Administrative III	98
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Administrative I	66

Hourly labor rates include Direct Costs such as general computers, system charges, telephone, fax, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.

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Mileage will be billed at the current Federal Rate.

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A Finance Charge of 1.5% per month (an Annual Rate of 18%) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

*This schedule will be updated annually.

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(Cont'd.)

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GPS, 2-Person	317
GPS, 1-Person	246
Survey Crew, 2-Person	268
Survey Crew, 1-Person	202

EQUIPMENT CHARGES

Equipment	Billing Rate (dollars per day)	Billing Rate (dollars per week)
DO Meter	16	81
pH Meter	5	26
Automatic Sampler	128	698
Transducer/Data Logger	40	202
Hydrant Pressure Gage	11	49
Hydrant Pressure Recorder (HPR)	—	202
Hydrant Wrench	5	32
Pitot Diffuser	29	132
Well Sounder	29	132
Ultrasonic Flow Meter	—	264
Vehicle	87	437
Velocity Meter	11	64
Water Quality Multimeter	173	946
Thickness Gage	—	70

* This schedule will be updated annually.

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
WATER SYSTEM EVALUATION FOR ELLIS PROGRAM FIP**

This Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and West Yost Associates ("Consultant").

RECITALS

- A. CONSULTANT is a registered professional engineer.
- B. CONSULTANT services are needed related to the evaluation and preparation of an AB1600 Technical Report for the City of Tracy's Ellis Program FIP ("PROJECT").
- C. At the request of the CITY, in August 2013, CONSULTANT submitted a proposal to perform the services described in this Agreement. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Charles Duncan. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use any subcontractors or subconsultants, without City's prior written consent.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN
PROFESSIONALS
WATER SYSTEM EVALUATION FOR ELLIS PROGRAM FIP
Page 2 of 7**

- 3. INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant. Consultant is free to work for other entities while under contract with the City. Consultant is not entitled to City benefits.
- 4. CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.
- 5. COMPENSATION.**

 - 5.1 General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B," attached and incorporated by reference. Consultant's fee for this Agreement is Not to Exceed \$39,950. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without the City's prior written approval.
 - 5.2 Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3 Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
- 6. TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
- 7. OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
WATER SYSTEM EVALUATION FOR ELLIS PROGRAM FIP
Page 3 of 7**

8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning work under this Agreement, Consultant shall obtain a City of Tracy Business License.

10. **INSURANCE.**

- 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
- 10.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 10.3 **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.
- 10.5 **Professional Liability** "claims made" coverage shall be maintained to cover damages from negligent errors, omissions, or acts of Consultant in an amount not less than \$2,000,000 per claim and in the aggregate.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
WATER SYSTEM EVALUATION FOR ELLIS PROGRAM FIP
Page 4 of 7**

- 10.6 Endorsements.** Consultant shall obtain endorsements to the commercial general liability with the following provisions:
- 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
- 10.6.2** For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
- 10.7 Notice of Cancellation.** Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
WATER SYSTEM EVALUATION FOR ELLIS PROGRAM FIP
Page 5 of 7

12. MISCELLANEOUS.

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

To City:

Kul Sharma
City Engineer
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

Mr. Charles Duncan
President
West Yost Associates
7041 Koll Center Parkway, Suite 110
Pleasanton, CA 94566

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

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

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

12.4 Severability. If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

12.5 Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN
PROFESSIONALS
WATER SYSTEM EVALUATION FOR ELLIS PROGRAM FIP
Page 6 of 7**

- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all applicable and non-conflicting local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 12.8 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
WATER SYSTEM EVALUATION FOR ELLIS PROGRAM FIP
Page 7 of 7

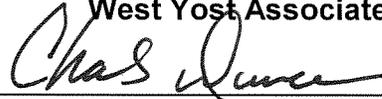
13. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

City of Tracy

Consultant

West Yost Associates



By: Brent H. Ives
Title: Mayor
Date: _____

By: Charles Duncan
Title: President
Date: 1.28.14

Attest:

Fed. Employer ID No. 68-0370826



By: Elizabeth M. Nilsen
Title: Chief Financial Officer
Date: 1/28/14

By: Sandra Edwards
Title: City Clerk
Date: _____

Approved As To Form:

By: Daniel G. Sodergren
Title: City Attorney
Date: _____

Exhibits:

- A Scope of Services, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 5.)

Water System Evaluation for Ellis Program FIP Approach and Scope of Work



PROJECT UNDERSTANDING

The Ellis Program FIP is located north of Linne Road, and is bounded to the East by Corral Hollow Road and to the West by Lammers Road within the Tracy City Limits.

As previously analyzed by West Yost Associates (West Yost) in the July 2012 Revised Water Supply Assessment (WSA) for the Ellis Specific Plan and Ellis Program FIP, the Ellis Program FIP included a mix of residential, commercial, and recreational uses covering approximately 320 acres. The Ellis Program FIP included a maximum of 2,250 residential units, 180,000 square feet of commercial space, a 16-acre swim center, and approximately 21 acres of neighborhood parks.

At this time, it is West Yost's understanding that the Ellis Program FIP will develop incrementally, generally from the east to the west. The development increments are defined by neighborhoods in the Ellis Program FIP and are anticipated to be developed in the following order:

- Initial Ellis Phase 1 Development Increment
 - Includes the 540 Residential Units and swim center
- Ellis Phase 1 Development Increment = Village Neighborhood
 - Includes Swim Center, Village Center and 540 Residential Units
- Second Development Increment = Full Buildout
 - Includes buildout of 2,250 residential units, swim center and 16 acre school

Land uses to be included in each of the development increments (including the number and type of dwelling units, square footage of commercial space, and acres of neighborhood parks) will be provided to West Yost by the Ellis Program FIP developers prior to the start of work on this Water System Evaluation for the Ellis Program FIP.

The City has requested that West Yost make the following assumptions:

1. The Ellis Program FIP will receive their water supply from the Delta Mendota Canal through the City's existing water treatment plant, and local groundwater sources, and that no additional analysis regarding water supply source or reliability is required (however, Ellis Program FIP's proportionate share of the recent WTP upgrades and providing water supply reliability will be evaluated and cost allocated accordingly).
2. The Ellis Program FIP will be allowed to interimly use existing available capacity in the City's existing water system infrastructure for 540 residential units.
3. The Ellis Program FIP will be required to pay a proportionate share of new water system infrastructure (i.e., transmission pipelines, storage facilities, and/or pumping facilities) required to meet the projected future water demands associated with the Ellis Program FIP.
4. West Yost's technical memorandum should be prepared in accordance with the Mitigation Fee Act, also known as "AB 1600."

Water System Evaluation for Ellis Program FIP Approach and Scope of Work



A final technical memorandum summarizing the results and costs for the Ellis Specific Plan evaluation was presented to City staff on June 3, 2013. Based on comments from City staff and Project Representatives, additional modifications and analysis of the hydraulic model will be performed. The major tasks to complete the evaluation of the Project are presented below.

BASIC SCOPE OF SERVICES

Task 1 – Addressing City Comments

West Yost will review comments received by City staff and Ellis Project Representatives and address comments by updating required tables and sections of the technical memorandum based on revised water demands and results of the hydraulic model analysis. For budgetary purposes, West Yost assumes attendance at up to four meetings to discuss and review comments.

Task 2 – Hydraulic Modeling

Under Task 2, West Yost will analyze the City's hydraulic model for the additional conditions requested by the City.

- Determine pumping capacity requirement for the initial Phase 1 of the ESP.
- Determine the number of residential units that can be supported by the initial pressure zone 3 facilities.
- Determine the point in time when the Zone 3 booster pump station must be expanded to its planned ultimate capacity.
- Confirm the portion of the Ellis Project that could be served by pressure zone 2 infrastructure and the impacts, if any to proposed pressure zone 3 infrastructure.
- Evaluation of Ellis "Avenues" Project.

Task 3 – Technical Memorandum

Under Task 3, West Yost will prepare and submit a revised draft and final technical memorandum that summarizes the results of the revised analysis.

Task 4 – Project Management and Coordination

Under Task 4, West Yost will keep project on track and within budget. Any additional coordination required for subsequent evaluations will also be performed under this task. For budgetary purposes, West Yost assumes up to 40 hours will be used for this coordination.

Total Estimated Fee for Tasks 1 – 4 Services = \$39,950

Water System Evaluation for Ellis Program FIP Approach and Scope of Work



SCHEDULE

West Yost shall complete the revised Draft TM four (4) weeks after receiving verbal authorization to proceed with this agreement, and West Yost's receipt of all supporting information from the City. West Yost shall complete the Final TM, no later than two weeks after receiving written, consolidated comments on the revised Draft TM.

PERSONNEL

West Yost shall assign the following person/persons to perform the tasks set forth in this Agreement:

- Charles Duncan, President (Authorized Representative);
- Shannon Barcal, Engineer II.
- Christine Encelan, Administrative IV

WEST YOST ASSOCIATES, INC.
2014 Billing Rate Schedule

Exhibit "B"

(Effective January 1, 2014 through December 31, 2014)*

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Automatic Sampler	128	698
Transducer/Data Logger	40	202
Hydrant Pressure Gage	11	49
Hydrant Pressure Recorder (HPR)	—	202
Hydrant Wrench	5	32
Pitot Diffuser	29	132
Well Sounder	29	132
Ultrasonic Flow Meter	—	264
Vehicle	87	437
Velocity Meter	11	64
Water Quality Multimeter	173	946
Thickness Gage	—	70

* This schedule will be updated annually.

RESOLUTION 2014 - _____

APPROVING VARIOUS PROFESSIONAL SERVICES AGREEMENTS WITH WEST YOST AND ASSOCIATES RELATED TO WATER ANALYSIS FOR CORDES RANCH AND TRACY HILLS DEVELOPMENTS AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENTS

WHEREAS, City Council has adopted citywide Water Master Plans which identifies the backbone water infrastructure to serve the new developments, and

WHEREAS, The developers fund the cost of the Master Plan improvements through development fees, and

WHEREAS, the initial projects within these developments can only fund a portion of the backbone infrastructure, and

WHEREAS, the Master Plan infrastructure is completed in multiple phases as funding become available, and

WHEREAS, Alternate analyses are completed to identify various phases of construction to achieve ultimate improvements, and

WHEREAS, Cordes Ranch, Tracy Hills and Ellis developments are planning their initial phases of developments to identify water infrastructure improvements and have requested the City to enter into PSAs with West Yost and Associates for their initial development, and

WHEREAS, Since West Yost and Associates have completed the City's Master Plan and are the most familiar with the water model, and

WHEREAS, A request for proposal was posted on the City web site for design and preparation of improvement plans and construction documents for the booster pump station and three proposals were received by the City, and

WHEREAS, After careful review the proposal from West Yost and Associates was found to be the most qualified based upon their qualifications, experience and cost, and

WHEREAS, West Yost and Associates is the keeper of the City's water model and is most qualified to complete the other three PSA's as listed below, and

WHEREAS, Approval of this agenda item will have no impact to the City's General Fund and funding for PSA Number One of \$271,900 will be paid by Tracy Hills with an additional \$10,000 as a contingency amount to be paid on as needed based on a time and material if agreed to by both the City and Tracy Hills with the remaining fund of \$36,000 to be paid by Plan C and infill area, and

WHEREAS, PSA Number Two (\$20,900) will be paid by Tracy Hills and PSA Number Three (\$85,000) will be paid for by Prologis through the existing Cost Recovery Agreement and PSA Number Four (\$39,950) will be paid for by Surland Companies;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves:

1. A PSA with West Yost and Associates for design, preparation of improvement plans and construction documents for JJWT Plant booster pump station for a not to exceed amount of \$317,900, and

- 2. A PSA with West Yost and Associates to complete the Tracy Hills water supply assessment for a not to exceed amount of \$20,900, and
- 3. A PSA with West Yost and Associates for a water system re-analysis of the Cordes Ranch project for a not to exceed amount of \$85,000,
- 4. A PSA with West Yost and Associates for a water system analysis of the Ellis Program area for a not to exceed amount of \$39,950, and authorizes the Mayor to execute the Agreement.

* * * * *

The foregoing Resolution _____ was adopted by the City Council on the 18th day of February, 2014, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.H

REQUEST

APPROVE AMENDMENT NUMBER THREE TO THE PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, FOR THE TRACY HILLS SPECIFIC PLAN AMENDMENT SUBSEQUENT ENVIRONMENTAL IMPACT REPORT AND AUTHORIZE THE MAYOR TO EXECUTE THE AMENDMENT

EXECUTIVE SUMMARY

Changes to the Tracy Hills Specific Plan Amendment project and its project description will require changes and additions to the scope of work for the project's Environmental Impact Report (EIR) from what was previously approved. This request is to approve an amendment to the Professional Services Agreement (PSA) for Kimley-Horn and Associates (KHA) to complete the work on the EIR.

DISCUSSION

On May 7, 2013, the City Council approved a Professional Services Agreement (PSA) (Resolution 2013-063) with KHA to prepare the Environmental Impact Report for the Tracy Hills Specific Plan Amendment project. Amendment Number One to the PSA was approved by the City Council on November 5, 2013, and Amendment Number Two is scheduled to be considered on February 18, 2013, earlier on the City Council Agenda. Subsequently, additional work has been requested for preparation of the EIR related to changes in the project description and additional items of the EIR to be prepared by KHA, including revised traffic assessment, additional technical analyses and a revised Notice of Preparation. The additional work is outlined in the PSA, Attachment A. The proposed amendment includes an additional amount not to exceed \$163,211.

STRATEGIC PLAN

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

FISCAL IMPACT

This PSA amendment will not impact the General Fund. The City and the project developer have a Cost Recovery Agreement through which the developer pays consultant costs and staff time to review and process the application.

RECOMMENDATION

Staff recommends that the City Council approve PSA Amendment Number Three to the Tracy Hills Specific Plan Amendment Subsequent Environmental Impact Report, and authorize the Mayor to execute the Amendment.

Agenda Item 1.H.
February 18, 2014
Page 2

Prepared by: Alan Bell, Senior Planner

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

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

ATTACHMENT

Attachment A – Amendment Number Three to Professional Services Agreement

**CITY OF TRACY
AMENDMENT NO. 3 TO
PROFESSIONAL SERVICES AGREEMENT
TRACY HILLS SPECIFIC PLAN AMENDMENT ENVIRONMENTAL IMPACT REPORT
AND TECHNICAL ANALYSIS RELATED TO TENTATIVE MAPS**

This Amendment No. 3 ("Amendment") to the Professional Services Agreement for Tracy Hills Specific Plan Amendment Environmental Impact Report and Technical Analysis related to Tentative Maps is entered into between the City of Tracy, a municipal corporation ("City"), and Kimley-Horn and Associates, Inc. ("CONSULTANT").

RECITALS

- A. The City and CONSULTANT entered into a Professional Services Agreement ("Agreement") for the Tracy Hills Specific Plan Amendment Subsequent Environmental Impact Report which was approved by the City Council on May 7, 2013, under Resolution No. 2013-063.
- B. The City and CONSULTANT entered into a Professional Services Agreement Amendment No. 1 approved by the City Council on November 5, 2013, under Resolution No. 2013-167; and Amendment No. 2 on February 18, 2014, under Resolution No. 2014-_____.
- C. During the past two months, the scope of the project has expanded, causing the Environmental Impact Report scope of work to be modified and require additional work in areas such as traffic, cultural resources and others.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Incorporation by Reference.** This Amendment incorporates by reference all terms set forth in the Agreement, unless specifically modified by this Amendment. The terms which are not specifically modified by this Amendment shall remain in effect.
2. **Terms of Amendment.** Section 1, Scope of Services, is amended to include the additional work set forth in Exhibit A2, attached hereto and incorporated herein. The Development Services Director may authorize in writing, additional CONSULTANT work directly related to the preparation of the Environmental Impact Report as long as such work does not exceed the approved contingency amount.

Section 5, Compensation, is amended to increase the not-to-exceed amount from \$531,685.00 to \$694,896.

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.

CITY OF TRACY
AMENDMENT NO. 3 TO
PROFESSIONAL SERVICES AGREEMENT
TRACY HILLS SPECIFIC PLAN AMENDMENT ENVIRONMENTAL IMPACT REPORT
AND TECHNICAL ANALYSIS RELATED TO TENTATIVE MAPS
PAGE 2 of 2

4. **Severability.** If any term of this Amendment is held invalid by a court of competent jurisdiction, the Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in effect.
5. **Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Amendment. This Amendment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

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

City of Tracy

By: _____
Brent H. Ives
Title: Mayor
Date: _____

Attest:

By: _____
Sandra Edwards
Title: City Clerk
Date: _____

Kimley-Horn and Associates, Inc.

By: 
Laura Worthington-Forbes
Title: Regional Vice President
Date: 2-12-14

By: 
Scott Colvin
Title: Assistant Secretary
Date: 2/12/14

Approved as to form

By: _____
Daniel G. Sodergren
Title: City Attorney
Date: _____

**Exhibit A2
Scope of Services**

**Amendment No. 3 to Professional Services Agreement
Tracy Hills Specific Plan Amendment Environmental Impact Report and Technical
Analysis Related to Tentative Maps**

The following identifies the key topical areas requiring a scope of work amendment as described during the November 26, 2013 conference call with City Staff and in the follow-up email submitted on November 27, 2013. In addition, the following reflects modifications to the Scope of Work triggered by our meeting with Caltrans Staff on January 22, 2014, and finally, by any applicable City revisions to the Specific Plan prepared by the Project Applicant and submitted to the City for review on December 16, 2013. As noted below in more detail, the following is a compilation of those items that need to be addressed, amended/modified and/or added to the Project EIR for the Tracy Hills Specific Plan Amendment.

Task 1 Revise/Recirculate Notice of Preparation (NOP).

The NOP will be revised to reflect the current revision to the 1998 Specific Plan and all modifications as noted above. This task assumes one minor round of review and corresponding edits requested by City staff. It is assumed that City Staff will be responsible for mailing and distribution of the NOP.

Task 2 Revise Administrative Draft EIR

The following sections of the Administrative Draft EIR currently in production will be added, augmented or revised as follows:

- **Executive Summary:** KHA will update the Executive Summary to reflect the current project description, EIR approach and topical sections.
- **Introduction: (Project History, Incorporation by Reference, EIR Scope, Issues of Concern, etc.).** KHA will update these sections based on the Revised Specific Plan and revised approach to CEQA clearance.
- **Project Description:** At minimum, the Project Description will be modified by KHA in the following areas:
 - Revise introduction to exclude “tiering” concept
 - Revise background section to further “tell the story” of why nothing has been built on site for the last 15+ years; and why a new EIR is being prepared
 - Project Characteristics: will be updated to reflect the current “Revised Specific Plan” proposal from Project Applicant, including all new graphics as applicable. The “entire” project will need to be reflected, as opposed to emphasis on Phase I
 - Land Use tables and Exhibits will require updates to reflect the most current Specific Plan Amendment
 - Zoning amendment will need to be added
 - Contemplated Actions: will need to be added following receipt of draft “contemplated actions” prepared by City of Tracy staff (this will include any clean-up actions to the 1998 Specific Plan ordinances, resolutions and conditions of approval)
- **Environmental Impact Analysis:** The following topical areas will be revised by KHA to reflect current baseline conditions, the updated Revised Specific Plan and the impacts of the

Specific Plan in its entirety. In addition, because an Initial Study will not be used to focus the EIR on the effects determined to be significant, the EIR will include all the environmental topics identified in Appendix G of the State CEQA Guidelines.

- **Cultural/Historic Resources:** There were mitigation measures included as part of the original 1998 EIR which were referenced in the previously circulated NOP/Initial Study. Given the change in project direction and need for an updated “baseline”, KHA has added a Cultural Resource Specialist to the team (Pacific Legacy) to review, validate and augment where necessary the prior EIR analysis and corresponding mitigation measures for inclusion in the EIR.

The KHA scope of work for this effort includes a literature review of existing cultural resources documentation for the project and adjacent area. This would include the Sandelin Archaeology and Forestry report (cited in the 1998 EIR document) and other reports not cited in the cultural sections relevant to the Tracy Hills Specific Plan (e.g. site records, previous reports). This search will be conducted at the Northwest Information Center of the California Historical Information System located at Sonoma State University. Pacific Legacy will review relevant documents and reports regarding the property.

The results of the background research and records search will be used to identify and evaluate any previously surveyed areas within the project area to determine whether or not previous survey(s) meet the recording standards of the California Office of Historic Preservation. While reviewing reports, a checklist will be created to address the variables which may affect the adequacy of the document. This could include survey coverage, transect spacing, vegetation or other prohibitive ground cover, survey for one particular class of resource or other constraints. At this time no field studies are anticipated.

Any deficiencies in previous cultural resource studies and the EIR will be documented. KHA will prepare a letter report with their recommendations and/or suggestions to ensure that the CEQA document is adequate.

- **Geology and Soils:** For this topical area, the Project Applicant will have their geotechnical consultant validate/verify the prior geotechnical findings for the entire project area, confirm the impact discussions and conclusions are still applicable (and if not, modify accordingly), standards/thresholds of significance are relevant and appropriate, and that the mitigation measures are updated where necessary to address currently acceptable standard engineering practices. This updated analysis will be used in preparation of a new EIR section.
- **Hazards:** KHA will update this section of the EIR to reflect current baseline conditions and a comprehensive update to the Lawrence Livermore National Laboratory Site 300 site conditions and operations.
- **Mineral Resources:** KHA will modify this discussion to tier off of the 2011 General Plan EIR (only). KHA will include this topic under the heading of “Other Environmental Topics” in the EIR, given the recent analysis, conclusions and mitigation measures adopted as part of the General Plan EIR, that no further analysis would be required. As an Initial Study will not be used to “focus” out those environmental topics found to have a less than significant impact on the environment, they will be included in the content of the EIR.

- ***Agricultural Resources:*** KHA will modify this discussion to tier off of the 2011 General Plan EIR (only). Similar to the approach for Mineral Resources (above), KHA will include this topic under the heading of “Other Environmental Topics” in the EIR, given the recent analysis, conclusions and mitigation measures adopted as part of the General Plan EIR, that no further analysis would be required. As an Initial Study will not be used to “focus” out those environmental topics found to have a less than significant impact on the environment, they will be included in the content of the EIR.
- ***Public Services:*** Based on the previous scope of work, KHA tiered off of the 1998 Specific Plan EIR for topics related to police, fire, parks and public facilities. These sections will be revised to reflect current baseline conditions, applicable General Plan updates and the Specific Plan in its entirety.
- ***Hydrology & Water Quality:*** This section of the EIR will be updated by KHA to reflect the current project description, revised baseline conditions and current EIR approach.
- ***Biological Resources:*** KHA will modify this section as necessary to address the Specific Plan land uses, current land use map and any changes to offsite infrastructure improvements or requirements in our collaborative efforts with CH2MHill.
- ***Back Sections of Administrative Draft EIR:*** All back sections of the EIR will be updated and modified by KHA to reflect updated revisions to the Specific Plan and the revised EIR approach.

Task 3: Revise Transportation Impact Assessment

Traffic and Circulation Additional Roadways/Buildout Analysis:

Since meeting with Caltrans the following scope of services has been added to the traffic analysis for the EIR:

KHA will analyze all intersections and segments (including County, City and Caltrans) where the project adds more than 5% of the cumulative traffic volume on the facility. KHA prepared the following table to indicate the analysis that was performed to determine the extent of the traffic analysis. Caltrans requested that Caltrans facilities be analyzed for 2035 plus project buildout conditions, in order for them to concur with the findings of the EIR. The analysis will also include the extraction of data from the City travel demand model and Fehr and Peers will conduct this task as a subconsultant to KHA. For the interchanges (3 in total), concept layouts will be prepared to indicate the anticipated ROW requirements. The addition of these intersections will result in the analysis for the following conditions:

- Existing
- Existing Plus Project Phase 1
- Existing Plus Project 2035
- Cumulative (2035)
- Cumulative (2035) plus Project (2035)
- Cumulative (2035) plus Project Buildout (at Caltrans facilities only)

For segment analysis, only segment number 6 is added to the existing scope. The other segments are already included in the existing scope, or not required to be studied, where the project contribution is less than 5%.

#	Study Segment
6	I-205-Eleventh Street/Tracy Boulevard

For intersections, numbers 22 to 33 (12 intersections) are added to the original scope.

#	Study Intersection
22	Lammers Road/Hansen Road
23	Lammers Ext (Eleventh)/I-205 Ramps
24	Lammers Ext/Pavillion Parkway
25	Corral Hollow Road/Eleventh Street
26	Tracy Boulevard/W. Central Avenue
27	Tracy Boulevard/Eleventh Street
28	Linne Road/Chrisman Road
29	Chrisman Road/Eleventh Street
30	Chrisman Road/I-205 Ramps
31	Linne Road/MacArthur Drive
32	Corral Hollow Road/Tennis Lane
33	Mountain House Parkway/Schulte Road

Task 4: Project Management, Coordination and Meeting Attendance

Given the schedule for submittal of an Administrative Draft EIR, KHA has added environmental, planning and engineering staff support to the team over the course of the next four weeks and has shifted staff priorities and workload to be certain to meet this very critical schedule.

Task 5: Subconsultants Support

RBF Consulting will continue to provide technical support in the topical areas of air quality, greenhouse gas emissions, noise and biological resources. The level of effort required for RBF to update and/or modify their technical reports and corresponding EIR sections is outlined below. In addition to RBF, Fehr and Peers will conduct the necessary modeling to support the TIA work requested by Caltrans addressed in Task 3, Pacific Legacy will conduct the Cultural Resource peer review and database inventory update, and KHA will engage ADT to conduct the traffic counts referenced in Task 3 above.

Task 5.1: EIR Section Updates (Air Quality/Noise/Greenhouse Gas Emissions/Biological Analysis)

RBF Consulting will support KHA in updating the existing EIR sections that were previously written using the original Specific Plan Amendment. The EIR sections will be updated to reflect current baseline conditions, the revised Specific Plan Amendment, and any other revisions and/or changes requested by City staff. It will be necessary to allocate additional staff and resources to meet the schedule for the proposed project. Therefore, RBF has included additional hours to ensure the schedule will be met.

RBF Consulting will also support KHA in coordinating with both the City and the Project Applicant on a regular basis to ensure that the proposed deadlines are met. Along with KHA, RBF will undertake consultation and coordination of the Project and review the EIR for compliance with CEQA requirements, the State CEQA Guidelines, City CEQA practices and prevailing CEQA case law.

Task 5.2: Pacific Legacy Consultants

Refer to Scope of Work under Task 2, Cultural Resources, above.

Task 5.3: ADT Traffic Counts

Refer to Scope of Work under Task 3, Transportation Impact Analysis, above.

Task 5.4: Fehr and Peers

5.4.1 Traffic Forecasts

Fehr and Peers will provide travel demand forecasts and select-zone assignments to support transportation analysis for the Specific Plan EIR. These tasks include providing traffic forecasts for up to six model runs, including select-zone assignments and development of AM and PM peak hour intersection turning movements at up to 15 intersections.

Fehr & Peers will provide high level forecasting support to the project team to help the project team re-define the horizon year land uses for the Tracy Hills Project.

Fehr & Peers will provide high level project transportation metrics to support the transportation evaluation of different Tracy Hills horizon scenarios. The work will include providing select-zone assignments and project-wide trip generation estimates for six additional model runs to test different project definitions. Fehr & Peers will respond to comments on the high level forecasts and advise the project team on how changes to the project definition would affect the high-level transportation metrics.

5.4.2 Specific Plan Revisions and EIR-Traffic Forecasts-Additional Tasks

Fehr & Peers will provide travel demand forecasts and select-zone assignments to support transportation analysis for the Specific Plan EIR with the latest definition of the project. These tasks are similar to those already performed under the June 24, 2013 Scope of Work and contract with KHA. Where possible, efficiencies based on already-defined technical processes will be employed.

Fehr & Peers will prepare up to three model runs, including select-zone assignments and development of AM and PM peak hour intersection turning movements at up to 15 intersections for the following scenarios:

- Baseline (Fall 2010)-ALREADY COMPLETED
- Baseline (Fall 2010) with 2035/Horizon Project
- Future (2035) with 2035/Horizon Project
- Future (2035) with Buildout

Fehr & Peers will be available to attend up to two additional meetings over the course of the project as a result of this additional effort.

The following provides the Fee Estimate for Tasks 1 through 5 as described above.

TASK	COMBINED TASK TOTAL
Task 1 - Revised NOP	\$385.00
Task 2 - Revise Administrative Draft EIR	\$25,380.00
Task 3 - Additional Roadways and BO Analysis	\$57,000.00
Task 4 - Project Management/Coordination/Meetings	\$29,400.00
Subtotal KHA	\$112,165.00
Task 5 - Tech Reports-Sub Fees	
5.1 - RBF Consulting (AQ/Noise/GHG/Bio Analysis)	\$12,295.00
5.2 - Pacific Legacy-Cultural Assessment	\$3,578.00
5.3 - ADT Traffic Counts for Additional Roadways	\$5,000.00
5.4 - Fehr and Peers Modeling & Coordination	\$25,000.00
Total Sub-Consultants (5.1-5.4)	\$45,873.00
Reimbursables/Expenses	\$5,000.00
Total Fee Estimate	\$163,038.00

RESOLUTION _____

APPROVING AMENDMENT NUMBER THREE TO THE PROFESSIONAL SERVICES AGREEMENT (PSA) WITH KIMLEY-HORN AND ASSOCIATES FOR THE TRACY HILLS SPECIFIC PLAN AMENDMENT EIR AND TECHNICAL ANALYSIS RELATED TO TENTATIVE MAPS AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, On May 7, 2013, the City Council approved a Professional Services Agreement (PSA) (Resolution Number 2013-063) with Kimley-Horn and Associates (KHA) to prepare the Tracy Hills Specific Plan Amendment project Environmental Impact Report (EIR), and

WHEREAS, The City Council approved Amendment Number One to the PSA (Resolution Number 2013-167) on November 5, 2013 and Amendment Number Two on February 18, 2014 (Resolution Number 2014-_____), and

WHEREAS, During the past three months, the Specific Plan Amendment project has been modified, resulting in additional technical analysis, an expanded scope for the EIR, and sections already prepared to be rewritten, and

WHEREAS, KHA submitted a proposal to complete the additional work at a cost not to exceed \$163,211, and

WHEREAS, a Cost Recovery Agreement is in place through which the developer pays consultant costs to prepare the EIR;

NOW, THEREFORE, BE IT RESOLVED, That City Council, approves PSA Amendment Number Three to the Tracy Hills Specific Plan Amendment EIR and Technical Analysis Related to Tentative Maps, and authorizes the Mayor to execute the Agreement.

* * * * *

The foregoing Resolution was passed and adopted by the Tracy City Council on the 18th day of February, 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

CITY CLERK

AGENDA ITEM 1.I

REQUEST

APPROVAL OF FOUR MASTER PROFESSIONAL SERVICES AGREEMENTS WITH KIMLEY-HORN, FIRST CARBON SOLUTIONS, ASCENT ENVIRONMENTAL, AND DE NOVO PLANNING GROUP FOR ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE FOR VARIOUS PROJECTS AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENTS.

EXECUTIVE SUMMARY

This agenda item, with City Council approval, would authorize the City to contract with Kimley-Horn, First Carbon Solutions, Ascent Environmental, and De Novo Planning Group for the completion of environmental analyses and planning assistance on a variety of upcoming development projects.

DISCUSSION

Development Services Department staff is working with various developers on a large number of entitlement applications, most of which include the need for environmental analyses. Some examples include a major amendment to the Tracy Gateway project and Development Agreement, Cordes Ranch, and several residential subdivision projects, many of which require General Plan and/or Zoning amendments. In consideration of the timing needs of the developers, staff is tasked with expediting the completion of the entitlements of these projects, including their necessary environmental studies.

In December 2013 the City published a Request for Proposals for assistance with environmental (CEQA) studies and documentation and other assistance to planning staff as required. On December 20, 2013, staff received the proposals and chose four consultants that best fit the City's needs. As projects are submitted for review, staff will select the most appropriate consultant for assistance with each project. These contracts with each of the four consultants are for a term of two years.

STRATEGIC PLAN

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

FISCAL IMPACT

There will be no impact to the General Fund. The funding for these consultants will be through Cost Recovery Agreements executed with each developer to cover the costs of staff time and consultant work related to each project.

RECOMMENDATION

Staff recommends that the City Council approve the Master Professional Services Agreements and Billing Rates with Kimley-Horn, First Carbon Solutions, Ascent Environmental, Incorporated, and De Novo Planning Group for environmental analyses and planning assistance for various projects, and authorize the Mayor to execute the agreements. It is further recommended that individual task orders be approved by the City Manager with a not to exceed a cumulative dollar amount of \$600,000, provided that this is only applicable to projects for which funds are available through a Cost Recovery Agreement.

Prepared by: Victoria Lombardo, Senior Planner

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

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

ATTACHMENTS

- Attachment A — Master Professional Services Agreement with Kimley-Horn, with billing rates included
- Attachment B — Master Professional Services Agreement with First Carbon Solutions, with billing rates included
- Attachment C — Master Professional Services Agreement with Ascent Environmental, Incorporated, with billing rates included
- Attachment D — Master Professional Services Agreement with De Novo Planning Group, with billing rates included

CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and Kimley-Horn and Associates, Inc., a North Carolina Corporation ("Consultant").

RECITALS

- A. Consultant is qualified to perform environmental analysis (CEQA) services as well as a broad range of other planning assistance services. Such consultant services are needed related to the processing of various development applications.
- B. On December 5, 2013, the City issued a Request For Proposals for CEQA and planning assistance services (hereinafter "Project"). On December 20, 2013, Consultant submitted its proposal for the Project to the City. After negotiations between the City and Consultant, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- C. On February 18, 2014, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2014-_____

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES.** Consultant shall perform the services generally described in Exhibit "A" attached and incorporated by reference. Consultant's specific scope of services shall be more particularly described in individual Task Orders subject to the written approval of the City and Consultant. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Laura Worthington-Forbes. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use any subcontractor or subconsultant, without the City's prior written consent. The term of Agreement is two years from the date of final signature.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant.

Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

3. **INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant.
4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.
5. **COMPENSATION.**
 - 5.1. **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "A," and Not to Exceed the amount set forth in each individual Task Order, provided however, that the aggregate total of all Task Orders under this Agreement is Not to Exceed \$600,000. Consultant's billing rates, and the Not to Exceed amounts, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.
 - 5.2. **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3. **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such

documents shall be revealed or made available by Consultant to any third party without the prior written consent of City.

8. **INDEMNIFICATION**. Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE**. Before beginning any work under this Agreement, Consultant shall obtain a City of Tracy Business License.
10. **INSURANCE**.
- 10.1 **General**. Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
- 10.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 10.3 **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.
- 10.5 **Professional Liability** coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per occurrence.

- 10.6 Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
- 10.6.2** For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
- 10.7 Notice of Cancellation.** Consultant shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.

11. ASSIGNMENT AND DELEGATION. This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's prior written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

12. MISCELLANEOUS.

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

To City:

Bill Dean
Assistant DS Director
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

Laura Worthington-Forbes
Principal-in-Charge
Kimley-Horn and Associates, Inc.
100 West San Fernando St., Ste. 250
San Jose, CA 95113

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
Kimley-Horn and Associates
Page 6 of 6

12.8 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by licensed professionals performing in the same or similar time and locality, and under the same or similar circumstances.

13. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

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

City of Tracy

By: Brent H. Ives
Title: Mayor

Date: _____
Attest:

By: Sandra Edwards
Title: City Clerk

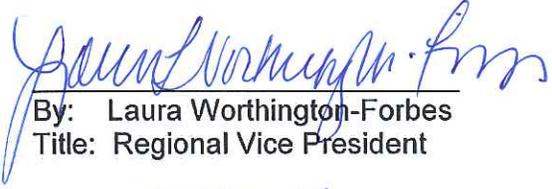
Date: _____

Approved As To Form:

By: Daniel G. Sodergren
Title: City Attorney

Date: _____

Consultant
Kimley-Horn and Associates, Inc.



By: Laura Worthington-Forbes
Title: Regional Vice President

Date: 2-12-14

Fed. Employer ID No. _____



By: Scott Colvin
Title: Assistant Secretary

Date: 2/12/14



Northern California Hourly Rate Schedule

Rates Effective through June 30, 2014

	<u>Hourly Billing Rate*</u>
Principal / Sr. Technical Advisor	\$275
Sr. Professional	\$260
Professional II	\$205
Professional I	\$155
Analyst II	\$125
Analyst I	\$100
Sr. Designer	\$145
Designer	\$95
Project Support	\$140
Clerical	\$80

*Rates will be escalated 5% yearly on July 1st.

Other Direct Costs: Outside Printing/Reproduction, Delivery Services/USPS, Misc. Field Equipment/Supplies, and Travel Expenses will be billed at actual cost plus 10%. Mileage will be billed at the Federal Rate.

CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and **First Carbon Solutions** ("Consultant").

FirstCarbon Solutions IMBA

RECITALS

- A. Consultant is qualified to perform environmental analysis (CEQA) services as well as a broad range of other planning assistance services. Such consultant services are needed related to the processing of various development applications.
- B. On December 5, 2013, the City issued a Request For Proposals for CEQA and planning assistance services (hereinafter "Project"). On December 20, 2013, Consultant submitted its proposal for the Project to the City. After negotiations between the City and Consultant, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- C. On February 18, 2014, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2014-_____

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES.** Consultant shall perform the services generally described in Exhibit "A" attached and incorporated by reference. Consultant's specific scope of services shall be more particularly described in individual Task Orders subject to the written approval of the City and Consultant. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: **Mary Bean.** Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use any subcontractor or subconsultant, without the City's prior written consent. The term of Agreement is two years from the date of final signature.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant.

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

First Carbon Solutions

Page 2 of 6

Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

3. **INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant.
4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.
5. **COMPENSATION.**
 - 5.1. **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "A," and Not to Exceed the amount set forth in each individual Task Order, provided however, that the aggregate total of all Task Orders under this Agreement is Not to Exceed \$600,000. Consultant's billing rates, and the Not to Exceed amounts, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.
 - 5.2. **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3. **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

First Carbon Solutions

Page 3 of 6

documents shall be revealed or made available by Consultant to any third party without the prior written consent of City.

8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning any work under this Agreement, Consultant shall obtain a City of Tracy Business License.

10. **INSURANCE.**

- 10.1 General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
- 10.2 Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 10.3 Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 10.4 Workers' Compensation** coverage shall be maintained as required by the State of California.
- 10.5 Professional Liability** coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per occurrence.

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

First Carbon Solutions

Page 4 of 6

- 10.6 Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 10.6.2** For any claims related to this Agreement, Consultant’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.
- 10.7 Notice of Cancellation.** Consultant shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant’s Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant’s duties be delegated, without the City’s prior written consent. Any attempt to assign or delegate this Agreement without the City’s written consent shall be void and of no effect. City’s consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 12. MISCELLANEOUS.**
- 12.1 Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
First Carbon Solutions
Page 5 of 6

To City:

Bill Dean
Assistant DS Director
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

Mary Bean
Director of Professional Services
First Carbon Solutions | **MBA**
1350 Treat Boulevard, Suite 380
Walnut Creek, CA 94597

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

First Carbon Solutions

Page 6 of 6

12.8 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by licensed professionals performing in the same or similar time and locality, and under the same or similar circumstances.

13. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

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

City of Tracy

By: Brent H. Ives
Title: Mayor

Date: _____

Attest:

By: Sandra Edwards
Title: City Clerk

Date: _____

Approved As To Form:

By: Daniel G. Sodergren
Title: City Attorney

Date: _____

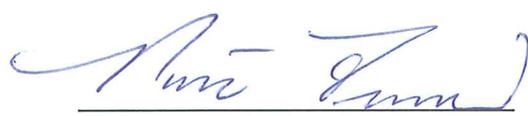
Consultant
First Carbon Solutions



By: Mary Bean
Title: Vice President

Date: 2/12/14

Fed. Employer ID No. _____
95-3782289



By: Robert Francisco
Title: President and CFO

Date: 2/12/14

FirstCarbon Solutions | Michael Brandman Associates

Fee Schedule

FirstCarbon Solutions | Michael Brandman Associates (FCS|MBA) provides consulting services in environmental impact assessment and regulatory compliance, planning, air quality and greenhouse gases, biological and cultural resources management. Compensation is based on the following fee schedule and charges.

Hourly Labor Rates

President/Vice President	\$240 - 285
Director	160 - 270
Senior Project Manager/Senior Scientist/Senior Regulatory Scientist	110 - 180
Project Manager/Regulatory Scientist	100 - 150
Assistant Project Manager/Assistant Regulatory Scientist	80 - 120
Environmental Planner/Project Ecologist/Biologist	70 - 95
Environmental Analyst/Regulatory Analyst	60 - 90
Research Analyst/Staff Ecologist	50 - 75
Senior Archaeologist/Paleontologist	95 - 135
Project Archaeologist/Paleontologist/Principal Investigator, Historian	85 - 110
Project Coordinator	65 - 90
Architectural Historian/Staff Archaeologist	65 - 95
Field Director/Crew Chief/Supervisor	65 - 80
Laboratory Director	65 - 80
Field Monitors/Laborer	40 - 55
Laboratory Assistant	40 - 55
Publications Coordinator/Technical Editor	90 - 115
GIS Analyst	70 - 130
Graphics Designer/GIS Technician	65 - 80
Word Processor	65 - 80
Administrative Assistant/Accounting/Clerical	55 - 80
Reprographics Assistant/Intern	45 - 60

Other Labor Rates

Labor rates for expert testimony, litigation support, and depositions/court appearances will be billed at a minimum of two times the above rates. If additional services are authorized during the performance of a contract, compensation will be based on the fee schedule in effect at the time the services are authorized.

Direct Expenses

Direct expenses are billed at the amount charged, as described below, plus a 10-percent administration cost.

1. Out-of-pocket expenses - including, but not limited to, travel, messenger service, lodging, meals, blueprint, reproduction, and photographic services: Cost, as charged to FCS|MBA.
2. Subcontractors' fees: As quoted.
3. Passenger cars: \$0.565 per mile.
4. Four-wheel drive vehicles: \$75.00 per day (\$0.565 per mile).
5. Reproduction and Color copies: See Reprographics Fee Schedule provided as necessary.
6. Records checks: fees vary with facility and project.
7. USFWS/CDFG impacts or mitigation fees.
8. Museum curation: fees vary with the city and project.
9. Cultural resources storage/curation of fossil and artifact collections: Cost, as charged to FCS|MBA.
10. Per Diem: \$145.00/per day. Lodging surcharge may apply in high rate areas.

Terms

Compensation and direct expenses are invoiced monthly and are payable upon receipt.

Rates effective January 1, 2013.

CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and **Ascent Environmental, Incorporated** ("Consultant").

RECITALS

- A. Consultant is qualified to perform environmental analysis (CEQA) services as well as a broad range of other planning assistance services. Such consultant services are needed related to the processing of various development applications.
- B. On December 5, 2013, the City issued a Request For Proposals for CEQA and planning assistance services (hereinafter "Project"). On December 20, 2013, Consultant submitted its proposal for the Project to the City. After negotiations between the City and Consultant, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- C. On February 18, 2014, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2014-_____

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** Consultant shall perform the services generally described in Exhibit "A" attached and incorporated by reference. Consultant's specific scope of services shall be more particularly described in individual Task Orders subject to the written approval of the City and Consultant. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: **Amanda Olekszulin**. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use any subcontractor or subconsultant, without the City's prior written consent. The term of Agreement is two years from the date of final signature.
- 2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant.

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

Ascent Environmental, Incorporated

Page 2 of 6

Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

3. **INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant.
4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.
5. **COMPENSATION.**
 - 5.1. **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "A," and Not to Exceed the amount set forth in each individual Task Order, provided however, that the aggregate total of all Task Orders under this Agreement is Not to Exceed \$600,000. Consultant's billing rates, and the Not to Exceed amounts, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.
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6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

Ascent Environmental, Incorporated

Page 3 of 6

documents shall be revealed or made available by Consultant to any third party without the prior written consent of City.

8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

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The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning any work under this Agreement, Consultant shall obtain a City of Tracy Business License.

10. **INSURANCE.**

- 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
- 10.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 10.3 **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
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CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

Ascent Environmental, Incorporated

Page 4 of 6

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- 10.6.2** For any claims related to this Agreement, Consultant’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.
- 10.7 Notice of Cancellation.** Consultant shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant’s Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant’s duties be delegated, without the City’s prior written consent. Any attempt to assign or delegate this Agreement without the City’s written consent shall be void and of no effect. City’s consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 12. MISCELLANEOUS.**
- 12.1 Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

Ascent Environmental, Incorporated

Page 5 of 6

To City:

Bill Dean
Assistant DS Director
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

Amanda Olekszulín
President
Ascent Environmental, Incorporated
455 Capitol Mall, Suite 300
Sacramento, CA 95814

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

Ascent Environmental, Incorporated

Page 6 of 6

12.8 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by licensed professionals performing in the same or similar time and locality, and under the same or similar circumstances.

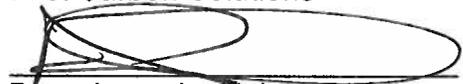
13. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

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

City of Tracy

Consultant
First Carbon Solutions

By: Brent H. Ives
Title: Mayor


By: Amanda Olekszulin
Title: ~~President~~ CFO/Principal

Date: _____

Date: 2/12/14

Fed. Employer ID No. 27-1537109

Attest:

By: Sandra Edwards
Title: City Clerk

Date: _____

Title: _____
Date: _____

Approved As To Form:

By: Daniel G. Sodergren
Title: City Attorney

Date: _____



Ascent Environmental, Inc.
2014 Fee Schedule

Labor Classification	Billing Rate
Principal, Director	\$200 to \$240
Senior Project Manager, Senior Planner/Scientist/Biologist	\$150 to \$195
Project Manager, Project Planner/Scientist/Biologist	\$120 to \$160
Environmental Analyst, Staff Scientist/Staff Biologist	\$90 to \$130
Graphics/GIS	\$70 to \$110
Document Production/Word Processor/Administrative Assistant	\$70 to \$95
Project Assistant	\$45 to \$65
Direct Costs	Rates*
Reproduction: 8 ½" by 11" black & white	\$0.08/page
Reproduction: 8 ½" by 11" color	\$0.45/page
Reproduction: CDs	\$10/disc
Automobile mileage (IRS rate in effect)	\$0.565
Noise meter	½ day/\$100, Full day/\$150 (no overnight) Multiple day/\$200 (24-hour), Week/\$500
Per Diem	Standard Government Rates or as negotiated
Other direct costs, including subcontractors	As incurred

Rates apply to all agreements executed during the calendar year. After the current calendar year, agreements (including contract amendments), will be subject to the rate in effect at the time the agreement is executed.

* A general and administrative cost of 10 percent will be applied to all direct costs, including subcontractors.

CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
ENVIRONMENTAL ANALYSIS (CEQA) SERVICES AND PLANNING ASSISTANCE

This Master Professional Services Agreement (“Agreement”) is entered into between the City of Tracy, a municipal corporation (“City”), and **De Novo Planning Group** (“Consultant”).

RECITALS

- A. Consultant is qualified to perform environmental analysis (CEQA) services as well as a broad range of other planning assistance services. Such consultant services are needed related to the processing of various development applications.
- B. On December 5, 2013, the City issued a Request For Proposals for CEQA and planning assistance services (hereinafter “Project”). On December 20, 2013, Consultant submitted its proposal for the Project to the City. After negotiations between the City and Consultant, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- C. On February 18, 2014, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2014-_____

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** Consultant shall perform the services generally described in Exhibit “A” attached and incorporated by reference. Consultant’s specific scope of services shall be more particularly described in individual Task Orders subject to the written approval of the City and Consultant. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: **Ben Ritchie**. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit “A,” nor shall Consultant use any subcontractor or subconsultant, without the City’s prior written consent. The term of Agreement is two years from the date of final signature.
- 2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant.

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

De Novo Planning Group

Page 2 of 6

Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

3. **INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant.
4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.
5. **COMPENSATION.**
 - 5.1. **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "A," and Not to Exceed the amount set forth in each individual Task Order, provided however, that the aggregate total of all Task Orders under this Agreement is Not to Exceed \$600,000. Consultant's billing rates, and the Not to Exceed amounts, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.
 - 5.2. **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3. **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

De Novo Planning Group

Page 3 of 6

documents shall be revealed or made available by Consultant to any third party without the prior written consent of City.

8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning any work under this Agreement, Consultant shall obtain a City of Tracy Business License.

10. **INSURANCE.**

- 10.1 General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
- 10.2 Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 10.3 Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 10.4 Workers' Compensation** coverage shall be maintained as required by the State of California.
- 10.5 Professional Liability** coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per occurrence.

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

De Novo Planning Group

Page 4 of 6

- 10.6 Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 10.6.2** For any claims related to this Agreement, Consultant’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.
- 10.7 Notice of Cancellation.** Consultant shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant’s Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.

11. ASSIGNMENT AND DELEGATION. This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant’s duties be delegated, without the City’s prior written consent. Any attempt to assign or delegate this Agreement without the City’s written consent shall be void and of no effect. City’s consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

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CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

De Novo Planning Group

Page 5 of 6

To City:

Bill Dean
Assistant DS Director
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

Ben Ritchie
Principal
De Novo Planning Group
2778 17th Street
Sacramento, CA 95818

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
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- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

De Novo Planning Group

Page 6 of 6

12.8 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by licensed professionals performing in the same or similar time and locality, and under the same or similar circumstances.

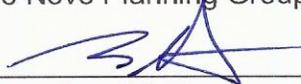
13. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

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

City of Tracy

Consultant
De Novo Planning Group

By: Brent H. Ives
Title: Mayor



By: Ben Ritchie
Title: Principal

Date: _____

Date: 2/12/14

Fed. Employer ID No. _____

Attest:

26-2962235

By: Sandra Edwards
Title: City Clerk

Date: _____

Title: _____
Date: _____

Approved As To Form:

By: Daniel G. Sodergren
Title: City Attorney

Date: _____

De Novo Planning Group



A Land Use Planning, Design, and Environmental Firm

De Novo Planning Group 2014-2015 Hourly Billing Rates

City of Tracy Environmental Analysis (CEQA) Services and Planning Assistance Agreement

Project Manager: \$125/hour

Principal Planner: \$110/hour

GIS/Graphics: \$75/hour

RESOLUTION _____

APPROVING MASTER PROFESSIONAL SERVICES AGREEMENTS
WITH KIMLEY-HORN, FIRST CARBON SOLUTIONS, ASCENT ENVIRONMENTAL,
INCOPORATED AND DE NOVO PLANNING GROUP TO AUGMENT STAFF RESOURCES
RELATED TO THE ENVIRONMENTAL DOCUMENTATION AND OTHER PLANNING
ASSISTANCE FOR VARIOUS PROJECTS AND AUTHORIZING THE MAYOR TO EXECUTE
THE AGREEMENTS

WHEREAS, Staff is processing various applications that require environmental analyses and the completion and review of the appropriate entitlement documents, and

WHEREAS, The project applicants expect the timely completion of the required environmental documentation and entitlements, and

WHEREAS, In December 2013, the Development Services Department published a Request for Proposals for environmental documentation and planning assistance for the projects, and

WHEREAS, On December 20, 2013 Kimley-Horn, First Carbon Solutions, Ascent, and De Novo Planning Group, along with several other consulting firms submitted proposals to the City, and

WHEREAS, The proposals submitted by Kimley-Horn, First Carbon Solutions, Ascent Environmental, Incorporated, and De Novo Planning Group best meet the City's needs by demonstrating the competence and professional qualifications necessary for the preparation of appropriate environmental analyses and to assist planning staff as otherwise necessary;

NOW, THEREFORE, BE IT RESOLVED, That City Council hereby approves the Master Professional Services Agreements and Billing Rates with Kimley-Horn, First Carbon Solutions, Ascent Environmental, Incorporated, and De Novo Planning Group, authorizes the approval of task orders to be completed by the City Manager with a not to exceed a cumulative dollar amount of \$600,000, provided that this is only applicable to projects for which funds are available through a Cost Recovery Agreement, and authorizes the Mayor to execute the Agreements.

* * * * *

The foregoing Resolution 2014-_____ was adopted by the City Council on the 18th day of February, 2014, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 3

REQUEST

ACCEPT CONSULTANT FINAL REPORT ON CITY COST ALLOCATION PLAN AND CONSIDER NEW SINGLE HOURLY BILLING RATE METHODOLOGY AND MODIFICATION OF COST RECOVERY AGREEMENT (CRA) OVERHEAD RECOVERY LEVELS

EXECUTIVE SUMMARY

In response to Council direction, staff developed a transparent cost allocation approach using a single hourly billing rate for the recovery of indirect costs (overhead) through City Cost Recovery Agreements (CRAs) and Capital Improvement Program (CIP) projects. It was also suggested that staff work with the development community to explore indirect cost recovery options regarding CRAs.

BACKGROUND

In response to a Council Member's request to evaluate the City's overhead application practices, Management Partners was retained in April 2013 to review the City's cost allocation methodology. The evaluation process also involved meeting with local developers who had expressed concerns about the City's cost recovery policy. Additionally, Council directed staff explore a single hourly billing rate methodology and work with the development community to identify options regarding the overhead charges for CRAs.

DISCUSSION

In August 2013, Management Partners presented a status update to Council regarding its evaluation of the City's cost allocation methodology and practices. In its February 2014 final report, Management Partners indicated that the City's cost allocation methodology was reasonable and within industry standards. Management Partners also met with members of the development community to review the City's current cost allocation practices. The consultants reported that developers were less concerned about the overhead methodology and more focused on the City's policy to recover full overhead costs. It was also determined that the City's presentation of its overhead charges would benefit from further clarification on customer invoices. Management Partners has recommended that the City's invoices be reformatted to ensure clarity and transparency for its customers.

Proposed Methodology

Currently, the City uses a multiplier methodology that is applied to engineering and planning hourly rates to recover indirect costs associated with planning and engineering services. This is what has been historically known as the "150%."

Following Council direction, staff developed a single hourly billing rate methodology with guidance from Management Partners. Like the City's current practice, the proposed

methodology is designed to recover planning and engineering's share of indirect costs through CRAs and capital projects.

The single hourly billing rate model reflects four indirect costs categories: Divisional Indirect; Development Services (DS) Administration; Internal Services; and City-Wide Services.

1. **Divisional Indirect.** This category of indirect costs reflects the divisions' operating budget, less direct salary and benefits, and billed contracts, DS administration, and internal service fund charges.
2. **DS Administration.** This category of indirect costs represents support from executive administrative staff and department senior leadership support (Department Head, City Engineer).
3. **Internal Services.** This category of indirect costs represents support from internal service funds which include workers' compensation, building maintenance, vehicle operation, maintenance, and replacement, vehicle fuel, information technology, general equipment, and general insurance.
4. **City-Wide Services.** This category of indirect costs represents support from central services departments, including the City Manager, City Clerk and City Attorney, and Administrative Services Department (Finance and HR).

The attached matrix reflects an hourly base rate (including salary and benefits) for applicable employee positions, and the rate when various categories of indirect costs are applied (Attachment 1). A city can choose to recover some or all of the indirect expenses. The City's current practice is to fully recover all of its costs.

Cost Recovery Agreements (CRAs)

Staff met several times with the development community to discuss the proposed new methodology and received positive feedback. In response to Council direction, staff also discussed the different indirect cost categories and corresponding rates in the context of CRAs. Overhead recovered through CRAs is difficult to predict because it is based on activity level. After reviewing FY 12/13 General Fund year-end actuals, the City recovered approximately \$200,000 in indirect costs through CRAs. However, it is anticipated that there will be fewer CRAs over time as they are typically associated with larger development projects.

Staff compared the proposed rates to private sector charges for engineering and planning services and determined that the *Internal Services* rates were the most competitive. Under this scenario, it is estimated that the City would recover between 70-75% of its total indirect costs. Using FY 12/13 CRA overhead as an example, the City would recover \$140,000-\$150,000 of the \$200,000 using the Internal Services rates.

While the development community acknowledged that the *Internal Services* rates may be comparable to the private sector, they emphasized that the rates do not take into account additional cost associated with the time for the City to review, process, and approve various planning/engineering activities. Given this, the majority of developers expressed interest in having the *DS Administration* rates apply to CRAs. Under this scenario, the City would recover an estimated 65% of its total indirect costs, or \$130,000 based on FY 12/13 CRA overhead actuals.

Capital Projects

As discussed earlier, indirect costs are also recovered through capital projects and significantly exceed what is collected via CRAs. In prior years, annual overhead recovered through CIPs has been \$2-\$2.2 million. However, after calculating year-end actuals for FY 12/13, the amount recovered was approximately \$2.3 million. It is expected that the City would continue to recover this amount using the new allocation model and City Wide Service rate.

Policy Considerations

Determining the level of cost recovery is a policy decision. This staff report presents several policy issues for Council consideration.

1. **Implement a Single Hourly Billing Rate.** Staff is proposing that Council consider transitioning from a multiplier methodology to a single hourly billing rate to recover indirect costs. A single hourly billing rate provides the transparency requested by Council and the development community and is a more precise way of calculating and capturing applicable expenses.
2. **Consider modifying the City's Current Cost Recovery Practice.** The City's current practice is to fully recover all of its indirect costs. Council requested that staff explore recovery alternatives with respect to CRAs, which would impact general fund expenditures. Should Council choose not to fully recover overhead costs with respect to CRAs, it is recommended that the *Internal Services* rates apply. Council did not direct staff to identify alternatives regarding capital projects, and recommends that the City continue to fully recover its indirect costs.

Should Council adopt the new methodology and/or adjust overhead cost recovery levels for CRAs, it is recommended that the change be effective the date of the Council action.

STRATEGIC PLAN

This item is in accordance with Council Strategy Priority for Organizational Efficiency, Goal 1: To advance City Council's fiscal policies.

FISCAL IMPACT

Adopting a single hourly billing rate cost allocation methodology based on a full cost recovery model will maximize the recovery of overhead, reducing the fiscal impact to the General Fund, assuming the application of City Wide Services rates (Attachment 1). Using a rate other than the City Wide Services rate will reduce overhead recovery levels, and potentially increase expenses to the General Fund.

RECOMMENDATION

It is recommended that the City Council take the following actions:

1. Accept Management Partners final cost allocation report.
2. Consider Single Hourly Billing Rate Cost Allocation Methodology to recover City Indirect costs.
3. Provide direction to staff regarding cost recovery levels for CRAs.
4. Maintain full cost recovery for indirect costs related to capital projects.

ATTACHMENTS

Attachment 1: Proposed Single Hourly Billing Rate Methodology

Prepared by: Jenny Haruyama, Administrative Services Director
Reviewed by: Maria A. Hurtado, Assistant City Manager
Approved by: R. Leon Churchill, Jr., City Manager

Proposed Single Hourly Billing Rate Methodology

Attachment 1

Engineering:					
Job Title	Salary & Benefits	Plus Divisional Indirect	Plus DS Admin.	Plus Internal Services	Plus City-Wide Services
Senior Civil Engineer	\$ 124	\$ 149	\$ 159	\$ 189	\$ 239
Associate Civil Engineer	\$ 109	\$ 131	\$ 140	\$ 167	\$ 211
Engineering Technician	\$ 76	\$ 91	\$ 97	\$ 115	\$ 144
Junior Civil Engineer	\$ 80	\$ 95	\$ 101	\$ 120	\$ 151
Construction Inspector	\$ 86	\$ 103	\$ 110	\$ 130	\$ 163

Planning:					
Job Title	Salary & Benefits	Plus Divisional Indirect	Plus DS Admin.	Plus Internal Services	Plus City-Wide Services
Assistant Director	\$ 145	\$ 158	\$ 173	\$ 196	\$ 264
Senior Planner	\$ 109	\$ 119	\$ 130	\$ 147	\$ 197
Associate Planner	\$ 90	\$ 98	\$ 107	\$ 121	\$ 163
Assistant Planner	\$ 79	\$ 86	\$ 94	\$ 106	\$ 141

AGENDA ITEM 4

REQUEST

FISCAL YEAR 13/14 GENERAL FUND MID-YEAR BUDGET PERFORMANCE REPORT

EXECUTIVE SUMMARY

Overall, second quarter general fund revenues are trending positively, particularly property and general sales tax. The City's property tax base is growing and revenues should exceed the adopted budget amount. Sales tax revenue is also projected to increase due to the sale of new autos, fuel, and department stores merchandise. Miscellaneous retail, which includes wireless providers and e-commerce (Crate and Barrel) is also increasing. Other economically sensitive revenue, including franchise fees, licenses and permits, transient occupancy tax, and interest income are stable. General fund operating expenditures are trending as expected; year-end savings are anticipated.

Several revenue and expenditure adjustments are proposed for mid-year. General fund budget adjustments include increasing property and sales tax by \$1,228,820 and \$636,000 respectively, and authorizing expenses in the amount of \$139,771 to pay for street tree emergency services and airport fuel system repairs. Non-general fund expenditure adjustments include \$180,300 for operating costs associated with the purchase of treated water from the South San Joaquin Irrigation District (SSJID), and temporary work hours to assist with water conservation efforts. An additional adjustment in the amount of \$102,000 is requested to fund an Accounting Coordinator position via development fees to coordinate all existing and new development reporting, including AB 1600 development impact fee reporting and fee revenue collection, and to update Finance and Implementation Plans (FIPs).

DISCUSSION

FY 13/14 MID-YEAR BUDGET PERFORMANCE REPORT

FY 13/14 General Fund Budget

The FY 13/14 General Fund Adopted Budget assumed \$51.8 million in general fund revenue. Of that amount, approximately \$5.9 million was temporary taxes (Measure E sales tax). Total adopted expenditures equaled \$51.2 million.

The FY 13/14 General Fund Operating Revenues and Expenditures Chart below reflects the adopted budget, year-to-date actuals through December 2013, and

year-end projections. Mid-year trends indicate that General Fund operating revenue will exceed adopted budget levels. Expected increases in FY 13/14 revenue are based on continued economic growth and recovery. Current operating expense projections anticipate year-end savings due to vacancies, reprioritization of projects, and current and prior year expense trends. Taking into consideration the changes in revenues and expenditures, it is projected that the City will realize \$2.9 million at year-end.

FY 13/14 General Fund Operating Revenues and Expenditures

GENERAL FUND SUMMARY	FY 13/14 ADOPTED BUDGET	FY 13/14 ACTUALS THRU DECEMBER 2013	FY 13/14 YEAR-END PROJECTIONS
<i>REVENUE</i>			
Property Taxes	\$14,410,000	\$8,250,887	\$15,638,820
Sales Taxes - General	\$14,502,900	\$4,294,356	\$15,139,380
Temporary Taxes (Measure E)	\$5,905,260	\$2,467,827	\$6,673,800
Franchise Fees	\$2,554,200	\$971,868	\$2,554,000
Other Taxes	\$1,630,000	\$1,113,546	\$1,660,000
Use of Money & Property	\$770,000	\$161,003	\$416,000
<i>Subtotal</i>	<i>\$39,772,360</i>	<i>\$17,259,487</i>	<i>\$42,082,000</i>
Other General Fund Revenue	\$12,062,000	\$6,529,524	\$11,548,800
Total Revenues	\$51,834,360	\$23,789,011	\$53,630,800
<i>EXPENDITURES</i>			
Total Expenditures	\$51,229,440	\$22,770,974	\$50,656,650
REVENUE LESS EXPENDITURES	\$604,920		\$2,974,150

FY 13/14 General Fund Revenue Trends

The following section discusses revenue trends, with particular emphasis on key economically sensitive revenue, including Property Tax, Sales Tax, Temporary Taxes (Measure E), Franchise Fees, Other Taxes (Transient Occupancy Tax, Business Licenses), and Use of Money and Property (Interest Income).

Property Tax

Across the State and region, property tax trends continue to show signs of recovery. For the City of Tracy, property tax revenue is transitioning from a negative decline to steady growth. This is due to a reduction in foreclosures and turnover in homes and/or property reassessments. Given that property tax revenue projections for year-end are anticipated to be higher than adopted levels, a budget adjustment of \$1,228,820 is recommended.

Sales Tax (General)

Like property tax, general sales tax continues to grow. The FY 13/14 adopted budget for sales tax was \$14.5 million; however, based on 2013 third quarter projections from the City's sales tax consultant, Muni-Services, FY 13/14 year-end sales tax revenue is expected to be higher. A budget adjustment of \$636,000 is recommended.

This increase in sales tax is due to changes in the City's top three key economic categories. According to Muni-Services' 2013 Third Quarter Sales Tax Report, the strongest categories are transportation (new auto sales and fuel), general retail (department stores, apparel, furniture, recreation products, drug stores, and miscellaneous retail), and food products (restaurants, food markets, and liquor stores). New auto sales are expected to continue through FY 14/15 and level out in subsequent years. Department stores and miscellaneous retail, which includes wireless telephone providers and fulfillment centers (e.g. Crate & Barrel), continue to generate a significant amount of sales tax. Restaurants are currently the strongest food product sales tax generator.

Temporary Taxes (Measure E)

In November 2010, Tracy voters approved Measure E, a new half-cent temporary sales tax applicable to physical purchases made in the City of Tracy and online sales to Tracy customers. The tax began in April 2011 and will expire in March 2016. The FY 13/14 General Fund Adopted Budget assumes \$5.9 million in Measure E taxes; however, current projections indicate that the amount may be closer to \$6.6 million.

Franchise Fees

Franchise fees are collected by the City as a privilege of operating a utility service in Tracy, and as a fee in lieu of a business license tax. Franchise fees are currently received from gas and electric, cable television, and solid waste collection service providers. Franchise fees are economically sensitive revenue and fluctuate based on the fiscal health of the nation, state, and/or local region. Franchise fee revenue currently represents approximately 5% of the General Fund budget.

Historically, franchise fee payments are not remitted equally throughout the year; therefore, second quarter receipts are not necessarily predictive. The FY 13/14 General Fund Adopted Budget assumed \$2.5 million in franchise fee revenue based on the prior year's estimated year-end figures. Conservative projections anticipate no change to the adopted amount.

Other Taxes

The Other Taxes revenue category includes several tax sources, the most significant of which are Transient Occupancy Tax (TOT) and Business License Tax. The City levies TOT on all hotel and motel rooms within Tracy city limits. The current TOT rate is 10%. The City also requires all businesses located within the City of Tracy, or those that operate within Tracy to obtain a business license. The amount of business license tax paid by each business is typically based on the number of employees.

Revenue received from the Other Taxes category is on target and is expected to be in alignment with adopted levels of \$1.6 million at the end of FY 13/14.

Use of Money/Property

Revenue received from the Use of Money & Property category includes investment earnings and rental income from City property. The City earns interest income by investing monies not immediately required for daily operations in a number of money market instruments. Interest income revenue is dependent on two factors: first, the cash balance in the City's investment portfolio; and second, the yield on those funds. While the General Fund reserve is not declining, capital fund balances fluctuate from year- to-year depending on the number of projects; therefore, FY 13/14 year-end projections are estimated to be approximately \$426,000 (\$344,000 lower than adopted levels).

FY 13/14 General Fund Expenditure Trends

Department expenditures are trending at or below the expected 50% budget level. Approximately 45% of the General Fund budget has been expended. Operating expense projections anticipate that the City may experience budget savings due to vacancies, reprioritization of projects, and current and prior year expense trends. The City could realize up to \$1.1 million in savings at year-end.

FY 13/14 Proposed Budget Adjustments

The FY 13/14 mid-year report reflects several proposed revenue and expenditure adjustments per Exhibit A, of Attachment 1. The proposed adjustments would impact the General Fund and other non-general fund sources.

General Fund

1. A revenue adjustment in the amount of \$1,228,820 is proposed in anticipation of higher property taxes.
2. A revenue adjustment in the amount of \$636,000 is proposed in anticipation of higher sales taxes.
3. An expense adjustment in the amount of \$39,771 is requested to cover the cost of unanticipated street tree emergency removal services due to a storm in October 2013. This expense would be funded through anticipated excess revenue and year-end savings.
4. An expense adjustment in the amount of \$100,000 is requested to address airport fuel system repairs required by the San Joaquin County Environmental Health Department. This expense would be funded through anticipated excess revenue and year-end savings.

Non-General Fund

1. An expense adjustment in the amount of \$176,000 is requested to cover increased operating costs as a result of purchasing a portion of the City of Lathrop's South San Joaquin Irrigation District (SSJID) capacity. This purchase was authorized by Council in August 2013 and increased costs were expected at the time of the purchase. Supplemental funding is available via the Water Fund.

2. An expense adjustment in the amount of \$4,300 is requested to fund temporary work hours to assist with water conservation including, but not limited to, responding to requests for information, field inspections, and implementation of water conservation measures. Supplemental funding is available via the Water Fund.
3. An expense adjustment in the amount of \$102,000 is requested to fund an Accounting Coordinator position from development-related fees to coordinate all existing and new development reporting, including but not limited to: AB 1600 development impact fee reporting and fee revenue data for Finance and Implementation Plan (FIPs). This position is not new to the City; prior to the recession it was responsible for a variety of accounting and financial tracking, reporting, and billing responsibilities related to City-wide, development, and capital fees and expenses. Since that time, the tasks have been reallocated to multiple positions within the Administrative Services and Development Services Departments, resulting in inefficiency. It is recommended that the required responsibilities be consolidated and performed by one dedicated position. This expense would be funded through existing development-related fee revenue.

STATE BUDGET IMPACTS

In January 2014, the Governor released his FY 14/15 budget package. The Governor's budget reflects a significant improvement in the State's finances due to the economic recovery and prior budgetary reductions. The State's FY 14/15 budget projects a \$3.2 billion surplus and anticipates ending the year with a \$5.6 billion reserve. The State also projects that General Fund revenues will grow faster than expenses through FY 17/18 and anticipates operating surpluses to reach \$9.6 billion.

While the Legislative Analyst's Office (LAO) recommends giving high priority to building a strong reserve, it also underscores the importance of the State paying off its budgetary liabilities accrued over recent years. Just as important is setting aside funds to address the growing unfunded retirement liability.

The Governor's FY 14/15 budget does not propose any fiscal or legislative changes that would impact local government or local control.

GENERAL FUND RESERVE STATUS

As of June 30, 2013, the General Fund has a reserve balance of \$28.9 million. Of that amount, approximately \$27.5 million is designated as unrestricted. The total unrestricted fund balance represented over 56% of total general fund expenditures for FY 13/14. Of the \$27.5 million in reserves, approximately \$12 million is allocated to the Reserve for Economic Uncertainty. Recommended reserve designations and allocations will be presented to Council as part of the FY 14/15 budget in May 2014.

FY 14/15 BUDGET DEVELOPMENT PROCESS

In January 2014, staff began strategic budget development discussions anticipating the need to maintain service levels and prioritize any recommended budget augmentations given the timing of future revenue and anticipated expiration of Measure E in FY 15/16. To date, the City has implemented nearly \$5 million in budget reductions due to targeted early retirements, vacancy eliminations, and consolidation of departments and executive management positions. Another \$3 million in savings will occur incrementally over the next three fiscal years (starting in FY 12/13) as employees begin to pay their share of PERS costs. Employees will pay their full share of employee PERS by FY 15/16.

Also included in the FY 14/15 budget development process is the Capital Improvement Program (CIP) budget. A workshop is scheduled for April 2014 to review recommended capital projects for FY 14/15.

CONCLUSION

The mid-year budget analysis indicates that overall, assumptions for revenues and expenditures have not changed significantly, with exception of property tax and sales tax revenue. Several general fund and non-general fund expense adjustments have also been proposed. It is recommended that Council accept the FY 14/15 Mid-Year Update Report and adopt the attached resolution authorizing FY 13/14 revenue and expense adjustments as reflected in Exhibit A.

STRATEGIC PLAN

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

FISCAL IMPACT

The FY 13/14 General Fund Adopted Budget reflects \$14,410,000 in property tax and 14,502,900 in sales tax revenue. Based on current economic trends and projections provided by Muni-Services, both property and sales tax revenue are expected to be higher than the FY 13/14 adopted amounts. Authorization of revenue adjustments would increase the FY 13/14 adopted property and sales tax revenue to \$1,228,820 and \$636,000 respectively. Proposed general fund expenditure adjustments would increase the expenditure budget by \$137,371. This amount would be covered by anticipated FY 13/14 year-end savings and excess revenue. The proposed non-general fund expenses, which total \$282,300, would be funded through applicable sources, including the Water Fund and development-related fees.

RECOMMENDATION

It is recommended that City Council:

- Accept the FY 13/14 General Fund Mid-Year Performance Report
- Adopt a Resolution Authorizing a FY 13/14 Budget Adjustment

Prepared by: Jenny Haruyama, Administrative Services Director

Reviewed by: Maria A. Hurtado, Assistant City Manager

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

RESOLUTION ____

AUTHORIZING FY 2013/14 OPERATING BUDGET ADJUSTMENTS

WHEREAS, City Council adopted the FY 2013/14 Operating Budget in June 2013, and subsequent budget adjustments and/or supplemental appropriations beyond the adopted budget require Council approval, and

WHEREAS, Operating budget revenue levels fluctuate and unanticipated mid-year expenses occur, and

WHEREAS, Several revenue and expense adjustments are recommended as reflected in Exhibit A;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves budget adjustments per Exhibit A, amending the adopted FY 2013/14 Operating Budget.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 18th day of February, 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

FY 2013/14 PROPOSED BUDGET ADJUSTMENTS

GENERAL FUND

Revenue

- Increase General Fund property tax revenue in the amount of \$1,228,820.
- Increase General Fund sales tax revenue in the amount of \$636,000.

Expenditures

- Increase General Fund expenditures in the amount of \$37,371 for street tree emergency services.
- Increase General Fund expenditures in the amount of \$100,000 to develop a Spill Prevention Control and Countermeasure Plan and repair airport fuel systems to be in compliance with San Joaquin County Environmental Health Department regulations.

OTHER SOURCES

Water Fund - Expenditures

- Increase Water Fund expenses in the amount of \$176,000 to purchase treated water from South San Joaquin Irrigation District (SSJID).
- Increase Water Fund expenses in the amount of \$4,300 for temporary hours to manage water conservation efforts during the months of May and June 2014.

Development-Related Fees - Expenditures

- Increase expenses in the amount of \$102,000 to fund Accounting Coordinator position to perform accounting and financial tracking, reporting, and billing responsibilities related to City-wide, development, and capital fees and expenses.

February 18, 2014

AGENDA ITEM 5

REQUEST

DISCUSS AND PROVIDE DIRECTION ON A COUNCIL COMMUNICATION POLICY

EXECUTIVE SUMMARY

Staff requests Council discuss the attached City Council Communications Policy which clarifies how communications to, from, and between City Council Members take place.

DISCUSSION

Background:

On January 17, 2012, the City Council directed staff to place an item on a future City Council agenda to discuss the creation of a City Council Communications Policy and Code of Conduct for City Council Members.

On July 17, 2012, Council discussed the establishment of a City Council procedure and protocol manual, a City Council communications Policy, and a City Council code of conduct guidelines. Council determined that additional information on a communication policy should be brought back for Council consideration (Attachment A: July 17, 2012 Agenda Item 12.B Staff Report).

On February 21st and 22nd, 2013 during the Council retreat, the Council briefly discussed the development of a (1) communication policy, (2) code of conduct policy, and (3) the future compilation of manual that contains all Council related procedures and policies for current and future Council members. Council directed staff to address all three at a later date.

This staff report presents a sample Communication Policy for Council for Council consideration. Once the Communication Policy is adopted by Council, staff proposes to return to Council with a code of conduct agenda item for Council discussion, followed by a discussion on the development of a manual containing all Council related policies for easier future reference.

City Council Communication Policy:

Council expressed interest in clarifying how communications to, from, and between City Council Members take place. The attached draft communication policy primarily addresses how written Council-related communication is handled and is largely based on current practices and City Council policies as well as state law requirements.

The Communications Policy is divided into three sections: The first section describes how communications to the City Council are distributed. This distribution of communication includes any communication from individuals via email or regular mail.

The second section describes how communication from the City Council is recommended. Particular attention is focused on the difference between Council members' representation of the City Council's official positions or actions versus individual Council member's views as residents and how these differences should be differentiated when speaking to groups or individuals related to various issues. This section also clarifies the use of City Letterhead and other resources, as well as how confidential information is handled.

The third and last section of the draft Communications policy focuses on communications between City Council members and the importance of understanding City Council parameters bounded by the Brown Act.

Staff recommends that the City Council review and discuss the draft City Council Communications Policy. It is staff's intent to return to Council, once the Communication Policy is adopted by Council, with a code of conduct agenda item for Council discussion, followed by a discussion on the development of a manual containing all Council related policies for easier future reference.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no impact to the General Fund with the discussion or implementation of this agenda item.

RECOMMENDATION

Staff recommends that Council discuss and provide direction on a City Council Communication Policy.

Prepared by: Maria A. Hurtado, Assistant City Manager
Daniel G. Sodergren, City Attorney

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

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

ATTACHMENTS

Attachment A – July 17, 2012 Agenda Item 12.B Staff Report
Attachment B - Draft City Council Communications Policy

July 17, 2012

AGENDA ITEM 12.B

REQUEST**DISCUSS AND PROVIDE DIRECTION ON THE ESTABLISHMENT OF A CITY COUNCIL PROCEDURES AND PROTOCOL MANUAL, A CITY COUNCIL COMMUNICATIONS POLICY, AND A CITY COUNCIL CODE OF CONDUCT**EXECUTIVE SUMMARY

Staff is seeking direction from the City Council on the establishment of a City Council Procedures and Protocol Manual, a City Council Communications Policy, and a City Council Code of Conduct. The latter two could be incorporated into the Council Procedures and Protocol Manual.

DISCUSSION

On January 17, 2012, the City Council directed staff to place an item on a future City Council agenda to discuss the creation of a City Council Communications Policy and Code of Conduct for City Council Members.

Currently, the primary policy document for the conduct of City Council meetings is the City's Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings ("City Council Procedures") (Resolution 2008-140, a copy of which is attached). However, this policy does not directly address the subject of the conduct of City Council members by documenting accepted practices and clarifying expectations. Nor does it address how written communications to, from, and between City Council Members are handled.

I. City Council Procedures and Protocol Manual

A number of cities have adopted city council codes of conduct and communications policies in addition to rules of procedures for conducting meetings. Some cities have included such policies in a manual that serves as an easy reference guide to council members, staff, and the public. For example, staff has attached the outlines of such manuals from the Cities of Lodi, Arcata, and Menlo Park.

Staff believes that creating such a manual would be helpful. Therefore, concurrently with considering the establishment of a City Council Communications Policy and a City Council Code of Conduct, staff is recommending that the City Council direct staff to begin preparing a City Council Procedures and Protocol Manual. Such a manual would contain, or cross-reference, existing City Council-adopted policies (including the City Council Procedures), references to state law provisions that pertain to the City Council, and any new City Council-related policies that are adopted (e.g., the City Council Communications Policy and the City Council Code of Conduct).

II. City Council Communications Policy

To clarify its preferred procedures as to how communications to, from, and between City Council Members take place, staff recommends that the City Council adopt a City Council Communications Policy. If the Council chooses to adopt such a policy, it could eventually be included in the City Council Procedures and Protocol Manual, described above.

Staff has attached a draft City Council Communications Policy. This draft is largely based on current practices and City Council policies as well as state law requirements.

Although this draft City Council Communications Policy primarily addresses how written City Council-related communication is handled (e.g., emails, letters, etc.), it does not directly address how City Council Members should conduct themselves in their communications with each other, City staff, and with the public. Staff recommends that these subjects be addressed, if at all, in the context of a City Council Code of Conduct, discussed below.

Staff is recommending that the City Council review the draft City Council Communications Policy and provide direction as to whether Council wishes to adopt such a policy. If Council prefers, this topic could also be further discussed as part of a workshop (along with a proposed City Council Code of Conduct).

III. City Council Code of Conduct

Many cities and organizations have a code of conduct, or guidelines, establishing how Council Members and officials should deal with each other, staff, and the public. Samples of such codes/guidelines from the Cities of Sunnyvale and the Mountain House Community Services District are attached. There are also provisions relating to conduct contained in the attached City Council Procedures and Protocol Manuals from Menlo Park and Arcata.

Staff is recommending that the City Council review these samples and provide initial direction to staff as to whether Council wishes to adopt such a code/guidelines and generally what should be included in such a code/guidelines. If Council directs staff to do so, staff will then schedule a future workshop for further discussion and direction.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no impact to the General Fund.

RECOMMENDATION

Staff recommends that City Council discuss the establishment of a City Council Procedures and Protocol Manual, a City Council Communications Policy, and a City Council Code of Conduct, and:

- Direct staff to begin establishing a City Council Procedures and Protocol Manual;
- Provide direction to staff on the draft City Council Communications Policy; and
- Provide initial direction to staff on establishing a City Council Code of Conduct and scheduling a future workshop on this topic.

Prepared by: Maria Hurtado, Assistant City Manager
Daniel G. Sodergren, City Attorney

Approved by: Leon Churchill, Jr., City Manager

- Attachments:
- A. Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings (Resolution 2008-140)
 - B. Draft City Council Communications Policy
 - C. Procedures and Protocol Manuals from the Cities of Lodi, Arcata, and Menlo Park
 - D. Sample Codes of Conduct/Guidelines from the City of Sunnyvale and the Mountain House Community Services District

ATTACHMENT A

RESOLUTION 2008-140

**RESCINDING RESOLUTION 2007-258 AND
ESTABLISHING UPDATED COUNCIL POLICIES AND PROCEDURES**

WHEREAS, On November 6, 2007, the Council adopted Resolution 2007-258 which revised the "Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings, and

WHEREAS, On July 15, 2008, Council desired to modify the Procedures related to, Public Access to Materials Distributed after the Agenda has been Posted or at Council Meetings, Non-agendized Items, and Presentations to the Council, and

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

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby rescinds Resolution 2007-258 and adopts the "Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings" attached as Exhibit "A."

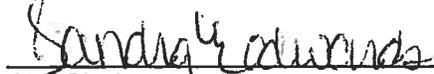
* * * * *

The foregoing Resolution 2008-140 was adopted by the Tracy City Council on the 15th day of July 2008, by the following vote:

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



Mayor

ATTEST:


City Clerk

**PROCEDURES FOR PREPARATION, POSTING
AND DISTRIBUTION OF AGENDA
AND THE CONDUCT OF PUBLIC MEETINGS**
(Exhibit "A" to Resolution No. 2008-140; July 15, 2008)

Applicability

The procedures outlined below relating to the preparation, posting and distribution of agendas applies to the City Council, the Community Development Agency, the South County Fire Authority, the Public Facilities Corporation, the Tracy Operating Partnership Joint Powers Authority, and all City Boards, Commissions, and Committees. The procedures outlined below relating to the conduct of Council meetings apply only to the City Council. All City Council meetings shall be open to the public; however, the City Council may hold closed sessions as authorized by state law.

A. Preparation, Posting and Distribution of Agenda

Purpose of Agenda

The agenda process serves four purposes:

- As a communication mechanism, the agenda informs City staff, City Council, the public and the press.
- As a compliance mechanism, the agenda process ensures compliance with mandated state laws.
- As a decision-making mechanism, the agenda process regularly brings City business to the City Council for consideration and action. Agenda items should contain enough background information so City Council can obtain a full understanding of the issues. The agenda item should conclude with a staff recommendation so City Council has the benefit of staff input prior to making a final decision.
- As a historical reference that can be kept as a record of proceedings and actions as needed for future actions and/or litigation.

Agenda

As set forth above, the purpose of the agenda is to provide a framework within which Council meetings can be conducted and to effectively implement the approved Council programs, goals and budget. Staff shall work within the policies established by Council and not place matters on the agenda that are outside the scope of existing work programs and priorities except as approved by a majority of the Council, or to inform the Council of matters necessary to the proper operation and well-being of the City.

The agenda shall contain a brief general description of each item of business to be transacted or discussed at the meeting.

Distribution of Agenda

At a minimum the posting and distribution of all agendas shall be done in accordance with the Ralph M. Brown Act ("Brown Act") (California Government Code sections 54950 et seq.). Agendas for regular meetings shall be posted 72 hours prior to the meeting; special meeting agendas shall be posted not less than 24 hours prior to the meeting. All agendas shall be posted in the following locations: City Hall, the Community Center, the library, the City's website, and other locations as may be required by a particular Board or Commission's Bylaws. Posting of agendas at City Hall shall be the official location for purposes of Brown Act compliance.

The agenda packets are provided to City Council Members on the Thursday (or Friday) prior to City Council meeting. Distribution to the staff, public and media shall occur immediately after distribution to the City Council. The City will provide, by mail, a copy of the agenda cover sheet and the specific item relating to any individual and/or company which has an item on any given Council agenda.

Agenda subscriptions are available from the receptionist at City Hall, 333 Civic Center Plaza, Tracy, (Tel: 209/831-6000). A paperless version of the agenda is available at a cost of \$2 per disc; a paper copy costs \$35 per month (\$17.50 per agenda) to be pre-paid not less than 10 days prior to any regular Council meeting. A full copy of the agenda shall be provided in an indexed binder and shall be available for review by the public at City Hall during normal operating hours. Copies of individual agenda items will be provided at a cost of \$.15 per page. Copies of the agenda are also available at the Library and the agenda is posted on the City's website www.ci.tracy.ca.us.

Public Access to Written Materials after the Agenda has been Posted or Distributed at Council Meetings

On occasion, Council may receive written materials either after the Agenda has been posted or at a Council meeting. These written materials are typically related to an agenda item or handed out during Items from the Audience. Once the Council receives these written materials they become a public record. A copy will be kept in a file at the City Clerk's Office and posted on the City's website under "Materials Distributed at Council Meetings" 48 hours after the Council meeting.

B. Conduct of Council Meetings

Council Meetings

Council meetings are held on the first and third Tuesdays of the month, unless the meeting date falls on a holiday as defined in California Government Code Section 6700. No meeting shall be held on such a holiday, but a regular meeting shall be held at 7:00 p.m. on the next business day thereafter, as required by California Government Code Section 54954. Special meetings are scheduled as necessary.

Council meetings are broadcast live on Channel 26. Reruns of the preceding Council meeting are shown every Wednesday at 8:00 p.m. and every Saturday at 9:00 a.m. on Channel 26. Videotapes and DVD recordings of City Council meetings are available. Videotapes cost \$3 per tape and DVDs cost \$2.

Order of Business

The suggested order of business of Council meetings shall be as follows. However, the City Manager may make exceptions to the order as needed.

1. Roll Call
2. Pledge of Allegiance
3. Invocation
4. Proclamations and Awards
5. Consent Calendar
6. Items from the Audience
7. Continued Public Hearings
8. New Public Hearings
9. Regular Items including Introduction and Second Readings of Ordinances
10. Items from the Audience
11. Staff Items
12. Council Items
13. Adjournment

The regular order of business may be changed or suspended for any purpose at any particular meeting by the Mayor.

The Council may determine whether it will consider any new items after 11:00 p.m. and shall determine which specific items will be considered. If an item is continued due to the lateness of the hour, the item shall be automatically placed on the agenda for the next regularly scheduled City Council meeting unless otherwise scheduled by motion action of the Council.

Consent Calendar

All items listed on the Consent Calendar are considered to be routine matters or consistent with previous City Council direction. One motion, a second and a roll call vote may enact the items listed on the Consent Calendar. There will be no separate discussion of Consent Calendar items unless members of the City Council, City staff or the public request discussion on a specific item at the beginning of the meeting.

Public Access/Items from the Audience

It is the policy of the City Council that members of the public be allowed to address the Council on any agenda item or other matter within the Council's jurisdiction. Each member of the public will be allowed a maximum of five (5) minutes for public input or testimony. At the Mayor's discretion, additional time for testimony may be granted. Individuals addressing the Council shall state their names and addresses for the record, to ensure accuracy in the minutes and for contact information. The public shall be given an opportunity to speak on "Items of Interest to the Public." Agendas for regular meetings will have two opportunities for "Items from the Audience." The first opportunity will be limited to a 15-minute maximum period. The second opportunity will not have a maximum time limit. The five (5) minute maximum time limit per speaker will apply to all "Items from the Audience." The City Clerk shall be the timekeeper.

Non-Agendized Items (Items from the Audience and Council Items)

No matters, other than those on the posted agenda, shall be acted upon by the Council. However, items may be added to the agenda (such as emergency matters) as permitted in the Brown Act. Brief announcements, brief responses or questions for clarification, may be made to statements or questions raised on items not on the agenda.

Action on any item not on the agenda shall be deferred until the item is properly listed on the agenda for a subsequent Council meeting unless added due to an immediate need as permitted under state law.

Council Member Request for Matters to be Discussed by Council

The intent of this policy is to provide an orderly means through which an individual Council Member can raise an issue for discussion and possible direction by the City Council. The policy described below has two parts. The first part is to enable the Council Member to place a matter in front of the Council. The second part is to enable the Council to determine whether staff time should be spent on the issue.

Part 1: Council Members wishing to have a matter discussed by the City Council may do so by one of two means:

1. During a Council meeting, under "Council Items," a Council Member may request that a matter be placed on a future agenda for discussion. The Council Member will state the meeting date for which he/she wishes the item to be agendized.
2. In advance of a Council meeting, a Council Member may contact the City Manager, or his/her designee, via telephone, email, or in person and convey the desired title of the agenda item and desired meeting date. The desired title must be conveyed before 12:00 p.m. on the Wednesday prior to the Council meeting. This will give the City Clerk's Office time on the following Thursday to finalize the agenda and post it within the required timeframe. Requests received after this deadline shall be placed on the agenda for the following regularly-scheduled meeting. The item will then be added under the "Council Items" section of the agenda in the order it was received. It is the Council Member's option to prepare a one page summary report for the City Clerk's Office to include in the Council agenda packet. The one page summary will identify the Council Member who made the request and briefly describe the nature of the item.

Staff will not spend time preparing any reports or analyses on the requested item. The only staff assistance provided at this initial stage would be to help the Council Member frame the issue, if needed, so that the Council and public clearly understand the request.

Part 2: Consideration of the Council Member's Request: When the item is called at the Council meeting, the Council Member who made the request will describe the item. The Council discussion will be limited to determining whether staff time and City resources should be spent researching the particular agenda item and whether to direct staff to conduct further analysis on the item. Council will not take action on the item itself.

Concurrence that staff time and City resources will be devoted to the item does not signify approval of the item. It only indicates that the Council wishes to have it studied further. Additionally, the Council may, at any time, decide to drop the matter, even after the matter has been analyzed by staff.

Upon the concurrence of a majority of the Council that the item should be researched and agendized, the City Manager will determine when to place the item on a future agenda based on time necessary to complete the research and staff workload considerations and the effect on City Council established priorities.

Members of the Public - Request for Agenda Items

When a member of the public raises an item at a Council meeting which requires attention, such items shall be referred to staff for follow-up. If the requesting member of the public is not satisfied with staff's response to his/her question, the member of the public may request a Council Member to sponsor his/her item for discussion at a future Council meeting. In such cases, the sponsoring Council Member shall follow those procedures described under "Council Member Request for Agenda Items." Placing an item from a member of the public on a Council agenda does not imply or guarantee a decision or action different from that taken by staff in the initial follow-up to the question or request.

Public Hearings

Public hearings are required for a variety of City Council actions such as most changes to the Tracy Municipal Code, zoning revisions, some annexations, street vacations, weed abatement, liens, fee increases, etc. Whenever the law provides that publication of a notice shall be made, such notice shall be published in a newspaper of general circulation for the period prescribed, the number of times, and in the manner required. Each speaker will be allowed a maximum of five (5) minutes for public input or testimony. At the Mayor's discretion, additional time for testimony may be granted. The City Clerk shall be the timekeeper.

Presentations to the Council

Letters and written communications: Persons who wish to make presentations which may exceed the time limits are encouraged to submit comments in writing at the earliest possible time to ensure distribution to Council and other interested parties. Letters submitted with a request that they be read into the record will be done so only upon a request of the majority of the Council.

PowerPoint (or similar): Staff and members of the public who wish to make PowerPoint, Video or similar presentations to the Council will utilize the City's audio/visual equipment. Staff and members of the public are required to provide the City Clerk's Office with the DVD/CD/Video (or email copy) of the presentation no later than 24 hours prior to the Council meeting.

Additionally, eight (8) hard copies of the presentation material shall be provided to the City Clerk's Office for inclusion in the record of the meeting and for distribution to Council, City Attorney and City Manager.

Americans with Disabilities Act

The City of Tracy is in compliance with the Americans with Disabilities Act and will make all reasonable accommodations for the disabled. To allow for such reasonable accommodations, persons requiring assistance or auxiliary aids to participate at a City meeting, should contact the City Manager's Office at (209) 831-6000 at least 24 hours prior to the meeting.

Workshops

The purpose of a workshop is to inform the policy body on complex issues. Workshops provide an opportunity for the Council to review documents and request additional information. However, no final Council action shall be taken on workshop items.

Procedure for Invocations

Any member of the public who wishes to offer an invocation prior to the opening of a regular City Council meeting shall contact the City Clerk. The City Clerk shall select a mutually agreeable City Council meeting date for the invocation.

Minutes

The City Clerk's office shall be responsible for the preparation and distribution of the Council minutes. The minutes shall be summary minutes and shall reflect the sense of the discussion and any action taken, or recommendation made, with respect to each item considered at the meeting. A written report or written communication presented at a City Council meeting will be referenced in the minutes with the name and title of the author, date of the report or communication, subject of the communication or title of report, and the action taken on the matter. Unless a reading of the minutes is requested by a Council Member, the minutes may be approved as a Consent Calendar item.

No minutes or written record of closed sessions of the City Council shall be kept, except as required by state law or as directed by the majority vote of the City Council. The Council shall report at a public meeting any action taken in closed session, as required by Government Code Section 54957.1.

The City Clerk shall include a report on posting of the agenda in the minutes.

Rules of Decorum – Enforcement

While the Council is in session, all persons shall preserve the order and decorum of the session. The standards of order and decorum shall be governed by common sense. Any person who disrupts the orderly course of the meeting is guilty of an infraction and may be called out of order by the Mayor and barred from further participation during that session of the Council in accordance with the Brown Act and the California Penal Code.

(Exhibit "A" to Resolution No. 2008-140)

ATTACHMENT B

DRAFT

CITY OF TRACY

CITY COUNCIL COMMUNICATIONS POLICY

I. COMMUNICATIONS TO THE CITY COUNCIL

A. Distribution of Communications

1. Email

a. To the City Council

Individuals can communicate electronically with the City Council by sending an email to the general City Council email address (council@ci.tracy.ca.us) or through the City's Governmental Outreach website (<http://user.govoutreach.com/tracy/>). When the City receives an email communication directed to the "City Council," City staff will forward it to each City Council Member's email address and a copy will be sent to the City Manager's and City Attorney's email addresses. If the email pertains to City business, the City Manager will respond to it and copy the City Council with the response.

b. To the Mayor or Individual City Council Members

When the City receives email addressed to the Mayor or an individual City Council Member, City staff will forward it to the Mayor's or individual City Council's email address and will send a copy to the City Manager's email address.

2. Regular Mail

a. To the City Council

When the City receives regular mail (via United States Postal Service or other delivery) directed to the "City Council," City staff will copy it and place it in each City Council Member's mail box, or scan it and electronically send to each City Council Member's email address, and send copies to the City Manager and City Attorney. If the mail pertains to City business, the City Manager will respond to it and copy the City Council with the response.

b. To the Mayor or Individual City Council Members

When the City receives regular mail addressed to the Mayor or an individual City Council Member, City staff will open the letter, date stamp it, copy it, and place it in the

Mayor's or individual City Council Member's mail box. If the mail is marked "confidential," a copy will be placed in a confidential file and will only be subject to inspection and copying by the public to the extent required by the California Public Records Act. (Government Code, §§6250-6276.48.) Please note that the label "confidential" does not necessarily mean that the mail is exempt from disclosure under the California Public Records Act.

B. Communications Regarding Performance of Staff

When the City receives an email or letter addressed to the City Council or City staff regarding the performance of staff, staff will take the following steps:

1. City Employees Except For Police Officers

If the communication relates to the performance of the City Attorney or City Manager, staff will either forward it to each City Council Member's email address (if it is received by email) or copy it and place it in each City Council Members' mail box (if it is received by regular mail). Staff will then send a response back to the sender either by email or regular mail containing the following information: "Your [email or letter] has been forwarded to the City Council. However, to the extent your [email or letter] relates to the performance of a City employee, City Council Members are limited in responding to you about it, as personnel matters are generally considered to be confidential."

If the communication relates to the performance of any other employee, staff will either forward it to the City Manager's email address (if it is received by email) or send a copy of it to the City Manager (if it is received by regular mail). Staff will then send a response back to the sender either by email or regular mail containing the following explanation: "Your [email or letter] has been received by the City. However, to the extent your [email or letter] relates to the performance of a City employee, the City is limited in responding to you about it, as personnel matters are generally considered to be confidential."

2. Police Officers

If the communication relates to the performance of a police officer or command staff, staff shall forward the communication to the Police Department. The Police Department will then process the communication in accordance with the Department's Personnel Complaint Procedure.

C. Retention of Communications

All communications addressed to the City Council, Mayor, or an individual City Council Member, that the City receives, will be retained in accordance with the City's Records Retention Policy.

II. COMMUNICATIONS FROM THE CITY COUNCIL

A. Representing an Official Position of the City

A person elected to the City Council occupies two roles: as a member of a body elected to represent the City in its entirety and as a private resident of the City. Although the second role is not relinquished when the first role is assumed, it is important to distinguish between the two roles at all times and, when communicating, to clarify which role is communicating.

Therefore, City Council Members should make it clear in all verbal and written communications that they are expressing their own personal opinions and not necessarily those of the City Council, unless the City Council has taken formal action expressing its opinion on a matter.

When a City Council Member speaks to groups or is asked the City Council's position on an issue, the response should reflect the position of the City Council as a body. Of course, a City Council Member may clarify his or her vote on a matter by stating, for example, "Although I voted against "X", the City Council voted in support of it." When representing the City at meetings or other venues, it is important that those in attendance gain an understanding of the City Council's position as a whole rather than only the individual City Council Member's position.

B. Use of City Letterhead

Only the Mayor (and City staff) may use City letterhead, unless otherwise directed by City Council motion. When the Mayor uses City letterhead, it should generally be for transmitting the City's position on policy matters to outside agencies on behalf of the City Council. Staff can assist in the preparation of such letters. All letters sent on behalf of the City Council will be copied and placed in each City Council Member's mail box and a copy will be sent to the City Manager.

C. Use of Other City Resources

City Council Members may only use City resources, including business cards, printers, copiers, paper, City-owned computers and iPads, to conduct City business. Such resources may not be used for personal or political purposes. The only exception to this limitation is for "incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call." (Government Code, § 8314(b)(2).)

D. Ceremonial Documents

The City Council has established procedures for considering requests for proclamations, certificates of recognition, commendation and/or appreciation and letters of

congratulations from any group or individual. (See Resolution No. 2010-059 establishing standard procedures for issuing ceremonial documents.)

E. State Legislation

The City Council has delegated to the City Manager the authority to monitor, review, evaluate and make recommendations, when appropriate, on state or federal legislative and regulatory trends and judicial developments. For those matters that the City Manager deems sufficiently important, and that require a prompt response, the City Manager has authority to coordinate all efforts to communicate the City's views on policy issues to any branch of government at any level. In furtherance of this, the City Manager may draft proposed position papers or letters for the Mayor's signature on behalf of the City. (See Resolution No. 2004-208 establishing a legislative response policy.)

F. Confidential Communications

All written materials and verbal information provided to City Council Members on matters that are confidential under state law shall be kept in complete confidence to ensure that the City's position is not compromised. No disclosure or mention of information in these materials may be made to anyone other than City Council Members, the City Attorney or the City Manager (and staff, outside legal counsel or consultants who may be present in a closed session during which such information is discussed).

G. Attorney-Client Communications

The attorney-client relationship is not always in effect when an individual City Council Member communicates with the City Attorney. The City Attorney only has an attorney-client relationship with the City acting through the entire City Council as a body. Therefore, to the extent an individual City Council Member communicates with the City Attorney, the communication may not be considered confidential.

H. Public Records Act

Correspondence from City Council Members prepared using City resources (including City-owned computers and iPads), or received by City staff, is a public record pursuant to the California Public Records Act and, unless expressly exempt from disclosure, is subject to inspection and copying by the public. (Government Code, §§6250-6276.48.)

III. COMMUNICATIONS BETWEEN CITY COUNCIL MEMBERS

City Council Members are subject to the state's open meeting law – the Brown Act. (Government Code, §§54950-54963.) The Brown Act specifically prohibits “any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body.” (Government

Code, §54952.2(b.) Therefore, particular care should be taken when City Council Members are communicating with one another to ensure that they are complying with the Brown Act.

To avoid potential Brown Act violations, when sending emails to the City Council, City staff will only send blind copies (“bcc”), so City Council Members cannot “respond to all.”

ATTACHMENT C:

Procedures and Protocol Manuals from the
Cities of Lodi, Arcata, and Menlo Park

City of Lodi



CITY COUNCIL PROTOCOL MANUAL

Prepared by:

Office of the City Clerk
City of Lodi
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EXHIBIT A: Chapter 2.04, "City Council Meetings"

EXHIBIT B: Resolution 2006-31 Establishing Rules for the Conduct of Meetings, Proceedings and Business

EXHIBIT C: Resolution 2004-115 Adopting City of Lodi Code of Ethics and Values

EXHIBIT D: Resolution 2009-146 Adopting Policy Regarding Legislative Invocations Before Meetings of the Lodi City Council

CITY COUNCIL PROTOCOL MANUAL

1. PURPOSE

The purpose of establishing the City Council Protocol Manual is to provide guidelines for the City Council to conduct its business in an orderly, consistent, and fair manner.

The protocols set forth herein are not intended to limit the inherent power and general legal authority of the City Council. Any of the protocols herein may be waived by a majority vote of the Council Members when it is deemed that there is good cause to do so based upon the particular facts and circumstances.

The protocols shall be amended by a majority vote of the Council Members and may be amended administratively by the City Clerk's Office in order to remain current with federal, state, and local law.

2. STATUTORY REQUIREMENTS/REGULATIONS

Certain state laws and other established regulations exist, which govern various responsibilities of the City Council. This protocol manual is not intended to duplicate, fully articulate all requirements, or repeal any existing statutes or regulations. City Council Members are responsible for becoming familiar with these statutes and regulations.

2.1 The Brown Act

The Ralph M. Brown Act provides that all meetings of a legislative body, whether meetings of the City Council or its appointed commissions and committees, shall be open and public and all persons shall be permitted to attend. Notices of such meetings must be made 72 hours prior to the meeting (or 24 hours in the case of a special meeting). A "meeting" takes place whenever a quorum is present and subject matter related to the City business is heard, discussed, or deliberated upon.

2.2 Political Reform Act

The Political Reform Act states that public officials shall perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. The Political Reform Act establishes regulations regarding conflicts of interests and campaign receipts and expenditures.

2.3 Lodi Municipal Code (LMC)

The Lodi Municipal Code consists of those codified ordinances of general municipal regulations and laws of the City of Lodi.

2.4 LMC Chapter 2.04 Relating to Council Meetings

LMC Chapter 2.04, "City Council Meetings," sets forth the Regular Meeting and Shirtsleeve Session dates, times, and location and further establishes rules for the conduct of City Council meetings. (Attached as Exhibit A)

2.5 Rules of Conduct of Meetings, Proceedings, and Business (Res. 2006-31)

Resolution No. 2006-31, adopted by the Lodi City Council on February 15, 2006, establishes rules for the conduct of City Council meetings, proceedings, and business. (Attached as Exhibit B)

2.6 City of Lodi Administrative Policy Manual

The Administrative Policy Manual consolidates all administrative policies and procedures of a general or inter-departmental nature into one document. Administrative regulations meet the following criteria: 1) are directed toward an ongoing City process or procedure; 2) are limited to one major subject area; and 3) are applicable to more than one City department. Administrative regulations are issued from the City Manager's Office.

2.7 Code of Ethics & Values (Res. 2004-115)

Resolution No. 2004-115, adopted by the Lodi City Council on June 2, 2004, sets forth the code of ethics and values for Lodi City Council Members and City Council appointees.

The proper operation of democratic government requires that decision-makers be independent, impartial, and accountable to the people they serve. The City of Lodi has adopted this code of ethics and values to promote and maintain the highest standards of personal professional conduct in the City's government. (Attached as Exhibit C)

3. COUNCIL ORGANIZATION

3.1 Newly-Elected Members

Newly-elected Council Members are sworn into office generally at the first regular Council meeting in December following a regular municipal election. Immediately upon election (even before being sworn into office), newly-elected Council Members are subject to the provisions of the Brown Act. Newly-elected Council Members shall not be allowed to attend closed sessions before being sworn into office.

3.2 Reorganization

Pursuant to Lodi Municipal Code Section 2.04.070, "Presiding officer—Mayor—Mayor Pro Tempore," the reorganization of the Council shall occur annually at the first regular Council meeting in December by electing a Mayor and Mayor Pro Tempore.

A community reception honoring the incoming Mayor, outgoing Mayor, and Council Members is traditionally held immediately following the reorganizational meeting.

3.3 Selection of Mayor and Mayor Pro Tempore

The term of office for the Mayor and Mayor Pro Tempore shall be one year. A majority vote of the Council is necessary to designate a Mayor and Mayor Pro Tempore. The election of the Mayor and Mayor Pro Tempore will take place as follows:

- City Clerk will conduct the election for the office of Mayor.
- Following the election, the City Clerk will turn over the gavel to the newly-elected Mayor, who will then conduct the election for the office of Mayor Pro Tempore.

3.4 Duties of Mayor and Mayor Pro Tempore

The Mayor shall preside at the meetings of the Council. If he/she is absent or unable to act, the Mayor Pro Tempore shall serve until the Mayor returns or is able to act.

In the absence of the Mayor and Mayor Pro Tempore, the City Clerk shall call the Council to order, whereupon a temporary Chairperson shall be elected by the members of the Council present.

The Mayor meets with the City Manager, Deputy City Manager, City Attorney, and City Clerk one week prior to Council meetings to review the draft agenda.

(Refer to LMC Section 2.04.070, "Presiding officer—Mayor—Mayor Pro Tempore," LMC Section 2.04.080, "Call to order—Temporary chairman," and Res. 2006-31 for additional duties of Mayor and Mayor Pro Tempore.)

3.5 Seating Order

Following the Council reorganization, the City Clerk shall designate the seating order for the Council dais.

3.6 Representation at Ceremonial Functions

The Mayor shall represent the Council at ceremonial functions. The Mayor may, at his/her own discretion, ask another Council Member to represent the Council at the function.

Council Members shall be reimbursed for admission, meal expenses, and mileage to attend ceremonial functions, for which the Council Member was invited to represent the City, pursuant to the City of Lodi Travel and Business Expense Policy.

3.6a Issuance of Proclamations and Certificates, Presentation of Gifts, and Public Recognition

PROCLAMATIONS AND CERTIFICATES OF RECOGNITION OR APPRECIATION: All requests for proclamations and certificates are subject to approval by and prepared on behalf of the Mayor. Proclamations and certificates are signed by the Mayor, and are prepared in response to the type of recognition requested (which may include recognition of individuals, groups, and events of significance to the Lodi community). Proclamations and certificates may be presented at a City Council meeting or at an outside event or meeting. Typically, requests are honored for presentation at a Council meeting only if a local representative from the requesting agency can appear to accept the certificate.

PRESENTATION OF GIFTS: Requests for plaques, gifts, awards, or other Protocol Account expenses shall be approved by the Mayor, or by the City Council should the amount be over \$1,000 (refer to Res. 2000-126, "Protocol Account Policy").

IN MEMORY OF: A meeting may be dedicated in memory of an individual at the direction of the Mayor or Member of the City Council. The announcement will be made following roll call. If the meeting is dedicated, the individual's family will be mailed a letter by the City Clerk's Office acknowledging the dedication.

4. COUNCIL ADMINISTRATION

4.1 Salaries and Benefits

Council salaries are established by LMC Chapter 2.08, "City Council Salaries." Government Code Section 36516 provides specific restrictions for adjusting Council salaries. Council Members shall be entitled to certain benefits, as outlined in Resolution No. 2000-211, which was adopted on November 15, 2000.

4.2 Travel and Expense Reimbursements

The Council shall establish an annual budget for conferences, meetings, training, and representation at ceremonial functions. Council Members shall attend these functions at his/her own discretion for purposes of improving comprehension of and proficiency in municipal affairs and/or legislative operations.

The Mayor will be allocated an additional \$500 per year for representation expenses.

The expenses of spouses who accompany public officials in the conduct of their public duties cannot be reimbursed (75 Cal. Op. Att'y. Gen. 20 (1992)).

4.2a AB1234 Expense Reimbursement Policy (Res. 2006-230)

Council Members shall be subject to the AB1234 Expense Reimbursement Policy as adopted by the Lodi City Council on December 20, 2006.

4.2b Appointment of Delegate/Alternate to National League of Cities and League of California Cities Annual Conferences (Res. 96-138)

Pursuant to Resolution No. 96-138, adopted by the Lodi City Council on September 18, 1996, the Mayor shall serve as the voting delegate and the Mayor Pro Tempore shall serve as the voting alternate for all National League of Cities and League of California Cities annual business meetings. In the event the Mayor and/or Mayor Pro Tempore does not attend the meeting, the Mayor shall make the selection of the voting alternate and/or delegate.

4.3 Protocol Account Policy (Res. 2000-126)

Pursuant to Resolution No. 2000-126, adopted by the Lodi City Council on July 19, 2000, expenses used for such occasions as Council receptions and business luncheons, joint dinner meetings with various agencies and organizations, and supplies associated with Mayoral duties (e.g. plaques and awards, sympathy and congratulation tokens, etc.) would require specific City Council approval, if over \$1,000. A monthly itemized report of the Protocol Account shall be provided to the City Council by the City Clerk.

4.4 Appointment of City Council Appointees (LMC Title 2)

Pursuant to LMC Section 2.12.010, "Office established—Appointment—Qualifications," the office of City Manager is established, which shall be appointed by the City Council solely on the basis of his/her executive and administrative qualifications. The powers and duties of the City Manager are set forth in LMC Section 2.12.060, "Powers and duties generally."

Pursuant to LMC Chapter 2.13, "City Clerk," the City Clerk shall be appointed by the City Council, which shall prescribe the qualifications, additional duties, and compensation of the City Clerk. The powers and duties of the City Clerk are further set forth in LMC Chapter 2.13, as well as those specified in California Government Code §40801 et seq. and other state and local statutes.

Pursuant to LMC Chapter 2.14, "City Attorney," the City Attorney shall be appointed by the City Council and shall serve as legal counsel to the City government and all officers, departments, boards, commissions, and agencies thereof. The powers and duties of the City Attorney are further set forth in LMC Chapter 2.14, as well as those prescribed by state law and by ordinance or resolution of the City Council.

4.5 Evaluation of City Council Appointees (Res. 2002-224)

Pursuant to Resolution No. 2002-224, adopted by the Lodi City Council on November 6, 2002, the City Council shall conduct Council Appointees' evaluations annually over the course of two City Council closed session meetings.

The purpose of Council Appointee evaluations is to: 1) motivate Appointees to work at their highest capacity by jointly establishing job standards and objectives, review progress toward achieving those results, and subsequently plan the Appointee's future development; 2) determine an Appointee's performance level to assist in making appraisals for merit pay increases and disciplinary actions; and 3) serve as a means of communication between City Council and the Appointee.

5. COMMISSION APPOINTMENTS

5.1 Commissions

City commissions (which hereinafter include standing Council-appointed boards, commissions, and committees) serve as advisory bodies to facilitate public input and citizen participation in the determination of public policies. This is accomplished by formulating recommended courses of action and policy to the City Council with whom final determination rests. The Planning Commission (LMC Chapter 2.16, "Planning Commission") has authority to make final determination in applicable circumstances (see LMC Title 17, "Zoning").

5.2 Board, Committee, and Commission Appointment and Removal

Appointment

Resolution No. 2003-156, adopted by the Lodi City Council on August 20, 2003, establishes the policy regarding appointment of persons to membership on a City board, committee, and commission (hereinafter "Commission"). Commission applicants, with the exception of the Greater Lodi Area Youth Commission, must be registered voters of San Joaquin County, and Site Plan and Architectural Review Commission applicants must be registered voters of the City of Lodi. Pursuant to LMC Section 2.16.010, "Established—Appointment," Planning Commission applicants must be registered voters of the City of Lodi. Those applicants not meeting this requirement will be notified by the City Clerk's Office that their application does not meet specifications and cannot be considered for appointment. Applications are to be accepted by the City Clerk for 30 days and shall remain valid and on file for one year. Exception: Full-time and part-time City employees are prohibited from serving on a commission.

Those seeking appointment to a commission must submit an application to the City Clerk's Office. Those commissioners whose terms have expired must submit a new application (terms are not automatically renewed), and the City Clerk will notify said Commissioners with a letter and new application form. Following the

close of the 30-day application period, copies of all applications will be provided to Council Members for informational purposes, as well as to the appropriate staff liaisons, who will be asked to provide feedback on each candidate, including those seeking reappointment.

The Mayor shall conduct interviews and submit recommendation(s) for appointment to the City Clerk's Office for placement on the City Council agenda for motion action. Exception: The Greater Lodi Area Youth Commission may conduct independent interviews of all applicants, providing the Mayor with a ranking of the top ten, which he/she shall use in selecting qualified candidates.

Following Council appointment, the successful candidate(s) will be notified by the City Clerk's Office via letter of the appointment and Conflict of Interest filing obligation. Copies of the letter and completed application form(s) will be forwarded to the appropriate staff liaison, who will contact the successful candidate(s) regarding meeting dates and times and responsibilities. The City Clerk's Office will notify the unsuccessful candidates of the outcome and confirm the status of their application (i.e. currently valid; has or about to expire; etc.).

Removal

A person appointed by the City Council to a Commission shall continue to serve as a member thereof except when:

1. The person's term of office expires and a different person has been appointed.
2. The person voluntarily resigns from the Commission.
3. The person no longer resides and/or is a registered voter within the required jurisdiction.
4. The person fails to attend three (3) consecutive meetings of the Commission and does not have prior approval for said absences by way of a majority action of the Commission.

A majority vote of the City Council may remove any member of a Commission for any reason including, but not limited to, conduct unbecoming a public official, violating the City's Conflict of Interest Code, failing to comply with statutory requirements, or failing to attend fifty percent (50%) of the Commission meetings in a calendar year. Conduct unbecoming a public official includes the conduct that any reasonable commissioner would know is incompatible to public service, would indicate a lack of fitness to perform the functions of a commissioner or would discredit or cause embarrassment to the City.

Any member of the City Council may initiate a person's removal from a Commission by requesting that consideration of the person's removal be placed on the Council's agenda at a regular or special meeting for discussion and potential action. The City Clerk shall notify the person affected of the time and place of the meeting. When the item is on the City Council agenda, the City Council may, by majority vote, remove the person from a Commission."

5.3 Commission Responsibility

Commissioners should respect the public and staff and shall take seriously their responsibility for reporting to the City Council. Positions taken by appointed representatives should be in alignment with the positions that the Council has taken on issues that directly impact the City of Lodi. Commissioners shall make a good faith effort to attend all scheduled meetings and will notify the City liaison if they will be absent. Each Council-appointed commission shall be designated a staff liaison who shall make certain that the commission is properly instructed on its responsibilities and performance expectations. This may include the issuance of the commission's bylaws or guidelines, as well as copies of The Brown Act and Resolution No. 2006-31, "Rules of Conduct of Meetings, Proceedings, and Business." The City Attorney may from time to time conduct Brown Act workshops for new commissioners.

Commissioners may address the Council on items discussed by their respective bodies but should be limited to the chair or a representative that has been appointed by the commission. This will not take precedence over any individual's first amendment right to address the Council as an individual.

5.4 Council Contact with Commissions

Members of the City Council should not attempt to influence or publicly criticize commission recommendations, or to influence or lobby individual commission members on any item under their consideration. It is important for commissions to be able to make objective recommendations to the City Council on items before them. An exception to the Brown Act allows a legislative body majority to attend an open and noticed meeting of a standing committee of the legislative body provided that the legislative body members who are not members of the standing committee attend only as observers, meaning that they cannot speak or otherwise participate in the meeting.

5.5 Ad Hoc Committees and Task Forces

The City Council, through the City Manager, shall make certain that all Council-appointed ad hoc committees and task forces are properly instructed in their assigned scope of work and responsibility. The expected output of their effort shall be clearly defined. Ad hoc committees and task forces are responsible for keeping the Council informed about issues being considered and their progress. This is to be accomplished by meeting minutes distributed in the Council weekly packets. Ad hoc committees and task forces are responsible for advising the Council of any need for information or more specific instructions. Ad hoc committees and task forces shall obtain Council concurrence before they proceed in any direction different from the original instructions of the Council.

5.6 Annual Recognition Reception

Each year in December, the City Council hosts an event (coordinated by the City Clerk's Office) to recognize the efforts of current and outgoing members of Council-appointed boards, commissions, committees, and task force groups.

5.7 Council Service on Commissions

Council Members are requested to serve on various commissions for outside agencies. Following a City election, at which new Council Members are elected, the newly-seated Council shall review the list of current assignments and make recommendations for appointments. Any Council Member desiring to serve on a certain commission should inform the Mayor. Council Members resigning from his/her position on a certain commission should inform the Mayor (via the City Clerk's Office) in writing. Appointments are subject to approval by a majority of Council.

Council representatives to such commissions shall keep the Council informed of ongoing business through periodic updates under the "Comments by Council" segment of the regular City Council meeting agenda or other means as appropriate.

5.8 Regional Boards

The role of the Council on regional boards will vary depending on the nature of the appointment. Representing interests of Lodi is appropriate on some boards; this is generally the case when other local governments have its own representation. Examples might be serving on the Northern California Power Agency and Northern San Joaquin County Groundwater Banking Authority. Other appointments, such as San Joaquin Council of Governments, are broader in nature; these boards depend on its members taking a more regional approach.

The positions taken by the appointed representative are to be in alignment with the positions that the Council has taken on issues that directly impact the City of Lodi. If an issue should arise that is specific to Lodi and the Council has not taken a position, the issue should be discussed by the Council prior to taking a formal position at a regional board to assure that it is in alignment with the Council's position.

6. MEETING GUIDELINES & PROCEDURES

6.1 Attendance / Quorum

Council Members acknowledge that attendance at lawful meetings of the City Council is part of their official duty. Council Members shall make a good faith effort to attend all such meetings unless unable. Council Members will notify the City Clerk if they will be absent from a meeting. The City Clerk will then notify the City Manager, City Attorney, and all other Council Members.

Three members of the City Council shall constitute a quorum and shall be sufficient to transact business. If less than three appear at a regular meeting, the Mayor, Mayor Pro Tempore in the absence of the Mayor, any Council Member in the absence of the Mayor and Mayor Pro Tempore, or in the absence of all Council Members, the City Clerk, or his/her designee, shall adjourn the meeting to a stated day and hour or cancel the meeting due to the lack of a quorum.

Rule of Necessity: If enough Council Members are disqualified (e.g. conflict of interest) such that a quorum cannot be met the disqualified Members shall draw lots to rehabilitate a sufficient number of Council members to permit Council action. Direction from the City Attorney should be sought to determine that real conflict exists to necessitate the need to use the Rule of Necessity.

6.2 Meeting Dates and Location

Whenever possible, taking into consideration the number of participants and room availability, all Council meetings noticed for action shall be scheduled in the Council Chamber at the Carnegie Forum to allow for a live cable-cast of the meeting.

6.2a Regular Meetings & Informal Informational (Shirtsleeve) Sessions

Pursuant to LMC Chapter 2.04, "City Council Meetings," regular meeting dates are the first and third Wednesday of each month commencing at 7:00 p.m. Informal Informational (Shirtsleeve) Sessions are held every Tuesday morning at 7:00 a.m.

6.2b Special/Joint/Adjourned/Emergency Meetings

The Brown Act sets forth specific requirements for holding adjourned, special, and emergency meetings. The City Council may from time to time hold special joint meetings with boards and commissions or outside agencies or groups.

6.3 Agenda / Council Meeting

6.3a Agenda Packet Preparation

The City Manager reviews and approves all items for the Council agenda. Agenda packets are compiled, photocopied, converted electronically, posted to the Web, and distributed through the City Clerk's Office, pursuant to the "City Council Agendas, Council Communications, and Packet Policy/Procedure." Agenda packets (in CD format) shall be delivered to Council Members on the Friday prior to the Council meeting.

6.3b Placing Items on the Agenda

Pursuant to LMC Section 2.04.180 "Preparation of agendas," matters may be placed on the agenda for consideration by request of 1) any member of the City Council, 2) the City Manager, 3) the City Clerk, and 4) the City Attorney. Any reasonable request by any person named in this section shall

be honored, subject to the City Manager's discretion as to the preparation of accompanying staff reports.

Requests from the public to place an item on the agenda are to be directed to the City Clerk's Office and shall be handled in the following manner:

- Proclamation/Certificate – All requests for proclamations and certificates are subject to approval of the Mayor and are typically honored only if a local representative from the requesting agency can appear to accept the certificate.
- Presentations – Most requests for presentation by civic groups and local organizations and requests for recognition of Eagle Scouts or for excellence in academics, athletics, etc. shall be honored and placed appropriately under the "Presentations" segment of the agenda.
- Item for Discussion/Action – Requests by members of the public to place an item for discussion or action on the agenda shall be directed to the appropriate City department for proper handling. In the event it cannot be handled in this manner, the individual requesting the action should submit in writing his/her specific request. The City Clerk shall then place the matter on the agenda under "Communications." The Council shall not take action on the matter other than to either 1) direct that the matter be placed on a future agenda or 2) direct staff to research the issue and report back to Council.

6.3c Order of Agenda Items

Resolution No. 2005-10, adopted by the Lodi City Council on January 11, 2005, establishes the order of business for City Council meetings. Topics anticipated to be of greatest interest to the public will be placed at the beginning of the Regular Calendar.

6.3d Agenda Posting

The agenda for any Regular, Special, or Shirtsleeve Session meeting shall be made available to the general public.

For every Regular, Special, or Shirtsleeve Session meeting, the City Clerk, or other authorized person, shall post the agenda, specifying the time and place at which the meeting will be held and a brief description of all items of business to be discussed at the meeting. The agenda shall be posted according to law at the following locations:

- Lodi City Hall – 221 W. Pine Street
- City Clerk's Office – 221 W. Pine Street, 2nd Floor
- Lodi Carnegie Forum* – 305 W. Pine Street
- Lodi Public Library – 201 W. Locust Street
- On the Internet – www.lodi.gov

***NOTE:** This is the official City of Lodi posting location freely accessible to the public 24 hours a day.

6.3e Americans with Disabilities Act Statement

Agendas for all City Council meetings will contain a statement regarding the Americans with Disabilities Act in substantially the following language, making the City Clerk the contact for inquiries.

“NOTE: All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the City Clerk, located at 221 W. Pine Street, Lodi, and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the City Clerk’s Office as soon as possible and at least 24 hours prior to the meeting date.”

6.3f Limitation to Act Only on Items on the Agenda

No action shall be taken by the City Council on any item not on the posted agenda, subject only to the exceptions listed below:

- Upon a majority determination that an “emergency situation” (as defined by state law) exists; and
- Upon determination by a 4/5 vote of the full City Council, or a unanimous vote if less than a full Council, that there is a need to take immediate action and that the need to take the action came to the attention of the City Council subsequent to posting of the agenda.

6.3g Supplemental Information (“Blue Sheet” Items)

At times, it may be necessary to amend or provide new information to Council following the publication of the City Council packet. Supplemental material that revises a previously submitted item shall show new information in bold and deleted information in strikethrough. Supplemental material that adds further information to a previously submitted item (e.g. a new Council Communication or attachment) shall contain the statement “SUPPLEMENTAL INFORMATION” on the top, right-hand side of the new material. All supplemental material shall be copied on blue paper and distributed to Council Members and key staff members, in addition to the public information table, prior to the start of the meeting.

6.3h Closed Session

Closed sessions are regulated pursuant to the Brown Act. All written materials and verbal information regarding closed session items shall remain confidential. No member of the Council, employee of the City, or anyone else present shall

disclose to any person the content or substance of any discussion that takes place in a closed session, unless authorized by a majority of Council. The same high standard of respect and decorum as apply to public meetings shall apply to closed sessions. There shall be courtesy, respect, and tolerance for all viewpoints and for the right of Council Members to disagree.

In accordance with Resolution No. 80-101, adopted by the Lodi City Council on August 6, 1980, the City Clerk is authorized to attend all closed session meetings to record motions and actions taken by the City Council. The City Attorney, following the adjournment of a closed session, shall disclose all reportable action taken in the closed session, which shall be recorded into the record by the City Clerk.

6.3i Invocations (Res. 2009-146)

In accordance with Resolution No. 2009-146, adopted by the Lodi City Council on October 21, 2009, invocations shall follow the policy regarding legislative invocations before meetings of the Lodi City Council. (Attached as Exhibit D)

6.3j Presentations

Special presentations shall be scheduled as necessary in recognition of persons or groups, or for the promotion of an event or service. Requests for special presentations must be submitted to the City Clerk in writing in advance of the agenda deadline.

6.3k Consent Calendar

Those items on the Council agenda that are considered to be of a routine and non-controversial nature by the City Manager shall be listed on the "Consent Calendar." These items so listed shall be approved, adopted, accepted, etc. by one motion of the Council.

Council Members may comment on Consent Calendar items or ask for minor clarifications without the need for pulling the item for separate consideration. Items requiring deliberation should be pulled for separate consideration.

6.3l Public Comments

Pursuant to the Brown Act, public comment will be allowed on specific items of business on the Council agenda before or during the Council's consideration of the matter. Members of the public wishing to address Council on a closed session topic will be allowed an opportunity to do so prior to Council adjourning to closed session. Public comments will also be allowed on any item not on the agenda but within the jurisdiction of the City Council. Public comments on non-

agenda items are limited to five minutes each. Individuals desiring to speak are encouraged to submit a request to speak card to the City Clerk listing their name and address.

All comments and testimony shall be made from the podium through the Mayor; no comment or testimony shall be shouted from the audience. Comment and testimony are to be directed to the City Council. Dialogue between and inquiries from citizens at the podium and members of staff or the seated audience is not permitted. Inquiries which require staff response shall be referred to staff for response at a later time.

The City Council cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the City Council itself; however, the Brown Act provides no immunity for defamatory statements. Any person who addresses the City Council in a manner which disrupts, disturbs, or impedes the orderly conduct of the meeting may be asked to terminate his/her comment period. Continued inappropriate behavior or comments, after having been directed to discontinue, may be grounds for removal from the meeting.

6.3m Council Comments on Non-Agenda Items

Council Members may make comments on non-agenda items. Comments are generally for informational purposes or to request a future report on a matter; it is not intended for detailed discussion of an item or for action (Gov. Code Section 54954.2(a)(2)).

6.3n Public Hearings

Public hearings may be required on certain items as prescribed by the Lodi Municipal Code or by state or federal law. In addition to the public hearing procedures set forth in Resolution 2006-31, adopted by the Lodi City Council on February 15, 2006, the general procedure for public hearings is as follows:

1. Staff presents its report. Council Members may ask questions of staff.
2. The Mayor opens the public hearing.
3. The applicant or appellant has the opportunity to present his/her comments, testimony, or arguments. Adequate time must be allotted for the applicant or appellant to present his/her case.
4. Members of the public may present their comments subject to time limits established by the Mayor.
5. The Mayor closes the public hearing after everyone wishing to speak has had the opportunity to do so.
6. Council deliberates and takes action.

When the City Council acts in an adjudicatory or quasi-judicial capacity, each member must (1) disclose on the record the nature and substance of any ex parte communications relating to the matter; and (2) provide interested parties full and fair opportunity to rebut or explain the information obtained from those communications.

6.3o Regular Calendar

Those items on the Council agenda that are considered to require Council discussion or public input shall be listed on the "Regular Calendar." These items so listed shall be approved, adopted, accepted, etc. separately by the Council.

6.3p Ordinances

Ordinances involve a command or prohibition and have the force of law in the city for which an ordinance is adopted. An ordinance generally prescribes some permanent rule of conduct or government that remains in force until the ordinance is repealed. With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required—one to introduce (on the Regular Calendar) and a second to adopt the ordinance (under Ordinances). Ordinances may only be passed at a Regular meeting or at an Adjourned (i.e. continued) Regular meeting; except for urgency ordinances, ordinances may not be passed at a Special meeting. Unless otherwise stated, an ordinance shall take effect 30 days following the date of adoption.

6.3q Resolutions

A resolution expresses City Council policy or directs certain types of administrative action and may be changed by a subsequent resolution. Resolutions are effective on the date of adoption.

6.3r Minute Motion

A minute motion is the most informal official action taken by the City Council. It ordinarily is used to indicate majority approval of a procedural action, such as accepting grant deeds, approving plans and specifications and agreements, or otherwise authorizing disposition of an agenda item.

6.3s Agency Meetings (LPIC, IDA, LFC, RDA)

The City Council, which also sits as members of the Lodi Public Improvement Committee (LPIC), Improvement Development Authority (IDA), Lodi Financing Committee (LFC), and the Redevelopment Agency (RDA), shall meet annually at the second meeting in December to elect new officers. Typically, the Mayor shall serve as Chairperson or President and the

Mayor Pro Tempore shall serve as the Vice Chairperson or Vice President. The RDA members are entitled to compensation of \$30 per meeting up to four meetings per month; however, they may vote to waive the compensation.

6.3t Council Communications / Staff Reports

Each City Council agenda item shall have a coordinating staff report (Council Communication) prepared by the originating department. Council Communications are written specifically for the purpose of communicating information necessary for policy and decision-making and shall include an abbreviated history, the overall intent and need for the requested action, and its impact or affect on the community, services, and programs of the City.

6.3u Submitted Materials at Meetings are Public Record

Any written correspondence or other materials, when distributed to all, or a majority of all, of the members of the City Council by any person in connection with a matter subject to discussion or consideration at a public meeting, are disclosable public records under the California Public Records Act and shall be made available upon request without delay. Writings that are public records and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by City staff or a member of the City Council, or after the meeting if prepared by some other person. All writings referenced herein shall be provided to and documented with a received/filed date by the City Clerk.

6.3v Electronic Mail Communications, Prohibited during Meetings

Use of the Internet and e-mail is prohibited by Council Members during City Council meetings. The purpose of this is: 1) to ensure that no violations of the Brown Act occur and 2) to allow for proper management of communications during meetings so that City business can be conducted in an efficient and orderly manner. E-mail communication sent to the City Council related to an item on an agenda will be received in the City Clerk's Office up to the close of business (5 p.m.) on the date of the meeting and will be provided to Council Members via "blue sheet." Such communications will be handled in accordance with California Government Code Section 54957.5.

6.3w Minutes

The City Clerk, or his/her designee, shall attend and prepare comprehensive summary minutes of all public meetings of the City Council. Minutes ready for Council approval shall be placed on the regular City Council meeting agenda and included in the Council packet. Pursuant to LMC Section 2.04.110, "Reading and approval of minutes," any Council Member can request a correction or amendment to the minutes, subject to verification

by the City Clerk. It is suggested that Council Members contact the City Clerk no later than Tuesday before the regular meeting, which will allow the Clerk time to review the audio tape to ensure that the requested amendment was verbalized at the meeting, and if so, make the change to the minutes and present the amended minutes to Council on the day of the meeting for approval.

6.4 Rules of Conduct

6.4a Discussion Rules

The Mayor or presiding officer has the responsibility to control the debate and the order of speakers pursuant to the rules for conduct of meetings, proceedings, and business as set forth in Resolution No. 2006-31.

6.4b Council Comments (Related to Items on the Agenda)

Council Members shall limit their comments to the subject matter, item, or motion being currently considered by the Council.

6.4c Speaker Time Limits

Members of the public speaking on non-agenda items shall be limited to five minutes. On scheduled items where the Council determines that the existence of unusual or controversial issues exists, that the large number of speakers wishing to address the Council so justifies, or that other considerations make modification appropriate, the Mayor may limit the amount of time to be afforded each speaker.

6.4d Council Questions of Speakers

Council Members who wish to ask questions of speakers may do so, but only after being recognized by the Mayor. Members of Council shall not engage in debate with a member of the public at Council meetings.

6.5 Decorum

6.5a Council Members / Council Appointees

Resolution No. 2004-115, adopted by the Lodi City Council on June 2, 2004, establishes the code of ethics and values to be followed by City Council Members and City Council Appointees (i.e. City Manager, City Attorney, and City Clerk). Members of the City Council and Council Appointees value and recognize the importance of the trust invested in them by the public to accomplish the business of the City. Council Members and Appointees shall accord the utmost courtesy to each other, to City employees, and to the public appearing before the City Council. At all times, Council Members in the minority on an issue shall respect the decision and authority of the majority.

6.5b City employees

Members of the City staff are expected to observe the same rules of order and decorum applicable to the City Council. City staff shall act at all times in a business professional manner toward Council Members and members of the public.

6.5c Public

Members of the public attending City Council meetings shall observe the same rules of order and decorum applicable to the City Council.

6.5d Noise in the Chamber

Noise emanating from the audience within the Council Chamber or lobby area, which disrupts City Council meetings, shall not be permitted.

6.6 Use of Council Chamber

As set forth in the City of Lodi Administrative Policy and Procedure Manual, the following are authorized uses of the spaces in the Carnegie Forum.

1. All meetings of the City Council.
2. All meetings of City boards and commissions when such boards and commissions are staffed by a City liaison person.
3. Meetings called by a Council Member(s) to discuss City business with constituents and others.
4. Department Head and other City staff meetings.
5. City employee training sessions.
6. General meetings of City employees for the purpose of disseminating job-related information.
7. Professional meetings hosted/conducted by City staff.
8. City-sponsored community awareness programs.

Exceptions to this policy may be made only on the authority of the City Council. The Council Chamber cannot be used as a location for taking campaign photos. All requests for use of Carnegie Forum spaces shall be made through the Secretary to the City Manager.

7. COMMUNICATIONS

7.1 Processing and Delivering of City Council Mail by City Clerk's Office

Upon authorization of the City Council Member, the City Clerk shall open all mail addressed to the Mayor and City Council Members, with the exception of those marked "Personal" or "Confidential."

Communication Addressed to the "City Council"

All correspondence addressed to the "City Council" is treated as public information. A copy is made for each member of the City Council, City Manager, City Attorney, and all other affected departments for information, referral, or handling. The original document is retained in the City Clerk's Office file.

Communication Addressed to the "Mayor"

Commonly, the sender's intent when addressing communication to the "Mayor" is merely to forward it to the head of the city governing body, and consequently, this type of correspondence is often handled in the same manner as communication addressed to the "City Council." Handling of the Mayor's mail is, however, at the discretion of the individual serving in this capacity, which is ascertained each year following the reorganization of the City Council.

Communication Addressed to Individual Council Members

Communication addressed specifically to individual City Council Members is treated as personal mail and is only opened by the City Clerk's Office if express authorization to do so was given by the Council Member. No copies are made or distributed. Should a response be needed, it is up to the individual Council Member to whom the correspondence was addressed, as is forwarding the information to affected departments if appropriate.

7.2 Council Calendar

An Annual Calendar List of Events shall be prepared by the City Clerk's Office, which includes City-related events, functions, meetings, and annual conferences. A weekly calendar is also prepared by the City Clerk and distributed to each Council Member, Administrative staff, and the press for informational purposes. It shall be the responsibility of Council Members to notify the City Clerk of their attendance at an event, for which the City Clerk will handle the arrangements.

7.3 Citizen Complaint Process

All complaints directed to the City Council through the City Clerk's Office will be copied to the City Manager's Office and other affected departments. A reply, confirming receipt and notifying the sender who the communication was forwarded to, will be sent by the City Clerk's Office within 24 hours.

7.4 Use of City Letterhead or City Seal

All Council Member correspondence written on City resources, i.e. letterhead, staff support, postage, etc., will reflect a majority position of the Council, not individual Council Members' positions. All Council Member correspondence using City resources shall be copied to the full Council. The City Clerk is the custodian of the Official City Seal pursuant to Lodi Municipal Code 2.13.010. The City Seal shall not be altered and is to be used only on official City documents.

7.5 Communications with Staff

Pursuant to LMC Section 2.12.070, "Council to Deal Exclusively through City Manager," the City Council and its members, except for the purpose of inquiry, shall deal with administrative services solely through the City Manager, and neither the City Council nor any member thereof shall give orders to any of the subordinates of the City Manager. A Council Member shall not direct staff to initiate any action, change a course of action, or prepare any report that is significant in nature, nor shall a Council Member initiate any project or study without the approval of a majority of Council. Exception: Pursuant to LMC Title 2.13 and 2.14, the City Attorney and City Clerk are appointed by the City Council and shall report his/her advice, recommendations, and requests directly to the City Council.

In regard to an agenda item question, Council Members are encouraged to contact staff members to ask questions for clarification prior to the meeting, at which the subject will be discussed.

7.6 Complaints Regarding Performance of Staff

Any concerns by a member of Council over the behavior or work of a City employee should be directed to the City Manager privately to ensure the concern is resolved. Council Members shall not reprimand employees directly, nor shall they communicate their concerns to anyone other than the City Manager.

7.7 Handling of Litigation / Confidential Information

Council Members shall keep all written materials and verbal information provided to them on matters that are confidential under state law in complete confidence to ensure that the City's position is not compromised. No disclosure or mention of information in these materials shall be made to anyone other than Council Members, the City Attorney, or City Manager.

7.8 Representing Majority vs. Individual Opinion

A person elected to the City Council plays two roles: a member of a body elected to represent the City in its entirety and a private resident of the City. The second role is not relinquished when the first role is assumed. It is important to distinguish between the two roles at all times and to conduct business in one role separately from the other. The elected Council Member retains the right to speak as an individual, not as a member of the City Council, but must make it very clear that he/she speaks on his/her own behalf and not as a member of the City Council. This is because when the Council acts, it acts as a whole, not as a group of individuals.

If a member of the City Council appears before another governmental agency or organization to give a statement on an issue affecting the City, the Council Member should first indicate the majority position and opinion of the Council. Personal opinions and comments may be expressed only if the Council Member clarifies that these statements do not represent the position of the City Council.

7.9. Legislative Communications at the Request of City-Affiliated Organizations

From time to time, the City is asked by the League of California Cities and other City-affiliated organizations to take a support and/or oppose position on a particular piece of legislation and/or proposal. When such a request is received, the matter shall be agendaized and acted upon at the next regularly scheduled City Council meeting. When a request is received necessitating a more timely response in that action is required prior to the next regularly scheduled City Council meeting, the Mayor, or his/her designee, on behalf of the City, may sign and submit the requested communication so long as the position is consistent with the position taken by the League and/or other City-affiliated organizations and previous positions, if any, taken by the City. A copy of the communication shall be presented as an informational item on the Consent Calendar at the next regularly scheduled City Council meeting.

8. CONFLICT OF INTEREST / ECONOMIC DISCLOSURE REQUIREMENTS FOR PUBLIC OFFICIALS

8.1 Conflict of Interest

The Political Reform Act (Government Code, Title 9, Sections 81000-91015) controls conflict of interest through disclosure and prohibition of participation in decisions, which are actual conflicts of interest. Specifically, it requires City Council Members and other public officials to annually disclose all financial interests that may be affected by decisions made in their official capacity; this includes interests such as investments, real property, and income. Council Members must also disqualify themselves from making or participating in making or influencing any governmental decision that will have a foreseeable material financial affect on any economic interest of the Council Member or certain family members.

The Political Reform Act requires state and local government agencies to adopt and promulgate conflict of interest codes, which shall be reviewed bi-annually on even-numbered years. On December 1, 2004, the Lodi City Council adopted Resolution No. 2004-268 amending the City of Lodi's Conflict of Interest Code.

8.2 Statements of Economic Interest

A financial disclosure form (Statement of Economic Interest) must be filed with the City Clerk no later than April 1 of each year for financial interests pertaining to the preceding calendar year. Newly-elected Council Members must file a statement within 30 days of officially assuming office. Certain commission members and City employees are also subject to this disclosure requirement.

8.3 Make and Participate in Making a Decision

An official makes a decision when the official votes on a matter, appoints a person, obligates or commits the City to any course of

action, or enters into any contract on behalf of the City. Pursuant to LMC 2.04.140, "Voting," all members of the Council, when present, must vote. If a member of the Council states that he/she is not voting, his/her silence shall be recorded as an affirmative vote unless, however, the Council Member abstains from voting by reason of his/her interest in the matter before the Council and that reason is stated at the meeting.

An official participates in making a decision when the official negotiates on behalf of the City without significant substantive review, or advises or makes recommendations to the decision maker, either directly or without significant intervening substantive review.

Exceptions: Making or participating in the making of a decision does not include ministerial, secretarial, manual or clerical actions, appearances by the official as a member of the general public before any body of the City in the course of its prescribed governmental function to represent himself/herself on matters related solely to his/her personal interest.

8.4 Provision of Advice from City Attorney regarding Conflict of Interest

Any official who is uncertain as to whether he/she may have a conflict of interest shall seek clarification from the City Attorney; however, the official must understand that the City Attorney may not keep the consultation confidential from the full Council, and the City Attorney's opinion is not a defense to a Fair Political Practices Commission (FPPC) enforcement action. When in doubt, the City Attorney can request a formal opinion from the FPPC if the request is made at least four weeks in advance.

8.5 Using Official Position to Influence

Council Members shall not attempt to coerce or influence any member, officer, official, consultant, or commission member of the City in the awarding of contracts, the selection of consultants, the processing of development applications, or the granting of City licenses or permits. The Council shall not attempt to change or interfere with the operating policies and practices of any City department.

APPENDIX
Reference Table of Amendments

DATE	DESCRIPTION	ACTION
3/15/09	City Council adopted City Council Protocol Manual	Res. 2006-45
1/2/07	Amended Manual to update resolution number relating to the AB1234 Expense Reimbursement Policy (Section 4.2a)	Administratively
10/8/09	Amended Manual to add " <i>Appendix: Reference Table of Amendments</i> " for tracking purpose and added Exhibits A, B, and C to the Table of Contents page	Administratively
10/21/09	Amended Manual to update policy regarding invocations, referencing the Council-adopted resolution (Section 6.3i), and added Exhibit D to the Table of Contents page and attached it to the Manual	Res. 2009-146
2/2/11	Amended Manual to revise the boards, committees, and commissions appointment policy to include the specific follow-up process and indicate that the applicants shall be interviewed by the Mayor	Council action (motion/action)
5/18/11	Amended Manual to add Section 7.9 regarding communications at the request of the League of California Cities	Council action (motion/action)
10/5/11	Amended Manual, Sections 7.4 and 7.9, to further clarify use of City letterhead and expand the definition of legislative communications (i.e. not only League requests)	Council action (motion/action)
10/19/11	Amended Section 5.6, Annual Recognition Reception, to reflect that the reception is held annually in December rather than August	Administratively
11/2/11	Amended Section 5.2 (Commission Appointments) to add language regarding removal process	Council action (motion/action)

Chapter 2.04

CITY COUNCIL MEETINGS

Sections:

- 2.04.010 Regular meetings—Day and time.**
- 2.04.020 Informal informational meetings.**
- 2.04.030 Meeting place.**
- 2.04.040 Meetings to be public.**
- 2.04.050 Special meetings.**
- 2.04.060 Quorum.**
- 2.04.070 Presiding officer—Mayor—Mayor pro tempore.**
- 2.04.080 Call to order—Temporary chairman.**
- 2.04.090 Roll call.**
- 2.04.100 Order of business—Assembly of officers.**
- 2.04.110 Reading and approval of minutes.**
- 2.04.120 Rules of debate.**
- 2.04.130 Addressing the council.**
- 2.04.140 Voting.**
- 2.04.150 Decorum.**
- 2.04.160 Persons allowed within rail.**
- 2.04.170 Entry of dissent in minutes.**
- 2.04.180 Preparation of agendas.**
- 2.04.190 Closed sessions—Confidentiality.**

2.04.010 Regular meetings—Day and time.

Regular meetings of the council shall be held on the first and third Wednesday of each month at seven p.m.; provided, however, that any such regular meeting at which a closed session is to be held may be com-

menced, for the holding of such closed session, at such earlier time on the meeting day as may be noticed on the council's agenda and posted at least seventy-two hours in advance of such earlier commencement time. In the event of any such earlier commencement of a regular meeting for the purpose of holding a closed session, no other items of business on the council's meeting agenda shall be addressed before seven p.m. In case the regular meeting falls upon a legal holiday, then the regular meeting which otherwise would have occurred on that day shall be held on the first business day thereafter at the hour of seven p.m. (Ord. 1699 § 1, 2001)

2.04.020 Informal informational meetings.

Informal informational meetings of the city council shall be held on each Tuesday morning of each month at the hour of seven a.m. in the council chambers of the city or at such location and at such time as the council may deem appropriate, subject to notice requirements as provided by law. No formal action shall be taken by the city council at such meetings. The city manager, city attorney, department heads and members of the public, as the council may request, shall be present and present such information as may be deemed desirable. (Ord. 1594 § 1 (part), 1994)

2.04.030 Meeting place.

All regular meetings of the council shall be held in the council chambers, Carnegie Forum Building, Lodi, California, or at such other place as the council may deem appropriate, subject to notice requirements as provided by law. If by reason of fire, flood, earthquake or other emergency, it is unsafe

2.04.030

to meet in the place so designated, the meetings may be held for the duration of the emergency at such place as is designated by the mayor. (Ord. 1594 § 1 (part), 1994)

2.04.040 Meetings to be public.

All meetings of the council shall be open to the public. (Ord. 1594 § 1 (part), 1994)

2.04.050 Special meetings.

At any time the mayor or three city council members may call a special meeting by delivering written notice to each member and to each local newspaper of general circulation, radio or television station requesting notice in writing, such notice to be delivered personally or by mail at least twenty-four hours before the time of such meeting. Written notice may be dispensed with if a representative of the newspaper, radio or television station is present at the meeting and if all council members give their written consent to the meeting and the consent is filed in the city clerk's office when the meeting is held. A council member may give such consent by telegram. (Ord. 1594 § 1 (part), 1994)

2.04.060 Quorum.

A majority of all members elected to the council shall constitute a quorum at any regular or special meeting of the council. Unless otherwise required by law, a simple majority of the members present may take action or adopt ordinances or resolutions. (Ord. 1594 § 1 (part), 1994)

**2.04.070 Presiding officer—
Mayor—Mayor pro
tempore.**

The presiding officer of the council shall

be the mayor who shall be elected by the council annually at the first regular meeting after the canvass of votes done in conjunction with the statewide general election in even-numbered years. In years where there is no general statewide election, the mayor shall be elected at the first regular meeting in December. At the time of the election of the mayor, one of the members of the council shall be chosen as mayor pro tempore. If the mayor is absent or unable to act, the mayor pro tempore shall serve until the mayor returns or is able to act. The mayor shall preserve strict order and decorum at all regular and special meetings of the council. He shall state every question coming before the council, call for the vote, announce the decision of the council on all subjects and decide all questions of order, subject, however, to an appeal to the council, in which event a majority vote of the council shall govern and conclusively determine such question of order. He shall sign all ordinances adopted by the council during his presence. In the event of the absence of the mayor, the mayor pro tempore shall sign ordinances as then adopted. (Ord. 1594 § 1 (part), 1994)

**2.04.080 Call to order—Temporary
chairman.**

The mayor, or in his/her absence the mayor pro tempore, shall take the chair at the hour appointed for the meeting, and shall immediately call the council to order. In the absence of the mayor or mayor pro tempore, the city clerk, or the acting city clerk shall call the council to order whereupon a temporary chairperson shall be elected by the members of the council present. Upon the arrival of the mayor or mayor pro tempore, the temporary chairperson shall

immediately relinquish the chair upon the conclusion of the business immediately before the council. (Ord. 1594 § 1 (part), 1994)

2.04.090 Roll call.

Before proceeding with the business of the council at regular, special or informational sessions, the city clerk or the acting city clerk shall call the roll of the members, and the names of those present shall be entered in the minutes. (Ord. 1594 § 1 (part), 1994)

**2.04.100 Order of business—
Assembly of officers.**

All meetings of the council shall be open to the public, except for closed sessions as permitted by law. The council shall provide by resolution the order of business for regular meetings of the council, and shall provide therein for public comment as required by law. In attendance shall be the city manager, the city clerk, and the city attorney or their authorized designees. (Ord. 1699 § 2, 2001)

**2.04.110 Reading and approval of
minutes.**

Unless the reading of the minutes of a council meeting is requested by a majority of the council, such minutes may be approved without reading if the city clerk has previously furnished each member with a copy thereof. Any council member can correct an error in the minutes, subject to verification by the clerk. (Ord. 1594 § 1 (part), 1994)

2.04.120 Rules of debate.

The council shall, by resolution, adopt

rules of conduct and debate applicable to all city council meetings. (Ord. 1594 § 1 (part), 1994)

2.04.130 Addressing the council.

A. Any interested person may, subject to the rules of procedure adopted hereunder, speak on any item coming before the council. It shall not be required that persons wishing to speak give prior written notice, but priority shall be given to those who have so notified the city clerk in advance.

B. After a motion is made and seconded, no person shall address the city council without first securing permission of the council to do so.

C. Remarks by the public shall be made only from the podium. Speakers shall first give their names and addresses for the record, and no one shall be permitted to enter into any discussion without permission of the presiding officer. (Ord. 1594 § 1 (part), 1994)

2.04.140 Voting.

All members of the council, when present, must vote. If a member of the council states that he is not voting, his silence shall be recorded as an affirmative vote unless, however, the council member abstains from voting by reason of his/her interest in the matter before the council and that reason is stated at the meeting. (Ord. 1594 § 1 (part), 1994)

2.04.150 Decorum.

A. Council Members. While the council is in session, the members must preserve order and decorum, and a member shall neither, by conversation or otherwise, delay or interrupt the proceedings or the peace of the council nor disturb any member while

2.04.150

speaking or refuse to obey the orders of the council or its presiding officer, except as otherwise provided by this chapter. Any member who, after warning by the chair, repeatedly violates these rules may be ejected for the remainder of the meeting by two-thirds vote of the council.

B. Other Persons. Any person making personal, impertinent or slanderous remarks or who becomes boisterous during the council meeting shall be forthwith, by the presiding officer, barred from further audience at the meeting before the council, unless permission to continue is granted by a majority vote of the council.

C. Any violation of this section may be punished as an infraction pursuant to Section 1.08.010 of this code. (Ord. 1594 § 1 (part), 1994)

2.04.160 Persons allowed within rail.

No person, except city officials, their representatives and newsgathering or media personnel, shall be permitted within the rail in front of the council chamber during meetings, without the express consent of the council. (Ord. 1594 § 1 (part), 1994)

2.04.170 Entry of dissent in minutes.

Any council member shall have the right to have the reasons for his dissent from, or protest against, any action of the council entered on the minutes. (Ord. 1594 § 1 (part), 1994)

2.04.180 Preparation of agendas.

A. Consistent with the provisions of the Ralph M. Brown Act (Government Code Section 54950 et seq.), the agenda for council meetings shall be prepared by the

city manager, and distributed by the city clerk.

B. Matters may be placed on the agenda for consideration by the city council by request of:

1. Any member of the city council;
2. The city manager;
3. The city clerk;
4. The city attorney.

C. Any reasonable request by any person named in this section to place a matter on the agenda shall be honored, subject to the city manager's discretion as to the preparation of accompanying staff reports. (Ord. 1594 § 1 (part), 1994)

**2.04.190 Closed sessions—
Confidentiality.**

A. No officer, employee or agent of the

city shall, without proper authorization, divulge confidential information received by such person as part of his or her official duties during any closed session of the city council authorized under the Ralph M. Brown Act (Government Code Section 54950 et seq.) as it now exists or may later be modified.

B. Such confidential information may include but is not limited to matters involving pending litigation, property acquisition, labor negotiations, personnel matters or other information, the disclosure of which would reasonably be likely to prejudice the *good faith conduct* of city business, constitute an unwarranted invasion of privacy, or place the city at an unfair disadvantage in negotiations.

C. For purposes of this section, "proper authorization" means:

1. In matters of personal privacy, a waiver by the individual enjoying such right of privacy;
2. The order or subpoena of a court of competent jurisdiction;
3. Authorization by the city council as a body;
4. Conclusion or finalization of the matter or subject involved, as determined by the city council.

D. Nothing in this chapter shall be deemed a waiver of any other confidential privilege for any information established elsewhere by statute or case law. (Ord. 1594 § 1 (part), 1994)

RESOLUTION NO. 2006-31

A RESOLUTION OF THE LODI CITY COUNCIL ADOPTING
AND ESTABLISHING RULES FOR THE CONDUCT OF ITS
MEETINGS, PROCEEDINGS, AND BUSINESS AND
THEREBY RESCINDING RESOLUTION 2004-282

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WHEREAS, the Lodi City Council, pursuant to Chapter 2.04 of the Lodi Municipal Code, is empowered and required to adopt by resolution, rules of conduct for City Council meetings; and

WHEREAS, it is desirable to make such procedural rules applicable to all other boards, commissions, and committees of the City.

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

SECTION 1. RULES OF CONDUCT AND DEBATE FOR THE CITY COUNCIL,
BOARDS, COMMISSIONS, AND COMMITTEES

A. Presiding Officer May Debate

The Mayor or presiding officer may move, second, and debate from the chair, subject only to such limitations of debate as are by these rules established. The chair shall not be deprived of any of the rights and privileges of a Council or board member by reason of being the presiding officer.

B. Obtaining The Floor.

Any member of the Council or board wishing to speak must first obtain the floor by being recognized by the chair. The chair must recognize any member who seeks the floor when appropriately entitled to do so.

C. Motions.

The chair or any member of the Council or board may bring any matter of business appearing on the agenda before the body by making a motion. The chair shall open the matter for debate, offering the first opportunity to debate to the moving party and, thereafter, to any other member properly recognized by the chair. Once the matter has been fully debated and seconded and the chair calls for a vote, no further debate will be allowed; provided, however, Council or board members may be allowed to explain their vote. The person making the motion shall have the privilege of closing debate.

D. Voting.

All members present at a meeting shall vote when the question is called, subject to the provisions of Lodi Municipal Code Section 2.04.140.

E. Procedural Rules of Order.

Once the main motion is properly placed on the floor, several related motions may be employed in addressing the main motion. These motions take precedence over the main motion and, if properly made and seconded, must be disposed of before the main motion can be acted upon. The following motions are appropriate and may be made by the chair or any Council or board member at any appropriate time during the discussion of the main motion. They are listed in order of precedence. The first three subsidiary motions are non-debatable; the last four are debatable.

SUBSIDIARY MOTIONS:

1. Lay on the Table. Any member may move to lay the matter under discussion on the table. The motion temporarily suspends any further discussion or the pending motion without setting a time certain to resume debate. It must be moved and seconded and passed by a majority vote. To bring the matter back before the body, a member must move that the matter be taken from the table, seconded, and passed by a majority. A motion to take from the table must be made at the same meeting at which it was placed on the table or at the next regular meeting of the body; otherwise, the motion that was tabled dies, although, it can be raised later as a new motion.
2. Move Previous Question. Any member may move to immediately bring the question being debated to a vote, suspending any further debate. The motion must be made and seconded without interrupting one who already has the floor. A two-thirds vote is required for passage.
3. Limit or Extend Limits of Debate. Any member may move to put limits on or extend the length of debate. The motion must be made and seconded and requires a two-thirds vote to pass.
4. Postpone to a Time Certain. Any member may move to postpone the pending motion to a time certain. This motion continues the pending main motion to a future date as determined by the Council or board at the time the motion is passed. The motion must be seconded and requires a majority vote for passage.
5. Commit or Refer. Any member may move that the matter being discussed should be referred to a committee, commission, or staff for further study. The motion must be seconded and requires a majority vote for passage. The motion may contain directions for the committee or commission, as well as a date upon which the matter will be returned to the Council or board's agenda. If no date is set for returning the item to the Council or board's agenda, any member may move, at any time, to require the item be returned to the agenda. The motion must be seconded and a majority vote is required for passage if the item is to come back at a future date certain, or a two-thirds vote if the item is to be immediately discussed by the Council or board at the time the motion to return is made.

6. Amend. Any member may amend the main motion or any amendment made to the main motion. Before the main motion may be acted upon, all amendments and amendments to amendments must first be acted upon. A motion to amend must be seconded and requires a majority vote for passage. An amendment must be related to the main motion or amendment to which it is directed. Any amendment which substitutes a new motion rather than amending the existing motion is out of order and may be so declared by the chair.
7. Postpone Indefinitely. Any member may move to postpone indefinitely the motion on the floor, thus avoiding a direct vote on the pending motion and suspending any further action on the matter. The motion must be seconded and requires a majority vote for passage.

F. Motions of Privilege, Order, and Convenience.

The following actions by the Council or board are to insure orderly conduct of meetings and for the convenience of the members. These motions take precedence over any pending main or subsidiary motion and may or may not be debated as noted.

1. Call for Orders of the Day. Any member may demand that the agenda be followed in the order stated therein. No second is required and the chair must comply unless the Council or board, by majority vote, sets aside the orders of the day.
2. Question of Privilege. Any member, at any time during the meeting, may make a request of the chair to accommodate the needs of the body or his/her personal needs for such things as reducing noise, adjusting air conditioning, ventilation, lighting, etc. Admissibility of question is ruled on by the chair.
3. Recess. Any member may move for a recess. The motion must be seconded and a majority vote is required for passage. The motion is debatable.
4. Adjourn. Any member may move to adjourn at any time, even if there is business pending. The motion must be seconded and a majority vote is required for passage. The motion is not debatable.
5. Point of Order. Any member may require the chair to enforce the rules of the Council or board by raising a point of order. The point of order shall be ruled upon by the chair.
6. Appeal. Should any member be dissatisfied with a ruling from the chair, he/she may move to appeal the ruling to the full Council or board. The motion must be seconded to put it before the Council or board. A majority vote in the negative or a tie vote sustains the ruling of the chair. The motion is debatable and the chair may participate in the debate.

7. Suspend the Rules. Any member may move to suspend the rules if necessary to accomplish a matter that would otherwise violate the rules. The motion requires a second and a two-thirds vote is required for passage.
8. Division of Question. Any member may move to divide the subject matter of a motion which is made up of several parts in order to vote separately on each part. The motion requires a second and a majority vote for passage. This motion may also be applied to complex ordinances or resolutions.
9. Reconsider. Except for votes regarding matters which are quasi-judicial in nature or matters which require a noticed public hearing, the Council or board may reconsider any vote taken at the same session, but no later than the same or next regular meeting, to correct inadvertent or precipitant errors, or consider new information not available at the time of the vote. The motion to reconsider must be made by a member who voted on the prevailing side, must be seconded, and requires a majority vote for passage, regardless of the vote required to adopt the motion being reconsidered. If the motion to reconsider is successful, the matter to be reconsidered takes no special precedence over other pending matters and any special voting requirements related thereto still apply. Except pursuant to a motion to reconsider, once a matter has been determined and voted upon, the same matter cannot be brought up again at the same meeting.
10. Rescind, Repeal, or Annul. The Council or board may rescind, repeal, or annul any prior action taken with reference to any legislative matter so long as the action to rescind, repeal, or annul complies with all the rules applicable to the initial adoption, including any special voting or notice requirements or unless otherwise specified by law.

G. Authority of the Chair.

Subject to appeal, the chair shall be the chief parliamentarian, rule on points of order, **and shall have the authority to prevent the misuse of** the legitimate form of motions, or the abuse of privilege of renewing certain motions, to obstruct the business of the Council or board by ruling such motions out of order. In so ruling, the chair shall be courteous and fair and should presume that the moving party is making the motion in good faith.

H. Public Hearings.

Matters which are required to be heard at a noticed public hearing shall be conducted in the following manner.

1. Time for Consideration. Matters noticed to be heard by the Council or board shall commence at the time specified in the notice of hearing, or as soon thereafter as is reasonably possible, and shall continue until the same has been completed or until other disposition of the matter has been made.

2. Continuance of Hearings. Any hearing being held or noticed or ordered to be held by the Council or board at any meeting may, by order or notice of continuance, be continued or re-continued to any subsequent meeting in the manner provided herein for adjourned meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or notice of continuance was adopted or made.
3. Public Discussion at Hearings. When a matter for public hearing comes before the body, the chair shall open the public hearing. Upon opening the public hearing and before any motion is adopted related to the merits of the issue to be heard, the chair shall inquire if there are any persons present who desire to speak on the matter which is to be heard or to present evidence respecting the matter. Any person desiring to speak or present evidence shall make his/her presence known to the chair and upon being recognized by the chair, the person may speak or present evidence relevant to the matter being heard. No person may speak without first being recognized by the chair. Members who wish to ask questions of the speakers or each other during the public hearing portion, may do so but only after first being recognized by the chair. The chair shall conduct the meeting in such a manner as to afford due process. Time limits may be established by the chair, limiting the duration of presentations as set forth in these rules.

All persons interested in the matter being heard shall be entitled to submit written evidence or remarks, as well as other graphic evidence. All such evidence presented shall be retained by the City Clerk or secretary of the board as part of the record. No person shall be permitted during the hearing to speak about matters or present evidence which are not germane to the matter being considered. A determination of relevance shall be made by the chair, but may be appealed as set forth in these rules.

4. Consideration of Question by Council or Board. After all members of the **public desiring to speak upon the subject of the hearing have been given** an opportunity to do so, the public hearing shall be closed by the chair, and the body may consider what disposition they wish to make of the question or questions presented at the hearing. No member of the public shall be allowed, without consent of the chair, to speak further on the question during this period of deliberation: although, the members may ask questions of the speakers if so desired. At the conclusion of discussion and appropriate motion having been made and seconded, the body shall vote on the matter.

I. New Business: Introduction.

During Council meetings, no new business on the agenda (except closed sessions) shall be considered after 11:00 p.m. without two-thirds vote of the Council. Any new business remaining on the agenda shall be carried over to the next regular Council meeting.

J. Quorum: Majority: Two-Thirds Vote: Determination.

As used in this resolution or in the application of Lodi Municipal Code Chapter 2.04, the following definitions shall apply:

1. "Quorum" shall mean a simple majority of the total number of all persons on such body.
2. "Majority" shall mean the majority of members actually present at a meeting.
3. "Two-thirds vote" shall mean two-thirds vote of the members actually present, rounded up or to the next number if less than a whole person. Two-thirds of four members shall be three members: two-thirds of five members shall be four members: etc.

K. The City Attorney shall review the City Council Agenda prior to its distribution to Council and note all Quasi Judicial items thereon. When the City Council or commission acts in an adjudicatory or quasi-judicial capacity, each member must (1) disclose on the record the nature and substance of any ex parte communications relating to the matter; and (2) provide interested parties full and fair opportunity to rebut or explain the information obtained from those communications.

SECTION 2. This Resolution shall become effective immediately.

Dated: February 15, 2006

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I hereby certify that Resolution No. 2006-31 was passed and adopted by the City Council of the City of Lodi in a regular meeting held February 15, 2006, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Johnson, Mounce,
and Mayor Beckman

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


SUSAN J. BLACKSTON

City Clerk

2006-31

RESOLUTION NO. 2004-115

A RESOLUTION OF THE LODI CITY COUNCIL
ADOPTING THE CITY OF LODI CODE OF ETHICS AND VALUES

BE IT RESOLVED that the *City of Lodi Code of Ethics and Values*, as shown on Exhibit A attached hereto, is hereby adopted by the City Council of the City of Lodi to be effective immediately; and

FURTHER RESOLVED that this resolution shall apply to Lodi City Council Members and City Council Appointees (i.e. *City Manager, City Attorney, and City Clerk*).

Dated: June 2, 2004

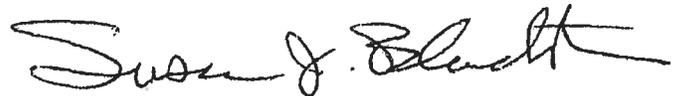
I hereby certify that Resolution No. 2004-115 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 2, 2004, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk



CITY OF LODI Code of Ethics and Values

EXHIBIT A

PREAMBLE

The proper operation of democratic government requires that decision-makers be independent, impartial, and accountable to the people they serve. The City of Lodi has adopted this Code of Ethics and Values to promote and maintain the highest standards of personal professional conduct in the City's government. All elected and appointed officials are required to subscribe to this Code, understand how it applies to their specific responsibilities, and practice its eight core values in their work. Because we seek public confidence in the City's services and public trust of its decision-makers, our decisions and our work must meet the most demanding ethical standards and demonstrate the highest levels of achievement in following this Code.

**1. As a representative of the City of Lodi, I will be ethical.
In practice, this value looks like:**

- a) I am trustworthy, acting with the utmost integrity and moral courage.
- b) I am truthful, do what I say I will do, and am dependable.
- c) I make impartial decisions, free of bribes, *unlawful gifts*, *narrow political interests*, and financial and other personal interest that impair my independence of judgment or action.
- d) I am fair, distributing benefits and burdens according to consistent and equitable criteria.
- e) I extend equal opportunities and due process to all parties in matters under consideration. If I engage in unilateral meetings and discussions, I do so without *making voting decisions*.
- f) I show respect for persons, confidences, and information designated as "confidential" to the extent permitted by California law.
- g) I use my title(s) only when conducting official City business, for information purposes, or as an indication of background and expertise, *carefully considering whether I am exceeding or appearing to exceed my authority*.

**2. As a representative of the City of Lodi, I will be professional.
In practice, this value looks like:**

- a) I apply my knowledge and expertise to my assigned activities and to the interpersonal relationships that are part of my job in a consistent, confident, competent, and productive manner.
- b) I approach my job and work-related relationships with a positive attitude.
- c) I keep my professional knowledge and skills current and growing.

**3. As a representative of the City of Lodi, I will be service-oriented.
In practice, this value looks like:**

- a) I provide *friendly, receptive, courteous service to everyone*.
- b) I am attuned to, and care about, the needs and issues of citizens, public officials, and City workers.
- c) In my interactions with constituents, I am interested, engaged, and responsive.

4. **As a representative of the City of Lodi, I will be fiscally responsible.**
In practice, this value looks like:
- a) I make decisions after prudent consideration of their financial impact, taking into account the long-term financial needs of the City, especially its financial stability.
 - b) I demonstrate concern for the proper use of City assets (e.g. personnel, time, property, equipment, and funds) and follow established procedures.
 - c) I make good financial decisions that seek to preserve programs and services for City residents.
5. **As a representative of the City of Lodi, I will be organized.**
In practice, this value looks like:
- a) I act in an efficient manner, making decisions and recommendations based upon research and facts, taking into consideration short- and long-term goals.
 - b) I follow through in a responsible way, keeping others informed, and responding in a timely fashion.
 - c) I am respectful of established City processes and guidelines.
6. **As a representative of the City of Lodi, I will be communicative.**
In practice, this value looks like:
- a) I convey the City's care for and commitment to its citizens.
 - b) I communicate in various ways that I am approachable, open-minded, and willing to participate in dialog.
 - c) I engage in effective two-way communication, by listening carefully, asking questions, and determining an appropriate response, which adds value to conversations.
7. **As a representative of the City of Lodi, I will be collaborative.**
In practice, this value looks like:
- a) I act in a cooperative manner with groups and other individuals, working together in a spirit of tolerance and understanding.
 - b) I work toward consensus-building and gain value from diverse opinions.
 - c) I accomplish the goals and responsibilities of my individual position, while respecting my role as a member of a team.
 - d) I consider the broader regional and state-wide implications of the City's decisions and issues.
8. **As a representative of the City of Lodi, I will be progressive.**
In practice, this value looks like:
- a) I exhibit a proactive, innovative approach to setting goals and conducting the City's business.
 - b) I display a style that maintains consistent standards, but is also sensitive to the need to compromise, "thinking outside the box," and improving existing paradigms when necessary.
 - c) I promote intelligent and thoughtful innovation in order to forward the City's policy agenda and City services.

RESOLUTION NO. 2009-146

A RESOLUTION OF THE LODI CITY
COUNCIL ADOPTING POLICY REGARDING
LEGISLATIVE INVOCATIONS BEFORE
MEETINGS OF THE LODI CITY COUNCIL

=====

The Lodi City Council ("the Council") is an elected legislative and deliberative public body, serving the citizens of Lodi, California, and after hearing makes the following findings:

WHEREAS, the Council wishes to maintain a tradition of solemnizing its proceedings by allowing for a pluralistic call to civic responsibility according to the faiths or beliefs of Lodi's citizens (the "Invocation") before each meeting, for the benefit of the Council; and

WHEREAS, the Council now desires to adopt this formal, written policy to clarify and codify its Invocation practices and amend the Council Protocol Manual adopted by Resolution No. 2006-45 accordingly; and

WHEREAS, in *Marsh v. Chambers*, 463 U.S. 783 (1983), the United States Supreme Court rejected a challenge to the Nebraska Legislature's practice of opening each day of its sessions with a prayer by a chaplain paid with taxpayer dollars, and specifically concluded, "The opening sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom." *Id.*, at 786; and

WHEREAS, the United States Supreme Court has determined, "The content of [such] prayer is not of concern to judges where. . .there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief." *Marsh*, 463 U. S. at 794-795. Thus, *Marsh* focuses on exploitation of the prayer opportunity and efforts, direct or not, to proselytize; to promote or sell a particular religion; and

WHEREAS, in *Simpson v. Chesterfield County Bd. of Supervisors*, 404 F.3d 276 (4th Cir. 2004), *cert. denied*, the United States Court of Appeals for the Fourth Circuit reviewed and specifically approved as constitutional the prayer policy of a county board, and made a number of findings about the policy; and

WHEREAS, the Council acknowledges the general guidance provided by the Fourth Circuit's findings in *Simpson*, including the fact that the policy there:

(1) Allowed for invocations for the benefit of the legislative body itself "rather than for the individual leading the invocation or for those who might also be present," *Id.*, at 284; and

(2) Established a practice in which various clergy in the county's religious community were invited on a rotating basis to present invocations before meetings of the board; *Id.*, at 279; and

(3) Thus, "made plain that [the county board] was not affiliated with any one specific faith" by allowing different persons from different religious convictions and backgrounds to offer the invocations. *Id.*, at 286; and

WHEREAS, in *Pelphrey v. Cobb County, Georgia*, 547 F.3d 1263, 1271 (11th Cir. 2008), the Eleventh Circuit embarked on a thorough and scholarly examination of the *Marsh* test for invocations when it affirmed as constitutional the invocation policy of a county commission. In so doing, the Eleventh Circuit reached very similar findings as to those of the Fourth Circuit in *Simpson*, and the Council finds its findings also provide useful guidance:

(1) The *Marsh* Court considered several factors to determine whether the legislative prayers at issue had been exploited to advance one faith in violation of the Establishment Clause - the Court weighed the chaplain's religious affiliation, his tenure before the legislative body, and the overall nature of his prayers. *Marsh*, 463 U.S. at 792-95. The "nonsectarian" nature of a chaplain's prayers is but one factor in this fact-intensive analysis and it does not form the basis for a bright-line rule. *Pelphrey*, 547 F.3d at 1271; and

(2) An invocation policy which results in prayers from speakers from a wide cross section of a municipality's religious leaders (i.e., leaders of Christian, Jewish, Muslim and Unitarian faiths), and which allows prayers that include specific references from each of the various faiths, does not advance, proselytize or disparage any particular religious faith. *Id.* at 1277-1278; and

WHEREAS, the Council notes that the Ninth Circuit, in an unpublished decision, has also acknowledged that a policy for invocations that, "as is traditional in Congress, rotate[s] among leaders of different faiths, sects, and denominations" may pass constitutional muster due to the fact that such a policy does not proselytize or disparage any particular religious belief. *Bacus v. Palo Verde Unified School District Board of Education*, 52 Fed.Appx. 355, 356 (9th Cir.2002); and

WHEREAS, the Council acknowledges the decision of California Second District Court of Appeal in *Rubin v. City of Burbank*, 101 Cal.App.4th 1194 (2002), which found illegal an invocation policy that allowed references to particular faiths. However, the Council believes the *Rubin* holding does not apply to the policy set forth herein because:

(1) The *Rubin* policy was not open to all religious groups within the City of Burbank; and

(2) The *Rubin* policy was not open to non-religious groups; and

(3) Appearances under the *Rubin* policy were controlled by a pastoral association; and

(4) The *Rubin* Invocation was given during the Council meeting;

WHEREAS, invocations consistent with the policy adopted herein are currently offered before the United States House of Representatives, United States Senate, and the California Senate; and

WHEREAS, the Council intends and has intended in past practice, to adopt a policy that does not proselytize, advance or disparage any particular faith or religious

belief or show any purposeful preference of one religious view to the exclusion of others; and

WHEREAS, the Council recognizes its constitutional duty to interpret, construe, and amend its policies and ordinances to comply with constitutional requirements as they are announced; and

WHEREAS, the Council accepts as binding the applicability of general principles of law and all the rights and obligations afforded under the United State Constitution and the Constitution of the State of California.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that the Council hereby adopts the following written policy regarding legislative invocations before meetings of the Council, to wit:

1. In order to solemnize proceedings of the Council, it is the policy of the Council to allow for a legislative invocation (the "Invocation") to be offered before its meetings for the benefit of the Council. The Invocation shall be given in the manner of a "Call to Civic Responsibility" encouraging the Council to consider the City's business with open minds and make just, wise and compassionate decisions.

2. The Invocation shall occur at 6:55 p.m. prior to the opening and noticed start time of the Council's meeting and shall be listed on the agenda.

3. No member or employee of the Council or any other person in attendance at the meeting shall be required to participate in any Invocation that is offered.

4. The Invocation shall be voluntarily delivered by an eligible person as detailed below. To ensure that such person (the "Invocation Speaker") is selected from among a wide pool on a rotating basis, the Invocation Speaker shall be selected according to the following procedure:

- a. The City Clerk (the "Clerk") shall compile and maintain a database (the "Invocation List") of the religious congregations and secular groups with an established presence within and around the City of Lodi.
- b. The Invocation List shall be compiled by referencing the listing for "churches," "congregations," or other religious assemblies and nonprofit civic groups in the annual Yellow Page phone book(s) published for the City of Lodi, research from the Internet, and consultation with local Chambers of Commerce. All religious and secular groups with an established presence in the local community of Lodi including Lodi citizens who must leave Lodi to attend a house of worship are eligible to be included in the Invocation List. Any such group not otherwise identified for participation may request its inclusion by specific written communication to the Clerk.
- c. This policy is intended to be and shall be applied in a way that is all-inclusive of every diverse religious and secular group within and around the City of Lodi. The Invocation List is to be compiled and used for purposes of logistics, efficiency and equal opportunity for all who may choose to participate in the Invocation.

- d. The Invocation List shall also include the name and contact information of any chaplain who may serve one or more of the fire departments or law enforcement agencies of the City of Lodi.
 - e. The Invocation List shall be updated annually, by reasonable efforts of the Clerk.
 - f. Within thirty (30) days of the effective date of this policy, and annually each calendar year thereafter, the Clerk shall mail an invitation addressed to each group listed on the Invocation List, as well as to the individual chaplains included on the Invocation List.
 - g. Respondents to the invitation letter shall be scheduled on a first-come, first-serve basis to deliver the Invocation.
5. No Invocation Speaker shall receive compensation for his or her service.
 6. The Clerk shall make every reasonable effort to ensure that the eligible Invocation Speakers that are scheduled to give the Invocation before the Council meetings represent a variety of view points from within and around the City of Lodi. In any event, no Invocation Speaker shall be scheduled to offer an Invocation at consecutive meetings of the Council, or at more than two (2) Council meetings in any calendar year.
 7. Neither the Council nor the Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any Invocation. Moreover, the Invocation may be given in a manner that respectfully references the faith or beliefs of the Invocation Speaker. However, no Invocation Speaker shall give an Invocation that seeks to: 1) convert those present to a particular religious belief or seeks to demean a particular religious belief or lack thereof; 2) advocates a political agenda; or 3) asserts the accuracy, inaccuracy, or primacy of any religious belief or lack thereof. Invocation Speakers who violate this policy shall be permanently removed from the Invocation List and their Invocation may be interrupted and terminated by the Mayor.
 8. Shortly before the opening gavel that officially begins the meeting and the agenda/business of the public, the Mayor shall introduce the Invocation Speaker, and invite only those who wish to do so to stand for those observances given for the benefit of the Council.
 9. In the event that the Invocation Speaker does not or cannot appear as scheduled, or in the event that no Invocation Speaker has volunteered or been scheduled for a particular Council meeting, shortly before the opening gavel that officially begins the meeting and the agenda/business of the public, the Mayor shall announce a moment of silence for individual reflection; and invite only those who wish to do so to stand for those observances given for the benefit of the Council.
 10. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the Council with, nor express the Council's preference for or against, any faith or religious denomination, belief, affiliation or lack thereof. Rather, this policy is intended to acknowledge and express the

Council's respect for the diversity of religious and non-religious thought represented and practiced among the citizens within and around the City of Lodi.

1. To clarify the Council's intentions, as stated herein above, the following disclaimer shall be included in at least 10 point font under the Invocation Agenda Item:

"Invocations may be offered by any of the various religious and non-religious organizations within and around the City of Lodi. Invocations are voluntary offerings of private citizens, to and for the benefit of the Council. The views or beliefs expressed by the Invocation Speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the beliefs or views of any Invocation Speaker or religious organization."

NOW, THEREFORE, BE IT FURTHER RESOLVED that this policy shall become effective immediately.

Dated: October 21, 2009

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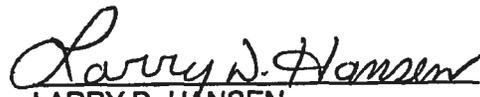
I hereby certify that Resolution No. 2009-146 was passed and adopted by the City Council of the City of Lodi in a regular meeting held October 21, 2009, by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Johnson, Katakian, Mounce, and Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


LARRY D. HANSEN
Mayor

Attest:



RANDI JOHL
City Clerk

CITY OF ARCATA

CITY COUNCIL PROTOCOL MANUAL



Adopted 2-20-2002
Revised 3-2-2005
Revised 6-2-2007
Revised 2-2009

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Chapter 1

Introduction and Overview

As a City Councilmember, you not only establish important and often critical policies for the community of Arcata, you are also a board member of a public corporation having an annual budget of several million dollars. The scope of services and issues addressed by the city organization go well beyond those frequently reported in the newspaper or discussed at City Council meetings.

1.01 Council-Manager Form of Government

The City of Arcata has a Council-Manager form of government. As described in the Municipal Code and the Government Code of California, certain responsibilities are vested in the City Council and the City Manager. Basically, this form of government prescribes that a City Council's role is that of a legislative policy-making body which determines not only the local laws that regulate community life, but also determines public policy and gives direction to the City Manager to administer the affairs of the city government in a businesslike and prudent manner (Arcata Municipal Code Title II and California Government Code § 34100, *et seq.*).

The City of Arcata was incorporated in 1858. At that time, the separately elected City Clerk was the administrative officer for municipal affairs. There was also a separately elected City Treasurer. The City Council established Arcata as a Council-Manager form of government in 1958 and hired its first City Manager that year. Shortly after that, the position of City Clerk was changed from elected to appointed and the City Treasurer position was changed to the appointed Finance Director position.

1.02 Purpose of City Council Protocol Manual

The City of Arcata has prepared its own Protocol Manual to assist the City Council by documenting accepted practices and clarifying expectations. Administration of City Council affairs is greatly enhanced by the agreement of the City Council and staff to be bound by these practices. While attempting not to be overly restrictive, procedures are established so that expectations and practices can be clearly articulated to guide Councilmembers in their actions.

1.03 Overview of Basic City Documents

This Protocol Manual provides a summary of important aspects of City Council activities. However, it cannot incorporate all material and information necessary for undertaking the business of the City Council. Many other laws, plans, and documents exist which bind the City Council to certain courses of action and practices. The following is a summary of some of the most notable documents that establish City Council direction. A complete list of City plans and implementation programs is provided in Appendix A.

A. Codes of the State of California

The state laws contain many requirements for the operation of city government and administration of meetings of city councils throughout the state. Arcata is a “general law city” which means it operates under applicable general laws of the state. As a general law city of the state of California, Arcata is vested with all the powers of incorporated cities as set forth in the California Constitution and the applicable California state laws. Conversely, there are a number of cities within California that are “charter cities” and have adopted local provisions that establish basic governing procedures for local government (California Government Code §§ 34100-34102).

B. Arcata Municipal Code

The Municipal Code contains local laws and regulations adopted by ordinances. Title I and Title II of the Code address the role of the City Council, describe the organization of City Council meetings and responsibilities, and appointment of certain City staff positions, advisory boards, and commissions. Boards and commissions are also addressed in Title III. In addition to these administrative matters, the Municipal Code contains a variety of laws including, but not limited to, zoning standards, health and safety issues, traffic regulations, building standards, and revenue and finance issues.

C. Goals

The City Council sets both long-term and short-term goals for the City each spring. The goal-setting process includes a review of the previous year’s goals including progress toward completion and updating. The budget is then written with the objective of working toward completion of those goals.

D. Annual Budget

The annual budget is set for the fiscal year beginning July 1 and ending June 30. It is the primary tool and road map for accomplishing the goals of the City. The budget document is the result of one of the most important processes the City undertakes. By adopting the annual budget, the City Council makes policy decisions, sets priorities, allocates resources, and provides the framework for government operations. Study sessions on the budget are held in May and public hearings in June with adoption at the second City Council meeting in June.

E. Annual Financial Audit

The annual financial audit includes the financial statements of the City for a fiscal year. It includes the financial condition of the City as reflected in the balance sheet, the results of operations as reflected in income statements, an analysis of the uses of City funds, and related footnotes. The annual financial audit includes statements for the various groups of funds and a consolidated group of statements for the City as a whole. The City Council has the responsibility of hiring an independent auditor, and of reviewing and accepting the audit.

F. General Plan

A state-mandated General Plan addresses the City’s long-range planning needs relative to land use, transportation, economic development, and other planning elements. The City’s General Plan is reviewed on an ongoing basis, but mandatory elements may only be revised four times a year; however, certain amendments necessary for affordable housing development are not subject to this limitation (California Government Code § 65358).

G. Five-year Capital Improvement Program

The Five-year Capital Improvement Program serves as a guide for determining priorities, planning, financing, and construction of capital projects which add to, support, or improve the physical infrastructure, capital assets, or productive capacity of City services.

H. Disaster Preparedness Plan

The City maintains a disaster preparedness plan that outlines actions to be taken during times of extreme emergency. The Mayor is called upon to declare the emergency, and then the City Manager directs all disaster response activities. The City Council may be called upon during an emergency to establish policies related to a specific incident. The chain of command is as follows:

The City Manager is the Director of Emergency Services

The City Manager may appoint an Assistant Director of Emergency Services
(Arcata Municipal Code Title II, Chapter 6, §§ 2700–2709)

1.04 Orientation of New Members

It is important for the members of the City Council to gain an understanding of the full range of services and programs provided by the City. As new members join the City Council, the following will be provided in a timely manner.

- a. The City Manager will host an orientation program to distribute materials outlining City policy and protocol.
- b. The City Manager will facilitate a meeting with the City Attorney for conflict-of-interest training, review of current legal matters, review of parliamentary procedure, and updates on labor negotiations.
- c. The City Manager will arrange a meeting with Personnel prior to the first pay period to cover information reviewed with all City employees (e.g., benefits elections, I-9, retirement options, etc.).
- d. The City Manager will arrange meetings with key Department Heads to be briefed on current projects within his/her Department and to tour City facilities.
- e. The City Manager will arrange an opportunity for "ride alongs" with the Arcata Police Department.
- f. The City Manager's assistant will arrange a meeting for a briefing on various aspects of City Hall, including, but not limited to, travel procedures, email, phone service, etc.
- g. The City Manager will provide information for attendance at the League of California Cities' New Mayors and Council Members Academy.

Chapter 2

Arcata City Council: General Powers and Responsibilities

2.01 City Council, Generally

Fundamentally, the powers of the City Council are to be utilized for the good of the community and its residents; to provide for the health, safety, and general welfare of the citizenry. The City Council is the policy-making and law-making body of the City. State law and local ordinances define the powers and responsibilities of the Council.

It is important to note that the Council acts as a body. No member has any extraordinary powers beyond those of other members. While the Mayor has some additional ceremonial and presiding officer responsibilities as described below, when it comes to establishing policies, voting, and in other significant areas, all members are equal. It is also important to note that policy is established by at least a majority vote of the Council. While individual members may disagree with decisions of the majority, a decision of the majority does bind the Council to a course of action. Councilmembers should respect adopted Council policy. In turn, it is staff's responsibility to ensure the policy of the majority of the Council is upheld.

Actions of staff to pursue the policy direction established by a majority of Council do not reflect any bias against Councilmembers who held a minority opinion on an issue.

A. Council Non-Participation in Administration

In order to uphold the integrity of the Council-Manager form of government and to provide proper checks and balances, members of the City Council shall refrain from becoming directly involved in the administrative affairs of the City, unless directed by a majority of the Council to participate in a policy or project. As the Council is the policy-making body and the maker of local laws, its involvement in enforcement of ordinances would only damage the credibility of the system.

2.02 Role of Councilmembers

Members of the Arcata City Council are collectively responsible for establishing policy, adopting an annual budget, and providing vision and goals to the City Manager. The following outline is a brief description of the various duties of Councilmembers. The description is not intended to be comprehensive, but rather it is an effort to summarize the primary responsibilities of the Council.

A. Summary of Council Duties and Responsibilities as Provided in State Law:

1. Councilmembers serve as the:
 - a. City Council
 - b. Arcata Community Development Agency Board
 - c. Personnel Board
 - d. City of Arcata Joint Powers Financing Authority

2. Establish Policy
 - a. Adopt goals and objectives
 - b. Establish priorities for public services
 - c. Adopt/amend the operating and capital budgets
 - d. Approve contracts over \$25,000
 - e. Adopt resolutions
3. Enact Local Laws
 - a. Adopt ordinances
4. Supervise Appointed Officials
 - a. Appoint City Manager and City Attorney
 - b. Evaluate performance of City Manager and City Attorney
 - c. Establish boards, commissions, committees and task forces
 - d. Make appointments to such bodies
 - e. Provide direction to advisory bodies
5. Make Decisions
 - a. Study problems
 - b. Review alternatives
 - c. Determine best course of public policy
 - d. Call special elections as necessary

2.03 Role of Mayor

A. Presiding Officer

The Council selects the Mayor by a majority vote each year on the second Tuesday of December. The Mayor serves as the presiding officer, unless otherwise delegated, and acts as chair at all meetings of the City Council. The Mayor sets the Agenda for regular and special Council meetings. The Mayor may participate in all deliberations of the Council in the same manner as any other member and is expected to vote in all proceedings, unless a conflict of interest exists. During Council proceedings, the Mayor facilitates discussion, gauges direction, and listens for majority support prior to calling for a vote on a motion. The Mayor does not possess any power of veto. State law allows the Mayor to move or second an action. As a matter of Arcata tradition, the Mayor does not make a motion and will only second a motion in rare and unusual circumstances (California Government Code §§ 36801–36815).

B. Ceremonial Representative and Other Duties of the Mayor

Responsibility to act as the City Council's ceremonial representative at public events and functions has been assigned to the Mayor. In the Mayor's absence, the Mayor shall appoint a Councilmember to perform the ceremonial role. However, all Councilmembers are encouraged to participate. The Mayor may initiate and execute certificates of appreciation and recognition, and Council-approved proclamations. The Mayor has the responsibility of making liaison, board and committee assignments for Councilmembers with those assignments to be ratified by the Council.

2.04 Vice-Mayor, Absence of Mayor and Councilmembers

In the absence of the Mayor, the Vice-Mayor shall perform the duties of the Mayor. The Council selects the Vice-Mayor by a majority vote each year on the second Tuesday of December.

When both the Mayor and Vice-Mayor are absent, the Mayor will designate from amongst the Councilmembers a person to serve as Acting Mayor, who shall, for the term of such absence, have the powers of the Mayor. [See 7.12]

2.05 Resignation of Mayor or Vice-Mayor

If the Mayor or Vice-Mayor resigns, the City Council will select a new Mayor or Vice-Mayor.

2.06 Emergency Response

The City Council may proclaim, and the Mayor shall sign, a declaration of emergency. If the City Council is not in session, the Director of Emergency Services may proclaim the existence of an emergency (Arcata Municipal Code, Title II, Chapter 6, § 2703).

2.07 Appointment of Officer

The City Council is responsible for appointing two positions within the City organization-- the City Manager and the City Attorney. The City Manager and the City Attorney serve at the pleasure of the Council. The City Manager is responsible for all personnel within the City organization.

2.08 Boards, Commissions, Committees, and Task Forces

A. Appointments Made by the Council

Boards, commissions, committees, and task forces provide a great deal of assistance to the Arcata City Council when formulating public policy and transforming policy decisions into action. The City has several standing boards commissions and committees. In addition, special purpose task forces are often appointed by the City Council to address specific issues of interest on a limited duration basis. These ad hoc committees will be dissolved upon completion of the intended task. Committees and task forces are purely advisory to the Council, and, in some situations, staff. Commissions have final decision-making authority, subject to appeal to the City Council, but may also serve in an advisory capacity in certain situations. The Board of Permit Appeals makes final decisions on matters arising under the Uniform Building Code and its final decisions are not subject to review by the City Council.

The procedures established in this Manual reflect the policy of the City Council regarding the appointment of volunteer citizens to the various bodies of the City. The establishment of these procedures ensures that well-qualified, responsible, and willing citizens are given the opportunity to serve the City and participate in the governance of their community.

The City Council is specifically empowered to create all boards, commissions, committees and task forces, pursuant to the provisions of the Arcata Municipal Code, as the Council deems necessary or advisable. In the exercise of this power, it is the desire of the City Council to establish a consistent policy in its decision-making role to fairly and equitably evaluate those citizens of the community who demonstrate a desire to serve on such boards, commissions, committees, or task forces (Arcata Municipal Code Title II, Chapter 3).

For full-term vacancies, the filing period is as determined by Ordinance. For all vacancies, the City Clerk will:

1. Publicly announce the position vacancy and filing period by publication of same in the official newspaper of the City of Arcata and set forth the qualifications required, if any.
2. Notify the incumbent(s) whose term(s) is/are expiring, of such term expiration and invite the incumbent(s) to consider being reappointed.
3. Advertise the position and accept applications when an incumbent's term expires.
4. Prepare interview packets for Councilmember review prior to the Council interview period, including: 1) A list of current membership; 2) A list of current vacancies and term expirations; 3) A summary of the duties and responsibilities of the vacant position on the Commission or Committee; 4) The applications; and 5) Recommendations from the staff liaison outlining needed expertise on the Commission or Committee, if any.

B. Council Action

1. Council Interview Period. The Council may personally interview each applicant individually, at a time and place to be designated by the Council. However, after reviewing applications, the Council reserves the right to make appointments without conducting interviews.
2. The Council may appoint a sub-committee to review applications or conduct interviews of applicants and make recommendations to the full Council for appointment.
3. Council Evaluation. After each applicant or member is evaluated or recommended, the Council will deliberate and reach a decision at its earliest convenience.
4. Decision & Announcement. The City Clerk will notify each applicant of the decision of the Council and provide a copy the City Commission/Committee Handbook for new members. The City Clerk will also notify the commission/committee's staff liaison of the Council's decision, who will, in turn, notify the Chair. In addition, the staff liaison will contact the new member and provide orientation prior to the next scheduled meeting.
5. All Council interviews, deliberations and actions to appoint members to boards, committees and commissions are subject to the Ralph M. Brown Act (state open meetings act, attached as Appendix B), and as such, must be noticed and open to the public.

C. Resignations

Vacancies occurring in the middle of a term shall be filled by appointment for the unexpired portion of the term in the same manner provided herein for initial appointment [Arcata Municipal Code, Title II, Chapter 3, § 2202(C)].

D. Councilmembers' Roles and Relationships with City Bodies

1. Because the Council has the ability to review decisions made by the commissions and recommendations made by committees and task forces, Councilmembers shall not be appointed to City boards or commissions or committees concurrent with their term of office.
2. Unless specifically authorized by a majority vote of a quorum of the Council, no Councilmember shall be authorized to testify before or direct the work of any board, commission, committee or task force of the City.
3. If a Councilmember is testifying in such a capacity pursuant to the above provision, testimony should be undertaken in such a manner as to assure public confidence in the decision-making process and avoid the appearance of bias, prejudice, or improper influence. Toward this purpose, the following protocol should be observed:
 - a. Councilmembers shall not testify in matters pending before any commission, committee, or task force that will receive, or could potentially receive, future appeal or review before the City Council. Violation of this protocol shall require the Councilmember to disqualify his or herself from participating in any appeal or review proceedings before the City Council.
 - b. Except in matters directly involving personal interests, Councilmembers, in their capacity as private citizens, should abstain from providing testimony or influencing decisions in matters pending before any City board, commission, committee or task force that will receive, or could potentially receive, future review or other action before the Council. Where a Councilmember elects to provide such testimony, the following rules shall apply:
 - (i) The Councilmember shall declare at the outset and upon the record that the Councilmember is present in his or her private capacity as an interested citizen, and not on behalf of or at the request of the City Council.
 - (ii) The Councilmember shall refrain from stating or implying that the Councilmember's position or opinion is that of the City Council.
 - (iii) The Councilmember shall refrain from directing City staff or the advisory body to take any action on behalf of the Councilmember.
 - (iv) The Councilmember shall observe any rules of procedure or protocol that apply to any other private citizen testifying before the advisory board.
 - (v) The Councilmember shall disqualify him or herself from participating in the matter should it come before the Council for review and/or decision.

2.09 Service on Outside Boards

Councilmembers are often requested to serve on outside boards, councils, commissions, or committees. This type of representation serves to facilitate communication and provide interaction with other governmental bodies. The City Council appoints members to some of these groups on an as-needed or as-requested basis.

Councilmembers participating in policy discussions at regional meetings will represent the consensus of the Council, except where regional appointment requires regional opinion. Personal positions, when given, will be identified and not represented as the position of the City. Assignment and direction of staff in relation to regional meetings are at the discretion of the City Manager.

2.10 Incompatibility of Offices

In general, California law prohibits public officials from simultaneously holding more than one public office when the functions or responsibilities of the two offices have the potential for overlapping. This prohibition arises from a concern over the potential clash of two public offices held by a single official with potentially overlapping public duties. The Legislature may, however, expressly authorize through legislation the holding of two offices notwithstanding the fact that the dual holding would otherwise be prohibited. For example, the Legislature has exempted local agency formation commissions, the Coastal Commission, joint powers agencies, and transportation corridor agencies.

Chapter 3

Support Provided to City Council

3.01 Staff/Clerical Support

Staff and administrative support to members of the City Council is provided through the City Manager's Office. Secretarial services provided include distributing mail and email, scheduling appointments and receiving messages. All other Council requests for staff services are made by request to the City Manager or Executive Assistant who will assign the appropriate staff member. Sensitivity to workload of support staff is appreciated and turnaround time will vary depending on current work assignments.

3.02 Office Equipment

To enhance Councilmembers' service to the community and their ability to communicate with staff and the public, the City provides meeting facilities and office equipment for City business.

It is important to note that all letters, memoranda, and interactive computer communication (email) involving City Councilmembers and members of advisory boards and commissions, the subject of which relates to the conduct of government or the performance of any governmental function, with a few exceptions specified in the Public Records Act, are public records.

A. Business and Personal Use of City Equipment

The City's electronic equipment and information systems are intended for professional business use by a Councilmember in the performance of their duties. Personal use of City equipment is prohibited.

B. Photocopy Machines and Other Equipment

1. Photocopy Machines. Councilmembers are provided a code number for use of the photocopier for City business.
2. Other equipment. Except as provided herein, in no event shall a Councilmember take City property to his or her home.

C. Monitoring, Enforcement and Penalties

1. City information systems or storage media are the property of the City of Arcata. The City retains the right to access, copy and change, alter, modify, destroy, delete or erase this property without prior notice to Councilmembers.
2. The City retains the right to monitor and audit email and internet usage. The right to use these technologies does not include the right to privacy.
3. Deleted documents, messages and data may be retrieved from a variety of points in the network. Councilmembers should assume that electronic evidence discovery might recover deleted or unsaved data.

4. Councilmembers' use of a personal internet account on City equipment, and Councilmembers' use of a City internet account on personal equipment are to be arranged through the City Manager and are subject to the provisions of this policy. Said Councilmembers should be aware that their personal email and electronic files could be monitored by the City and could be reviewed as part of a public records request.

3.03 Meeting Rooms

Councilmembers may utilize the office space provided in City Hall. Use of other meeting rooms, including the conference room located at City Hall, may be scheduled through the City Manager's Office.

3.04 Mail, Deliveries

Members of the City Council receive a large volume of mail and other materials that are delivered primarily through the use of mailboxes located in the City Council's office. The City Manager's staff disseminates mail to individual Council mailboxes. Staff does not open mail addressed to individual Councilmembers. General correspondence addressed to Councilmembers as a whole will be opened and delivered to the Council General Box.

Councilmembers are encouraged to check mailboxes often. In addition, City staff will email, telefax or personally deliver materials that are time sensitive to a Councilmember's home or office, if appropriate.

3.05 Council Library

A library of current City plans, implementation programs, and the Arcata Municipal Code is located in the City Council's office. These documents are for reference and are not to be removed from the office. Copies can be made available for individual Councilmembers upon request to the department of origin.

Chapter 4

Financial Matters

4.01 Council Compensation

The Municipal Code provides for payment of a modest honorarium to members of the City Council. State law sets the level of compensation (California Government Code § 36516 and Arcata Municipal Code, Title II, Chapter 1, § 2010).

4.02 Budget

The annual City budget includes appropriations for expenses necessary for Councilmembers to undertake official City business. Funding provided includes membership in professional organizations, attendance at conferences or educational seminars, purchase of publications and office supplies.

4.03 Financial Disclosure

Candidates for the office of Councilmember shall file a financial disclosure statement with the City Clerk who will retain a copy and forward the original to the Fair Political Practices Commission (FPPC) (California Government Code §§ 87201 and 87202). Financial disclosure shall be filed with nomination papers, not earlier than 113 days before the election with the deadline being no later than 88 days before the election (California Elections Code, § 10220-10227; California Government Code § 87200). When Councilmembers assume office or leave office, whether by election, appointment, end of term, or resignation, Statements of Economic Interests (FPPC Form 700) covering the previous 12 months, or the period since the previous statement was filed under Government Code § 87202 or 87203, must be filed within thirty days (California Government Code § 87204). In addition, Councilmembers are required to file financial disclosure statements (FPPC Form 700) on an annual basis after January 1 and before April 1 of each year covering the previous calendar year (California Government Code § 87203). Statements filed in any of the above circumstances will be available for public inspection.

4.04 Travel Policy and Procedures

The City Council has adopted a travel policy by resolution (Appendix C). Councilmembers, staff, and appointed officials will be reimbursed for all “approved travel” as defined in the City Travel Policy only up to the amount of an individual’s funds allocated for travel/training. If a Councilmember desires to exceed his or her allocated annual travel budget, prior to travel he or she may submit a written request to the City Manager for a reallocation of another Councilmember’s unused travel balance. The City Manager will confirm that the reallocation is approved by the donating Councilmember and is in the best interests of the City.

“Approved Travel” means pre-authorized travel to attend training or conferences, or other City Council-directed travel activities.

A. Pre-authorization of Travel/Training

Councilmembers and appointed officials traveling on City business that involves an overnight stay shall submit a Travel/Training Authorization Form to the City Manager for pre-approval. In advance of making travel arrangements, Councilmembers must check account balances, complete a Travel/Training Authorization Form and make all travel arrangements with the Executive Assistant to the City Manager. The travel authorization form will include a complete estimate of the costs of the trip, including conference registration, transportation, and per diem. The travel authorization form will also include the purpose of the trip, the dates of travel, and other pertinent details.

In advance of any travel on City business, a Travel/Training Authorization Form must be submitted to and signed by the City Manager. The City Manager must authorize:

- a. Overnight travel by elected or appointed officials
- b. Use of a rental vehicle by elected or appointed officials
- c. Out-of-state travel by elected or appointed officials

B. Authorization for Reimbursement of Travel Expenses

Within 10 days of the close of the authorized travel period a final itemized Travel/Training Authorization Form, including all receipts and expense reimbursement requests, must be submitted to the Executive Assistant to the City Manager for processing and final approval and signature by the City Manager. The Executive Assistant to the City Manager will process and submit authorized travel reimbursement requests to the Finance Department.

4.05 City Credit Card Policy

Card Issuance. The Finance Department issues each Councilmember a City credit card. Use of City credit cards is set forth in the City Credit Card Policy (Appendix D).

Cards Lost or Stolen. Lost or stolen cards must be reported to the Finance Director within one working day of discovery.

Leaving Office. Each card holder must surrender the City credit card immediately upon leaving office, or upon request of the City Manager or Finance Director. Use of the card after privileges are withdrawn is prohibited.

Chapter 5 Communications

5.01 Overview

Perhaps the most fundamental role of a Councilmember is communication—communication with the public to assess community opinions and needs, and to share the vision and goals of the City with constituents; and communication with staff to provide policy direction and to gain an understanding of the implications of various policy alternatives.

Because the City Council performs as a body (that is, acting based on the will of the majority as opposed to individuals), it is important that general guidelines be understood when speaking for the Council. Equally important, when members are expressing personal views and not those of the Council, the public should be so advised.

5.02 Correspondence from Councilmembers

Members of the City Council will often be called upon to write letters to citizens, businesses, or other public agencies. Typically, the Mayor will be charged with transmitting the City's position on policy matters to outside agencies on behalf of the City Council. Individual members of Council will often prepare letters for constituents in response to inquiries, or to provide requested information. City letterhead is available for this purpose, and staff can assist in the preparation of such correspondence.

On occasion, members may wish to correspond on an issue on which the Council has yet to take a position, or about an issue for which the Council has no position. In these circumstances, members should clearly indicate that they are not speaking for the City Council as a whole, but for themselves as one member of the Council. City letterhead and office support may be utilized in these circumstances.

Councilmembers may occasionally be asked to prepare letters of recommendation for community members seeking employment or appointment. It is inappropriate for Councilmembers to make a recommendation or utilize City letterhead or their Council titles for such letters without approval of the majority of Council.

City letterhead and staff support cannot be utilized for personal or political purposes.

5.03 Local Ballot Measures

At times, initiatives that affect City Council policy may be placed on the ballot. There are restrictions regarding what actions the City may take on ballot measures. Specifically, state statutes prohibit the City from using its personnel, equipment, materials, buildings, or other resources to influence the outcome of elections. What the City can do is distribute informational reports or pamphlets for the purpose of informing the public of the facts of an issue.

5.04 Proclamations

Proclamations are issued by the City Council as a ceremonial commemoration of an event or issue (e.g., National Night Out). Proclamations are not statements of policy. Proclamations are a manner in which the City can make special recognition of an individual, event, or issue.

Proclamations can be directly made if they have been listed on a previously approved list (Appendix E). The Council-approved proclamations list is a separate document so that it can be added to after the Council has approved a new proclamation without having to pass a new resolution each time. All proposed proclamations not on the annually approved list must first be approved by the Council during a regular City Council meeting as an item on the Consent Calendar. When a proclamation is approved as a consent item, and if the proclamation is expected to be an annual event, description of the item shall include the phrase "and add proclamation to the Council-approved list." The decision to add or not to add a proclamation to the approved list shall be made following consultation between the City Manager and the Mayor at the time the Council meeting agenda is being prepared.

The list will be reviewed by the City Council every February following a City Council election. Proclamations not requested for two years will automatically be deleted from the list of pre-approved proclamations.

5.05 State Public Records Disclosure Act

To ensure that business communications submitted to and by elected and appointed officials comply with the California Public Records Act and the Ralph M. Brown Act (state open meetings act), the following is set forth:

A. Communications, Generally

All letters, memoranda, and interactive computer email communications involving City Councilmembers and members of boards, commissions, committees and task forces, the subject of which relate to the conduct of government or the performance of any governmental function, with a few exceptions as outlined in the Public Records Act, are public records. Copies of such letters, memoranda, and email communications may not be provided to the public or news media without the filing of a public information disclosure request with the City Clerk. The City Clerk has a system for processing such requests.

B. Written Communications

Written letters and memoranda received by the City on a specific agenda, addressed to a Councilmember or the Council as a body, will be photocopied and provided to all City Councilmembers, and a copy kept according to the City's Records Retention Schedule.

C. Electronic Communications

1. Informal messages with no retention value and that do not relate to the functional responsibility of the recipient or sender as a public official, such as meeting notices, reminders, telephone messages and informal notes, do not constitute a public record. Users should delete these messages once their administrative purpose is served.

2. All other messages that relate to the functional responsibility of the recipient or sender as a public official constitute a public record. Such records are subject to public inspection and copying; users may either print a copy of the record and file it with the City Clerk for retention, according to the City's Records Retention Schedule, or forward such email messages to citymgr@cityofarcata.org from which the City Clerk will print and file it according to the City's Records Retention Schedule.
3. Email communications that are intended to be shared among three or more Councilmembers, whether concurrently or serially, must be considered in light of the Ralph M. Brown Act (state open meetings act). If the intended purpose of the email is to have a discussion that should be held at an open meeting, the electronic discussion should not occur.
4. Email should be used cautiously when seeking legal advice or to discuss matters of pending litigation or other "confidential" City business. In general, email is discoverable in litigation, and even deleted email is not necessarily removed from the system. Confidential email communications should not be shared with individuals other than the intended recipients or the attorney-client privilege protecting the document from disclosure may be waived.
5. Email between Councilmembers and between Councilmembers and staff shall not be transmitted to the public or news media without the filing of a public disclosure request with the City Clerk.
6. Email shall not be used for personal use, since Councilmembers' conventional email addresses include the City's "return address."

Chapter 6

Conflicts of Interest

6.01 Ethics, AB 1234 Ethics Training

The City maintains a commitment to conducting business according to the highest achievable ethical standards. Recognizing that ethical dilemmas may arise and that public officials must make difficult choices after careful consideration of competing public, personal and/or private interests at stake, the Council has adopted a code of ethical conduct, which is attached as Appendix F.

The City Manager is subject to a professional code of ethics as a member of the International City/County Management Association (ICMA). These principles appear in the appendix of this manual, as Appendix G. It should be noted that this code binds the City Manager to certain practices that are designed to ensure actions are in support of the City's best interests. Violations of such principles can result in censure by the ICMA.

State law (California Government Code § 53235, *et seq.*) requires public officials to complete two hours of training in ethics principles and laws every two years. In addition to Councilmembers, Arcata requires the training of all of its commissioners (Planning and Historic and Design Review), its City Manager, its department directors, its mid-managers when they staff a City commission, and the chairperson and vice-chairperson of each committee or board. Additionally, the City Council encourages all committee and board members to complete the training. At present, the City Attorney is able to provide periodic training sessions that satisfy the requirement. Alternatively, the League of California Cities offers AB 1234 training, often in conjunction with League conferences or other training workshops, and on-line training is offered through the Institute for Local Government and the Fair Political Practices Commission. Certificates of course completion are kept on file by the City Clerk.

6.02 Conflicts of Interest

There are numerous sources of conflicts of interest that may require a Councilmember to disqualify himself or herself from participating in decision-making. The Political Reform Act (PRA) controls financial conflicts of interest of public officials. The PRA is one of the most complicated laws affecting local government. This law is implemented and enforced by the Fair Political Practices Commission (FPPC) which has issued comprehensive implementing regulations. To understand the PRA's impact on a Councilmember's actions, it is suggested that members discuss the law and potential conflicts with the City Attorney or a private attorney.

In general, under the PRA, public officials are prohibited from making, participating in or in any way attempting to use their official position to influence a government decision in which they know or have reason to know they have a financial interest (California Government Code § 87100; 2 California Code of Regulations §§ 18700, 18702-18702.4). A "public official" is defined as including every member, officer, employee or consultant of the state or local government agency (California Government Code § 82048; 2 California Code of Regulations § 18701).

A. Applicability

Under the PRA, an official has a financial interest if it is reasonably foreseeable that a decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

1. Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more (California Government Code §§ 82005, 82034, 82035; 2 California Code of Regulations § 18703.1).
2. Any real property in which the public official has a direct or indirect interest worth \$2,000 or more (California Government Code § 82033).
3. Any source of income other than gifts or certain loans aggregating \$500 or more provided to the public official within 12 months prior to the time of the decision (California Government Code § 82030; 2 California Code of Regulations § 18703.3).
4. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management (2 California Code of Regulations § 18703.1).
5. Any gift totaling \$420 (adjusted biannually by the FPPC) or more provided to, received by or promised within 12 months prior to the decision (2 California Code of Regulations §§ 18703.4, 18704-18961).

B. Analysis

In general, the FPPC suggests that an eight-part analysis be followed in determining whether a conflict of interest exists:

1. Is the person involved a public official? The PRA applies to “public officials at any level of state or local government” (California Government Code § 87100).
2. Is the public official making, participating in making, using, or attempting to use his/her official position to influence governmental decision (2 California Code of Regulations §§ 18700, 18702-18702.4)?
3. What are the actual economic interests of the official potentially impacted by the decision (California Government Code § 87103, 2 California Code of Regulations §§ 18704-18704.5)?
4. Is the economic interest directly or indirectly involved in the governmental decision (2 California Code of Regulations §§ 18704-18704.5)?
5. Is the financial effect on the economic interest material (2 California Code of Regulations §§ 18702-18702.5)?
6. Is it “reasonably foreseeable” that the governmental decision will have a material financial effect on the economic interest (2 California Code of Regulations §§ 18700-18706)?
7. Will the decision’s effect on the official’s economic interest differ from that on the public generally (2 California Code of Regulations §§ 18707-18707.10)?
8. Is participation by the public official legally required in order to create a quorum to vote on the matter (2 California Code of Regulations § 18708)?

C. Disqualification and Disclosure

When the agenda item is called, a City Councilmember who has a conflict of interest is required to publicly state that a conflict of interest exists, describe the nature of the economic interest giving rise to the conflict, disqualify himself or herself, and leave the room. Ideally, Councilmembers will become familiar enough with the sources of conflicts to determine in advance whether disqualification is necessary. However, if a Councilmember becomes aware of a potential conflict only during the meeting, it is perfectly appropriate for the Councilmember to ask for a break in order to discuss the matter with the City Attorney, if necessary. If any Councilmember questions a potential conflict of interest related to another Councilmember, a recess may be called at the request of the Councilmember who may have a conflict to allow discussion of the issue with the City Attorney to determine if there is a conflict. If the Councilmember decides a conflict exists, that Councilmember may not participate in any aspect of the decision making, including discussing the matter with City staff. When a conflict of interest arises involving a matter on the consent portion of the agenda, the Councilmember is not required to leave the room, unless that item is pulled from the consent agenda for separate discussion.

D. Legally Required Participation

In the event that a decision cannot be made because a majority of the Council is disqualified due to conflicts of interest, the PRA allows the minimum number of Councilmembers necessary to constitute a quorum to return and participate in the decision to the minimum extent required. The Councilmembers permitted to participate must be chosen through a random process (California Government Code § 87101).

E. Conflict of Interest Code

The City is required to adopt and maintain a Conflict of Interest Code. This code is found in the Arcata Municipal Code at Title 2, Chapter 8. Under state law, the code must be reviewed every two years and amended as circumstances change. The City's code must be consistent with minimum requirements of the PRA (California Government Code §§ 87300-87313).

F. Advice on Conflict of Interest

The City Attorney may provide advice to a Councilmember about the existence of a conflict of interest. However, advice given by the City Attorney does not protect the Councilmember from an enforcement action by the FPPC. A Councilmember may seek a formal written opinion from the FPPC on a particular set of facts. Such an opinion letter would provide protection from an enforcement action arising under the same set of facts.

G. Other Sources of Conflict

In addition to the PRA, State law prohibits Councilmembers from entering into contracts with the City. (California Government Code § 1090) In general, this type of conflict is not subject to remedy through the disqualification of the interested Councilmember, but must instead be entirely avoided by the Council. There are, however, numerous exceptions to this provision that will allow the Council to enter into certain contracts after disqualification of the interested Councilmember and those should be reviewed with the City Attorney on a case-by-case basis (California Government Code § 1090).

H. Revolving Door Policies

For a period of one year after leaving office, state law prohibits Councilmembers and chief administrators from accepting employment with the City, or from acting as agent or attorney for any other person by appearing formally or informally, orally or in writing, before the Council or any of its commissions, or committees if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance of, amendment to, award of, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property (California Government Code § 87406.3).

Chapter 7

Interaction with City Staff/Officials

7.01 Overview

City Council policy is implemented through dedicated and professional staff. Therefore, it is critical that the relationship between Council and staff be well understood by all parties so policies and programs may be implemented successfully. To support effective relationships, it is important that roles are clearly recognized.

7.02 Council-Manager Form of Government

Arcata has a Council-Manager form of government. Basically, with this structure, the City Council's role is to establish City policies and priorities. The Council appoints a City Manager to implement those policies and undertake the administration of the organization.

The City Manager is appointed by the City Council to enforce its laws, to direct the daily operations of city government, to prepare and monitor the principal budget, and to implement the policies and programs initiated by the City Council. The City Manager is responsible to the City Council, rather than to individual Councilmembers, and directs and coordinates the various departments. The City Manager is responsible for appointing all department directors and authorizing all other personnel positions. The City Council authorizes positions through the budget process; based upon that authorization, the City Manager makes the appointments.

The Council-Manager form of government is outlined in the California Government Code. The powers and duties of the City Manager include:

- Generally supervise over the administrative affairs of the City
- Appoint and remove at any time any department directors and employees
- Attend all meetings of the Council at which the Manager's attendance may be required by that body [AMC § 2107(d)]
- See that all laws and ordinances are faithfully executed, subject to the authority which the Council may grant the Mayor to maintain law and order in times of emergency
- Recommend for adoption by the Council such measures as the Manager may deem necessary or expedient
- Prepare and submit to the Council such reports as may be required by that body, or as deemed advisable to be submitted
- Keep the Council fully advised of the financial condition of the City and its future needs
- Prepare and submit to the Council a proposed budget for the fiscal year, and be responsible for its administration upon adoption
- Perform such other duties as the Council may determine by ordinance or resolution
- Implement and administer City Council policy

7.03 Non-interference by City Council

The City Council is to work through the City Manager when dealing with administrative services of the City.

In no manner, either directly or indirectly, shall a Councilmember become involved in, or attempt to influence, personnel matters that are under the direction of the City Manager. No member of the Council shall, by suggestion or otherwise, attempt to influence or coerce the City Manager concerning appointments to City offices or employment. Nor shall the City Council be involved in, or influence, the purchase of any supplies beyond the requirements of the City's procurement code/procedures.

Except for the purpose of inquiry, the Council and its members will deal with the administrative service solely through the City Manager or designee, and neither the Council nor any commission, committee or member of a board shall give an order to, try to influence, coerce or direct, either formally or informally, any subordinate of the City Manager.

Violations of the provisions of this section by any of the above persons, if reported by any staff to the City Manager, will be brought forth to the entire City Council for review. The Council, on a case-by-case basis, will establish what, if any, corrections and/or sanctions are appropriate. See Chapter 9, § 9.03.

7.04 City Council/City Manager Relationship

The employment relationship between the City Council and City Manager honors the fact that the City Manager is the chief executive of the City. All dealings with the City Manager, whether in public or private, should respect the authority of the City Manager in administrative matters. Disagreements should be expressed in policy terms, rather than in terms that question satisfaction with or support of the City Manager.

The City Manager respects and is sensitive to the policy responsibilities of the City Council and acknowledges that the final responsibility for establishing the policy direction of the City is held by the City Council.

A. Performance Evaluation

The City Council is to evaluate the City Manager on an annual basis to ensure that both the City Council and City Manager are in agreement about performance and goals based upon mutual trust and common objectives. The City Manager's performance is evaluated in the following areas: Leadership, teamwork, job knowledge, attitude, accountability, empowerment, communication, problem-solving skills, quality of service, safety/risk-taking, implementation and administration of adopted Council policy.

7.05 City Council/City Staff Relationship

City Councilmember contact with City staff members, inclusive of the City Manager, will be during regular business hours, except in the case of an emergency.

7.06 City Council/City Attorney Relationship

Pursuant to recommendation of the City Manager, the City Council shall make provision for obtaining legal counsel for the City, either by appointment of a City Attorney on a full-time or part-time basis, or by any reasonable contractual arrangement for such professional services. The City Attorney is a contract employee appointed by the City Council. The City Attorney is the legal advisor for the Council, its committees, commissions and boards, the City Manager, and all City officers and employees with respect to any legal question involving an official duty or any legal matter pertaining to the affairs of the City. The general legal responsibilities of the City Attorney are to:

1. Provide legal assistance necessary for formulation and implementation of legislative policies and projects;
2. Represent the City's interest, as determined by the City Council, in litigation, administrative hearings, negotiations, and similar proceedings;
3. Prepare or approve as to form ordinances, resolutions, contracts, and other legal documents to best reflect and implement the purposes and intentions of the City Council; and
4. Keep City Council and staff apprised of court rulings and legislation affecting the legal interests of the City.

It is important to note that the City Attorney does not represent individual members of the Council, but rather the City Council as a whole. Accordingly, with the exception of conflict of interest inquiries, in questions involving pending or upcoming matters, or protocol and procedure, the City Attorney's services are engaged and directed through the majority of the Council. Individual Councilmembers may seek advice or assistance from the City Attorney on other matters while exercising their best judgment on the most efficient and appropriate use of his/her resources. The City Attorney's performance is reviewed as provided by the services retention contract.

7.07 Roles and Information Flow

A. Council Roles

The full City Council retains the authority to accept, reject, or amend the staff recommendation on policy matters.

Members of the City Council must avoid intrusion into those areas that are the responsibility of staff. Individual Councilmembers may not intervene in staff decision making, the development of staff recommendations, scheduling of work, and executing department priorities without the prior knowledge and approval of the City Council as a whole. This is necessary to protect staff from undue influence and pressure from individual Councilmembers, and to allow staff to execute priorities given by management and the Council as a whole without fear of reprisal. If a Councilmember wishes to influence the actions, decisions, recommendations, workloads, work schedule, or priorities of staff, that member must prevail upon the Council to do so as a matter of Council policy.

B. Access to Information

The City Manager is the information liaison between the Council and City staff. Requests from Councilmembers for information are to be directed to the City Manager and will be responded to promptly. The information requested will be copied to all members of the Council so that each member may be equally informed. The sharing of information with the City Council is one of the City Manager's highest priorities.

There are limited restrictions controlling when information cannot be provided. The City is legally bound not to release certain confidential personnel information. Likewise, certain aspects of police department affairs (e.g., access to restricted or confidential information related to crimes) may not be available to members of the City Council.

C. Staff Roles

The Council recognizes the primary functions of staff as executing Council policy and actions taken by the Council, and keeping the Council informed. Staff is obligated to take guidance and direction only from the City Manager or Department Director. This direction follows the policy guidance of the City Council as a whole. Staff is directed to reject any attempts by individual Councilmembers to unduly direct or otherwise pressure them into making, changing, or otherwise influencing recommendations.

City staff will make every effort to respond in a timely and professional manner to all requests for information or assistance made by individual Councilmembers provided that, in the judgment of the City Manager, the request is not of a magnitude, either in terms of workload or policy, that it would be more appropriately assigned to staff through the direction of the full City Council.

7.08 Dissemination of Information

In addition to regular, comprehensive memoranda written by the City Manager directly to City Council concerning all aspects of City operations (exclusive of confidential personnel issues), all Councilmembers receive copies of all correspondence received by the City Manager that will assist them in their policy-making role. The City Manager also provides other documents to the Council on a regular basis, such as status reports, executive summaries, and agendas of all City commission and committee meetings and weekly senior staff meetings.

A variety of methods are used to share information with the Council. Workshops and study sessions are held to provide detailed presentations of matters. The City Manager's open-door policy allows individual Councilmembers to meet with the Manager on an impromptu or one-on-one basis.

7.09 Magnitude of Information Request

Any information, service-related needs, or policy positions perceived as necessary by individual Councilmembers that cannot be fulfilled based upon the above guidelines should be considered as an item for the agenda of a City Council meeting. If so directed by an action of the Council, staff will proceed to complete the work within a Council-established timeline.

7.10 Staff Relationship to Advisory Bodies

Staff support and assistance may be provided to the City's boards, commissions, committees and task forces. These bodies, however, do not have supervisory authority over City

employees. While staff may work closely with advisory bodies, staff members remain responsible to their immediate supervisors and, ultimately, the City Manager. The members of the commissions, boards, or committees are responsible for the functions of the advisory body. The chairperson is responsible for committee compliance with the municipal code and/or committee bylaws. Staff members are to assist the advisory body chair to ensure appropriate compliance with state and local laws and regulations.

Staff support includes: (1) preparation of a summary agenda and appropriate notice after approval by the chairperson; (2) preparation of reports providing a brief background of the issues, a list of alternatives, recommendations, and appropriate backup materials, if necessary; and (3) preparation of minutes of advisory body meetings. Advisory body members should have sufficient information to reach decisions based upon a clear explanation of the issues.

Advisory bodies wishing to communicate recommendations to the City Council shall do so through adopted Council agenda procedures as outlined in § 8.06(B) of this manual. In addition, when an advisory body wishes to correspond with an outside agency, correspondence shall be reviewed and approved by the City Council.

7.11 Restrictions on Political Involvement by Staff

Arcata is a nonpartisan local government. Professional staff formulates recommendations in compliance with Council policy for the good of the community, not influenced by political factors. For this reason, it is very important to understand the restrictions of political involvement of staff.

By working for the City, staff members do not surrender their right to be involved in political activities. Employees may privately express their personal opinions. They may register to vote, sign nominating or recall petitions, and they may vote in any election.

7.12 Council Attendance Policy

If a Councilmember intends to be absent from the City for more than 24 hours, he or she shall notify the City Manager of such absence and its duration.

Vacancy for Nonattendance

Under state law, if a Councilmember is absent without permission from all regular City Council meetings for 60 days consecutively from the last regular meeting he or she attended, his or her office becomes vacant and shall be filled as any other vacancy [California Government Code § 36513(a)].

At the start of each City Council meeting, the City Clerk, or designee, will call the roll. Any absent Councilmember who has called the Mayor or City Manager's Office before 5:00 p.m. on the day of the meeting to advise of such absence may request to be excused by the City Council.

Chapter 8

City Council Meetings

The City Council's collective policy and law-making powers are put into action at the Council meetings. It is here that the City Council conducts its business. The opportunity for citizens to be heard, the availability of local officials to the citizenry, and the openness of Council meetings all lend themselves to the essential democratic nature of local government.

8.01 Meeting Schedule

Regular City Council meetings are held the first and third Wednesdays of each month at 6:00 p.m., in the Council Chamber, 736 F Street, Arcata. By a majority vote of the Council, meetings not completed by 10:30 p.m. will be continued to the following Thursday at 6:00 p.m. in the Council Chamber.

8.02 Public Notice of Meetings and Hearings

Pursuant to the California Government Code, cities are charged with establishing a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. The procedure followed by the City of Arcata is as follows:

A. *Notices*

Except where a specific means of notifying the public of a public hearing is otherwise provided by law or ordinance, notice of upcoming public hearings before the City Council or the City's boards and commissions shall be given by one publication of a notice containing the time, place, date, subject, and body before whom the hearing is to be held, in the City's official newspaper consistent with State law.

B. *Preliminary Agenda of Council Meeting*

The public shall be notified of the agenda for the forthcoming regular City Council meeting by the posting of a copy of the agenda in the following public places in the City at least 72 hours in advance of the meeting:

- Bulletin Board Outside Arcata City Hall
736 F Street
Arcata, CA 95501

A copy of the agenda will also be made available to the public as follows:

- Arcata Branch, Humboldt County Library
- Electronic Posting:
Access Humboldt (Community Media)
City of Arcata Website

C. *Duties of City Clerk*

The City Clerk is directed to publish notices and post agendas as required by § 8.02 of the Arcata City Council Protocol Manual.

The California Government Code addresses the subject of special meetings. For special meetings, only those items specifically listed on the agenda may be discussed, considered, or decided.

The City Clerk is responsible for posting a notice of public meeting at least 72 hours in advance of the meeting. Posting locations include the City Clerk's Office at City Hall.

8.03 Emergency Meetings

State Law permits the Council to hold an emergency meeting without providing advance 24-hour notice when prompt action is necessary due to the disruption or threatened disruption of public facilities during an emergency situation. Emergency situations are those matters immediately affecting the public health, safety and welfare of the community (California Government Code § 54956.5).

8.04 Special Meetings

Special meetings may be called by either the Mayor, Vice-Mayor or Acting Mayor in the absence of the Mayor. Additionally, as long as substantive consideration of agenda items does not occur, a majority of the Council may meet without providing notice to the public, in order to call a special meeting and prepare an agenda. When a special meeting is called by a majority of the Council, a representative of this majority shall notify the City Clerk of such special meeting call, who shall prepare a notice of special meeting, to be signed by all members of the majority calling the special meeting. Notice of a special meeting will be made by the City Clerk by delivering personally, by mail, or by facsimile, written notice to each member of the Council and to each local newspaper of general circulation, and to each local radio or television station which has on file with the City a written request to be notified of such special meeting or of all special meetings at least 24 hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted.

The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical, and increase the likelihood of such injury or damage.

At all regular and special meetings, public comments are invited during a public hearing before or during consideration of any item on the agenda. Public comment is appropriate on any matter within the jurisdiction of the City Council. All regular meeting agendas must provide a time for the public to address the body on items not on the agenda.

8.05 Study Sessions

The City Council may meet informally in a study session. The study session is the forum used by the Council to review forthcoming programs of the City, to receive progress reports on current issues, or to receive similar information from the City Manager and others. All discussions and conclusions held during a study session are of an informal nature. Although no final action is taken while in a study session, a majority of the Council may give City staff preliminary direction on what to bring back to the Council for later consideration. Such direction given at a study session does not in any way obligate a Councilmember to vote in a particular way if the item is later brought back to the Council for further review.

8.06 Placing Items on the Agenda

A. City Council Agenda Planning

Any Councilmember may request that an item be placed on a City Council agenda by submitting a written request to the City Manager/City Clerk. The written request must, at a minimum, contain all of the following:

1. A substantive outline or summary of the information that will be presented to the City Council;
2. A concise statement of the specific action the City Council will be asked to take on the item; and,
3. A statement of the reasons why the requesting party believes it is appropriate and within the jurisdiction of the City Council to consider this subject matter and to take the requested action.

All matters to be presented to the City Council at its regular meetings are reviewed by the Mayor and City Manager. The item shall be placed on the agenda as soon as possible with consideration for scheduling issues.

B. Advisory Bodies and Civic Organizations

Advisory bodies of the City Council and other civic agencies (e.g., Chamber of Commerce, Arcata Main Street) may submit items for Council consideration by submitting a written request, as outlined in paragraph *A. City Council Agenda Planning*—1, 2, and 3 above, to the City Manager/City Clerk at least 15 working days prior to the meeting, to be considered by the Mayor and City Manager for placement on an agenda.

C. Members of the Public

A member of the public may request an item be placed on a future agenda while addressing the City Council during a regular meeting and/or by submitting a written request to the City Manager/City Clerk as outlined in paragraph *A. City Council Agenda Planning*—1, 2, and 3 above. In order to allow sufficient time for the Council to review, and staff to research the matter, the request should be submitted at least 15 working days prior to the meeting for which the item is requested to be placed on the agenda. If the issue is placed on the agenda, the City Clerk will notify the requester so that he or she may plan to attend the meeting.

D. Emergency or Other Items Added to the Agenda

Emergency items may be added to an agenda in accordance with state law. The reason(s) for adding an emergency item to the agenda shall be announced publicly at the meeting, and the issue shall be included in the minutes of the meeting. Placing emergency items on the agenda requires a majority vote of the Council and the items are taken up as the last item on the agenda. Additionally, the Council may add items to the agenda upon a 4/5ths vote determining that there is need to take immediate action and that the need for action came to the City's attention after posting of the agenda [California Government Code § 54954.2(b)].

8.07 Development of the Agenda

Staff is required to submit a staff report for each topic of discussion on the City Council agenda. The deadline for submitting these reports and documentation is 3:00 p.m. on Wednesday of the week prior to the date of the meeting for which the item is scheduled.

The agenda packet will be available for the Councilmembers, staff, public and media by noon on the Friday prior to the Council Meeting.

8.07.1 Communications Received After Agenda Distribution

All writings, documents, or electronic communications relating to any item on the agenda, received after distribution of the Council agenda packet and prior to the Council meeting, shall be distributed to the entire City Council and made available for public inspection during normal business hours at Arcata City Hall in the agenda binder located in the lobby, and in the City Manager's Office (California Government Code § 54957.5).

Citizens providing writings or documents to the City Council during the Council meeting must present ten (10) copies of each document to the City Clerk for distribution. Failure to submit the required number of copies will result in the document(s) NOT being distributed to the City Council at that meeting and NOT being placed in the official record.

8.08 Video/DVD, Web Streaming and Audio Recording of Meetings

City Council meetings, except study sessions and those meetings or portions of meetings conducted in Closed Session pursuant to the California Government Code, are broadcast live over the local Community Access Channel and web streamed live and archived on the City's website. Video/DVDs are kept for the sole purpose of being able to rebroadcast the meetings on the Community Access Channel and web meetings are archived on the City's website for up to one year. Both forms of broadcasted meetings are for the convenient viewing by Arcata citizens, are not the permanent record of City Council proceedings, and are only retained consistent with state law.

8.09 Order of Business *(Set by Resolution No. 067-56)*

The City Council, by adoption of a resolution, establishes the general order of meetings. This section summarizes each meeting component. The Council may, at any time, by simple majority of those present, vote to consider items in a different order.

I. Call to Order & Flag Salute

The Mayor, or in the Mayor's absence the Vice-Mayor, presides over all meetings of the City Council, and after determining that a quorum is present, calls the meeting to order. In the absence of the Mayor and Vice-Mayor, the City Clerk shall call the Council to order, whereupon a temporary Mayor Pro-tem shall be elected by the members of the Council present. Following the call to order, those in attendance are asked to join the Council in reciting the Pledge of Allegiance.

II. Roll Call

The City Clerk, or designee, takes roll and announces the presence or absence of individual Councilmembers.

III. Ceremonial Matters

Requests for proclamations, other than those listed on the Council approved list, will first be presented to the City Council under the Consent Calendar and will become Ceremonial at the following Council meeting.

IV. Reports by Commission/Committee

V. Meeting of the Community Development Agency

At this time the City Council presides as the Board of Directors of the Arcata Community Development Agency for the purpose of hearing redevelopment matters which relate specifically to the Community Development Agency of the City of Arcata.

VI. Consent Calendar

All matters on the Consent Calendar are considered to be routine by the City Council and are enacted on one motion. If discussion is required, that item is removed from the Consent Calendar and considered separately. At the end of the reading of the Consent Calendar, Councilmembers or members of the public may remove an item.

VII. Items Removed from Consent Calendar

VIII. Old Business

IX. New Business

X. Oral & Written Communications

This time is provided for people to address the Council or submit written communications on matters not on the agenda. At the conclusion of all oral communications, the Council may respond to statements. Any request that requires Council action will be set by the Council for a future agenda or referred to staff. Speakers addressing the Council may be limited to three minutes, with a maximum of five minutes, and a time limit on the length of Oral Communications may be imposed. Speakers unable to be heard during this portion of Oral Communications, due to the Council setting a time limit, will be heard at 10:30 p.m. or directly following the completion of all other City business.

XI. Council and Staff Reports

All reports shall be specifically limited to items relating to City business and shall not

request or lead to action by the Council at this meeting.

XII. Dates of Future Meetings

XIII. Closed Session: Litigation and/or Personnel and/or Real Estate

XIV. Closed Session Reports

XV. Adjournment

By majority vote of the Council, meetings not completed by 10:30 p.m. will be continued to the following Thursday at 6:00 p.m. in the Council Chamber. Should the Council vote to continue the meeting past 10:30 p.m., discussion on an item on the agenda that either requires or allows for public input may not begin without a unanimous vote of the City Councilmembers present. (Closed session items may begin later.) (Resolution No. 067-56.)

8.10 Council Action

The City Council exercises legislative authority through a simple motion, an amendment to a motion, adoption of a resolution, or adoption of an ordinance. Depending on the item, staff reports will generally attempt to present appropriate motions, with options, for the Council to make. The City Council is encouraged to review the staff recommendations and use presented options as a template when making a motion. In most situations, a majority of the members present is adequate to adopt a motion, however this is not always the case, and staff will advise the Council when either a super majority or majority of the entire body is required. In addition, in most situations a voice vote is all that is required for Council action; however, staff will advise the Council when a roll call vote is required. Motions should be concise and give clear direction to staff.

Although finality in action is an important principle in government, there may be occasions when the Council wishes to reconsider a motion it has previously passed. In such circumstances, a motion to reconsider may be made either at the meeting where the item was first voted upon, or at the very next meeting of the Council. A motion to reconsider brought forward at the following meeting of the Council will require proper notice on the agenda. A motion to reconsider an item previously voted on can be made only by a Councilmember who voted in the majority.

8.11 Legislative and Quasi-Judicial Actions of the Council

The Council can take both legislative and quasi-judicial action. In general, the Council acts in a legislative capacity when it takes action to adopt policies, plans, and ordinances of general application. In these situations, a Councilmember may rely on any information he or she lawfully obtains when participating in a decision-making process. In contrast, the Council will also act in a quasi-judicial capacity when it acts on matters that implicate constitutionally protected property and liberty interests. These types of actions generally involve land use entitlements and other types of permits, licenses, etc.

The distinction between legislative and quasi-judicial activity is especially important because of the rights that are given to the applicant. Specifically, an applicant in a quasi-judicial matter is entitled to due process of the law. This includes a right to have a decision made on the record by a fair and impartial Council. In order to ensure these rights are satisfied, the Council must disclose all ex parte communication it receives; that is, information or evidence a Councilmember obtains from outside the Council hearing on the matter. Additionally, Councilmembers may be called upon to answer questions about potential bias.

8.12 General Parliamentary Procedure

Parliamentary procedures set the agreed-upon standard for conducting business. For general guidance, the Council will follow Rosenberg's Rules of Order, attached as Appendix H. Certain processes are subject to state code and must be complied with. The Council will accept direction from the City Manager/City Clerk and the City Attorney on the code. For other matters, the Arcata City Council has a tradition that adheres to the common parliamentary practices used by similar institutions to facilitate the orderly processing of the business of its meetings. When necessary to resolve issues that may arise over the process, the Mayor will refer to the City Attorney who will act as the Parliamentarian. Upon such advice, the Council will vote and follow the decision of the majority.

8.13 Public Presentations at Meetings

The Mayor may establish reasonable time restrictions on presentations from members of the public that take into consideration the complexity of the subject matter, the number of other members of the public wishing to address the Council, and the number of other items on the agenda to which the Council must attend. Members of the public who wish to utilize electronic media in their presentations must coordinate in advance with the City Manager or his/her designee. The City Manager may establish reasonable rules on the public's use of electronic media, to minimize the disruption of Council meetings as well as the burden on City staff, including the requirement of advance notice and/or submission of presentation data to ensure all compatibility issues are resolved before the Council meeting. Electronic media presentations are subject to time restrictions as established by the Mayor. The public may use the City's projector in the Council Chambers to assist in making their electronic presentations, subject to electronic media presentation rules established by the City Manager.

Chapter 9

Protocol Administration

9.01 Biennial Review

The City Council will review and revise the City Council Protocol Manual as needed. The City Council will specifically review, and if necessary revise, the Protocol Manual every February following a City Council election.

9.02 City Attorney as Protocol Advisor

The City Attorney shall assist the Mayor and serve as an advisor for interpreting the City Council's adopted Protocol Manual.

9.03 Adherence to Non-interference Policy

The City Council delegates to the City Manager the responsibility to discuss with any Councilmember, on behalf of the full Council, any perceived or inappropriate interference or encroachment of administrative services. The City Manager will discuss with the Councilmember the action and suggest a more appropriate process or procedure to follow. If inappropriate action continues after this discussion, the City Manager will report the concern to the full Council.

9.04 Applicability of Protocol Manual

The City Council Protocol Manual shall apply when the Council is sitting as another entity or agency. The role of Mayor and Vice-Mayor shall be interchangeable with the Chair and Vice-Chair, or President and Vice-President, when sitting as another entity.

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CITY OF ARCATA
CITY COUNCIL
PROTOCOL MANUAL

Appendix

- A. List of City Plans
- B. Ralph M. Brown Act
(California Government Code, Sections 54950-54963)
- C. Travel Policy
- D. Credit Card Policy
- E. Council-Approved Proclamations List
- F. City of Arcata Code of Ethics
- G. ICMA Code of Ethics
- H. Rosenberg's Rules of Order & Amendment

PROCEDURES MANUAL

Menlo Park City Council



Approved at the City Council Meeting of January 24, 2006

CITY OF MENLO PARK
Mission Statement

It is the mission of the City government to ensure that Menlo Park is a desirable and vibrant community in which to live and do business, and to respond to the values and priorities of the residents so as to provide for the community's current and future needs.

Explicitly, the City fulfills its function by:

- Addressing the needs of the residents through the City Council, the appointed commissions, and the City staff.
- Providing easy and open access to information and encouraging dialogue, enabling residents to actively engage in civic life.
- Providing for the safety of its residents, businesses, and visitors.
- Providing timely and responsive service.
- Providing special assistance to those in need.
- Functioning effectively, efficiently and with accountability.
- Creating a positive and desirable workplace environment for City employees.
- Managing change for the betterment of the City.
- Creating and maintaining a viable revenue stream and providing for the unpredictable nature of our economy.
- Implementing and maintaining City infrastructure, facilities, and programs.
- Formulating sound environmental policies.
- Recognizing and supporting the City's diverse neighborhoods and population.
- Acting as a responsible member of the greater region.

Mission Statement adopted by the City Council on July 20, 2004.

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- A. Reference Guide to Motions
- B. Legislative Policy Guide
- C. List of City Council Policies (available as hard copy only)
- D. City Manager Code of Ethics (available as hard copy only)

The City of Menlo Park acknowledges and greatly appreciates the excellent work of the City of Davis, California, and its willingness to share its “procedures manual” as a helpful example.

Introduction

The Menlo Park City Council establishes policies and priorities for the community and is responsible for the fiscal health of a public corporation. In Fiscal Year 2005-06, the City has a General Fund budget of nearly \$30 million and a total budget of \$85 million. The City organization is comprised of 150 different services and has assets valued in excess of \$370 million (roads, buildings, parks, etc).

Purpose of the Procedures Manual

City of Menlo Park staff prepared a procedures manual to assist the City Council by documenting currently accepted practices. Through agreement of the City Council and staff to be bound by these practices, the effective administration of City Council affairs is greatly enhanced. While attempting not to be overly restrictive, procedures are established so that expectations and practices can be clearly articulated to guide Council Members in their actions. It is anticipated that this Procedures Manual will be reviewed by each two-year City Council and may be revised from time to time.

Overview of City Documents

This procedures manual provides a summary of important aspects of City Council activities. However, it cannot incorporate all material and information necessary for undertaking the business of a city council. Many other laws, policies, plans and documents exist which bind the City Council to certain courses of action and practices. A summary of some of the most notable documents that establish City Council direction is provided below.

Municipal Code: The Municipal Code contains local laws and regulations adopted by ordinances. The administrative chapter of the code addresses the role of the City Council, Mayor and Mayor Pro Tempore. It also describes the organization of City Council meetings and responsibilities as well as the appointment of certain city staff positions and advisory commissions. In addition to these administrative matters, the Municipal Code contains a variety of laws. The municipal code is available either on the City's website or from the City Clerk.

California Government Code: The State Government Code contains many requirements for the operation of city government. Many of these requirements are also replicated within the municipal code to ensure there is broad awareness of such requirements. Menlo Park is a "general law" city, which means it is organized in accordance with provisions of the State Government Code. Also described within the government code is the Council-City Manager form of government. Basically, this form of government prescribes that a city council's role is to establish policies and priorities, while the role of the City Manager is to oversee the operations of the city government.

Annual Budget: The City's annual budget provides a description of city services and the resources used to provide services. The document contains both a broad overview of the budget as well as descriptions of programs and services organized for convenience by lead department. The City operates on a July 1 through June 30 fiscal year.

General Plan: The General Plan is comprised of a number of elements, such as land use, transportation, open space and housing, in accordance with State requirements, and provides a policy framework for various matters that fall within these areas.

Orientation of New Council Members

It is important that members of the Council have an understanding of the full range of services and programs provided by the organization. As new members join the City Council, the City Clerk coordinates with department heads to provide tours of City facilities and meetings with key staff.

League of California Cities Guide

A publication that provides additional useful information is the *Mayors and Council Members Resource Guide* published by the League of California Cities. The Guide contains general information on the role and responsibilities of city council members and on the specific requirements and laws that govern Council actions. The Guide is available from the City Clerk.

Menlo Park City Council: Powers and Responsibilities

City Council Generally

The powers of a city council in California to establish policy are quite broad. Essentially, councils may undertake any action related to city affairs other than those forbidden or preempted by state or federal law. Specifically, *the Council shall have the power, in the name of the city, to do and perform all acts and things appropriate to a municipal corporation and the general welfare of its inhabitants and which are not specifically forbidden by the Constitution and laws of the State of California (California Government Code).*

It is important to note that the Council acts as a body. No member has any extraordinary powers beyond those of other members. While the Mayor and Mayor Pro Tem have some additional ceremonial and administrative responsibilities as described below, in the establishment of policies, voting and in other significant areas, all members are equal. It is also important to note that policy is established by at least a majority vote of the Council. While individual members may disagree with decisions of the majority, a decision of the majority does bind the Council to a course of action. In turn, it is staff's responsibility to ensure the policy of the Council is upheld. Actions of staff to pursue the policy direction established by a majority of Council do not reflect any bias against Council members who held a minority opinion on an issue.

The City Council has occasionally debated whether it should take positions of a broader nature or limit itself to purely municipal functions. Historically, Menlo Park City Councils have chosen to not take positions on issues outside of their immediate authority to effect. The propensity of the City Council to involve itself in such issues reflects the personalities and outlooks of the members who make up the two-year Council sessions.

Limitations are imposed on a Council member's ability to serve on appointed boards of the city. State law expresses that no member of the Council shall serve as a voting member of any city board, committee, or commission, whether composed of citizen volunteers, city employees, or a combination of both. This is not construed as prohibiting members of the Council from serving on committees or subcommittees of the Council itself, or of agencies representing other levels of government. In fact, Council members often participate and provide leadership in regional and state programs and meetings. Council members are strongly encouraged to report to the Council on matters discussed at subcommittees and other regional or state board/agency/group activities in which they have been involved.

Role of Mayor & Mayor Pro Tempore

Mayor: As reflected in the Municipal Code, the Mayor is to preside at all meetings of the City Council and perform such other duties consistent with the office as may be imposed by the Council or by vote of the people. The Mayor does not possess any power of veto. As presiding officer of the Council, the Mayor is to faithfully communicate the will of the Council majority in matters of policy. The Mayor is also recognized as the official head of the city for all ceremonial purposes.

The Mayor, unless unavailable, shall sign all ordinances, and other documents that have been adopted by the City Council and require an official signature; except when the City Manager has been authorized by Council action to sign documents. In the event the Mayor is unavailable, the Mayor Pro Tempore's signature may be used.

Traditionally, the Mayor has also been assigned by the City Council to consult and coordinate with the City Manager in the development of agendas for meetings of the City Council. The scope of such review focuses on the timing of business items and the volume of business that can be considered at any one meeting. Such review does not allow for a unilateral unlimited delay of items to be considered by the Council or the introduction of new items not otherwise part of the Council's identified priorities or staff's work plan. Should any significant disagreement arise regarding the scheduling of items, these matters are to be resolved by the full City Council. The staff maintains a "tentative" Council Calendar that programs when matters will likely be considered at future meetings.

Mayor Pro Tempore: The City Council has specified that the Mayor Pro Tempore shall perform the duties of the Mayor during the Mayor's absence or disability. The Mayor Pro Tempore shall serve in this capacity at the pleasure of the City Council. The Mayor Pro Tempore title is often abbreviated to Mayor Pro Tem; and a more common and contemporary title of Vice Mayor may be substituted as well.

Appointment of City Manager, City Attorney

The City Council appoints two positions within the city organization: the City Manager and City Attorney. Both positions serve at the will of the City Council. The City Manager is an employee of the City and has an employment agreement that specifies certain terms of employment including an annual evaluation by the City Council. The City Manager is responsible for all other personnel appointments within the City. The current City Attorney is a part-time employee, and a partner in a local law firm that has served the City for many years.

Role in Disaster

The City Council has some special, extraordinary powers in the case of a disaster. Some meeting restrictions and expenditure controls are eased in such extreme situations. In critical situations the Council may be directed by the City Manager/Emergency Services Director to assemble in the City's Emergency Operations Center (EOC), located within the Police Department, to provide policy guidance and to receive information in an emergency. Should the City Council not be available during an emergency, state law specifies a hierarchy of others who may serve in place of the City Council. The most likely scenario is that the County Board of Supervisors would serve in the place of the Council.

Appointment of Advisory Bodies

The city has a number of standing advisory bodies. Appendix C contains adopted policy #CC-01-0004 on the appointment, roles and responsibilities of the various Commissions. These procedures apply to all appointments and reappointments to standing advisory bodies.

In addition, resident committees and task forces are occasionally appointed by the City Council to address issues of interest. A task force or other ad hoc body is a body created by Council for a specific task. Council subcommittees, when used, are to help the Council do its job. Committees ordinarily will assist the Council by preparing policy alternatives and implications for Council deliberation. Council subcommittees will normally not have direct

dealings with staff operations. Council subcommittees may not speak or act for the Council. Subcommittees will be used sparingly and ordinarily in an ad hoc capacity. This policy applies to any group that is formed by Council action, whether or not it is called a subcommittee. Unless otherwise stated, a subcommittee ceases to exist as soon as its task is complete. The Council may assign, and specify the role of, one or two Council Members to the task force (if more, it becomes a defacto Council meeting). Unless otherwise specified, Council Members have all the rights, and only the rights, of ordinary citizens with respect to task forces and other ad hoc bodies.

Note that both appointed advisory bodies and ad hoc committees are usually subject to the open meetings laws commonly known as the Brown Act.

Council Relationship with Advisory Bodies

The City Council has determined that Council Members should not lobby commissioners for particular votes. However, Council Members may attend meetings as residents and request that commissioners consider certain issues during their deliberations or in unusual instances as Council Members to reflect the views of the Council as a body.

Council Members choosing to attend commission or committee meetings should be sensitive to the fact that they are not participating members of the body. Council Members have the rights, and only the rights, of ordinary citizens with respect to Commissions – including the right to write to and speak to the Commission during public comment periods.

Role of Commission Liaison

Members of the Council are assigned to serve in a liaison capacity with one or more city commissions. The purpose of the liaison assignment is to facilitate communication between the City Council and the advisory body. The liaison also helps to increase the Council's familiarity with the membership, programs and issues of the advisory body. In fulfilling their liaison assignment, members may elect to attend commission meetings periodically to observe the activities of the advisory body or simply maintain communication with the commission chair on a regular basis.

Members should be sensitive to the fact that they are not participating members of the commission, but are there rather to create a linkage between the City Council and commission. In interacting with commissions, Council Members are to reflect the views of the Council as a body. Being a Commission liaison bestows no special right with respect to Commission business.

Typically, assignments to commission liaison positions are made at the beginning of a Council term in December. The Mayor will ask Council members which liaison assignments they desire and will submit recommendations to the full Council regarding the various committees, boards, and commissions which City Council Members will represent as a liaison. In the rare instance where more than one Council Member wishes to be the appointed liaison to a particular commission, a vote of the Council will be taken to confirm appointments.

City Council Meetings

General Procedures

By resolution, the City Council has adopted a modified version of Roberts Rules of Order.

Presiding Officer: The Mayor is the presiding officer and acts as chair at Council meetings. In the absence or incapacity of the Mayor, the Mayor Pro Tempore serves as presiding officer.

Seating arrangement of the Council: The Mayor Pro Tempore is seated immediately next to the Mayor. The Mayor, with the approval of individual Council members, shall establish the seating arrangement for regular Council meetings.

Quorum: Three-fifths of the Council members constitute a quorum for the transaction of business.

Meeting Schedule

The Council approves and follows an annual calendar that reflects its priorities and coincides with the budgeting process, beginning at the start of the calendar year. Project priorities are ranked in February for the following fiscal year, in order to reflect the commitment of resources required. Other Council priorities are overlaid on the calendar as time permits.

Regular meetings are usually held in the Council Chambers, 701 Laurel Street, on Tuesdays at 7 pm, with study sessions and closed sessions generally being convened earlier, as needed, or at the end of the meeting at the conclusion of public business.

On occasion, the Council meeting will be held in alternative locations such as the Senior Center. No Council meeting will typically be held in the event that a regular meeting of the Council falls on a legal holiday or the day after a holiday. Other meetings throughout the year may be cancelled as well. Council Members should inform the City Manager's secretary as soon as possible if they intend to be out of town on a set meeting date. On occasion, arrangements may be made in order for Council Members to remotely participate in Council meetings by telephone conference call when out of town.

Special Meetings

Special meetings may be called by the Mayor or by three members of the City Council. Written notice must be given to the City Council and to the media 24 hours prior to a special meeting. No business other than that officially noticed may be discussed.

Public Comment: At all regular and special meetings, public comments must be permitted before or during consideration of any agenda item. Public comment is appropriate on any matter within the jurisdiction of the City Council.

Meeting Notices and Minutes: Notice requirements of the Brown Act are complied with for all meetings; minutes of the meeting are taken by the City Clerk or designee and made available for public inspection.

Development of Agenda

The City Council adopts a yearly meeting calendar identifying meeting dates and cancellations to aid members and staff with planning and scheduling. A medium-range “tentative” Council calendar that reflects an estimate of when various items will be scheduled over the next few weeks is available on the City’s website. A copy of the draft agenda is transmitted to the Mayor for review on the Monday one-week prior to the meeting. Staff is required to submit reports for a Tuesday Council meeting to the City Clerk by noon on the Thursday of the week preceding the meeting. All agenda materials are available after 5:30pm on the Thursday before the Tuesday Council meeting. Website posting includes a tentative Council calendar that shows Council meeting dates and planned agenda items 3-5 weeks in advance.

Given this agenda development schedule, it is usually extremely difficult when Council requests at a Tuesday meeting that a report be prepared for consideration the following week. For this reason, it will usually require at least one week for the preparation of a report requested by the City Council. Complex reports, of course, will require more time to prepare, and an estimated time of completion can be provided to the City Council. The ability to schedule new agenda items depends on the nature of the item itself, other agenda subjects that are already scheduled and the amount of time available.

Placing Items on Agenda

City Council: A Council Member may request an item be considered on a future agenda and, upon agreement of a majority of Council, staff will prepare a staff report if formal Council action is required. Council Members may make this request verbally during a meeting or may submit written requests. Normally, the process involves two steps: initial consideration of the request by the full Council at the soonest possible regularly scheduled meeting; and, if a majority agrees, the matter is then scheduled for further consideration on an upcoming meeting agenda.

Members of the public: A member of the public may request that an item be placed on a future agenda during public comment or through other communication with Council Members. Upon approval of a majority of Council, the item will be agendized and a staff report may be prepared. The City Manager will inform the Council of the potential impact the request will have on established priorities or staff workload and seek approval by the City Council before authorizing the work or scheduling the item as appropriate.

Emergency and Non-Agendized items: Emergency and non-agendized items may be added to an agenda only in accordance with state law. Emergency items are only those matters affecting public health or safety such as work stoppages, disasters and other severe emergencies. Adding an emergency item requires a majority vote. Emergency items are very rare. More likely, after the agenda is posted an item arises that the Council would like to act on. Non-agendized items may be added to the agenda only if the Council makes findings that (1) the need to consider the item arose after the posting of the agenda, and; (2) there is a need to take immediate action at this meeting of the City Council. These findings must be approved by a 4/5th vote; if less than five members of Council are present, the findings require a unanimous vote of those present.

Notification and Advertising

The City attempts to well publicize matters of significant neighborhood or community public interest that appear on a City Council agenda, as well as all matters where advertising is required by law. Advertisements and notifications are intended to inform all interested individuals.

Order of Business

The City Council established the order of business for meetings through the adoption of a policy on meeting procedures. Technically, the order of the agenda is as follows: roll call; special business; proclamations; council, committee and staff reports; public comment #1; appointments to boards/commissions/committees; consent calendar; public hearings; regular business; public comment #2; written communications; information items; adjournment. The following section describes the various types of meeting components.

1. **Closed Sessions** (*closed to the public*): The ability of the City Council to conduct sessions not open to the public is restricted by state law to ensure open proceedings. Certain defined circumstances exist wherein a city council may meet without the public in attendance. Such circumstances include:

Real Property: The purchase, sale, exchange or lease of real property with the City's negotiator; the real property and the person(s) with whom the City may negotiate must be announced in open session prior to the closed session (*Cal Govt Code 54956.8*).

Litigation: Pending or a significant exposure to litigation or the decision to initiate litigation; the litigation title must be identified in open session prior to the closed session unless the Council states that to do so would jeopardize its ability to conclude existing settlement negotiations or effectuate service of process.

Compensation: Salaries and benefits of employees; Council meets in closed session to review its position and instruct designated representatives (*Cal Govt Code §54957.6*).

Personnel: A closed session is held to discuss the appointment, employment, evaluation of performance, or dismissal of a public employee, or to hear a complaint against the employee unless the employee requests a public hearing (*Cal Govt Code §54957.6*).

It is critical to stress that there shall be no disclosure of closed session confidential information. Members of the Council, employees of the City, or anyone else present shall not disclose to any person, including affected/opposing parties, the press, or anyone else, the content or substance of any discussion which takes place in a closed session without Council direction and concurrence. Whenever possible, written reports received for closed session items will be turned in at the end of the meeting.

Typically, closed sessions will be scheduled prior to the public portions of the meeting or at the end of the meeting after public business has been concluded. This is done so public portions of the meeting are not interrupted by closed sessions. In addition, such sessions may require the attendance of special legal counsel and consultants. In an attempt to manage the costs of these professionals, it is beneficial to conduct closed sessions at a time certain. On occasion, during the course of a regular meeting, an issue arises that requires the Council to adjourn to a closed session on the advice of the City Attorney.

- 2. Council Member Reports:** Provides members of the Council an opportunity to introduce matters not currently before the Council, including brief announcements, to pose questions of staff and make requests for items to be placed on the agenda at a future meeting. Examples of appropriate communications would be information of general interest received from outside agencies, comments or inquiries received from the public, requests to agenda future items, or announcements of interest to the public.

State law provides that Council can take action only on such matters that have been noticed at least three days (72 hours) in advance of the regular meeting, or 24 hours in the case of a special meeting, unless special circumstances are found to exist (as mentioned above). Formal action or approval on non-agendized items is not allowed, and such items should be placed on the agenda of the next available regular meeting.

- 3. Consent Calendar:** Those items on the Council agenda that are considered to be of a routine and non-controversial nature by the City Manager are placed on the "Consent Calendar." These items shall be approved, adopted, accepted, etc., by one motion of the Council. Typical consent calendar items include the final reading and adoption of ordinances, various resolutions approving agreements, awards of contracts, minor budgetary adjustments, meeting minutes, status reports, and reports of routine city operations.

Council Members may request that any item listed under "Consent Calendar" be removed from the Consent Calendar, and Council will then take action separately on this item. A member of the public may request that an item listed under "Consent Calendar" be removed and Council action taken separately on the item; the City Council must concur with such a request. Items that are removed ("pulled") by members of the Council for discussion will typically be heard after other Consent Calendar items are approved unless the majority of Council chooses an earlier or later time.

Council Members are encouraged to contact the City Manager's office prior to 12:00 noon on the day of a Council meeting day to provide notification of items to be removed from the Consent Calendar. This practice allows the City Manager to notify staff that may need to be present to respond to removed items. Equally important, it also allows the Manager to inform staff who do not need to be present at the meeting. Unless contacted in advance of the meeting with sufficient time, the presumption is that staff will not be present.

- 4. Public Comment:** A block of 30 minutes time is set aside at the beginning of the meeting and again at the end to receive general public comment about issues not on the agenda. Comments on agenda items should not be heard until the appropriate item is called. Individuals desiring to speak are to address the Council from the speaker podium after giving their name and place of residence. Speaker cards may be required and should be filled out, including the speaker's actual jurisdiction of residence, and given to the City Clerk prior to Public Comment.

Comments should focus on a specific matter within the Council's jurisdiction. Members of the public are encouraged to present written comments, preferably in advance of the meeting, as a way to fully communicate their thoughts on agenda or non-agenda items. When written materials are presented, they should be submitted to the City Clerk for distribution and record keeping ahead of time. Comments are typically limited to three minutes per speaker so that all have an opportunity to address the Council.

Videos, PowerPoint or similar presentations may accompany in-person testimony but are subject to the same speaking time limits. Prior notice and coordination with the City Clerk is strongly encouraged and the Mayor reserves the privilege to limit such requests as necessary for the effective conduct of the meeting. Speakers are to address their comments to the City Council from the podium.

Public comment on regular business items normally follows staff's presentation of the staff report, clarifying questions from Council Members and applicant comments as necessary and appropriate. Typically, applicants or appellants are limited to a maximum of 10 minutes. Council will then hear public comment.

5. **Public Hearing:** In the case of public hearings, once the Council has voted to close the hearing, no member of the public shall be permitted to address the Council or the staff from the audience, except at the discretion of the presiding officer (Mayor).
6. **Regular Business Items:** Regular items are shown on the agenda and are normally taken in the order listed.
7. **Written Communications:** The City Council has established a practice of placing written communication between Members requesting items to be agendaized and select letters sent by agencies to Council Members on the meeting agenda so that this correspondence receives wide distribution. If letters or emails from the public are received on the day of or just before a meeting, copies will be placed at the Council Members' positions on the dais.
8. **Commission Reports:** Commission reports provide an opportunity for designated members of appointed boards to address the Council on matters of importance or to update the Council and community on studies that are underway.
9. **Study Session:** From time to time, the Council will hold study sessions. These meetings are normally scheduled before the regular Council meeting. On occasion, dedicated study sessions are held instead of a regular meeting on the first Tuesday of the month. The purpose of study sessions is to give the Council a less formal and more interactive forum to discuss issues in advance of any official action to be taken. Staff often presents policy alternatives and is more directly engaged in the dialogue. Official minutes are not generally kept, but meetings are open to the public and are broadcast and videotaped when held in the Council Chambers and at the direction of the Council. While general direction may be given to staff or the proponent behind the topic of discussion, no formal action by the Council is taken in a study session.

Discussion Rules

To assist the City Council in the orderly discussion of items, rules are followed which represent accepted practices for the management of Council meetings.

1. **Obtaining the floor:** A member of the City Council or staff shall first address the Mayor and gain recognition. Comments and questions should be directed through the chair and limited to the issue before the Council. Cross-exchange between Council Members and public should be avoided.
2. **Questions to staff:** A Council Member shall, after recognition by the Mayor, address questions to the City Manager, City Attorney, department head or designated staff member. If a Council Member has questions on an agenda item, that member should

preferably contact staff prior to the meeting in order to allow staff time to research a response for the meeting.

3. Interruptions:

- a. Once recognized, a Council Member is considered to have the floor, and another Council Member may not interrupt the speaker except to make a point of order or point of personal privilege. In such a circumstance, the Council Member holding the floor shall cease speaking until the point of order or privilege is resolved.
- b. Upon being recognized by the Mayor, members of the staff shall hold the floor until completion of their remarks or until recognition is withdrawn by the Mayor.

4. Discussion: A Council Member should not speak more than once on a particular subject until every other Council Member has had the opportunity to speak. Council Members are encouraged to discuss items during the decision-making process and may ask staff to respond when appropriate. The Mayor normally allows other members to speak first, then will give his/her views and summarize.

5. Tabling procedure: Tabling an item immediately stops discussion and causes a vote to postpone a matter indefinitely or to a time and date certain. A motion to “continue” an agenda item has the same effect, but is generally used when a scheduling problem arises or when insufficient time is available to address the matter thoroughly.

6. Right of protest: A Council Member is not required to state reasons for a dissenting vote.

7. Calling for the question: The purpose of calling for the question is to disallow further debate and put an issue to an immediate vote. A Council Member may move to “call for the question” on an item which is being considered. The motion requires a second, is not debatable, and must pass by a four-fifths vote. If the motion carries, the item is no longer debatable and the City Council must vote on it.

8. Conducting business at a late hour. According to Council policy, all regular meetings of the Council are to end by midnight unless there is a three-fourths vote taken by 11:00 pm to extend the meeting. The motion to extend is to include the title of the items to be considered after 11:00 and a new ending time for the meeting.

Voting Procedures

When present, all Council Members are to vote. Failure of a seated member to orally express a vote constitutes an affirmative vote.

No ordinance, resolution or motion shall be passed or become effective without an affirmative vote by the majority with a quorum present.

A conflict of interest shall be declared whenever appropriate and in compliance with state law. The affected Council Member will step down from the dais and leave the Chambers.

Council members may declare general consensus at the discretion of the presiding officer, if there are no negative votes or objections.

Upon the request of any Council Member, a roll call vote will be taken and recorded.

Tie vote: A tie vote is equivalent to a motion that has failed. The presiding officer may publicly explain the effect of the tie vote for the audience or may direct a member of the staff to do so.

Motions. There are a number of types of motions, each of which must meet certain requirements before a vote can be taken. A reference guide to motions is provided in chart form in Appendix A of this manual.

Reconsideration: Reconsideration of an item shall be allowed in accordance with the following Council guidelines. A Member of the prevailing majority when the previous vote was taken must make a motion for reconsideration. The City Council has determined that any motion for reconsideration should be made at the meeting immediately following that at which the action was taken. No motion for reconsideration will be entertained after this time unless the City Council determines significant new information has arisen which warrants such action.

Other Guidelines

Other guidelines have been developed to ensure that meetings of the Council are conducted in a civil and professional manner. Council members and staff shall:

1. Work to preserve appropriate order and decorum during all meetings.
2. Discourage side conversations, disruptions, interruptions or delaying efforts.
3. Inform the Mayor before departing from a meeting.
4. Limit disruptive behavior. The Mayor will call persons demonstrating rude, boisterous, or profane behavior to order. If such conduct continues, the Mayor may call a recess, request the removal of such person(s) from the Council Chambers, adjourn the meeting, or take such other appropriate action. The Council has a policy to discourage applause, booing or other similar behaviors from the public during meetings.
5. Recognize that only the City Council, staff, advisory body chairs or designated representatives, and those authorized by the presiding officer shall be permitted to sit at the Council or staff tables.
6. Limit breaks of the City Council to 5-10 minutes. The Council has authorized the Mayor to resume the meeting if a quorum exists and other members have not returned from the break within the announced time period.
7. Impose time limits on speakers. While the City Council encourages and embraces the need for and right of public participation, it acknowledges that public comments must, at times, be limited. Therefore, the City Council authorizes the Mayor, as presiding officer, to poll the audience for an indication of the number of people wishing to speak, and to impose time limits per speaker. Typically, speakers are limited to three minutes but a shorter time limit may be established as deemed necessary. When a member of the public is to speak on behalf of others in attendance, a maximum time limit of ten minutes is usually imposed. After the time limit, Council may ask questions of the speaker for clarification, if needed. Each speaker will be thanked for his or her participation.

Values of Respect: The City Council has also recognized the importance of approaching the public's business in an environment of personal respect and courtesy, which places emphasis on the consideration of policy and avoids personalization of comments. Some guidelines utilized by the City Council include:

1. Discussion should focus on policy matters
2. Personal criticism of members is inappropriate
3. Proper decorum should be displayed as other members express their views
4. Treat members of the public equally, applying rules in a fair and consistent manner

Enforcement of Order: The Police Chief or his designee acts as the Sergeant-At-Arms. Any Council Member may request the presiding officer to enforce the rules of protocol. Upon motion and majority vote, the presiding officer shall be required to do so.

Open Meeting Laws ("The Brown Act")

Operations and procedures of the City and City Council incorporate requirements of the state's open meeting law (commonly referred to as the Brown Act). Because this law is such an important part of local government operations, some specific requirements of the law are highlighted below.

Applicability and Penalties: The entire city organization conducts its business in compliance with the Ralph M. Brown Act, State Government Code Section 54950. The intent of the Act is to ensure that deliberation and actions of local public agencies are conducted in open and at public meetings.

- A. **Applicability:** The Act applies to Council and all commissions, boards and Council appointed subcommittees (except if comprised entirely of two Council Members) and task forces that advise Council. Staff cannot promote actions that would violate the Act.
- B. **Meetings:** All meetings shall be open and public. A City Council meeting takes place whenever a quorum (3 or more members) is present and information about the business of the body is received; discussions qualify as a meeting. Social functions (e.g., receptions, dinners) do not fall under the Act unless city business is discussed.

Serial meetings take place when any member of Council or city staff contact more than two Council Members for the purpose of deliberating or acting upon an item pending before the City Council. This restriction does not apply to the public or media who may contact Council Members. Correspondence that merely takes a position on an issue is acceptable. Note that the Brown Act applies to City Council Members immediately after their election and prior to their swearing-in ceremony.

- C. **Agendas:** Agendas for regular meetings must be posted 72 hours in advance of the meeting and must meet various requirements.
- D. **Actions:** No action can be taken on any item not appearing on the posted agenda.

Exceptions: 1) An emergency situation exists (determined by a majority of the Council).
2) The need to take action arose subsequent to the agenda being posted and there is a need for immediate action (determined by 2/3 vote of the Council; or if less than 2/3 are

present, by unanimous vote). 3) The item was continued to another meeting that was scheduled and posted within 5 days of the original agenda.

- E. Public Input: The public, by law, has an opportunity to address the Council on any item of interest to the public that is within the jurisdiction of the Council, at the time the matter is heard. The Mayor has the right to establish a time limit on speakers and the total time allocated for a particular issue. Three minutes per speaker has been standard, but in unusual cases either shorter or longer time periods may be established by the Mayor or the Council.
- F. Public Disruptions: A portion or all of the public may be removed if willful disruption makes conducting the meeting "unfeasible"; the press may remain unless they participate in the disruption.
- G. Correspondence: All writings distributed for discussion or consideration at a public meeting are public records.
- H. Special Meetings: Special meetings may be called by the Mayor or a majority of the Council with strict notification requirements for delivery to the media and Council 24 hours before the time of the meeting.
- I. Emergency Meetings: Emergency meetings may be called without notification due to the disruption or threatened disruption of public facilities. Only work stoppages or crippling disasters that impair the public health and/or safety qualify for emergency meetings.
- J. Other Provisions: The Act provides many other restrictions and requirements; this chapter is intended merely as a Council summary and overview of the Act, and nothing in this Chapter supersedes the provisions of the Brown Act. Please check with the City Attorney and/or the City Clerk for more information.

Council Communications

Overview

Perhaps the most fundamental role of a Council Member is communication—communication with the public to assess community opinions and needs—communication with staff to provide policy direction and to gain an understanding of the implications of various policy alternatives. Because the City Council performs as a body (that is, acting based on the will of the majority as opposed to individuals), it is important that general guidelines be understood when speaking as a Council Member. Equally important, when members are expressing personal views and not those of the Council, the public should be so advised.

Correspondence from Council Members

Members of the City Council may occasionally be called upon to write letters to citizens, businesses or other public agencies. Typically, the Mayor will be charged with transmitting the City's position on policy matters to outside agencies on behalf of the City Council. Correspondence sent on behalf of the Council is placed on official City letterhead and is signed by the Mayor or City Manager. Individual members of Council may prepare letters to constituents in response to inquiries or to provide requested information. Individualized City Council Member letterhead is available for this purpose, and staff can assist in the preparation of such correspondence. Council Members are required to place on file and to provide copies upon request of any correspondence sent on City letterhead.

On occasion, members may wish to transmit correspondence on an issue upon which the Council has yet to take a position or about an issue for which the Council has no position. In these circumstances, members should use their personalized letterhead and clearly indicate within letters that they are not speaking for the City Council as a whole, but for themselves as one member of Council.

After the City Council has taken a position on an issue, official correspondence should reflect this position. While members who may disagree with a position are free to prepare correspondence on such issues as private citizens, City letterhead, official Council title, and staff support should not be utilized in order to avoid confusion. In addition, City letterhead and staff support cannot be utilized for personal or political purposes.

Council Members may be asked to prepare letters of recommendation for students and others seeking appointment. It is appropriate for individual Council Members to utilize City letterhead and their Council titles for such letters. No review by the full Council is required, however, copies will be kept on file.

Speaking for “the City”

Similar to written correspondence, when members are requested to speak to groups or are asked the Council's position on an issue, the response should reflect the position of the Council as a whole. Of course, a member may clarify their vote on a matter by stating, for example, “While I voted against “X”, the City Council voted in support of it.” When representing the City

at meetings or other venues, it is important that those in attendance gain an understanding of the City Council's position rather than that of an individual member.

When dealing with members of the media, it is usually the Mayor who represents the position and interest of the City Council. When the City Manager or Department Heads are contacted, they too will refer the media first to the Mayor for comment. Similarly, when the City issues a Press Release, the Mayor is consulted in terms of any Council Member quotes or references. The City Manager decides whether staff are available to respond to media requests directly or not.

Local Ballot Measures

At times measures that affect City Council policy may be placed on the ballot. There are restrictions regarding what actions a City Council or individual Members may take on ballot measures. Guidelines as to what is permissible are available from the City Clerk or City Attorney upon request.

State Legislation, Propositions

The City has been a member of the League of California Cities for many years. In addition, the City has a representative on the City/County Association of Governments (C/CAG). Both of these groups actively track legislation at the state level. Either through the advisories received from these two organizations or as a result of City staff following key legislative bills of importance to the City, the Council is at times requested to take a position or an action on pending state legislation. Unless Council has previously acted on a similar bill in the recent past, in which the City's position is clear, the Council has a practice of requiring analysis and discussion of bills prior to taking an official position. The analysis includes a summary of the legislation's purpose and a listing of those entities both in support of and against the proposed legislation. As a framework for screening bills that are pending to determine if the City should weigh in, Appendix B serves as a Legislative Policy Guide, with the explicit understanding that the City will express itself on legislation dealing with issues that will directly effect its financial stability or effective operation, and that the City may enter into alliances with other entities to promote common goals.

Proclamations

Ceremonial proclamations are often requested of the City in recognition of an event or individual. Proclamations are not statements of policy but a manner in which the city can make special recognition of an event (e.g., Recycling Week) or individual. As part of his/her ceremonial responsibilities, the Mayor is charged with administration of proclamations. Individual Council Members do not issue proclamations. Proclamations can be sent to the requestor or presented at a City Council meeting as arranged with the requesting body and at the Mayor's discretion.

Interaction with City Staff

Overview

City Council policy is implemented on a daily basis through staff. Therefore, it is critical that the relationship between Council and staff be well understood by all parties so that policies and programs may be implemented successfully. The City of Menlo Park has a long tradition of positive relationships between members of the City Council and staff. To maintain these effective relationships it is important that roles are clearly recognized.

Council-Manager Form of Government

Like most California cities, Menlo Park has adopted a City Council-City Manager form of government. The Council appoints a City Manager to implement policy, enforce its laws, to direct the daily operations of city government, and to prepare and monitor the municipal budget. The Municipal Code specifies roles and responsibilities and requires that Council Members work through the City Manager in dealing with City staff unless simply requesting information from department heads or other staff members. The City Manager is responsible to the City Council as a body rather than to individual Council Members.

Council-Manager Relationship

The employment relationship between the City Council and City Manager reflects the fact that the City Manager is the chief executive officer of the City. The City Manager has an employment agreement with the City Council. Regular communication between the City Council and City Manager is important in maintaining effective interpersonal relations. All dealings with the City Manager, whether in public or private, should be consistent with the authority of the City Manager in administrative and personnel matters. Council Members should avoid situations that can result in City staff being directed, intentionally or unintentionally, by one or more members of the City Council. Further, Council Members should avoid involving themselves in matters regarding individual City employees or related affairs.

The City Council evaluates the City Manager's performance on a regular basis to ensure that both the City Council and City Manager are in agreement about organizational performance and priority goals that are based on mutual trust and common objectives.

As in any professional relationship, it is important that the City Manager keep the City Council informed. The City Manager respects that the final responsibility for establishing the policy direction of the City is held by the City Council. The City Manager communicates with City Council in various ways. In addition to the formal Council meetings, there are periodic briefing meetings with individual Council members and written memoranda and email. Communication must be undertaken in such a way that all Council Members are treated similarly and kept equally informed. It is also important that the Council provide ongoing feedback, information and perceptions to the City Manager including responses to written communications and surveys requesting feedback.

City Manager Code of Ethics

The City Manager is subject to a professional code of ethics that binds the City Manager to certain practices that are designed to ensure his or her actions are in support of the City's best

interests. Violations of such standards can result in censure. Appendix D is a copy of the City Manager's Code Of Ethics.

City Council-City Attorney Relationship

The City Attorney is the legal advisor for the Council, City Manager and departments. The general legal responsibilities of the City Attorney are to: 1) provide legal assistance necessary for formulation and implementation of legislative policies and projects; 2) represent the City's interest, as determined by the City Council, in litigation, administrative hearings, negotiations and similar proceedings; 3) prepare ordinances, resolutions, contracts and other legal documents to best reflect and implement the purposes for which they are prepared; and 4) keep City Council and staff apprised of court rulings and legislation affecting the legal interest of the City. It is important to note that the City Attorney does not represent individual members of Council, but the City Council as a whole.

Roles and Information Flow

Objectives: It is the intent of staff to ensure Council members have free and easy access to information from the City and to ensure that such information is communicated completely, with candor and without bias. Individual Council Members may not intervene in staff decision-making, the development of staff recommendations, scheduling of work, or executing department priorities without the prior knowledge and approval of the City Council as a whole. This is necessary to protect staff from undue influence and pressure from individual Council Members, and to allow staff to execute the priorities given by management and the Council as a whole without fear of reprisal.

Council roles: The full City Council retains power to accept, reject, amend, influence, or otherwise guide and direct staff actions, decisions, recommendations, service levels, work loads and schedules, departmental priorities, and the performance of City business. If a Council Member wishes to influence the actions, decisions, recommendations, workloads, work schedule, and priorities of staff, that member must prevail upon the Council to do so as a matter of Council policy.

Should a Council Member become dissatisfied about a department, he/she should always talk it over with the City Manager and/or the Assistant City Manager, not the department head. Concerns about a department head must be taken to the City Manager only.

Access to Information: Individual Council Members as well as the Council as a whole shall receive the full cooperation and candor of staff in being provided with any requested information. The City Manager or appropriate staff will inform council when a critical or unusual event occurs about which the public would be concerned.

To assist the City Manager in his ability to monitor the flow of information, requests for information are best tracked if submitted in writing, either in memorandum form or through email. And to ensure proper responsiveness, Council Members are asked to "cc" both the department head and the City Manager on all correspondence with staff. Staff further encourages Council Members and constituents to utilize the "Menlo Park Direct Connect" web-based system that is accessed via the home page of the City's website.

There are limited restrictions when information cannot be provided. Draft documents (e.g., staff reports in progress, administrative draft EIRs) under review are not available for release until complete and after review by city management. In addition, there are legal restrictions on the City's ability to release certain personnel information even to members of the City Council. Certain aspects of Police Department affairs (access to restricted or confidential information related to crimes) may not be available to members of the Council.

City Council Members have a responsibility in this information flow as well. It is critical that they make use of staff reports and commission minutes. Council Members should come to meetings well prepared – having read staff reports and attachments, and requesting in advance any necessary and available information from staff. If a Council Member has questions on an agenda item, that member should preferably contact staff prior to the meeting in order to allow staff time to research a response for the meeting.

Staff roles: The Council recognizes the primary functions of staff as serving the community, executing Council policy and actions and in keeping the Council informed. Staff is obligated to take guidance and direction only from the Council as a whole or from the appropriate management supervisors. Staff is directed to report to the City Manager any attempts by individual members of the Council to unduly direct or otherwise pressure them into making, changing or otherwise influencing recommendations.

City staff will make every effort to respond in a timely and professional manner to all requests made by individual Council Members for information or assistance; provided that, in the judgment of the City Manager, the request is not of a magnitude, either in terms of workload or policy, which would require that it would be more appropriately assigned to staff through the direction of the full City Council. If a request by an individual Council Member is determined by the City Manager to take one hour or more of staff time to complete, that request may be included on the formal Council agenda for full Council discussion.

Dissemination of Information

In cases where a staff response to an individual Council Member request involves written materials that may be of interest to other Council Members, the City Manager will provide copies of the material to all other Council Members. In making this judgment, the City Manager will consider whether the information is significant, new, otherwise not available to the Council or of interest to the Council.

Magnitude of Information Request

Any information, service-related request, or revised policy position perceived as necessary by individual Council Members, and that cannot be fulfilled based on the above guidelines, should be submitted by the individual Council Member in writing to the Council as a whole. When raised at a Council meeting, the full Council can decide whether and when to agendaize the request for further consideration. The City Manager will seek necessary clarification as to whether the Council desires staff research or a report prepared; and, if so, the relative priority that should be given to such a request in light of other priorities and potential workload impacts.

Staff Relationship with Advisory Bodies

Staff support and assistance is typically provided to commissions and task forces. However, advisory bodies do not have authority over City employees. While staff may work closely with

advisory bodies, staff members remain responsible to their immediate supervisors and ultimately the City Manager and City Council. The members of the commission/ board/committee are responsible for the functions of the advisory body, and the chairperson is responsible for committee compliance with City policies and practices as outlined in the Commission Handbook.

Staff support often includes preparation of an agenda and its posting in compliance with the Brown Act. Staff may also prepare reports providing background on the issue, alternatives, a recommendation, and appropriate backup materials, if necessary. Advisory body members should have sufficient information to reach decisions based upon a clear explanation of the issues. The assigned staff person may serve as secretary, taking minutes as needed. Staff members are to assist the advisory body chair to ensure appropriate compliance with state and local laws and regulations.

It is important that advisory bodies wishing to communicate recommendations to the City Council do so through approved Council agenda procedures. In addition, if a commission wishes to correspond with an outside agency, that correspondence will be prepared by staff for review by the City Manager and possible approval by the City Council. Individuals who would like staff to perform research or for the commission to review a particular issue must gain the approval for such a request from the full City Council before any work is planned or done. The annual work plan for the City's commissions is determined by the City Council at its priority-setting that precedes the adoption of the fiscal year budget.

Restrictions on Political Involvement by Staff

Local governments are non-partisan entities. Professional staff, as reflected within the principles of the Council-Manager form of government, formulates recommendations in compliance with Council policy and for the good of the community and is not influenced by political factors. For this reason, it is very important to understand the restrictions of staff in any level of political involvement through campaigns, fund-raisers, or other means.

By working for the City, staff members do not surrender rights to be involved in local elections. Indeed, laws are in place to preserve those rights. However, there are limitations to such involvement. Different restrictions apply to management and to general employees.

General employees have no restrictions while off the job. No participation in campaigns or other activities may take place while on the job. No City resources may be used by staff in support of any campaign. Even while off the job, no employee may participate in campaign or other activities in a City uniform. For example, posing for a promotional photograph for a candidate for local office while in uniform is inappropriate. The support of the City Council in these matters is requested. A Council Member asking staff to sign petitions or similar items can similarly create an awkward situation.

For management staff, the City Manager strongly discourages any involvement in a local campaign even while on personal time. Such involvement could erode the tenet that staff is to provide an equal level of service to all members of the City Council. The City Manager specifically prohibits any political involvement in local campaigns by department heads.

Support Provided to City Council

Staff Support

General administrative support to members of the City Council is provided through the City Manager's Office. Secretarial services including scheduling of appointments, receipt of telephone messages, and word processing are available as needed. In addition to supporting the five City Council members, the two administrative support staff members also assist the City Manager, Assistant City Manager, City Clerk and Business Development Manager. Sensitivity to the workload of support staff members in the City Manager's Office is appreciated. Should requested tasks require significant time commitments, prior consultation with the City Manager is requested.

Office Equipment

To enhance Council Members' ability to communicate with staff and the public, the City Council office is equipped with a computer and telephones with voicemail. The Council can also receive and send faxes.

Council Members may be connected from their home to the City's computer network. Information Services staff will provide initial assistance in setting up necessary software and hardware. While staff will maintain those computer applications related to City affairs, staff cannot provide assistance for personal computer applications. When individual Council Members have completed their term of office, any installed software and external modems must be returned to the City.

These technologies facilitate efficient communication by Council Members. However, their use also raises important legal issues to which Council Members must pay special attention. First, the Brown Act prohibits members from using "technological devices" to develop a concurrence by a majority regarding an action to be taken by the Council. "Technological devices" under the Brown Act include phones, faxes, computer email, public access cable TV and video. Council Members should not use e-mail, faxes or phones for communicating with other Council Members in order to develop a majority position on any particular issue that may come before the full Council. Particular caution is advised when using or responding to email received via the "CCIN" feature on the City's website and email directory. Correspondence sent using CCIN automatically goes to all five Council Members, certain staff and to the local newspapers.

Second, be aware that most emails sent by Council Members probably are public records under the Public Records Act. Even though it does not create paper, sending email is more similar to mailing a letter than placing a telephone call. The information in the email is stored on the computer network until deleted, and may continue to exist on the network's back-up systems even after being deleted. As a result, emails can become records of the City maintained in the course of business, and thus available for public disclosure under the Public Records Act.

Finally, the City's email system is intended for the conduct of official business, and not for political reasons. See CHAPTER 8 for a detailed discussion on the prohibition against using City property and funds for personal or political purposes.

Meeting Rooms

An office is available adjacent to the City Manager's Office for shared use by members of the City Council. Council Members can also reserve larger meeting space for use by contacting the City Manager's Office staff.

Mail, Deliveries

Members of the City Council receive a large volume of mail and other materials from the public, private interests and staff. The City Manager's Office staff maintains a mailbox for each member. Meeting agenda materials are available for pick up Thursday evenings at 5:30pm and are posted on the City's website. Members are encouraged to return unwanted reports and documents to staff for distribution to the public or for recycling.

Financial Matters

Council Compensation

State law and the Municipal Code provide for modest compensation to members of the City Council. State law limits an increase in City Council salaries to 5% per year, effective only following the next election after adoption. Currently, Council Members receive a stipend of \$640 per month. Council Members are also eligible for participation in group insurance benefits including retirement, medical, dental, vision, and life insurance plans available at the level provided to management employees.

Expenditure Allowance

The annual city budget includes limited funding for members to undertake official City business. Eligible expenses include travel for attendance at conferences or educational seminars, and the purchase of publications and annual subscriptions. Travel expense reimbursement for meals does not allow reimbursement for alcohol. Donations to organizations are not eligible nor are meals for individuals other than Council Members. Available funds are disbursed on a first come first served basis, with the Mayor and City Manager monitoring expenses during the year. Appendix D includes a copy of #CC-91-0002 pertaining to travel and meeting expenses.

Expenditure Guidelines

It is important to note that any expense must be related to City affairs. Public property and funds may not be used for any private or personal purpose. Courts have ruled that this prohibition includes personal political purposes. For example, reimbursement could not be allowed to pay for meals at a meeting designed to discuss political or campaign strategies. It is also inappropriate for City funds to pay for a meal or other expenses of a private citizen.

City budgetary practices and accounting controls apply to expenditures within the City Council budget. Reimbursement requests should be made through the City Manager's Office monthly with receipts. Expenditure records are public information. Questions arising as to the proper application or interpretation of the adopted policy will result in the City Manager conferring with the Mayor.

Conflicts & Liability

Conflict of Interest

State laws are in place to prevent an action by a Council Member that would or may constitute a conflict of interest. The purpose of such laws and regulations is to ensure that all actions are taken in the public interest. At any time a Member believes a potential for conflict of interest exists, he/she is encouraged to consult with the City Attorney or private legal counsel for advice. Staff may also request an opinion from the City Attorney regarding a member's potential conflict. Laws that regulate conflicts are very complicated. Violations may result in significant penalties including criminal prosecution.

There are two primary laws that govern conflicts of interest for public officials in California - the Political Reform Act and Government Code §1090. In general terms, the Political Reform Act prohibits a public official from having a financial interest in a decision before the official; §1090 prohibits a public official from having an interest in government contracts.

The Political Reform Act prohibits public officials from making, participating in, or in any way attempting to use their official position to influence a governmental decision in which they know, or have reason to know, that they have a financial interest. Therefore, if a public official has a conflict of interest, the official must disqualify himself or herself from acting on or participating in the decision before the City. Once a year Council Members and certain staff are required to file statements of economic interests.

Government Code §1090 is similar to the Political Reform Act, but applies only to City contracts in which a public official has a financial interest. The financial interests covered by §1090 are different from those in the Political Reform Act. A Member having an interest in a contract may preclude the City from entering into the contract at all. In addition, the penalties for violating §1090 are severe. If a Council Member believes that he or she may have any financial interest in a contract that will be before the Council, the Member should immediately seek advice from the City Attorney or the Member's personal attorney.

There are a number of other restrictions placed on Council actions that are highlighted in the League of California Cities' *Guide*. Such restrictions include prohibitions on secrecy and discrimination as well as assurance that all city funds are spent for public purposes. Violations of these restrictions may result in personal liability for individual Council Members.

City Attorney Advice

The City Attorney has an affirmative duty to protect the City and City Council from conflicts of interest wherever possible. It is critical to note that while the City Attorney can render advice on the interpretation of State laws and regulations on conflict matters, such advice is solely an interpretation of the law. The only authority that can provide binding interpretations on such matters is the State Fair Political Practices Commission (FPPC). Members or the full Council may also solicit opinions on such matters directly from the FPPC; however, such opinions often take time to develop and may not readily respond to urgent matters. It is important to note that

the City Attorney does not represent individual members of Council, but the City Council as a whole.

Conflict of Interest Forms

Annual disclosure statements are required of all Council members, designated commissioners and senior staff which indicate potential conflicts of interest including sources of income, ownership of property and receipt of loans and gifts. Council Members and the City Manager often serve on the governing board of other agencies as a result of their positions. These agencies also require submittal of disclosure forms. These forms require information including income, loans, receipt of gifts, and interest in real property among other items.

Liability

The City is a large institution offering a variety of services and may occasionally find itself subject to legal actions through lawsuits. For example, those involved in automobile accidents sometimes choose to take actions against a City since the accident occurred on a City roadway. The City must always approach its responsibilities in a manner that reduces risk to all involved; however, with such a wide variety of high-profile services all risk cannot be eliminated. The City belongs to an agency with other governments to manage insurance and risk activities.

It is important to note that violations of certain laws and regulations by individual members of the City Council may result in that member's being personally liable for damages which would not be covered by the City's insurance. Examples may include discrimination, harassment or fraud.

Additional Training & Resource Materials

League of California Cities

The League is an association of virtually all cities in California. It provides many services including the production of educational conferences for local officials, publication of various newsletters and the monthly magazine *Western City*. The League has lobbyists on staff to represent the interest of cities before the state legislature and federal government and supports committees having local officials as members that are organized to address issues as they arise. The League has an Internet web site at www.cacities.org. The City of Menlo Park participates in League activities through the Peninsula Division.

Local Government Commission

The Commission is a California-based organization that focuses largely on planning and resource conservation issues. It conducts workshops, offers periodic seminars, and publishes newsletters.

International City/County Management Association (ICMA)

ICMA is a professional association of local government chief executives/city managers. The association has an extensive list of publications to assist local officials.

Other Reference Material Available

The Brown Act - Open Meetings for Local Legislative Bodies

Report on City Participation in Ballot Measure Campaigns

A Guide to the Political Reform Act

Elected Officials Handbooks:

Setting Goals for Action: An Overview of Policy Development

Building a Policy-Making Team

Setting Policies for Service Delivery

Pursuing Personal Effectiveness

City of Menlo Park Municipal Code

APPENDIX A – Reference Guide to Motions

Type of Motion	Second Required	Debatable	Amendable	Priority Over Pending Motion	Reconsidered	Interrupt Speaker
Adjourn	Y	n/a	n/a	Y	n/a	n/a
Amend or Substitute ¹	Y	Y	Y	Y	Y	n/a
Appeal	Y	Y	n/a	n/a	Y	Y
Call the Question ⁷	Y	n/a	n/a	Y	n/a	n/a
Take Up New Business Past 12 pm ⁸	Y	Y	n/a	Y	n/a	n/a
Limit Debate	Y	n/a	Y	Y	Y	n/a
Main Motion	Y	Y	Y	Except "table"	Y	n/a
Nominations	n/a	Y	n/a	n/a	n/a	n/a
Personal Privilege or Point or Order	n/a	n/a	n/a	Y	Y	Y
Postpone to Time Certain	Y	Y	Y	Y	Y	n/a
Previous Question	Y	n/a	n/a	Y	Y	n/a
Recess or Adjourn to Time Certain	Y	Y	Y	n/a	n/a	n/a
Reconsider	Y ²	Y ³	n/a	n/a	n/a	⁴
Table or Take From Table	Y	n/a	n/a	Y ⁵	n/a	n/a
Take up Out of Order	Y	n/a	n/a	n/a	n/a	n/a
Withdraw a Motion ⁶	n/a	n/a	n/a	Y	Y	Y

"Y" indicates that this action can be taken, is necessary, is required, is permitted or is applicable
 "n/a" indicates that this action cannot be taken, is unnecessary or is inapplicable

- ¹ Limit of three substitute motions.
- ² May only be made by a person who voted on prevailing side; not applicable to "table" motions. Must be made within two meetings of original action.
- ³ If prior motion was debatable.
- ⁴ Except for request for later action.
- ⁵ Highest subsidiary motion – takes precedence over all motions except adjourn and privilege.
- ⁶ Must be voted unless there is no objection.
- ⁷ Requires 4/5 vote.
- ⁸ Requires ¾ vote taken by 11:00 p.m. to extend beyond midnight.

APPENDIX B

LEGISLATIVE POLICY GUIDE

The City Council of Menlo Park believes:

- *In conducting the business of government with openness, respect, and civility, and including the involvement of all stakeholders in establishing goals and in solving problems.*
- *The vitality of cities is dependent upon their fiscal stability and local autonomy, and that local self-governance is the cornerstone of democracy.*

Therefore:

- The City supports legislation that reflects the need to conduct the public's business in public.
- The City opposes legislation that mandates costly and unnecessary procedures.
- The City supports the use of the general plan as a guide to meeting community planning needs, and opposes mandatory review or approval by another level of government and legislation that restricts the land use authority of cities.
- The City emphasizes efficiency and effectiveness to achieve the best possible use of city resources and believes the state should implement fiscal and legislative reforms in order to allow local government to adequately finance its service responsibilities, with accountability to the taxpayers for its programs.
- The City supports additional funding for local transportation and other critical unmet infrastructure needs and enhanced autonomy for local transportation decision-making.
- The City supports strategic alliances with counties, schools, other cities and local agencies, nonprofit and civic organizations and business and professional associations.

September 2005

ATTACHMENT D:

Sample Codes of Conduct/Guidelines from the
City of Sunnyvale and the Mountain House
Community Services District



City of Sunnyvale

2011 Code of Ethics and Conduct for Elected and Appointed Officials

"Conduct is three-fourths of our life and its largest concern."

-- Matthew Arnold

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For ease of reference in the Code of Ethics and Conduct, the term "member" refers to any member of the Sunnyvale City Council or the City's boards and commissions established by the City Charter, City Ordinance or Council policy.

Policy Purpose

The Sunnyvale City Council has adopted a Code of Ethics and Conduct for members of the City Council and the City's boards and commissions to assure public confidence in the integrity of local government and its effective and fair operation.

A. ETHICS

The citizens and businesses of Sunnyvale are entitled to have fair, ethical and accountable local government which has earned the public's full confidence for integrity. In keeping with the City of Sunnyvale Commitment to Excellence, the effective functioning of democratic government therefore requires that:

- public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government;
- public officials be independent, impartial and fair in their judgment and actions;
- public office be used for the public good, not for personal gain; and
- public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Sunnyvale City Council has adopted a Code of Ethics and Conduct for members of the City Council and of the City's boards and commissions to assure public confidence in the integrity of local government and its effective and fair operation. The Ethics section of the City's Code of Ethics and Conduct provides guidance on ethical issues and questions of right and wrong.

1. Act in the Public Interest. Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of Sunnyvale and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the Sunnyvale City Council, boards and commissions.
2. Comply with both the spirit and the letter of the Law and City Policy. Members shall comply with the laws of the nation, the State of California and the City of Sunnyvale in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; the Sunnyvale City Charter; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.
3. Conduct of Members. The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, boards and commissions, the staff or public.
4. Respect for Process. Members shall perform their duties in accordance with the processes and rules of order established by the City Council and board and commissions governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council by City staff.
5. Conduct of Public Meetings. Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

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6. Decisions Based on Merit. Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.
7. Communication. Members shall publicly disclose substantive information that is relevant to a matter under consideration by the Council or boards and commissions, which they may have received from sources outside of the public decision-making process.
8. Conflict of Interest. In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest, or where they have an organizational responsibility or personal relationship which may give the appearance of a conflict of interest. In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts; and they shall abstain from participating in deliberations and decision-making where conflicts may exist.
9. Gifts and Favors. Members shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, that are not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgment or action or give the appearance of being compromised.
10. Confidential Information. Members shall respect the confidentiality of information concerning the property, personnel or affairs of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.
11. Use of Public Resources. Members shall not use public resources not available to the public in general, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.
12. Representation of Private Interests. In keeping with their role as stewards of the public interest, members of Council shall not appear on behalf of the private interests of third parties before the Council or any board, commission or proceeding of the City, nor shall members of boards and commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.
13. Advocacy. Members shall represent the official policies or positions of the City Council, board or commission to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Sunnyvale, nor will they allow the inference that they do. Councilmembers and board and commission members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention or display endorsements during Council meetings, board/commission meetings, or other official City meetings.
14. Policy Role of Members. Members shall respect and adhere to the council-manager structure of Sunnyvale City government as outlined by the Sunnyvale City Charter. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, boards and commissions, and City staff. Except as provided by the City Charter, members therefore shall not interfere with the administrative functions of the City or the professional duties of City staff; nor shall they impair the ability of staff to implement Council policy decisions.

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15. Independence of boards and commissions. Because of the value of the independent advice of boards and commissions to the public decision-making process, members of Council shall refrain from using their position to unduly influence the deliberations or outcomes of board and commission proceedings.
16. Positive Work Place Environment. Members shall support the maintenance of a positive and constructive work place environment for City employees and for citizens and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

B. CONDUCT

The Conduct section of the City's Code of Ethics and Conduct is designed to describe the manner in which Councilmembers and board and commission members should treat one another, City staff, constituents, and others they come into contact with in representing the City of Sunnyvale. It reflects the work of a Council Policy and Protocol Subcommittee that was charged with defining more clearly the behavior, manners, and courtesies that are suitable for various occasions. The Subcommittee also considered a wide variety of policy changes and clarifications designed to make public meetings and the process of governance run more smoothly.

The constant and consistent theme through all of the conduct guidelines is "respect." Councilmembers experience huge workloads and tremendous stress in making decisions that could impact thousands of lives. Despite these pressures, elected and appointed officials are called upon to exhibit appropriate behavior at all times. Demonstrating respect for each individual through words and actions is the touchstone that can help guide Councilmembers and board and commission members to do the right thing in even the most difficult situations.

1. Elected and Appointed Officials' Conduct with One Another

"In life, courtesy and self-possession, and in the arts, style, are the sensible impressions of the free mind, for both arise out of a deliberate shaping of all things and from never being swept away, whatever the emotion, into confusion or dullness."

-- William Butler Yeats

Elected and appointed officials are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even though individuals may "agree to disagree" on contentious issues.

1(a). In Public Meetings

Use formal titles

Elected and appointed officials should refer to one another formally during public meetings, such as Mayor, Vice Mayor, Chair, Commissioner or Councilmember followed by the individual's last name.

Practice civility and decorum in discussions and debate

Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, public officials to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated.

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Honor the role of the chair in maintaining order

It is the responsibility of the chair to keep the comments of members on track during public meetings. Members should honor efforts by the chair to focus discussion on current agenda items. If there is disagreement about the agenda or the chair's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.

Avoid personal comments that could offend other members

If a member is personally offended by the remarks of another member, the offended member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other member to justify or apologize for the language used. The chair will maintain control of this discussion.

Demonstrate effective problem-solving approaches

Members have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

Outside of official board or commission meetings, individual board and commission members are not authorized to represent the City or their board or commission unless specifically designated by the Council or the board or commission to do so for a particular purpose. In private settings, board and commission members may communicate at any time and on any subject with individual members of the City Council, and may express to them individual viewpoints and opinions. In public, however, all members shall represent the official policies or positions of their board or commission, with the following exception. During a Council public hearing on any item addressed by the board or commission, any member may speak under standard time limits, but shall indicate whether their testimony represents an official position (majority opinion) or a minority opinion of the board/commission to which they belong. The chair shall represent the majority view of the board or commission, but may report on any minority views as well, including his or her own. When an official board or commission position differs from staff's recommendation on a particular policy issue, then at the Mayor's discretion additional time may be provided to the chair of the board or commission (or his/her designee) to explain the position of the board/commission or to rebut statements made by staff or the public. If new information is brought to light during a public hearing which was not shared previously with the board or commission, the Mayor may allow the board or commission chair to respond. If the Council deems the new information sufficient to warrant additional study, then by majority vote Council may remand the issue back to the board or commission for further study prior to taking other action itself.

Individual opinions and positions may be expressed by board and commission members regarding items that have not come before the particular board/commission to which they belong. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Sunnyvale, nor will they allow the inference that they do.

Although a board or commission may disagree with the final decision the Council makes, the board or commission shall not act in any manner contrary to the established policy adopted by the Council.

1(b). In Private Encounters

Continue respectful behavior in private

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

Be aware of the insecurity of written notes, voicemail messages, and E-mail

Technology allows words written or said without much forethought to be distributed wide and far. Would you feel comfortable to have this note faxed to others? How would you feel if this voicemail message were

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played on a speaker phone in a full office? What would happen if this E-mail message were forwarded to others? Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

Even private conversations can have a public presence

Elected and appointed officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted.

In private, board and commission members may communicate at any time and on any subject with the City Council, and may express to Council individual viewpoints and opinions.

2. Elected and Appointed Officials' Conduct with City Staff

*"Never let a problem become an excuse."
-- Robert Schuller*

Governance of a City relies on the cooperative efforts of elected officials, who set policy, appointed officials who advise the elected, and City staff who implements and administers the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

Treat all staff as professionals

Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.

Member questions/inquiries to City staff

1. **General**. Council and board/commission communications with City staff should be limited to normal City business hours unless the circumstances warrant otherwise. Responses to Council questions posed outside of normal business hours should be expected no earlier than the next business day.
2. **Routine Requests for Information and Inquiries**. Members may contact staff directly for information made readily available to the general public on a regular basis (e.g., "What are the library's hours of operation?" or "How does one reserve a tee time at the golf course?"). Under these circumstances staff shall treat the member no differently than they would the general public, and the member shall not use their elected status to secure preferential treatment. The city manager does not need to be advised of such contacts.
3. **Non-Routine Requests for Readily Available Information**. Members may also contact staff directly for easily retrievable information not routinely requested by the general public so long as it does not require staff to discuss the issue or express an opinion (e.g., "How many traffic lights are there in the City?" or "Under what circumstances does the City lower its flags to half mast?")
4. **Non-Routine Requests Requiring Special Effort**. Any member request or inquiry that requires staff to compile information that is not readily available or easily retrievable and/or that requests staff to express an opinion (legal or otherwise) must be directed to the city manager, or to the city attorney, as appropriate (e.g., "How many Study Issues completed over the past five years have required 500 or more hours of staff time?", or "What is the logic behind the City's sign ordinances affecting businesses along El Camino Real?"). The city manager (or city attorney as appropriate) shall be responsible for

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distributing such requests to his/her staff for follow-up. Responses to such requests shall be copied to all Councilmembers (if originating from a Councilmember), relevant board or commission members (if originating from a board or commission member), the city manager, the city attorney as appropriate and affected department directors.

5. Meeting Requests. Any member request for a meeting with staff must be directed to the city manager or city attorney, as appropriate.
6. Public Safety Restrictions. Under certain circumstances, requests for information regarding operations or personnel of the Department of Public Safety may be legally restricted. Applicable statutes include: The Peace Officers' Procedural Bill of Rights (California Government Code Section 3300, et seq.), Confidentiality of Peace Officer Records (California Penal Code Section 832.5-7), and a number of exceptions to the California Public Records Act, defined in Government Code Section 6254. Providing information in response to such requests could violate the law, and might also violate due process rights that have been defined for peace officers in the State of California. Accordingly, it shall be the policy of the City of Sunnyvale to strictly comply with all applicable legal authorities governing the release of Department of Public Safety information and records.

Do not disrupt City staff from their jobs

Elected and appointed officials should not disrupt City staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met. Do not attend City staff meetings unless requested by staff – even if the elected or appointed official does not say anything, his or her presence implies support, shows partiality, intimidates staff, and hampers staff's ability to do their job objectively.

Never publicly criticize an individual employee

Elected and appointed officials should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the city manager through private correspondence or conversation. Comments about staff in the office of the city attorney should be made directly to the city attorney. Appointed officials should make their comments regarding staff to the city manager or the Mayor.

Do not get involved in administrative functions

Elected and appointed officials must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits. [See Code of Ethics] The Sunnyvale City Charter, Section 807, also contains information about the prohibition of Council interference in administrative functions.

Check with City staff on correspondence before taking action

Before sending correspondence, Councilmembers should check with City staff to see if an official City response has already been sent or is in progress. Board and commission members shall not send correspondence except as authorized under the City's policies governing volunteers. (Council Policy 7.2.19, Boards and Commissions.)

Limit requests for staff support

Routine secretarial support will be provided to all Councilmembers. The Council Executive Assistant opens all mail for Councilmembers, unless a Councilmember requests other arrangements. Mail addressed to the Mayor is reviewed first by the city manager who notes suggested action and/or follow-up items.

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Requests for additional staff support – even in high priority or emergency situations – should be made to the city manager who is responsible for allocating City resources in order to maintain a professional, well-run City government.

Do not solicit political support from staff

Elected and appointed officials should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

3. Elected and Appointed Officials' Conduct with the Public

"If a man be gracious and courteous to strangers, it shows he is a citizen of the world, and that his heart is no island cut off from other lands, but a continent that joins to them."

-- Francis Bacon

3(a). In Public Meetings

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

Be welcoming to speakers and treat them with care and gentleness. While questions of clarification may be asked, the official's primary role during public testimony is to listen.

"I give many public presentations so standing up in front of a group and using a microphone is not new to me. But I found that speaking in front of Council was an entirely different experience. I was incredibly nervous and my voice was shaking. I think the reason was because the issue was so personal to me. The Council was going to take a vote that would affect my family's daily life and my home. I was feeling a lot of emotion. The way that Council treats people during public hearings can do a lot to make them relax or to push their emotions to a higher level of intensity."

Be fair and equitable in allocating public hearing time to individual speakers.

"The first thing the Mayor said to me was to be brief because the meeting was running late and the Council was eager to go home. That shouldn't be my problem. I'm sorry my item was at the end of the agenda and that there were a lot of speakers, but it is critically important to me and I should be allowed to say what I have to say and believe that the Council is listening to me."

The chair will determine and announce limits on speakers at the start of the public hearing process. Questions should not be asked for the express purpose of allowing one speaker to evade the time limit imposed on all others (e.g., "Was there something else you wanted to say?"). Generally, each speaker will be allocated three minutes with applicants and appellants or their designated representatives allowed ten. If many speakers are anticipated, the chair may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers.

No speaker will be turned away unless he or she exhibits inappropriate behavior. Each speaker may only speak once during the public hearing unless the chair requests additional clarification later in the process. After the close of the public hearing, no more public testimony will be accepted unless the chair reopens the public hearing for a limited and specific purpose.

For ease of reference in the Code of Ethics and Conduct, the term "member" refers to any member of the Sunnyvale City Council or the City's boards and commissions established by the City Charter, City Ordinance or Council policy.

Give the appearance of active listening

It is disconcerting to speakers to have members not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time or gazing around the room gives the appearance of disinterest. Be aware of facial expressions, especially those that could be interpreted as "smirking," disbelief, anger or boredom.

Maintain an open mind

Members of the public deserve an opportunity to influence the thinking of elected and appointed officials. To express an opinion or pass judgment prior to the close of a public hearing casts doubt on a member's ability to conduct a fair review of the issue. This is particularly important when officials are serving in a quasi-judicial capacity.

Ask for clarification, but avoid debate and argument with the public

Only the chair – not individual members – can interrupt a speaker during a presentation. However, a member can ask the chair for a point of order if the speaker is off the topic or exhibiting behavior or language the member finds disturbing.

If speakers become flustered or defensive by questions, it is the responsibility of the chair to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by members to the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker. Members' personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed.

No personal attacks of any kind, under any circumstance

Members should be aware that their body language and tone of voice, as well as the words they use, can appear to be intimidating or aggressive.

Follow parliamentary procedure in conducting public meetings

The city attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. The chair, subject to the appeal of the full Council or board/commission makes final rulings on parliamentary procedure.

3(b). In Unofficial Settings

Make no promises on behalf of the Council, board/commission or City

Members will frequently be asked to explain a Council or board/commission action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council or board/commission action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).

Make no personal comments about other members

It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other members, their opinions and actions.

Remember that despite its impressive population figures, Sunnyvale is a small town at heart
Members are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in the City of Sunnyvale. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by members, 24 hours a day, seven days a week. It is a serious and continuous responsibility.

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4. Council Conduct with Other Public Agencies

*"Always do right. This will gratify some people and astonish the rest."
-- Mark Twain*

Be clear about representing the City or personal interests

When representing the City, the Councilmember must support and advocate the official City position on an issue, not a personal viewpoint. Outside of official board or commission meetings, board and commission members are not authorized to represent the City or their board or commission unless specifically designated by the Council or the board or commission to do so for a particular purpose.

When representing another organization whose position is different from the City, the Councilmember should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Councilmembers should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

Correspondence also should be equally clear about representation

City letterhead may be used when the Councilmember is representing the City and the City's official position. A copy of official correspondence should be given to the Council Executive Assistant to be filed in the Council Office as part of the permanent public record.

City letterhead should not be used for non-City business nor for correspondence representing a dissenting point of view from an official Council position.

5. Council Conduct with Boards and Commissions

*"We rarely find that people have good sense unless they agree with us."
--Francois, Duc de La Rochefoucauld*

The City has established several boards and commissions as a means of gathering more community input. Citizens who serve on boards and commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

If attending a board or commission meeting, be careful to only express personal opinions

Councilmembers may attend any board or commission meeting, which are always open to any member of the public. However, they should be sensitive to the way their participation especially if it is on behalf of an individual, business or developer -- could be viewed as unfairly affecting the process. Any public comments by a Councilmember at a board or commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council.

Limit contact with board and commission members to questions of clarification

It is inappropriate for a Councilmember to contact a board or commission member to lobby on behalf of an individual, business, or developer, and vice versa. It is acceptable for Councilmembers to contact board or commission members in order to clarify a position taken by the board or commission.

Remember that boards and commissions serve the community, not individual Councilmembers
The City Council appoints individuals to serve on boards and commissions, and it is the responsibility of boards and commissions to follow policy established by the Council. But board and commission members do not report to individual Councilmembers, nor should Councilmembers feel they have the power or right to

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threaten board and commission members with removal if they disagree about an issue. Appointment and re-appointment to a board or commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A board or commission appointment should not be used as a political "reward."

Be respectful of diverse opinions

A primary role of boards and commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Councilmembers may have a closer working relationship with some individuals serving on boards and commissions, but must be fair and respectful of all citizens serving on boards and commissions.

Keep political support away from public forums

Board and commission members may offer political support to a Councilmember, but not in a public forum while conducting official duties. Conversely, Councilmembers may support board and commission members who are running for office, but not in an official forum in their capacity as a Councilmember.

6. Conduct with the Media

*"Keep them well fed and never let them know that all you've got is a chair and a whip."
-- Lion Tamer School*

Board and commission members are not authorized to represent the City outside of official board/commission meetings unless specifically authorized to do so.

Councilmembers are frequently contacted by the media for background and quotes.

The best advice for dealing with the media is to never go "off the record"

Most members of the media represent the highest levels of journalistic integrity and ethics, and can be trusted to keep their word. But one bad experience can be catastrophic. Words that are not said cannot be quoted.

The Mayor is the official spokesperson for the City on City positions.

The Mayor is the designated representative of the Council to present and speak on the official City position. If an individual Councilmember is contacted by the media, the Councilmember should be clear about whether their comments represent the official City position or a personal viewpoint.

Choose words carefully and cautiously

Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

C. SANCTIONS

*"You cannot have a proud and chivalrous spirit if your conduct is mean and paltry;
for whatever a man's actions are, such must be his spirit."
-- Demosthenes*

Public Disruption

Members of the public who do not follow proper conduct after a warning in a public hearing may be barred from further testimony at that meeting or removed from the Council Chambers.

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Inappropriate Staff Behavior

Councilmembers should refer to the city manager any City staff or to the city attorney any City Attorney's staff who do not follow proper conduct in their dealings with Councilmembers, other City staff, or the public. These employees may be disciplined in accordance with standard City procedures for such actions. (Please refer to the section on Council Conduct with City Staff for more details on interaction with Staff.)

Councilmembers Behavior and Conduct

Compliance and Enforcement. The Sunnyvale Code of Ethics and Conduct expresses standards of ethical conduct expected for members of the Sunnyvale City Council, boards and commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government. The chairs of boards and commissions and the Mayor and Council have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Ethics and Conduct are brought to their attention.

City Councilmembers who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council, lose seniority or committee assignments (both within the City of Sunnyvale or with inter-government agencies) or have official travel restricted. Serious infractions of the Code of Ethics or Code of Conduct could lead to other sanctions as deemed appropriate by Council.

Councilmembers should point out to the offending Councilmember infractions of the Code of Ethics and Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being challenged, then the matter should be referred to the Vice Mayor.

It is the responsibility of the Mayor to initiate action if a Councilmember's behavior may warrant sanction. If no action is taken by the Mayor, the alleged violation(s) can be brought up with the full Council in a public meeting.

Board and Commission Members Behavior and Conduct

Counseling, verbal reprimands and written warnings may be administered by the Mayor to board and commission members failing to comply with City policy. These lower levels of sanctions shall be kept private to the degree allowed by law. Copies of all written reprimands administered by the Mayor shall be distributed in memo format to the chair of the respective board or commission, the city clerk, the city attorney, the city manager, and the City Council. Written reprimands administered by the Mayor shall not be included in packets for public meetings and shall not be publicized except as required under the Public Records Act.

The City Council may impose sanctions on board and commission members whose conduct does not comply with the City's policies, up to and including removal from office. Any form of discipline imposed by Council shall be determined by a majority vote of at least a quorum of the Council at a noticed public meeting and such action shall be preceded by a Report to Council with supporting documentation. The Report to Council shall be distributed in accordance with normal procedures, including hard copies to numerous public facilities and posting online. Any Report to Council addressing alleged misconduct by a board or commission member shall be routed through the Office of the city attorney for review of whether any information is exempt from disclosure (subject to redaction) based on privacy interests authorized under the Public Records Act.

When deemed warranted, the Mayor or majority of Council may call for an investigation of board or commission member conduct. Should the city manager or city attorney believe an investigation is warranted,

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they shall confer with the Mayor or Council. The Mayor or Council shall ask the city manager and/or the city attorney to investigate the allegation and report the findings.

The results of any such investigation shall be provided to the full Council in the form of a Report to Council, and shall be placed on the agenda of a noticed public meeting as "Information Only". Any such report shall be made public and distributed in accordance with normal procedures (i.e., hard copies to numerous public locations and posted online). Any report to Council addressing the investigation of board and commission members shall be routed through the Office of the City Attorney for review of whether any information is exempt from disclosure (subject to redaction) based on privacy interests authorized under the Public Records Act.

It shall be the Mayor and/or the Council's responsibility to determine the next appropriate action. Any such action taken by Council (with the exception of "take no further action") shall be conducted at a noticed public hearing. These actions include, but are not limited to: discussing and counseling the individual on the violations; placing the matter on a future public hearing agenda to consider sanctions; forming a Council ad hoc subcommittee to review the allegation, the investigation and its findings, as well as to recommend sanction options for Council consideration.

Under the City Charter, the City Council also may remove members of boards and commissions from office. A violation of this Code of Ethics and Conduct shall not be considered a basis for challenging the validity of a Council, board or commission decision.

D. PRINCIPLES OF PROPER CONDUCT

Proper conduct IS ...

- Keeping promises
- Being dependable
- Building a solid reputation
- Participating and being available
- Demonstrating patience
- Showing empathy
- Holding onto ethical principles under stress
- Listening attentively
- Studying thoroughly
- Keeping integrity intact
- Overcoming discouragement
- Going above and beyond, time and time again
- Modeling a professional manner

Proper conduct IS NOT ...

- Showing antagonism or hostility
- Deliberately lying or misleading
- Speaking recklessly
- Spreading rumors
- Stirring up bad feelings, divisiveness
- Acting in a self-righteous manner

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It all comes down to respect

Respect for one another as individuals ... respect for the validity of different opinions ... respect for the democratic process ... respect for the community that we serve.

E. CHECKLIST FOR MONITORING CONDUCT

- Will my decision/statement/action violate the trust, rights or good will of others?
- What are my interior motives and the spirit behind my actions?
- If I have to justify my conduct in public tomorrow, will I do so with pride or shame?
- How would my conduct be evaluated by people whose integrity and character I respect?
- Even if my conduct is not illegal or unethical, is it done at someone else's painful expense? Will it destroy their trust in me? Will it harm their reputation?
- Is my conduct fair? Just? Morally right?
- If I were on the receiving end of my conduct, would I approve and agree, or would I take offense?
- Does my conduct give others reason to trust or distrust me?
- Am I willing to take an ethical stand when it is called for? Am I willing to make my ethical beliefs public in a way that makes it clear what I stand for?
- Do I exhibit the same conduct in my private life as I do in my public life?
- Can I take legitimate pride in the way I conduct myself and the example I set?
- Do I listen and understand the views of others?
- Do I question and confront different points of view in a constructive manner?
- Do I work to resolve differences and come to mutual agreement?
- Do I support others and show respect for their ideas?
- Will my conduct cause public embarrassment to someone else?

F. GLOSSARY OF TERMS

attitude	The manner in which one shows one's dispositions, opinions, and feelings
behavior	External appearance or action; manner of behaving; carriage of oneself
civility	Politeness, consideration, courtesy
conduct	The way one acts; personal behavior
courtesy	Politeness connected with kindness
decorum	Suitable; proper; good taste in behavior
manners	A way of acting; a style, method, or form; the way in which things are done
point of order	An interruption of a meeting to question whether rules or bylaws are being broken, such as the speaker has strayed from the motion currently under consideration
point of personal privilege	A challenge to a speaker to defend or apologize for comments that a fellow member considers offensive
propriety	Conforming to acceptable standards of behavior
protocol	The courtesies that are established as proper and correct
respect	The act of noticing with attention; holding in esteem; courteous regard

G. IMPLEMENTATION

As an expression of the standards of conduct for members expected by the City, the Sunnyvale Code of Ethics and Conduct is intended to be self-enforcing. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions. For this reason, this document shall be included in the regular orientations for candidates for City Council, applicants to board and commissions, and newly elected

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and appointed officials. Members entering office shall sign a statement affirming they read and understood the City of Sunnyvale Code of Ethics and Conduct. In addition, the Code of Ethics and Conduct shall be annually reviewed by the City Council, boards and commissions, and the City Council shall consider recommendations from boards and commissions and update it as necessary.

(Adopted: RTC 08-113 (4/8/08), Update: RTC 09-036 (2/3/09); Updated: RTC 09-047 (2/24/09); Approved with no changes: RTC 10-078 (3/23/10); Approved with no changes: RTC 11-058 (3/29/11))

Lead Department: Office of the City Manager

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**BEFORE THE BOARD OF DIRECTORS OF THE
MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT**

RESOLUTION

MMXI-21

**RESOLUTION AMENDING THE BOARD OF DIRECTORS
RULES OF PROCEDURE TO ADD A BOARD OF DIRECTORS CODE OF CONDUCT**

WHEREAS, the Mountain House Community Services District (MHCSD) Board of Directors is committed to providing excellence in legislative leadership that results in the provision of the highest quality services to its constituents and to comply with State laws, including AB 1234 (Salinas) approved in 2006;

WHEREAS, the MHCSD Board of Directors desires to establish a Code of Conduct;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT AS FOLLOWS:

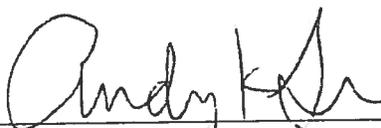
1) The Board of Directors Rules of Procedure are hereby amended to add Article XIV entitled "BOARD OF DIRECTORS CODE OF CONDUCT," a true and correct copy of which is attached to this Resolution as Attachment A and incorporated by this reference as though fully set forth herein.

PASSED AND ADOPTED this **20th day of October, 2011**, by the following vote of the Board of Directors of the Mountain House Community Services District, to wit:

AYES: FARRON, LAMB, SINGH, TINGLE, SU

NOES:

ABSENT:



ANDY SU, PRESIDENT
Board of Directors of the Mountain House
Community Services District, County of San
Joaquin, State of California

ATTEST: MIMI DUZENSKI
Secretary of the Board of Directors
of the Mountain House Community
Services District, County of San
Joaquin, State of California

By: 



Article XIV
BOARD OF DIRECTORS CODE OF CONDUCT

All members of the Board of Directors, including those serving as President and Vice President, have equal votes. No Board Member has more power than any other Board Member and all should be treated with equal respect. Board Members are responsible for monitoring the District's progress in attaining its goals and objectives, while pursuing its mission. The work of the District is a team effort. All individuals should work together in the collaborative process, assisting each other in conducting the affairs of the District.

In order to assist in the governance of the behavior between and among members of the Board of Directors and District staff, all Board Members should:

- Fully participate in Board of Directors meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others. Responsiveness and attentive listening in communication is encouraged.
- Prepare in advance of Board meetings and be familiar with issues on the agenda
- Be respectful of other people's time. Stay focused and act efficiently during public meetings
- Serve as a model of leadership and civility to the community
- Demonstrate honesty and integrity in every action and statement
- Participate in scheduled activities to increase team effectiveness and review Board procedures, such as this Code of Conduct

Meeting Chair

The President will chair official meetings of the Board of Directors, unless the Vice President or another Board Member is designated as Chair of a specific meeting.

- Maintains order, decorum, and the fair and equitable treatment of all speakers
- Keeps discussion and questions focused on specific agenda item under consideration

Board Conduct with One Another

IN PUBLIC MEETINGS

- Use formal titles
The Board should refer to one another formally during public meetings as President, Vice President, or Director followed by the individual's last name.
- Practice civility and decorum in discussions and debate
The dignity, style, values and opinions of each Board Member shall be respected. Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, Board Members to make belligerent,

personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated.

- Honor the role of the Chair in maintaining order
It is the responsibility of the Chair to keep the comments of Board Members on track during public meetings. Board Members should honor efforts by the Chair to focus discussion on current agenda items. If there is disagreement about the agenda or the Chair's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.
- Avoid personal comments that could offend other Board Members
If a Board Member is personally offended by the remarks of another Board Member, the offended Board Member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other Board Member to justify or apologize for the language used. The Chair will maintain control of this discussion.
- Demonstrate effective problem-solving approaches
Board Members have a public stage to show how individuals with disparate and differing points of view can find common ground and seek a compromise that benefits the community as a whole.
- Differing viewpoints are healthy in the decision-making process. Individuals have the right to disagree with ideas and opinions, but without being disagreeable. Once the Board of Directors takes action, Board Members should commit to supporting said action and not to create barriers to the implementation of said action.

IN PRIVATE ENCOUNTERS

- Continue respectful behavior in private
The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.
- Board Members should commit themselves to emphasizing the positive, avoiding double talk, hidden agendas, gossip, backbiting, and other negative forms of interaction.

Board Conduct with District Staff

- The primary responsibility of the Board of Directors is the formulation and evaluation of policy. Routine matters concerning the operational aspects of the District are to be delegated to professional staff members of the District.
- Treat all staff as professionals
Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable. Board Members should develop a working relationship with the General Manager wherein current issues, concerns and District projects can be discussed comfortably and openly.
- Limit contact to specific District staff
Questions of District staff and/or requests for additional background information

should be directed only to the General Manager, District Counsel, or Department Heads. The Office of the General Manager should be copied on any request, except those to the District Counsel. In seeking clarification for policy-related concerns, especially those involving personnel, legal action, land acquisition and development, finances, and programming, said concerns should be referred directly to the General Manager or District Counsel.

Requests for follow-up or directions to staff should be made only through the General Manager or the District Counsel when appropriate. When in doubt about what staff contact is appropriate, Board Members should ask the General Manager for direction. Materials supplied to a Board Member in response to a request will be made available to all members of the Board so that all have equal access to information.

- In handling items related to safety, concerns for safety or hazards should be reported to the General Manager or to the District office. Emergency situations should be dealt with immediately by seeking appropriate assistance.
- Do not disrupt District staff from their jobs
Board Members should not disrupt District staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met.
- Never publicly criticize an individual employee
Board should never express concerns about the performance of a District employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the General Manager through private correspondence or conversation.
- Do not get involved in administrative functions
Outside of regular or special Board meetings, Board Members must not attempt to influence District staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of District licenses and permits. The Board's authority to make decisions regarding such matters during Board meetings, is not limited by this section. If approached by District personnel concerning specific District policy, Board Members should direct inquiries to the appropriate staff supervisor or General Manager. The chain of command should be followed.
- Do not attend administrative meetings with District staff unless requested by staff
Even if the Board Member does not say anything, the Board Member's presence implies support, shows partiality, intimidates staff, and hampers staff's ability to do their job objectively.
- Do not solicit political support from staff
Board Members should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from District staff. District staff may, as private citizens with constitutional rights, support political candidates, but all such activities must be done away from the workplace.

Board Conduct with The Public

IN PUBLIC MEETINGS

- Be welcoming to speakers and treat them with care and gentleness
- Be fair and consistent in allocating public hearing time to individual speakers
The Chair will determine and announce limits on speakers at the start of the public hearing process. Generally, each speaker will be allocated five-minutes with applicants and appellants or their designated representatives allowed more time. If many speakers are anticipated, the Chair may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers.

No speaker will be turned away unless he or she exhibits inappropriate behavior. Each speaker may only speak once during the public hearing unless the Board requests additional clarification later in the process.

- Give the appearance of active listening
It is disconcerting to speakers to have Board Members not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time gazing around the room gives the appearance of disinterest. Be aware of facial expressions, especially those that could be interpreted as "smirking," disbelief, anger or boredom.
- Ask for clarification, but avoid debate and argument with the public
Only the Chair – not individual Board Members -- can interrupt a speaker during a presentation. However, a Board Member can ask the Chair for a point of order if the speaker is off the topic or exhibiting behavior or language the Board Member finds disturbing. If speakers become flustered or defensive by Board questions, it is the responsibility of the Chair to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Board Members to members of the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker. Board Members' personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed.
- No personal attacks of any kind, under any circumstance
Board Members should be aware that their body language and tone of voice, as well as the words they use, can appear to be intimidating or aggressive.

IN UNOFFICIAL SETTINGS

- The needs of the District's constituents should be the priority of the Board of Directors. When a Director believes he or she may have a conflict of interest, the legal counsel shall be requested to make a determination if one exists or not.
- When responding to constituent requests and concerns, Directors should be courteous, responding to individuals in a positive manner and routing their questions through appropriate channels and to responsible management personnel. When handling complaints, said complaints should be referred directly to the General Manager.

- Make no promises on behalf of the Board
Board Members will frequently be asked to explain a Board action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of District policy and to refer to District staff for further information. It is inappropriate to overtly or implicitly promise Board action, or to promise District staff will do something specific (fix a pothole, secure employment, remove a library book, plant new flowers in the median, etc.).
- Make no personal comments about other Board Members
It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other Board Members, their opinions and actions. Board Members are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in Mountain House. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by Board Members, 24 hours a day, seven days a week.

Board Conduct with Other Public Agencies

- Be clear about representing the District or personal interests
If a Board Member appears before another governmental agency or organization to give a statement on an issue, the Board Member must clearly state: 1) if his or her statement reflects personal opinion or is the official stance of the District; 2) whether this is the majority or minority opinion of the Board.
If the Board Member is representing the District, the Board Member must support and advocate the official District position on an issue, not a personal viewpoint. If the Board Member is representing another organization whose position is different from the District, the Board Member should withdraw from voting on the issue if it significantly impacts or is detrimental to the District's interest. Board Members should be clear about which organizations they represent and inform the President and Board of their involvement.
- Correspondence also should be equally clear about representation
District letterhead should not be used by Board Members.

Board Conduct with the Media

Board Members are frequently contacted by the media for background and quotes.

- The General Manager is the official spokesperson for the Board and representative of the District position
The President is the designated representative of the Board to present and speak on the official District position. If an individual Board Member is contacted by the media, the Board Member should be clear about whether their comments represent the official District position or a personal viewpoint.

Sanctions

- Board Members Behavior and Conduct
Board Members who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Board.

Principles of Proper Conduct

Proper conduct IS ...

- Keeping promises
- Being dependable
- Building a solid reputation
- Participating and being available
- Demonstrating patience
- Showing empathy
- Holding onto ethical principles under stress
- Listening attentively
- Studying thoroughly
- Keeping integrity intact
- Overcoming discouragement
- Going above and beyond, time and time again
- Modeling a professional manner

Proper conduct IS NOT ...

- Showing antagonism or hostility
- Deliberately lying or misleading
- Speaking recklessly
- Spreading rumors
- Stirring up bad feelings, divisiveness
- Acting in a self-righteous manner

It all comes down to respect. Respect for one another as individuals . . . respect for the validity of different opinions . . . respect for the democratic process . . . respect for the community that we serve.

Checklist for Monitoring Conduct

- Will my decision/statement/action violate the trust, rights or good will of others?
- What are my interior motives and the spirit behind my actions?
- If I have to justify my conduct in public tomorrow, will I do so with pride or shame?
- How would my conduct be evaluated by people whose integrity and character I respect?

Even if my conduct is not illegal or unethical, is it done at someone else's painful expense? Will it destroy their trust in me? Will it harm their reputation?

Is my conduct fair? Just? Morally right?

If I were on the receiving end of my conduct, would I approve and agree, or would I take offense?

Does my conduct give others reason to trust or distrust me?

Am I willing to take an ethical stand when it is called for? Am I willing to make my ethical beliefs public in a way that makes it clear what I stand for?

Do I exhibit the same conduct in my private life as I do in my public life?

Can I take legitimate pride in the way I conduct myself and the example I set?

Do I listen and understand the views of others?

Do I question and confront different points of view in a constructive manner?

Do I work to resolve differences and come to mutual agreement?

Do I support others and show respect for their ideas?

Will my conduct cause public embarrassment to someone else?

Glossary of Terms

Attitude	The manner in which one shows one's dispositions, opinions, and feelings
Behavior	External appearance or action; manner of behaving; carriage of oneself
Civility	Politeness, consideration, courtesy
Conduct	The way one acts; personal behavior
Courtesy	Politeness connected with kindness
Decorum	Suitable; proper; good taste in behavior
Manners	A way of acting; a style, method, or form; the way in which things are done
Point of Order	An interruption of a meeting to question whether rules or bylaws are being broken, such as the speaker has strayed from the motion currently under consideration
Point of Personal Privilege	A challenge to a speaker to defend or apologize for comments that a fellow Board Member considers offensive
Propriety	Conforming to acceptable standards of behavior
Protocol	The courtesies that are established as proper and correct
Respect	The act of noticing with attention; holding in esteem; courteous regard

DRAFT**CITY OF TRACY****CITY COUNCIL COMMUNICATIONS POLICY****I. COMMUNICATIONS TO THE CITY COUNCIL****A. Distribution of Communications****1. Email****a. To the City Council**

Individuals can communicate electronically with the City Council by sending an email to the general City Council email address (council@ci.tracy.ca.us) or through the City's Governmental Outreach website (<http://user.govoutreach.com/tracy/>). When the City receives an email communication directed to the "City Council," City staff will forward it to each City Council Member's email address and a copy will be sent to the City Manager's and City Attorney's email addresses. If the email pertains to City business, the City Manager will respond to it and copy the City Council with the response.

b. To the Mayor or Individual City Council Members

When the City receives email addressed to the Mayor or an individual City Council Member, City staff will forward it to the Mayor's or individual City Council's email address and will send a copy to the City Manager's email address.

2. Regular Mail**a. To the City Council**

When the City receives regular mail (via United States Postal Service or other delivery) directed to the "City Council," City staff will copy it and place it in each City Council Member's mail box, or scan it and electronically send to each City Council Member's email address, and send copies to the City Manager and City Attorney. If the mail pertains to City business, the City Manager will respond to it and copy the City Council with the response.

b. To the Mayor or Individual City Council Members

When the City receives regular mail addressed to the Mayor or an individual City Council Member, City staff will open the letter, date stamp it, copy it, and place it in the

Mayor's or individual City Council Member's mail box. If the mail is marked "confidential," a copy will be placed in a confidential file and will only be subject to inspection and copying by the public to the extent required by the California Public Records Act. (Government Code, §§6250-6276.48.) Please note that the label "confidential" does not necessarily mean that the mail is exempt from disclosure under the California Public Records Act.

B. Communications Regarding Performance of Staff

When the City receives an email or letter addressed to the City Council or City staff regarding the performance of staff, staff will take the following steps:

1. City Employees Except For Police Officers

If the communication relates to the performance of the City Attorney or City Manager, staff will either forward it to each City Council Member's email address (if it is received by email) or copy it and place it in each City Council Members' mail box (if it is received by regular mail). Staff will then send a response back to the sender either by email or regular mail containing the following information: "Your [email or letter] has been forwarded to the City Council. However, to the extent your [email or letter] relates to the performance of a City employee, City Council Members are limited in responding to you about it, as personnel matters are generally considered to be confidential."

If the communication relates to the performance of any other employee, staff will either forward it to the City Manager's email address (if it is received by email) or send a copy of it to the City Manager (if it is received by regular mail). Staff will then send a response back to the sender either by email or regular mail containing the following explanation: "Your [email or letter] has been received by the City. However, to the extent your [email or letter] relates to the performance of a City employee, the City is limited in responding to you about it, as personnel matters are generally considered to be confidential."

2. Police Officers

If the communication relates to the performance of the Police Chief, Police command staff, or a Police officer, staff shall forward the communication to the Police Department. The Police Department will then process the communication in accordance with state law and the Department's Personnel Complaint Procedure.

C. Retention of Communications

All communications addressed to the City Council, Mayor, or an individual City Council Member, that the City receives, will be retained in accordance with the City's Records Retention Policy.

II. COMMUNICATIONS FROM THE CITY COUNCIL

A. Representing an Official Position of the City

A person elected to the City Council occupies two roles: as a member of a body elected to represent the City in its entirety and as a private resident of the City. Although the second role is not relinquished when the first role is assumed, it is important to distinguish between the two roles at all times and, when communicating, to clarify which role is communicating.

Therefore, City Council Members should make it clear in all verbal and written communications that they are expressing their own personal opinions and not necessarily those of the City Council, unless the City Council has taken formal action expressing its opinion on a matter.

When a City Council Member speaks to groups or is asked the City Council's position on an issue, the response should reflect the position of the City Council as a body. Of course, a City Council Member may clarify his or her vote on a matter by stating, for example, "Although I voted against "X", the City Council voted in support of it." When representing the City at meetings or other venues, it is important that those in attendance gain an understanding of the City Council's position as a whole rather than only the individual City Council Member's position.

B. Use of City Letterhead

Only the Mayor (and City staff) may use City letterhead, unless otherwise directed by City Council motion. When the Mayor uses City letterhead, it should generally be for transmitting the City's position on policy matters to outside agencies on behalf of the City Council. Staff can assist in the preparation of such letters. All letters sent on behalf of the City Council will be copied and placed in each City Council Member's mail box and a copy will be sent to the City Manager.

C. Use of Other City Resources

City Council Members may only use City resources, including business cards, printers, copiers, paper, City-owned computers and iPads, to conduct City business. Such resources may not be used for personal or political purposes. The only exception to this limitation is for "incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call." (Government Code, § 8314(b)(2).)

D. Ceremonial Documents

The City Council has established procedures for considering requests for proclamations, certificates of recognition, commendation and/or appreciation and letters of

congratulations from any group or individual. (See Resolution No. 2010-059 establishing standard procedures for issuing ceremonial documents.)

E. State Legislation

The City Council has delegated to the City Manager the authority to monitor, review, evaluate and make recommendations, when appropriate, on state or federal legislative and regulatory trends and judicial developments. For those matters that the City Manager deems sufficiently important, and that require a prompt response, the City Manager has authority to coordinate all efforts to communicate the City's views on policy issues to any branch of government at any level. In furtherance of this, the City Manager may draft proposed position papers or letters for the Mayor's signature on behalf of the City. (See Resolution No. 2004-208 establishing a legislative response policy.)

F. Confidential Communications

All written materials and verbal information provided to City Council Members on matters that are confidential under state law shall be kept in complete confidence to ensure that the City's position is not compromised. No disclosure or mention of information in these materials may be made to anyone other than City Council Members, the City Attorney or the City Manager (and staff, outside legal counsel or consultants who may be present in a closed session during which such information is discussed).

G. Attorney-Client Communications

The attorney-client relationship is not always in effect when an individual City Council Member communicates with the City Attorney. The City Attorney only has an attorney-client relationship with the City acting through the entire City Council as a body. Therefore, to the extent an individual City Council Member communicates with the City Attorney, the communication may not be considered confidential.

H. Public Records Act

Correspondence from City Council Members prepared using City resources (including City-owned computers and iPads), or received by City staff, is a public record pursuant to the California Public Records Act and, unless expressly exempt from disclosure, is subject to inspection and copying by the public. (Government Code, §§6250-6276.48.)

III. COMMUNICATIONS BETWEEN CITY COUNCIL MEMBERS

City Council Members are subject to the state's open meeting law – the Brown Act. (Government Code, §§54950-54963.) The Brown Act specifically prohibits “any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body.” (Government

Code, §54952.2(b.) Therefore, particular care should be taken when City Council Members are communicating with one another to ensure that they are complying with the Brown Act.

To avoid potential Brown Act violations, when sending emails to the City Council, City staff will only send blind copies (“bcc”), so City Council Members cannot “respond to all.”

DRAFT

RESOLUTION 2004-208

ESTABLISHING A LEGISLATIVE RESPONSE POLICY

WHEREAS, Oftentimes legislation moves forward rapidly and the City of Tracy ("City") needs to communicate quickly as to whether it supports or opposes the proposed legislation and the City wishes to advocate its position when the outcome of the legislation could have an effect on the liability of cities, the power of cities or govern or tax, or the ability of cities to conduct and manage the affairs of government in an orderly and efficient manner, and

WHEREAS, The purpose of this legislative response policy is to enhance the advocacy efforts on behalf of the City by providing a protocol for responding to legislative bills, actions and/or state, federal or judicial developments and measures that directly or indirectly affect the City.

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

SECTION 1. The following legislative response policy for the City of Tracy is hereby established.

A. Purpose of Policy

Oftentimes legislation moves forward rapidly and the City of Tracy ("City") needs to communicate quickly as to whether it supports or opposes the proposed legislation. The City wishes to advocate its position when the outcome of the legislation could have an effect on the liability of cities, the power of cities or govern or tax, or the ability of cities to conduct and manage the affairs of government in an orderly and efficient manner. Because the timing of legislation often prohibits the City from participating because there is insufficient time to submit a request to the City Council ("Council") at a regularly scheduled meeting it would be more efficient to authorize the City Manager ("Manager") to communicate the City's position using a Council-adopted policy. The purpose of establishing a policy is to enhance the advocacy efforts on behalf of the City by providing a protocol for responding to legislative bills, actions and/or state, federal or judicial developments and measures that directly or indirectly affect the City. The purpose in doing so is to strengthen and protect local control for the City, expeditiously engage in issues with affect on the City, and support, strengthen and protect the quality of life for all citizens of our community.

B. Delegation to City Manager

While the Council is responsible for the overall supervision, control and direction of the policy, the Council may delegate the management of the City's efforts with regard to legislative affairs provided the Council retains ultimate responsibility for the decisions and actions of such person or group. The Manager, with input from Department Heads and their respective professional organizations (such as California Park and Recreation Society, National Recreation and Park Association, Cal Chiefs, and the California Society of Municipal Finance Officers), shall monitor, review, evaluate and make recommendations when appropriate on state or federal legislative and regulatory trends and judicial developments. For those matters that the Manager deems sufficiently important and determines that a prompt response is necessary, the Manager has authority to coordinate all efforts to respond or otherwise communicate the City's views on policy issues to any branch of government at any level. In furtherance of this goal, the Manager may draft proposed resolutions, position papers, or letters, for the Mayor's signature, on behalf of the City. In

addition, the Manager, in consultation with the League of California Cities ("League") and its Grass Roots Coordinator ("GRC") may prepare testimony, letters or otherwise communicate the Council/City's views consistent with previous policy and actions to appropriate governmental bodies and other interested groups and shall keep the Council informed of all such efforts. The Manager will be responsible for coordinating city efforts and promoting the City's policy priorities to other government entities. In determining whether the City desires to communicate support or opposition to proposed legislation the City shall consider the Existing Policy and Guiding Principles, and position on such legislation, adopted by the Board of Directors of the League.

C. City Council Information

If the Manager determines that the proposed legislation should be presented to Council for discussion, the Manager shall schedule the item for a Council agenda. All written communications regarding City positions on legislation, including the reasons for those actions, shall be copied to the Council.

SECTION 2. This resolution shall take effect immediately.

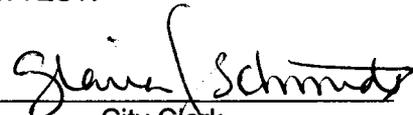
The foregoing Resolution 2004-208 was passed and adopted by the Tracy City Council on the 6th day of July, 2004, by the following vote:

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



Mayor

ATTEST:



City Clerk

RESOLUTION 2010-059

ADOPTING STANDARD PROCEDURES FOR ISSUING
CEREMONIAL DOCUMENTS

WHEREAS, The City of Tracy periodically receives requests to issue Proclamations in recognition of national and local events, Certificates of Recognition and Commendation for accomplishments and achievements attained by individuals and groups, and Certificates of Appreciation and Letters of Congratulation for contributions and achievements; and

WHEREAS, previously, the City has addressed these types of requests based on past precedent; and

NOW, THEREFORE, BE IT RESOLVED, that Exhibit A (attached) establishes criteria to be used in issuing Proclamations, Certificates of Recognition and Commendation, Certificates of Appreciation and Letters of Congratulation on behalf of the City of Tracy.

The foregoing Resolution 2010-059 was passed and adopted by the Tracy City Council on the 4th day of May, 2010, by the following vote.

AYES: COUNCIL MEMBERS: ABERCROMBIE, MACIEL, TOLBERT, TUCKER, IVES

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE



Mayor

ATTEST:



City Clerk

**STANDARD PROCEDURES FOR ISSUING CEREMONIAL DOCUMENTS
(Exhibit "A" to Resolution 2010- 059)**

Applicability

This policy applies to all ceremonial documents, and other forms of recognition issued by the City of Tracy.

Policy Statement

The procedures outlined in this policy are intended to establish guidelines for issuing formal recognition in support of a particular event, program or cause, or recognition of a particular individual or group.

The policy prohibits the City of Tracy from advancing any particular religion or from advancing religion generally but shall not be construed so as to limit the free exercise of religion or to allow the City to treat a religious organization differently than a similarly situated non-religious organization.

Requests for Recognition

The City of Tracy will consider requests for proclamations, certificates of recognition, commendation and/or appreciation and letters of congratulations from any group or individual. The request should have local or regional appeal and promote activities taking place in the City. Requests for proclamations should include a sample proclamation.

All requests are subject to approval by the Mayor or his/her designee, and only one ceremonial document will be issued per event.

Types of Recognition

1. Proclamations may be issued to recognize:

- National events with widespread community interest or concern
- Significant local, county or state activities which promote the health, welfare and heritage of the community, with an emphasis on events which support the City Council's goals and objectives
- Commemorative events
- Civic celebrations

2. Certificates of Recognition may be issued to recognize:

- Exceptional accomplishments attained by local groups, businesses, civic organizations or individuals
- Individuals or groups who have made significant contributions to the community
- Outstanding achievements or contributions by non-profit organizations

3. Certificates of Commendation may be issued for:

- Acts of Heroism
- School or sport groups' achievements

4. Certificates of Appreciation may be issued for:

- Monetary donations
- In-kind contributions
- Cultural contributions
- Volunteer efforts

5. Letters of Congratulations may be issued for:

- Eagle Scout achievements
- Significant birthdays, anniversaries or retirements
- Significant anniversaries of City based institutions, corporations, community partners and non-profit organizations

Other Types of Presentations

The City Manager, or his/her designee, will have the authority to authorize employee awards including Employee of the Month, Employee/Police Officer/Firefighter of the Year, etc.

Certificates of Appointment (or reappointment) will be presented to incoming Board and/or Commission members, and Certificates of Recognition will be presented to outgoing members. Public officials will be presented with Certificates of Election upon appointment, and with plaques recognizing their years of service to the community at their final Council meeting.

The Mayor and Council Members may request acknowledgments in accordance with the guidelines. To expedite requests, proclamations, certificates and letters will be signed by the Mayor or his/her designee, but will be issued on behalf of the City Council.

The City also, on occasion, will issue other types of formal recognition including plaques, Keys to the City, etc., as determined by the issuing official. The City Manager, or his/her designee will be responsible for coordinating these presentations.

Submitting Requests

Requests for recognition should be sent to: City of Tracy, Attn: Mayor/Ceremonial Documents, 333 Civic Center Plaza, Tracy, 95376, at least 30 days prior to the requested date of recognition. Requests must include the name and daytime phone number of the contact person.

All requests will be subjected to a review and approval process. The City Manager, or his/her designee, reserves the right to determine the type of document to be issued based on the information provided by the requesting party. Submission of a request does not guarantee the issuance of a ceremonial document.

Please specify whether the document should be mailed, held for pick-up or presented at a special event. Documents will be presented at special events pending the availability of the Mayor, his/her designee, or other city official. The City Manager, or his/her designee, will determine the timing of presentations at specific City Council meetings based on the length of the agenda and the availability of the Mayor or his/her designee.

AGENDA ITEM 6

REQUEST

SECOND READING AND ADOPTION OF ORDINANCE 1193 AN ORDINANCE OF THE CITY OF TRACY REZONING ASSESSOR'S PARCEL NUMBERS 235-070-64 & 66 FROM LIGHT INDUSTRIAL (M-1) TO MEDIUM DENSITY RESIDENTIAL (MDR). THE APPLICANT IS ANDRE STAMBUK AND THE PROPERTY OWNERS ARE JAVIER AND JUANA DIAZ. APPLICATION NUMBER R13-0001

EXECUTIVE SUMMARY

Ordinance 1193 was introduced at the Council meeting held on February 4, 2014. Ordinance 1193 is before Council for a second reading and adoption.

DISCUSSION

On December 4, 2013, Andres Stambuk, on behalf of the property owners Javier and Juana Diaz, submitted an application to rezone two parcels on South C Street between Third and Fourth Streets from Light Industrial to Medium Density Residential. The site is currently not in compliance with the General Plan designation of Medium Residential. Ordinance 1193 was introduced at the Council meeting held on February 4, 2014, to amend the zoning on Assessor's Parcel Numbers 235-070-64 and 66, totaling 0.726 acres, from Light Industrial (M-1), to Medium Density Residential (MDR), to allow for residential development in conformance with the General Plan.

Ordinance 1193 is before Council for a second reading and adoption.

STRATEGIC PLAN

This item does not specifically relate to one of the Council's Strategic Plans.

FISCAL IMPACT

None.

RECOMMENDATION

That Council adopt Ordinance 1193 following its second reading.

Prepared by: Adrienne Richardson, Deputy City Clerk

Reviewed by: Sandra Edwards, City Clerk
Maria A. Hurtado, Assistant City Manager

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

ATTACHMENTS:

Attachment A – Ordinance 1193

ORDINANCE 1193

AN ORDINANCE OF THE CITY OF TRACY REZONING ASSESSOR'S PARCEL NUMBERS 235-070-64 & 66 FROM LIGHT INDUSTRIAL (M-1) TO MEDIUM DENSITY RESIDENTIAL (MDR). THE APPLICANT IS ANDRE STAMBUK AND THE PROPERTY OWNERS ARE JAVIER AND JUANA DIAZ. APPLICATION NUMBER R13-0001

WHEREAS, The subject properties have a General Plan designation of Residential Medium, is zoned Light Industrial, and is surrounded by properties zoned Medium Density Residential, and

WHEREAS, On December 4, 2013, Andres Stambuk, on behalf of the property owners, submitted an application to rezone the properties to Medium Density Residential, and

WHEREAS, Rezoning the properties to Medium Density Residential would allow for residential development in conformance with the General Plan, and

WHEREAS, The proposal does not increase the development density established by the General Plan for which an Environmental Impact Report was certified, and therefore, in accordance with California Environmental Quality Act Guidelines Section 15183, no further environmental assessment is required, and

WHEREAS, The Planning Commission held a public meeting to review and consider the rezone application on January 8, 2014, and recommended approval of the rezone, and

WHEREAS, The City Council held a public meeting to review and consider the rezone application on February 4, 2014;

NOW, THEREFORE, The City Council of the City of Tracy hereby ordains as follows:

SECTION 1: The zoning map of the City of Tracy is hereby amended to change the zoning on the following parcels from Light Industrial (M-1) to Medium Density Residential (MDR):

Approximately 0.299 acres located on the east side of South C Street, between Fourth Street and King Alley (Assessor's Parcel Number 235-070-64) and approximately 0.427 acres located on the east side of South C Street between Third Street and King Alley (Assessor's Parcel Number 235-070-66).

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

SECTION 3: This Ordinance shall be published once in the Tri-Valley Herald, a newspaper of general circulation, within fifteen (15) days from and after its final passage and adoption.

* * * * *

The foregoing Ordinance 1193 was introduced at a regular meeting of the Tracy City Council on the 4th day of February, 2014, and finally adopted on the 18th day of February, 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

February 18, 2014

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 specifically relate to one of 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