

Tuesday, April 19, 2011, 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. Individuals addressing the Council should state their names and addresses for the record, and for contact information. "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. The five minute maximum time limit for each speaker applies to all "Items from the Audience." Any item not on the agenda, brought up by 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 citizens address the Council, speakers should be as specific as possible about their concerns. If several speakers 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

PRESENTATION – Certificates of Appointment and Recognition - Transportation Advisory Commission
- D.A.R.E Graduates

1. CONSENT CALENDAR

- A. Minutes Approval
- B. Acceptance of the Holly Drive North of Grant Line Road Sidewalk Improvement Project - CIP 73119, Completed by Granite Construction of Watsonville, California, and Authorization for the City Clerk to File the Notice of Completion
- C. Acceptance of the Median Improvements at Various Arterial Streets - CIP 73113, Completed by Green Valley Group dba Green Valley Landscape of Livermore, California, and Authorization for the City Clerk to File the Notice of Completion
- D. Acceptance of the Sidewalk, Curb & Gutter Repairs (ADA Improvements, FY 10-11), - CIP 73122, Completed by Nor-Cal Concrete of Suisun, California, and Authorization for the City Clerk to File the Notice of Completion
- E. Authorize an Offsite Improvement Agreement with the Tracy Joint Unified School District and Robbelen Construction Company, Inc., for the Construction of Streets and Utilities Improvements along the Frontage of the Monte Vista Middle School on Tracy Boulevard and Lowell Avenue and Authorization for the Mayor to Execute the Agreement
- F. Authorization to Enter into a Cooperative Agreement between the City of Tracy, Contra Costa County, San Joaquin County, the City of Brentwood, and the Mountain House Community Services District for the Partial Reimbursement of City of Tracy Staff Expenses Related to Development of Technical Studies and Reports Regarding the Phase I Planning Analysis of Future State Route 239 and Authorization for the City Manager to Execute the Agreement
- G. Authorization of a Professional Services Agreement with Telstar Instruments, Inc. for Preventative Maintenance and Repairs of Chemical Systems at the Wastewater Treatment Plant, and Authorization for the Mayor to Execute the Agreement and Designation of Specialized Maintenance Activities at Water and Wastewater Facilities as Professional Services
- H. Authorizing an Amendment to the Professional Services Agreement with the Boys and Girls Club of Tracy, Sutter Central Valley Hospitals doing business as Sutter Tracy Community Hospital, and Vinewood Center for Children and Families for Additional Services Associated with Proposition 63 Funding and to the City's Finance Department, appropriating \$250,000 from the San Joaquin County Behavioral Health Services Community Service Agreement and Authorizing the Mayor to Execute the Amendments

- I. Approve a Professional Services Agreement with RBF Consulting for the Preparation of an Environmental Impact Report for the Tracy Hills Specific Plan Amendment Project
2. ITEMS FROM THE AUDIENCE
3. PUBLIC HEARING TO APPROVE A RESOLUTION OF THE CITY OF TRACY APPROVING A SETTLEMENT AGREEMENT WITH ARMADILLO REALTY, LLC REGARDING DEVELOPMENT IMPACT FEES, A MUTUAL EASEMENT AND MAINTENANCE AGREEMENT WITH ARMADILLO, LLC, AND A DECLARATION OF RESTRICTIONS
4. THAT COUNCIL DISCUSS AND ACCEPT THIS UPDATE REPORT ASSESSING CRIMINAL CONDUCT AND QUALITY OF LIFE ISSUES IN THE CENTRAL DOWNTOWN BUSINESS DISTRICT
5. CITY COUNCIL'S APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF TRACY AND YMCA OF SAN JOAQUIN COUNTY FOR PROVIDING AQUATICS PROGRAMMING SERVICES TO THE TRACY COMMUNITY AT THE PINKIE PHILLIPS POOL AT WEST HIGH SCHOOL AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY
6. DISCUSS THE SALE AND DISCHARGE OF SAFE AND SANE FIREWORKS WITHIN THE CITY OF TRACY AND PROVIDE DIRECTION TO STAFF AS HOW TO PROCEED
7. AUTHORIZATION TO ENTER INTO AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH COMBINED SOLAR TECHNOLOGIES, INC. FOR GREEN ENERGY AND THERMAL DESALINATION PROJECT FEASIBILITY STUDY
8. APPROVE AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH TRACY'S CALIFORNIA BLAST, LLC TO EXPLORE THE DEVELOPMENT OF RECREATIONAL, COMMERCIAL AND OTHER RELATED USES ON APPROXIMATELY 600 ACRES OF THE CITY-OWNED HOLLY SUGAR PROPERTY AND AUTHORIZE THE MAYOR TO SIGN THE AGREEMENT
9. CONSIDER THE ADOPTION OF A RESOLUTION RECOMMENDING THE CALIFORNIA CITIZENS REDISTRICTING COMMISSION PLACE SAN JOAQUIN COUNTY IN ONE CONGRESSIONAL, ASSEMBLY, AND STATE SENATE DISTRICT
10. ITEMS FROM THE AUDIENCE
11. COUNCIL ITEMS
12. ADJOURNMENT

March 15, 2011, 6:15 p.m.

Council Chambers, 333 Civic Center Plaza

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

1. Mayor Ives called the special meeting to order at 6:22 p.m.
2. Roll call found Council Members Abercrombie, Elliott, Mayor Pro Tem Maciel and Mayor Ives present; Council Member Rickman absent.
3. Items from the Audience – None.
4. CONDUCT A CITY COUNCIL WORKSHOP TO REVIEW THE PROPOSED FY11-12 CAPITAL IMPROVEMENT PLAN - Zane Johnston, Finance and Administrative Services Director, presented the staff report. The Capital Improvement Program (CIP) is a five year plan that identifies proposed capital projects for the City. The City has almost \$100m in the CIP. The CIP contains a list of current projects (those that have not yet been completed) that have received an appropriation of funds in FY 10-11 or prior fiscal years. If any of those projects require additional funding it is noted in the year in which the funding is proposed. In addition to current projects, new projects are also noted. These projects may have funds proposed for appropriation in the upcoming FY 11-12 or may indicate funding in some future year. Mr. Johnston stated the City can have a General Fund operating budget deficit, yet still have money to do capital projects. This is because most funds being discussed are restrictive in nature. For example, gas tax money cannot be used to pay police officers. The Operating Budget workshop will be held on May 17, 2011. Mr. Johnston added adoption of the CIP would be included with the adoption of the City's budget which would be presented at the City Council meeting to be held on June 7, 2011

Mr. Johnston added he would concentrate on CIP projects which would receive funding in FY 11-12. Projects which have received an appropriation in prior years are considered authorized projects. However, at various stages of the project development the Council may be requested to approve specific actions associated with that project. Such actions could include award of design contract, property acquisition, award of construction contract, etc. Mr. Johnston used the "Wayfinding Signage" program as an example, and stated the project has been authorized but funding has not yet been appropriated. Design has been completed; construction has not. It is not included in the FY 11-12 budget because no money is proposed, but it is still an authorized project. Subsequent decisions by the City Council could result in the project not going forward.

Council Member Abercrombie asked if money had been approved to fund the project. Mr. Johnston responded there is no construction contract to manufacture signs and put them in the ground. If the project goes out to bid it will come back to Council to approve the contract.

Council Member Abercrombie stated he was speaking hypothetically, but asked if Council could move money which has been allocated to a project to other projects. Using the "Wayfinding Signage" project as an example, Mr. Johnston responded the

Council has two options. Council could wait until the construction contract comes before the Council. If three Council Members voted against awarding the contract the project would end. Or, the Council could decide tonight whether they want to remove the money from the project. If three Council Members agree the changes could be made to the CIP, and when it comes before the Council for approval in June the money would be removed from that project. Mr. Johnston added "Wayfinding Signage" has a budget of \$435,000; so far, almost \$50,000 has been spent on design.

Mayor Pro Tem Maciel stated that since "Wayfinding Signage" is under general projects it has a little more discretion on funding. Other projects that come from different funding sources would not have as much discretion. Mr. Johnston responded a decision by a previous City Council was to allocate \$435,000 to the project. Therefore, it is an authorized project and staff can begin working on the project.

Mr. Johnston stated there are 188 active current projects that have received some or all of the necessary funding. Of these 21 have additional funding proposed for FY 11-12. There are 28 new projects and \$44.2 million in FY 11-12 appropriations. There is also an additional \$55.2 million previously appropriated to be carried over to FY 11-12 making a grand total of \$99.4 million.

Mr. Johnston gave some background information on Fund 301, the City's General Projects Fund. The fund has no ongoing revenue source. Prior to FY 07-08 Fund 301 received funding from the General Fund operating budget surplus, and in December of 2008, approximately \$10 million was added from a bond restructuring. The FY 09-10 CIP appropriated almost all of the funding in Fund 301. The fund has received \$186,000 in savings left over from completed projects, and a small appropriation of \$433,000 for FY 11-12. It is unlikely that this fund will receive any additional funding in the near future as the City has experienced significant General Fund revenue losses and will not be generating any operating budget surpluses. In addition, all bonds that could be refinanced have already been refinanced. Due to the reasons listed above only \$433,000 in funding from the City's General Projects Fund is proposed for FY 11-12. The bulk of these funds has already been allocated. The most notable of these projects is the Holly Sports Fields which has received about \$8.1 million from the General Projects Fund. As current projects funded by the City's General Projects Fund are completed, any money left over from the project budget will go back into the fund. It is possible the fund may have a balance in the high six figure range available for future projects.

Mr. Johnston stated two projects have been deleted from the CIP - \$100,000 for solar panels because the grant did not require a match, and \$190,000 for police cameras because the City did not receive the grant. The \$290,000, together with the \$186,000 left over from completed projects allowed the City to add other projects - \$100,000 for park security cameras; \$30,000 for downtown light repairs; \$250,000 for a new HVAC system for the Parks and Community Services Building; \$10,000 from Fund 301, plus some CDBG money for electric doors at City Hall, and \$43,000 for the Police Range. The money allocated to the Police Range is the beginning of a substantial investment for water, sewage and lighting. The intention is to be able to rent out the facility and put the fees generated back into this project.

Mr. Johnston stated the CIP is organized into groups by the type of project. Groups include, General Government and Public Safety, Traffic Safety, Streets & Highways, Wastewater, Water, Drainage, Airport & Transit, Parks & Recreation, and Miscellaneous Projects.

Group 71 - General Government/ Public Safety - includes \$343,120 for expansion of the Boyd Service Center (Development Impact fees); \$60,000 for automatic doors at City Hall (CDBG funding of \$50k, Fund 301 \$10k); \$100,000 for a Fuel Dispenser (Equipment Replacement Fund); and \$43,000 for the Police Range (Fund 301).

Group 72 – Traffic Safety – All projects funded from the gas tax. \$200,000 for a Traffic Signal at Corral Hollow and Kavanagh; \$100,000 for a Turning Pocket at Eleventh and McArthur (a multi-year project which will require additional land); \$50,000 for Traffic Calming; \$75,000 for a Traffic Signal Reflectivity Assessment (new mandate to ensure signs have the correct reflectivity), and \$50,000 for Traffic Signal Controller Replacement, an annual project.

Group 73 – Street & Highways - Widen Corral Hollow (Grant Line to Mall) final \$1,300,000 (Measure K) of \$6,662,304 total cost; New Interchange at I-205 and Lammers, \$5,754,300 mostly from Fed TEA grant; \$9,477,270 to widen Lammers, south of Eleventh Street completed by Tracy Gateway; \$660,000 to widen Corral Hollow, north of Linne (Measure K and gas tax), and Construction of Paradise through parcel 31 (NEI) \$653,700, final amount of Measure K funds.

Mr. Johnston added that with regard to the Gateway item, Gateway will do the work and then dedicate it to the City. Widening Corral Hollow, north of Linne was planned in anticipation of the aquatic facility, but the funding could be reallocated. Kul Sharma, City Engineer agreed that widening Corral Hollow was projected in anticipation of the aquatic center at Ellis; however, the City has an agreement with the church and following annexation of that area the improvements will be done.

Council Member Elliott referred to the sidewalk on Lammers and inquired whether there would be a sidewalk connecting to the school. Andrew Malik, Director of Development and Engineering Services, stated the developer's responsibility stops at the frontage of Gateway. Part of this area is in the County, and, at present, the City is working with the County to get this issue resolved.

Group 74 – Wastewater – \$1,000,000 to upgrade WW lines, South ISP, with a larger capacity line funded with impact fees; \$260,000 for Annual WW line replacement; \$230,000 for Annual WW plant items; \$50,000 for Capacity Maintenance Mgt Data; \$50,000 for discharge permit studies which need to be completed before the City can expand to 16 mgds, and \$600,000 for WW line replacement of underground pipes on Corral Hollow Road.

Group 75 – Water - \$2,125,000 water supply purchase WSID/BCID; \$200,000 to inject water into the ground table for storage and recovery; \$5,273,000 for water distribution (Gateway funded); \$320,000 for annual water line replacement; \$600,000 to replace water line on Corral Hollow Road, and \$50,000 for capacity maintenance data acquisition. Mr. Johnston added that although the water purchase from WSID/BCID has been financed they have requested a lump sum payment this year.

Group 76 - Storm Drainage - \$43,000 for replacement of various storm drains.

Group 77 - Airport and Transit – \$600,000 for replacement of Para Transit buses; \$700,000 for replacement of Transit buses; \$300,000 for Fiber Optic installation Transit Station to City Hall; \$25,000 for Electric Vehicle Charging Station, and \$150,000 for Security Cameras at the Transit Station. All funds for these projects will come from transit funds or from grants.

Parks & Recreation - \$557,400 additional development impact fees available to the Aquatics Center; \$10,000,000 from Development Agreement with Surland; \$250,000 for HVAC upgrades to the Parks and Community Services Building; \$448,000 added to Holly Sugar Sports Fields project (swap grant); \$100,000 for security cameras in parks; \$75,000 grant for frequency drives that run irrigation systems in the parks; \$120,000 grant for lights at the Tracy ballpark, and \$30,000 for downtown light/electrical repairs.

Mr. Johnston added that since this was the year the City had anticipated moving forward with the Aquatic Center the project has been included, even though other developments have occurred. Additionally, a federal grant the City received for the Holly Sugar Sports Fields was transferred to other projects which were closer to being implemented at the time. Since those projects have been completed the grant money received for those completed projects has been transferred back to Holly Sugar.

Group 79 – Miscellaneous – \$200,000 for a computer replacement program (equipment replacement fund).

Mr. Johnston stated there are no items other than program management funded by various development impact areas.

Mr. Johnston concluded by thanking staff who helped put together the CIP.

Council Member Elliott inquired if every project presented would come back to Council to approve funding before it moves forward. Mr. Johnston responded virtually any construction contract over \$10,000 which involves public works construction needs Council approval. Both the design contract and the construction contract require Council approval.

Council Member Elliott referred to the \$10 million dollars from a Development Agreement with Surland, and the \$557,400 in development impact fees for the aquatic center and stated he presumed the project would not move forward until there is more clarity on the situation. Mr. Johnston stated if Council chooses to leave the \$10 million in the CIP because the project is still being pursued in its existing form there is no problem in doing that, since a construction project will not be awarded until the funding has been received. However, if the facility is not built the impact fees would have to be returned to the specific development area.

Mayor Pro Tem Maciel inquired whether the fees could be used to remodel the Joe Wilson pool. Mr. Johnston responded the fees can be used to build new pools, but not to rehabilitate pools. Dan Sodergren, City Attorney, stated it would depend on what was included in the original fee study.

Council Member Elliott referred to the staff report which indicated it is possible the General Projects Fund may have a balance in the high six figure range available for future projects and asked if that was the \$186,000 referred to earlier. Mr. Johnston responded no. Two projects would be defunded - \$100,000 for solar panels because the grant did not require a match, and \$190,000 for police cameras because the City did not receive the grant. That money is available for the projects listed. However, after everything is completed staff estimates approximately half a million will be left over for which there is no specific project at the moment.

Council Member Abercrombie inquired whether the City was working on acquiring a grant to replace HAZMAT vehicles in June 2013. Al Nero, Fire Chief, responded the Fire Department will be looking at grant opportunities over the next two years. Homeland Security grants, Aid to Firefighters grants and several different grant opportunities are available.

In response to a question from Council Member Abercrombie regarding whether the City had begun looking at the costs involved in upgrading the CAD/RMS system at the Police Department to accommodate Fire Dispatch, Fire Chief Nero responded not yet.

Mr. Johnston stated there is an agenda item on the City Council agenda later this evening requesting additional funds for consulting services related to a new CAD/RMS system which would have multi-jurisdictional and multi-agency capabilities.

Council Member Abercrombie asked if the costs had been determined. Captain Espinoza responded there will be additional costs for staff, training, and dispatch, but the new system will have the ability to add an additional agency. In response to a question from Council Member Abercrombie regarding the cost to add an additional agency, Captain Espinoza stated that has not been determined.

Council Member Abercrombie inquired how many additional fields could be added at the Holly Sugar Sports Complex if \$385,382 became available. Rod Buchanan, Director of Parks and Community Services responded four or five, depending on whether they were baseball or soccer.

Mayor Ives asked for an update on the hangars at the airport. Mr. Buchanan stated the hangars have been designed for the most part, although there is still some design work still to be done. Mr. Buchanan added the City is seeking loan based funding of approximately \$2.2m dollars, but eventually the cash flow will be positive.

Mayor Ives asked for an update on the regional rail planning study grant. Leon Churchill, City Manager, stated there may be some additional work the City needs to complete in order to secure those funds.

Mayor Ives stated that since economic development has been determined to be the Council's highest priority, is any additional funding required in the CIP budget. Mr. Churchill responded there is no additional funding required other than what was discussed regarding "Wayfinding Signage." Other efforts can be pursued, but they are not proposed at this time.

Mr. Johnston reminded the Council that additional projects could be brought forward for consideration at any Council meeting.

Mayor Ives requested an economic development plan be brought back to Council, supplemental to what the City is already doing.

Council Member Elliott suggested more shape be put into the plan for economic development, so there is a more focused master plan approach for each area of the City.

Council Member Abercrombie requested an update on the regional animal shelter. Mr. Churchill responded the City is actively pursuing the project with San Joaquin County. The County has some capital funds available, although there is no time frame on when a decision will be made. Discussions are ongoing between the Board of Supervisors and staff.

5. ADJOURNMENT - It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Maciel to adjourn. Voice vote found all in favor; passed and so ordered. Time: 7:17 p.m.

The above agenda was posted at the Tracy Community Center on March 10, 2011. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

April 5, 2011, 6:00 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Ives called the meeting to order at 6:00 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Abercrombie, Rickman, Elliott, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE - None
4. CLOSED SESSION –
 - A. Pending Litigation (Gov. Code section 54956.9(b))
 - *Allred & McFarland v. City of Tracy*
(San Joaquin County Superior Court Case No. 39-2009-00215510-CU-WT-STK)
 - B. Real Property Negotiations (Govt. Code section 54956.8)

Property Location: City-owned Holly Sugar Property (APN Nos. 212-140-06; 212-140-07, 212-150-01 (portion); 212-160-09; 212-130-2 (portion); 212-130-13 (portion); 212-150-01 (portion); 212-160-04; 212-160-05; 212-160-11 (portion); 212-200-01

Negotiator(s) for the City Andrew Malik, Director of Development and Engineering Services; Kevin Tobeck, Director of Public Works; and Rod Buchanan, Director of Parks and Community Services

Negotiating Parties: Representatives of: Combined Solar Technologies, Inc.; Tracy Blast Development, LLC; Black Ops Airsoft, Inc. dba 9 Gates Airsoft; and American Custom Meats, LLC

Under Negotiation: Price and terms of payment for the purchase or lease of the property
5. MOTION TO RECESS TO CLOSED SESSION – Council Member Abercrombie motioned to recess the meeting to closed session at 6:01 p.m. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.
6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 6:49 p.m.
7. REPORT OF FINAL ACTION – None.

8. ADJOURNMENT – It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adjourn. Voice vote found all in favor; passed and so ordered. Time: 6:50 p.m.

The agenda was posted at City Hall on March 31, 2011. The above are summary minutes.

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.B

REQUEST

ACCEPTANCE OF THE HOLLY DRIVE NORTH OF GRANT LINE ROAD SIDEWALK IMPROVEMENT PROJECT - CIP 73119, COMPLETED BY GRANITE CONSTRUCTION OF WATSONVILLE, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

The contractor has completed construction of The Holly Drive north of Grant Line Road Sidewalk Improvement Project - CIP 73119, 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 to release the contractor's bonds and retention

DISCUSSION

On November 16, 2010, City Council awarded a construction contract for the Holly Drive north of Grant Line Road Sidewalk Improvement Project - CIP 73119, to Granite Construction of Watsonville, California, in the amount of \$55,885.

The scope of work of this project involved construction of approximately one block of new sidewalk on the east and west sides of Holly Drive between Grant Line Road and Portola Way.

One change order was issued in the amount of \$5,025 which consisted of the removal of approximately 67 linear feet of curb and gutter adjacent to the proposed sidewalk.

The project construction contract unit prices are based on estimated engineering quantities. Actual payment is based on field measured quantities installed by the contractor. According to the City's inspection records, actual field measurement quantities exceeded the contract quantities in the amount of \$232.50. These quantities were paid in accordance with the bid unit prices listed in the contract and are listed as overrun quantities.

Status of budget and project costs is as follows:

A. Construction Contract Amount	\$ 55,885.00
B. Change orders	\$ 5,025.00
C. Over run of Quantities	\$ 232.50
D. Right-of-Way acquisition	\$ 16,158.75
E. Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 14,757.86
F. Project Management Charges	\$ 19,747.40

Total Project Costs	\$111,806.51
Budgeted Amount	\$122,000.00

The project has been completed within the available budget for the project, on schedule, per plans, specifications, and City of Tracy standards. The project created five jobs for a period of two months.

STRATEGIC PLAN

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

FISCAL IMPACT

CIP 73119 is an approved Capital Improvement Project with sufficient funding and there will be no fiscal impact to the General Fund.

RECOMMENDATION

That City Council, by resolution, accept The Holly Drive North of Grant Line Road Sidewalk Improvements Project - CIP 73119, completed by Granite Construction of Watsonville, 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

Approved by: Andrew Malik, Development and Engineering Services Director
Leon Churchill, Jr., City Manager

RESOLUTION 2011-_____

ACCEPTING THE HOLLY DRIVE NORTH OF GRANT LINE ROAD SIDEWALK IMPROVEMENT PROJECT - CIP 73119, COMPLETED BY GRANITE CONSTRUCTION OF WATSONVILLE, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS, On November 16, 2010, City Council awarded a construction contract for the Holly Drive north of Grant Line Road Sidewalk Improvement Project - CIP 73119, to Granite Construction of Watsonville, California, and

WHEREAS, One change order was issued in the amount of \$5,025 which consisted of the removal of approximately 67 linear feet of curb and gutter, and

WHEREAS, According to the City's inspection records, actual field measurement quantities exceeded the contract quantities in the amount of \$232.50, and

WHEREAS, Status of budget and project costs is as follows:

Construction Contract Amount	\$ 55,885.00
Change orders	\$ 5,025.00
Over run of Quantities	\$ 232.50
Right-of-Way acquisition	\$ 16,158.75
Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 14,757.86
Project Management Charges	<u>\$ 19,747.40</u>
Total Project Costs	\$111,806.51

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

WHEREAS, CIP 73119 is an approved Capital Improvement Project with sufficient funding and there will be no fiscal impact to the General Fund;

NOW, THEREFORE, BE IT RESOLVED That City Council accepts The Holly Drive North of Grant Line Road Sidewalk Improvements Project - CIP 73119, completed by Granite Construction of Watsonville, 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 _____ was adopted by the Tracy City Council on the 19th day of April, 2011 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

CITY CLERK

AGENDA ITEM 1.C

REQUEST

ACCEPTANCE OF THE MEDIAN IMPROVEMENTS AT VARIOUS ARTERIAL STREETS - CIP 73113, COMPLETED BY GREEN VALLEY GROUP DBA GREEN VALLEY LANDSCAPE OF LIVERMORE, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

The contractor has completed the median landscape, hardscape, and irrigation improvements in segments of four arterial streets: Schulte Road, Cypress Drive, Tracy Boulevard, and Grant Line Road - CIP 73113. Project costs are within the available budget. Staff recommends Council accept the project to enable the City to release the contractor's bonds and retention.

DISCUSSION

July 6, 2010, City Council awarded a construction contract for Median Improvements at Various Arterials - CIP 73113, to Green Valley Group dba Green Valley Landscape of Livermore, CA, in the amount of \$248,295.

The scope of work involved replacing dead plants, shrubs and non-functional irrigation systems with new landscaping and hardscape improvements in the medians on the following streets

- o Schulte Road – east of Tracy Boulevard
- o Cypress Drive – between Corral Hollow Road and Lauriana Drive
- o Tracy Boulevard – south of Schulte Road and north of Central Avenue
- o Grant Line Road – between Joe Pombo Parkway and Corral Hollow Road

One change order was issued in the amount of \$9,620.24 for this project which consisted of relocating existing sprinkler heads 12" from the median curb to comply with new City standards, installation of new street signs, irrigation valves and replacement of eight dead trees.

Status of budget and project costs is as follows:

A. Construction Contract Amount	\$248,295.00
B. Change orders	\$ 9,620.24
C. Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 54,014.89
D. Project Management Charges	<u>\$ 39,808.18</u>
 Total Project Costs	 \$351,738.31
 Budgeted Amount	 \$360,030.00

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 seven strategic plans.

FISCAL IMPACT

CIP 73113 is an approved Capital Improvement Project with sufficient funding and there will be no fiscal impact to the General Fund.

RECOMMENDATION

That City Council, by resolution, accept the Median Improvements at Various Arterials Project - CIP 73113, completed by Green Valley Group dba Green Valley Landscape of Livermore, CA, 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

Approved by: Andrew Malik, Development and Engineering Services Director
Leon Churchill, Jr., City Manager

RESOLUTION 2011-_____

ACCEPTING THE MEDIAN IMPROVEMENTS AT VARIOUS ARTERIAL STREETS - CIP 73113, COMPLETED BY GREEN VALLEY GROUP DBA GREEN VALLEY LANDSCAPE OF LIVERMORE, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS, July 6, 2010, City Council awarded a construction contract for Median Improvements at Various Arterials - CIP 73113, to Green Valley Group dba Green Valley Landscape of Livermore, CA, in the amount of \$248,295, and

WHEREAS, One change order was issued in the amount of \$9,620.24, and

WHEREAS, Status of budget and project costs is as follows:

Construction Contract Amount	\$248,295.00
Change orders	\$ 9,620.24
Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 54,014.89
Project Management Charges	<u>\$ 39,808.18</u>
 Total Project Costs	 \$351,738.31
 Budgeted Amount	 \$360,030.00

WHEREAS, CIP 73113 is an approved Capital Improvement Project with sufficient funding and there will be no fiscal impact to the General Fund;

NOW, THEREFORE, BE IT RESOLVED That City Council accepts the Median Improvements at Various Arterials Project - CIP 73113, completed by Green Valley Group dba Green Valley Landscape of Livermore, CA, 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 _____ was adopted by the Tracy City Council on the 19th day of April, 2011 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 THE SIDEWALK, CURB & GUTTER REPAIRS (ADA IMPROVEMENTS, FY10-11), - CIP 73122, COMPLETED BY NOR-CAL CONCRETE OF SUISUN, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

The contractor has completed construction of The Sidewalk, Curb & Gutter Repairs (ADA Improvements, FY 10-11) Project - CIP 73122, in accordance with plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends City Council accept the project to enable the City to release the contractor's bonds and retention.

DISCUSSION

On December 21, 2010, City Council awarded a construction contract for The Sidewalk, Curb & Gutter Repairs (ADA Improvements, FY 10-11) Project -CIP 73122, to Nor-Cal Concrete, Inc., of Suisun, California, in the amount of \$108,543.30. This project involved the removal and replacement of approximately 6,408 square feet of damaged or deteriorated sidewalks, 855 square feet of driveways and 677 linear feet of curb and gutter, 6 curb ramps, and 5 tree root removals. This work improved pedestrian accessibility and compliance with the American Disability Act (ADA). The majority of the project improvements were completed between Tenth Street to Sixth Street and between Roosevelt to East Street. Additional streets included are: Carlton Avenue. and Beverly Place between Parker Avenue to Holly Drive.

No change orders were issued. The project construction contract unit prices are based on estimated engineering quantities. Actual payment is based on field measured quantities installed by the contractor. According to the City's inspection records, actual field measurement quantities are less than the contract quantities in the amount of \$(7,868.94). These quantities were deducted in accordance with the bid unit prices listed in the contract and are listed as under run quantities.

Status of budget and project costs is as follows:

A. Construction Contract Amount	\$108,543.30
B. Change orders	\$ 0
C. Under run of Quantities	\$ (7,468.94)
D. Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 22,666.45
F. Project Management Charges	<u>\$ 17,714.48</u>
 Total Project Costs	 \$141,455.29
 Budgeted Amount	 \$201,000.00

The project has been completed within the available budget for the project, 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 seven strategic plans.

FISCAL IMPACT

CIP 73122 is an approved Capital Improvement Projects with funding from the Community Development Block Grant and there is no fiscal impact to the General Fund. The remaining unused funding from this project will be transferred back into the CDBG funds for use in similar or other competing projects.

RECOMMENDATION

That City Council, by resolution, accept the Sidewalk, Curb & Gutter Repairs (ADA Improvements, FY 10-11) Project - CIP 73122, completed by Nor-Cal Concrete, Inc., of Suisun, 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

Approved by: Andrew Malik, Development and Engineering Services Director
Leon Churchill, Jr., City Manager

RESOLUTION 2011-_____

ACCEPTING THE SIDEWALK, CURB & GUTTER REPAIRS (ADA IMPROVEMENTS, FY10-11), - CIP 73122, COMPLETED BY NOR-CAL CONCRETE OF SUISUN, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS, On December 21, 2010, City Council awarded a construction contract for the Sidewalk, Curb & Gutter Repairs (ADA Improvements, FY 10-11) Project -CIP 73122, to Nor-Cal Concrete, Inc., of Suisun, California, in the amount of \$108,543.30, and

WHEREAS, According to the City's inspection records, actual field measurement quantities are less than the contract quantities in the amount of \$(7,868.94), and

WHEREAS, Status of budget and project costs is as follows:

Construction Contract Amount	\$108,543.30
Change orders	\$ 0
Under run of Quantities	\$ (7,468.94)
Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 22,666.45
Project Management Charges	<u>\$ 17,714.48</u>
Total Project Costs	\$141,455.29
Budgeted Amount	\$201,000.00

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

WHEREAS, CIP 73122 is an approved Capital Improvement Projects with funding from the Community Development Block Grant and there is no fiscal impact to the General Fund. The remaining unused funding from this project will be transferred back into the CDBG funds for use in similar or other competing projects;

NOW, THEREFORE, BE IT RESOLVED That City Council accepts the Sidewalk, Curb & Gutter Repairs (ADA Improvements, FY 10-11) Project - CIP 73122, completed by Nor-Cal Concrete, Inc., of Suisun, 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 _____ was adopted by the Tracy City Council on the 19th day of April, 2011 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.E

REQUEST

AUTHORIZE AN OFFSITE IMPROVEMENT AGREEMENT WITH THE TRACY JOINT UNIFIED SCHOOL DISTRICT AND ROBBELEN CONSTRUCTION COMPANY, INC., FOR THE CONSTRUCTION OF STREETS AND UTILITIES IMPROVEMENTS ALONG THE FRONTAGE OF THE MONTE VISTA MIDDLE SCHOOL ON TRACY BOULEVARD AND LOWELL AVENUE AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

As part of the modernization project for the Monte Vista Middle School, the Tracy Joint Unified School District (School District) will construct certain street and utility improvements along the frontage of the school facility on Tracy Boulevard and Lowell Avenue. Approval of an Offsite Improvement Agreement (OIA) with the School District will allow construction of the frontage improvements on the City's right-of-way on Tracy Boulevard and Lowell Avenue by Robbelen Construction Company, Inc. (the School District's contractor).

DISCUSSION

The modernization project for Monte Vista Middle School will include the demolition and replacement of existing modular buildings with new classroom buildings, construction of paved walkways, installation of on-site landscaping, construction of a bus-turn out on site, and the relocation of an ingress driveway. Certain street and utility improvements (offsite improvements) are necessary to be constructed on Tracy Boulevard and Lowell Avenue, to serve the modernized school facility. The proposed offsite improvements include, but are not limited to, curb, gutter, sidewalk, domestic, irrigation and fire service lines, storm drain and manhole, asphalt concrete pavement replacement, pavement marking, reconfiguration of existing parking on Lowell Avenue, signing and striping along the frontage of the school on Tracy Boulevard and Lowell Avenue.

The School District has submitted a request to proceed with construction of the offsite improvements within the City's right-of-way on Tracy Boulevard and Lowell Avenue, as described above, and also requested approval of the Offsite Improvement Agreement (OIA). Improvement Plans for the offsite improvements have been prepared and reviewed by the Engineering Division. The School District and their contractor have executed the OIA and submitted the required improvement security, to guarantee completion of the offsite improvements covered under the OIA. The OIA is on file with the City Engineer and is available for review upon request.

There's no right-of-way dedication required on Tracy Boulevard or Lowell Avenue. Upon completion of the public improvements, the City will accept the improvements for maintenance.

STRATEGIC PLAN

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

FISCAL IMPACT

There will be no impact to the General Fund. The cost of frontage improvements will be paid by the School District. The School District has paid the engineering review fees including plan checking, permit, inspection and agreement processing fees.

RECOMMENDATION

That City Council, by resolution, authorize the Offsite Improvement Agreement with the Tracy Joint Unified School District and Robbelen Construction Company, Inc. of El Dorado Hills, California, for construction of frontage improvements on Lowell Avenue and Tracy Boulevard, and authorize the Mayor to execute the Offsite Improvement Agreement.

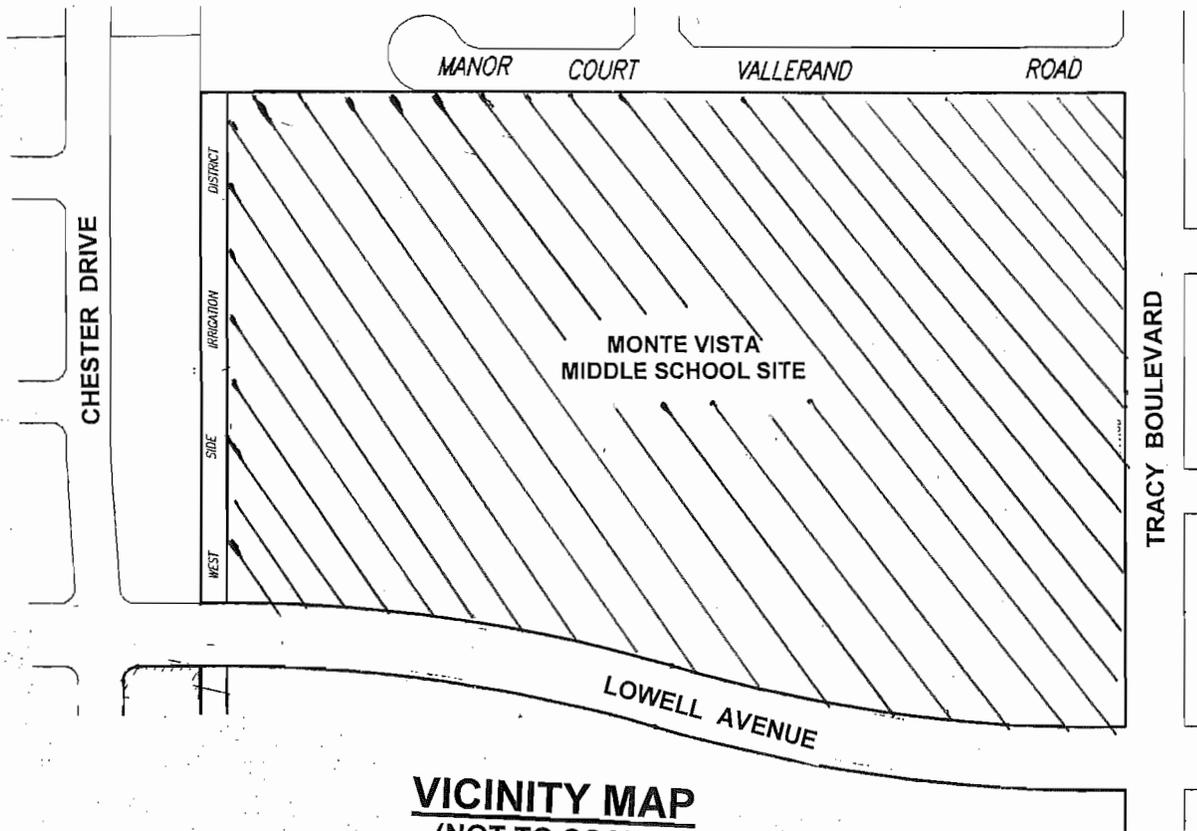
Prepared by: Ranchhod Pandya, Assistant Civil Engineer
Criseldo Mina, Senior Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer

Approved by: Andrew Malik, Director of Development and Engineering Services

Attachment - Location Map

TRACY UNIFIED SCHOOL DISTRICT
MONTE VISTA MIDDLE SCHOOL



VICINITY MAP
(NOT TO SCALE)

RESOLUTION 2011-_____

AUTHORIZING AN OFFSITE IMPROVEMENT AGREEMENT WITH THE TRACY JOINT UNIFIED SCHOOL DISTRICT AND ROBBELEN CONSTRUCTION COMPANY, INC., FOR THE CONSTRUCTION OF STREETS AND UTILITIES IMPROVEMENTS ALONG THE FRONTAGE OF THE MONTE VISTA MIDDLE SCHOOL ON TRACY BOULEVARD AND LOWELL AVENUE AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, As part of the modernization project for the Monte Vista Middle School, the Tracy Joint Unified School District (School District) will construct certain street and utility improvements along the frontage of the school facility on Tracy Boulevard and Lowell Avenue, and

WHEREAS, Approval of an Offsite Improvement Agreement (OIA) with the School District will allow construction of the frontage improvements on the City's right-of-way on Tracy Boulevard and Lowell Avenue by Robbelen Construction Company, Inc., and

WHEREAS, The School District has submitted a request to proceed with construction of the offsite improvements within the City's right-of-way on Tracy Boulevard and Lowell Avenue, as described above, and also requested approval of the Offsite Improvement Agreement

WHEREAS, The School District and their contractor have executed the OIA and submitted the required improvement security to guarantee completion of the offsite improvements covered under the OIA, and

WHEREAS, Upon completion of the public improvements, the City will accept the improvements for maintenance, and

WHEREAS, here will be no impact to the General Fund. The cost of frontage improvements will be paid by the School District;

NOW, THEREFORE, BE IT RESOLVED That City Council authorizes the Offsite Improvement Agreement with the Tracy Joint Unified School District and Robbelen Construction Company, Inc. of El Dorado Hills, California, for construction of frontage improvements on Lowell Avenue and Tracy Boulevard, and authorizes the Mayor to execute the Offsite Improvement Agreement.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 19th day of April, 2011 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

AUTHORIZATION TO ENTER INTO A COOPERATIVE AGREEMENT BETWEEN THE CITY OF TRACY, CONTRA COSTA COUNTY, SAN JOAQUIN COUNTY, THE CITY OF BRENTWOOD, AND THE MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT FOR THE PARTIAL REIMBURSEMENT OF CITY OF TRACY STAFF EXPENSES RELATED TO DEVELOPMENT OF TECHNICAL STUDIES AND REPORTS REGARDING THE PHASE I PLANNING ANALYSIS OF FUTURE STATE ROUTE 239 AND AUTHORIZATION FOR THE CITY MANAGER TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

Contra Costa County has received authorization to expend \$14 million in federal funding for studies and construction related to State Route 239, a highway that will connect State Route 4 in the Brentwood area with Interstate 1-205 or Interstate 580 in the Tracy area. Execution of this Cooperative Agreement between the City of Tracy, Contra Costa County, San Joaquin County, the City of Brentwood, and the Mountain House Community Services District will allow the City of Tracy to recover 80% of all staff costs associated with the project over a two year period with a not to exceed amount of \$50,000.

DISCUSSION

In March of 2010, staff met with public works representatives from Contra Costa County regarding a project to analyze, design and construct a new State Route 239. State Route 239 is a highway that currently connects State Route 4 in the Brentwood area with Interstate I-205 via Grant Line Road. See Exhibit A for Location Map.

Contra Costa County has received authorization to expend \$14 million in federal funds for studies and construction of State Route 239. The federal funds were authorized by the United States Congress in the Federal Transportation Act of 2005 known as the Safe Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU).

The California Department of Transportation (CALTRANS), the public agency administering the federal grant funds, has authorized Contra Costa County to begin to expend \$2.9 million of the federal funds for Phase I (Planning) work. The planning work will require each jurisdiction to provide: 1) data on adopted or pending development plans in the area; 2) technical input and review on potential traffic forecasting models and related analysis for use in the project; 3) technical input and review on potential route alignments; 4) assistance in developing the method of analysis of the routes; 5) input on potential strategies to fund the construction of the project; 6) assistance in developing public opinion poll and other methods of public outreach; 7) stakeholder contacts for inclusion in the public outreach; 8) assistance in the technical and policy development of potential institutional structures such as Joint Powers Agency (JPA); 9) assistance in advising partner jurisdictions elected officials on matters related to the project; and 10) assistance to Contra Costa County on other technical aspects of the project as needed. It is anticipated that the Phase I (Planning) analysis of the project will take approximately 24 months to complete.

Since each jurisdiction is being requested to provide technical assistance for the project, CALTRANS has agreed to allow certain staff expenses to be reimbursed to each jurisdiction. In general, each jurisdiction will be allowed to recover 80% of designated staff expenses for the project with a not to exceed amount of \$50,000 for the Phase I planning work. The remaining 20% of staff time provided by each jurisdiction will be accounted for as that jurisdiction's local funding match to the project. Staff believes this is a reasonable method and amount for staff reimbursable expenses. The attached Cooperative Agreement provides greater details related to the process for invoicing staff reimbursable expenses.

STRATEGIC PLAN

The agenda item relates to the City's Economic Development Strategic Plan in that it will provide for future roadway infrastructure better connecting the Brentwood / Antioch areas to I-205 and I-580.

FISCAL IMPACT

There will be an impact to the General Fund. While 80% of dedicated staff time will be reimbursed through this Cooperative Agreement, the remaining 20%, or approximately \$12,500, will come from the General Fund.

RECOMMENDATION

That City Council, by resolution, authorize the City Manager of the City of Tracy to execute the Cooperative Agreement between the City of Tracy, Contra Costa County, San Joaquin County, the City of Brentwood, and the Mountain House Services District for the reimbursement of staff expenses related to development of technical studies and reports regarding the Phase I planning analysis of future State Route 239.

Prepared by: Andrew Malik, Development and Engineering Services Director
Kul Sharma, City Engineer

Reviewed and Approved by: Leon Churchill, Jr., City Manager

Exhibit A – Location Map
Exhibit B – Cooperative Funding Agreement



©2011 Google - Map data ©2011 Google -

[Save to My Map](#)

- EXISTING ROUTE
- - - RECOMMENDED ROUTE

EXHIBIT B

COOPERATIVE FUNDING AGREEMENT

STATE ROUTE 239 PROJECT -- PHASE 1 (PLANNING)

This COOPERATIVE FUNDING AGREEMENT (this “AGREEMENT”) is effective this _____ day of _____, 2011 among CONTRA COSTA COUNTY, a political subdivision of the State of California (“CONTRA COSTA”), SAN JOAQUIN COUNTY, a political subdivision of the State of California (“SAN JOAQUIN”), the CITY OF BRENTWOOD, a municipal corporation of the State of California (“BRENTWOOD”), the CITY OF TRACY, a municipal corporation of the State of California (“TRACY”), and MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT, a California special district¹ (“MOUNTAIN HOUSE” and together with CONTRA COSTA, SAN JOAQUIN, BRENTWOOD and TRACY, the “PARTIES” and each separately, a “PARTY”).

RECITALS

THE PARTIES ENTER THIS AGREEMENT on the basis of the following facts, understandings and intentions:

A. SAN JOAQUIN COUNTY, BRENTWOOD, TRACY, and MOUNTAIN HOUSE (each, a “PARTNER JURISDICTION” and collectively, the “PARTNER JURISDICTIONS”), and CONTRA COSTA desire to work together in a collaborative planning process to develop specific technical studies and reports regarding the design and construction of future State Route 239 (the “PROJECT”), a highway that will connect State Route 4 in the Brentwood area with Interstate 205 or Interstate 580 in the Tracy area (herein, “STATE ROUTE 239”).

B. CONTRA COSTA has received authorization to expend \$14 million in federal funding for studies and construction of STATE ROUTE 239 (the “FEDERAL GRANT

¹ Mountain House needs to confirm / correct their agency type.

FUNDS”). The FEDERAL GRANT FUNDS were authorized by the United States Congress in the Federal Transportation Act of 2005 (Public Law No. 109-59) known as the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

C. CONTRA COSTA has been authorized by the California Department of Transportation (“CALTRANS”), the public agency administering the FEDERAL GRANT FUNDS, to begin expending \$2.9 Million of the FEDERAL GRANT FUNDS for PHASE 1 (PLANNING) (as defined in Section 2 below) of the PROJECT.

D. CONTRA COSTA and each of the PARTNER JURISDICTIONS are located within the study area where STATE ROUTE 239 may be constructed and have expressed interest in participating in the collaborative study of STATE ROUTE 239.

E. CONTRA COSTA has determined that each PARTNER JURISDICTION may be reimbursed from the FEDERAL GRANT FUNDS for eighty percent (80%) of its staff time spent working on the PROJECT. This determination was made through consultation with CALTRANS.

F. CONTRA COSTA desires to provide a portion of the FEDERAL GRANT FUNDS to the PARTNER JURISDICTIONS to ensure that the PARTNER JURISDICTIONS’ staff are available to work on the PROJECT and are reimbursed for their staff time, in accordance with all applicable state and federal regulations.

NOW, THEREFORE, in consideration of the mutual agreements set forth above and the rights and obligations set forth in this AGREEMENT and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, CONTRA COSTA and each PARTNER JURISDICTION hereby agree to the following:

1. Term. The term of this Agreement shall commence on April 1, 2011 and shall terminate when the STATE ROUTE 239 consultant, Parsons Transportation Group Inc. (the “CONSULTANT”) has delivered its final report regarding PHASE 1 (PLANNING) of the PROJECT. PHASE 1 (PLANNING) is anticipated to take approximately two years from start to finish, with an anticipated completion date of April 30, 2013.

2. Reimbursable Expenses. As part of the PROJECT, each PARTNER JURISDICTION’S staff will perform tasks at the request of CONTRA COSTA, including, but not necessarily limited to, the following work: 1) provide data on adopted or pending

development plans and policy documents including general plans, specific plans, transportation improvement plans, other infrastructure plans and projects, major development plans, property ownership, and other background data that pertain to the respective PARTNER JURISDICTION; 2) provide technical input and review on potential traffic forecasting models and related analysis for use in the PROJECT, including both land use data and roadway data that are input into the forecasting models; 3) provide technical input and review of potential route alignments (specific paths) that STATE ROUTE 239 could take; 4) assist in developing the method of analysis of the routes; 5) provide input on potential innovative strategies to fund the construction of STATE ROUTE 239, including review of a traffic and revenue study that will estimate the viability of public-private partnerships; 6) assist in the development of a public opinion poll and other methods of public outreach that will be used in the PROJECT; 7) identify potential stakeholders within their jurisdiction for inclusion in the public outreach element of the PROJECT; 8) assist in the technical and policy development of potential institutional structures such as the creation of a Joint Exercise of Powers Agency; 9) advise PARTNER JURISDICTION'S elected officials on the foregoing items and related matters; and 10) advise CONTRA COSTA on other technical aspects of the PROJECT as needed (the foregoing items and other related tasks being referred to herein, as "PHASE 1 (PLANNING)").

3. Compensation.

a) Exhibit A attached hereto and incorporated herein by reference sets forth the name, title and hourly rate of pay for each PARTNER JURISDICTION staff person that will be charged for such staff person's time for work on the PROJECT. In compliance with federal funding regulations and pursuant to the requirements of this Section 3, CONTRA COSTA will reimburse each PARTNER JURISDICTION for eighty percent (80%) of its staff time worked on the PROJECT. Federal regulations require that local jurisdictions match the FEDERAL GRANT FUNDS on a twenty-percent (20%) basis and CONTRA COSTA and each of the PARTNER JURISDICTIONS agree that twenty percent (20%) of its respective staff time spent on the PROJECT will not be reimbursed from FEDERAL GRANT FUNDS and that such staff time is the responsibility of the respective PARTNER JURISDICTION.

b) CONTRA COSTA'S reimbursement of a PARTNER JURISDICTION'S staff time will cover eighty percent (80%) of direct staff time only, per state and federal regulation. Overhead costs are not reimbursable.

c) Each PARTNER JURISDICTION will provide monthly invoices to CONTRA COSTA'S project manager, which will include: (i) a summary of work performed; (ii) the identity of personnel who performed the work; (iii) the specific tasks for which the work was performed; (iv) the number of staff hours involved in performing the work for each specified task and the date on which such hours were worked; (v) the hourly rate of pay for each staff person; and (vi) the total amount for which reimbursement is being requested.

d) The CONTRA COSTA project manager will review the invoices and approve them for payment or, if additional documentation or information is required or there are questions regarding an invoice, the project manager will contact such PARTNER JURISDICTION regarding such additional documentation, information or questions.

e) Once CONTRA COSTA'S project manager has approved the invoice, it will be submitted to CONTRA COSTA'S Public Works Department for payment. CONTRA COSTA will then seek reimbursement from CALTRANS for such payments to the PARTNER JURISDICTIONS.

f) CONTRA COSTA'S reimbursements to each PARTNER JURISDICTION shall not exceed \$50,000 per PARTNER JURISDICTION and reimbursement will not exceed a cumulative total of \$200,000 to all PARTNER JURISDICTIONS, in the aggregate, as indicated on Exhibit A attached hereto.

4. Changes to Compensation. If CALTRANS reduces the compensation rate at which it will reimburse CONTRA COSTA, or changes the requirements CONTRA COSTA must meet in order to receive reimbursement from CALTRANS, CONTRA COSTA reserves the right to revise this Agreement in accordance with any such changes and the PARTNER JURISDICTIONS agree to amend this Agreement to reflect any such changed requirements. Any revisions will be made in consultation with the PARTNER JURISDICTIONS and pursuant to Section 9 of this Agreement.

5. Compliance with Laws. CONTRA COSTA and each of the PARTNER JURISDICTIONS shall comply with all federal and state laws and regulations regarding the work performed and the reimbursements requested, including all federal and state laws and regulations regarding the receipt and use of FEDERAL GRANT FUNDS.

6. Notices. All required or permitted payments, reports, demands and notices may be sent by regular mail or electronic mail. Notices that are mailed by regular mail shall be

deemed delivered two (2) business days after deposited in the mail. Notices may be personally delivered and shall be deemed delivered at the time delivered to the appropriate address set forth below. Notices delivered by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return electronic mail or other written acknowledgment of receipt); provided that, if such notice is not sent during normal business hours of the recipient, such notice shall be deemed to have been sent at the opening of business on the next business day of the recipient. Unless and until notified otherwise in writing, a PARTY shall send or deliver all such communications relating to this Agreement to the following address:

John Greitzer
Senior Transportation Planner
Contra Costa County
Department of Conservation and Development
651 Pine Street, 4th Floor-North Wing
Martinez CA 94553-0095
e-mail address: jgrei@cd.cccounty.us

And CONTRA COSTA shall send all such communications to the following addresses:

Nader Shareghi
Public Works Director
Mountain House Community Services District
230 S. Sterling Drive, Suite 100
Mountain House, CA 95391
e-mail address: nshareghi@sjgov.org

Paul Eldredge
Assistant Director of Public Works
City of Brentwood
708 Third Street
Brentwood, CA 94513
e-mail address: peldredge@ci.brentwood.ca.us

Firoz Vohra
Senior Engineer
San Joaquin County Public Works Dept.
1810 East Hazelton Avenue
Stockton, CA 95205
e-mail address: fvohra@sjgov.org

Andrew Malik

Director of Development and Engineering Services
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
e-mail address: Andrew.malik@ci.tracy.ca.us

7. Records and Audit.

a. *Financial Records.* Each PARTNER JURISDICTION shall maintain true and complete records in connection with the PROJECT, and shall retain all such records for at least thirty-six (36) months after the delivery of the CONSULTANT'S final report regarding PHASE 1 (PLANNING) pursuant to Federal Highway Administration requirements.

b. *Reports.* Each PARTNER JURISDICTION shall provide CONTRA COSTA with any reports as needed by CONTRA COSTA to comply with the terms and conditions of CALTRANS with respect to the FEDERAL GRANT FUNDS. The PARTNER JURISDICTIONS and CONTRA COSTA shall mutually agree upon the format and the content of such reports and the frequency with which the reports shall be provided to CONTRA COSTA, as needed.

8. Termination of Agreement. A PARTY may terminate this Agreement at any time by giving written notice of termination to each of the other PARTIES which shall specify the effective date thereof; provided that any notice of termination shall be given at least thirty (30) days before its effective date.

9. Entire Agreement. This Agreement is the entire agreement among CONTRA COSTA and the PARTNER JURISDICTIONS relating to the subject matter of this Agreement. All PARTIES acknowledge they have not relied upon any promise, representation or warranty not expressly set forth in this Agreement in executing this Agreement. If any provision of this Agreement is void or otherwise unenforceable, the remainder of the Agreement shall continue in full force and effect. Any changes to the terms and provisions of this Agreement or affecting the obligations of the PARTIES set forth in this Agreement shall be by written amendment signed by all PARTIES.

10. Severability. Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of a PARTY to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect;

provided that the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the PARTIES.

11. Waiver. No waiver by a PARTY of any default or breach of any covenant by the other PARTIES shall be implied from any omission to take action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in such waiver and then such waiver shall be operative only for the time and to the extent stated in such waiver. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. No waiver of any provision under this Agreement shall be effective unless in writing and signed by the waiving PARTY.

12. **JURY TRIAL WAIVER; SPECIFIC PERFORMANCE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR DISPUTE ARISING OUT OF THIS AGREEMENT.** The parties hereto agree that specific performance is the only remedy available for a breach of this Agreement.

13. Controlling Law. This Agreement and all matters relating to it shall be governed by the laws of the State of California.

14. Authority. All PARTIES executing this Agreement represent and warrant that they are authorized to do so.

CONTRA COSTA COUNTY

By:

Date _____, 2011

APPROVED AS TO FORM:
Sharon Anderson, County Counsel

By: Deputy County Counsel

Date _____, 2011

CITY OF BRENTWOOD

By: (Name, Title)

Date _____, 2011

APPROVED AS TO FORM:

By: _____, City Attorney

Date _____, 2011

CITY OF TRACY

By: (Name, Title)

Date _____, 2011

APPROVED AS TO FORM:

By: _____, City Attorney

Date _____, 2011

MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT

By: (Name, Title)

Date _____, 2011

APPROVED AS TO FORM:

By: _____, Legal Counsel

Date _____, 2011

SAN JOAQUIN COUNTY

By: (Name, Title)

Date _____, 2011

APPROVED AS TO FORM:

By: _____, County Counsel

Date _____, 2011

Exhibit A

Payment rates for reimbursement to PARTNER JURISDICTIONS

Staff persons working on PROJECT	Title of staff person working on PROJECT	Hourly pay rate (direct costs only, no overhead or other costs)	80% of hourly pay rate *	Maximum total reimbursement for PROJECT
City of Brentwood staff persons:				
1.				
2.				
3.				
Brentwood Total				\$50,000.00
Mountain House Community Services District staff persons:				
1.				
2.				
3.				
Mountain House Total				\$50,000.00
San Joaquin County staff persons:				
1.				
2.				
3.				
San Joaquin County Total				\$50,000.00
City of Tracy staff persons:				
1.				
2.				
3.				
Tracy Total				\$50,000.00
			Combined Total	\$200,000.00

* -- CONTRA COSTA will reimburse PARTNER JURISDICTIONS for eighty percent (80%) of their respective employee's hourly rates, which is the rate at which CONTRA COSTA will be reimbursed with FEDERAL GRANT FUNDS, as set forth in more detail in the Agreement.

RESOLUTION 2011-_____

AUTHORIZING ENTERING INTO A COOPERATIVE AGREEMENT BETWEEN THE CITY OF TRACY, CONTRA COSTA COUNTY, SAN JOAQUIN COUNTY, THE CITY OF BRENTWOOD, AND THE MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT FOR THE PARTIAL REIMBURSEMENT OF CITY OF TRACY STAFF EXPENSES RELATED TO DEVELOPMENT OF TECHNICAL STUDIES AND REPORTS REGARDING THE PHASE I PLANNING ANALYSIS OF FUTURE STATE ROUTE 239 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, State Route 239 is a highway that currently connects State Route 4 in the Brentwood area with Interstate I-205 via Grant Line Road, and

WHEREAS, Contra Costa County has received authorization to expend \$14 million in federal funds for studies and construction of State Route 239, and

WHEREAS, The California Department of Transportation (CALTRANS), the public agency administering the federal grant funds, has authorized Contra Costa County to begin to expend \$2.9 million of the federal funds for Phase I (Planning), and

WHEREAS, Since each jurisdiction is being requested to provide technical assistance for the project, CALTRANS has agreed to allow certain staff expenses to be reimbursed to each jurisdiction, and

WHEREAS, Each jurisdiction will be allowed to recover 80% of designated staff expenses for the project with a not to exceed amount of \$50,000 for the Phase I planning work, and

WHEREAS, There will be an impact to the General Fund. While 80% of dedicated staff time will be reimbursed through this Cooperative Agreement, the remaining 20%, or approximately \$12,500, will come from the General Fund;

NOW, THEREFORE, BE IT RESOLVED That City Council authorize the City Manager of the City of Tracy to execute the Cooperative Agreement between the City of Tracy, Contra Costa County, San Joaquin County, the City of Brentwood, and the Mountain House Services District for the reimbursement of staff expenses related to development of technical studies and reports regarding the Phase I planning analysis of future State Route 239.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 19th day of April, 2011 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.G

REQUEST

AUTHORIZATION OF A PROFESSIONAL SERVICES AGREEMENT WITH TELSTAR INSTRUMENTS, INC. FOR PREVENTATIVE MAINTENANCE AND REPAIRS OF CHEMICAL SYSTEMS AT THE WASTEWATER TREATMENT PLANT, AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT AND DESIGNATION OF SPECIALIZED MAINTENANCE ACTIVITIES AT WATER AND WASTEWATER FACILITIES AS PROFESSIONAL SERVICES

EXECUTIVE SUMMARY

Preventative maintenance work is required on the chlorine and sulfur dioxide systems at the Wastewater Treatment Plant (WWTP). Staff recommends approval of a Professional Services Agreement with Telstar Instruments, Inc. for the chemical system preventative maintenance and repair of equipment.

DISCUSSION

The City utilizes chlorine to disinfect its wastewater effluent before it is discharged into the Delta. Chlorine is the most common method of wastewater disinfection as it inactivates pathogens. Sulfur dioxide is used to remove residual chlorine. Disinfection and dechlorination is required by the City's National Pollutant Discharge Elimination System (NPDES) permit. Both of these chemicals are considered acutely hazardous materials and are essential for the City's wastewater treatment process. They are dangerous if improperly handled or released into the environment.

Preventative maintenance of the chemical feed systems is required. Additionally, a chlorine tank valve no longer closes completely causing a small leak, but an additional valve in the system contains the leak. This tank valve must be replaced. The project requires emptying the chemical tanks which is a significant amount of work.

Safety regulations require preventative maintenance of the chlorine and sulfur dioxide tanks every 5 years. The chemical system was installed in 2007 during the wastewater treatment plant expansion. The chemical tank preventative maintenance is due in 2012, but because of the leaking valve staff proposes to advance these activities to the current fiscal year.

The work to be done includes preventative maintenance on all of the chemical feed equipment, replacement of all of the tank valves, upgrading the automatic shutdown system, installing a pressure reducing valve on the gas feed system, and replacing piping and line valves.

A Request for Proposals was issued and proposals were received from companies specializing in this work. Proposals were received from: Telstar Instruments, Inc., Ward Technical Products, Inc., and KCK Company. After thorough review, staff determined that Telstar Instruments of Concord was well qualified to perform the required scope of work. Telstar Instruments is the factory representative for the manufacturer of the City's

equipment. Telstar Instruments has performed quality work for the City on previous contracts.

The Tracy Municipal Code designates a variety of specialized work as professional services. The water and wastewater facilities require specialized services for maintenance, repair and operations. The wastewater chemical system maintenance is an example of specialized services performed. Staff recommends designation of specialty services at the water and wastewater facilities as professional services through City Council resolution.

STRATEGIC PLAN

The agenda item is a routine operational item and is not related to the City Council Seven Strategic Plans.

FISCAL IMPACT

There is no impact to the General Fund. Staff negotiated with Telstar Instruments, Inc. The cost for the preventative maintenance activities is \$62,000. The cost for the replacement valves and related work is \$154,450. The total agreement amount including tax, freight, and bond premiums is \$230,675.

Funding is available in the approved City budget. The preventative maintenance was budgeted in the wastewater treatment plant maintenance budget. Funding for the replacement valves and related work is in CIP 74-089.

RECOMMENDATION

That the City Council, by resolutions, designate specialized maintenance activities at water and wastewater facilities as professional services, authorize a Professional Services Agreement with Telstar Instruments, Inc. for the chemical system preventative maintenance and repairs at the Wastewater Treatment Plant, and authorize the Mayor to execute the agreement.

Attachment: Telstar Agreement

Prepared by: Vanessa Carrera, Management Analyst I

Reviewed by: Kevin Tobeck, Director of Public Works

Approved by: Leon Churchill, Jr., City Manager

AGREEMENT

This AGREEMENT (hereinafter "Agreement") is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "City"), and Telstar Instruments, a California Corporation (hereinafter "Contractor").

RECITALS

- A. In accordance with the applicable provisions of State law and local law, including the Tracy Municipal Code, the City issued a Request for Proposals for preventative maintenance activities associated with the chlorine and sulfur dioxide systems located at the Wastewater Treatment Plant.
- B. In response to the Request for Proposals, the Contractor submitted the Proposal Forms, which are incorporated herein by reference, which were found by the City to be responsive to the Request for Proposals.
- C. After reviewing all proposals submitted in response to the Request for Proposals, the City selected the Contractor, based on proposal and qualifications, and the City Council awarded this Agreement to the Contractor pursuant to Resolution No. _____.
- D. The work is more specifically described in the Contract Documents, but generally includes preventative maintenance and repair activities associated with the chlorine and sulfur dioxide systems located at the Wastewater Treatment Plant.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF WORK.** CONTRACTOR shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference. The services shall be performed by, or under the direct supervision of, CONTRACTOR's Authorized Representative: June Johnsen, General Manager. CONTRACTOR shall not replace its Authorized Representative, nor shall CONTRACTOR replace any of the personnel listed in Exhibit "A," nor shall CONTRACTOR use any subcontractors or subconsultants, without the prior written consent of the City.
- 2. **CONTRACT DOCUMENTS.**
 - 2.1. List of Contract Documents. The Contract Documents consist of this executed Agreement; all Proposal Documents including the Request for Proposals, Instructions to Proposers, Proposal Forms; Notice of Award; Notice to Proceed; and Exhibits.
 - 2.2. Contract Modifications. The Contract Documents may not be modified orally or in any manner other than in writing in accordance with the Contract Documents. All such modifications shall be incorporated in the Contract Documents.

2.3. Precedence of Contract Documents.

2.3.1. In the event of a conflict between component parts of the Contract Documents, the document highest in precedence shall control. The precedence shall be:

2.3.1.1. Agreement.

2.3.1.2. All Proposal submittals.

2.3.1.3. Maintenance procedures outlined in the Operations & Maintenance Manual.

2.3.1.4. Notice of Award, Notice to Proceed, and Exhibits.

2.4. **Entire Agreement.** The Contract Documents comprise the entire integrated understanding between the City and Contractor concerning the Work to be performed for this Project. All prior negotiations or stipulations regarding this matter which preceded or accompanied the executing of these Contract Documents are conclusively deemed to be superseded by these Contract Documents. The Contract Documents are complementary; what is called for in one is binding as if called for by all. To the extent that portions of the Contract Documents are not attached to this Agreement, they shall be deemed incorporated herein by reference.

3. **CONTRACT AMOUNT.** City shall pay to Contractor, for the performance of the Work, the Contract Amount subject to adjustment for unit price items, and as modified pursuant to the terms of the Contract Documents. The Contractor's compensation shall include all costs incurred by the Contractor in the performance of the Work, including: furnishing all labor (including supervision), materials, equipment, tools, transportation, bonds and services necessary (including the costs of any and all applicable taxes, patent rights, royalties, licenses, and permits) to complete the Work. The Contract Amount is **\$231,000.**
4. **CONTRACT TIME.** After the Contractor has provided all documents required by the Notice of Award, as identified in the Instructions to Proposers, the City shall issue a Notice to Proceed to Contractor. Contractor shall commence the Work on the date specified in the Notice to Proceed. The Work shall be diligently prosecuted and fully completed within 90 days from the date of the Notice to Proceed. Time is of the essence in the performance of all obligations under these Contract Documents, and all timing requirements shall be strictly adhered to unless otherwise modified by the City in accordance with the Contract Documents. The Contractor shall submit all requests for extensions of time to the City, in writing, no later than ten (10) working days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
5. **CONTRACTOR REPRESENTATIVE.** At all times during the progress of the Work, Contractor shall have a competent foreman or superintendent (hereinafter "Contractor Representative") on site with authority to act on behalf of the Contractor. The Contractor shall, at all times, keep the City Representative informed in writing of the name and telephone number of the Contractor Representative. The Contractor shall, at all times, keep the City Representative informed in writing of the names and telephone numbers of all subcontractors performing the Work.

6. **INSURANCE.** Concurrently with the execution of this Agreement by the Contractor, and prior to the commencement of any Work, the Contractor shall furnish evidence to the City that all of the following insurance requirements have been satisfied.
- 6.1. **General.** The Contractor shall, throughout the duration of this Agreement, maintain insurance to cover Contractor, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
- 6.2. **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.
- 6.3. **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.
- 6.4. **Workers' Compensation** coverage shall be maintained as required by the State of California.
- 6.5 **Endorsements.** Contractor shall obtain endorsements to the commercial general liability, automobile liability, and workers' compensation policies in a form satisfactory to the City.
- 6.6 **Authorized Insurers.** All insurance companies providing coverage to Contractor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 6.7 **Insurance Certificate.** Contractor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City.
- 6.8 **Contractor's Obligation.** Maintenance of insurance by the Contractor as specified in this Agreement shall in no way be interpreted as relieving the Contractor of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Contractor may carry, at its own expense, such additional insurance as it deems necessary.
7. **PERMITS, LICENSES, AND COMPLIANCE WITH LAW.** The Contractor shall obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, the Contractor shall obtain a City of Tracy Business License. The Contractor shall comply with all applicable legal requirements including all local, state, and federal laws, including City Regulations, whether or not said laws are expressly stated in this Agreement.
8. **ACCESS TO THE SITE.** In order to permit the City to inspect the Work, the Contractor shall, at all times, provide to the City proper and safe access to the Project site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

9. **AUDIT BY THE CITY.** The City, and entities and agencies designated by the City, shall have access to and the right to audit all of Contractor's books, records, contracts, change orders, correspondence, instructions, drawings, receipts, vouchers, purchase orders, notes, daily logs, and memoranda relating to the Work. Contractor shall preserve all such records for a period of at least three years after final completion and shall provide copies of same at City's request.
10. **ACCEPTANCE OF WORK.** Prior to acceptance of the Work by the City Council, the Contractor shall be solely responsible for maintaining the quality of the Work, and maintaining safety at the Project site. The Contractor's obligation to perform the Work shall not be satisfied until after the City Representative has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.
11. **WARRANTY OF QUALITY OF WORK.** Contractor warrants to the City that all materials and equipment used in or incorporated into the Work will be of good quality, new, and free of liens, claims, and security interests of third parties; that the Work will be of good quality and free from defects; and that the Work will conform with the requirements of the Contract Documents. If required by the City Representative, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
12. **WARRANTY PERIOD.** The Contractor shall warrant the quality of the Work, in accordance with the terms of the Contract Documents, for a period of one year after acceptance of the Work by the City Council. In the event that (during the one year warranty period) any portion of the Work is determined by the City Representative to be defective as a result of an obligation of the Contractor under this Agreement, the Contractor shall be in default.
13. **INDEPENDENT CONTRACTOR STATUS.** Contractor is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Contractor is not City's employee and Contractor 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 whatsoever, unless the City provides prior written authorization to Contractor.
14. **CONFLICTS OF INTEREST.** Contractor (including its employees, agents, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. In the event that Contractor maintains or acquires such a conflicting interest, any contract (including this Agreement) involving Contractor's conflicting interest may be terminated by the City.
15. **ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
16. **INDEMNIFICATION.** Contractor shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the Contractor or its employees, agents, subcontractors, or by these specifications, except only for those claims arising

from the sole negligence of sole willful conduct of the City, its officers, agents, or employees. Contractor's indemnification shall include any and all costs, expenses, attorney's fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Contractor at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees. Contractor's indemnification of City shall not be limited by any prior or subsequent declaration by the Contractor.

17. ASSIGNMENT AND DELEGATION.

17.1. Assignment of this Agreement. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the Contractor's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

17.2. Assignment pursuant to Government Code. Pursuant to Government Code Section 4552, the Contractor shall assign to the City, all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Action (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgment by the parties. The Contractor further warrants that all goods, services, and materials provided to the City in accordance with this Contract are free and clear of all liens and encumbrances.

18. **PAYMENT BOND.** Pursuant to the Civil Code section 3247, Contractor shall, before entering upon performance of the work, file payment bond with City in the amount of the Contract Amount awarded to secure payment by Contractor to laborers and materialmen until the date on which claims are required to be made by laborers and materialmen pursuant to law.

19. **PERFORMANCE BOND.** Contractor shall, before entering upon performance of the work, file performance bond with City in the amount of the Contract Amount awarded to secure faithful performance of this Agreement (until the date on which the City Council accepts the Work as complete).

20. **PREVAILING WAGES.** The Contractor is hereby notified that pursuant to Section 1770 et. seq. of the Labor Code of the Statutes of the State of California, the City Council of the City of Tracy has ascertained the general prevailing rate of per diem wages and the rates for legal holiday and overtime work for the locality in which the work is to be performed, for each craft or type of workman or mechanic needed.

1. Prevailing wage rates shall be paid.
2. Travel and subsistence payments shall be made as required by statute.
3. Statutory provisions for penalties for failure to comply with wage and hour laws will be enforced.

4. Certified copies of payroll records shall be maintained, certified, and available for inspection.
5. Statutory requirements relating to the employment of apprentices shall be adhered to.
6. Eight hours labor constitutes a legal day of work.
7. Contractor shall comply with workers compensation requirements of Labor Code section 3700.

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

TO CITY:

Public Works Director
City of Tracy
520 Tracy Blvd.
Tracy, CA 95376

TO CONTRACTOR:

June Johnsen
Telstar Instruments
1717 Solano Way, Unit 34
Concord, CA 94520

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 following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

22. 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.

23. SEVERABILITY. In the event any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.

AREA INTENTIONALLY LEFT BLANK

24. **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.

25. **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 Contractor and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

CITY OF TRACY

CONTRACTOR

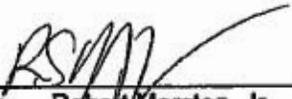
By: Brent H. Ives
Title: MAYOR
Date: _____

Attest:

By: Sandra Edwards
Title: CITY CLERK
Date: _____

Approved As To Form:

By: Dan Sodergren
Title: CITY ATTORNEY
Date: _____


By: Robert Marston, Jr.
Title: Chief Executive Officer
Date: 4-4-11
Fed. Employer ID No.
94-2785168
Contractor's License No.
422364

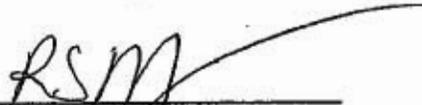

By: Robert Marston, Jr.
Title: Chief Financial Officer
Date: 4-4-11
Fed. Employer ID No.
94-2785168
Contractor's License No.
422364

EXHIBIT "A"

A. Preventive Maintenance

Telstar is the factory authorized service center for Severn Trent chlorination and de-chlorination equipment. Telstar is also factory certified for installation, sales, maintenance, rebuild, retrofits, and upgrades to Severn Trent equipment. Telstar technicians are factory trained and Telstar has staff in excess of 50 years combined experience on chemical feed systems, installation, maintenance, troubleshooting, and repair. The service on the equipment outlined herein is as follows:

- Dismantle, clean, inspect and complete required annual maintenance which includes PM kits
- All units will be reassembled and tested prior to returning to service
- All tubing will be replaced and all equipment will be tagged with a tag indicating date of service and serial number of equipment.
- Provide traceable calibration certificates per NIST standards, performed by technicians who are ISA CCST certified
- All safety devices will be individually tested, then tested again as a complete system

CHLORINE STORAGE ROOM EQUIPMENT

1. Chlorine Remote Vacuum Regulators
 - a. Install PM kits for four (3) each remote vacuum regulators
 - b. Test and calibrate four (4) each low temperature switches on each vacuum regulator.
 - c. Test and calibrate four (4) each 0-200psi pressure gauges with diaphragm seals.
2. Chlorine Pressure Relief Assemblies
 - a. Install three (3) each pressure relief rupture discs
 - b. Test three (3) each pressure switch set at 40psi
3. Chlorine Filter Canisters
 - a. Four (4) each chlorine filters
 - b. Install gaskets and baskets and chlorine filters
4. Electric Actuated Pressure Reducing Valves
 - a. Three (3) each pressure reducing valve 12000 PPD
 - b. Install PM kits
 - c. Calibrate and test
5. Three (3) each Chlorine Vaporizers 8000 PPD
 - a. Test and calibrate temperature controllers
 - b. Test and calibrate water level control switch
 - c. Test and calibrate low level control switch
 - d. Test and calibrate Cathodic protection
 - e. Test and calibrate high temperature switch
 - f. Test and calibrate 0-300psi gauge
 - g. Test and calibrate temperature gauge
6. Chlorine Pressure Transmitters
 - a. Three (3) each calibration of pressure transmitters; 0-300psi = 4-20ma
7. Chlorine Pressure Gauges
 - a. Five (5) each 0-300psi - Test Gauges
8. Chlorine pressure switches (5 each) – test and calibrate
9. Calibrate Chlorine Storage Tank Scale

CHLORINE ROOM GAS FEED EQUIPMENT

12. Three (3) each 8000PPD Chlorinators
 - a. Install PM kits for cabinets and rotameter
 - b. Install PM kits for differential regulator
 - c. Test and calibrate control valves
 - d. Test 0-30" Hg vacuum gauges with diaphragm seal
 - e. Test and calibrate low vacuum alarm switch
 - f. Test and calibrate high vacuum alarm switch
 - g. Test and calibrate 1450 controllers
13. Two (2) each 2000 PPD Chlorinators
 - a. Install PM kits for cabinets and rotameter
 - b. Install PM kits for differential regulator
 - c. Test and calibrate control valves
 - d. Test 0-30" Hg vacuum gauges with diaphragm seal
 - e. Test and calibrate low vacuum alarm switch
 - f. Test and calibrate high vacuum alarm switch
 - g. Test and calibrate 1450 controller
14. Chlorine Ejectors 2000 PPD
 - a. Two (2) each chlorine 2000PPD ejectors
 - b. Install PM kits
15. Chlorine Ejectors 6000 PPD
 - a. Two (2) each chlorine 6000 PPD ejectors
 - b. Install PM kit

SULPHUR DIOXIDE (SO₂) STORAGE ROOM EQUIPMENT

16. SO₂ Remote Vacuum Regulators
 - a. Install PM kits for three (3) each remote vacuum regulators
 - b. Test and calibrate three (3) each low temperature switches on each vacuum regulator.
 - c. Test and calibrate three (3) each 0-200psi pressure gauges with diaphragm seals.
17. SO₂ Expansion Tank Assemblies
 - a. Install five (5) each 400psi rupture discs
 - b. Test five (5) each expansion tank pressure switches. Set at 40psi
18. SO₂ Pressure Relief Assemblies
 - a. Install two (2) each pressure relief rupture discs
 - b. Test two (2) each pressure switch set at 40psi
19. SO₂ Filter Canisters
 - a. Three (3) each chlorine filters
 - b. Install gaskets, baskets and chlorine filters
20. SO₂ Self Actuating Gas Pressure Reducing Valve
 - a. One (1) each gas pressure reducing valve
 - b. Install PM kit
 - c. Calibrate and test
21. Electric Actuated Pressure Reducing Valves
 - a. Two (2) each pressure reducing valve 12000 PPD
 - b. Install PM kits
 - c. Calibrate and test
22. Two (2) each SO₂ Vaporizers
 - a. Remove and overhaul tanks; clean, sandblast, inspect, hydro test, replace anodes and other preventative maintenance items.
 - b. Test and calibrate temperature controllers

- c. Test and calibrate water level control switch
 - d. Test and calibrate low level control switch
 - e. Test and calibrate cathodic protection
 - f. Test and calibrate high temperature switch
 - g. Test and calibrate 0-300psi gauge
 - h. Test and calibrate temperature gauge
23. SO2 Pressure Transmitters
- a. Two (2) each calibration of pressure transmitters; 0-300psi = 4-20ma
24. SO2 Pressure Gauges
- a. Five (5) each 0-300psi - Test Gauges
25. SO2 pressure switches (4 each) – test and calibrate
26. Calibrate SO2 Storage Tank Scale

SULPHUR DIOXIDE ROOM GAS FEED EQUIPMENT

27. Two (2) each 7600 PPD Sulfonators
- a. Install PM kits for cabinets and rotameters
 - b. Install PM kits for differential regulator
 - c. Test and calibrate control valves
 - d. Test 0-30" Hg gauges with diaphragm seal
 - e. Test and calibrate low vacuum alarm switch
 - f. Test and calibrate high vacuum alarm switch
 - g. Test and calibrate 1450 controllers
28. SO2 Ejectors
- a. One (1) each 3800 PPD ejector
 - b. Install PM kit

Preventive Maintenance \$62,000.00

B. Actuator System

UniPro standard valve closure system which includes:

- (6) ea UniPro pneumatic actuators
- (6) ea Hytorc valves adaptors
- (2) ea hose manifold brackets
- (2) ea air control units, 120 volt AC
- (2) ea 80 gallon air receivers
- (2) ea UniPro control panels (UL508A)
- We will provide and install all conduit, hardware and wire within 50 feet of the storage tank.
- The electrical power required is estimating to be within 50 feet of the control panel.

Actuator System \$91,450.00

C. Angle Valves

Purchase and replace all 8 bulk tank angle valves with Midland valves, specified for chlorine and sulfur dioxide; 4 per tank and includes installation

Angle Valves \$24,000.00

D. Redundant Gas Line

Installation of an independent chlorine gas feed line that would be a redundant gas line for use by staff. Work to include equipment and piping to complete this activity.

Redundant Gas Line \$19,000.00

E. Replace Flex Line

Replace your existing transfer hoses:

- Supply and install Briggs Company 1 inch transfer hoses with the following specs: Monel sch 80 male NPT end connections, black carbon-impregnated flexible Teflon hose, double kynar braided, high density polyethylene external armor guard.

Replace Flex Line \$10,000.00

F. Add PRV

Purchase and installation of a PRV unit for your existing gas feed system as there is currently no PRV installed.

Add PRV \$6,000.00

G. Replace 1" ball valves

Supply and install 1" manual Jamesbury ball valves while piping system is apart

Replace 1" ball valves \$4,000.00

The price for Items A-G \$216,450.00

Tax \$9,300.00

Freight \$1,650.00

Total cost for labor, materials, tax and freight \$227,400

Premium for performance and payment bonds.....\$3,275

Total Agreement Amount \$230,675

RESOLUTION _____

AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH TELSTAR INSTRUMENTS, INC. FOR PREVENTATIVE MAINTENANCE AND REPAIRS OF CHEMICAL SYSTEMS AT THE WASTEWATER TREATMENT PLANT, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, Safety regulations require preventative maintenance of the chlorine and sulfur dioxide tanks every 5 years. The chemical system was installed in 2007 during the wastewater treatment plant expansion. The chemical tank preventative maintenance is due in 2012, but because of the leaking valve staff proposes to advance these activities to the current fiscal year, and

WHEREAS, The work to be done includes preventative maintenance on all of the chemical feed equipment, replacement of all of the tank valves, upgrading the automatic shutdown system, installing a pressure reducing valve on the gas feed system, and replacing piping and line valves, and

WHEREAS, There is no impact to the General Fund. Staff negotiated with Telstar Instruments, Inc. The cost for the preventative maintenance activities is \$62,000. The cost for the replacement valves and related work is \$154,450. The total agreement amount including tax, freight, and bond premiums is \$230,675, and

WHEREAS, Funding is available in the approved City budget. The preventative maintenance was budgeted in the wastewater treatment plant maintenance budget. Funding for the replacement valves and related work is in CIP 74-089;

NOW, THEREFORE, BE IT RESOLVED, That the City Council authorizes a Professional Services Agreement with Telstar Instruments, Inc. for preventative maintenance and repairs of chemical systems at the Wastewater Treatment Plant, and authorizes the Mayor to execute the Agreement.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 19th day of April, 2011, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

RESOLUTION _____

DESIGNATING SPECIALIZED MAINTENANCE ACTIVITIES AT
WATER AND WASTEWATER FACILITIES AS PROFESSIONAL SERVICES

WHEREAS, The Tracy Municipal Code designates a variety of specialized work as professional services; and

WHEREAS, The water and wastewater facilities require specialized services for maintenance, repair and operations; and

WHEREAS, Staff recommends designation of specialty services at the water and wastewater facilities as professional services;

NOW, THEREFORE, BE IT RESOLVED, City Council designates specialized maintenance activities at water and wastewater facilities as professional services.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 19th day of April, 2011, 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

AUTHORIZING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH THE BOYS AND GIRLS CLUB OF TRACY, SUTTER CENTRAL VALLEY HOSPITALS DOING BUSINESS AS SUTTER TRACY COMMUNITY HOSPITAL, AND VINEWOOD CENTER FOR CHILDREN AND FAMILIES FOR ADDITIONAL SERVICES ASSOCIATED WITH PROPOSITION 63 FUNDING AND TO THE CITY'S FINANCE DEPARTMENT, APPROPRIATING \$250,000 FROM THE SAN JOAQUIN COUNTY BEHAVIORAL HEALTH SERVICES COMMUNITY SERVICE AGREEMENT AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENTS

EXECUTIVE SUMMARY

Municipal Code 2.20.090 limits the City Manager's authority to enter into and sign on behalf of the City, without the prior approval of the City Council, contracts that do not exceed \$50,000. Contracts in excess of that amount must be approved by the City Council. Three service providers under the Mayor's Community Youth Support Network program will receive funding over the \$50,000 due to the availability of Proposition 63 funds from the County. This funding source is from the County so City will not have a fiscal impact from the proposed increase.

DISCUSSION

In August 2008, San Joaquin County Behavioral Health Services, Prevention and Early Intervention Planning coordinated a series of countywide community meetings to discuss an overview of MHSA planning activities, needs assessment findings and feedback as well as strategy discussions and prioritization. As a result, in April of 2009, the County released a Three Year Program and Expenditure Plan Executive Summary.

This plan outlined a \$250,000 allocation for the Mayor's Community Youth Support Network (MCYSN) to conduct community outreach and case management with high-risk youth. This funding matches the \$200,000 committed by the City of Tracy through the MCYSN Reconnecting Our Youth Grant Program to support non-profits working in Tracy. As such, the \$250,000 allows current service providers to expand current outreach, case management and family strengthening activities.

On May 4, 2010 City Council approved a resolution authorizing the City Manager to execute any documents necessary for the purpose of obtaining Proposition 63 funds in the amount of \$250,000 for the Mayors Community Youth Support Network. The funds are distributed through current grant contracts.

Municipal Code 2.20.090 limits the City Manager's authority to enter into and sign on behalf of the City, without the prior approval of the City Council, contracts that do not exceed \$50,000. Contracts in excess of that amount must be approved by the City Council. Three of the five contracts for current service providers will exceed the City Manager's \$50,000 authorization limit; as such; staff is seeking approval for all the current agreements that are receiving Proposition 63 funding from the County of San Joaquin, Department of Health Care Services, Division of Behavioral Health Services that exceed \$50,000. Exhibits A, B and C summarize the additional funding and services provided by each MCYSN collaborative partner that will exceed \$50,000 through the program. Those providers are: Boys And Girls Club of Tracy, Sutter Central

Valley Hospitals doing business as Sutter Tracy Community Hospital, and Vinewood Center for Children and Families.

STRATEGIC PLAN:

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

FISCAL IMPACT:

There is no impact to the general fund. Proposition 63 funding will be distributed via "pass-through" to the Mayor's Community Youth Support Network approved Service Providers through current Professional Services Agreements.

RECOMMENDATION:

That City Council authorize an amendment to the Professional Services Agreement with the Boys and Girls Club of Tracy, Sutter Central Valley Hospitals doing business as Sutter Tracy Community Hospital, and Vinewood Center for Children and Families for additional services associated with Proposition 63 funding and appropriating \$250,000 from the San Joaquin County Behavioral Health Services Community Service Agreement and authorizing the Mayor to execute the amendments.

Prepared by: Monica Gutierrez, Management Analyst

Reviewed by: Maria Hurtado, Assistant City Manager

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

Attachments - Exhibits A, B, and C

CITY OF TRACY
AMENDMENT NO. 1 TO
Professional Services Agreement

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 (hereinafter "City"), and BOYS AND GIRLS CLUB OF TRACY, a California nonprofit public benefit corporations (hereinafter "CONSULTANT").

RECITALS

- A. On June 7, 2010 the City issued a Request for Qualifications (RFQ) for the Reconnecting Our Youth Grant Program (herein after "Project").
- B. On July 15, 2010 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. CONSULTANT through its Center, by reason of its delivery of community services, wishes to provide such services to meet the CITY's desired outcomes for the Projects that are outlined in Proposition 63 funding.
- D. On July 15, 2010 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.
- E. Pursuant to Tracy Municipal Code 2.20.090 the City Council has authorized the execution of this Agreement.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **Incorporation By Reference.** This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.
- 2. **Terms of Amendment.** The not to exceed amount as referenced in Section 5 of the PSA shall Not Exceed \$100,270 for additional quarterly parent empowerment workshops, behavioral health crisis training, and three middle school workshop series for at-risk female students.

CITY OF TRACY
Amendment No. 1 to Professional Services Agreement
Reconnecting Our Youth Grant Program
Page 2 of 2

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 Subdivider 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 Ives
Title: Mayor
Date: _____

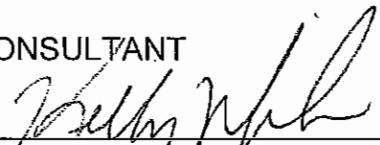
Attest:

By: Sandra Edwards
Title: CITY CLERK
Date: _____

Approved As To Form:

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

CONSULTANT



By: Kelly Wilson
Title: Executive Director
Date: 4/11/11
Fed. Employer ID No. 68-0028-682

CITY OF TRACY
AMENDMENT NO. 1 TO
Professional Services Agreement

This Amendment No. 1 (hereinafter "Amendment") to the **Professional Services Agreement** effective November 2, 2010, between the City of Tracy and Sutter Central Valley Hospitals doing business as Sutter Tracy Community Hospital, is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "City"), and SUTTER CENTRAL VALLEY HOSPITALS, DBA, SUTTER TRACY COMMUNITY HOSPITAL, a California nonprofit public benefit corporation (hereinafter "HOSPITAL") and is effective immediately.

RECITALS

- A. On June 7, 2010 the City issued a Request for Qualifications (RFQ) for the Reconnecting Our Youth Grant Program (herein after "Project").
- B. HOSPITAL through its Center, by reason of its delivery of community services, wishes to provide such services to meet the CITY's desired outcomes for the Projects that are outlined in Proposition 63 funding.
- C. On July 15, 2010 HOSPITAL submitted its proposal for the Project to the City. After negotiations between the CITY and HOSPITAL, the parties have reached an agreement for the performance of services in accordance with the terms set forth in the Agreement.
- D. City and HOSPITAL wish to make certain modifications to the Agreement related to the total amount of compensation payable to HOSPITAL for Services performed.
- E. Pursuant to Tracy Municipal Code 2.20.090 the City Council has authorized the execution of this Amendment.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. Incorporation By Reference.** This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.
- 2. Terms of Amendment.** The not to exceed amount as referenced in Section 5 of the PSA shall Not Exceed \$104,167 for additional youth case management and resource specialist services.

CITY OF TRACY
Amendment No. 1 to Professional Services Agreement
Reconnecting Our Youth Grant Program
Page 2 of 2

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 HOSPITAL and City. This Amendment shall inure to the benefit of and be binding upon the parties thereto and their respective successors and assigns.

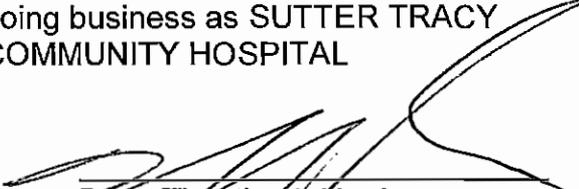
IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

[Duplicate language above]

CITY OF TRACY

SUTTER CENTRAL VALLEY HOSPITALS
doing business as SUTTER TRACY
COMMUNITY HOSPITAL

By: Brent Ives
Title: Mayor
Date: _____



By: Timothy J. Noakes
Title: Chief Financial Officer
Date: 4/12/11
Fed. Employer ID No. 94-1196220

Attest:

By: Sandra Edwards
Title: CITY CLERK
Date: _____

Approved As To Form:

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

**CITY OF TRACY
AMENDMENT NO. 1 TO
*Professional Services Agreement***

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 (hereinafter "City"), and VINEWOOD CENTER FOR CHILDREN AND FAMILIES, a California nonprofit public benefit corporations (hereinafter "CONSULTANT").

RECITALS

- A. On June 7, 2010 the City issued a Request for Qualifications (RFQ) for the Reconnecting Our Youth Grant Program (herein after "Project").
- B. On July 15, 2010 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. CONSULTANT through its Center, by reason of its delivery of community services, wishes to provide such services to meet the CITY's desired outcomes for the Projects that are outlined in Proposition 63 funding.
- D. Pursuant to Tracy Municipal Code 2.20.090 the City Council has authorized the execution of this Agreement.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **Incorporation By Reference.** This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.
- 2. **Terms of Amendment.** The not to exceed amount as referenced in Section 5 of the PSA shall Not Exceed \$55,100 for additional Parent Project Sr. and Jr. classes as well as parent outreach.
- 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. 1 to Professional Services Agreement
Reconnecting Our Youth Grant Program
Page 2 of 2

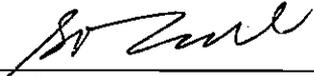
5. Signatures. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of the Subdivider and the City. This Amendment shall inure to the benefit 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

CONSULTANT

By: Brent Ives
Title: Mayor
Date: _____



By: Samina Masood
Title: Executive Director
Date: _____
Fed. Employer ID No. 68-0489093

Attest:

By: Sandra Edwards
Title: CITY CLERK
Date: _____

Approved As To Form:

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

RESOLUTION _____

AUTHORIZING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH THE BOYS AND GIRLS CLUB OF TRACY, SUTTER CENTRAL VALLEY HOSPITALS DOING BUSINESS AS SUTTER TRACY COMMUNITY HOSPITAL, AND VINEWOOD CENTER FOR CHILDREN AND FAMILIES FOR ADDITIONAL SERVICES ASSOCIATED WITH PROPOSITION 63 FUNDING AND TO THE CITY'S FINANCE DEPARTMENT, APPROPRIATING \$250,000 FROM THE SAN JOAQUIN COUNTY BEHAVIORAL HEALTH SERVICES COMMUNITY SERVICE AGREEMENT AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENTS

WHEREAS, In August 2008, San Joaquin County Behavioral Health Services, Prevention and Early Intervention Planning coordinated a series of countywide community meetings to discuss an overview of MHSA planning activities, needs assessment findings and feedback as well as strategy discussions and prioritization; and

WHEREAS, In April of 2009 San Joaquin County released a Three Year Program and Expenditure Plan Executive Summary which outlined a \$250,000 allocation for the MCYSN to conduct community outreach and case management with high-risk youth; and

WHEREAS, On May 10, 2010 City Council approved a resolution authorizing the City Manager to execute any documents necessary for the purpose of obtaining proposition 63 funding in the amount of \$250,000 for the Mayors Community Youth Support Network; and WHEREAS, Three of the five contracts will exceed the City Manager's \$50,000 contract authority.

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby authorizes an amendment to the Professional Services Agreement with the Boys and Girls Club of Tracy, Sutter Central Valley Hospitals doing business as Sutter Tracy Community Hospital, and Vinewood Center for Children and Families for additional services associated with Proposition 63 funding and appropriates \$250,000 from the San Joaquin County Behavioral Health Services Community Service Agreement and authorizes the Mayor to execute the amendments.

The foregoing Resolution _____ was passed and adopted by the City Council of the City of Tracy on the _____ day of _____, 2011, by the following vote:

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

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.I

REQUEST

APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH RBF CONSULTING FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT FOR THE TRACY HILLS SPECIFIC PLAN AMENDMENT PROJECT

EXECUTIVE SUMMARY

This request is to approve a Professional Services Agreement with RBF Consulting, Inc. (RBF Consulting) to complete the environmental review for a proposed Tracy Hills Specific Plan Amendment. A formal Request for Proposals process was conducted by the City in accordance with Tracy Municipal Code section 2.20.140.

DISCUSSION

The Tracy Hills Specific Plan was adopted by City Council in 1998, and the property was annexed to the City limits the same year by action of the Local Agency Formation Commission (LAFCo). Over the last year, the property owners have participated in the technical analyses related to infrastructure delivery to this and other sites identified in the City's General Plan. Property owners now desire to begin the process to amend and update the Specific Plan and complete environmental review in accordance with the California Environmental Quality Act (CEQA). The nature of the amendment relates to changing and updating land use locations for portions of the project site, updating planned infrastructure systems, and contemporizing urban design and architectural standards.

A Specific Plan is a comprehensive planning document that establishes the infrastructure requirements for a particular development as well as the development standards (and zoning) that will guide development as the project is phased.

The City has several Specific Plans which are typically used to plan relatively large projects such as Tracy Hills. Specific Plans have been approved by the City for projects such as the I-205 Corridor Specific Plan, the Residential Areas Specific Plan, and the Industrial Areas Specific Plan.

The City followed the Tracy Municipal Code (TMC) procedures for hiring professional consultants, set forth in Section 2.20.140. A Request for Proposals was issued on the City's website resulting in the receipt of nine proposals. This work is anticipated to cost \$306,277 funded by the project proponents, and take approximately 12 to 18 months to complete.

STRATEGIC PLAN

The Tracy Hills project is planned to be a significant jobs center as well as a significant residential project for the City as it develops over time. The City's Economic Development Strategy establishes Goal 1 to "Increase the Jobs Opportunities in Tracy". Objectives 1 and 2 under that Goal are to "Increase the Quantity and Quality of jobs in

Tracy” and to “Diversify Tracy’s Economic Base”.

Tracy Hills is a mixed use project, with over 500 acres for industrial, office and retail uses, which at build out over many years will accommodate thousands of new jobs and residents in Tracy.

FISCAL IMPACT

There will be no impact to the General Fund. The City entered into a Reimbursement Agreement with proponents of the Tracy Hills project on August 7, 2001 via City Council resolution 2001-280 to cover the costs of staff time and consultant work related to the Tracy Hills project. RBF Consulting was selected to prepare environmental documents, and assist with the project after a competitive Request for Proposal process, conducted in accordance with Tracy Municipal Code Section 2.20.140. Staff and project proponents are working on drafting a new Cost Recovery Agreement to replace the existing Reimbursement Agreement.

RECOMMENDATION

Staff recommends that City Council, by resolution, approve a Professional Services Agreement with RBF Consulting in the amount of \$306,277, and authorize the Mayor to execute the Agreement.

Prepared by: Bill Dean, Assistant DES Director

Reviewed by: Andrew Malik, Development and Engineering Services Director

Approved by: Leon Churchill Jr., City Manager

RESOLUTION 2011-_____

APPROVING A PROFESSIONAL SERVICE AGREEMENT WITH RBF CONSULTING FOR THE TRACY HILLS SPECIFIC PLAN AMENDMENT PROEJCT ENVIRONMENTAL IMPACT REPORT AND AURTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, Tracy Hills is identified as a future growth area in the City's General Plan that has an adopted Specific Plan, and

WHEREAS, Project proponents and property owners desire to update the Specific Plan, and amend the General Plan for areas within the Tracy Hills project, and

WHEREAS, An Environmental Impact Report completed in compliance with the California Environmental Quality Act is required for the project, and

WHEREAS, A formal request for proposals process in accordance with Tracy Municipal Code Section 2.20.140 was conducted and the proposal submitted by RBF Consulting best meets the City's needs by demonstrating the competence and professional qualifications necessary for the satisfactory completion of the project, and

WHEREAS, The project budget submitted by RBF Consulting is \$306,277, and

WHEREAS, There is no fiscal impact to the General Fund because the developer is responsible for all costs associated with processing the Environmental Impact Report and development applications pursuant to the Reimbursement Agreement approved by City Council on August 7, 2001 by City Council Resolution 2001-280;

NOW, THEREFORE, BE IT RESOLVED that City Council approves a Professional Service Agreement with RBF Consulting as specified in the Scope of Work (Exhibit One to this resolution) in the amount of \$306,277 and authorizes the Mayor to execute the Agreement.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 19th day of April, 2011 by the following vote:

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

MAYOR

ATTEST

CITY CLERK

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT
TRACY HILLS SPECIFIC PLAN AMENDMENT SUPPLEMENTAL ENVIRONMENTAL
IMPACT REPORT**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "CITY"), and **RBF Consulting, Inc.** (hereinafter "CONSULTANT").

RECITALS

- A. Whereas, project proponents are in the process of compiling an application for an amendment to the Tracy Hills Specific Plan, and
- B. Whereas, the project will require environmental review and likely the preparation of a Supplemental Environmental Impact Report (SEIR), for which a Request for Proposals process in accordance with Tracy Municipal Code Section 2.20.140 was followed, and
- C. Whereas, CONSULTANT was selected to perform the duties of preparing the SEIR,

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES.** CONSULTANT shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference. The services shall be performed by, or under the direct supervision of, CONSULTANT's Authorized Representative: **Laura Worthinigton-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 subcontractors or subconsultants, without the prior written consent of the CITY.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. CONSULTANT shall commence 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 commenced 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 (10) 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

CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT

Tracy Hills Specific Plan Amendment Supplemental Environmental Impact Report

Page 2 of 6

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 whatsoever, unless the CITY provides prior written authorization to CONSULTANT. Contractors and CONSULTANTS are free to work for other entities while under contract with the CITY. Contractors and CONSULTANTS are 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. In the event that CONSULTANT maintains or acquires such a conflicting interest, any contract (including this Agreement) involving CONSULTANT's conflicting interest may be terminated by the CITY.
5. **COMPENSATION.**
 - 5.1. For services performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "A," attached hereto and incorporated herein by reference. CONSULTANT's fee for this Agreement is Not To Exceed \$306,277.00. CONSULTANT's billing rates shall cover all costs and expenses of every kind and nature for CONSULTANT's performance of this Agreement. No work shall be performed by CONSULTANT in excess of the Not To Exceed amount without the prior written approval of the CITY.
 - 5.2. CONSULTANT shall submit monthly invoices to the CITY describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3. Within thirty (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 (10) 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 prior written consent of the City.

CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT

Tracy Hills Specific Plan Amendment Supplemental Environmental Impact Report

Page 3 of 6

8. **ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
9. **INDEMNIFICATION.** CONSULTANT shall indemnify, defend, and hold harmless the CITY (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of CONSULTANT's negligent performance of services under this Agreement.
10. **BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, CONSULTANT shall obtain a City of Tracy Business License.
11. **INSURANCE.**
 - 11.1. **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 herein.
 - 11.2. **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "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.
 - 11.3. **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
 - 11.4. **Workers' Compensation** coverage shall be maintained as required by the State of California.
 - 11.5. **Professional Liability** "claims made" 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 claim.
 - 11.6. **Endorsements.** CONSULTANT shall obtain endorsements to the automobile and commercial general liability with the following provisions:
 - 11.6.1 The CITY (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
 - 11.6.2 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.
 - 11.7. **Notice of Cancellation.** CONSULTANT shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the CITY should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material

CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
Tracy Hills Specific Plan Amendment Supplemental Environmental Impact Report
Page 4 of 6

change in the policy prior to the expiration shall be considered a cancellation.

- 11.8. **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.
- 11.9. **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 (5) days after the execution of this Agreement.
- 11.10. **Substitute Certificates.** No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, CONSULTANT shall provide a substitute certificate of insurance.
- 11.11. **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.
12. **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT's duties be delegated, without the written consent of the CITY. Any attempt to assign or delegate this Agreement without the written consent of the CITY shall be void and of no force and effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.
13. **NOTICES.**
- 13.1 All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To CITY:

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

To CONSULTANT:

Laura Worthington-Forbes
RBF Consulting
111 N. Market Street, Suite 440
San Jose, CA 95113

- 13.2 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 following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT

Tracy Hills Specific Plan Amendment Supplemental Environmental Impact Report

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14. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
15. **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.
16. **SEVERABILITY.** In the event any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.
17. **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.
18. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed for this project. This Agreement supersedes all prior negotiations, representations, or agreements.
19. **COMPLIANCE WITH THE LAW.** CONSULTANT shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
20. **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.

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CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT

Tracy Hills Specific Plan Amendment Supplemental Environmental Impact Report

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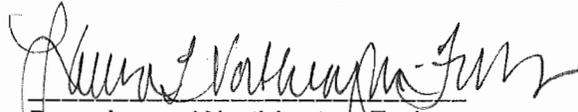
21. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY. This Agreement shall inure to the benefit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

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

CITY OF TRACY

CONSULTANT
RBF Consulting

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



By: Laura Worthington-Forbes
Title: Senior Vice President
Date: 3/17/11

Attest:

Fed. Employer ID No. _____

By: Sandra Edwards
Title: CITY CLERK
Date: _____



By: Douglas J. Frost
Title: Executive Vice President & CFO
Date: 3/16/11

Approved As To Form:

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

**SCOPE OF WORK TO PREPARE A FOCUSED SUPPLEMENTAL
ENVIRONMENTAL IMPACT REPORT FOR THE
TRACY HILLS SPECIFIC PLAN AMENDMENT**

I. PROJECT UNDERSTANDING

Pursuant to the requirements of the California Environmental Quality Act (CEQA), the City of Tracy (City) certified an Environmental Impact Report (EIR) for the Tracy Hills Specific Plan (proposed project) in January, 1998. Since certification of the EIR thirteen years ago, the project applicant has prepared a revised Specific Plan that proposes the following changes to the Specific Plan:

Table 1: Tracy Hills Specific Plan Update

Land Use Category	1998 Specific Plan (Acreage)	2010 Specific Plan (Acreage)	1998 Specific Plan (DU ¹ or SF ²)	2010 Specific Plan (DU or SF)	Net Change (DU, SF, or Acres)
Residential Estate (RE)	82.6	92.5	120 DU	121 DU	-1 DU
Low Density Residential (LDR)	539.3	597.5	1,888 DU	1,972 DU	+ 84 DU
Medium Density Residential (MDR)	557.3	548.3	3,065 DU	3,099 DU	+ 34 DU
High Density Residential (HDR)	35.4	30.8	425 DU	373 DU	-52 DU
Professional Office and Medical (POM)	96.7	83.9	842,450 SF	1,096,168 SF	+235,718 SF
Neighborhood Service (NS)	18.2	15.8	158,558 SF	172,412 SF	+13,854 SF
General Highway Commercial (GHC)	71.5	85.4	622,908 SF	929,547 SF	+306,639 SF
Village Commercial (VC)	21.8	9.4	189,922 SF	102,256 SF	-87,666 SF
Light Industrial (M-1)	383.7	377.8	4,178,493 SF	4,936,571 SF	+758,078 SF
Parks (P)	59.5	69.0	N/A	--	+9.5 Acres
Open Space (OS)	24.8	232.5	N/A	--	+207.7 Acres
Golf Course (OS)	190.6	--		--	-190.6 Acres
Open Space Buffers/Wildlife Habitat/Greenways (OS)	3,552.1	3,540.5			-11.6 Acres
Canal (CNL)	--	3.2	N/A	--	+3.2 Acres
Schools (Elementary and High School)	80.0	82.0	N/A	--	+2.0 Acres
Public Facilities and Infrastructure	438.1	406.3	N/A	--	-31.8 Acres
Total	6,174.9 Acre	6,174.9 Acre	5,499 DU and 5,992,331 SF	5,564 DU and 7,236,952 SF	65 DU and 1,226,623 SF³

Notes:

1. DU=Dwelling Unit

2. SF=Square Feet

3. The update to the Tracy Hills Specific Plan would result in a net change of 65 DU; 1,226,623 square feet of Commercial/Office/Medical/Industrial uses; and elimination of the proposed golf course and increased open space within the project area.

Through negotiations with the U.S. Fish and Wildlife Service and the State Department of Fish and Game, approximately 3,540.5 acres of project area would be set aside as multi-species wildlife habitat for the purpose of mitigating the impact of development on all potential endangered species in the project area. In addition, approximately 301.5 acres are proposed for passive and active recreation facilities, including park facilities.

The 2010 *Tracy Hills Specific Plan* proposes the following changes:

- An increase of 84 Low Density Residential (LDR) units and 34 Medium Density Residential Units (MDR);
- A decrease of 1 Residential Estate (RE) unit and 52 High Density Residential (HDR) units;
- An increase of 1,226,623 square feet of Commercial/Office/Medical/Industrial uses; and
- Redesignation of the 18-hole (190.6 acre) golf course previously proposed in the 1998 Specific Plan as open space.

The City recommends the preparation of a Supplemental EIR to address potentially significant impacts that could result from proposed changes in the Tracy Hills Specific Plan, including: air quality, greenhouse gas emissions/climate change, noise, transportation and traffic, biological resources, as well as utilities and public services.

II. SCOPE OF WORK

RBF will prepare an Administrative Draft Supplemental EIR, Draft Supplemental EIR, Final Supplemental EIR and related work products for the update to the *Tracy Hills Specific Plan*. These documents will be prepared in accordance with CEQA (Section 21000 *et seq.* of the California Public Resources Code) and the CEQA Guidelines (California Code of Regulations Section 15000 *et seq.*).

1.0 PROJECT INITIATION

Kickoff Meeting

RBF will attend one (1) project kickoff meeting to clarify program objectives, identify key issues, gather background documents (e.g. relevant technical studies prepared by the project applicant), and discuss expectations for the proposed project with the City. RBF will review the project schedule with the City and refine as necessary.

Consultation with Responsible and Trustee Agencies

As indicated in Section 15083 of the State CEQA Guidelines, public agencies have found that early consultation solves many potential conflicts that could arise later in the review process. RBF will informally contact affected local, state and federal responsible and/or trustee agencies early in the EIR process to identify potential environmental issues or concerns. The SEIR budget allows up to eight hours for this task.

Notice of Preparation

RBF will prepare the Notice of Preparation (NOP) for the Project. The NOP package will be prepared pursuant to Section 15082(a) of the CEQA Guidelines. One camera-ready copy of the completed NOP

will be forwarded to the City for reproduction and distribution to the State Clearinghouse, affected agencies and other interested parties. This scope of work assumes that the City will be responsible for the preparation of all public notices for the NOP and distribution of the NOP pursuant to CEQA requirements. RBF will review all public and agency comments submitted to the City in response to the NOP and identify issues of particular concern and will clarify/refine the scope of work for the SEIR. Additional analytical tasks not included in this proposal will be identified during this task.

2.0 ADMINISTRATIVE DRAFT SEIR

2.1 Introduction and Purpose

The Introduction will cite the provisions of CEQA applicable to the proposed project. This section will identify the purpose of the SEIR, statutory authority, scoping procedures, SEIR format, listing of responsible and trustee agencies, and documentation incorporated by reference, including all relevant provisions of the previously approved *Tracy Hills Specific Plan*.

2.2 Executive Summary

RBF will prepare an Executive Summary for the SEIR including a project summary that summarizes the proposed changes to the *Tracy Hills Specific Plan*; an overview of project impacts; mitigation measures and levels of significance after mitigation; and a summary of project alternatives. The Executive Summary will be presented in a table format with supporting text.

2.3 Project Description

The Project Description will detail the project location, characteristics of the project site, background and history of the project, proposed changes to the *Tracy Hills Specific Plan*, project objectives as proposed by the project applicant, and permits and approvals that are required for the project based on available information. This section will also include a summary of the local environmental setting for the project and exhibits depicting the regional and site vicinity.

2.4 Impact Analysis

The Impact Analysis section of the SEIR will thoroughly discuss the existing conditions for each environmental issue area included in the Supplemental EIR, identify short-term impacts associated with project construction and long-term impacts associated with operation of the proposed project, and indicate the level of significance for each impact. RBF will evaluate potential impacts relative to the thresholds of significance contained in Appendix G of the CEQA Guidelines. Feasible mitigation measures will be recommended to reduce the significance of impacts and the resulting level of significance after mitigation will be identified. Environmental issues raised during the scoping process (responses to the Notice of Preparation) will also be evaluated. If an environmental issue is raised during the scoping meeting that is not included in this Scope of Work, the Scope of Work may need to be augmented. The analyses will be based upon all available data, results from additional research, and an assessment of existing technical studies prepared by the project applicant, the *City of Tracy General Plan* and *General Plan EIR*, as well as technical studies prepared as part of the Supplemental EIR.

This section will include an analysis of the following environmental issue areas: 1) Air Quality; 2) Greenhouse Gases/Climate Change; 3) Noise; 4) Transportation and Traffic; 5) Utilities and Public Services; and 6) Biological Resources. These sections are proposed primarily to evaluate the proposed increase of 1,244,621 square feet of Commercial/Office/Medical/Industrial uses proposed in the proposed

Tracy Hills Specific Plan Update, as well as to address regulatory changes since certification of the SEIR in 1998.

2.4.1 Air Quality

The City of Tracy is located within the San Joaquin Valley Air Basin (SJVAB), which is under the jurisdiction of the San Joaquin Valley Air Pollution Control District (SJVAPCD). Baseline and project setting meteorological and air quality data developed through the California Air Resources Board (CARB) and climatological and air quality profile data gathered by the SJVAPCD and CARB will be utilized for the description of existing ambient air quality. Air quality data from the nearest air quality monitoring stations will be included to help highlight existing air quality local to the proposed project site. The current status and applicability of the SJVAPCD's Air Quality Attainment Plans (Ozone and Particulate Matter) and Guide for Assessing and Mitigating Air Quality Impacts (GAMAQI) will be described. An overview of the nature and location of existing sensitive receptors will be also provided.

Equipment exhaust and fugitive dust emissions resulting from construction activities will be quantified using URBEMIS 2007. Based on data and assumptions provided by the project Applicant, the analysis will estimate equipment exhaust emissions utilizing the latest emission factors as prescribed by CARB and the EMFAC2007 and OFFROADS2007 models. Emissions from soil hauling activities will also be quantified, if necessary. Fugitive dust emissions will be quantified based upon the area to be graded per day. RBF will also qualitatively discuss naturally occurring asbestos impacts as they relate to the proposed construction activities.

Construction of the proposed project is expected to result in increased concentrations of one or more toxic air contaminants (TAC), potentially exposing existing nearby residents to the proposed project. RBF will follow guidance from the California Air Pollution Control Officers Association (CAPCOA), Health Risk Assessments for Proposed Land Use Projects (July 2009). The Office of Environmental Health Hazard Assessment (OEHHA) provides the Air Toxics Hot Spots Program Risk Assessment Guidelines (August 2003), the SCAQMD provides the Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics "Hot Spots" Information and Assessment Act (AB2588) (July 2005), and the Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis (August 2003) for guidance. A screening level assessment will be conducted following these guidelines. For this project, the principle source of TAC during construction is expected to be the diesel-powered construction equipment.

RBF will quantify vehicular and area source emissions then provide a comparison to the SJVAPCD thresholds of significance. The emissions will be quantitatively derived utilizing the EMFAC2007 and URBEMIS2007 models. The indirect, direct, and cumulative emissions will also be analyzed in the context of the SJVAPCD's Indirect Source Review Guidelines, and will also consider health related impacts. A formal Health Risk Assessment is not included in this scope of work. If project traffic warrant Carbon Monoxide Hotspot modeling, RBF will model all intersections utilizing the BREEZE ROADS model to evaluate localized hot-spots of carbon monoxide.

This scope of work assumes that the applicant will provide detailed construction phasing and grading/excavation/paving quantities associated with the proposed Tracy Hills Specific Plan Update.

2.4.2 Greenhouse Gases/Climate Change

RBF will review the land use data associated with the proposed project. Based on this review, RBF will prepare an inventory of the GHG emissions (i.e., nitrous oxide, methane, and carbon dioxide) from both direct and indirect sources. The emissions inventory will be compiled consistent with the methodology prescribed by

CARB in the Local Government Operations Protocol for the Quantification and Reporting of Greenhouse Gas Emissions Inventories (June 2010).

The analysis will determine the project's impact based on the methodology and significance criteria established by the SJVAPCD document, Guidance for Valley Land-Use Agencies in Addressing GHG Emissions Impacts for New Projects Under CEQA (December 17, 2009). The SJVAPCD methodology involves determining if the project is consistent with the Assembly Bill 32 mandate of reducing GHG's by approximately 29 percent beyond "Business as Usual" conditions. The GHG reduction associated with the project's design features and potential mitigation measures will be quantified utilizing the SJVAPCD's GHG Emissions Reduction Tool, which includes Best Performance Standards for development projects.

In July 2010, the City of Tracy developed a Sustainability Action Plan, which provides numerous sustainability measures related to energy, transportation and land use, solid waste, and water. Based on detailed information provided by the project applicant, RBF will determine the project's consistency with the City's Sustainability Action Plan (July 2010). Consistency with the sustainability measures as well as the SJVAPCD's GHG mitigation measures will be utilized to calculate the project's GHG emissions reduction from "Business as Usual" conditions.

RBF assumes that the project applicant will provide a detailed listing of all water/energy conservation and sustainability measures that will be incorporated into the design. From this list, RBF will determine applicability to the SJVAPCD's Best Performance Standards and calculate the project's GHG emissions reductions from "Business as Usual" conditions. Any planned sustainable project features will also be provided. Assuming this list is thorough and conforms to the list of sustainable measures outlined in the Sustainability Action Plan, RBF will then utilize this information to determine the project's significance in relation to the thresholds in Appendix G of the CEQA Guidelines.

Optional Task

RBF will conduct the analysis described above and prepare a GHG emissions inventory and quantify applicable emissions reductions. However, if the necessary detailed listing/explanation of project sustainability features and consistency with the City's Sustainability Action Plan are not provided, RBF will thoroughly review available documentation (e.g., site plans, Specific Plan, etc.) to determine how each of the project components would comply with the City's Sustainability Action Plan and the SJVAPCD's GHG mitigation measures. Based on the sustainability measures that are included in the project design, RBF will determine project consistency with SJVAPCD thresholds as well as the City's Sustainability Action Plan.

It should be noted that the City's Sustainability Action Plan does not achieve the SJVAPCD's 29 percent reduction threshold for GHG emissions. The General Plan EIR found a significant GHG impact in this regard. Therefore, project compliance with the Sustainability Action Plan would not necessarily reduce impacts to a less than significant level.

2.4.2-a Health Risk Analysis

A health risk analysis for the residential development near I-580 in Tracy will be prepared by Illingworth & Rodkin. The risk analysis would include evaluation of diesel particulate matter (DPM) and total organic toxic air contaminants (TACs) or TOG TACs from vehicles traveling on I-580. Emissions of DPM and TOG TACs would be calculated for 3 years, the project year and 2 future years (e.g., 2010, 2020, and 2025). Emissions from each of these years would be used in modeling concentrations in development area. The 70-year cancer risks will be calculated as a time-weighted average cancer risk using the modeled concentrations for each of the emission years.

Air quality dispersion modeling would be conducted using either the Cal3QHER mobile source model or the AERMOD model for each of the emission scenarios developed (we would confirm the model selection with the District). Hourly meteorological data will be used for the modeling analysis. Depending on the dispersion model used, 3 to 5 years of meteorological data for Tracy are available. For the AERMOD model, the SJVAPCD has 5 years of meteorological data (2004 - 2008) that can be used. If the Cal3QHER model is used, there are 3 years of meteorological data available (1997 - 1999). These data were originally developed for the East Altamont Power Project and are based on wind speed and direction data from Tracy and stability data derived from Stockton airport data. The specific approach used for the health risk analysis will be developed based on discussions with the SJVAPCD. If necessary, a brief risk analysis and modeling protocol will be prepared and submitted to the SJVAPCD.

A report would provide the summary of the emission calculations, modeling results and cancer risk calculations, along with figures showing the project site, modeling links, and receptor locations

2.4.3 Noise

RBF will review applicable local noise and land use compatibility criteria for the project area. Noise standards regulating noise impacts will be discussed for land uses on and adjacent to the project site. RBF will conduct a site visit throughout the project area. During the site visit, RBF will conduct six noise measurements throughout the project area. The noise measurements will evaluate noise exposure due to traffic while accounting for local topography, shielding from existing structures, and variations in travel speed.

Noise and vibration impacts from construction sources will be qualitatively analyzed. The construction impacts will be generally evaluated in terms of maximum levels (L_{max}) and hourly equivalent continuous noise levels (Leq) and the frequency of occurrence at adjacent sensitive locations. Analysis requirements will be based on the sensitivity of the area and the Noise Ordinance specifications and the Federal Transit Administration's vibration analysis guidance.

Potential effects of stationary noise sources will be evaluated based on local land use compatibility standards. Compliance with applicable noise standards will be evaluated, with recommended mitigation measures included where appropriate. Additionally, noise impacts to the surrounding uses will be analyzed. However this scope of work assumes that the noise analysis of the Lawrence Livermore National Laboratory (LLNL) from the certified EIR is still adequate and would not need to be revised as part of this analysis.

The proposed project is anticipated to generate an increase in vehicular traffic trips from future growth associated with an increase of 1,244,621 square feet of Commercial/Office/Medical/Industrial uses over what was analyzed in the EIR that was certified in 1998. On- and off-site noise impacts from vehicular traffic will be assessed using the U.S. Federal Highway Traffic Noise Prediction Model (FHWA-RD-77-108). The analysis will focus on noise impacts associated with the development of the proposed project. Model input data will include average daily traffic volumes, day/night percentages of autos, medium and heavy trucks, vehicle speeds, ground attenuation factors, and roadway widths. The 24-hour weighted Community Noise Equivalent Levels (CNEL) will be presented in a tabular format. Traffic parameters necessary for the model input will be obtained from the traffic impact analysis.

2.4.3 Transportation/Traffic

Based on preparation of a Traffic Impact Analysis (TIA) prepared by RBF, the Transportation/Traffic section of the EIR will include an evaluation of and how project phasing would impact construction of the City's road network elements. A major concern that has been identified is the technical approach to

evaluation of the project phasing relating to the TMP scenarios (Year 2035), General Plan (Year 2030), and ultimate buildout of the Specific Plan within the overall framework of the EIR. Thus, RBF recommends a strategic effort where the scope, technical analysis, potential impacts and phasing be addressed through close collaboration between the RBF team and City staff, with input on phased timing and cost from the project applicant, if required. This will be a very important step in streamlining the traffic analysis for EIR and accommodating the City's General Plan and the TMP within the buildout realm of the Tracy Hills Specific Plan. Fehr and Peers will provide modeling support for the various phases and road network alternatives for the strategic and analysis phases of the study.

Once the scope of work and approach has been refined, traffic counts and the Traffic Impact Analysis will be conducted to conform to CEQA requirements for the project phases and ultimate buildout as indicated for both project and cumulative conditions.

Strategic Development Plan

The Tracy Hills Specific Plan is anticipated to develop in phases and roadway network improvements will only occur as the project builds its allocated units. Major infrastructure for the development includes the Corral Hollow Road interchange, the Lammers Road interchange and the extension of these roads southwards to I-580. The residential character of the Tracy Hills project would result in traffic distributing within and throughout the City on the major roadway network system to the north of I-205. This characteristic, together with phasing and ultimate buildout of the Specific Plan Update will be a major challenge to evaluate, and we will work closely with City staff to address these concerns. Following is a short list of strategic concerns:

- Phase 1 Land use assumptions and subsequent road network requirements
- Tracy General Plan Buildout (2030) land use assumptions and subsequent road network improvements
- Tracy TMP (2035) Land use assumptions and subsequent road network improvements
- Tracy Hills Buildout, possibly on the TMP or Buildout road network on a programmatic level (roadway segments only)

Specific Plan Revision and Refinement (Optional)

As an optional task, RBF will work with the project applicant to address transportation and circulation within the revised Specific Plan:

- Develop a phasing plan that includes the vision of the Specific Plan, yet incorporates the City TMP land use uptake and is coordinated with roadway infrastructure development;
- Develop goals for smart growth;
- Develop overall transportation goals and objectives for the Specific Plan revision;
- Refine the roadway connections taking cognizance of the TMP;
- Cross check and possibly revise the Specific Plan with the General Plan goals and objectives as it relates to transportation and traffic;
- Provide connectivity for pedestrians and bicycles; and
- Develop roadway cross sections to facilitate smart growth.

Traffic Impact Analysis

The Transportation and Traffic section will evaluate the first phase of the Specific Plan Update at a project-level and the remaining phases of the Specific Plan Update at a program-level.

The following conditions and intersections will be analyzed:

- Near-Term Future (approximate Buildout year for Phase 1) Without Phase 1
- Near-Term Future (approximate Buildout year for Phase 1) With Phase 1
- Future Year (2030) General Plan Without Project – (With TMP roadway network)
- Future Year (2030) General Plan With Project (land use to be determined) – (With TMP roadway network)
- Future (2035) Without Project TMP land use assumptions - programmatic (With TMP roadway network) - Completed
- Future (2035) With Project TMP land use assumptions – programmatic (With TMP roadway network) - Completed
- Future Scenario with Project Buildout – programmatic level with a possible comparison against the TMP and General Plan Buildout roadway network - Completed

On-Site Study intersections/Segments - RBF will study up to 10 roadways/intersections as shown in the attached map. Some of these intersections are located at collector streets that will connect to the City Master Plan roadway network.

Off-Site Study Intersections/Segments - Off-Site study intersections will be determined based on trip distribution from the Tracy Hills Travel Demand Model. For phase 1 of the project traffic will distribute along majority of the existing roadway network and up to 15 intersections will be studied. Once additional phases develop, additional roadways will be built out. RBF will study up to 25 intersections with the revised road network configuration.

2.4.4 Public Services and Utilities

Based on changes in the proposed *Tracy Hills Specific Plan Update* since certification of the EIR in 1998, RBF will prepare a revised Public Services and Utilities section. The following tasks will be conducted to prepare this section of the EIR:

- Contact service providers to determine existing service levels in the project area, including documentation regarding existing staff levels, equipment and facilities, and planned service expansions;
- Discuss proposed changes to the number of school facilities provided within the updated Tracy Hills Specific Plan and any potential impacts to the Tracy Unified School District;
- Address impacts to the City's water supply system and infrastructure and wastewater treatment plant, as well as potential increases in solid waste; and
- Describe City policies, programs, and standards associated with the provision of public services and utilities.

RBF will work closely with the City's consultants preparing the infrastructure master plans for this task.

2.4.5 Biological Resources

The City understands that the project applicant has conducted subsequent biological investigations since certification of the prior EIR. As an optional task, RBF would utilize the services of H.T. Harvey and Associates to peer review any complete technical reports in order to complete the Biological Resources section of the EIR.

Biological Resources Peer Review (Optional)

Existing sources of background information about the project site and vicinity will be reviewed, summarized, and cited as appropriate. Examples of such information include aerial photographs of the project site; primary literature and technical reports on special-status species that occur in the region; the California Natural Diversity Database; regional planning documents (general plan policies, environmental impact reports from the region, etc.); species data compiled by the California Native Plant Society, the National Audubon Society, or other public interest groups; and resource agency data.

H.T. Harvey & Associates will conduct a technical review of project specific biological studies and reports provided by the project applicant, prepared to supplement and update studies of biological resources conducted since certification of the 1998 EIR. This review will involve an evaluation of survey methods, results, and analyses; and will identify data gaps. The review will identify additional biological assessments, surveys updates, and focused surveys for special status species that may be required in addition to existing studies.

H. T. Harvey & Associates will prepare an independent report documenting the findings of the review, which will describe suitability of existing documentation of biological resources, identify gaps in the existing information, and will provide recommendations for additional studies if needed. Potential impacts to biotic resources, not described in the 1998 FEIR, will also be identified as requiring further analysis in the SEIR. H. T. Harvey & Associates will also assist RBF with preparation of the impact analysis in the EIR.

2.4.3 Other Issues

RBF will assess any other issues that may be discovered in the review of comments received in response to the Notice of Preparation. If major issues are discovered, RBF will discuss them with the City and determine whether revisions to the Scope of Work and fee are necessary.

1.4.4 Effects Found Not to be Significant

RBF will describe effects found not to be significant, in accordance with Section 15128 of the CEQA Guidelines, by listing them with brief explanations of why they are not significant and by referral to the evidence supporting the finding in the Initial Study.

2.5 Growth Inducing Impacts

RBF will discuss potential growth-inducing impacts pursuant to CEQA Guidelines Section 15126.2. The potential for the project to reduce obstacles to future development (e.g., provide new infrastructure or links between discontinuous infrastructure distribution lines) will be considered. The analysis in this section will be based on data from the California Department of Finance and U.S. Census Bureau for the City of Tracy.

2.6 Cumulative Impacts

In accordance with CEQA Guidelines Section 15130, this section will discuss the cumulative impacts of the project “when the project’s incremental effect is cumulatively considerable.” “Cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past, current and probable future projects.

RBF will define the appropriate study area for the cumulative analysis. The potential for impacts and levels of significance will be based on the effects of the proposed project combined with the effects of other known and probable future projects. RBF will evaluate cumulative impacts for each of the identified environmental issue areas. Mitigation measures will be recommended where appropriate to reduce the level of significance of identified cumulative impacts.

2.7 Alternatives

If new significant impacts are identified within the Supplemental EIR, RBF will evaluate if the existing alternatives to the proposed project or new alternatives would reduce significant and unavoidable impacts of the proposed Tracy Hills Specific Plan Update.

2.8 Complete Administrative Draft EIR

RBF will respond to one complete set of written comments on the Administrative Draft EIR. RBF will prepare a "Screencheck" Draft EIR with all the changes highlighted to assist with the final check of the document. Five copies of the Administrative Draft EIR and two copies of the "Screencheck" Draft EIR will be provided to the City.

2.9 EIR GRAPHIC EXHIBITS

The EIR will include a maximum of twenty (20) exhibits to enhance the written text and clarify the proposed project's environmental impacts. Using state-of-the-art computer design equipment and techniques, our in-house graphic design team will create professional quality, black and white or full color exhibits for the EIR. All exhibits will be 8½" x 11" or 11" x 17" in size.

3.0 DRAFT EIR

RBF will respond to comments on the "Screencheck" Draft EIR (anticipated to only require editorial or other "non-substantive" changes) and will produce the Draft EIR for the required 45-day public review period. RBF will also prepare a Notice of Completion (NOC) for submittal to the Office of Planning and Research (OPR) and distribution to the public.

RBF will provide 50 copies of the Draft EIR to the City along with a camera-ready original for reproduction and an electronic copy.

4.0 FINAL EIR

4.1 Response to Comments/Administrative Final EIR

City staff will provide RBF with one complete set of comments on the Draft EIR. Upon review of the comments, RBF will meet with staff to discuss the comments and agree upon strategies to respond to key comments.

Following the meeting with the City, RBF will respond to all comments received on the Draft EIR during the 45-day public review period. RBF will prepare thorough, reasoned and sensitive responses to relevant environmental issues. RBF assumes that no new analysis will be required to respond to public comments. RBF will prepare an errata, if required, to summarize changes necessary to the Draft EIR derived from written responses to comments. To facilitate use of the errata by the City, RBF will indicate Draft EIR changes with bold and underline text (**bold, underline**) for text additions and strike out (~~strike-out~~) for

any deleted text. This task includes written responses to both written and verbal comments received on the Draft EIR (including review of hearing transcripts, as required). A draft Response to Comments document will be prepared for review by City staff (one review cycle is anticipated). RBF has allocated 80 hours of professional and technical staff time for the completion of this task.

Five copies of the Administrative Final EIR will be provided to the City.

4.2 Final EIR

The Final EIR will consist of a list of individuals and public agencies commenting on the Draft EIR, the comment letters received, an errata (if needed) to summarize changes to the Draft EIR, written Responses to Comments and a Mitigation Monitoring and Reporting Program (MMRP) (refer to Task 3.4).

RBF will provide the City with 50 copies of the Final EIR, along with a camera-ready original for reproduction and an electronic copy.

All mapping, exhibits, summary tables, and draft documents will become the property of the City upon completion of the Final EIR. RBF will provide the document(s) on a computer disc compatible with the City's word processing program.

5.0 Mitigation Monitoring and Reporting Program (MMRP) and Noticing, Findings and Statement of Overriding Considerations

To comply with Public Resources Code Section 21081.6, RBF will prepare an MMRP for adoption by the City at the time of project approval. The body of the MMRP will be in a table format.

RBF will work with City staff to identify the mitigation monitoring steps/procedures to ensure that mitigation measures are implemented as intended. The MMRP will describe the authority for the MMRP, the mitigation measures to be implemented, as amended in the errata for the Final EIR, the timing for implementation of the measures and the agency or individual responsible for their implementation. The MMRP will also include a column to verify (via documentation or field checks, for example) implementation of the measure, date of verification, and pertinent remarks.

This task will also include completing of noticing for the proposed project, including the Notice of Completion (NOC) and the Notice of Determination (NOD) for filing by the City.

Upon completion of the Final EIR, RBF will prepare Draft Findings and Evidence, as well as a Statement of Overriding Considerations for any significant and unavoidable impacts of the proposed project for consideration by the City Council.

6.0 COORDINATION OF ENVIRONMENTAL REVIEW AND MEETING ATTENDANCE

RBF will establish a communication link with City staff in order to maintain an orderly flow of communication and coordination. Laura Worthington-Forbes will be the Principal-in-Charge and Erika Spencer will be the Project Manager and will ensure that all commitments made to the City are completed on schedule and within budget as expeditiously as possible. Project coordination will include telephone communications, in-person meetings and e-mail correspondence between the City and RBF. This task assumes attendance of up to 12 two-hour bi-weekly project meetings with the City and project team, and two three-hour Planning Commission and City Council meetings. Additional meetings may be attended

on a time and materials basis at the direction and/or with the approval. This task also assumes additional time for project management and coordination.

7.0 PERSONNEL

The following RBF personnel would be working on the Tracy Hills Specific Plan Amendment EIR.

Laura Worthington-Forbes, Project Director
Erika Spencer, Project Manager
Kristie Wheeler, Senior Environmental Planner
Kara Spencer, Environmental Specialist
Frederik Venter, P.E., Senior Transportation Engineer
Arshad Syed, Transportation Engineer
Norman Wong, Transportation Engineer
Eddie Torres, INCE, Air Quality and Noise Specialist
Achilles Malisos, Air Quality and Noise Specialist
Jonathon Schuppert, Planner
Shelly Tegge, Administrative Assistant

8.0 FEE PROPOSAL

Please see enclosed fee proposal.

9.0 SCHEDULE

Please see enclosed schedule.

PROFESSIONAL FEES FOR PLANNING CONSULTING SERVICES										
		Project Director	Project Manager	Traffic/Senior Engineer	Environmental Specialist	Transportation Planner	Environmental Analyst/Planner	Admin/Graphics Support	TOTAL HOURS	ESTIMATED COST (T&M)
		\$265	\$165	\$195	\$138	\$110	\$100	\$63		
TASKS										
1.0	Project Initiation									
	Kickoff Meeting	8	8		8				24	\$4,544
	Consultation with Responsible and Trustee Agencies	2	8		5				15	\$2,540
	Prepare Notice of Preparation	4	8		24		4	3	43	\$6,281
2.0	Administrative Draft EIR									
	Introduction and Purpose		1		4		1		6	\$817
	Executive Summary		6		8		3		17	\$2,394
	Project Description	2	8		32		16		58	\$7,866
	Air Quality	3	6		63		4		76	\$10,879
	Biological Resources	2	6		6		4		18	\$2,748
	Greenhouse Gases/Climate Change	2	6		51		3		62	\$8,858
	Noise	2	4		54		4		64	\$9,042
	Public Services and Utilities	3	8		32		4		42	\$6,931
	Transportation and Circulation	2	8	180		260	275		725	\$93,050
	Other Issues	1	4						5	\$925
	Effects Found Not to be Significant	1	5		3				9	\$1,504
	Growth Inducing Impacts	1	6		6				13	\$2,083
	Cumulative Impacts	3	8		24				35	\$5,427
	Alternatives	3	16		32			8	59	\$8,355
3.0	Draft EIR									
4.0	Final EIR									
	Prepare Final EIR	8	32		40				80	\$12,920
5.0	Mitigation Monitoring Program									
	Prepare the Mitigation Monitoring Program, Noticing, Findings and Statement of Overriding Considerations	1	8		48		6		63	\$8,809
6.0	Coordination of Environmental Review/Meetings/Management									
	Coordination of Environmental	95	95		16				206	\$43,058
	Subtotal Hours	149	267	180	480	260	324	19	1,674	\$1,674
	Subtotal - Labor Cost	\$39,485	\$44,055	\$35,100	\$66,240	\$28,600	\$32,400	\$1,197	\$247,077	\$247,077
	Deliverables and Direct Costs									
	Direct Expenses (Travel, mailing, etc.)									\$3,000
	Deliverables									\$1,200
	Deliverables and Direct Costs Subtotal									\$4,200
	Subconsultants									
	Fehr and Peers - Traffic Modeling									\$30,000
	Illingworth & Rodkin-Health Risk Analysis									\$7,000
	Subtotal-Subconsultants									\$37,000
	Optional Tasks									
	Transportation and Traffic - Specific Plan Revisions and Refinement									\$5,000
	Greenhouse Gas Analysis - Optional Task									\$3,000
	Biological Resources H.T. Harvey and Associates									\$10,000
	Subtotal - Direct Cost									\$18,000
	TOTAL ESTIMATED FEES									\$288,277
	Total ESTIMATED FEES (With Optional Tasks)									\$306,277

Tracy Hills Specific Plan Update Environmental Impact Report



		April 2011 - March 2012													
		START DATE	FINISH DATE	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March
Task No.	Project Schedule	Jan. 2011	Dec. 2011												
1.0	Project Initiation	Apr-2011	May-2011												
	Kickoff Meeting	Apr-2011	Apr-2011	✱											
	Consultation with Responsible and Trustee Agencies	May-2011	May-2011												
	Notice of Preparation (NOP)	May-2011	May-2011												
2.0	Prepare Administrative EIR	Apr-2011	Oct. 2011												
	Prepare Technical Reports (e.g. TIA, etc.)	Apr-2011	Aug. 2011												
	Complete ADEIR	May-2011	Sept. 2011												
	City Review of Administrative Draft ADEIR	Sept. 2011	Oct. 2011												
3.0	Draft EIR	Oct. 2011	Nov. 2011												
	Prepare Public Review Draft	Oct. 2011	Nov. 2011												
	45-day Public Review	Nov. 2011	Dec. 2011												
4.0	Final EIR	Dec-2011	Jan. 2012												
	Prepare Response to Comments & FEIR	Dec. 2011	Jan. 2012												
5.0	Prepare MMRP	Jan. 2012	Jan. 2012												
	Prepare MMRP	Jan. 2012	Jan. 2012												
6.0	Project Management/Meetings	Feb. 2012	Mar-2012												
	Planning Commission & City Council Mtgs.	Feb. 2012	Mar-2012											✱	✱
	City Council Meetings														

AGENDA ITEM 3

REQUEST

PUBLIC HEARING TO APPROVE A RESOLUTION OF THE CITY OF TRACY APPROVING A SETTLEMENT AGREEMENT WITH ARMADILLO REALTY, LLC REGARDING DEVELOPMENT IMPACT FEES, A MUTUAL EASEMENT AND MAINTENANCE AGREEMENT WITH ARMADILLO, LLC, AND A DECLARATION OF RESTRICTIONS

EXECUTIVE SUMMARY

Both the City Council and Community Development Agency are asked to approve (in separate meetings) a Settlement Agreement and Mutual Release Between the Community Development Agency of the City of Tracy, City of Tracy and Armadillo Realty, LLC ("Armadillo") ("Settlement Agreement"), regarding development impact fees, reimbursement to Armadillo for improvements, conveyance of .072 acre, reciprocal easement and parking maintenance agreement, and deed restriction on City property. Agency is also asked to approve the First Amendment to the DDA between the Agency and Armadillo Realty, LLC.

DISCUSSION

The Community Development Agency and Armadillo entered into a Disposition and Development Agreement on April 19, 2005 ("DDA"). Armadillo is the owner and operator of the Texas Roadhouse restaurant, located on the Property located at the corner of Naglee Road and Grant Line Road in the City. The Armadillo Property is approximately 1.23 acres, also referred to as Parcel A.

The City owns a parcel adjacent to and north of the Armadillo Property (formerly owned by the Agency, but transferred to the City on March 8, 2011). This City Property is approximately 1.01 acres, and is referred to as Parcel B.

The City and the Agency are involved in a dispute with Armadillo regarding the payment of certain development impact fees, which the City and Agency believe are due under the Disposition and Development Agreement dated April 19, 2005. The disputed amount is \$211,386.

Armadillo constructed certain improvements on Parcel B (excavation, utilities, parking and building pad) with the understanding that City or Agency would reimburse Armadillo for these improvements upon the sale or lease of Parcel B. The cost of reimbursable improvements to Parcel B is \$416,942. Parcel B is currently for sale.

City and Agency have considered filing a lawsuit to recover the unpaid Impact Fees. The Parties have attempted to resolve this dispute resulting in the proposed Settlement Agreement. Pursuant to the proposed Settlement Agreement, Armadillo will pay the City \$125,000 in settlement of the unpaid Impact Fees.

In addition, the proposed Settlement Agreement addresses the following:

- (a) Armadillo constructed certain improvements just over the property line between Parcels A and B (trash enclosure and walkway). As part of this settlement, City will agree to complete a lot line adjustment and convey a small portion of Parcel B property (.072 acres) to Armadillo and Armadillo will pay the City \$20,000; and
- (b) City has agreed to record a Declaration restricting the use of Parcel B to uses which are not steakhouses ("Declaration of Restrictions"); and
- (c) The Parties wish to have a reciprocal easement and maintenance agreement for the operation and maintenance of the parking lots on both parcels ("Mutual Easement and Maintenance Agreement").

The amount that City/Agency owes Armadillo for the reimbursable improvements to Parcel B (\$416,942) will be reduced by the amount that Armadillo will owe to the City under the proposed Settlement Agreement (\$145,000).

FISCAL IMPACT

Under the terms of the settlement, City will receive a portion of the disputed development impact fees. The remaining uncollected fees will be paid by the buyer of Parcel B.

STRATEGIC PLAN

This agenda item does not relate to the Council strategic plans.

RECOMMENDATION

That City Council adopt a resolution authorizing the Mayor to sign: the Settlement Agreement; the Mutual Easement and Maintenance Agreement, and Declaration of Restrictions.

Prepared by: Andrew Malik, Development and Engineering Services Director
Daniel G. Sodergren, City Attorney

Reviewed and Approved by: Leon Churchill, Jr., City Manager

Attachments: Resolution
Settlement Agreement
Mutual Easement and Maintenance Agreement
Declaration of Restrictions

RESOLUTION _____

APPROVING A SETTLEMENT AGREEMENT WITH ARMADILLO REALTY, LLC REGARDING DEVELOPMENT IMPACT FEES, A MUTUAL EASEMENT AND MAINTENANCE AGREEMENT WITH ARMADILLO REALTY, LLC, AND A DECLARATION OF RESTRICTIONS

WHEREAS, Armadillo Realty, LLC, (“Armadillo”) is the owner and operator of the Texas Roadhouse restaurant, located on the Property located at the corner of Naglee Road and Grant Line Road in the City. The Armadillo Property is approximately 1.23 acres, also referred to as Parcel A; and

WHEREAS, the City owns a parcel adjacent to and north of the Armadillo Property. This City Property is approximately 1.01 acres, and is referred to as Parcel B; and

WHEREAS, the City and the Community Development Agency are involved in a dispute with Armadillo regarding the payment of certain development impact fees, which the City and Agency believe are due under the Disposition and Development Agreement between the Agency and Armadillo dated April 19, 2005 (“DDA”). The disputed amount is \$211,386; and

WHEREAS, Armadillo constructed certain improvements on Parcel B (excavation, utilities, parking and building pad) with the understanding that City or Agency would reimburse Armadillo for these improvements upon the sale or lease of Parcel B. The cost of reimbursable improvements to Parcel B is \$416,942. Parcel B is currently for sale; and

WHEREAS, City and Agency have considered filing a lawsuit to recover the unpaid Impact Fees. The Parties have attempted to resolve this dispute resulting in a Settlement Agreement and Mutual Release (“Settlement Agreement”); and

WHEREAS, the Settlement Agreement also contemplates a Mutual Easement and Maintenance Agreement and a Declaration of Restrictions.

NOW, THEREFORE, the Tracy City Council authorizes the Mayor to sign the Settlement Agreement, the Mutual Easement and Maintenance Agreement and Declaration of Restrictions

* * * * *

Resolution _____
Page 2

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 19th day of April, 2011, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

**Settlement Agreement and Mutual Release Between
Community Development Agency of the City of Tracy,
City of Tracy and Armadillo Realty, LLC**

This Settlement Agreement and Mutual Release between the Community Development Agency of the City of Tracy, City of Tracy and Armadillo Realty, LLC, is entered into on _____, 2011.

Recitals

- A. Agency. The Community Development Agency of the City of Tracy (Agency) is a redevelopment agency operating under the laws of the State of California.
- B. City. The City of Tracy (City) is a general law city operating under the laws of the State of California.
- C. Armadillo. Armadillo Realty, LLC, (Armadillo) is a Nevada limited liability company. Armadillo is also the owner and operator of the Texas Roadhouse restaurant, located on the Property described in Recital E.
- D. DDA and Impact Fees. Agency and Armadillo are parties to a Disposition and Development Agreement dated April 19, 2005 (DDA) under which the parties set forth the terms and conditions of development of the Property. Under the DDA, the Agency required payment of certain development impact fees (Impact Fees) as a condition of issuance of permits. Armadillo paid the City \$283,791 in Impact Fees at the time of issuance of permits for Parcel A. The City and Agency believe that Armadillo owes an additional \$211,386 in Impact Fees to City. Armadillo disagrees (the Dispute).
- E. Property. The Property is approximately 2.2 acres as shown in the DDA and in the Parcel Map recorded as document number 2005-169772, located at the corner of Naglee Road and Grant Line Road in the City of Tracy. The Property was divided into two parcels, as follows:
- Parcel A (originally 1.23 acres) was conveyed from Agency to Armadillo in 2005. It has been developed by Armadillo as a Texas Roadhouse Restaurant.
 - Parcel B (originally 1.01 acres) is currently owned by City, having been acquired from Agency, and is for sale. Armadillo constructed certain improvements on Parcel B (excavation, utilities, parking and building pad) with the understanding that the City would reimburse Armadillo for these improvements upon the sale or lease of Parcel B. The cost of the improvements to Parcel B is \$416,942 (Parcel B Improvement Costs).
- F. Litigation and tolling. City and Agency have considered filing a lawsuit to recover the unpaid Impact Fees. The Parties have attempted to resolve this dispute and have entered into extended tolling agreements in December 2009, March 2010, July 2010, October 2010, and March 2011 to toll the statute of limitations with respect to legal claims the City or Agency may have.



G. Setbacks. Regarding building setbacks, the City here acknowledges that in the I-205 Corridor Specific Plan area, where Parcel B is located, the building setback in a commercial shopping center may be reduced to zero along non-street property lines. (I-205 Corridor Specific Plan Amendment approved by the City Council by Resolution No. 2001-333.)

H. Settlement. The Parties have reached a settlement and wish to enter into this Agreement, and other related documents, to reflect that settlement. The parties wish to: (1) compromise and settle the dispute between them in order to avoid the cost and uncertainties of litigation; (2) memorialize the agreement of the parties regarding recordation of a Grant Deed and Reciprocal Easements for the mutual benefit of Parcel A and Parcel B; (3) agree to a limitation on the steakhouse use of Parcel B; and (4) address such other outstanding matters between the parties as are set forth in this agreement.

NOW, THEREFORE, in consideration of the promises set forth in this agreement, the parties agree that:

1. Lot line adjustment; Grant Deed. City agrees to process a lot line adjustment between Parcels A and B and to convey to Armadillo a .072-acre (3,148.50 square foot) portion of Parcel B which contains certain Parcel A improvements (including a bollard located adjacent to the dumpster on Parcel A, a grease trap, and a service area for the Texas Roadhouse restaurant). Armadillo shall pay the City half of the fair market value of this piece, which the parties estimate to be \$40,000. A diagram of the proposed lot line adjustment and property to be conveyed is attached as Exhibit A. After the lot line adjustment is approved and recorded, the City shall convey the .072 acre portion to Armadillo.

2. Reciprocal Easements. The parties agree to record a reciprocal access and parking easement and maintenance agreement in substantially the form set forth in Exhibit B, attached. The Mutual Easement and Maintenance Agreement permits mutual, non-exclusive ingress, egress, access and parking on the surface parking facilities of Parcels A and B, and provides for maintenance. The recording shall occur concurrently with the recording of the lot line adjustment, grant deed, and declaration of restrictions. City will use its best efforts to process the lot line adjustment and record these documents as soon after the effective date of this Agreement as possible.

3. Limitation on Steakhouse Use of Parcel B. City agrees to record a Declaration of Restrictions against Parcel B to provide that Parcel B not be used as a steak house. This restriction shall remain in effect for as long as Parcel A is used as a steakhouse by Texas Roadhouse or any successor steakhouse restaurant, or for 50 years, whichever occurs first. In this Agreement, "steakhouse" means a full-service, sit-down restaurant offering steak-type items as 20% or more of its menu entrees (including such items as steak, T-bone, sirloin, rib eye, prime rib, New York strip, filet mignon). The recording shall occur concurrently with the recording of the lot line adjustment, grant deed and reciprocal easements.

This limitation shall be reflected in the Amended DDA, referred to in Section 4 below, and in a separate Declaration of Restrictions in substantially the form set forth in Exhibit C, attached.

4. Amending DDA. The parties agree to amend the DDA to reflect this settlement, including:
- redefinition of Parcel A and Parcel B to reflect the conveyance described in Section 1 above;
 - adding a reference to this Settlement agreement regarding the payment of Impact Fees, and
 - adding a new section to reflect the limitation on use of Parcel B for a steak house restaurant. (See Section 3 above.)

The DDA Amendment shall be substantially in the form set forth in Exhibit D attached.

5. Amounts Owed by Armadillo. After recordation of the Grant Deed, Reciprocal Easements, and DDA amendment, Armadillo shall owe the City \$145,000, which represents the following amounts:

- \$125,000, in settlement of the unpaid impact fees (see Recital D); and
- \$ 20,000, as half the value of the City property being conveyed to Armadillo (see ¶1).

This amount shall offset the amount City will reimburse Armadillo for Parcel B Improvement Costs. (See Paragraph 6.)

6. Payment by City. Upon the sale, lease or other disposition of Parcel B, City shall reimburse Armadillo \$416,942 for the Parcel B Improvement Costs. This amount shall be reduced by the \$145,000 owed to City by Armadillo, so that the reimbursement total will be \$271,942.

7. Release of claims; No assignment. For the above-mentioned valuable considerations and upon the occurrence of the conditions precedent set forth in this Agreement, the parties hereby release, forever discharge and agree to hold harmless each other party to this Agreement and their respective officers, agents, employees, attorneys, shareholders, insurers, predecessors and successors in interest, assigns and spouses, of and from any and all claims, damages, setoffs or causes of action asserted or which could be asserted in connection with the Dispute.

The parties warrant that they have made no assignment of any claim, cause of action, right of action or any other right of any other kind which is the subject of this Agreement, and that no other person or entity has an interest in any of the demands, obligations, actions, or causes of action referred to here.

This Agreement has been knowingly and voluntarily executed by the parties. The parties intend to relinquish all claims against each other in connection with the Dispute, whether or not now known, and expressly waive all rights and benefits conferred upon them by the provisions of Civil Code Section 1542, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

By their initials, the parties understand and acknowledge the significance and consequences of this waiver of Section 1542:

8. Miscellaneous provisions.

8.1 Own costs. The parties acknowledge and agree that they shall each be responsible for the payment of their own cost, expenses and attorneys' fees incurred in relation to the Dispute and the preparation of this Agreement.

8.2 Entire agreement. This Agreement, and the related documents referred to in Sections 1 through 4, contain the entire agreement between the parties and may not be amended, altered, modified or otherwise changed except by a writing executed by them.

8.3 Laws of California. This Agreement shall be governed by the laws of the State of California.

8.4 Severability. If a provision of this Agreement is for any reason held to be invalid or unconstitutional, the decision shall not affect the remaining portions of the Agreement.

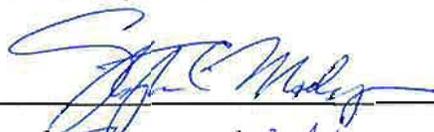
8.5 Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

COMMUNITY DEVELOPMENT AGENCY
OF THE CITY OF TRACY

ARMADILLO REALTY, LLC, a Nevada
limited liability company

By: _____
Chairperson

By:  _____

Name: STEPHEN C. MADIGAN

CITY OF TRACY

Its: PRESIDENT

By: _____
Mayor

Approved as to form:



Daniel G. Sodergren, City and Agency
Attorney

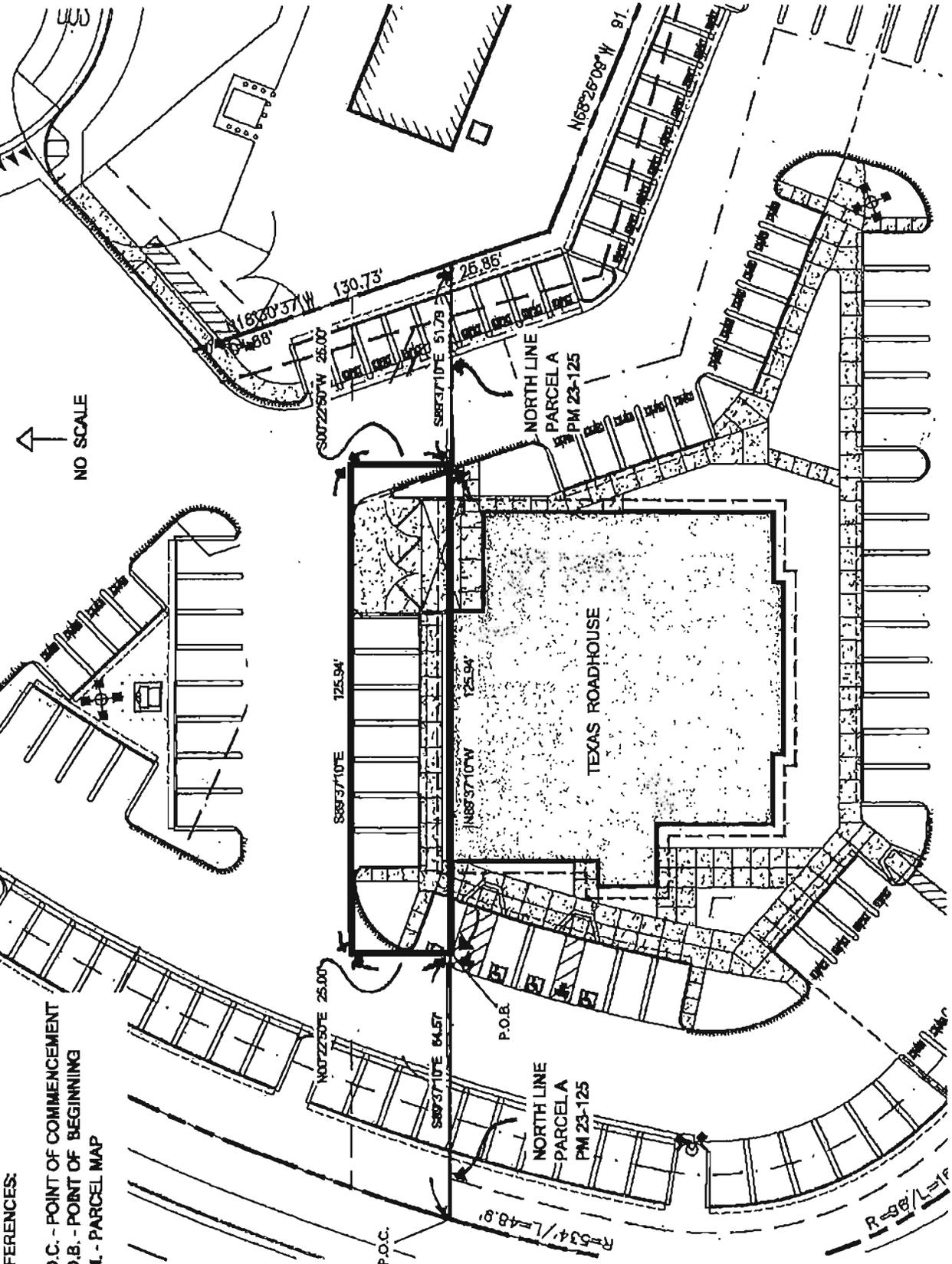
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Exhibits:

- A Diagram of the proposed lot line adjustment and property to be conveyed (Agr. §1)
- B Form of Mutual Easement and Maintenance Agreement (Agr. §2)
- C Form of Declaration of Restrictions applicable to Parcel B (Agr. §3)
- D Form of DDA Amendment (Agr. §4)

Exhibit A
Diagram of the proposed lot line adjustment and property to be conveyed

A handwritten signature in the bottom right corner of the page, consisting of stylized cursive letters.



↑
NO SCALE

- REFERENCES:
 P.O.C. - POINT OF COMMENCEMENT
 P.O.B. - POINT OF BEGINNING
 P.M. - PARCEL MAP

gpa

EXHIBIT "A"

LEGAL DESCRIPTION
TEXAS ROADHOUSE
LOT LINE ADJUSTMENT

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A PORTION OF LOTS 39 AND 40 OF "NAGLEE BURK TRACT" ACCORDING TO THE OFFICIAL MAP THEREOF, FILED IN VOLUME 5 OF MAPS AND PLATS, PAGE 18, SAN JOAQUIN COUNTY RECORDS AND ALSO AS SHOWN UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD JULY 13, 2005 IN BOOK 23 OF PARCEL MAPS, PAGE 125, SAN JOAQUIN COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL A, AS SHOWN ON ABOVE SAID PARCEL MAP; THENCE SOUTH 89 DEGREES 37 MINUTES 10 SECONDS EAST, ALONG THE NORTH LINE OF SAID PARCEL A, 64.57 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 22 MINUTES 50 SECONDS EAST, 25.00 FEET TO A POINT; THENCE SOUTH 89 DEGREES 37 MINUTES 10 SECONDS EAST, PARALLEL TO SAID NORTH LINE OF PARCEL A, 125.94 FEET TO A POINT; THENCE SOUTH 00 DEGREES 22 MINUTES 50 SECONDS WEST, 25.00 FEET TO A POINT ON SAID NORTH LINE OF PARCEL A; THENCE NORTH 89 FEET 37 MINUTES 10 SECONDS WEST, ALONG SAID NORTH LINE OF PARCEL A, 125.94 FEET TO THE POINT OF BEGINNING.

CONTAINING 3148.5 SQUARE FEET, MORE OR LESS.



[Handwritten mark]

Exhibit B
Form of Easement and Maintenance Agreement



Recorded by
and When Recorded Return to:
City Clerk
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Re: parcels at Naglee Road and Grant Line Road, Tracy, CA
APN Nos. 212-290-41 and 212-290-43

MUTUAL EASEMENT AND MAINTENANCE AGREEMENT

This Mutual Easement and Maintenance Agreement is entered into on _____, 2011 between the City of Tracy, a municipal corporation ("City") and Armadillo Realty, LLC, a Nevada limited liability company ("Armadillo").

Recitals:

- A. City is the owner of .938 acres of property (after 2011 lot line adjustment) located near the corner of Naglee Road and Grant Line Road in the City of Tracy, shown as Parcel B on the Parcel Map recorded as Document No. 2005-169772, as amended by the Grant Deed from City to Armadillo recorded _____, 2011.
- B. Armadillo is the owner of 1.302 acres of property (after 2011 lot line adjustment) located at the corner of Naglee Road and Grant Line Road in the City of Tracy, shown as Parcel A on the Parcel Map recorded as Document No. 2005-169772, as amended by the Grant Deed from City to Armadillo recorded _____, 2011.
- C. Under the Settlement Agreement and Mutual Release between the parties, dated _____, 2011, the parties agreed, among other things, to: (a) compromise and settle the dispute between them; (b) transfer from Parcel B (Agency) to Parcel A (Armadillo) a .072 portion of land; (c) limit the steakhouse use on Parcel A; and (d) record a mutual easement and maintenance agreement regarding joint use of the parking area surrounding both properties.
- D. This Mutual Easement and Maintenance Agreement satisfies a portion of that Settlement Agreement and Mutual Release.

NOW, THEREFORE, the parties agree as follows:

1. Grant of easement. Armadillo, as grantor, hereby grants to City, a non-exclusive perpetual easement for ingress, egress, access and parking for vehicular and pedestrian traffic upon and across the surface parking facilities and related entrances, exits, driveways, walks and service drives located within Parcel A (as shown on Exhibit A, the "Parcel A Parking Easement").

2. Grant of easement. City, as grantor, hereby grants to Armadillo, a non-exclusive perpetual easement for ingress, egress, access and parking for vehicular and pedestrian traffic upon and across the surface parking facilities and related entrances, exits, driveways, walks and service drives located within Parcel B (as shown on Exhibit A, the "Parcel B Parking Easement").

3. Easements appurtenant. Each easement granted here shall be appurtenant to and for the benefit of the parcel owned or occupied by the grantee of such easement and its successors, assignees, mortgagees, lessees, sublessees, employees, suppliers, contractors, vendors, agents, customers, licensees and invitees.

4. No other easements. No owner of Parcel A or Parcel B shall grant any parking easement or easements of the type set forth in this document for the benefit of any other person or property.

5. Maintenance obligation and cost sharing.

a. Obligation. Armadillo agrees to and shall maintain the easement areas on both Parcel A and Parcel B (the "Easement Area") in good condition and repair. Maintenance shall include the following:

- (1) maintaining the surface in a level, smooth and evenly covered and properly striped condition with the type of surface material and paint originally installed, or such substitute as shall in all respects be equal in quality, use and durability;
- (2) repairing or replacing the driveways or parking areas when necessary;
- (3) placing, keeping in repair, and replacing any necessary directional signs, markers and lines; and;
- (4) keeping in repair and replacing when necessary any curbing or drainage facilities required for the driveways or paved areas.

b. Cost sharing. The cost of maintenance and repair of the Easement Area shall be shared based on the proportion of parking spaces on each:

Parcel A:	67%	(Armadillo; 102/152 spaces)
Parcel B:	33%	(City; 50/152 spaces)

At least 30 days before the beginning of each calendar year, Armadillo shall submit to the owner of Parcel B an estimated budget of Operating Costs for the following year. The Parcel B owner shall pay its proportionate share of the Operating Costs in 12 equal installments, which shall be due and payable on the first day of every month of the year. Within 60 days of the end of every calendar year, Armadillo shall submit a statement containing the actual Operating Costs for the prior year to the owner of Parcel B. If the actual Operating Costs are higher than the total amount paid by Armadillo, the owner of Parcel B shall pay such difference within 30 days of receipt of such statement. If the actual Operating Costs are less than the total amount paid by Armadillo, the owner of Parcel B

shall include the difference with the delivery of the statement. Each budget and statement shall be accompanied by such documents as may be reasonably necessary to enable the owner of Parcel B to verify the accuracy of the statement.

Any payment not paid when due shall bear interest from the date due until paid at the rate of 10% per year, or the maximum lawful rate under California law, whichever is less.

- c. Operating Costs. The Operating Costs shall include:
- (1) the costs of the services described in Section 5.a above;
 - (2) any agreed-upon costs of supervising or providing security for the parking area;
 - (3) insurance costs for the Easement Area;
 - (4) utility services for the Easement Area; and
 - (5) the cost of complying with all laws applicable to the Easement Area.

Armadillo has the right to contract out the operation, maintenance and repair of the Easement Area to a third party, and the reasonable costs of such a contract are deemed an Operating Cost.

Operating Costs shall not include, and Armadillo shall not be obligated to pay for, replacement of the Easement Area.

6. Miscellaneous provisions.

a. Indemnification, defense, hold harmless. The owners of Parcel A and Parcel B shall indemnify, defend and hold harmless the other owner, and their respective successors, from any and all claims, expenses (including attorneys' fees), and liabilities arising from the exercise of the easement rights granted here.

b. Attorneys' fees. If a dispute arises between the parties regarding this Mutual Easement and Maintenance Agreement, the prevailing party is entitled to reasonable attorneys' fees and costs and expenses of any action or proceeding, whether or not the dispute is litigated to final judgment.

c. Modifications. This document may only be modified in writing, signed by both parties, and recorded in the County Recorder's Office of San Joaquin County.

CITY OF TRACY, a municipal corporation

ARMADILLO REALTY, LLC, a Nevada limited liability company

By: _____
City Manager, as authorized by City Council Resolution No. _____

By: [Signature] *

Name: STEPHEN C. MADWICK

Dated: _____

Its: President

Attest: _____
City Clerk

Dated: 7-12-11

Approved as to form:

*Notary acknowledgement required.

Daniel G. Sodergren,
City Attorney

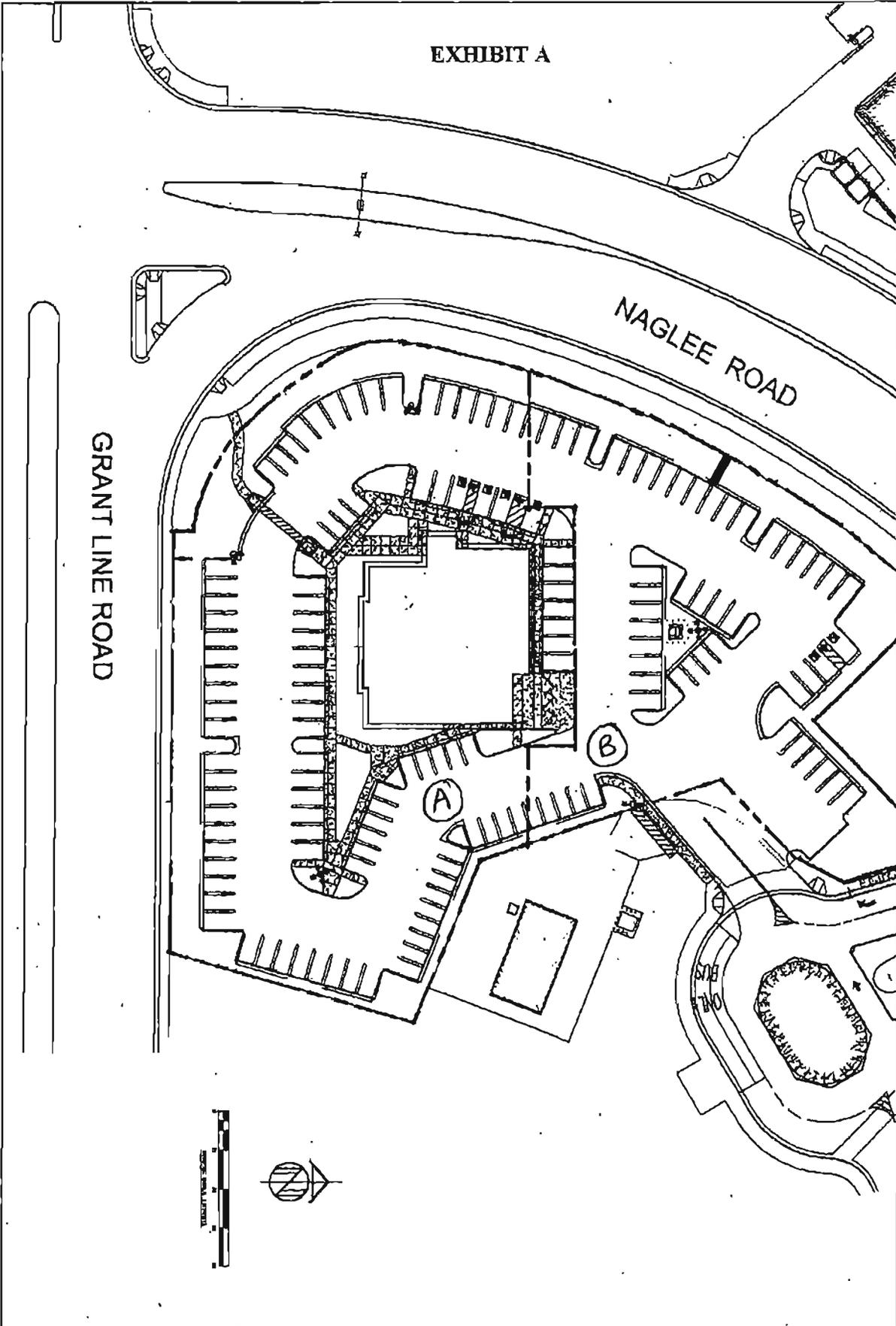


Exhibits:

- A The Easement Area, including the Parcel A Parking Easement and the Parcel B Parking Easement

[Handwritten initials]

EXHIBIT A



ITEM #5
PARKING CONRG
AFTER U/A

EGH

Exhibit C
Form of Declaration of Restrictions applicable to Parcel B (Agr. §3)



Recorded by
and When Recorded Return to:
City Clerk
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Re: parcel near Naglee Road and Grant Line Road, Tracy, CA
APN No. 212-290-41

DECLARATION OF RESTRICTIONS

This Declaration is made on _____, 2011 by the City of Tracy, a municipal corporation, referred to as "Declarant" or "City".

A. The Declarant is the owner of real property (after the concurrent recording of a lot line adjustment) located near the corner of Naglee Road and Grant Line Road in the City of Tracy, shown as Parcel B on the Parcel Map recorded as Document No. 2005-169772, as amended by the Grant Deed from City to Armadillo recorded _____, 2011 (the "Property"); and

B. Armadillo Realty, LLC is the owner of Parcel A on the Parcel Map recorded as Document No. 2005-169772, as amended by the Grant Deed from City to Armadillo recorded _____, 2011.

C. Under the Settlement Agreement and Mutual Release between the City and Armadillo Realty, LLC, City agreed to limit use of its property as a steakhouse restaurant, among other things; and

D. The City/Declarant desires and intends to impose on the Property the beneficial restrictions contained in this Declaration in conformance with the Settlement Agreement for the overall benefit of the Property and its present and future owners.

NOW, THEREFORE, Declarant declares that the Property described in Recital A shall be held, conveyed, leased, rented, used, occupied and improved subject to the following restrictions:

1. The Property shall not be used as a steakhouse as long as Parcel A is used as a steakhouse by Armadillo (doing business as Texas Roadhouse) or by any successor steakhouse restaurant, or for 50 years, whichever is less.

Steakhouse means a full-service, sit-down restaurant offering steak-type items as 20% or more of its menu entrees (including such items a steak, T-bone, sirloin, rib eye, prime rib, New York strip, filet mignon).



2. This restriction is also reflected in the Amended Disposition and Development Agreement recorded concurrently with this Declaration.

3. These restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part of it.

This Declaration was executed on the date first written above.

Declarant:

CITY OF TRACY, a municipal corporation

By: _____
City Manager, as authorized by City Council Resolution No. _____

Dated: _____

Attest: _____
City Clerk

Approved as to form:

Daniel G. Sodergren
City Attorney

Exhibit D
Form of DDA Amendment (Agr. §4)

GR

**First Amendment to the Disposition and Development Agreement
By and Between the Community Development Agency of the City of Tracy
and Armadillo Realty, LLC**

This First Amendment to the Disposition and Development Agreement By and Between the Community Development Agency of the City of Tracy and Armadillo Realty, LLC is entered into on _____, 2011.

Recitals. This First Amendment is based on the following facts:

A. On April 19, 2005, the Community Development Agency of the City of Tracy, California (Agency) and Armadillo Realty, LLC, a Nevada Limited Liability Company (Developer) entered into a Disposition and Development Agreement (DDA).

B. The DDA concerns the 2.2-acre Property located at the corner of Naglee Road and Grant Line Road in the City of Tracy, including:

- modified Parcel A (1.23 acres to 1.302 acres), owned by Armadillo/Developer; and
- modified Parcel B (1.01 acres to .938 acres), now owned by the City.

The modified parcel descriptions are those as modified by the conveyance of a portion of Parcel B to Parcel A, and recorded by Grant Deed from City to Developer. The modifications are shown in the legal description and diagram attached as Exhibit A.

C. To resolve certain issues between the Parties regarding the payment of fees to the City, and other matters, the Parties have entered into a Settlement Agreement, agreed to corresponding modifications to the DDA, and conveyance of property from the Agency to Developer.

D. The parties wish to amend the DDA by this First Amendment.

NOW, THEREFORE, the Parties agree that:

1. Recital C of the DDA is amended to read:

“C. The Property is made up of Parcel A, which is more particularly described in Exhibit A and Parcel B, which is more particularly described in Exhibit B. The property descriptions are modified by the conveyance of .072-acres from City (Parcel B) to Developer (Parcel A) as set forth in the descriptions and diagram set forth in the First Amendment Exhibit A, attached.

All references in this DDA to Parcel 1 shall mean the modified Parcel A, and all references to Parcel 2 shall mean the modified Parcel B.”

2. Section 1.05, second paragraph, is amended to read:

"1.05 Construction Plans and City Approvals.

....

Developer shall diligently pursue the City's approval of the PDP, FDP and Conditional Use Permit. Developer shall also diligently pursue the City's issuance of the building permit allowing the construction of the Project in conformance with the Construction Plans. In connection with the issuance of the building permit for the Project, Developer shall pay mitigation fees required by the "Finance Plan" to be provided to Developer by the City, *except as modified by the separate Settlement Agreement and Mutual Release entered into in 2011*. The Agency shall render all reasonable assistance to Developer in expediting the PDP, FDP, Conditional Use Permit and building permit process. Developer acknowledges that Agency assistance or approval does not constitute City approval. Nothing in this Agreement shall obligate the City to approve the PDP, FDP, Conditional Use Permit or building permit."

3. A new Section 3.04, Limitation on Use, is added to Article 3, Disposition of Parcel 2, to read:

ARTICLE 3. DISPOSITION OF PARCEL 2

" 3.04 Limitation on Use.

As of the date of the First Amendment to this DDA, the City has acquired Parcel B from the Agency. Pursuant to the Settlement Agreement and Mutual Release between the Agency, City and Armadillo, the City has agreed to the following:

"City agrees to record a Declaration of Restrictions against Parcel B to provide that Parcel B not be used as a steak house. This restriction shall remain in effect for as long as Parcel A is used as a steakhouse by Texas Roadhouse or any successor steakhouse restaurant, or for 50 years, whichever occurs first. In this Agreement, "steakhouse" means a full-service, sit-down restaurant offering steak-type items as 20% or more of its menu entrees (including such items as steak, T-bone, sirloin, rib eye, prime rib, New York strip, filet mignon)."

4. Except as amended here, the original DDA remains in effect.

The parties have executed this First Amendment on the date first written above.

COMMUNITY DEVELOPMENT AGENCY
OF THE CITY OF TRACY,
a public body, corporate and politic

By: _____
Chairperson

Approved as to form:

Daniel G. Sodergren, Agency Attorney

DEVELOPER:
ARMADILLO REALTY, LLC
a Nevada Limited Liability Company

By:  _____
Its: PRESIDENT _____

- Exhibits:
- A Modified Parcel A
 - B Modified Parcel B
 - C Description and Diagram of Modifications to Parcels A and B

CM

Exhibit A: Modified Parcel A

CAH

EXHIBIT "A"

**LEGAL DESCRIPTION
RESULTANT PARCEL A**

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A PORTION OF LOTS 39 AND 40 OF "NAGLEE BURK TRACT" ACCORDING TO THE OFFICIAL MAP THEREOF, FILED IN VOLUME 5 OF MAPS AND PLATS, PAGE 18, SAN JOAQUIN COUNTY RECORDS AND ALSO AS SHOWN UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD JULY 13, 2005 IN BOOK 23 OF PARCEL MAPS, PAGE 125, SAN JOAQUIN COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF PARCEL A, AS SHOWN UPON SAID PARCEL MAP, FILED FOR RECORD JULY 13, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 125, SAN JOAQUIN COUNTY RECORDS:

TOGETHER WITH THE FOLLOWING DESCRIBED STRIP OF LAND:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL A, AS SHOWN ON ABOVE SAID PARCEL MAP; THENCE SOUTH 89 DEGREES 37 MINUTES 10 SECONDS EAST, ALONG THE NORTH LINE OF SAID PARCEL A, 64.57 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 22 MINUTES 50 SECONDS EAST, 25.00 FEET TO A POINT; THENCE SOUTH 89 DEGREES 37 MINUTES 10 SECONDS EAST, PARALLEL TO SAID NORTH LINE OF PARCEL A, 125.94 FEET TO A POINT; THENCE SOUTH 00 DEGREES 22 MINUTES 50 SECONDS WEST, 25.00 FEET TO A POINT ON SAID NORTH LINE OF PARCEL A; THENCE NORTH 89 FEET 37 MINUTES 10 SECONDS WEST, ALONG SAID NORTH LINE OF PARCEL A, 125.94 FEET TO THE POINT OF BEGINNING.



Dan R. Schack
03/04/11

gma

Exhibit B: Modified Parcel B



EXHIBIT "A"

LEGAL DESCRIPTION
RESULTANT PARCEL B

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A PORTION OF LOTS 39 AND 40 OF "NAGLEE BURK TRACT" ACCORDING TO THE OFFICIAL MAP THEREOF, FILED IN VOLUME 5 OF MAPS AND PLATS, PAGE 18, SAN JOAQUIN COUNTY RECORDS AND ALSO AS SHOWN UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD JULY 13, 2005 IN BOOK 23 OF PARCEL MAPS, PAGE 125, SAN JOAQUIN COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF PARCEL B, AS SHOWN UPON SAID PARCEL MAP, FILED FOR RECORD JULY 13, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 125, SAN JOAQUIN COUNTY RECORDS:

EXCEPT THEREFROM THE FOLLOWING DESCRIBED STRIP OF LAND:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL A, AS SHOWN ON ABOVE SAID PARCEL MAP; THENCE SOUTH 89 DEGREES 37 MINUTES 10 SECONDS EAST, ALONG THE NORTH LINE OF SAID PARCEL A, 64.57 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 22 MINUTES 50 SECONDS EAST, 25.00 FEET TO A POINT; THENCE SOUTH 89 DEGREES 37 MINUTES 10 SECONDS EAST, PARALLEL TO SAID NORTH LINE OF PARCEL A, 125.94 FEET TO A POINT; THENCE SOUTH 00 DEGREES 22 MINUTES 50 SECONDS WEST, 25.00 FEET TO A POINT ON SAID NORTH LINE OF PARCEL A; THENCE NORTH 89 FEET 37 MINUTES 10 SECONDS WEST, ALONG SAID NORTH LINE OF PARCEL A, 125.94 FEET TO THE POINT OF BEGINNING.

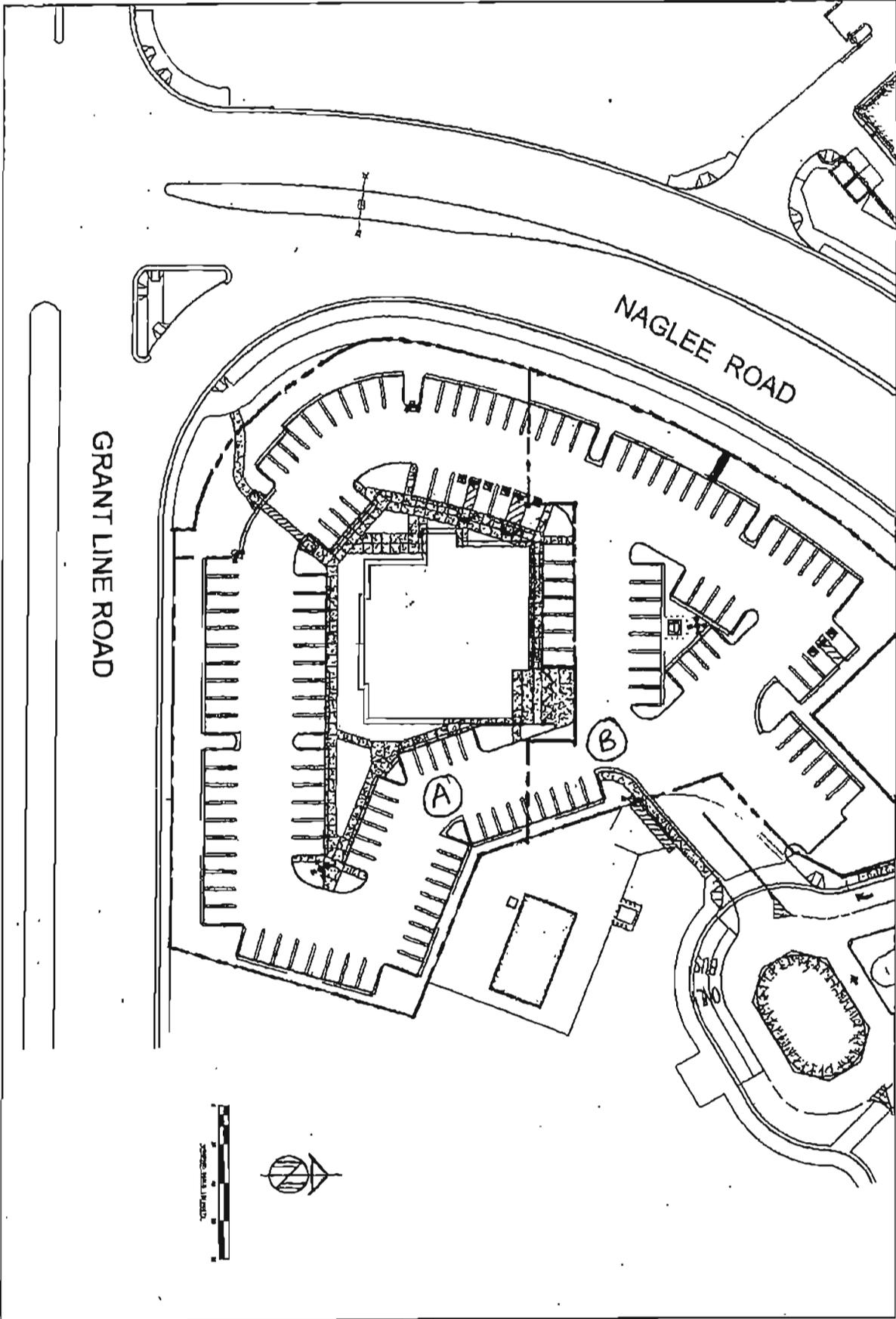


Dan R. Schack
03/04/11

[Handwritten signature]

Exhibit C: Description and Diagram of Modifications to Parcels A and B

gph



ITEM #5
PARKING CONFG
AFTER U/A

Recorded by
and When Recorded Return to:
City Clerk
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Re: parcel near Naglee Road and Grant Line Road, Tracy, CA
APN No. 212-290-41

DECLARATION OF RESTRICTIONS

This Declaration is made on _____, 2011 by the City of Tracy, a municipal corporation, referred to as "Declarant" or "City".

A. The Declarant is the owner of real property (after the concurrent recording of a lot line adjustment) located near the corner of Naglee Road and Grant Line Road in the City of Tracy, shown as Parcel B on the Parcel Map recorded as Document No. 2005-169772, as amended by the Grant Deed from City to Armadillo recorded _____, 2011 (the "Property"); and

B. Armadillo Realty, LLC is the owner of Parcel A on the Parcel Map recorded as Document No. 2005-169772, as amended by the Grant Deed from City to Armadillo recorded _____, 2011.

C. Under the Settlement Agreement and Mutual Release between the City and Armadillo Realty, LLC, City agreed to limit use of its property as a steakhouse restaurant, among other things; and

D. The City/Declarant desires and intends to impose on the Property the beneficial restrictions contained in this Declaration in conformance with the Settlement Agreement for the overall benefit of the Property and its present and future owners.

NOW, THEREFORE, Declarant declares that the Property described in Recital A shall be held, conveyed, leased, rented, used, occupied and improved subject to the following restrictions:

1. The Property shall not be used as a steakhouse as long as Parcel A is used as a steakhouse by Armadillo (doing business as Texas Roadhouse) or by any successor steakhouse restaurant, or for 50 years, whichever is less.

Steakhouse means a full-service, sit-down restaurant offering steak-type items as 20% or more of its menu entrees (including such items a steak, T-bone, sirloin, rib eye, prime rib, New York strip, filet mignon).

2. This restriction is also reflected in the Amended Disposition and Development Agreement recorded concurrently with this Declaration.

3. These restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part of it.

This Declaration was executed on the date first written above.

Declarant:

CITY OF TRACY, a municipal corporation

By: _____
City Manager, as authorized by City Council Resolution No. _____

Dated: _____

Attest: _____
City Clerk

Approved as to form:

Daniel G. Sodergren
City Attorney

AGENDA ITEM 4

REQUEST

THAT COUNCIL DISCUSS AND ACCEPT THIS UPDATE REPORT ASSESSING CRIMINAL CONDUCT AND QUALITY OF LIFE ISSUES IN THE CENTRAL DOWNTOWN BUSINESS DISTRICT

EXECUTIVE SUMMARY

After presenting the preliminary report on this matter to Council on November 16, 2010, and an updated report on January 18, 2011, the Police Department staff seeks to update Council and the community on the progress and next steps for the Downtown Security Initiative.

DISCUSSION

The community has raised concerns about criminal conduct and quality of life issues in the Central Downtown District and those concerns, both real and perceived, have been heard by City staff. The Police Department has also been working with the community to assess what the scope of the concerns is and where perception might be exceeding the reality of the true issues. In previous meetings, the Police Department has discussed raised concerns from the community in detail and offered response strategies to the Council it would implement as part of its assessment and implementation program. This report will offer an update on the results of the community survey and the results to date of the implementation plan.

Downtown Security Initiative:

Since November of 2010, the Police Department has:

- Deployed two Neighborhood Resource Officers for a minimum of 12 hours each; total 24 hours per week.
- Deployed Volunteers in Police Services (VIPS) for a minimum of 10 hours of "Eyes and Ears" patrol per week.
- Directed uniformed Patrol Officers to spend a minimum of 21 hours of patrol time per week.
- Used Officers, Community Services Officers, and VIPS to make weekly, personal contacts with merchants, community members and business owners.
- Identified and diverted resources to specific crime / quality of life issues.
- Conducted two Safety Surveys of business owners to gauge their perception of safety within the downtown business district.
- Conducted a Business Watch survey to determine which educational programs interest the merchants.

Through this initiative, the Tracy Police Department has dramatically increased its overall efforts to dissuade criminal activity and discourage unlawful conduct that interferes with the quality of life in the area.

In comparing the activity levels between the first four months after the full time Downtown officer was reassigned (July through October 2010) and then comparing it to the four months after the Downtown Security Initiative operational period began (November 2010 through February 2011), several significant trends emerge.

- The number of total calls for service increased significantly by 53% as did the number of activities initiated by police officer observations by 202%.

Calls for Service Before and During the Downtown Security Initiative

	Before		After	
	July - October 2010	%	Nov 2010 - Feb 2011	%
Officer Initiated	408	61%	827	80%
Citizen Initiated	266	39%	205	20%
Total	674	100%	1032	100%

- The number of reports increased between the two periods by 27%. Evaluating arrest data, it showed that number of arrests because of citizen initiated calls as the Department's "eyes and ears" dropped by 50%, however, the number of officer initiated arrests in the downtown area increased noticeably by 188%.

Reports and Arrests Before and During the Downtown Security Initiative

	Before	After	Before/After
	July - October 2010	Nov 2010 - Feb 2011	Change
Reports	62	79	27%
Arrests - Citizen Calls	8	4	-50%
Arrests - Officer Initiated	8	23	188%

Tracy Downtown Safety Survey:

Two safety surveys were conducted in an attempt to gauge the public perception of safety as a baseline assessment and then later to evaluate any changes after full response strategy implementation. The first downtown safety survey was conducted the week of November 29 through December 3, 2010 and netted 89 businesses responding. The same questionnaire was given in the second survey and only 52 businesses elected to participate. The comparative concerns are as follows:

**Downtown Safety Survey Comparisons
 November 2010 and March 2011**

	Nov-10	%	Mar-11	%	Change
Panhandling	41	23%	25	21%	-2%
Graffiti	40	22%	23	19%	-3%
Drug dealing	19	10%	14	12%	1%
Gangs/Gang crime	17	9%	12	10%	1%
Speeding/Traffic	20	11%	11	9%	-2%
Street vendors	6	3%	11	9%	6%
Illegal dumping/trash	18	10%	11	9%	-1%
Unkempt/Abandoned buildings	11	6%	6	5%	-1%
No Response	0	0	6	5%	5%
Violent crime	6	3%	2	2%	-2%
Junk/Abandoned cars	3	2%	0	0%	-2%
Total Responses	181	100%	121	100%	

Regarding the perception of safety since the merchants opened their businesses, the November survey listed 56% as feeling safety had improved while 19% perceived no improvement. The March survey revealed 62% of responding merchants said that improvement was noted while 19% felt there was none. Between the surveys it revealed Police Department was able to positively improve the business community's perception of safety by 6%.

**Downtown Safety Survey Comparisons
 November 2010 and March 2011**

Has Safety Improved?	Nov 2010	%	Mar 2011	%	Change
Yes	50	56%	32	62%	5%
No	17	19%	10	19%	0%
Same	6	7%	0	0%	-7%
No Response	16	18%	10	19%	1%
Total	89	100%	52	100%	

Regarding the question on whether respondents felt that the Downtown was a safe place to shop and walk around in, the November and March surveys respectively reiterated that the overwhelming majority (64% and 62%, respectively) believe it was safe.

**Downtown Safety Survey Comparisons
 November 2010 and March 2011**

The downtown area is a safe place to shop and walk around.
 (5 = Strongly Agree and 1 = Strongly Disagree)

Scale	Nov 2010	%	Mar 2011	%	Change
5	27	30%	13	25%	-5%
4	30	34%	19	37%	3%
3	13	15%	15	29%	14%
2	8	9%	5	10%	1%
1	3	3%	0	0%	-3%
No Response	8	9%	0	0%	-9%
Total	89	100%	52	100%	

The surveys continue to show a strong level of confidence in the safety of the downtown area. Both surveys indicate a significant percentage of satisfaction with Downtown safety, 72% and 71%, respectively. Those dissatisfied fell from 7% to 4%.

**Downtown Safety Survey Comparisons
 November 2010 and March 2011**

How would you rate your overall satisfaction of safety in downtown Tracy?

	Rate	Nov 2010	%	Mar 2011	%	Change
Very Satisfied	5	18	20%	11	21%	1%
Satisfied	4	46	52%	26	50%	-2%
Neither Satisfied nor Dissatisfied	3	17	19%	12	23%	4%
Dissatisfied	2	5	6%	2	4%	-2%
Very Dissatisfied	1	1	1%	0	0%	-1%
No Rating		2	2%	1	2%	0%
Total Responded		89	100%	52	100%	

Business Watch:

The Crime Prevention Specialists personally conducted a Business Watch interest survey with the merchants. Of the 71 responsive merchants, several requested training on the topics of Personal Safety, Robbery Prevention and Identity Theft. Their preference was that the training be held in or close to the downtown because of their businesses and the timing of classes be offered before or after business hours or on a regular basis.

Next Steps:

Tracy Police Department staff will continue building and maintaining its relationships with the residents and business people in and near the Downtown area. The Police Department will continue partnering with other City departments, such as code enforcement, public works, and fire when issues emerge that can best be handled by their expertise and unique resources. Over the course of the next six months, the Downtown area can expect the Police Department at least maintain and hopefully improve the perception of public safety in the Downtown Neighborhood by:

- Enforcing violations of law (crimes) and abating nuisance activity
- Providing preventative patrols using Neighborhood Resource officers, patrol officers and volunteers
- Using crime analysis to collect, analyze and interpret data from calls for service and crime statistics to better direct resources as needed
- Adjusting strategies and tactics based upon crime analysis
- Providing crime prevention information specific to businesses through educational venues such as Business Watch, Chamber of Commerce meetings, Tracy Civic Center Association and other interested community groups
- Maintaining regular contacts with individual business representatives and through associations serving merchants and property owners in downtown Tracy
- Continuing “Eyes and Ears” patrol by the Tracy Police Department’s Volunteers in Police Service (VIPS) through December 31, 2011.
- Monitoring areas bordering the downtown area and promptly addressing any “spillover” problems that emerge as a result of increased presence and enforcement in downtown

FISCAL IMPACT

While pursuing this Downtown Security Initiative has not cost the City any additional funding beyond the allocated operating budget, the Police Department has diverted a significant amount of its staff resources to this initiative. While total costs of actual police officer, community service officer and VIPS time converted into dollars was not calculated for this presentation, a sampling of the minimum number of sworn police officer hours allocated to this initiative alone shows the level of the Department’s commitment. The minimum cost calculation for officers during this 5 month period has been \$54,513 and amortized on a yearly basis, the cost would be \$130,831. While it may appear that the cost would be the same as reinstating the Downtown Officer position, the Police Department’s current initiative actually provides greater value and hours of coverage than any solo officer assignment could.

RECOMMENDATION

That the City Council discuss and accept this updated report as it relates to activities in the Central Downtown Business District and discuss whether it wants any further update briefings and at what frequency.

Prepared by: David Sant, Police Lieutenant

Reviewed by: Janet M. Thiessen, Chief of Police

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

AGENDA ITEM 5

REQUEST

CITY COUNCIL'S APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF TRACY AND YMCA OF SAN JOAQUIN COUNTY FOR PROVIDING AQUATICS PROGRAMMING SERVICES TO THE TRACY COMMUNITY AT THE PINKIE PHILLIPS POOL AT WEST HIGH SCHOOL AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

EXECUTIVE SUMMARY

On March 8, 2011, the City of Tracy issued a Request for Proposals/Qualifications (RFP) in an effort to obtain the services of a qualified contractor to provide aquatics programming to the Tracy Community at the Pinkie Phillips Pool at West High School. In addition to posting the RFP on the City's website, copies of the RFP were sent to eleven entities that potentially have the capabilities to provide these services. In response to this RFP, the City received only one proposal, from the YMCA of San Joaquin County. After evaluating the proposal, reviewing qualifications and discussing the submitted methodologies proposed to meet local aquatics needs, staff determined that YMCA of San Joaquin County was qualified to provide these services.

DISCUSSION

In response to the City's ongoing efforts to improve efficiency and reduce allocations of general funds for operations, the Parks and Community Services Department has undertaken a systematic review of all programming areas, evaluated the cost effectiveness of these programs and explored methods to continue to offer popular programs while reducing the financial impact of the programs. During this process, City staff realized that potential for savings exists by contracting out to a qualified entity to conduct the City's aquatics services.

On March 8, 2011, to determine whether or not a contractor could be found to offer these services without affecting the quality of the programming, the City issued a Request for Proposals/Qualifications (RFP) to see if any entities were interested in contracting with the City to provide aquatic services at the Pinkie Phillips Pool at West High School. March 27, 2011 was the deadline for the submission of proposals and YMCA of San Joaquin County submitted the only proposal.

City staff evaluated YMCA's proposal to determine if the proposer could provide the level and quality of services that local residents had come to expect from the program. Some of the criteria utilized in this evaluation process included:

- Completeness of proposal
- Proposer's understanding of the scope of services desired
- Past experience in providing similar programming
- Methodology proposed to meet local aquatics needs
- Proposed variety of programming

- Maximizing use of the Pinkie Phillips Pool at West High School
- Proposed expansion of programming and/or innovative new program ideas

Based on this evaluation process, staff concluded that YMCA of San Joaquin County was qualified to offer well rounded and quality aquatics programming at the West High School swimming pool. The YMCA's proposed programming at the Pinkie Phillips Pool at West High School offers the same level of programmed services the City has offered in the past and also includes new and expanded programming at the facility. This proposed programming is anticipated to increase use of the facility. Additionally, the YMCA's suggested fees are similar to those that the City has charged for similar programming. As an example, for swim classes and other training programs, the YMCA is planning on charging a fee of \$60 per participant (\$55 with resident discount), while in the 2010 season the City charged a fee of \$55 (\$50 with resident discount). The fees YMCA has suggested for other activities (such as water exercise, recreation swim, etc.) are the same as the City charges. The rental fees will remain the same.

YMCA of San Joaquin County also agreed to provide these services while being paid ninety four percent (94%) of all revenues received for the programming for the first one hundred fifty thousand dollars (\$150,000) collected and seventy percent (70%) of any revenues collected over one hundred fifty thousand dollars (\$150,000). Staff is recommending that Council approve the agreement (Attachment A) between the City of Tracy and YMCA of San Joaquin County for providing aquatic services at the Pinkie Phillips Pool at West High School.

STRATEGIC PLAN

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

Assure Fiscal Health

Goal 1: Assure Fiscal Health

Objective 1a: Develop a 5 Year Plan that leads to a Balanced Budget and elimination of the City structural budget deficit.

Communication/Marketing Priority

Goal 2: Provide the community of Tracy with basic and extended services that offer opportunities for individuals, families and businesses to prosper as they live, work and play in Tracy.

Objective 2.e: Promote the high "quality of life" attributes and recreation opportunities of the City.

FISCAL IMPACT

Staff has estimated that contracting for the provision of these services will reduce the allocation of City general funds to the Parks and Community Services Department annual operating budget by a minimum of \$65,000 while maintaining at least the existing level of services.

RECOMMENDATION

That City Council approve a professional services agreement between the City of Tracy and YMCA of San Joaquin County for providing aquatics programming services to the Tracy community at the Pinkie Phillips Pool at West High School and authorize the Mayor to execute the agreement on behalf of the City.

Prepared by: Floyd Lewis, Recreation Supervisor, Parks and Community Services

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

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

Attachment - Attachment A: PSA between the City of Tracy and YMCA of San Joaquin County

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT
FOR AQUATIC SERVICES AT THE
PINKIE PHILLIPS POOL AT WEST HIGH SCHOOL**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into by and between the CITY OF TRACY, a California Municipal Corporation ("CITY"), and the Young Men's Christian Association of San Joaquin County, Inc. a California Non-Profit Public Benefit Corporation ("PROVIDER").

RECITALS

- A. Whereas, CITY has received a proposal to provide contracted aquatic program services through the CITY's Parks and Community Services Department from PROVIDER.
- B. Whereas, PROVIDER was selected based on the qualifications necessary to operate and conduct a community aquatics program.
- C. Whereas, CITY's City Council authorized contracting with PROVIDER on April 19, 2011, by Resolution _____.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** PROVIDER shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference. The services shall be performed by, or under the direct supervision of, PROVIDER's Authorized Representative: Cindy Silligman. PROVIDER shall not replace its Authorized Representative, nor shall PROVIDER replace any of the personnel listed in Exhibit "A," nor shall PROVIDER use any subcontractors, without the mutual written and signed agreement between the CITY and PROVIDER. PROVIDER has provided the proposed 2011 season program and rates attached as Exhibit "B."
- 2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. PROVIDER shall commence 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 commenced and completed by PROVIDER in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the PROVIDER. PROVIDER 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.

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- 3. INDEPENDENT CONTRACTOR STATUS.** PROVIDER is an independent contractor and is solely responsible for all acts of its employees or agents, including any negligent acts or omissions. PROVIDER is not CITY's employee and PROVIDER 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 whatsoever, unless the CITY provides prior written authorization to PROVIDER. PROVIDER is free to work for other entities while under contract with the CITY. PROVIDER, and its agents or employees are not entitled to CITY benefits. PROVIDER shall not use any subcontractors without the prior written consent of the CITY. PROVIDER is not covered by the CITY's Worker's Compensation or State Unemployment Insurance.
- 4. CONFLICTS OF INTEREST.** PROVIDER (including its employees or agents) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. In the event that PROVIDER maintains or acquires such a conflicting interest, any contract (including this Agreement) involving PROVIDER's conflicting interest may be terminated by the CITY.
- 5. COMPENSATION.**

 - 5.1.** For services performed by PROVIDER in accordance with this Agreement, for the first \$150,000 of annual, as measured from the operational year starting on May 1st and ending on September 15th, gross fees actually collected for programs in which PROVIDER provides the services set forth in Exhibit "A" (the "Programs"), CITY shall pay PROVIDER ninety-four percent of such collected fees. For annual gross fees actually collected that exceed \$150,000 in said annual operational year, the CITY shall pay PROVIDER seventy percent of such collected fees for programs in which PROVIDER provides the services set forth in Exhibit "A".
 - 5.2.** PROVIDER's payment shall cover all costs and expenses of every kind and nature for PROVIDER's performance of this Agreement.
 - 5.3.** CITY shall use its best efforts to process payment to PROVIDER for program classes and activities within 10 days of the end of each program session.
 - 5.4.** City shall use its best efforts to process all other operational revenues collected on the 1st and 15th of each month.
 - 5.5.** PROVIDER's earnings from this Agreement may be taxable income and PROVIDER shall be solely responsible for payment of any and all taxes.
- 6. TERMINATION.** This Agreement may be cancelled in the event that (a) registration for the Programs is insufficient to pay the full costs of operating the Programs; (b) sufficient funds have not been appropriated by the City Council; (c) upon breach of this Agreement; (d) if the facility used to provide the Programs is deemed unsafe and the issue can not be resolved within 30 days; or (e) by providing 120 days written notice to the other party.
- 7. OWNERSHIP OF WORK.** All original documents prepared by PROVIDER for this Agreement, whether complete or in progress, are the property of the CITY, and shall

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be given to the CITY at the completion of PROVIDER's services, or upon demand from the CITY. No such documents shall be revealed or made available by PROVIDER to any third party without the prior written consent of the City.

8. **ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
9. **INDEMNIFICATION.** PROVIDER shall indemnify, defend, and hold harmless the CITY (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of PROVIDER's performance of services under this Agreement excepting those claims, demands, damages, liabilities, costs, and expenses resulting solely from or arising solely out of CITY's negligence or willful misconduct.
10. **BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, PROVIDER shall obtain a City of Tracy Business License.
11. **INSURANCE.**
 - 11.1. **General.** PROVIDER shall, throughout the duration of this Agreement, maintain insurance to cover PROVIDER, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
 - 11.2. **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "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.
 - 11.3. **Workers' Compensation** coverage shall be maintained as required by the State of California.
 - 11.4. **General Liability** "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of PROVIDER in an amount not less than \$1,000,000 per claim.
 - 11.5. **Endorsements.** PROVIDER shall obtain endorsements to the commercial general liability with the following provisions:
 - 11.5.1 The CITY (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
 - 11.5.2 For any claims related to this Agreement, PROVIDER's coverage shall be primary insurance with respect to the CITY. Any insurance maintained by the CITY shall be excess of the PROVIDER's insurance and shall not contribute with it.
 - 11.7. **Notice of Cancellation.** PROVIDER shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty days prior written notice to the CITY should the policy be canceled before the

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expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

- 11.8. Authorized Insurers.** All insurance companies providing coverage to PROVIDER 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.
- 11.9. Insurance Certificate.** PROVIDER 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.
- 11.10. Substitute Certificates.** No later than thirty days prior to the policy expiration date of any insurance policy required by this Agreement, PROVIDER shall provide a substitute certificate of insurance.
- 11.11. PROVIDER's Obligation.** Maintenance of insurance by the PROVIDER as specified in this Agreement shall in no way be interpreted as relieving the PROVIDER of any responsibility whatsoever (including indemnity obligations under this Agreement), and the PROVIDER may carry, at its own expense, such additional insurance as it deems necessary.
- 12. ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the PROVIDER's duties be delegated, without the written consent of the CITY. Any attempt to assign or delegate this Agreement without the written consent of the CITY shall be void and of no force and effect. Consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 13. NOTICES.**
- 13.1** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To CITY:
Rod Buchanan
Director
Parks and Community Services
400 E. 10th Street
Tracy, CA 95376

To PROVIDER:
YMCA of San Joaquin County
Rich Good, Executive Director
6135 Tam O'Shanter Drive
Stockton, CA 95210

With a copy to:
City Attorney
333 Civic Center Plaza
Tracy, CA 95376

- 13.2** 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)

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three working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

14. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
15. **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.
16. **SEVERABILITY.** In the event any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.
17. **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.
18. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed for this project. This Agreement supersedes all prior negotiations, representations, or agreements.
19. **COMPLIANCE WITH THE LAW.** PROVIDER shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
20. **STANDARD OF CARE.** Unless otherwise specified in this Agreement, the standard of care applicable to PROVIDER's services will be the degree of skill and diligence ordinarily used by reputable providers performing in the same or similar time and locality, and under the same or similar circumstances.
21. **EXPANSION.** Any additional programs or program hours or an increase in participation must be submitted in writing to the CITY and approved in writing by the CITY before any program expansions are allowed.
22. **OPERATIONS.** The PROVIDER shall adhere to the maintenance and operational provisions the CITY agreed to in of the Memorandum of Understanding (MOU) between the City of Tracy and the Tracy Unified School District relating to the construction and operation of the Pinkie Phillips Pool at West High School, a true and correct copy of which is attached hereto as Exhibit "C" and, to the extent it speaks to the CITY's maintenance and operational responsibilities, incorporated herein by this reference.

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speaks to the CITY's maintenance and operational responsibilities, incorporated herein by this reference.

21. **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 PROVIDER and the CITY. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

CITY OF TRACY

YMCA OF SAN JOAQUIN COUNTY

By: Brent H. Ives
Title: Mayor

Date: _____



By: Rich Good
Title: Executive Director

Date: 9/04/11

Attest:

By: Sandra Edwards
Title: City Clerk

Date: _____

Approved As To Form:

By: Daniel Sodergren
Title: City Attorney

Date: _____

EXHIBIT “A”

1. SCOPE OF SERVICES. PROVIDER and CITY shall perform the following services:

1.1. PROVIDER shall:

- Recruit among local youth and adults to hire and provide qualified and American Red Cross certified lifeguards and/or YMCA certified lifeguards and swim instructors to meet the program requirements.
- Recruit among local youth and adults to hire and provide qualified staff to conduct aquatic related training, exercise, and/or instruction classes and programs.
- All personnel must meet the requirements of Education Code Section 10911.5 and Public Resources Code Section 5164 requiring fingerprinting of any person working with or having direct supervision of minors under the age of 18 and provide proof of such to the CITY.
- Submit program information to be included in the Activity Guide that is produced three times per year.
- Maintain the safety and cleanliness of all equipment in the facility including fulfilling the maintenance and operations stipulations listed in the Memorandum of Understanding (MOU) between the CITY and the Tracy Unified School District (TUSD) pertaining to the construction and operation of the West High swimming pool, attached hereto and incorporated herein by this reference.
- Clean, remove rubbish and maintain the pool deck area, office space and restrooms as identified in the MOU between the CITY and the TUSD relating to the construction and operations of the Pinkie Phillips Pool at West High School.
- Purchase and maintain all materials and supplies needed for the restrooms as identified in the MOU between the CITY and the TUSD relating to the construction and operations of the Pinkie Phillips Pool at West High School.
- Open, monitor and close the facility for any public rental of the pool.
- Follow and support the registration procedures and policies of the Department.
- Provide information to prospective participants who visit the facility for information.
- Maintain proper records such as attendance records and accident reports.
- Represent the CITY well through professional conduct.
- Replace any training gear or lifesaving equipment damaged by its employees in the course of the community aquatics program, minor wear excluded.
- Provide program equipment if the current equipment is no longer safe.
- Process and deliver funds collected onsite to the City.

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- Manage class sizes, cancel classes with insufficient participants and notify City of all changes to class schedules.

1.2. CITY shall:

- Provide facility and current equipment to operate classes as set forth in the MOU between the CITY and the TUSD, attached as Exhibit “B” hereto, relating to the construction and operations of the Pinkie Phillips Pool at West High School.
- Conduct program registration and track enrollments, maintain rosters and waiting lists, process refunds, and customer complaints and comments.
- Provide ongoing evaluation forms to program participants.
- Prepare and disseminate routine and special marketing and publicity materials including the Activity Guide which is published three times per year.
- Prepare and disseminate information to participants via letters, newsletters, bulletin boards and other means.
- Provide program materials including training devices, rescue tools, etc.

2. PROJECT RESTRICTIONS.

2.1. Expected Growth. PROVIDER shall maintain a successful program within the existing parameters and expand the program within budgetary goals.

2.2. Facility. PROVIDER shall have access and sole use of the Pinkie Phillips Pool at West High School, office space and restrooms during the dates outlined in the Memorandum of Understanding (MOU) between the City of Tracy and the Tracy Unified School District relating to the construction and operation of the Pinkie Phillips Pool at West High School. (See Exhibit “C” to the Agreement.)

3. TERM. The initial term of this contract is from May 1, 2011 through September 15, 2011. The CITY and PROVIDER may, upon mutual written and signed agreement, renew this contract on its same terms up to five times for terms running from May 1st through September 15th of each successive year. Such option shall be exercised, if at all, in writing signed by the City Manager, or his or her designee, no later than April 1st, of each year.

YMCA Fee Proposal for Community Aquatics Services For the City of Tracy				
Activity	Fee	Resident Discount	Session/Length	Notes
Adult Swim Lessons	\$60	\$55	2 week session	
Advanced Swim Skills: Fish, Flying Fish, Shark	\$60	\$55	2 week session	
Aquatic Camp	\$80	\$75	2 week session	
Diving	\$60	\$55	2 week session	
Lap Swim	\$3 or \$25		daily	\$3 drop in or \$25/10 day pass
Parent & Tot: Shrimp, Kipper, Inia, Perch	\$60	\$55	2 week session	
Recreational Swim	\$2		daily	
Rentals	\$195		1 1/2 hours	Exception made for swim teams.
Swim Skills: Pollywog, Guppy, Minnow	\$60	\$55	2 week session	
Tiny Tots: Pike, Eel, Ray, Starfish	\$60	\$55	2 week session	
Water Aerobics	\$3 or \$25		2 days/week	\$3 drop in or \$25/10 day pass
Water Polo	\$60	\$55	2 week session	

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF TRACY AND
THE TRACY UNIFIED SCHOOL DISTRICT FOR
THE DEVELOPMENT AND OPERATION OF A
SWIMMING POOL AT WEST HIGH SCHOOL**

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), made and entered into this 6th day of February, 2007, by and between the CITY OF TRACY, a municipal corporation of the State of California, ("City") and the TRACY UNIFIED SCHOOL DISTRICT, a political subdivision of the State of California, ("District").

RECITALS

A. Section 10900 *et seq.* of the Education Code authorizes cities and school districts to organize, promote and conduct programs of community recreation; to establish systems of playgrounds and recreation; and to acquire, construct, improve, maintain and operate recreation centers, including facilities such as swimming pools.

B. Section 10910 of the Education Code provides that the governing body of any school district may use or grant the use of any of the buildings or grounds of the school district to any other public authority for the purpose of organizing, promoting and conducting of community recreation whenever such use will not interfere with the use of such facilities for any other purpose of the public school system.

C. District intends on constructing a swimming pool facility at its West High School site using funds from a voter-approved bond measure (Measure E).

D. The proposed swimming pool facility consists of a 53-meter by 25-yard competition pool ("Pool");

E. The proposed swimming pool facility also includes a 960 square foot restroom building facility and a 960 square foot office/storage/changing room area building facility (“Community Buildings”);

F. City is in need of additional aquatics facilities to meet the needs of its residents.

G. District has offered City use of Pool and Community Buildings during specified times, in exchange for contributions towards project and maintenance costs as specified in this MOU.

H. This MOU sets forth the understandings of the parties as it relates to funding, maintenance and use of Pool and Community Buildings.

NOW THEREFORE, the parties agree as follows:

SECTION 1. **DEFINITIONS.**

For the purposes of this MOU, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

A. “Capital Maintenance” shall mean the renovation, repair or replacement of Pool and Community Buildings or any mechanical or operating system contained within Pool and Community Buildings, including, but not limited to: heating, ventilation and cooling systems; plumbing systems; electrical systems; pool heating and filtration systems; building and pool mechanical and lighting systems; seating; walls, including painting and wall covering; floors, including floor covering; and pool deck. “Capital Maintenance” costs do not include Routine Operation, Maintenance and Repair costs or any costs resulting from any of the following:

1. District's failure to perform its obligations related to Routine Operation, Maintenance and Repairs under Section 6.A of this MOU;
2. The negligent or wrongful acts or omissions of District, its agents, employees or subcontractors and/or the negligent or wrongful acts or omissions of City, its agents, employees or subcontractors;
3. An insured casualty or natural disaster to the extent realized by real property insurance coverage; or
4. Any work that is covered by a contractor's warranty or defective workmanship bond.

B. "Community Buildings" shall mean the 960 square foot restroom building facility and the 960 square foot office/storage building facility.

C. "Design and Construction Management Related Services" shall mean the following services, costs and fees related to the construction of Pool and Community Buildings: preparation of working drawings and plans and specifications, including architectural and engineering costs; construction management costs; permit fees; and testing and inspection fees.

D. "Joint Use Agreement" shall mean the Joint Use Collaborative Agreement for Use of Facilities and Active Use Areas, entered into between the City and District on August 25, 2006.

E. "Pool" shall mean the 53-meter by 25-yard competition swimming pool.

F. "Project Costs" shall mean costs for the design and construction of Pool as set forth in Section 4 of this MOU.

G. "Routine Cleanup" shall mean:

1. Removal of all trash, litter and/or garbage from entire Pool area, and deposit of such material in a proper receptacle provided by District;

2. Spray/wash-down of the restroom floors and Pool deck area; and
3. Covering and uncovering Pool (tarps).

H. "Routine Operation, Maintenance and Repairs" shall mean the work necessary to keep Pool and Community Buildings in a neat, clean and working condition, including, but not limited to: graffiti removal; providing custodial services; maintaining the desired water temperature of Pool; and maintaining the proper chemical balance of Pool. "Routine Maintenance and Repairs" shall also include the cost of chemicals and the cost to provide electricity, gas, water, sewer and refuse service necessary to operate Pool and Community Buildings (to the extent as necessary and practicable, additional utility metering facilities shall be installed at the site for the Pool and Community Buildings). Further, unless otherwise agreed to by staff of City and District, the temperature of Pool shall be maintained between 78 and 82 degrees during the time City has priority use of Pool, as set forth in Section 8. If at any point, the District has knowledge that the temperature of the Pool is below 78 degrees, the District shall immediately take reasonable measures to cure and conform to the provisions of this section.

SECTION 2. GENERAL PROVISIONS.

This MOU constitutes the entire agreement between the parties respecting the Pool and City's use of Community Buildings. However, the Joint Use Agreement shall apply to District's use of Community Buildings at any time and City's use of Pool during District's priority use times specified in Section 8.A. of this MOU.

SECTION 3. TERM.

Subject to provisions set forth elsewhere in this MOU regarding termination, the term of this MOU shall commence as of the date this MOU is signed by both parties, and shall remain in effect for a period of 30 years. The term will automatically extend for two additional 10-year terms, unless the City, in its sole discretion and upon at least 180 days written notice to District prior to the then current expiration date of the MOU, chooses not to allow the MOU to automatically extend.

SECTION 4. DESIGN AND CONSTRUCTION OF POOL AND COMMUNITY BUILDINGS.

A. District shall be responsible for the design and construction of Pool and Community Buildings. This includes, but is not limited to, the following (which collectively are referred to as "Project Costs"):

1. Design and Construction Management Related Services;
2. Compliance with all legal requirements, including, but not limited to, the Americans with Disability Act, the California Environmental Quality Act, legal advertisements to the public and to qualified bidders;
3. Conducting and administering the bidding process for construction;
4. Awarding the construction contract;
5. Administration of construction;
6. Payment of amounts due to the architect, the contractor and other persons providing services; and
7. Administration and resolution of any claims of, or disputes with, the contractor or any provider of Design and Construction Management Related Services.

B. District shall prepare working drawings and plans and specifications for Pool and Community Buildings (collectively referred to as "Plans and

Specifications”). City shall have a reasonable opportunity to inspect the Plans and Specifications, District’s estimated cost of construction and the construction contingency budget. District shall consult with City as to the Plans and Specifications. If City and District cannot agree to the Plans and Specifications after working in good faith for a reasonable time period, the City or District may terminate this MOU by providing written notice to the other party. However, any party providing notice of termination must first attempt to meet with the other party in good faith to attempt to resolve any disputed issues.

C. If the bid from the lowest responsible bidder exceeds District’s estimated cost of construction, District shall consult with the project architect and City as to whether and/or how the Plans and Specifications should be modified. If City and District cannot agree as to whether and/or how the Plans and Specifications should be modified after working together in good faith, the City or District may terminate this MOU by providing written notice to the other party. However, any party providing notice of termination must first attempt to meet with the other party in good faith to attempt to resolve any disputed issues.

1. If both parties agree to terminate this MOU pursuant to this Subsection C, the parties shall agree as to a reasonable allocation of Design Related Services costs.

2. If District chooses to terminate this MOU pursuant to this Subsection C, it shall be responsible for all Design Related Services costs and Project Costs.

3. If City chooses to terminate this MOU pursuant to this Subsection C, it shall pay District for Design Related Services costs reasonably necessary to remove Community Buildings and recreation swim area of Pool from the Plans and Specifications.

D. District anticipates that construction of Pool and Community Buildings will be completed approximately twelve (12) months following the opening of bids for construction of the Pool and Community Buildings. District shall exercise its best

efforts to cause the Pool and Community Buildings to be completed no later than eighteen (18) months following opening of bids for construction of Pool.

E. Ownership of Pool and Community Buildings shall vest in District.

F. Pool shall be named by District.

SECTION 5. PROJECT COSTS.

A. The Project Costs shall be funded by contributions from City and District. City's contributions for Project Costs shall be limited to the following:

1. All costs of the construction contract directly related to construction of Community Buildings;
2. Twenty-five percent of the construction contract directly related to construction of Pool; and
3. Twenty-five percent of Design and Construction Management Related Services.

B. Notwithstanding Subsection A, above, if District chooses to bid construction of Pool and/or Community Buildings with other District projects:

1. District shall prepare the bidding documents in such a manner so that the fixed price per unit for each item of work directly associated with the construction of Pool and/or Community Buildings is separately identified; and
2. City's contributions for Project Costs shall be limited to the following:
 - a. All costs directly related to construction of Community Buildings, as identified in the lowest bid for such work, regardless of whom the overall lowest bidder for the project or projects is;

b. Twenty-five percent of costs directly related to construction of Pool, as identified in the lowest bid for such work, regardless of whom the overall lowest bidder for the project or projects is; and

c. Twenty-five percent of Design and Construction Management Related Services.

B. City shall make three (3) separate deposits of its contributions to the Project Costs as follows:

1. Within 60 days of District's issuance of the Notice to Proceed to the construction contractor, City shall deposit with District the amount equal to 50% of the total costs identified in Subsections A or B, above.

2. Within thirty (30) days of the date the architect certifies substantial completion of project construction, City shall deposit with District the amount of equal to 25% of the total costs identified in Subsections A or B, above.

3. Within thirty (3) days following completion of all punch list items to City's reasonable satisfaction, City shall deposit with District the amount equal to 25% of the total costs identified in Subsections A or B, above.

SECTION 6. OPERATION, MAINTENANCE AND CLEANUP.

A. District shall be responsible for all Routine Operation, Maintenance and Repairs and Capital Maintenance of Pool and Community Buildings, except as set forth in this MOU.

B. Within thirty (30) days following the end of each fiscal year, District shall exercise its best efforts to provide City with a detailed summary of actual Routine Operation, Maintenance and Repair costs for the previous year. City shall pay district 25% of such costs within thirty (30) days of receipt of the summary of costs.

C. District shall pay \$134,683 annually, for a period of 30 years, for Capital Maintenance. City shall pay \$44,895 annually, for a period of 30 years, for Capital Maintenance. These amounts reflect the actual costs anticipated for Capital Maintenance and Repair for operation of the Pool and Community Buildings over a 30 year period. These amounts shall be deposited by both parties into a separately established facilities fund to be used solely as a repair and replacement fund for long-term improvements on the Pool and Community Buildings. No expenditures shall be made from such fund unless approved by both the District's Superintendent, or his or her designee, and City's Manager, and his or her designee.

D. City shall be responsible for Routine Cleanup during the hours of use of Pool and Community Buildings by City. District shall be responsible for Routine Cleanup during all other times.

SECTION 7. STAFFING OF POOL.

A. City shall be responsible for staffing, supervision and control of Pool during the time City uses Pool, including:

1. Providing qualified swimming instructors, lifeguards, attendants and/or other necessary personnel who are Water Safety Instructors, Lifeguard Trained or appropriately certified by the American Red Cross or another comparable association;
 2. Following all local and State health and safety laws, statutes and ordinances for operations and personnel certifications;
 3. Paying the salaries and other expenses of necessary personnel;
- and
4. Supplying any special equipment necessary for teaching and other uses of Pool by City.

B. District shall be responsible for staffing, supervision and control of Pool during all other times when City does not have priority use or is not using Pool.

SECTION 8. USE OF POOL AND COMMUNITY BUILDINGS.

A. District shall have priority use of Pool during school year for:

1. Student educational and recreational purposes during school hours; and
2. District-sponsored extra curricular athletic activities during non-school hours.

B. City shall have priority use of Pool on weekends from the Memorial Day weekend through the Labor Day weekend, and weekdays from the final regular school day of the school year, through the first return day of the new school year. City's use of Pool and Community Buildings shall include:

1. The ability to provide food and beverage services at City's sole cost and liability;
2. The use of ample District parking facilities for City program participants, which shall be maintained by District but that City shall be responsible for routine clean-up of garbage during its use; and
3. Exclusive year-round access to the Community Buildings to permit secured storage and retention of equipment and materials necessary for City's programming.

C. District and City shall coordinate a schedule for their respective uses of Pool, annually by the end of April of each year prior to the start of the academic year in August, with final schedule completed and agreed upon by August 15 of each year, during the term of this MOU. Adjustments to the coordinated schedule may take place during the year with approval by both District and City. Both parties agree to work in good faith to accommodate reasonable change requests. Should an activity need to be relocated, assistance will be provided by

either party to secure and publicize an alternate location for the activity, whether it is an appropriate District or City facility.

D. District may use Community Buildings in accordance with the Joint Use Agreement.

SECTION 9. INDEMNIFICATION.

A. City shall indemnify, defend and hold harmless District, its officers, employees, elected officials, and agents, from and against any and all claims, losses, damages, expenses or liabilities arising as a result of the negligence or willful misconduct of City, its officers, employees, elected officials, agents, contractors, invitees, or fee-paying patrons in performing under the terms and conditions of this MOU, including compliance with all applicable local, state, and federal regulations and laws. This Section shall not release District from the statutory obligation to comply with the applicable Tort Claims statutes in the event of a claim against the City.

B. District shall indemnify, defend and hold harmless City, its officers, employees, elected officials, and agents, from and against any and all claims, losses, damages, expenses or liabilities arising as a result of the negligence or willful misconduct of District, its officers, employees, elected officials, agents or contractors, invitees, or fee-paying patrons in performing under the terms and conditions of this MOU, including compliance with all applicable local, state, and federal regulations and laws. This Section shall not release City from the statutory obligation to comply with the applicable Tort Claims statutes in the event of a claim against the District.

SECTION 10.

INSURANCE.

- A. City and District shall each maintain insurance in connection with this MOU at the following minimum levels:
1. General liability as provided by: City through membership and affiliation with the San Joaquin Valley Risk Management Authority, a retention group; and District through membership and affiliation with NorCalRelief, a retention group.
 2. Coverage shall be maintained in an amount not less than \$2,000,000 Aggregate and \$1,000,000 per occurrence for general liability, bodily injury and property damage.
 3. Retention (SIR) as agreed upon by City and District.
- B. City and District shall maintain worker's compensation coverage as required by the State of California.
- C. City shall obtain endorsements to its automobile and commercial general liability coverage naming District (including its elected officials, officers, employees, agents, and volunteers) as an "additional insured"; and District shall obtain endorsements to its automobile and commercial general liability coverage naming City (including its elected officials, officers, employees, agents, and volunteers) as an "additional insured."
- D. District shall either carry insurance on the Pool adequate to cover the full replacement value of the Pool to extent available, or provide City with evidence showing that District is adequately self-insured.

SECTION 11.

DAMAGE AND DESTRUCTION.

- A. If Pool and/or Community Buildings are substantially damaged through no fault of City so as to render them unusable for City's purposes, City shall have

the option to terminate this MOU upon providing District thirty (30) days written notice. After receipt by the District of City's intention to terminate the MOU, District may elect to undertake repairs within that thirty (30) day period so as to render the Pool and/or Community Buildings usable for City's purposes. If the facilities are reasonably restored or repaired to such extent as to make the Pool and/or Community Buildings usable by City within the thirty (30) day time period, City shall act in good faith as to whether it decides to terminate this MOU. If City chooses to terminate the MOU, City's Contribution shall be refunded according to the schedule set forth in the attached Exhibit A to the extent of insurance coverage paid to District for the loss, less costs to secure the site and render it safe (which costs shall be shared equally). In the alternative, City and District may agree upon rebuilding Pool and/or Community Buildings upon terms that may be negotiated.

SECTION 12.

DEFAULT.

A. Except for the notice and cure provisions contained in this Section, failure or delay by either party to perform any term or provision of this MOU constitutes a breach under this MOU. The party who commits a breach shall promptly commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence, and during any period of curing shall not be in default of this MOU.

B. In the event of a breach by either party, the injured party shall give written notice of breach to the party in breach, specifying the breach complained of by the injured party.

C. If a breach, however, is not cured or commenced to be cured within 30 days after receipt of the notice of breach, then the party not so curing or commencing to cure shall be in default under this MOU, and the nondefaulting

party shall have the right to exercise any and all remedies available to it at law or in equity.

SECTION 13.

ELECTIVE TERMINATION.

A. Only upon completion of Pool and City use of Pool for a period of five (5) years, District may terminate this MOU, without cause, upon one hundred eighty (180) days written notice to City. If District chooses to terminate this MOU pursuant to this Section, City's contributions to all of the Project Costs described in Section 5.A., shall be refunded according to the method set forth in the attached Exhibit A, and any unused amounts paid by City and District for Capital Maintenance shall be refunded with interest to each party.

B. At any time, City may terminate this MOU, without cause, upon one hundred eighty (180) days written notice to District. If City chooses to terminate this MOU pursuant to this Section, City's contributions to the Project Costs described in Section 5.A.2. (costs of construction contract directly related to construction of Pool), shall be refunded according to the method set forth in the attached Exhibit B, and any unused amounts paid by City and District for Capital Maintenance shall be refunded with interest to each party.

C. If District does not have sufficient funds to refund Project Costs to City pursuant to this Section, District may request that the City agree to a reasonable repayment plan.

D. The provisions of this Section are in addition to, and not a limitation of, any other rights or remedies available to the parties.

SECTION 14.

ASSIGNMENT AND SUBLETTING.

A. Neither City nor District shall assign its interest in this MOU without the prior written consent of the other.

B. Notwithstanding Subsection A, above, City may allow groups and individuals to reserve Pool and Community Buildings pursuant to the City's policies and procedures, during the time City has priority use of Pool.

C. All covenants, promises, conditions, representations, and agreements expressed in this MOU shall be binding on the party who makes them and on that party's representatives, successors, and permitted assigns.

SECTION 15.

WAIVER.

In no event shall any payment by City or any acceptance of payment by District hereunder constitute or be construed to be a waiver by City or District of any breach of covenants or conditions of this MOU or any default which may then exist on the part of City or District, and the making of any such payment or the acceptance of any such payment while any such breach or default exists, shall in no way impair or prejudice any right or remedy available to City or District with respect to such breach or default. The waiver by one party of any breach by the other party of any of the provisions of this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this MOU.

SECTION 16.

INDEPENDENT CONTRACTOR.

Under no circumstances shall this MOU be construed as one of agency, partnership, joint venture or employment between District and City. Each party acknowledges and agrees that it neither has, nor will give the appearance or

impression of having, any legal authority to bind or commit the other party in any way. The City and District agree that each party shall be responsible for the payment of wages and benefits of each of their respective employees and agents.

SECTION 17. **AMENDMENTS.**

Amendments to the terms and conditions of this MOU shall be requested in writing by the party desiring such revision, and any such adjustment to this MOU shall be determined and effective only upon the mutual agreement in writing of the parties.

SECTION 18. **NOTICES.**

Any and all notices or other communication required or permitted by this MOU or by law to be served on or given to either party by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of personal service, when deposited in the United States mail, first class, postage prepaid, addressed to:

City: City of Tracy
 Maria Hurtado
 Director of Parks and Community Services
 400 East 10th Street
 Tracy, California 95376

District: Tracy Unified School District
 Casey Goodall
 Assistant Superintendent of Business Services
 1875 West Lowell Avenue
 Tracy, California 95376

SECTION 19.

FORCE MAJEURE.

If either party shall be delayed or prevented from the performance of any act required by this MOU by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, hazardous materials testing or remediation ordered by any governmental entity with authority therefore or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

SECTION 20.

ENTIRE AGREEMENT.

This MOU, including the attached exhibits, constitutes the entire agreement between the parties respecting the Pool and Community Buildings, and correctly sets forth the obligations of City and District to each other as of the Effective Date. Any agreements or representations not expressly set forth in this Agreement shall be null and void.

SECTION 21.

PARTIAL INVALIDITY.

If any provision of this MOU is held by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions of this MOU shall remain in full force and effect and unimpaired by the holding. All laws, rules, requirements, and regulations of the State of California, applicable to school districts and the functioning, powers, and administration of school districts and school facilities, are deemed included in this MOU as if fully set forth to the extent they apply to the design, construction, administration, and operation of the Pool, and shall be complied with in the performance of this MOU. Upon request by City, District shall use reasonable efforts to provide to City copies of such

requested laws, rules, and regulations applicable to school districts and shall use reasonable efforts to inform City of any changes to foregoing.

SECTION 22. **GOVERNING LAW.**

This MOU shall be governed by and in accordance with the laws of the State of California.

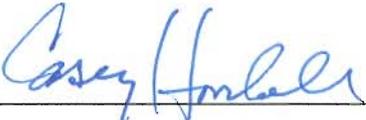
SECTION 23. **NONDISCRIMINATION.**

Neither City nor District shall discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in connection with or related to the performance of this MOU.

SECTION 24. **COUNTERPARTS.**

This MOU may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same MOU.

District



Associate Superintendent,
Business Services

Dated: 1/24/07

City



Mayor

Dated: 3/13/07

Approved as to Form:



Approved as to Form:



Exhibit A

Under this method, the total actual project costs as defined in Section 5 are divided by 30 years. This is the average annual straight line depreciation. In years one through nine, 50% of the annual straight line depreciation will be deducted for each year that has passed since completion of the pool until termination by the District of the agreement. This amount will be deducted from the total actual project costs and the balance remaining will be due by the District to the City. In years ten through nineteen, 100% of the annual straight line depreciation will be used as a deduction. In years twenty through twenty nine, 150% of the annual straight line depreciation will be used as a deduction. The following table shows this method being applied to the estimated project costs. However, the refund will be based on actual project costs.

CITY'S SHARE OF PROJECT COST	
	\$1,789,012
IF DISTRICT CANCELS AFTER YEAR	DISTRICT REFUNDS
5	\$1,639,012
6	\$1,609,012
7	\$1,579,012
8	\$1,549,012
9	\$1,519,012
10	\$1,459,012
11	\$1,399,012
12	\$1,339,012
13	\$1,279,012
14	\$1,219,012
15	\$1,159,012
16	\$1,099,012
17	\$1,039,012
18	\$979,012
19	\$919,012
20	\$829,012
21	\$739,012
22	\$649,012
23	\$559,012
24	\$469,012
25	\$379,012
26	\$289,012
27	\$199,012
28	\$109,012
29	\$19,012
30	\$0

Exhibit B

Under this method, 25% of the actual total hard construction costs of the pool are divided by 30 years. This is the average annual straight line depreciation. This amount will be deducted for each year that has passed since completion of the pool until termination by the City of the agreement. This amount will be deducted from the total actual hard construction costs and the balance remaining will be due by the District to the City. The following table shows this method being applied to the estimated project costs. However, the refund will be based on actual project costs.

25% OF POOL
\$818,537

IF CITY CANCELS AFTER YEAR	DISTRICT REFUNDS
1	\$788,537
2	\$758,537
3	\$728,537
4	\$698,537
5	\$668,537
6	\$638,537
7	\$608,537
8	\$578,537
9	\$548,537
10	\$518,537
11	\$488,537
12	\$458,537
13	\$428,537
14	\$398,537
15	\$368,537
16	\$338,537
17	\$308,537
18	\$278,537
19	\$248,537
20	\$218,537
21	\$188,537
22	\$158,537
23	\$128,537
24	\$98,537
25	\$68,537
26	\$38,537
27	\$8,537
28	\$0
29	\$0
30	\$0

RESOLUTION _____

APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF TRACY AND THE YMCA OF SAN JOAQUIN COUNTY, INC. RELATING TO THE PROVISION OF AQUATICS SERVICES AT THE PINKIE PHILLIPS POOL AT WEST HIGH SCHOOL AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

WHEREAS, March 8, 2011 the City of Tracy issued a Request for Proposals/ Qualification for the purposes of finding a qualified entity to provide aquatic services to the residents of Tracy at the Pinkie Phillips Pool at West High School; and

WHEREAS, The YMCA of San Joaquin County submitted a proposal in accordance with the Request for Proposals; and

WHEREAS, The City of Tracy has evaluated the YMCA of San Joaquin County proposal and finds that they are qualified to provide these services to the community; and

WHEREAS, The City of Tracy and YMCA of San Joaquin County have negotiated and agreed to terms for an agreement for the provision of these services.

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby approves a Professional Services Agreement between the City of Tracy and YMCA of San Joaquin County, Inc. relating to the provision of Aquatics Services at the Pinkie Phillips Pool at West High School and authorizes the Mayor to execute the agreement on behalf of the City.

* * * * *

The foregoing Resolution _____ was passed and adopted by the City Council of the City of Tracy on the _____ day of _____, 2011, by the following vote:

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

Mayor

ATTEST:

City Clerk

AGENDA ITEM 6

REQUEST

DISCUSS THE SALE AND DISCHARGE OF SAFE AND SANE FIREWORKS WITHIN THE CITY OF TRACY AND PROVIDE DIRECTION TO STAFF AS HOW TO PROCEED

EXECUTIVE SUMMARY

The City has received increased interest from non-profit organizations and vendors requesting the City allow for the sale and discharge of fireworks described as “Safe and Sane” within the city limits of Tracy. Currently the sale and discharge of “Safe and Sane” fireworks are not permitted by Title 9, Chapter 9.06.080, of the Tracy Municipal Code (TMC) which adopted Section 3301.2 of the California Fire Code. Staff is seeking direction from Council whether or not to develop an ordinance for Council to consider that permits the sale and use of “Safe and Sane” fireworks in the City of Tracy.

DISCUSSION

Historically, the sale and discharge of fireworks have been unlawful in Tracy. The current Tracy Municipal Code prohibits the sale, transport, possession, use or discharge of any and all fireworks. The Municipal Code does permit the public display of fireworks by a licensed pyrotechnic operator, such as the 4th of July event held annually at Tracy High School. In recent months, staff has received increased interest from non-profit organizations and fireworks vendors to reverse this longstanding position and to allow the sale and use of fireworks categorized as “Safe and Sane” by the Office of the California State Fire Marshal. The reason given for this request is that it provides fund-raising opportunities for local non-profit organizations.

The California State Fire Marshal (CSFM) evaluates fireworks for compliance with the California Code of Regulations Title 19 and the Health and Safety Code. Fireworks that meet the standards of the CSFM are categorized as “Safe and Sane” and approved for sale and use in California, subject to approval of the local authority having jurisdiction.

In San Joaquin County, several jurisdictions have reversed the ban on fireworks and have approved the sale and use of “Safe and Sane” fireworks. In fact, since 2004 the cities of Manteca, Stockton and Lodi joined Ripon in allowing “Safe and Sane” fireworks to be both sold and discharged within their communities. These communities have determined that the fund raising opportunities generated for non-profits outweigh the safety considerations.

Each year, children and adults are injured as a result of using fireworks, including those fireworks categorized as “Safe and Sane”. Each year, fires are caused by the use of fireworks, including those classified as “Safe and Sane”. For example, in the City of Manteca, there have been 13 fires started by “Safe and Sane” fireworks during the past five years.

The Fire Chief does not condone in any way the sale, possession, or use of any fireworks, including those classified as "Safe and Sane".

Should it be the decision of the Council to direct staff to facilitate the sale and use of "Safe and Sane" fireworks, staff will develop an ordinance for Council's consideration at the May 3, 2011 City Council meeting. Such an ordinance could be approved and effective by June 17, 2011. Staff will also develop the appropriate vehicles to administer the sale and use for implementation immediately, subject to final approval of the ordinance.

Each year, there are discharges of illegal fireworks throughout the City. It is the intent of the Tracy Fire Department, with assistance from the Tracy Police Department to enforce current ordinances regarding sale, possession, and use of illegal fireworks based on the availability of staff. It is our intent to do so regardless of the decision of the Council.

STRATEGIC PLAN

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

FISCAL IMPACT

There will be an undetermined fiscal impact should the Council approve the sale and use of "Safe and Sane" fireworks. Staff will make every effort to ensure that fees are established to cover the costs incurred by the City in administering and regulating sales and use.

RECOMMENDATION

Provide direction to staff as how to proceed.

Prepared by: Al Nero, Fire Chief

Reviewed by: Leon Churchill, Jr., City Manager

Approved by: Leon Churchill, Jr., City Manager

AGENDA ITEM 7

REQUEST

AUTHORIZATION TO ENTER INTO AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH COMBINED SOLAR TECHNOLOGIES, INC. FOR GREEN ENERGY AND THERMAL DESALINATION PROJECT FEASIBILITY STUDY

EXECUTIVE SUMMARY

City staff met with Combined Solar Technologies, Inc. (CST) representatives and concluded the recommended approach to determine the feasibility of the Green Energy Project is to enter into an Exclusive Negotiating Rights Agreement (ENRA). The ENRA reserves the City-owned property for use by the project; in exchange CST will produce a project feasibility study. Staff recommends approval of the agreement.

DISCUSSION

On April 20, 2010, City Council authorized CST to conduct a Green Energy Pilot Project at the wastewater treatment plant (WWTP). The pilot project demonstrated how thermal desalination can be used to remove salt from Tracy's wastewater. On January 4, 2011, City Council authorized staff to negotiate with CST for a feasibility study. Meetings held with CST identified the recommended approach for the City and CST is to enter into an ENRA. The ENRA will reserve the City-owned property for use by the energy project and in turn the City will receive the feasibility study, valued at several hundred thousand dollars.

The first portion of the feasibility study is a "fatal flaws" analysis that is estimated to require 60 days to complete. If the fatal flaws analysis shows the project to be feasible, the detailed feasibility study will be prepared, and lead to further negotiations and preparation of the required California Environmental Quality Act (CEQA) documents. CST will also evaluate the necessary required permits such as issued by the San Joaquin Valley Air Pollution Control District (SJVAPCD).

A separate cost recovery agreement will provide funding from CST for the negotiating, drafting, preparation and processing of various agreements and documents (including CEQA) needed for the financing of the facility and for the sale and/or lease of the property to CST.

The term of the ENRA is 18 months, which is anticipated to be adequate for completion of the feasibility study and environmental document. The CEQA document would be brought to City Council for consideration.

CST's approach, in comparison to other green energy alternatives, provides a public benefit to the daunting, ongoing challenge of reducing the salinity of Tracy's wastewater while producing renewable energy. CST operates its business in Tracy and specializes in creating renewable systems that support the production of clean water and green energy. The company prides itself in developing American-made systems and hiring staff locally.

CST has constructed a 100,000 gallon per day full-scale project for the Musco Family Olive Tracy facility which is currently operating. The Musco Olive project uses olive pits to fuel boilers that produce steam to generate electricity for the olive plant. The heat energy is then used to thermally desalinate the boiler brine. The steam condensate is essentially distilled water and is blended back into the effluent. Musco Olive received a permit from the SJVAPCD to operate this facility. The proposed Green Energy Project for the Tracy WWTP would utilize the same technology and would use a renewable fuel source.

A discussion with the fuel supplier who currently leases a portion of the proposed green energy property from the City, subject to the ENRA, has indicated that currently there is a readily available supply of almond shells. A fuel supply analysis will be included in the feasibility study to determine the availability and long-term reliability of various fuel sources.

The electricity generated through the green energy plant would be used at the WWTP and the excess would be sold. City energy cost savings will be explored in the Project feasibility study. The salts contained in the boiler would be evaporated into a solid state, and the condensed steam would be blended with the effluent. Reuse of the solid salt by-product is currently being evaluated as part of a CVSalts (Central Valley Salts) study. The City is a member of CVSalts and will be given notice of the study once completed.

The salinity standards for the Delta are more stringent during the months of April through August. The feasibility report will analyze the potential for solar thermal production to augment the heat produced from the green energy plant, especially during these months.

The potential for grant funding for this type of renewable energy project will be explored as part of the feasibility study. Project financing will take research and evaluation to determine the optimal method of ownership. Project options include the project being privately owned and the City contracting to purchase the electrical power and operation of the thermal desalination, or the project could be a public/private venture.

City staff has met with Tracy Blast Development, LLC regarding the possibility that another suitable property for the Green Energy Project instead of the City-owned property identified in the ENRA may be viable, thus freeing up land along Tracy Boulevard for other uses. The proposed ENRA allows for these discussions through the term of the agreement.

The Green Energy Project is at the very beginning stages and a significant amount of information is needed to formulate an optimally sized facility. Initial thoughts are that a 700,000 gallon per day project would provide significant reduction of salts. A project of this size is estimated to cost on the order of \$20 to \$30 million, generate 10 to 15 megawatts of electricity, and have a seven year payback period resulting in positive cash flow in future years.

STRATEGIC PLAN

This agenda item supports the Environmental Sustainability Strategic Plan by generating electricity from renewable resources and improving wastewater effluent water quality.

FISCAL IMPACT

There is no fiscal impact to the City's General Fund. Professional services are anticipated for reviewing certain aspects of the project and there are adequate funds in the approved budget. For this phase of the work, the cost of professional services is estimated to be less than \$5,000. Funding will be from the Wastewater Enterprise Fund.

RECOMMENDATION

That the City Council, by resolution, authorize the Exclusive Negotiating Rights Agreement with CST for a Green Energy and Thermal Desalination Project Feasibility Study and authorize the Mayor to execute the Agreement.

Attachments: Exclusive Negotiating Rights Agreement
Location Map
Schematic of process

Prepared by: Vanessa Carrera, Management Analyst I

Reviewed by: Kevin Tobeck, Director of Public Works

Approved by: Leon Churchill Jr., City Manager

**EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
BETWEEN COMBINED SOLAR TECHNOLOGIES, INC.
AND THE CITY OF TRACY**

This Exclusive Negotiating Rights Agreement ("ENRA") is entered into between the City of Tracy ("City"), a municipal corporation, and Combined Solar Technologies, Inc. ("CST"), a Delaware corporation.

RECITALS

A. CST is proposing to study the feasibility of constructing and operating an electrical generation and water desalination facility, to be located on City-owned property and anticipated to benefit the City's wastewater treatment plant (the Project). The City-owned sites under consideration approximately 237 acres and consist of the following parcels (the Property), as shown on Exhibit A, attached:

- (1) a 13-acre parcel (a portion of APN 212-160-11, less 5 acres and the Holly Sugar Administration building; zoned industrial);
- (2) a 197-acre parcel (APN 212-160-05; zoned agricultural);
- (3) a 27-acre parcel (a portion of APN 212-160-09; zoned agricultural).

City and CST are entering into a separate Cost Recovery Agreement concurrently with this Agreement.

B. The parties wish to explore a sale and/or lease of the Property to CST to be used as the location for the development of an electrical generation and water desalination facility; and

C. The parties wish to enter into this exclusive negotiating rights agreement.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. **Purpose.** The purpose of this Agreement is to:

(a) authorize CST to prepare a feasibility study for the design, construction and operation of a green electrical generation and thermal desalination facility (Facility). The proposed Facility would be designed and scaled to the City's needs for desalination at the existing wastewater treatment plant and reduce energy costs to the wastewater treatment plant through alternative energy. The alternative energy will consist of biofuel and, if feasible,

biofuel and solar. More specific goals for the Facility are set forth in Exhibit B, attached; and

(b) if, after a preliminary 2 month analysis the Project appears feasible, to begin environmental review (with costs covered under a separate Cost Recovery Agreement between the parties); and

(c) to evaluate and negotiate the form of subsequent agreements which the parties may enter into for sale or lease of the Property; City's purchase of electrical energy; CST provision of desalination capacity; etc. This ENRA does not obligate either party to acquire, convey, lease or develop the Property.

2. Good Faith Negotiations. City and CST shall negotiate diligently and in good faith, during the term of this ENRA. Meetings between CST and the City shall be held twice per month to discuss project progress and salient issues, and CST agrees to address City's concerns.

3. Term. This Agreement shall commence when signed by both parties and shall have a term of 18 months except as provided in section 8 (Termination; Defaults and Remedies).

4. Consideration. City's consideration for this ENRA is the feasibility study prepared by CST, which will be provided to City.

5. Exclusive Negotiations. During the term of this ENRA, the City shall not negotiate with any entity other than CST regarding the sale, lease, or development of the Property, except as follows:
City and/or CST may negotiate with the property owner and/or developer representative (Tracy Blast Development, LLC) of the Holly Sugar property to the east (APN 212-160-10, 164 acres) regarding whether some of that Holly Sugar property might be used for the Facility instead of the Property.

6. Notices. Any and all notices or other communication required or permitted by this Agreement or by law to be served on or given to either party by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of personal service, when deposited in the United States mail, first class, postage prepaid, addressed to:

City: City of Tracy Public Works Department
Attn: Kevin Tobeck, Director of Public Works
520 Tracy Boulevard
Tracy, CA 95376

With copy to: City Attorney
333 Civic Center Plaza Drive
Tracy, CA 95376

Combined Solar Technologies, Inc.
Frank Schubert, President
860 Kennedy Place
Tracy, CA 95377

7. Costs and Expenses. Each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this ENRA, and the performance of each party's obligations under this ENRA, except as modified by the Cost Recovery Agreement between the parties.

8. Termination; Defaults and Remedies. Either party may terminate this ENRA if it is determined that the Project is not going to be feasible.

In the event of a default, the non-defaulting party shall give written notice to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured ten days after receipt by the defaulting party of such notice, the non-defaulting party may terminate this ENRA.

10. Attorneys' Fees. The prevailing party in any action to enforce this Agreement shall be entitled to recover reasonable attorney's fees and costs from the other party.

11. Governing Law. This ENRA shall be governed by and construed in accordance with the laws of the State of California.

12. Entire Agreement. This ENRA constitutes the entire agreement of the parties regarding the subject matters of this Agreement.

13. Counterparts. This ENRA may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

14. Assignment. CST may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the City, which consent shall be granted or withheld in the City's sole discretion, and any such attempted transfer or assignment without the prior written consent of the City shall be void.

15. No Third Party Beneficiaries. This ENRA is made and entered into solely for the benefit of the City and CST and no other person shall have any right of action under or by reason of this ENRA.

16. Signatures. The individuals executing this ENRA represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this ENRA on behalf of CST and the City.

City of Tracy

By: _____
Brent H. Ives, Mayor

Date: _____

Attest:

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

Combined Solar Technologies, Inc.

By: _____
Frank Schubert, President

Date: 4/8/11

By: _____
Olga Perry / CFO

Date: 4/8/11

Approved As To Form:

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

Exhibit A: Diagram of the Property
Exhibit B: Goals for the Facility

Exhibit A
Diagram of the Property



Exhibit B Goals for the Facility

Desalination. Heat and steam will be created through one or more renewable processes to remove salt from the existing City of Tracy Wastewater Treatment Plant discharge, thereby reducing both the salt concentration and salt loading of the discharge.

Electrical generation: biofuel; solar. Electrical generation will be provided by a nearby power plant, powered by biofuels and possibly by solar in addition. The amount of electricity needed will be calculated by the amount of steam produced, the pressure of the steam and the type of steam engines that will be used. The Facility is anticipated to produce 10 to 15 megawatts (MW) above the operational load.

CST will evaluate the feasibility of supplementing the biomass fuel with solar/thermal energy. A conceptual solar array field will be designed.

Sizing. The Facility will be sized to process 700,000 gallons of wastewater per day (GPD). Wastewater will be cleaned to less than 100 parts per million Total dissolved solids. The Facility will be designed to operate on several different types of biomass, thus increasing the availability and reliability of local biofuel sources.

System Outputs. The feasibility study will include an analysis of the best use for all of the system outputs: interconnection to the PG&E power grid and power sales management; potential reuse/recycling for the recovered clean water; potential reuse/recycling for the salt recovered; and potential use of heat resources remaining after electrical generation.

Financial Analysis. Once the preliminary design is complete, CST will develop a detailed financial analysis, based on design, construction and operations costs. CST will work with City staff to explore available incentive programs.

Preliminary Design. Preliminary design work includes: potential site locations; footprint of renewable energy facility (power plant); layout of component equipment; location of major pipelines and electrical lines; engineering calculations for sizing of all components; estimated construction schedule; estimated CEQA review and permitting schedule.

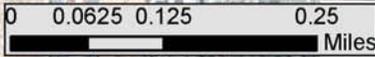
Other Analysis. CST will also evaluate (along with City staff):

- the necessary CEQA review
- Public Contract Code issues, if any
- land use entitlements (General Plan; rezoning) needed, if any, from San Joaquin County

- **Permits required for the Project, constraints and likelihood of obtaining them**

Public Record. It is understood that the Feasibility Study provided by CST is a public record, which must be made available to any member of the public upon request. (Government Code §6250 and following.)

City of Tracy Green Energy & Thermal Desalination Project Location Map/ Exhibit A

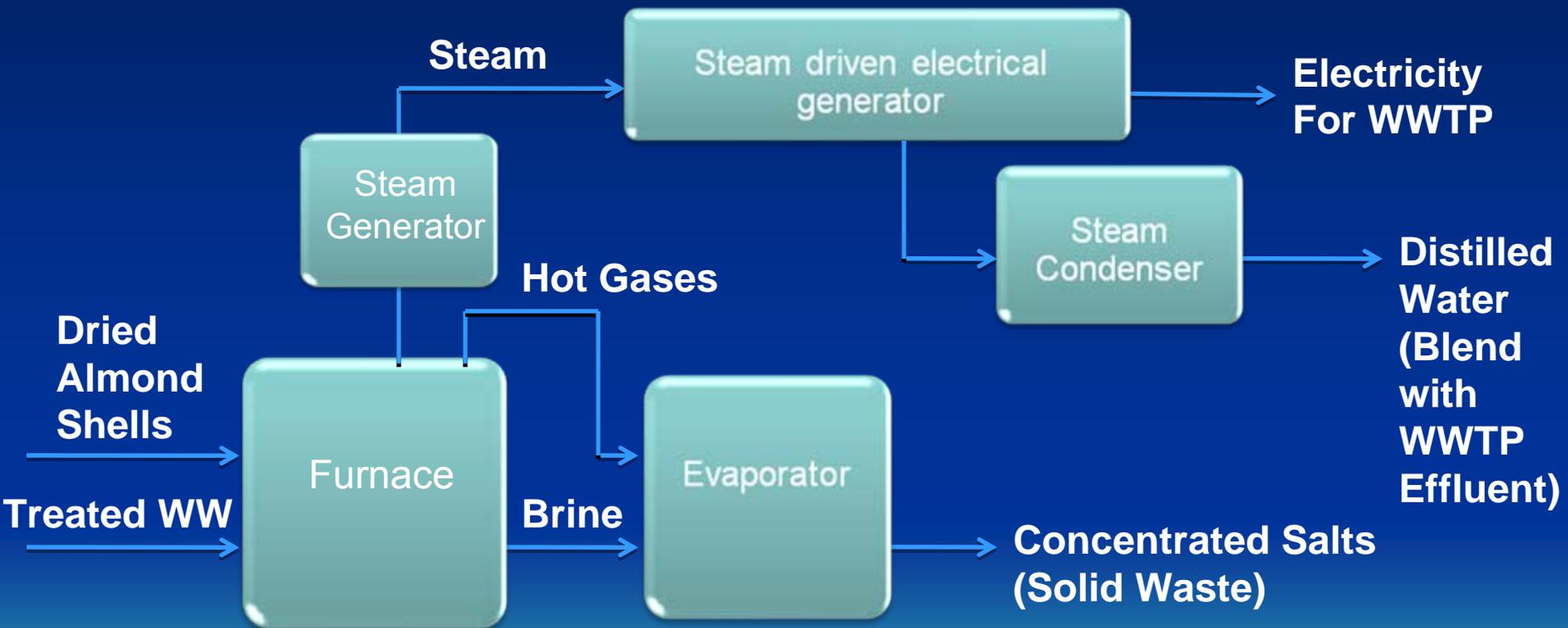


 Proposed Green Energy Project

 APN Parcels

Vanessa Carrera 2.2011

Green Energy Pilot Project at the Wastewater Treatment Plant



RESOLUTION _____

AUTHORIZING AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
WITH COMBINED SOLAR TECHNOLOGIES, INC. FOR GREEN ENERGY AND
THERMAL DESALINATION PROJECT FEASIBILITY STUDY AND AUTHORIZING
THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, On April 20, 2010, City Council authorized Combined Solar Technologies, Inc. (CST) to conduct a Green Energy Pilot Project at the Wastewater Treatment Plant (WWTP); and

WHEREAS, On January 4, 2011, City Council authorized staff to negotiate with CST for a feasibility study; and

WHEREAS, The term of the ENRA is 18 months, which is anticipated to be adequate for completion of the feasibility study and environmental document; and

WHEREAS, A separate cost recovery agreement will provide funding from CST for the negotiating, drafting, preparation and processing of various agreements and documents needed for financing of the facility and for the sale and/or lease of the property to CST; and

WHEREAS, The scope of work for the feasibility study includes analysis of: availability and long-term reliability of various fuel sources; the potential for selling excess energy and solid salt by-products; the potential for solar thermal production to augment the heat produced from the green energy plant; and the potential for grant funding and ownership options; and

WHEREAS, The electricity generated through the green energy plant (the Facility) would be used at the WWTP and the excess would be sold. The salts contained in the boiler would be evaporated into a solid state, and the condensed steam would be blended with the effluent; and

WHEREAS, The terms of the ENRA allow for some continuing discussions with Tracy Blast Development, LLC regarding the potential for using some of the Holly Sugar factory property for use by the Green Energy Project instead of the City owned property identified in the ENRA, in order to allow land along Tracy Boulevard for other uses; and

WHEREAS, There is no fiscal impact to the City's General Fund. Professional services are anticipated for reviewing certain aspects of the project and there are adequate funds in the approved budget. For this phase of the work, the cost of professional services is estimated to be less than \$5,000. Funding will be from the Wastewater Enterprise Fund.

NOW, THEREFORE, BE IT RESOLVED That the City Council authorizes the Exclusive Negotiating Rights Agreement with CST for a Green Energy and Thermal Desalination Project Feasibility Study and authorizes the Mayor to execute the Agreement.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 19th day of April, 2011, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 8

REQUEST

APPROVE AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH TRACY'S CALIFORNIA BLAST, LLC TO EXPLORE THE DEVELOPMENT OF RECREATIONAL, COMMERCIAL AND OTHER RELATED USES ON APPROXIMATELY 600 ACRES OF THE CITY-OWNED HOLLY SUGAR PROPERTY AND AUTHORIZE THE MAYOR TO SIGN THE AGREEMENT

EXECUTIVE SUMMARY

Tracy's California Blast, LLC has approached the City with a desire to explore the development of recreational, commercial and other related uses on approximately 600 acres of the City-owned Holly Sugar property. The purpose of this Exclusive Negotiating Rights Agreement (ENRA) is to establish initial terms between Tracy's California Blast, LLC and the City and to authorize Tracy's California Blast, LLC to work on future applications for various entitlements for the property.

DISCUSSION

On March 3, and July 7, 2009, Council approved two separate ENRAs with Jeff Macey to develop a motorsports park and bike park on approximately 300 acres of the City-owned Holly Sugar property just north of the Sports Complex. The purpose of these ENRAs were to allow Mr. Macey to form a development team and legal entity capable of developing the project and to allow Mr. Macey the opportunity to refine his development proposal. While the timelines for both of the previous ENRAs with Mr. Macey have expired, Mr. Macey has formed a new legal entity, Tracy's California Blast, LLC (TCB), and appears to have established a development team to initiate development applications once the current ENRA is approved.

The new development entity, TCB proposes to expand on the original motorsports park concept by 300 additional acres. New development ideas include expanded commercial and other recreational uses on a total of 628 acres. The location of the 628 acres under consideration within this ENRA is shown on Exhibit A.

Exhibit A also shows the location of Airsoft and Combined Solar Technologies (CST) which represent development of an Airsoft training/recreational area and development of an electrical generation and water desalination facility respectively. These projects are subject to separate ENRAs with the City. The Airsoft proposal is consistent with adopted City plans for a park at this location. The CST proposal is not yet fully defined in a geographic scope, but proposes uses consistent with existing Industrial designations of the City's General Plan. TCB ideas and proposal would require amendments to the General Plan. Staff would work with TCB, CST, and Airsoft on the evaluation of plans as they are developed for consideration.

Following are the highlights from the TCB ENRA:

AGENDA ITEM 8

April 19, 2011

Page 2

- 1) The Agreement for exclusive negotiating rights has a term of three years, subject to successful completion of the milestones set forth in sections 4 through 9 and 12 of the Agreement attached as Exhibit B.
- 2) Provides for cost recovery for the City's time and resources through a future Cost Recovery Agreement.
- 3) Authorizes TCB to prepare and submit applications for various entitlements for the property.
- 4) Authorizes amending the ENRA when and if additional City-owned property east of Tracy Boulevard is not needed for the CST project. (Staff will continue to work with TCB, CST, and Airsoft on further defining buildout of all properties and how each project can work to complement the other.)
- 5) Allows the parties to begin discussions regarding the eventual sale or lease of the property.

STRATEGIC PLAN

This agenda items supports the Economic Development and Amenities Strategic Plans by working to bring potential job and sales tax generating uses to the community, as well as additional recreational amenities.

FISCAL IMPACT

There is no fiscal impact to the City's General Fund. TCB will pay an initial fixed fee of \$25,000 to cover initial staff time on this project. Within 180 days of entering into this ENRA, TCB is required to enter into a Cost Recovery Agreement to cover all staff costs. For consideration for the three-year term, TCB will pay \$1,500 per month for exclusive rights to negotiate with the City.

RECOMMENDATION

Staff recommends that the City Council, by resolution, approve the Exclusive Negotiating Rights Agreement with Tracy's California Blast, LLC for the potential development of recreational, commercial, and other related uses on approximately 628 acres of the City-owned Holly Sugar property.

Attachments: Location Map (Exhibit A)
Exclusive Negotiating Rights Agreement (Exhibit B)

Prepared by: Andrew Malik, Development and Engineering Services Director
William Dean, Assistant DES Director
Rod Buchanan, Parks and Community Services Director

Reviewed and Approved by: Leon Churchill Jr., City Manager

City of Tracy Property Purchased from Holly Sugar



TRACY BLAST DEVELOPMENT
25 ACRES *

SAN JOAQUIN COUNTY
PURCHASED PROPERTY
105 ACRES *

TRACY BLAST DEVELOPMENT
100 ACRES *

TRACY BLAST DEVELOPMENT
400 ACRES *

FUEL STORAGE AREA

GREEN ENERGY PROJECT
237 ACRES *

AIRSOFT FACILITY
50 ACRES *

HOLLY SUGAR SPORTS PARK
160 ACRES *

SOLAR THERMAL AREA

POWER PLANT

TRACY BLAST DEVELOPMENT
103 ACRES *

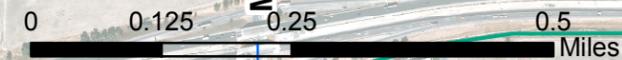
CORRAL HOLLOW RD

TRACY BLVD

HOLLY DR

MAC ARTHUR DR

- Holly Sugar Sports Park
- Tracy Blast
- Green Energy Project
- SJC Property
- Airsoft Facility
- Wastewater Pump station
- Wastewater Treatment Plant
- Wastewater Line
- Water Line
- Storm Drain Channel
- Holly Sugar Property
- Acreage Approximation



**EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
BETWEEN TRACY'S CALIFORNIA BLAST, LLC.
AND THE CITY OF TRACY**

This Exclusive Negotiating Rights Agreement ("ENRA") is entered into between the City of Tracy ("City"), a California Municipal Corporation, and Tracy's California Blast, LLC ("TCB").

RECITALS

A. TCB is proposing to study the feasibility of developing certain property currently owned by the City, and located to the north of the City limits in the vicinity of Corral Hollow Road and Holly Drive. This area generally is commonly known as the Holly Sugar property. The City-owned sites under consideration include approximately 628 acres and consist of the following parcels (the Property), as shown in the diagram at Exhibit A, attached:

1. APN 212-140-06
2. APN 212-140-07
3. APN 212-150-01 (portion)
4. APN 212-160-09 (portion)
5. APN 212-130-12 (portion)
6. APN 212-130-13 (portion)

City and TCB will enter into a separate Cost Recovery Agreement to implement this Agreement.

B. Jeff Macey (now President of TCB) and the City previously entered into ENRAs for 300 acres of the property for the development of a motorsports and bike park: March 3, 2009 for 120 days; Second ENRA July 7, 2009 for 180 days, extended on January 5, 2010 until July 1, 2010, and extended on July 20, 2010 until December 31, 2010. The Second ENRA has expired.

C. TCB wishes to continue exploring the potential development of the Property as a motorsports park and recreation area; and

D. Although the City is simultaneously entering into another ENRA for the study of an electrical generation and water desalination facility on parcels to the east of Tracy Boulevard, for the benefit of the City's wastewater treatment plant, the City remains interested in maintaining options for land uses for the Tracy Boulevard area if it is feasible to limit the area of, or to relocate, the biofuel and/or solar portions of the proposed facility. The City intends to carefully consider the property required for this facility within 90-120 days from the signing of this ENRA, and will consider amending this ENRA to add property if it is feasible and

cost-effective to do so. (The feasibility will depend on such factors as timing and cost of CEQA review and obtaining land use entitlements for alternative properties, timely purchase and conveyance of the alternative properties, and the cost of trucking fuels, habitat mitigation fees, clean-up, and preparation of the alternative sites.)

E. The parties wish to enter into this exclusive negotiating rights agreement.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Purpose. The purpose of this Agreement is to:

- (a) authorize TCB to prepare and submit applications for various entitlements for the Property; and
- (b) provide for cost recovery for the City's time and resources spent; and
- (c) provide for exclusive negotiations between the parties regarding the Property; and
- (d) specifically provide for amending this ENRA when and if additional City-owned property east of Tracy Boulevard is not needed for the electrical generation and desalination facility; and
- (e) explore a sale and/or lease of the Property or portions of the Property. This ENRA does not obligate either party to acquire, convey, lease or develop the Property.

2. Term. This Agreement shall commence when signed by both parties and shall have a term of three years, subject to the milestones and termination provisions set forth in Sections 4 through 9 and 12.

3. Consideration. TCB agrees to provide \$1500 per month to the City as consideration for this ENRA, due on the first of each month (and prorated for a partial month).

4. Development applications. TCB agrees to undertake evaluation of the development potential of the Property, to submit appropriate and required applications to the City in a timely manner, and to actively pursue and continue processing those applications.

Within 9 months from the signing of this ENRA, TCB agrees to prepare and submit development applications for various entitlements for the Property, including but not limited to the following:

- Specific Plan
- General Plan Amendment
- Rezoning
- Annexation
- Environmental review under the California Environmental Quality Act (CEQA).

5. TCB Consultant Team. Because of the complexity of the proposed Project, the City has a responsibility to assure that it will be working with a sufficiently experienced, sophisticated consultant team of planners, engineers, environmental and financial experts, and attorneys. TCB presented a list of its consultants to the City Council in February, 2011. Within 120 days after signing this ENRA, TCB shall demonstrate and verify its contractual relationship with consultants having the experience and expertise to undertake this Project, as determined by the Director of Development and Engineering Services.

6. Financial verification. Within 120 days of signing this ENRA, TCB shall allow National Development Council to review sufficient information to verify the financial statements of TCB, to complete the entitlement process (Specific Plan, General Plan, Annexation, environmental review) and the financial statements for the first phase (motorsports park on approximately 400 acres north of the proposed City sports park). The standard due diligence information and required documents include, but are not limited to:

- (a) for each principal of TCB:
 - personal financial statement; and
 - federal tax return for the current year and for the prior three years; and
 - a signed credit release form.
- (b) for investors who may be providing cash:
 - their company bank account number as evidence of the cash on hand; and
 - a signed general financial release of account information form.
- (c) for investors who are not providing cash on hand:
 - a legally-binding letter of commitment for the amount, backed up by
 - personal financial statements; and
 - federal tax returns for the current year and the last three years; and
 - a signed credit release form.

- (d) Follow-up information as may be required by National Development Council.

There is a 60-day period during which the City performs its financial due diligence regarding the viability of TCB to undertake the entitlement process, and the first phase, based on the review of financial information in a confidential manner by National Development Council.

7. Costs and Expenses. Within 90 days of signing this ENRA, and before additional staff time is spent, TCB shall pay to the City a fixed fee of \$25,000 to cover staff and consultant expenses up to the time a Cost Recovery Agreement is signed. The City may retain an EIR/Planning consultant at any time after the Cost Recovery Agreement is signed.

Within 120 days from the signing of this ENRA, TCB shall enter into a standard Cost Recovery Agreement with the City, the purpose of which is to provide for TCB's payment of all costs incurred by City and its consultants in the implementation of this ENRA and the processing of the required land use entitlements and CEQA review. (See Section 4.)

8. Modified Property Description. TCB and City intend to amend the Property description of this ENRA if it is feasible to (1) reduce the area required for the CST project (Recital D) and/or (2) relocate the biofuels storage or solar portions (but not the electrical generation and desalination facility) of the proposed CST facility.

- a. Reduction of CST facility area. The parties anticipate that they will know about the feasibility of reducing the area required for CST within 90-120 days of the signing of this ENRA, and amendments to the ENRA Property area can be considered at that time.
- b. Relocation of portions of the CST facility. Regarding the possible relocation of portions of the facility, TCB is responsible for establishing the feasibility and providing a ready alternative site, acceptable to the City. Once an alternative site is ready for use, this ENRA can be amended to reflect the relocated area for the CST facility. This will require evaluating and completing the following:
1. As soon as CST can give a rough approximation of the area needed, identify alternative sites for biofuels storage and solar project.
 2. Evaluate site for hazardous materials

3. Evaluate City or County land use status: General Plan designation; zoning designation; uses allowed; etc. Know exact process, timing and likelihood of amending any of these designations to allow the proposal.
4. Consider whether trucking distance will add substantially to the operating costs and/or require a higher level of CEQA review.
5. Determine level of CEQA review required, and the cost and timing.
6. Determine the potential habitat mitigation, clean-up costs or preparation of the alternative site.
7. If City accepts the alternative site, undertake CEQA review, obtain the required land use approvals, perform site preparation and pay required fees.

9. Responsibilities of TCB: Summary. Following is a list of milestones which TCB agrees to perform:

ACTIONS/MILESTONES	DEADLINE	ENRA SECTION REFERENCE
Payment of \$1500/month (prorated the first month) as consideration for this ENRA	5 days after signing ENRA	3
Evaluate and propose feasible alternative sites to CST and to City.	60-90 days after signing ENRA	Recital D 8 14
Payment of \$25,000 for City's costs	90 days after signing ENRA	7
Providing requested financial data to National Development Council to verify the financial statements of TCB for the entitlement process and the first phase. (Confirmation from National Development Council regarding financial viability within 30 days after information provided.)	120 days after signing ENRA	6
City Council to consider modification of properties under ENRAs, if reduced CST acreage and/or feasible alternative site(s) exist for CST.	90-120 days after signing ENRA for City approved reduction in CST acreage. For relocated site(s), when the alternative site(s) has been approved by City, acquired, entitled and ready for use.	Recital D 8 14

Demonstrating to City the composition and qualifications of consultant team	120 days after signing ENRA	5
Entering into Cost Recovery Agreement with City	120 days after signing ENRA	7
Submit <u>complete</u> applications to the City for all required entitlements	9 months from signing ENRA	4
Actively pursue and process the submitted applications	Evaluation every 6 months from signing of ENRA	4
Make payments and deposits under the Cost Recovery Agreement when due.	Ongoing after signing Cost Recovery Agreement.	7

10. Exclusive Negotiations. During the term of this ENRA, the City shall not negotiate with any entity other than TCB regarding the sale, lease, or development of the Property. City and TCB shall negotiate diligently and in good faith during the term of this ENRA.

11. Notices. Any and all notices or other communication required or permitted by this Agreement or by law to be served on or given to either party by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of personal service, when deposited in the United States mail, first class, postage prepaid, addressed to:

City of Tracy
Attn: Maria Hurtado, Assistant City Manager
333 Civic Center Plaza Drive
Tracy, CA 95376

With copy to: City Attorney
333 Civic Center Plaza Drive
Tracy, CA 95376

Tracy's California Blast, LLC
Jeff Macey, President

12. Termination; Defaults and Remedies. In the event of a default, the non-defaulting party shall give written notice to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured 60 days after receipt by the defaulting party of such notice, the non-defaulting party may terminate this ENRA. However, a default involving payment to the City must be cured within 10 days.

13. Attorneys' Fees. The prevailing party in any action to enforce this Agreement shall be entitled to recover reasonable attorney's fees and costs from the other party.

14. Governing Law. This ENRA shall be governed by and construed in accordance with the laws of the State of California.

15. Entire Agreement; Amendments. This ENRA constitutes the entire agreement of the parties regarding the subject matters of this Agreement.

The parties may amend this ENRA by mutual consent agreed to in writing.

If the applications submitted under Section 4 include areas which are outside of, or differ from, the Property as described in this ENRA, and which are owned by the City, the City staff shall ask the City Council to consider an amendment to this ENRA to include the additional or changed acreage. If, in the opinion of City less acreage is needed for the location of the electrical generation and desalination facility (Recital D), City agrees to consider amending this ENRA to include additional property, assuming TCB is in good standing under this ENRA at the time (Section 9). (See Section 8.)

16. Counterparts. This ENRA may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

17. Assignment. TCB may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the City, which consent shall be granted or withheld in the City's sole discretion, and any such attempted transfer or assignment without the prior written consent of the City shall be void.

18. No Third Party Beneficiaries. This ENRA is made and entered into solely for the benefit of the City and TCB and no other person shall have any right of action under or by reason of this ENRA.

19. Signatures. The individuals executing this ENRA represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this ENRA on behalf of TCB and the City.

<p>City of Tracy By: _____ Brent H. Ives, Mayor</p> <p>Date: _____</p> <p>Attest: By: _____ Sandra Edwards Title: City Clerk Date: _____</p> <p>Approved As To Form: By: _____ Daniel G. Sodergren Title: City Attorney Date: _____</p>	<p>Tracy's California Blast, LLC By: _____ Jeff Macey, President</p> <p>Date: _____</p>
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Exhibit A: Diagram of the Property

City of Tracy Property Purchased from Holly Sugar



TRACY BLAST DEVELOPMENT
25 ACRES *

SAN JOAQUIN COUNTY
PURCHASED PROPERTY
105 ACRES *

TRACY BLAST DEVELOPMENT
100 ACRES *

TRACY BLAST DEVELOPMENT
400 ACRES *

FUEL STORAGE AREA

GREEN ENERGY PROJECT
237 ACRES *

AIRSOFT FACILITY
50 ACRES *

HOLLY SUGAR SPORTS PARK
160 ACRES *

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POWER PLANT

TRACY BLAST DEVELOPMENT
103 ACRES *

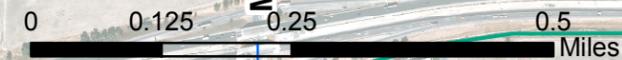
CORRAL HOLLOW RD

TRACY BLVD

HOLLY DR

MAC ARTHUR DR

- Holly Sugar Sports Park
- Tracy Blast
- Green Energy Project
- SJC Property
- Airsoft Facility
- Wastewater Pump station
- Wastewater Treatment Plant
- Wastewater Line
- Water Line
- Storm Drain Channel
- Holly Sugar Property
- Acreage Approximation



RESOLUTION 2011-_____

APPROVING AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH TRACY'S CALIFORNIA BLAST, LLC TO EXPLORE THE DEVELOPMENT OF RECREATIONAL, COMMERCIAL AND OTHER RELATED USES ON APPROXIMATELY 600 ACRES OF THE CITY-OWNED HOLLY SUGAR PROPERTY AND AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT

WHEREAS, On March 3, and July 7, 2009, Council approved two separate ENRAs with Jeff Macey to develop a motorsports park and bike park on approximately 300 acres of the City-owned Holly Sugar property just north of the Sports Complex, and

WHEREAS, Mr. Macey has formed a new legal entity, Tracy's California Blast, LLC and appears to have established a development team to initiate development applications once the current ENRA is approved, and

WHEREAS, The new development entity, Tracy's California Blast, LLC proposes to expand on the original motorsports park concept by 300 additional acres, and

WHEREAS, There is no fiscal impact to the City's General Fund. Tracy's California Blast, LLC will pay an initial fixed fee of \$25,000 to cover initial staff time on this project, and

WHEREAS, Tracy's California Blast, LLC is required to enter into a Cost Recovery Agreement to cover all staff costs, and

WHEREAS, For consideration for the three-year term, Tracy's California Blast, LLC will pay \$1,500 per month for exclusive rights to negotiate with the City;

NOW, THEREFORE, BE IT RESOLVED That City Council approves the Exclusive Negotiating Rights Agreement with Tracy's California Blast, LLC for the potential development of recreational, commercial, and other related uses on approximately 628 acres of the City-owned Holly Sugar property.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 19th day of April, 2011 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

CITY CLERK

AGENDA ITEM 9

REQUEST

CONSIDER THE ADOPTION OF A RESOLUTION RECOMMENDING THE CALIFORNIA CITIZENS REDISTRICTING COMMISSION PLACE SAN JOAQUIN COUNTY IN ONE CONGRESSIONAL, ASSEMBLY, AND STATE SENATE DISTRICT

EXECUTIVE SUMMARY

Council will discuss and consider adoption of a resolution recommending the California Citizens Redistricting Commission place San Joaquin County in one congressional, assembly, and state senate district.

DISCUSSION

At the April 5, 2011 City Council meeting, the Council agreed to place an item on the April 19, 2011 City Council agenda to discuss adopting a resolution recommending the California Citizens Redistricting Commission place San Joaquin County in one congressional, assembly, and state senate district.

In 2008, Proposition 11 established an independent Citizens Redistricting Committee, made up of California residents to configure state assembly and senate districts. Proposition 11 kept congressional boundaries under the purview of the state legislature. In 2010, Proposition 20 was approved which granted the Citizens Redistricting Committee the authority to configure congressional district lines as well.

Currently, San Joaquin County is represented by two congressional districts, four state assembly districts, and two state senate districts. The districts encompass Alameda, Amador, Contra Costa, El Dorado, Fresno, Madera, Mariposa, Merced, Sacramento, Solano, Santa Clara, Stanislaus, Tuolumne and Yolo counties.

However, the population of San Joaquin County continues to grow at a faster pace than the rest of the state. Therefore, it is important that San Joaquin County be placed into one congressional, assembly, and state senate district to provide a unified voice on issues affecting the County, and to better serve the needs of the entire constituency.

STRATEGIC PLAN

This agenda item does not relate to the Council's seven strategic plans.

FISCAL IMPACT

There will be no fiscal impact to the General Fund.

RECOMMENDATION

It is recommended that the City Council consider the adoption of a resolution recommending the California Citizens Redistricting Commission place San Joaquin County in one congressional, assembly, and state senate district, and direct staff to forward the resolution to the Redistricting Commission.

Prepared by: Carole Fleischmann, Assistant City Clerk
Reviewed by: Maria Hurtado, Assistant City Manager
Approved by: Leon Churchill, Jr., City Manager

RESOLUTION

RECOMMENDING THE CALIFORNIA CITIZENS REDISTRICTING COMMISSION
PLACE SAN JOAQUIN COUNTY IN ONE CONGRESSIONAL, ASSEMBLY,
AND STATE SENATE DISTRICT

WHEREAS, In 2008, Proposition 11 established an independent Citizens Redistricting Committee, made up of California residents to configure state assembly and senate districts, and

WHEREAS, In 2010, Proposition 20 was approved which granted the Citizens Redistricting Committee the authority to configure congressional district lines as well, and

WHEREAS, Currently, San Joaquin County is represented by two congressional districts, four state assembly districts, and two state senate districts. The districts encompass Alameda, Amador, Contra Costa, El Dorado, Fresno, Madera, Mariposa, Merced, Sacramento, Solano, Santa Clara, Stanislaus, Tuolumne and Yolo counties, and

WHEREAS, the population of San Joaquin County continues to grow at a faster pace than the rest of the state, and

WHEREAS, it is important that San Joaquin County be placed into one congressional, assembly, and state senate district to provide a unified voice on issues affecting the County, and to better serve the needs of the entire constituency.

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby adopts Resolution 2011- recommending the Citizens Redistricting Committee place San Joaquin County in one congressional, assembly and state senate district.

* * * * *

The foregoing Resolution 2011-____was passed and adopted by the Tracy City Council on the 19th day of April 2011, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk