

Tuesday, March 4, 2014, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

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

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

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

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

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

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

PRESENTATIONS – Employee of the Month
– Proclamation – American Red Cross Month
– D.A.R.E. Certificates

1. CONSENT CALENDAR

A. Approval of Minutes

B. Acceptance of the Sidewalk Repair Fiscal Year 2013 – 2014, Phase One, A Street and Eleventh Street Sidewalk Improvement – CIP 73139, completed by Extreme Excavation of Tracy, California, and Authorization for the City Clerk to File a Notice of Completion

C. Approve Professional Services Agreement (PSAs) with TJKM Transportation Consultants (Traffic), and West Yost and Associates (Water), Task Order No. 6 to Master PSA (MPSA) with Storm Water Consulting, Incorporated (Storm Drainage), MPSA (CH-2014) and Task Order No. 1 to MPSA (CH-2014-01) with CH2MHill (Wastewater), and Task Order No. 2 to MPSA (HA13-01) with Harris and Associates (Program Management) for Completion of Various Technical Analyses Related to the Industrial Development of I-205 Parcels M1 and M2, and Authorize the Mayor to Sign the Agreements

2. ITEMS FROM THE AUDIENCE

3. PUBLIC HEARING TO CONSIDER THE ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME INVESTMENT PARTNERSHIP PROGRAM (HOME) FUNDS FOR FISCAL YEAR 2014-2015

4. AUTHORIZE THE ESTABLISHMENT OF PREFERENTIAL PARKING ON TWELFTH STREET AND BERVERDOR AVENUE BETWEEN MAE AVENUE AND EAST STREET AS PILOT PROGRAM

5. ACCEPT REPORT REGARDING THE CITY'S FINANCIAL CONTROLS AND REPORTING PRACTICES

6. CONSIDER A REQUEST BY CITY COUNCIL TO DISCUSS COMPLAINTS BY BRIAN VAN LEHN REGARDING THEIR CONCERNS RELATIVE TO NOISE EMISSIONS FROM THE LEPRINO FOODS PROCESSING PLANT AT 2401 NORTH MACARTHUR DRIVE

7. ITEMS FROM THE AUDIENCE

8. STAFF ITEMS

9. COUNCIL ITEMS

- A. Determine Whether to Direct Staff to Place an Item on a Future Council Agenda Regarding Options to Address Infrastructure Issues in the Mount Oso, C Street and Mount Diablo Area
- B. Determine Whether to Direct Staff to Place an Item on a Future Council Agenda to Discuss How Best to Respond to Items From the Audience
- C. Appoint Applicants to the Measure E Residents' Oversight Committee
- D. Appointment of City Council Subcommittee to Interview Applicants for Vacancies on the Planning Commission

10. ADJOURNMENT

January 7, 2014, 5:30 p.m.

City Council Chambers, 333 Civic Center Plaza

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

1. CALL TO ORDER – Mayor Ives called the meeting to order at 5:30 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE – None.
4. REQUEST TO CONDUCT CLOSED SESSION
 - I. Personnel Matter (Gov. Code, § 54957

Public Employee Appointment, Employment, Evaluation of Performance, Discipline, or Dismissal

Position Titles: City Attorney and City Manager
5. MOTION TO RECESS TO CLOSED SESSION – Mayor Pro Tem Maciel motioned to recess the meeting to closed session at 5:31 p.m. It was seconded by Council Member Manne. Voice vote found all in favor; passed and so ordered.
6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 6:50 p.m.
7. REPORT OF FINAL ACTION – None.
8. ADJOURNMENT – It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adjourn the meeting. Voice vote found all in favor; passed and so ordered. Time: 6:51 p.m.

The above agenda was posted at City Hall on January 2, 2014. The above are action minutes.

Mayor

ATTEST:

City Clerk

January 21, 2014, 5:45 p.m.

City Council Chambers, 333 Civic Center Plaza

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

1. CALL TO ORDER – Mayor Ives called the meeting to order at 5:45 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Manne, Rickman, Mayor Pro Tem Maciel and Mayor Ives present. Council Member Young absent.
3. ITEMS FROM THE AUDIENCE – None.
4. REQUEST TO CONDUCT CLOSED SESSION – Conference with Legal Counsel – Anticipated Litigation (Gov. Code section 54956.9(d))
 - Significant exposure to litigation pursuant to paragraph (2) of subdivision(d) of Section 54956.9: Two potential cases.
5. MOTION TO RECESS TO CLOSED SESSION – Mayor Pro Tem Maciel motioned to recess the meeting to closed session at 5:46 p.m. It was seconded by Council Member Rickman. Voice vote found Council Members Manne, Rickman, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Young absent.

Council Member Young joined the closed session meeting at 5:47 p.m.
6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 6:48 p.m. Mayor Ives announced that the Closed Session meeting would be adjourned until after the close of the Regular City Council meeting. The Closed Session was reconvened at 10:17 p.m.
7. REPORT OF FINAL ACTION – None.
8. ADJOURNMENT – It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adjourn the meeting. Voice vote found all in favor; passed and so ordered. Time: 11:29 p.m.

The above agenda was posted at City Hall on January 16, 2014. The above are action minutes.

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.B

REQUEST

**ACCEPTANCE OF THE SIDEWALK REPAIR FISCAL YEAR 2013 – 2014,
PHASE ONE, A STREET AND ELEVENTH STREET SIDEWALK IMPROVEMENT
– CIP 73139, COMPLETED BY EXTREME EXCAVATION OF TRACY,
CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE A
NOTICE OF COMPLETION**

EXECUTIVE SUMMARY

The contractor, Extreme Excavation, has completed construction of the Sidewalk Repairs Fiscal Year (FY) 2013 – 2014, Phase One, A Street and Eleventh Street sidewalk improvements in accordance with project plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends City Council accept the project to enable the City to release the contractor's bond and retention.

DISCUSSION

The project scope of work included replacement of approximately 15,000 square feet of concrete sidewalk including driveways, curb, gutter, demolition, saw-cutting, miscellaneous asphalt concrete pavement, ADA curb ramps, and tree removal. Project plans and specifications were prepared in-house by engineering staff.

Public Contract Code Section 22032 and 22036 allows a public agency to procure informal bids for projects with an anticipated cost less than \$50,000. Since this project falls under this category, it was advertised for informal bids on the City of Tracy website and builder's exchanges on June 21, 2013; five bids were received on July 09, 2013.

On August 8, 2013, the City Manager, in accordance with TMC 2.20.260 executed the agreement with the lowest monetary bidder, Extreme Excavation of Tracy, California, in the amount of \$46,780 for the Sidewalk Repairs FY 2013 – 2014, Phase One, A Street and Eleventh Street Sidewalk Improvements - CIP 73139.

One change order was issued in the amount of \$3,325 for this project which consisted of additional work required due to conflicts with the PG&E gas line.

Status of budget and project cost is as follows:

A. Construction Contract Amount	\$ 46,780
B. Change order	\$ 3,325
C. Design, Construction Inspections (Estimated)	\$ 4,000
D. Citywide Project Management (Estimated)	<u>\$ 6,000</u>
Total Project Costs	\$ 60,105
Budgeted Amount	\$ 65,000

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

STRATEGIC PLAN

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

FISCAL IMPACT

CIP 73139 is an approved Capital Improvement Project with sufficient funding to cover the total project costs. There is no fiscal impact to the General Fund.

RECOMMENDATION

That City Council accept, by resolution, the Sidewalk Repairs Fiscal Year 2013 – 2014, Phase One, A Street and Eleventh Street Sidewalk Improvements – CIP 73139, completed by Extreme Excavation of Tracy, California, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

Prepared by: Paul Verma, Senior Civil Engineer

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

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

RESOLUTION _____

ACCEPTING THE SIDEWALK REPAIR FISCAL YEAR 2013 – 2014, PHASE ONE, A STREET AND ELEVENTH STREET SIDEWALK IMPROVEMENT – CIP 73139, COMPLETED BY EXTREME EXCAVATION OF TRACY, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION

WHEREAS, On August 8, 2013, the City Manager, in accordance with TMC 2.20.260 executed the agreement with the lowest monetary bidder, Extreme Excavation of Tracy, California, in the amount of \$46,780 for the Sidewalk Repairs Fiscal Year (FY) 2013 – 2014, Phase One, A Street and Eleventh Street sidewalk improvements - CIP 73139, and

WHEREAS, The contractor has completed construction of the completed construction of the Sidewalk FY 2013 – 2014 Phase One, A Street and Eleventh Street Sidewalk Improvements in accordance with project plans, specifications, and contract documents , and

WHEREAS, One change order was received in the net amount of \$3,325, and

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

A. Construction Contract Amount	\$ 46,780
B. Change order	\$ 3,325
C. Design, Construction Inspections (Estimated)	\$ 4,000
D. Citywide Project Management (Estimated)	<u>\$ 6,000</u>
Total Project Costs	\$ 61,105
Budgeted Amount	\$ 65,000

WHEREAS, CIP 73139, is an approved Capital Improvement Project with sufficient funding to cover the total project costs. There is no fiscal impact to the General Fund;

NOW, THEREFORE BE IT RESOLVED, That City Council accepts the Sidewalk Repairs FY 2013 – 2014 Phase One, A Street and Eleventh Street Sidewalk Improvement - CIP - 73139, completed by Extreme Excavation of Tracy, California, and authorizes the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

* * * * *

The foregoing Resolution 2014 - _____ was adopted by the Tracy City Council on the 4th day of March, 2014, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.C

REQUEST

APPROVE PROFESSIONAL SERVICE AGREEMENTS (PSAs) WITH TJKM TRANSPORTATION CONSULTANTS (TRAFFIC), AND WEST YOST AND ASSOCIATES (WATER), TASK ORDER NO. 6 TO MASTER PSA (MPSA) WITH STORM WATER CONSULTING, INCORPORATED (STORM DRAINAGE), MPSA (CH-2014) AND TASK ORDER NO. 1 TO MPSA (CH-2014-01) WITH CH2MHILL (WASTEWATER), AND TASK ORDER NO. 2 TO MPSA (HA13-01) WITH HARRIS AND ASSOCIATES (PROGRAM MANAGEMENT) FOR COMPLETION OF VARIOUS TECHNICAL ANALYSES RELATED TO THE INDUSTRIAL DEVELOPMENT OF I-205 PARCELS M1 AND M2, AND AUTHORIZE THE MAYOR TO SIGN THE AGREEMENTS

EXECUTIVE SUMMARY

Infrastructure studies to serve the I-205 properties were completed in 1990 and were funded jointly by the property owners. However, I-205 Specific Plan parcels M1 and M3 located north of I-205 and east of MacArthur Drive did not participate in those studies at that time. The owners of I-205 Parcels M1 and M2 have now requested the City to conduct an evaluation of capacity of existing improvements and identify necessary infrastructure improvements to serve the proposed industrial projects on these two parcels within the confines of the existing infrastructure Master Plans. Approval of the agreements with the City consultants will allow them to start their respective tasks and facilitate early completion of the technical analyses.

DISCUSSION

I-205 Specific Plan infrastructure studies were completed in 1990 and were funded by I-205 property owners. Parcels M1 and M2 located north of I-205 and east of MacArthur Drive did not participate in those studies. The property owners of these two parcels now want to develop their properties.

Since then Citywide Master Plans for Roadway, Water, Wastewater, and Storm Drainage have been completed. The ultimate Master Plan infrastructure will be constructed as more funds are available through development impact fees. Parcels M1 and M2 will be partly served from the Master Plan infrastructure and partly from the proposed infrastructure from the North East Industrial (NEI) area. The proposed technical analysis will identify needed improvements to serve the proposed industrial project on Parcels M1 and M2 and are listed as follows:

Traffic

Identify roadway improvements on Arbor Road and MacArthur Drive and the necessary intersection improvements at MacArthur Drive/ I-205 and Arbor Road/ MacArthur Drive to provide efficient traffic circulation of the proposed industrial project. The estimated cost to complete this specific task is not to exceed \$12,000.

Water

Evaluate the City's existing water distribution system for adequacy to meet the project's domestic, irrigation, and fire water flow and pressure demand. Confirm that water main looping as proposed meets City standards. The estimated cost to complete this specific task is \$15,200.

Storm Drainage

Provide recommendation on the temporary and final solution for disposing storm water generated from the project site and conveying excess runoff to the City's storm drainage system. The estimated cost to complete this specific task is \$5,000.

Wastewater

Evaluate the adequacy of the existing sewer lift station on MacArthur Drive and sewer force main from the lift station to the Wastewater Treatment Plant, and at the treatment plant. The estimated cost to complete this specific task is not to exceed \$28,810.

Program Management

Coordinate with various consultants and developers to finalize the technical analysis, review cost estimates and develop AB1600 development impact fees. The scope of work also includes the need to identify future reimbursements. The estimated cost to complete this specific task is \$19,000.

STRATEGIC PLAN

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

FISCAL IMPACT

Approval of these agreements will have no impact to the General Fund. The costs of engineering services under these agreements, including City staff time, will be paid by the developer of Parcels M1 and M2.

RECOMMENDATION

It is therefore recommended that City Council adopt a resolution approving the following agreements:

1. PSA with TJKM Transportation Consultants to conduct traffic circulation analysis for a not to exceed amount of \$12,000, and
2. PSA with West Yost and Associates to perform water network flow and pressure analysis for a not to exceed amount of \$15,200, and
3. Task Order No. 6 of MPSA with Storm Water Consulting, Incorporated to identify temporary and final solutions for disposing storm water generated by the project for a not to exceed amount of \$5,000, and

4. MPSA CH-2014 and Task Order Number 1 of MPSA (CH-2014-01) with CH2MHill for the evaluation of capacity of the existing sewer lift station and conveyance line to provide sewer services for the proposed industrial project for a not to exceed amount of \$28,810, and
5. Task Order No. 2 of MPSA (HA13-01) with Harris and Associates to prepare the finance plan for the proposed industrial project for a not to exceed amount of \$19,000, and authorize the Mayor to execute the agreements.

Prepared by: Criseldo S. Mina, Senior Civil Engineer

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

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

ATTACHMENTS:

Attachment A - PSA with TJKM Transportation Consultants to conduct traffic circulation analysis

Attachment B - PSA with West Yost and Associates to perform water network flow and pressure analysis

Attachment C - MPSA CH-2014 and Task Order No.1 of MPSA CH-2014-01 with CH2MHill for the evaluation of capacity of existing sewer lift station and conveyance line to provide sewer services

Attachment D – Task Order No. 2 to MPSA HA13-01 with Harris and Associates to prepare the finance plan

(A copy of Task Order No. 6 to MPSA with Storm Water Consulting, Incorporated, to identify temporary and final solutions for disposing storm water, will be provided at the March 4, 2014, Council Meeting)

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT
TRAFFIC IMPACT STUDY OF THE PROPOSED
DCT INDUSTRIAL PROJECT**

This Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and **TJKM Transportation Consultants** ("Consultant").

RECITALS

- A. CONSULTANT services are needed to prepare a traffic impact analysis for the I-205 M1 and M2 parcels as well as Infill Parcels #7 and #13.
- B. CONSULTANT is currently providing similar services and is familiar with the City's traffic model.
- C. At the request of the CITY, in November 2013, CONSULTANT submitted a proposal to perform the services described in this Agreement. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement..
- D. On February 18, 2014, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2014-_____.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

**CITYOF TRACY -- PROFESSIONAL SERVICES AGREEMENT
TRAFFIC IMPACT STUDY OF THE PROPOSED
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the date on which performance is due. City shall grant or deny such requests at its sole discretion.

3. **INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant. Consultant is free to work for other entities while under contract with the City. Consultant is not entitled to City benefits.
4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.
5. **COMPENSATION.**
 - 5.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B," attached and incorporated by reference. Consultant's fee for this Agreement is Not to Exceed **TWELVE THOUSAND DOLLARS (\$12,000.00)**. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without the City's prior written approval.
 - 5.2 **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3 **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

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

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

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

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

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

10. **INSURANCE.**

- 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
- 10.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 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.
- 10.3 **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.
- 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.
- 10.5 **Professional Liability** "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.

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

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To City:

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

To Consultant:

Christopher Thnay
TJKM Transportation Consultants
3875 Hopyard Road, Suite 200
Pleasanton, CA 94588

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

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

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
TRAFFIC IMPACT STUDY OF THE PROPOSED
DCT INDUSTRIAL PROJECT
PAGE 6 of 6**

skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

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

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

City of Tracy

Consultant

TJKM Transportation Consultants



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

By: Nayan Amin, TE
Title: President
Date: 1/29/2014
Fed. Employer ID No. 94-2239515

Attest:



By: Sandra Edwards
Title: City Clerk
Date: _____

By: Ruta Jariwala, PE, TE
Title: Treasurer
Date: 1/29/2014

Approved As To Form:

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

EXHIBIT A

CONSULTANT shall prepare a traffic impact analysis for the proposed DCT Industrial Project (Parcel M2 Light Industrial, APN 213-060-03, 39.56 Acres) located at the northeast quadrant of the intersection of I-205 and MacArthur Drive. There are three other parcels near the vicinity of the proposed project (Infill Parcel Property #7, Industrial APN 213-070-01, 41.0 Acres; M1 Light Industrial, APN 213-060-02, 14.16 Acres and Infill Parcel Property #13, Commercial, APN 213-070-36, 7.37 Acres).

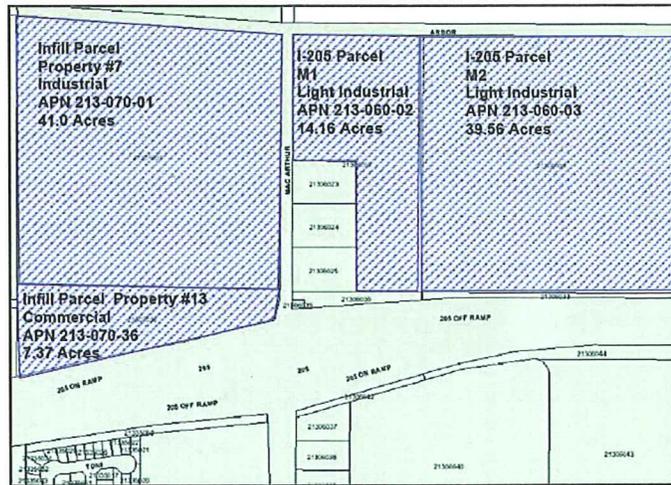
CONSULTANT's Staff

CONSULTANT shall use the following staff: Project Manager - Christopher Thnay, PE, AICP and Chris Kinzel, P.E. as QA/QC.

Scope of Work

Task 1 – Meetings and Coordination

During the course of the traffic study, TJKM shall work closely with the project team and staff of the City of Tracy, including attending several project meetings. It is crucial to the success of the project that the city agrees on key assumptions before proceeding with any major traffic work.



Task 2 – Project Start Up/Traffic Count and Data Collection

TJKM will obtain the latest site plan and land use information. Based on a review of the roadways in the project vicinity, TJKM shall study the following intersections:

1. MacArthur Drive/Arbor Avenue
2. MacArthur Drive/I-205 Westbound Ramp
3. MacArthur Drive/ I-205 Eastbound Ramp
4. MacArthur Drive/Pescadero Avenue
5. MacArthur Drive/ Grant Line Road
6. Pescadero Avenue / Paradise Road
7. Paradise Road/Arbor Avenue

In conversation with City staff, TJKM will use available existing a.m. (7 to 9) and p.m. (4 to 6) peak hour turning movement data.

Task 3 – Trip Generation, Distribution and Level of Service Calculations

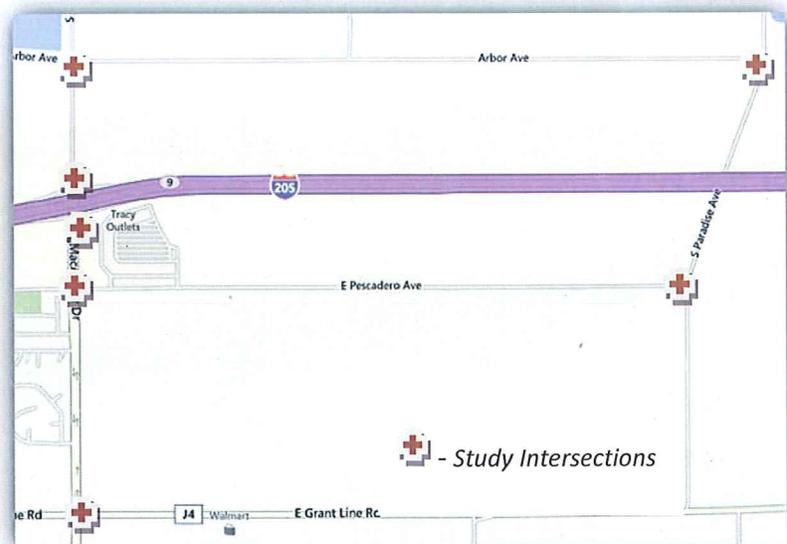


EXHIBIT A (continued)

Trip generation for the project shall be based on Institute of Transportation Engineers (ITE) Trip Generation, 9th Edition report. TJKM will distribute the projected trips based on the existing trip patterns and consultation with city staff.

TJKM will also conduct intersection capacity analysis based on procedures outlined in the 2000 Highway Capacity Manual (HCM) for the study intersections, using Synchro 7 software. The analysis will evaluate the potential traffic impact of the proposed project.

The following scenarios shall be analyzed:

- 1) Existing Traffic Conditions
- 2) Existing plus DCT Industrial Project Traffic Conditions
- 3) Existing plus Four Parcels Traffic Conditions

TJKM will determine the LOS for all the study intersections. For the unsignalized intersections, TJKM will conduct signal warrant analysis under each scenario. Traffic safety and operations are additional criteria to be evaluated for traffic control. TJKM will determine if the study intersections will operate below the City's adopted LOS D criteria (LOS E for ¼ mile near freeway).

Based on the results of the projected traffic, TJKM will determine the required intersection lane configuration and estimate the 95th percentile queue length for the left and right-turn lanes at the study intersections under each scenario. The results would be illustrated on figures and tables.

Task 4 – Traffic Operations and Mitigation Analysis

TJKM will determine mitigation measures at intersections where the LOS thresholds are exceeded. In addition, TJKM will conduct a triggering analysis to determine the level of traffic that might trigger a need for traffic signal at unsignalized intersections.

Note that the current scope of work does not include any coordination with Caltrans. In the event that traffic signals or other improvements are triggered at the MacArthur Drive/I-205 ramps, a separate task would be prepared at that time.

Task 5 – Fair Share Analysis

For the "Existing plus Four Parcels Traffic Conditions", TJKM will compute the fair share contributions of any identified mitigation measures based on the Caltrans Formula (*Caltrans Formula - Fair share % = 100 * P/(BO-EX)*).

Task 6 – Report TJKM will prepare a letter traffic report summarizing the methodology, findings and recommendations of the study. A draft report (complete with tables, figures and appendices) will be provided for review. The report's appendices will contain detailed LOS calculations, count data and other information used in the assessment of impacts. TJKM will respond to one set of comments and finalize the report.

EXHIBIT B

Rate Schedule

Principal	\$ 190/hour
Principal Associate	175/hour
Senior Associate	165/hour
Associate	140/hour
Senior Modeler	115/hour
Senior Engineer	110/hour
Engineer	90/hour
Contracts Director	140/hour
Assistant Engineer	85/hour
Assistant Planner	80/hour
Senior Designer	95/hour
Graphics Designer	95/hour
Designer	70/hour
Technical Staff	60/hour
Technical Staff II	30/hour
Administrative Staff	65/hour
Production Staff	30/hour

Reimbursable Expenses

Plotting (per sheet)	\$ 18.00
Travel Cost (per mile, subject to change; based on IRS standard mileage rates)555

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS
FOR WATER DISTRIBUTION ANALYSIS I-205 PARCELS M1 AND M2 AND INFILL
PARCELS 7 AND 13**

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

RECITALS

- A. Consultant is a registered professional engineer.
- B. Consultant's services are needed related to performing a fire flow analysis for Parcels M1 and M2 of the I-205 Specific Plan, located northeast of the Intersection of MacArthur Drive and I-205 and Infill Parcels 7 and 13 located northwest of the intersection of MacArthur Drive and I-205 ("Project").
- C. At the request of the City, in May 2013, Consultant submitted a proposal to perform the services described in this Agreement. After negotiations between City and Consultant, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

**City OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN
PROFESSIONALS FOR WATER DISTRIBUTION ANALYSIS I-205 PARCELS M1
AND M2 AND INFILL PARCELS 7 AND 13**

Page 2 of 6

3. **INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant. Consultant is free to work for other entities while under contract with the City. Consultant is not entitled to City benefits.

4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.

5. **COMPENSATION.**
 - 5.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B," attached and incorporated by reference. Consultant's fee for this Agreement is Not to Exceed \$15,200. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without the City's prior written approval.
 - 5.2 **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3 **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.

6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

City OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS FOR WATER DISTRIBUTION ANALYSIS I-205 PARCELS M1 AND M2 AND INFILL PARCELS 7 AND 13
Page 3 of 6

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

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

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

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

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

10. **INSURANCE.**

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

City OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN
PROFESSIONALS FOR WATER DISTRIBUTION ANALYSIS I-205 PARCELS M1
AND M2 AND INFILL PARCELS 7 AND 13
Page 4 of 6

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

City OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN
PROFESSIONALS FOR WATER DISTRIBUTION ANALYSIS I-205 PARCELS M1
AND M2 AND INFILL PARCELS 7 AND 13
Page 5 of 6

12. MISCELLANEOUS.

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

To City:

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

To Consultant:

Mr. Charles Duncan
President
West Yost Associates
2020 Research Park Drive, Suite 100
Davis, CA 95618

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

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

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

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

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

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

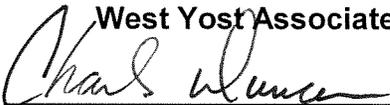
City OF TRACY -- PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS FOR WATER DISTRIBUTION ANALYSIS I-205 PARCELS M1 AND M2 AND INFILL PARCELS 7 AND 13
Page 6 of 6

- 12.7 **Compliance with the Law.** Consultant shall comply with all applicable and non-conflicting local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 12.8 **Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.
- 13. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

City of Tracy

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

Consultant
West Yost Associates


By: Charles Duncan
Title: President
Date: 2.4.14
Fed. Employer ID No. 68-0370826

Attest:

By: Sandra Edwards
Title: City Clerk
Date: _____

By: Elizabeth M. Nilsen
Title: Chief Financial Officer
Date: 
2/4/14

Approved As To Form:

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

**Proposed Scope of Work for
Water Distribution Analysis I-205
Parcels M1 And M2 and Infill Parcels 7 and 13**



SCOPE OF WORK

Task 1. Perform Water System Analysis

West Yost Associates (Consultant) will provide a water system hydraulic analysis of the proposed Project's hydraulic impact on the City's existing water system. The City's water system hydraulic model will be used to evaluate the ability of the City's existing water infrastructure to provide minimum required pressures and flows to the Project under various demand conditions, including but not limited to a maximum day plus fire flow condition. If minimum system pressures and/or flows cannot be maintained, then Consultant will determine the on-site water pipeline infrastructure sizing and alignments, and/or other water system infrastructure or system modifications/improvements that will mitigate identified issues.

Results will be provided in a 4 to 6 page Technical Memorandum to the City. No infrastructure costs estimates will be developed as part of this proposed scope of work. This proposed scope of work specifically excludes the evaluation of any Project phasing, and also does not include an evaluation of supply availability, storage requirements, booster pumping capacity and water treatment plant or SSJID treatment capacity.

Estimated Fee for Task 1 Services, \$15,200

SCHEDULE

Consultant will complete the Technical Memorandum identified in this Agreement five (5) weeks after receiving written authorization to proceed with this Agreement, and receipt of all requested information, from the City.

This requested information includes, but is not limited to, the following:

- Scaled drawings of the location and pipeline size of any and all existing pipeline turnouts (or stub-outs) for the Project that are already in place,
- The proposed on-site roadway alignments (in an electronic shape file format),
- The location and sizing of proposed buildings,
- Original land use designations, and
- Any other subsequent data requests.

Proposed Scope of Work for
Water Distribution Analysis I-205
Parcels M1 And M2 and Infill Parcels 7 and 13

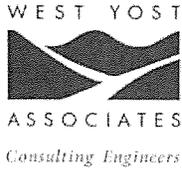
Exhibit "A"



PERSONNEL

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

- Charles Duncan (President, Authorized Representative);
- Gerry S. Nakano (Vice President)
- Elizabeth Drayer (Engineering Manager)
- Jim Connell (Principal Engineer)
- Amy Kwong (Senior Engineer)
- Irene Suroso (Senior Engineer)
- Brenda Estrada (Senior Engineer)
- Doug DeMaster (Senior Engineer)
- Shannon Barcal (Engineer II)
- Brian Coox (Engineer II)
- Christine Encelan (Administrative IV);
- Angelica Perea (Administrative III);
- Nikki Pacheco (Administrative III); and
- Tracy Baker (Administrative III).



WEST YOST ASSOCIATES, INC. 2014 Billing Rate Schedule

Exhibit "B"

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

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

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

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

Mileage will be billed at the current Federal Rate.

Subconsultants will be billed at actual cost plus 10%.

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

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

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

*This schedule will be updated annually.

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

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

SURVEYING AND EQUIPMENT CHARGES

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

EQUIPMENT CHARGES

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

* This schedule will be updated annually.

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
CH2MHILL (CH-2014)**

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and **CH2MHILL, Inc** ("Consultant").

RECITALS

- A. Consultant is a planning, engineering, and construction management company with planners, registered professional engineers and construction managers.
- B. City of Tracy is in need of various planning, engineering and construction management services for City projects as well as projects requested by new development.
- C. Consultant is familiar with City of Tracy's utility system and Consultant represents it has the qualifications, skills and experience to provide these services and is willing to provide services according to the terms of this Agreement.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

**City OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
CH2MHILL (CH-2014)**

Page 2 of 9

3. **INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant.
4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.
5. **COMPENSATION.**
 - 5.1. **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "B," and Not to Exceed the amount set forth in each individual Task Order. Billing rates may be adjusted in an amount not to exceed 4.5% percent per year, upon City's receipt of written notice from the Consultant. Consultant's billing rates, and Not to Exceed amount, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.
 - 5.2. **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3. **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the prior written consent of City.
8. **INDEMNIFICATION.** CONSULTANT shall indemnify, defend, and hold harmless the CITY (including its elected officials, officers, agents, volunteers, and employees)

City OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

CH2MHILL (CH-2014)

Page 3 of 9

from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of services under this Agreement.

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

10. **INSURANCE.**

10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.

10.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

10.3 **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.

10.5 **Professional Liability** coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per occurrence.

10.6 **Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:

10.6.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

10.6.2 For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

10.7 **Notice of Cancellation.** Consultant shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Consultant shall immediately obtain a replacement policy.

10.8 **Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

10.9 **Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of

City OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

CH2MHILL (CH-2014)

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insurance, in a form satisfactory to the City Attorney, no later than five days after the execution of this Agreement.

10.10 Substitute Certificates. No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.

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

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

12. MISCELLANEOUS.

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

To City:

Andrew Malik
Director of Development and
Engineering Services Department
333 Civic Center Drive
City of Tracy, CA 95376

To Consultant:

Vijay Kumar, P.E.
Vice President
CH2M HILL
2485 Natomas Park Drive
Suite 600
Sacramento, CA 95833

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

City OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

CH2MHILL (CH-2014)

Page 5 of 9

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

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City OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT

CH2MHILL (CH-2014)

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

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

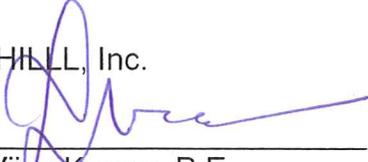
City of Tracy

CH2MHILL, Inc.

By: Brent H. Ives

Title: Mayor

Date: _____

By:  Vijay Kumar, P.E.

Title: Vice President

Date: 2/18/14

Fed. Employer ID No. 59-0918189

Attest:

By: Sandra Edwards

Title: City Clerk

Date: _____

Approved As To Form:

By: Daniel G. Sodergren

Title: City Attorney

Date: _____

Exhibits:

- A. Scope of Services, Personnel
- B. Billing rates

EXHIBIT “A”
SCOPE OF SERVICES

1. SCOPE OF SERVICES. The general scope of services represents an outline of the services, which the CITY anticipates to be performed. The precise scope of services to be incorporated into the Master Professional Services Agreement shall be more particularly described in individual Task Orders and shall be negotiated between the CITY and the CONSULTANT.

1.1 PROJECT Objectives. The CITY’s primary objective for this Consultant Agreement is to obtain professional services for Various Utility Projects for City projects and other projects needed by the development community.

1.2 General Scope of Work. Services for the Various Utility Projects may include but not limited to the following:

1.2.1 Various studies including capacity analysis, development, environmental, sewer system upgrade and replacement studies.

1.2.2 The planning, design, environmental documentation, preparation of construction documents and construction management services for various water, storm water, sanitary sewer collection systems, including gravity and force main pipelines and lift stations.

1.2.3 Projects may consist of new, replacement and upgrades to the sanitary sewer systems and facilities.

1.2.4 The Consultant’s scope of services may also include some of the following:

1.2.4.1 RECONNAISSANCE. Site Investigation/Field Review:

Perform site reconnaissance, including assembling a photographic record of the site.

Perform site research including documentation of existing utilities, surrounding conditions, including consideration of available documents for the adjacent properties.

Perform a field survey of the site including preparation of topographic plans and base map in AutoCAD format.

Coordinate with property owners, City and County staff, and utility agencies during the topographic surveying.

Maintain coordination with utility agencies throughout the Project and obtain confirmation of utility points of connection.

Review utility and civil plans of the cross streets to locate existing utility facilities.

Identify and resolve the point(s) of conflict related to the new improvements.

Perform soil investigation for the design of foundations, pavements, etc.

Perform “potholing”, if necessary, to verify the exact location of the underground utility lines.

1.2.4.2 SURVEY AND SOILS INVESTIGATION. CONSULTANT shall perform surveys and soil investigations including investigation for possible soil contamination as necessary for the facilities proposed.

1.2.4.3 ENVIRONMENTAL SERVICES. CONSULTANT shall prepare any Environmental Documents that may be required for this project.

1.2.4.4 PREPARE DRAWINGS AND SPECIFICATIONS.

Prepare complete construction documents including calculations, technical specifications, plans, construction cost estimates; submit to permitting agencies with jurisdiction, and revise as necessary to gain approval.

Prepare 22"x34" drawings on Mylar in AutoCAD format, with City of Tracy title blocks. Quality control procedures should be presented.

Prepare technical specifications for incorporation (as Division III) into the CITY's "Boiler Plate", Divisions I, II, & IV, by CITY staff.

Prepare statements of probable construction cost.

Submit five (5) sets of plans, specifications, schedule, and statement of probable construction cost at the 60, 90, 100 percent, and final completion points to the City. Respond to comments received from the City. Plan on attending four meetings with the City to review comments.

1.2.4.5 BID PERIOD SERVICES.

Attend one pre-bid and one pre-construction meeting in Tracy.

Any amendments to the design work during the bid period shall be prepared jointly by the Consultant and the City for distribution by the City.

1.2.4.6 SERVICES DURING CONSTRUCTION.

Answer questions; make interpretations and comments on the contractor's shop drawings.

An amendment to the contract may be issued for design support services during construction.

The scope of work does not include design elements, or preparation of Contract Change Orders, resulting from the identification of any contaminated soils during design or construction.

1.3 The City reserves the right to add or delete any of the services listed above from the proposed scope of work at any time during the tenure of this Master Professional Services Agreement. Additional services shall be more particularly described in individual Task Orders subject to the written approval of the CITY and CONSULTANT.

Personnel:

Vijay Kumar, Principal In Charge
Steve DeCou, Senior Reviewer and QA/QC Lead
Ben Romero, Project Manager
Allan Highstreet, Project Manager
Tim Bauer, Project Manager
Jenny Reina, Process Engineer
Dan Robillard, Mechanical Engineer
Jason Junkert, Design Engineer
Brad Memeo, Civil Engineer
Andrew Finney, Geotechnical Engineer

EXHIBIT “B”

2014 BILLING RATE SCHEDULE

Classification	Hourly Rate
Office/Clerical/Accounting	\$91
Engineering/Environmental Tech 1	\$79
Engineering/Environmental Tech 2	\$89
Engineering/Environmental Tech 3	\$118
Engineering/Environmental Tech 4	\$137
Engineering/Environmental Tech 5	\$160
Staff Engineer 1*	\$118
Staff Engineer 2*	\$137
Associate Engineer*	\$154
Project Engineer*/Associate Project Manager	\$189
Engineer Specialist*/Project Manager	\$214
Sr. Technologist*/Sr. Project Manager	\$234
Principal Technologist/Principal Project Manager	\$263
Principal -In-Charge/Principal Program Manager	\$279

1. These rates for all types of labor including permanent, part-time, flex and contract employees and effective through the last day of December and new billing rates will be in effect starting January 1 of the following year.
2. A markup of 10% shall be applied to all Other Direct Costs and Expenses
3. An additional premium of 25% shall be added to the above rates for Expert Witness and Testimony services

**CITY OF TRACY
TASK ORDER NO. 01 OF
MASTER PROFESSIONAL SERVICES AGREEMENT (CH-2014-01)
Wastewater System Review for M1 and M2 Parcels**

This Task Order is entered into between the City of Tracy, a municipal corporation ("City"), and CH2MHILL, Inc. ("Consultant").

RECITALS

- A. Consultant is a planning, engineering, and construction management company with planners, registered professional engineers and construction managers.
- B. City of Tracy is in need of various planning, engineering and construction management services for City projects as well as projects requested by new development.
- C. Consultant is familiar with City of Tracy's utility system and Consultant represents it has the qualifications, skills and experience to provide these services and is willing to provide services according to the terms of the master agreement.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **INCORPORATION OF MASTER AGREEMENT.** This Task Order incorporates by reference the terms set forth in the Master Agreement for this project, unless specifically modified by this Task Order.
- 2. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit "A" attached and incorporated by reference.
- 3. **TIME OF PERFORMANCE.** Consultant shall begin performance, and shall complete the required services no later than the dates set forth in Exhibit "A."
- 4. **COMPENSATION.** For services performed by Consultant in accordance with this Task Order, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B," attached and incorporated by reference. Consultant's fee for this Task Order is Not to Exceed twenty eight thousand eight hundred ten dollars.

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CITY OF TRACY
CH2M HILL, INC. Task Order CH-2014-01
Wastewater Collection and Treatment System
Analysis for I-205 Parcels M1 AND M2

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

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

City of Tracy

CH2MHILL, Inc.

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

By:  Vijay Kumar, P.E.
Title: Vice President
Date: 2/18/14
Fed. Employer ID No. 59-0918189

Attest:

By: Sandra Edwards
Title: City Clerk
Date: _____

Approved As To Form:

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

Exhibits:

- A. Scope of Services
- B. Billing rates

EXHIBIT "A"

Scope of Services

1. PROJECT UNDERSTANDING

City of Tracy (CITY) has received request from the owners of I-205 Parcels M1 and M2 and adjoining properties to conduct an analysis of the wastewater collection and treatment systems that are needed to provide wastewater services to the above parcels. These parcels are shown on Figure 1. It is assumed that the land use is light industrial.

CONSULTANT services are needed to perform wastewater system analysis to identify off-site wastewater system and associated costs.

A detailed analysis is needed to determine

1. Existing available wastewater collection and transmission capacity
2. Facility upgrades that are needed to provide additional incremental capacity
3. Associated cost of additional incremental capacity

This analysis will NOT designate or allocate sewer capacity to any current or proposed project since it will be done by the City of Tracy.

SCOPE OF SERVICES: CONSULTANT shall prepare a Technical Report that includes the following information:

TASK 1: Estimate Existing and Proposed Wastewater Flows

CONSULTANT shall develop proposed average and peak wastewater flows from the proposed development. Unit flow rates and infiltration and inflow estimates will be used from other recent wastewater system analyses such as 2012 Wastewater Master Plan and City Standards.

TASK 2: Wastewater Collection System Analysis

Based on proposed average and peak flow rates, identify current available capacity in the existing City wastewater collection system and determine how much additional conveyance capacity is available for the proposed projects. Evaluate whether the proposed projects could connect to the existing City sewer system. If sufficient conveyance capacity is not available, identify required incremental improvements to the existing sewer system. Identify the next logical increment such as upgrade of existing sewer line or installation of a parallel sewer line. Identification includes the general location of upgrade or new facilities and it will be conceptual in nature. General information about the location and size of the sewer line will be provided. Specific details such as coordinates of new facilities or invert information is excluded and it is assumed that it will be completed as part of the future design efforts. If existing capacity is available, then identify other options such as installation of new facilities or diverting current or future flows to other sewer tributary areas.

TASK 3: Wastewater System Cost and Review Meetings

Compute the estimated wastewater system cost for the above improvements. There is no guarantee that additional sewer capacity is available within the existing WWTP Capacity. If existing system has insufficient capacity, an expansion fee is required to make improvements to the existing WWTP to meet the proposed NPDES permit conditions. The State is requiring an expansion of the existing WWTP to improve water quality in the Delta since treated effluent from the existing WWTP is being discharged to the Old River. This task would identify the fair share portion of the PROJECT's contribution to the WWTP upgrade.

Attend a total of two meetings with the City staff to discuss various implementation options.

II. COMPLETION OF THE SCOPE OF SERVICES. CONSULTANT shall complete the Technical Report identified in this Exhibit "A" within the following time frame:

- A.** No later than Sixty (60) days after the receipt of this signed agreement, one electronic copy of the draft Technical Report will be provided by CONSULTANT to CITY for internal review and comment.
- B.** No later than 15 working days after receipt of direction, if any, from the CITY regarding revisions to the draft Technical Report, the CONSULTANT shall provide the CITY with the final Technical Report for distribution to appropriate parties.

Exhibit "B"

Fee Estimate

Wastewater Collection and Treatment System Analysis for I-205 Parcels M1 AND M2										
No.	Tasks	Sr. Project Consultant	Project Engineer	Staff Engineer	Engineering/Env. Tech 3	Office/ Clerical/ Accounting	Consultant Labor	Expense s (10% mark up included)	Total Cost	
		\$263	\$156	\$138	\$119	\$91				
1	Estimate Proposed Wastewater Flows	2	4	6	4	4	\$2,820	\$570	\$3,390	
2	Wastewater Collection System Analysis	12	24	40	16	10	\$15,240	\$900	\$16,140	
3	WW Fee and Review Meetings	12	12	12	12	4	\$8,480	\$800	\$9,280	
	Total	26	40	58	32	18	\$26,540	\$2,270	\$28,810	

Notes: This fee estimate assumes all work is completed in calendar year 2014. Costs for individual tasks may be more or less than the total for each task. However, the total fee shall not exceed the fee authorized by the City without City's written directive.

CITY OF TRACY
TASK ORDER NO. 2
“Program Management Services for Tracy’s Development Program”
MASTER PROFESSIONAL SERVICES AGREEMENT HA13-01
ON-CALL PROGRAM MANAGEMENT SERVICES

THIS Task Order is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter “CITY”), and HARRIS & ASSOCIATES (hereinafter “CONSULTANT”).

RECITALS

- A. CONSULTANT services are needed to create finance plan for the I-205 M1 and M2 parcels as well as Infill parcels 13 and 7. In addition, CONSULTANT will provide oversight to the city's other technical consultants throughout the preparation of the their respective technical studies.
- B. CONSULTANT is currently providing these services and is familiar with the City's existing infrastructure and finance plans.
- C. CITY and CONSULTANT executed MPSA HA13-01 to provide program management services including management of infrastructure master plans and similar services on multiple projects for a period of two years with an optional one year extension on an as needed basis.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **INCORPORATION OF MASTER AGREEMENT.** This Task Order hereby incorporates by reference all terms and conditions set forth in the Master Agreement, MPSA HA13-01, unless specifically modified by this Task Order.
- 2. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit “A” attached hereto and incorporated herein by reference.
- 3. **TIME OF PERFORMANCE.** CONSULTANT shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit “A.”
- 4. **COMPENSATION.** For services performed by CONSULTANT in accordance with this Task Order, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit “B,” attached hereto and incorporated herein by reference. CONSULTANT's fee for this Task Order is Not to Exceed **\$19,000.**
- 5. **SIGNATURES.** The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the CONSULTANT and the CITY. This Task Order shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
I-205 Parcels M1 and M2 and Infill Parcels 7 and 13
Page 2 of 4

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

CITY OF TRACY

CONSULTANT
Harris & Associates

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


By: Robert Guletz
Title: Vice President
Date: 2/6/2014

Attest:

Fed. Employer ID No. 94-2385238

By: Sandra Edwards
Title: City Clerk
Date: _____


By: Gary Wohl
Title: Chief Financial Officer
Date: 2/6/14

Approved As To Form:

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

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
I-205 Parcels M1 and M2 and Infill Parcels 7 and 13
Page 3 of 4**

EXHIBIT 'A'

SCOPE OF SERVICES

CONSULTANT will complete the following items as part of the scope of work of this task order:

- Coordinate with the city's other technical consultants on the completion of the studies for I-205 parcels M1 and M2 and Infill parcels 7 and 13.
- Participate in technical review of infrastructure analysis prepared by City's technical consultants for water, wastewater, storm drainage, and traffic.
- Calculate the cost of needed infrastructure and determine the fair share of the facilities for each of the studied parcels.
- Review the I-205 Cost Allocation spreadsheet to determine which fees adequately apply to this parcel and which other fees need to be calculated and/or adjusted.
- Complete the Finance Plan for the M1 and M2 Parcels in a format consistent with the other I-205 parcels.
- Attend one (1) in person meeting and up to four (4) conference calls with the City, developers, and city's other technical consultants.
- Prepare the agenda item and attend a City Council meeting for adoption of the finance plan.

Completion of the Scope of Services

CONSULTANT shall provide the scope of services as defined in Exhibit 'A' in accordance with the attached hourly rates for not to exceed amount of \$19,000. It is anticipated that the scope shall require approximately 100 hours of work over a 4 month timeframe. Should the level of effort exceed that or the timeframe be significantly extended, an amendment will be required.

PERSONNEL

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

Robert Guletz (Project Director)
Alison Bouley (Project Manager)

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
I-205 Parcels M1 and M2 and Infill Parcels 7 and 13
Page 4 of 4**

**EXHIBIT B
MASTER PROFESSIONAL SERVICES AGREEMENT HA 13-01
BILLING RATE SCHEDULE**

Effective January 1 - December 31, 2014

Hourly Rates of Named "Key Team Members" (2014):

Alison Bouley	Project Manager	\$190
Robert Guletz	Project Director	\$225

Hourly Rate Ranges (2013):

<u>Engineering and Municipal Services Groups</u>	<u>Hourly Rate Range</u>
Project Directors	\$190-225
Project Managers	\$150-210
Project Engineers	\$125-195
Technical Support	\$75-130
Administration	\$65-95

Construction / Project Management Group

	<u>Hourly Rate Range</u>
Project Directors	\$190-225
Project Managers	\$150-210
Construction Managers	\$125-200
Resident Engineers	\$150-200
Construction Engineers	\$110-200
Scheduling Engineers	\$110-190
Cost Engineers	\$110-190
Inspectors*	\$100-160
Technicians	\$90-160
Administration	\$65-95

Notes: Rates are subject to adjustment due to promotions during the effective period of this schedule. A new rate schedule will become effective January 1, 2015 and on the 1st of January every year thereafter. Hourly rates include most direct costs such as mileage, equipment, computers, communications and reproduction (except large quantities such as construction documents for bidding purposes). Harris reserves the right to convert this rate schedule to a direct- and indirect-costs format during the 2014 calendar year.

*Inspectors working in the State of California are subject to the Prevailing Wage Rates established for that area.

RESOLUTION 2014-_____

APPROVING PROFESSIONAL SERVICE AGREEMENTS (PSAs) WITH TJKM TRANSPORTATION CONSULTANTS (TRAFFIC), AND WEST YOST AND ASSOCIATES (WATER), TASK ORDER NO. 6 TO MASTER PSA (MPSA) WITH STORM WATER CONSULTING, INCORPORATED (STORM DRAINAGE), MPSA (CH-2014) AND TASK ORDER NO. 1 (CH-2014-01) WITH CH2MHILL (WASTEWATER), AND TASK ORDER NO. 2 TO MPSA (HA13-01) WITH HARRIS AND ASSOCIATES (PROGRAM MANAGEMENT) FOR COMPLETION OF VARIOUS TECHNICAL ANALYSES RELATED TO THE INDUSTRIAL DEVELOPMENT OF I-205 PARCELS M1 AND M2, AND AUTHORIZING THE MAYOR TO SIGN THE AGREEMENTS

WHEREAS, In 1990, Infrastructure analyses were completed to analyze the infrastructure needs of certain properties within the I-205 Specific Plan Area, and

WHEREAS, The owners of I-205 Parcels M1 and M2 did not participate in those previously completed technical analyses, and now wish to proceed with the evaluation of infrastructure needs of these two industrial parcels, and

WHEREAS, The technical analyses will identify the necessary improvements for roadways, storm drainage, water distribution and treatment, and sewer conveyance and treatment, that are required to be designed and constructed to serve the industrial project being proposed on these two parcels, and

WHEREAS, The City's consultants have prepared the scope of work and signed the Professional Services Agreement for their respective tasks, and

WHEREAS, City staff has reviewed the scope of work of the City's Consultants and found them to be complete, and

WHEREAS, The total cost of providing engineering services and completing the required tasks shall not exceed \$80,010.00, on a time and material basis, and

WHEREAS, The amount to complete each task shall be as follows: \$12,000 for traffic, \$15,200 for water, \$5,000 for storm drainage, \$28,810 for sewer, and \$19,000 for program management, and

WHEREAS, There is no impact to the General Fund. The owners of I-205 Parcels M1 and M2 paid the City \$80,010 for the cost of the technical analyses;

NOW, THEREFORE, BE IT RESOLVED, That City Council approve Professional Service Agreements (PSAs) with TJKM Transportation Consultants (Traffic), and West Yost and Associates (Water), Task Order No. 6 to Master PSA (MPSA) with Storm Water Consulting, Incorporated (Storm Drainage), Master PSA (CH-2014) and Task Order No. 1 to MPSA (CH-2014-01) with CH2MHill (Wastewater), and Task Order No. 2 to MPSA (HA13-01) with Harris and Associates (Program Management) for completion of various technical analyses related to the industrial development of I-205 parcels M1 and M2 located on Arbor Road, for a not to exceed amount of \$80,010, and authorize the Mayor to execute the agreements.

The foregoing Resolution 2014 _____ was adopted by the Tracy City Council on the 4th day of March 2014 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 3

REQUEST

PUBLIC HEARING TO CONSIDER THE ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME INVESTMENT PARTNERSHIP PROGRAM (HOME) FUNDS FOR FISCAL YEAR 2014-2015

EXECUTIVE SUMMARY

Consider and approve the allocation of Community Development Block Grant (CDBG) and Home Investment Partnership Program (HOME) funds for fiscal year (FY) 2014-2015.

DISCUSSION

Community Development Block Grant (CDBG) funds are allocated to cities and counties by the United States Department of Housing and Urban Development (HUD) for use in projects, programs, and services that demonstrate a benefit to low and moderate income individuals and families. Applicants must meet one of HUD's National objectives and criteria for eligibility.

During FY 2008-2009, City Council directed staff to revise the CDBG process so that those eligible applications that best address the local needs of the Tracy community would receive priority for funding. On November 3, 2010, City Council approved the following local priorities: 1) economic development/job creation, 2) emergency food and shelter, 3) domestic violence services, and 4) senior/adult services. In order to encourage meaningful citizen involvement, public examination, and appraisal of the process, as well as enhance program accountability, a subcommittee of the Parks and Community Services Commission was established to evaluate the CDBG applications and make funding allocation recommendations (Attachment A: Summary of Previous Allocations).

The estimated amount of CDBG funds allocated to the City of Tracy, as a subrecipient of San Joaquin County, is \$457,746 for FY 2014-2015. HUD regulations state that funding for activities in the Public Services category cannot exceed 15% of the City's annual CDBG allocation. Therefore, the Public Services category is limited to an estimated maximum allocation of \$68,661, leaving a balance of \$389,085 to be allocated in the Public Facilities and Economic Development categories for FY 2014-2015.

Additionally, the City is also estimated to receive \$65,648 in federal Home Investment Partnership Program (HOME) funds, which are intended for general housing activity types to include: homeowner and rental construction and/or rehabilitation and first-time homebuyer assistance.

CDBG and HOME applications for FY 2014-2015 were made available on December 18, 2013, with a submittal deadline of January 15, 2014. Staff held a public meeting on January 8, 2014, to answer questions regarding the application requirements.

CDBG regulations list several categories for proposal requests, and in some cases, specify spending limitations. The City received 11 applications in the CDBG - Public Services category, three applications in the CDBG - Public Facilities category, two applications in the CDBG – Economic Development category, and one application in the HOME funds category.

The CDBG subcommittee conducted a public meeting on Thursday, January 23, 2014 to consider the applications and make funding allocation recommendations.

The Parks and Community Services Commission conducted a public meeting on Thursday, February 6, 2014, to consider the recommendations made by the CDBG subcommittee. Following a discussion by the Commissioners and comments by the public, the Parks and Community Services Commission made the following recommendations:

CDBG FUNDS - PUBLIC SERVICES CATEGORY (15% Cap): \$68,661

ORGANIZATION NAME	PROJECT TITLE/DESCRIPTION	FUNDING REQUESTED	FUNDING RECOMMENDED
Coalition of Tracy Citizens to Assist the Homeless	Operational Costs: Volunteer Reimbursement & Encouragement	6,467	4,000
Emergency Food Bank and Family Svc. Of SJC	Mobile Farmer's Market	2,000	2,000
HSA: Aging & Community Svc.	Home Delivered Meal Program	9,000	6,433
McHenry House Tracy Family Shelter	Family Crisis Intervention Program	25,000	7,000
Second Harvest Food Bank of SJC/Stanslaus	Food Assistance	10,000	6,000
Sow A Seed Community Foundation	Bright Futures Youth Development Program	38,900	6,000
Tracy Interfaith Ministries	Hunger Awareness & Food Distribution	15,000	12,000
Tracy NorCal Trojans	Low-Income Operations	4,500	0
Tracy Volunteer Caregivers	Volunteer & Client Services	7,840	5,000
VBR Foster Family Agency	Domestic Violence Services	10,000	5,000
Women's Center – Youth & Family Svc.	South County Services & Shelter	10,000	5,000
San Joaquin Fair Housing Authority	Fair Housing Activities	10,228	10,228
TOTAL AMOUNTS:		138,707	68,661

**CDBG FUNDS - PUBLIC FACILITIES & ECONOMIC DEVELOPMENT CATEGORIES:
 \$389,085**

ORGANIZATION NAME	PROJECT TITLE/DESCRIPTION	FUNDING REQUESTED	FUNDING RECOMMENDED
City of Tracy	ADA Door Modifications on Various City Buildings: Phase 1	348,126	243,747
City of Tracy	Downtown Façade Improvement Program	100,000	35,959
Coalition of Tracy Citizens to Assist the Homeless	Emerson House Renovation/Repair	56,216	23,500
McHenry House Tracy Family Shelter	Repl. 6 Bedroom Ceilings & Install HVAC in 8 Apts.	80,879	80,879
Small Business Development Center	SBDC Consulting & Training	10,000	5,000
TOTAL AMOUNTS:		458,126	389,085

Note: The CDBG Subcommittee initially recommended fully funding The Coalition of Tracy Citizens to Assist the Homeless Emerson House Renovation/Repair project using HOME Funds in order to maximize funding to as many applicants as possible. Unfortunately, after the CDBG Subcommittee meeting on January 23, 2014, the project was determined to be ineligible for HOME funding. As a result, the application was placed for consideration in the CDBG – Public Facilities category. The application was being reviewed for CDBG funding eligibility by HUD at the time of the Parks and Community Services Commission meeting on February 6, 2014. On February 10, 2014, the County informed the City that the project would be eligible for funding should the applicant secure a 15-year lease prior to the March 4, 2014 City Council meeting. The City has received confirmation that a 15-year lease has been secured by the applicant making it eligible for CDBG funding.

HOME FUNDS: \$65,648 FOR FY2014-15

ORGANIZATION NAME	PROJECT TITLE/DESCRIPTION	FUNDING REQUESTED	FUNDING RECOMMENDED
Tri-Valley Housing Opportunity Center	Community Stabilization Program	15,500	0
City of Tracy	Down Payment Assistance Program	0	65,648
TOTAL AMOUNTS:		15,500	65,648

The Tri-Valley Housing Opportunity project is a duplication of services already provided by Visionary Home Builders (administered by the County). The County has informed City

staff that CDBG funds are not to be used for duplicate services. Therefore, the Parks and Community Services Commission recommend allocating the \$65,648 in HOME Funds to the City of Tracy Down Payment Assistance Program.

Each applicant awarded funding is required to sign an agreement with the City of Tracy to ensure that the funds are spent in the manner described in the applications (Attachment B: Form Agreement).

STRATEGIC PLAN

This agenda item supports the City Council's Quality of Life Strategic Plan through the implementation of the local priorities for CDBG funding.

FISCAL IMPACT

There will be no impact to the General Fund. The City of Tracy, as a subrecipient of San Joaquin County, will be allocated an estimated \$457,746 in CDBG funds for FY 2014-2015. The City will also be allocated an estimated \$65,648 in HOME funds.

RECOMMENDATION

That City Council, by resolution, allocate \$457,746 in Community Development Block Grant funds and \$65,648 in HOME funds for FY 2014-2015 pursuant to the recommendations listed in the attached resolution and authorize and direct the Development Services Director to execute the Form Agreements on behalf of the City.

Prepared by: Barbara Harb, Management Analyst
Scott Claar, Associate Planner

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

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

ATTACHMENTS

Attachment A: Summary of Previous Allocations
Attachment B: Form Agreement

NEIGHBORHOOD PRESERVATION
CDBG FINANCIAL STATUS REPORT
CITY OF TRACY ALLOCATIONS

January 29, 2014

	DESCRIPTION	HUD AC.#	ORIGINAL ALLOCATION	TRANSFER ADD/(DEL)	ADJUSTED ALLOCATION	PROGRAM INCOME	UNLIQUIDATE ENCUMBRAN	AMOUNT EXPENDED	TOTAL % OBL. & EXP.	UNOBLIGATED BALANCE
10-01	Tracy Interfaith Ministries Food Closet	1952	6,965.21		6,965.21			6,965.21	100.00%	0.00
10-02	Meals on Wheels	1953	7,035.57		7,035.57			7,035.57	100.00%	0.00
10-03	Second Harvest Food Bank	1954	6,736.55		6,736.55			6,736.55	100.00%	0.00
10-04	San Joaquin Fair Housing	1898	10,000.00		10,000.00			10,000.00	100.00%	0.00
10-05	McHenry House	1955	7,316.99		7,316.99			7,316.99	100.00%	0.00
10-06	Nutrition on the Move Program	1956	2,000.00		2,000.00			2,000.00	100.00%	0.00
10-07	Women's Center of SJ	1957	5,857.11	1,178.46	7,035.57			5,689.57	80.87%	1,346.00
10-08	Boys & Girls Club Outreach Program	1958	5,857.11		5,857.11			5,857.11	100.00%	0.00
10-09	Downtown ADA Sidewalk Improvement Project	1959	240,619.45	-240,619.45	0.00				0.00%	0.00
10-10	Tracy Caregivers	1960	6,208.89	-6,208.89	0.00				#DIV/0!	0.00
10-11	VBR Foster Family Agency	1961	6,156.12		6,156.12			6,156.12	100.00%	0.00
10-12	New City America Consulting Firm	1962	70,000.00	-22,000.00	48,000.00			48,000.00	100.00%	0.00
10-13	Boys & Girls Club Basketball Hoop Replacement	1963	60,000.00		60,000.00		24,128.60		40.21%	35,871.40
10-14	Disability Resource Agency (DRAIL)	1964	5,000.00	-51.30	4,948.70			4,948.70	100.00%	0.00
10-16	McHenry House Apartment Improvements	1965	0.00	5,200.00	5,200.00			5,200.00	100.00%	0.00
	2010 ALLOCATION		439,753.00	-262,501.18	177,251.82	0.00	24,128.60	115,905.82		37,217.40
11-01	Tracy Interfaith Ministries Food Closet	2083	9,568.00	(147.00)	9,421.00			9,421.00	100.00%	0.00
11-02	Boys & Girls Clubs of Tracy-Expansion	2084	76,918.00	8,264.00	85,182.00			85,000.00	99.79%	182.00
11-03	Second Harvest Food Bank	2085	9,152.00		9,152.00			9,152.00	100.00%	0.00
11-04	San Joaquin Fair Housing	2001	10,127.00		10,127.00			10,127.00	100.00%	0.00
11-05	McHenry House-Fire Alarm System	2086	45,000.00		45,000.00			28,000.00	62.22%	17,000.00
11-06	EFB-Mobile Farmer's Market	2087	2,000.00	1,000.00	3,000.00			3,000.00	100.00%	0.00
11-07	Tracy City Center Association	2088	67,869.00	-67,869.00	0.00	PROJECT CANCELED BY HUD			#DIV/0!	0.00
11-08	Women's Center of SJ	2089	8,423.00		8,423.00			8,423.00	100.00%	0.00
11-09	Boys & Girls Club Outreach Program	2090	9,568.00	-147.00	9,421.00			9,421.00	100.00%	0.00
11-10	City of Tracy - Grande Theater ADA Entrance Do	2091	58,000.00		58,000.00		813.92	46,166.92	81.00%	11,019.16
11-11	Lolly Hansen Senior Center Outdoor Recreation	2092	52,606.00		52,606.00			52,606.00	100.00%	0.00
11-12	Meals on Wheels Program	2093	8,112.00		8,112.00			8,112.00	100.00%	0.00
11-13	McHenry House Family Shelter	2094	8,944.00		8,944.00			8,944.00	100.00%	0.00
	2011 ALLOCATION		366,287.00	-58,899.00	307,388.00	0.00	813.92	278,372.92		28,201.16
12-01	Tracy Interfaith Ministries Food Closet	2176	7,994.00	41.60	8,035.60			8,035.60	100.00%	0.00
12-02	Boys & Girls Club of Tracy-Outreach	2177	7,994.00	147.00	8,141.00			8,141.00	100.00%	0.00
12-03	Second Harvest Food Bank	2178	7,994.00		7,994.00			7,994.00	100.00%	0.00
12-04	San Joaquin Fair Housing	2179	10,228.00		10,228.00			9,278.67	90.72%	949.33
12-05	McHenry House-Operations	2180	7,994.00		7,994.00			7,994.00	100.00%	0.00
12-06	EFB-Mobile Farmer's Market	2181	2,000.00		2,000.00			2,000.00	100.00%	0.00
12-07	Farm to Family	2182	2,500.00		2,500.00			2,500.00	100.00%	0.00
12-08	Women's Center	2183	7,994.00		7,994.00			5,524.00	69.10%	2,470.00
12-09	CDBG Administration	2184	10,000.00		10,000.00				0.00%	10,000.00
12-10	Fall 2012 Grants Program	2185	150,069.00	-150,069.00	0.00				0.00%	0.00
12-11	Lolly Hansen Sr. Ctr. Outdoor Rec Area	2186	195,000.00	10,000.00	205,000.00			173,468.00	84.62%	31,532.00
12-12	Meals on Wheels Program	2187	7,994.00		7,994.00			7,869.00	98.44%	125.00
12-14	Boys & Girls Club of Tracy-Solar Panels	2199		336,319.00	336,319.00				0.00%	336,319.00
12-15	McHenry House-Retrofit	2200		107,864.00	107,864.00			96,615.00	89.57%	11,249.00
	2012 ALLOCATION		417,761.00	304,302.60	722,063.60	0.00	0.00	329,419.27		392,644.33
13-01	TRACY INTERFAITH - FOOD PANTRY	2301	10,000.00	105.40	10,105.40			10,105.40	100.00%	0.00
13-02	BOYS & GIRLS CLUB-ECO CLASSROOM	2287	75,000.00		75,000.00				0.00%	75,000.00
13-03	SECOND HARVEST FOOD BANK	2288	7,000.00		7,000.00				0.00%	7,000.00
13-04	SAN JOAQUIN FAIR HOUSING	2255	10,228.00		10,228.00			4,097.90	40.07%	6,130.10
13-05	MCHENRY HOUSE-OPERATIONS	2289	12,500.00		12,500.00			12,500.00	100.00%	0.00
13-06	EFB-MOBILE FARMER'S MARKET	2290	1,272.00		1,272.00				0.00%	1,272.00
13-07	CITY OF TRACY-SIDEWALK ADA IMPROVEME	2291	100,535.00		100,535.00				0.00%	100,535.00
13-08	WOMEN'S CENTER-OPERATIONS	2292	7,000.00		7,000.00				0.00%	7,000.00
13-09	TRACY INTERFAITH-SOLAR PANELS	2293	155,408.00		155,408.00			77,550.73	49.90%	77,857.27
13-10	VBR FOSTER FAMILY AGENCY	2294	5,000.00		5,000.00				0.00%	5,000.00
13-11	MCHENRY HOUSE-DAY CENTER REHAB	2295	30,353.00		30,353.00				0.00%	30,353.00
13-12	HSA-MEALS ON WHEELS	2296	9,000.00		9,000.00				0.00%	9,000.00
13-13	OPERATION EMERSON HOUSE RENOVATION	2297	20,000.00		20,000.00				0.00%	20,000.00
13-16	LOLLY HANSEN OUTDOOR RECREATION ARE	2300	14,450.00		14,450.00				0.00%	14,450.00
	2013 ALLOCATION		457,746.00	105.40	457,851.40	0.00	0.00	104,254.03		353,597.37
	GRAND TOTAL		10,420,175.37	597.23	10,420,772.60	35,207.01	24,942.52	9,610,546.33	92.46%	811,660.26
								PROGRAM INCOME		-25,645.00
								CDBG ALLOCATIONS		837,305.26
		439,330.00	-423.00							

AGREEMENT BETWEEN THE CITY OF TRACY
AND (NAME OF ORGANIZATION)
FOR COMMUNITY DEVELOPMENT BLOCK GRANT
FUNDING FOR FISCAL YEAR 2014-2015

THIS AGREEMENT entered into this ____ day of ____ 2014 by and between the City of Tracy (herein called the "Grantee") and (NAME OF ORGANIZATION) (herein called the "Subrecipient").

WHEREAS, the Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383; and,

WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds to the benefit of low-income residents;

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

A. Activities

The Subrecipient will be responsible for administering a CDBG fiscal year 2014 - 2015 program in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant Program:

Program Delivery

Activity #1 (Complete description of activity to be undertaken, what products or services are to be performed, where they are to be provided, for whom they are to be provided, how they are to be provided.)

Activity #2 (Same)

Activity #3 (Same)

General Administration

B. National Objectives

The Subrecipient certifies that the activities carried out with funds provided under this Agreement will meet one or more of the CDBG program's National Objectives: 1) benefit low/moderate income persons, 2) aid in the prevention or elimination of slums or blight, 3) meet community development needs having a particular urgency, as defined in 24 CFR Part 570.208.

C. Levels of Accomplishment

In addition to the normal administrative services required as part of this Agreement, the Subrecipient agrees to provide the following levels of program services:

<u>Activity</u>	<u>Units per Month</u>	<u>Total Units/Year</u>
-----------------	------------------------	-------------------------

D. Staffing (Provide list of staff and time commitments to be allocated to each activity specified in I.A.)

E. Performance Monitoring

The Grantee will monitor the performance of the Subrecipient against goals and performance standards required herein. Substandard performance as determined by the Grantee will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the 1st day of July 2014 and end on the 30th day of June 2015. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other assets, including program income.

III. BUDGET

Line Item:	Amount:
Salaries	\$
Fringe	
Office Space (Program Only)	
Utilities	
Communications	
Reproduction/Printing	
Supplies and Materials	
Mileage	
Audit	
Other (specify)	
Indirect costs (specify)	
TOTAL	\$

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. The Grantee and the Subrecipient must approve any amendments to this budget in writing.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this contract shall not exceed **\$(enter amount) (\$0.0 Facilities, Economic Development and/or \$0.0 Public Services)** Draw-downs for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph III and in accordance with performance.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in OMB Circular A-87, Section 85.20

V. NOTICES

Communication and details concerning this contract shall be directed to the following contract representatives:

	<u>Grantee</u>	<u>Subrecipient</u>
Name & Title:	Andrew Malik	(Name of Contact)
Address:	333 Civic Center Drive	Address#1
City, State, Zip:	Tracy, CA 95376	Address City, State
Telephone:	209-831-6490	Phone Number
Fax Number:	209-830-6837	Fax Number

VI. SPECIAL CONDITIONS (Special conditions specific to the particular activity or individual subrecipient)

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)). The Subrecipient also agrees to comply with all other applicable federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the Subrecipient is an independent subrecipient.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this contract.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall comply with the insurance and bonding requirements of 24 CFR Part 84.

F. Grantor Recognition

The Subrecipient shall insure recognition of the role of the grantor agency in providing services through this contract. All activities, facilities and items utilized pursuant to this contract shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this contract.

G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Suspension or Termination

Either party may terminate this contract at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. Partial terminations of the Scope of Service in Paragraph I.A above may only be undertaken with the prior approval of the Grantee. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Subrecipient under this Agreement shall, at the option of the Grantee, become the property of the Grantee, and the Subrecipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

The Grantee may also suspend or terminate this Agreement, in whole or in part, if the Subrecipient materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and the Grantee may declare the Subrecipient ineligible for any further participation in the Grantee's contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe the Subrecipient is in noncompliance with any applicable rules or regulations, the Grantee may withhold up to fifteen (15) percent of said contract funds until such time as the Subrecipient is found to be in compliance by the Grantee, or is otherwise adjudicated to be in compliance.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR Part 84 and agrees to adhere to the accounting principles required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record-Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the federal regulations specified in 24 CFR Part 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meet one of the National Objectives of the CDBG program;
- c. Records required determining the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR Part 570.502, and 24 CFR Part 84; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. Retention

The Subrecipient shall retain all records pertinent to expenditures incurred under this contract for a period of four (4) years after the termination of all activities funded under this Agreement. The retention period starts from the date of submission of the consolidated annual performance and evaluation report (CAPER), in which the specific activity is reported on for the final time. Records for non-expendable property acquired with funds under this contract shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four (4) years after he/she has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service and, in the case of minor, that of a responsible parent/guardian.

5. Property Records\Reversion of Assets

The Subrecipient shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8), as applicable.

- a. Reversion of assets. Any real property acquired or improved in whole or in part using CDBG funds in excess of \$25,000 shall be used as indicated in this agreement (including the beneficiaries of such use) for a period of at least five years after the closeout of the County's grant from which the assistance was provided.

Any changes in the use or planned use of assisted real property shall be bound by the requirements of 24 CFR 570.505.

6. Close-Outs

The Subrecipient's obligation to the Grantee shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records.

7. Audits and Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, their designees or the federal government, at any time during normal business hours, as often as the Grantee or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning subrecipient audits and, as applicable, OMB Circular A-133.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report monthly, on a monthly basis, all program income as defined at 24 CFR 570.500(a) generate by activities carried out with CDBG funds made available under this contract. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balance on hand. All unused program income shall be returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury is not program income and shall be remitted promptly to the Grantee.

2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this contract based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee in a form, similar to Appendix "A" on a calendar quarterly basis.

D. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein.

All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this contract.

2. Procurement Standards

The Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR Part 84, Procurement Standards, and shall subsequently follow, Property Management Standards as modified by 24 CFR 570.502(b)(6), covering utilization and disposal of property.

3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this contract.

IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Antidisplacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in § 570.606(d) governing optional relocation policies. The Subrecipient shall provide relocation assistance to persons (families, individuals, businesses, nonprofit organizations and farms) that are displaced as a direct result of acquisition demolition or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

X. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with local and state civil right ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing

and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

2. Nondiscrimination

The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The Subrecipient will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570.601 and 602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), which prohibits discrimination against the handicapped in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this contract.

B. Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. W/MBE

The Subrecipient will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the term "minority and female business enterprise" mean a business at least fifty-one (51) percent owned

and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. EEO/AA Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276a-276a-5; 40 USC 327 and 40 USC 276c) and all other applicable Federal, State and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this contract. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction,

renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with federal requirements adopted by the Grantee pertaining to such 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journeyworkers; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. "Section 3" Clause
a. Compliance

Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this contract is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project area and contracts for work in connection with the project awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing

within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency.

The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this contract without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Subrecipient further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the Subrecipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Grantee, or of any designated public agencies or subrecipients that are receiving funds under the CDBG Entitlement program.

5. Lobbying

The Subrecipient hereby certifies that:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and

d. Lobbying Certification - Paragraph d

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction

imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

7. Religious Organization

The Subrecipient agrees that funds provided under this contract will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 CFR 570.200(j).

XI. ENVIRONMENTAL CONDITIONS

A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this contract:

- Clean Air Act, 42 U.S.C., 7401, et seq.
- Federal Water Pollution control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R., Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), the Subrecipient shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this contract shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures might be undertaken.

D. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR, Part 800, Advisory Council on Historic Preservation

Procedures for Protection of Historic Properties, insofar as they apply to the performance of this contract.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

XII. DRUG FREE WORKPLACE

Subrecipient will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the subrecipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing an on-going drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The subrecipient's policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee engaged in the performance of the grant is given a copy of the statement required by paragraph 1;
4. Notifying the employee in the statement required by paragraph 1 that as a condition of employment under the grant the employee will:
 - a. Abide by the terms of the statement; and
 - b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the Grantee in writing, within ten calendar days after receiving notice under subparagraph 4. b. from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
6. Taking on the following actions, within 30 calendar days of receiving notice under subparagraph 4. b., with respect to any employee who is so convicted:
 - a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - b. Requiring such employee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6.

XIII. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

GRANTEE

SUBRECIPIENT

Andrew Malik,
Development Services Director

(Contact)
(Title)

RESOLUTION 2014- _____

ALLOCATING COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME INVESTMENT PARTNERSHIP PROGRAM (HOME) FUNDS FOR FISCAL YEAR 2014-2015

WHEREAS, Community Development Block Grant (CDBG) funds are allocated to cities and counties by the United States Department of Housing and Urban Development (HUD) for use in projects, programs, and services that demonstrate a benefit to low and moderate income persons, and

WHEREAS, The City of Tracy, as a subrecipient of San Joaquin County, will receive an estimated \$457,746 in CDBG funds and \$65,648 in HOME funds for fiscal year 2014-2015, and

WHEREAS, The application submittal period was from December 18, 2013 to January 8, 2014, and

WHEREAS, On February 6, 2014, the Parks and Community Services Commission conducted a public meeting to consider the applications and made funding allocation recommendations, and

WHEREAS, The City Council conducted a public hearing on March 4, 2014, to consider the applications for allocation of CDBG and HOME funds for FY 2014-2015, and

WHEREAS, The entities (the "Awardees") receiving CDBG funding are required to enter into an agreement with the City to ensure funds are spent in accordance with the applications that were evaluated to determine funding eligibility and amounts. A form agreement (the "Form Agreement") is attached to the staff report accompanying this resolution;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy does hereby award CDBG funds to the following Awardees in the following amounts:

San Joaquin Fair Housing (Public Services)	\$ 10,228
Coalition to Assist the Homeless (Public Services)	\$ 4,000
Emergency Food Bank (Public Services)	\$ 2,000
San Joaquin County Department of Aging (Public Services)	\$ 6,433
McHenry House (Public Services)	\$ 7,000
Second Harvest Food Bank (Public Services)	\$ 6,000
Sow A Seed Community Foundation (Public Services)	\$ 6,000
Tracy Interfaith Ministries (Public Services)	\$ 12,000
Tracy Volunteer Caregivers (Public Services)	\$ 5,000
VBR Foster Family Agency (Public Services)	\$ 5,000
Women's Center (Public Services)	\$ 5,000
City of Tracy (Public Facilities)	\$243,747
Coalition of Tracy Citizens to Assist Homeless (Public Facilities)	\$ 23,500
McHenry House Tracy Family Shelter (Public Facilities)	\$ 80,879
City of Tracy (Economic Development)	\$ 35,959
Small Business Dev. Center (Economic Development)	<u>\$ 5,000</u>
Total	\$457,746

BE IT FURTHER RESOLVED, That \$65,648 in HOME funds is awarded to the City of Tracy for the purposes of funding the Down Payment Assistance Program;

BE IT FURTHER RESOLVED, That the Form Agreement is approved and that the Development Services Director is authorized and directed to sign the final agreement on behalf of the City.

The foregoing Resolution 2014-_____ was adopted by the Tracy City Council on the 4th day of March 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 4

REQUEST

AUTHORIZE THE ESTABLISHMENT OF PREFERENTIAL PARKING ON TWELFTH STREET AND BERVERDOR AVENUE BETWEEN MAE AVENUE AND EAST STREET AS PILOT PROGRAM

EXECUTIVE SUMMARY

On January 21, 2014, City Council, after reviewing the options for introducing the ordinance for preferential parking, directed staff to implement preferential parking as a pilot program on Twelfth Street and Berverdor Avenue between Mae Avenue and East Street for the period of 18 months, ending in June 2015. In addition, Council directed that the implementation costs associated with this pilot program be borne by the City and that Council may extend or eliminate the program after its expiration based on a review performed by Engineering and Police Department staff in coordination with neighborhood residents.

DISCUSSION

On January 21, 2014, staff introduced an ordinance adding a chapter to the City of Tracy Municipal Code governing preferential parking. Staff intended to use the ordinance, if approved, to address the parking issues on Twelfth Street and Berverdor Avenue west of East Street. Council, after reviewing the parking issues on these streets, did not pursue the introduction of the proposed ordinance and directed staff to implement preferential parking as a pilot program on Twelfth Street and Berverdor Avenue between Mae Avenue and East Street through the school year ending in June 2015. Furthermore, Council directed that associated costs for establishing this pilot program, including installation of signs, issuance of permits and enforcement of preferential parking zones shall be borne by the City.

Engineering and Police Department staff have been working together to finalize the logistics to implement the Council directive and recommend establishing preferential parking between the hours of 7:00 a.m. to 4:00 p.m., Monday through Friday. The procedures for issuance of the parking permits, revocations, exemptions and violations of the permit parking are recommended to apply as follows:

Issuance of Parking Permits, Fees, Revocation

Parking permits. Within 30 days after the designation of a preferential parking area, the Chief of Police shall begin issuing parking permits to any residents of the area.

Each resident is entitled to:

1. One permit for each vehicle registered to the resident's address, up to a maximum of two permits. The resident shall affix the permit to the vehicle.
2. One guest permit although the City may issue an additional guest permit to a property owner who is not a resident

3. Up to 10 one-day guest permits for each special event held at a residence.
4. The permit does not entitle the permittee to violate other parking regulations, guarantee a parking space at any particular location, or permit parking for more than 72 hours.
 - a. *Fees.* There is no fee for the annual parking permit.
 - b. *Revocation.* The Chief may revoke the parking permit of any person or for any vehicle no longer eligible for a permit, and shall notify the resident in writing of the reason for the revocation.

Parking Permit Exemptions

The following vehicles are not subject to the parking permit requirement in a designated preferential parking area:

- a. An emergency vehicle (See Vehicle Code section 165).
- b. A delivery, utility or service vehicle providing service to a resident or facility in the preferred parking area.
- c. A vehicle used by a disabled individual meeting the requirements of Vehicle Code section 22511.5 and displaying a handicap plate or placard.

Violations

Within a preferred parking area, no person may:

- a. Park a motor vehicle during the limited times without a valid permit properly displayed. The Police Department is authorized to issue a parking citation for a violation,
- b. Falsely represent himself or herself as eligible for a parking permit, or furnish false information in a permit application,
- c. Allow the use of a parking permit on a vehicle other than that for which the permit was issued,
- d. Copy or produce a counterfeit parking permit, or display a counterfeit permit, or
- e. Sell, give or exchange a permit to another person.

Police Department staff has determined the parking violation fine for permit parking to be \$50.00 per violation.

During the items from the audience segment of the February 4, 2014, City Council meeting, students from Tracy High School spoke for the need of additional student parking in and around the school to mitigate concerns of the neighboring residents. They further stated that the interim solution being implemented by the City would not resolve the issue and parking issues will spill over to the adjoining neighborhoods. The students also stated that they would also convey their concerns to the Tracy Unified School Board.

The City also received two letters, one from a resident on Highland Street and the other from Franklin Street, requesting that the radius for the preferential parking be extended to their streets as well. They were concerned that their streets had been intentionally excluded from the proposed preferential parking areas.

Staff has been working with the neighborhood groups, including Highland Street, for the last several years. However, the feedback from Highland residents was not in favor of preferential parking on their street. There was only an isolated traffic improvement request from Franklin Street, which was followed up with no parking restrictions on a stretch of street which had been already approved and installed.

After reviewing concerns from the residents and students, staff believes that the Council direction to implement the pilot program for preferential parking on Twelfth Street and Berverdor Avenue will mitigate the immediate concerns and will allow staff to evaluate its effectiveness of preferential parking and its impacts on the neighboring areas.

Engineering and Police Department staff, with coordination from residents, will review the effectiveness of the preferential parking program and present the results to the Council after completion of the program. At such time, Council may extend or eliminate the preferential parking program based on the staff review and input from the neighborhood residents.

STRATEGIC PLAN

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

FISCAL IMPACT

It is anticipated that the implementation of the Preferential Parking Pilot Program will have a minimal impact on the Police Department budget; no additional funding is requested at this time. Required signage will be installed by Public Works Department and parking permits will be issued by Police Department staff.

RECOMMENDATION

That City Council, by resolution, authorize establishment of preferential parking on Twelfth Street and Berverdor Avenue between Mae Avenue and East Street through June, 2015.

Prepared by: Ripon Bhatia, Senior Civil Engineer

Reviewed by: Jeremy Watney, Police Captain
Kuldeep Sharma, City Engineer
Andrew Malik, Development Services Director
Gary Hampton, Chief of Police
Maria A. Hurtado, Assistant City Manager

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

RESOLUTION _____

AUTHORIZING THE ESTABLISHMENT OF PREFERENTIAL PARKING ON TWELFTH STREET AND BERVERDOR AVENUE BETWEEN MAE AVENUE AND EAST STREET AS A PILOT PROGRAM

WHEREAS, The City is authorized by California Vehicle Code section 22507 to provide for preferential parking areas, and

WHEREAS, On January 21, 2014, City Council, directed staff to implement preferential parking as a pilot program on Twelfth Street and Berverdor Avenue between Mae Avenue and East Street for the period of 18 months, ending in June 2015, and

WHEREAS, Council directed that the implementation costs associated with this pilot program be borne by the City, and

WHEREAS, That Council may extend or eliminate this preferential parking after June 2015, based on a review performed by Engineering and Police Department Staff in coordination with neighborhood residents, and

WHEREAS, Staff recommends establishing preferential parking between the hours of 7:00 a.m. to 4:00 p.m. on Monday through Friday, and

WHEREAS, Staff further recommends the procedures for implementation of the preferential permit parking, and

WHEREAS, City Council received comments from the Tracy High School students for providing additional parking in and around the school, and

WHEREAS, The City also received two letters from neighboring street residents to extend preferential parking on their streets, and

WHEREAS, After reviewing concerns of students and residents, staff recommends Council proceed with its original directions and review its options after June 2015;

NOW, THEREFORE, BE IT RESOLVED:

1. Establishing preferential parking area. The City Council authorizes the establishment of preferential parking on Twelfth Street and Berverdor Avenue between Mae Avenue and East Street through June, 2015, between the hours of 7:00 a.m. to 4:00 p.m. on Monday through Friday, in accordance with the following implementation procedures:

Parking permits. Within 30 days, the Chief of Police shall begin issuing parking permits to any residents of the area. Each Permit is valid through June, 2015.

Each resident is entitled to:

1. One permit for each vehicle registered to the resident's address, up to a maximum of two permits. The resident shall affix the permit to the vehicle.
2. One guest permit. The City may issue an additional guest permit to a property owner who is not a resident
3. Up to 10 one-day guest permits for each special event held at a residence.

4. The permit does not entitle the permittee to violate other parking regulations, guarantee a parking space at any particular location, or permit parking for more than 72 hours.

Fees. There is no fee for the annual parking permit.

Revocation. The Chief may revoke the parking permit of any person or for any vehicle no longer eligible for a permit, and shall notify the resident in writing of the reason for the revocation.

Exemptions. The following vehicles are not subject to the parking permit requirement in the designated preferential parking area:

- a. An emergency vehicle (See Vehicle Code section 165).
- b. A delivery, utility or service vehicle providing service to a resident or facility in the preferred parking area.
- c. A vehicle used by a disabled individual meeting the requirements of Vehicle Code section 22511.5 and displaying a handicap plate or placard.

Violations. Within the preferred parking area, no person may:

- a. Park a motor vehicle during the limited times without a valid permit properly displayed. The Police Department is authorized to issue a parking citation for a violation,
 - b. Falsely represent himself or herself as eligible for a parking permit, or furnish false information in a permit application,
 - c. Allow the use of a parking permit on a vehicle other than that for which the permit was issued,
 - d. Copy or produce a counterfeit parking permit, or display a counterfeit permit, or
 - e. Sell, give or exchange a permit to another person.
2. Penalty. The Penalty for violation of the parking permit area is \$50.00 for each violation.
 3. Signage. The City Public Works Department is directed to install the appropriate signage within 30 days.

* * * * *

The foregoing Resolution 2014-_____ was adopted by the Tracy City Council on the 4th day of March, 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 5

REQUEST

ACCEPT REPORT REGARDING THE CITY'S FINANCIAL CONTROLS AND REPORTING PRACTICES

EXECUTIVE SUMMARY

This report outlines the City's financial policies and procedures and the City's auditing process. This report also discusses the City's plan to complete a comprehensive review of its existing administrative and financial policies and improve its informational transparency and accessibility practices.

DISCUSSION

Background

Staff has recently received several Public Records Act requests related to credit card use by City employees as well as travel expenses and reimbursements. Therefore, staff wanted to take this opportunity to provide an overview of the City's existing financial policies and procedures; auditing process; and plan to enhance existing policies and procedures and public access to City financial information.

A. The City's Financial Policies and Procedures

The City has several policies and procedures related to financial reporting, budget practices, and internal controls. The City's financial and budget policies address issues such as reserves, capital projects, use of one-time resources, and debt issuance. Examples of administrative and internal control policies include cell phone use and stipends, credit card issuance, travel expense and reimbursement, petty cash handling, and purchasing practices.

B. The City's Auditing Process

The Tracy Municipal Code requires that all funds, accounts, and financial transactions of the City be subject to an annual audit by an independent certified public accountant that is selected by the City Council. The audit is performed in compliance with auditing standards generally accepted in the United States and standards applicable to financial audits contained in the *Government Auditing Standards*, issued by the Comptroller General of the United States.

The Municipal Code further specifies that after the close of the fiscal year, an annual financial report covering all funds and financial operations shall be prepared and submitted to Council. This annual report is known as the Comprehensive Annual Financial Report (CAFR) and is audited by the City's auditor, Moss, Levy, and Hartzheim, LLP.

The City's audit process is comprised of three phases; the first two involve an audit of the City's financial statements and internal controls. The third phase is a single audit or federal program compliance audit. The fourth, or last phase, involves the reporting of the audit results, findings, and management action plan.

1. Phase 1 & 2: Audit of City Financial Statements and Internal Controls

During the first phase of the financial statement audit, the auditors perform an interim audit, known as a preliminary survey, prior to the close of the fiscal year (May or June). The auditors evaluate potential risks to the City's financial system and documents existing internal controls. This process determines if the City's established policies and procedures are reliable and are being implemented correctly. The results of the testing determine the scope of the audited transactions that occur in phase two.

The second phase of the financial statement audit involves a field audit, which is performed shortly after the end of the fiscal year (July and August). During this phase, the auditors perform extensive testing of all financial transactions; the objective of the auditors is to ensure that the financial record keeping and internal processes are done accurately and in accordance with federal auditing standards. This phase also includes a more involved review of financial transactions and procedures regarding cash handling, purchase orders, travel reimbursements, and credit card purchases.

2. Phase 3: Single Audit

The third phase is a compliance audit of federal programs. This audit involves further transaction testing in accordance with the Office of Management and Budget (OMB) Circular A-133 and is conducted in January following the close of the fiscal year and issuance of the CAFR. The OMB Circular A-133 establishes auditing standards for federal programs used by local government. In addition to this audit, the City undergoes several other specialty audits, which include a review of transit funding, gas tax, and state grants.

3. Phase 4: Results and Reporting

In this final phase, the audit results, findings, and management action plan is compiled into a report and is distributed to applicable executive management and Council. Although follow-up is considered a separate process, it is an integral part of audit work. If a significant finding (correction) is made, it must be addressed by a target date as provided in the management action plan.

C. Next Steps

Although City auditors have indicated that the City's financial statements are presented fairly and comply with generally accepted accounting principles, staff will explore options to further enhance its financial processes and informational transparency practices, which include the following:

1. Best Practice Review of City Internal Control Policies

A best practices review of the City's administrative and financial policies is already underway. This policy research will include, but is not limited to policies and procedures related to credit card issuance, travel expense and reimbursement, cell phone use, issuance and stipends, petty cash handling, and purchasing practices. The City's policies will be updated as needed to reflect best practice approaches to administrative and financial processes. Employee training will be provided on these policies and/or procedures. Staff is also considering an external, independent audit to review selected processes, and identify suggested improvements.

2. Improving Informational Transparency and Accessibility

The Council adopted a Governance Strategy that promotes communication and civic engagement, financial transparency, and fiscal stewardship. Over the past several months, the City has been in the process of implementing an open government financial software to improve public access, promote understanding, and build trust regarding its financial reporting practices. This user-friendly software is used by more than 40 California cities and enables the public to view financial data by fund, department, and/or type of expense/revenue in a variety of mediums. It is expected that the new software will be online by the end of the fiscal year.

Additionally, as part of the FY 13/14 CIP budget, the Council approved the upgrade of a new financial and human resource system. This upgrade will improve the City's overall financial reporting and tracking capabilities, particularly transactions related to internal control items such as credit card charges and travel expenses and reimbursements. The contract for the new system will be brought forward for Council approval on April 1, 2014. Given the complexity of the project, implementation will be phased over a period of two years and is scheduled to begin as early as Summer 2014.

Staff is also exploring ways to broaden the financial data posted on the City's website to include key administrative and financial policies related to the City's investment practices, reserves, and credit cards.

STRATEGIC PLAN

This item is in accordance with Council Governance Strategy, Goal 2: Ensure continued fiscal sustainability through budgetary and financial stewardship; Objective 3: Enhance Fiscal Transparency and Goal 3: Identify resources to promote communication and civic engagement, enhance city services, and promote organizational productivity.

FISCAL IMPACT

Acceptance of this report will have no impact on the City's FY 13/14 operating budget. Should external resources be used to conduct an external review of the City's financial processes, existing funding will be used to cover any applicable costs.

RECOMMENDATION

It is recommended that the City Council accept the report regarding the City's financial controls and reporting practices.

Prepared by: Jenny Haruyama, Administrative Services Director

Reviewed by: Maria A. Hurtado, Assistant City Manager

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

AGENDA ITEM 6

REQUEST

CONSIDER A REQUEST BY CITY COUNCIL TO DISCUSS COMPLAINTS BY BRIAN VAN LEHN REGARDING THEIR CONCERNS RELATIVE TO NOISE EMISSIONS FROM THE LEPRINO FOODS PROCESSING PLANT AT 2401 NORTH MACARTHUR DRIVE

EXECUTIVE SUMMARY

During its January 7, 2014, regular meeting, City Council considered a request by Council Member Young to consider a request by Brian Van Lehn to be placed on a future agenda to allow for open discussion relative to the issue of low frequency noise emanating from the Leprino Foods Plant at 2401 North MacArthur Drive. Following discussion of this item, Council agreed to Brian Van Lehn's request. Hence, this report provides summary background information relative to staff's previous action on this case.

DISCUSSION

City staff, Leprino, and the Van Lehn's have worked together to address certain noise issues related to operations at the Leprino facility since December 2, 2008. The outcome of those early discussions resulted in Leprino constructing noise barriers near the refrigerated rail cars adjacent to the residential neighborhood on the west side of their facility located at 2401 North MacArthur Drive. The rail car barriers were installed based on a recommendation by an acoustical engineer hired by Leprino Foods to analyze and make a recommendation as to the best way to reduce noise levels. Noise readings conducted after the barriers were constructed concluded that Leprino was not in violation of their 1994 Noise Exemption.

Brief Case History

The following information briefly summarizes the actions taken to date to address the Van Lehn complaint:

1994:

- Noise Exemption granted to Leprino Foods by Tracy Planning Commission.

2009:

- Discussion between the Van Lehns, City staff, and Leprino Foods executive staff.
- Preventative maintenance on railcars performed by Leprino Foods.
- Twelve noise readings were conducted, all within allowable limits; no violations of the City's Noise Ordinance were observed.

- Illingworth and Rodkin (Acoustical Engineers) hired by Leprino Foods document noise levels were within allowable limits, yet recommended noise barriers to attenuate noise.
- Leprino Foods constructed noise barriers, per Illingworth and Rodkin recommendation.
- Three additional noise readings were conducted after noise barriers were erected; noise still within allowable limits.

2010:

- An additional noise reading was performed by staff on January 28, noise levels still within allowable limits.
- The City agreed to fund City consultant Brown Buntin (Acoustical Engineers) to perform noise surveys for \$10,000. That funding source was the General Fund.
- Noise Survey concluded in March 2010, resulting in compliance finding with Noise Exemption granted in 1994.
- City Council considered this Code Enforcement case closed in May 2010.

On May 18, 2010, Council directed staff to consider this code enforcement case closed along with the stipulation that if the Leprino facility changes its operations or equipment in a manner that increases noise emissions, staff would conduct additional noise readings. To date, staff is not aware of any new operations or new exterior plant equipment at this time.

For more detail regarding staff's efforts and resources directed toward this noise issue, please refer to Attachments A and B (Council staff reports dated May 18, 2010, and June 21, 2011).

STRATEGIC PLAN

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

FISCAL IMPACT

This is a discussion item only; there is no impact to the General Fund. Should Council direct staff to spend more resources on this issue, there will be an impact to the General Fund. Should Council wish to allocate additional resources to this issue, staff will determine the amount and identify an appropriate funding source.

RECOMMENDATION

Staff recommends Council provide Brian Van Lehn the opportunity to discuss the issue of noise from the Leprino Foods plant as agreed to at its City Council meeting of January 7, 2014.

Agenda Item 6

March 4, 2014

Page 3

Prepared by: Ana Contreras, Community Preservation Manager

Reviewed by: Bill Dean, Assistant Development Services Director

Andrew Malik, Development Services Director

Maria A. Hurtado, Assistant City Manager

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

ATTACHMENTS

Attachment A: May 18, 2010 City Council Staff Report

Attachment B: June 21, 2011 City Council Staff Report

May 18, 2010

AGENDA ITEM _____

REQUEST**ACCEPT A REPORT ON STAFF'S ACTIONS TO DATE RELATIVE TO THE LEVEL OF NOISE EMISSIONS FROM THE LEPRINO FOODS PROCESSING FACILITY AT 2401 N. MACARTHUR DRIVE**EXECUTIVE SUMMARY

This report is in response to Council's request for a report on Code Enforcement's actions and findings relative to complaints received from Brian Lehn and Leanne Van Lehn regarding noise from Leprino Foods located at 2401 N. MacArthur Drive. City staff is requesting City Council accept the report as submitted.

DISCUSSIONBackground

Code Enforcement staff has worked with both Brian Van Lehn and Leanne Van Lehn (the Van Lehns) and Leprino Foods since December 2, 2008, after receiving complaints of possible Noise Ordinance violations emitting from diesel engines used in the rail cars that transport food products manufactured by Leprino Foods. The Van Lehns live in the residential neighborhood immediately west of the Leprino Foods facility located at 2401 MacArthur Drive (see Exhibit A). Their residence is located adjacent to Union Pacific Railroad lines that separate residences from the Leprino Foods property line.

Leprino Foods was granted a Noise Exemption in 1994 by the Tracy Planning Commission (see attached Planning Commission Resolution - Exhibit B). This resolution authorized an exemption from the otherwise applicable Tracy Municipal Code sound level limit of 65 decibels along the residential property line adjacent to the railroad tracks to a maximum of 67 decibels along the residential property line. A violation of the Noise Ordinance occurs if the one-hour average sound level limit is exceeded for three or more days during any 30 day period.

Leprino uses refrigerated rail cars to transport food product from the plant. The 1994 Exemption relieves Leprino Foods from the applicable sound level limits for diesel engine generators on rail car refrigeration units. The exemption allows for sound emissions up to a maximum of 98 decibels at the residential property line (as illustrated in Exhibit C).

The 98 decibel noise limit applies to noise that is generated when rail cars are entering, leaving, and parked immediately adjacent to the west property line, when the diesel-powered cooling generators are operating. The 1994 Exemption permits rail car diesel-engine generators to emit up to 98 decibels for no more than 60 minutes per 24-hour period. Since 1999, rail car cooling technology has changed. According to Union Pacific, diesel-powered cooling generators are the exclusive cooling source for the rail cars and are actually quieter than they were before.

History of Case Management

Since receiving the complaint, a significant amount of time has been dedicated to the case in order to determine the following:

- Whether a violation exists;
- Sources and extent of the noise, and
- What actions would be required to resolve a noise violation if a noise violation exists.

City staff has had multiple conversations and meetings with the Van Lehns, Leprino Foods executive staff, and Union Pacific Railroad representatives regarding this matter. Conversations with Union Pacific resulted in preventative maintenance of the railcars used in the Leprino Foods operation in an effort to correct potential operational deficiencies that may be contributing to the noise problem. The retrofitting was completed by the end of September 2009.

During the time this noise study was being completed, Leprino moved forward with voluntary abatement measures to reduce noise emissions from the plant and refrigeration units. Leprino received land use authorization from Union Pacific Railroad to erect target noise barriers at the railcars and lift pump station. Illingworth and Rodkin recommended this option as the best way to reduce the sound generated at these locations. The valuation for installation of the target noise barriers, including construction costs, exceeded \$170,000 and was finalized by the City of Tracy Building Division on November 13, 2009.

To obtain readings during the times that were reported as the most offensive to the Van Lehns, staff agreed to respond on an "on-call basis". Staff responded to the Van Lehns requests for readings based on the level of noise presented by the food operation facility and the southern orientation of the diesel car generators. The results of staff's readings are as follows:

Noise Readings after Installation of the Target Barrier Walls

Date	Start Time	End Time	Minimum Reading (LMIN)	Maximum Reading (LMAX)	Average Reading (LEQ)
Monday December 21, 2009 ¹	12:00 a.m.	1:12 a.m.	48.9	85.4	68.2
Wednesday December 23, 2009	11:38 p.m.	12:45 a.m.	55.9	75.9	65.1
Friday December 25, 2009	7:56 p.m.	9:14 p.m.	56.4	77.4	64.8
Thursday January 28, 2010 ²	3:25 a.m.	4:35 a.m.	51.4	73.9	66.8

1) Spikes in reading occurred at 12:06 a.m. (transfer truck) and again at 12:28 a.m. (loud muffler on a muscle car).

2) Spike in reading at 4:13 a.m. (transfer truck)

As evidenced in the above table, with the exception of the readings taken on December 21, 2009, which was a result of sources unassociated with the Leprino Foods operation, all readings were within the acceptable noise level limit of 67 dBA during the one-hour readings as permitted by the Noise Exemption.

During work on this case, staff researched a Condition of Approval of the Conditional Use Permit Leprino Foods obtained in 1999. The condition required a post-construction noise survey to verify consistency with the Noise Ordinance Exemption granted to Leprino Foods after an expansion of the plant that began in 1999. No City records dating to 1999 could be located documenting that the survey was completed. To satisfy this condition, Leprino Foods paid for the City to enter into a contract with Brown Buntin and Associates, Inc. (BBA), to perform the noise survey. The noise study was conducted on March 11, 2010, at the four sites outlined in Exhibit D. Upon completion of the noise survey, BBA documented the noise levels generated by the Leprino Foods plant in the range of 60-66 dBa at the four pre-determined monitoring sites near the residential boundary to the west of the plant, with the refrigeration units of the rail cars in full and continuous operation. That study corroborates the findings by City staff that Leprino Foods is in compliance with the 1994 Noise Exemption granted by the Planning Commission.

The March 11, 2010 noise measurements undertaken by BBA were conducted for 30 minutes with the Leprino plant in normal operation and the refrigeration cars running and 30 minutes with the refrigeration units powered down. BBA concluded that the 30 minute sample periods were sufficient for accurately determining the overall sound level produced by the plant and refrigeration units. Extending the sample period to one hour would not have changed the findings of the study unless changes in equipment operations occurred during the sample period. Although the BBA noise survey was performed to satisfy a condition of the use permit granted in 1999 and not specifically responding to a noise complaint, it substantiates staff's findings that the noise produced by Leprino Foods is in compliance with the exemption granted in 1994.

City staff's noise readings conducted between December, 2009 and January 2010 document Leprino Food's noise levels to be within the allowable limits of 67 dBa as allowed by the exemption. In summary, the March 11, 2010 noise study conducted by BBA confirmed that Leprino Foods is operating within the limits of the approved Noise Exemption.

FISCAL IMPACT

Enforcement staff has conducted numerous inspections of alleged noise violations from Leprino Foods at the request of the Van Lehns. Most of these inspections were performed at the time and exact location requested by the Van Lehns. These inspections generally occurred between 1:00 a.m. and 5:00 a.m., including staff conducting a noise reading at the Van Lehns' request on Christmas Day.

Between Code Enforcement, Planning, and legal counsel, staff has determined that more than 250 collective hours have been spent on researching and investigating this case.

RECOMMENDATION

Staff has been diligent in responding to the Van Lehns concerns and numerous readings have been taken at the Van Lehns request. These readings were conducted at various hours of the day, during the middle of the night, and with the diesel powered generators facing north and south, respectively. Despite diligent and costly efforts, staff has found

no evidence that Leprino Foods is out of compliance with the 1994 Noise Exemption. Continuing to expend resources on this matter may be warranted if past efforts had disclosed violations; however, staff believes it is inappropriate to continue to use City resources after all efforts to date fail to identify any violation of City ordinances or the Noise Exemption.

Staff recommends City Council accept this report and consider this case closed. Additional noise readings or surveys could be undertaken in the future if the Leprino Foods plant changes its operations or facilities in a manner that increases noise emissions.

Prepared by: Ana Contreras, Community Preservation Manager

Reviewed by: Andrew Malik, Development and Engineering Services Director

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

Attachments

Exhibit "A" – Location Map

Exhibit "B" – 1994 Leprino Noise Exemption Resolution

Exhibit "C" - Noise Exemption

Exhibit "D" - Brown Buntin Report, dated March 18, 2010

Exhibit "E" - Site Plan Identifying Locations from Where Noise Survey Was Conducted
for the March 11, 2010 Survey

Exhibit "F" – Follow-up Letter from BBA



Van Lehn Property

Property Line #1
Exempt from noise ordinance

Property Line #2
67 dBA at residential property line
Up to 98 dBA at residential property line not to exceed 1 hour

RESOLUTION NO. PC 94-06

A RESOLUTION OF THE CITY OF TRACY PLANNING COMMISSION
APPROVING A NOISE EXEMPTION PLAN
FOR LEPRINO FOODS COMPANY
2401 MACARTHUR DRIVE
APPLICATION NO. 3-94-NE

WHEREAS, Tracy Municipal Code Section 4-3.1004 establishes certain sound level limits for properties within the City of Tracy, and

WHEREAS, City Ordinance No. 897 C.S. allows certain commercial and industrial land owners to apply to by exempt from the sound level limits imposed by Section 4-3.1004 and subject to alternative sound level limits, and

WHEREAS, Leprino Food Company owns certain property located at 2401 MacArthur Drive in the City of Tracy and conducts certain food processing and related operations thereon which generate sound levels exceeding those established by Section 4-3.1004, and

WHEREAS, On June 1, 1994, and within sixty (60) days of the effective date of Ordinance No. 898 C.S., Heinz filed with the Planning Division of the City of Tracy, a Noise Exemption Application for exemption from the sound level limits imposed by said ordinance, and

WHEREAS, On August 12, 1994, within ninety (90) days after the filing of Noise Exemption Application, Heinz filed a comprehensive sound study reporting a fair and representative sampling of the base line sound measurements of the subject property during full operation, and

WHEREAS, On September 16, 1994, within sixty (60) days after the filing of the comprehensive sound study, Leprino filed a noise mitigation plan, which was subsequently revised and elaborated on November 17, 1994 and December 13, 1994, and

WHEREAS, On December 21, 1994, the Planning Commission conducted a duly noticed public hearing on Leprino's Noise Mitigation Plan and request to be subject to alternative sound level limits as contained therein, and

WHEREAS, The Planning Commission has reviewed and considered the project and determines that it is exempt from CEQA pursuant to general rule (CEQA Guidelines Section 15061 (b) (3)) because the Noise Exemption does not have the potential to cause a significant effect on the environment because no increase in noise levels will result from the exemption;

NOW, THEREFORE, BE IT RESOLVED That the Planning Commission of the City of Tracy does hereby resolve and find as follows:

1. Leprino Foods company has complied with the exemption application procedures established by Ordinance No. 897 C.S.
2. The Mitigation Plan and Alternative Sound Level Limits proposed by Leprino as hereby approved will not be detrimental to the public health, safety, and welfare of persons residing or working in or adjacent to the property.
3. The Mitigation Plan and Alternative Sound Level Limits submitted by Leprino as hereby approved is a reasonable means of reducing the adverse economic impact that would otherwise result from the application of the sound level limits prescribed by the Tracy Municipal Code Section 4-3.1004.
4. Leprino's Sound Mitigation Plan is hereby approved and Leprino is henceforth subject to the following alternative sound level limits:
 - a. Leprino Foods Plant is subject to the sound level limits of Tracy Municipal Code Section 4-3.1004 except as otherwise specified below;
 - b. The noise generated by diesel engine generators on railroad car refrigeration units shall be exempt from the general sound level limits up to 98 DAB at the industrial property line from which the noise is generated when rail cars are entering, leaving, and parked immediately adjacent to the west property line provided the diesel engine generators operate no more than 60 minutes per 24 hour period.
 - c. The west boundary line of the Leprino Foods Company property, where it adjoins the railroad tracks, shall be exempt from the noise ordinance limits;
 - d. An alternative sound level limit of 67 DAB is hereby established at the residential property boundary adjoining the railroad tracks and located west of the Leprino Foods Company facility;
 - e. A sound level limit of 70 DAB is hereby established along the eastern half of the northern property line common with the mobile home park (from a point opposite the freezer building to MacArthur Drive). The 65 DAB limit established by the ordinance shall apply elsewhere along the northern property boundary of the facility.

5. The sound level limits hereby established shall supersede, replace, and amend the sound level limits which would otherwise apply pursuant to Tracy Municipal Code Section 4-3.1004 to the property and shall be enforceable in the same manner as the limit otherwise prescribed by that section.

* * * * *

The foregoing Resolution No. PC 94-06 was passed and adopted by the Planning Commission of the City of Tracy on the 21st day of December, 1994, by the following vote:

AYES: COMMISSION MEMBERS: PRIBYL, ALEGRE, SWINGLE
NOES: COMMISSION MEMBERS: NONE
ABSENT: COMMISSION MEMBERS: ENGLISH

Mary J. Pribyl
CHAIR

ATTEST:

Benny Hand
SECRETARY

ORDINANCE NO. 897 C.S.

AN ORDINANCE ADDING NEW ARTICLE 11 TO TITLE 4 CHAPTER 3 OF THE TRACY MUNICIPAL CODE ALLOWING CERTAIN COMMERCIAL AND INDUSTRIAL PROPERTIES TO BE EXEMPT FROM THE GENERAL SOUND LEVEL LIMITS IMPOSED BY ARTICLE 10 OF TITLE 4 CHAPTER 3 OF THE TRACY MUNICIPAL CODE AND SUBJECT TO ALTERNATIVE SOUND LEVEL LIMITS

WHEREAS, The City of Tracy has adopted a noise ordinance prohibiting certain disturbing, excessive, offensive or unusually loud noises within the jurisdictional limits of the City of Tracy; and

WHEREAS, Such ordinance establishes certain sound level limits on base district zones within the City; and

WHEREAS, The City of Tracy recognizes that such limits may have a substantial adverse economic impact on certain existing commercial and industrial properties; and

WHEREAS, The City of Tracy declares that it is in the public interest and in the furtherance of the health, safety, and welfare of the residents of Tracy to allow owners of such property to apply for an exemption from the sound level limits and become subject to such alternative sound level limits, as may be found to be reasonable under the circumstances.

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

SECTION 1. That a new Article 11 shall be added to the Tracy Municipal Code and shall read as follows:

Sec. 4-3.1100 Purpose.

In conjunction with the adoption of Article 10 of Title 4 Chapter 3 of the Tracy Municipal Code, owners of property in a base district zone listed as Commercial or Industrial under the Tracy Zoning Regulations may be exempted from the general sound level limits prescribed by Tracy City Code Section 4-3.1000 and subject to such alternative sound level limits pursuant to the procedures prescribed herein.

Sec 4-3.1101. Definitions.

1) Existing use shall mean any use in a Commercial or Industrial base district zone or legal use existing in the unincorporated County and as prescribed by the Tracy Zoning Regulations which use is in existence on the effective date of Article 10 of the Tracy Municipal Code.

2) Baseline sound level shall mean the sound existing at the property line of an existing use on or before a date not later than one hundred eighty (180) days after the effective date of Article 10 of the Tracy Municipal Code. For seasonal operations, for the first season following the effective date of Article 10 of the Tracy Municipal Code.

3) Target sound level shall mean the sound level proposed in a sound mitigation plan submitted by an owner of an existing use pursuant to this ordinance.

Section 4-3.1102. Application for Exemption.

Any owner of an existing use in the City desiring to be exempt from the sound level limits prescribed by section 4-3.1004 shall file with the Community Development Director of the City of Tracy a notice of application for an exemption from the sound level limits otherwise prescribed by that provision. This notice shall be filed no later than sixty (60) days after the effective date of Article 10. For existing uses outside the City limits at the date of the adoption of this ordinance, notice shall be filed with the City no later than sixty (60) days after the City Council has adopted a Resolution ordering annexation for said property or use.

Section 4-3.1103. Sound Study Preparation and Plan of Sound Mitigation

An applicant shall make a filing of one of the following:

- 1) A deposit for the preparation and review of a sound study and sound mitigation plan, which shall be set by a resolution of the City Council as provided by Section 65456 of the California Government Code which allows a charge to recover the costs incurred to review the applications, prepare, review, and comment on the exemption proposal and corresponding documents. This shall include, but not be limited to, staff time, including consultants costs and environmental review. The studies shall report a fair and representative sampling of the day and night baseline sound levels on the subject property. Such study shall be completed no later than ninety (90) days after the filing of the notice of application for an exemption from section 4-3.1004, and shall be prepared by a qualified engineer and conducted in a scientifically reliable manner. Any amount expended beyond the amount of the initial deposit, the applicant will reimburse the City. Any amount not used by the City will be reimbursed to the applicant; or
- 2) A deposit for the review of an applicant's prepared sound study and sound mitigation plan, which shall be set by a

resolution of the City Council as provided by Section 65456 of the California Government Code which allows a charge to recover the costs incurred to review the applications, prepare, review, and comment on the exemption proposal and corresponding documents. This shall include, but not be limited to, staff time, including consultants costs and environmental review. The applicant's sound study and sound mitigation plan must have been prepared no more than three years prior to or no more than ninety (90) days after the filing date of the request for exemption, and which no modifications have been made by virtue thereof, resulting in measurable alteration and noise levels emitted from the source. For seasonal operations the sound study and sound mitigation plan shall be submitted during the first season following the effective date of Article 10 of the Tracy Municipal Code when a study completed in the last three years is not applicable. All sound studies must be prepared by a qualified engineer.

Section 4-3.1104. Hearing on Application for Exemption

Within sixty (60) days after receiving the sound study and sound mitigation plan, the Community Development Director shall cause the applicant's sound study and plan of sound mitigation to be placed for public hearing at a general meeting of the City Planning Commission. The Director shall prepare a staff report recommending the adoption, modification, or rejection of the plan.

The Planning Commission shall conduct a hearing on the sound study and plan of sound mitigation to decide whether to exempt the applicant's property from the sound level limits of section 4-3.1004. If an exemption is approved, the Commission shall further approve a plan of sound mitigation for the property, including a timetable for achieving approved sound levels.

Actions taken by the Planning Commission are appealable to the City Council consistent with the process established in the Zoning Regulations for Conditional Use Permits. The approved plan of sound mitigation shall establish the sound level limits for such property subject to enforcement by the City of Tracy in the same manner as those limits prescribed by section 4-3.1004.

No plan of mitigation shall be approved unless the Planning Commission makes each of the following findings:

- 1) That the owner has complied with the exemption application procedures established by this ordinance;

2) That the plan of the mitigation will not be detrimental to the public health, safety, and welfare of persons residing or working in or adjacent to the property; and

3) That the plan of mitigation is a reasonable means of reducing the adverse economic impact that would otherwise result from the application of the sound level limits prescribed by section 4-3.1004.

4) That the plan is a reasonable means of improving the social benefits to the community.

Section 4-3.1105. Extension on time limits.

Extensions on any time limits, excluding the initial filing for the exemption in section one, must be approved in writing by the Community Development Director. If the Community Development Director denies any extension on time limits, applicant has the right of appeal with the Planning Commission and subsequently to the City Council.

Section 4-3.1106. Severability

If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have passed this ordinance and adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

ORDINANCE NO. 897 C.S.

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* * * * *

The foregoing Ordinance No. 897 C.S. was introduced at a regular meeting of the Tracy City Council on the 1st day of March, 1994, and finally passed and adopted on the 15th day of March, 1994, by the following vote:

AYES: COUNCIL MEMBERS: BILBREY, IVES, MATTHEWS, MCCRAY, BLAND

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE



Mayor, City of Tracy

ATTEST:



City Clerk

A:exemptio

NOISE SURVEY REPORT

**LEPRINO FOODS
N. MACARTHUR DRIVE & E. GRANTLINE ROAD
TRACY, CALIFORNIA**

BBA Report No. 10-207

PREPARED FOR

**CITY OF TRACY
DEPARTMENT OF DEVELOPMENT & ENGINEERING SERVICES
333 CIVIC CENTER PLAZA
TRACY, CALIFORNIA 95376**

PREPARED BY

BROWN-BUNTIN ASSOCIATES, INC.

MARCH 18, 2010

INTRODUCTION

The following report describes the methods and findings of a noise monitoring survey undertaken by Brown-Buntin Associates, Inc. (BBA) at Leprino Foods (plant) in Tracy, California. The survey was conducted at the request of the City of Tracy for the purpose of documenting noise levels generated by the plant as they affect residential properties to the west of the plant. Noise monitoring sites were the same as utilized by BBA in 1999 for preparation of an Environmental Noise Assessment for the Leprino Foods Plant Expansion Project (report dated February 28, 1999).

Appendix A provides a description of the acoustical terminology used in this report. Unless otherwise stated, all sound levels reported are in A-weighted decibels (dB). A-weighting de-emphasizes the very low and very high frequencies of sound in a manner similar to the human ear. Most community noise standards utilize A-weighting, as it provides a high degree of correlation with human annoyance and health effects.

CRITERIA FOR ACCEPTABLE NOISE EXPOSURE

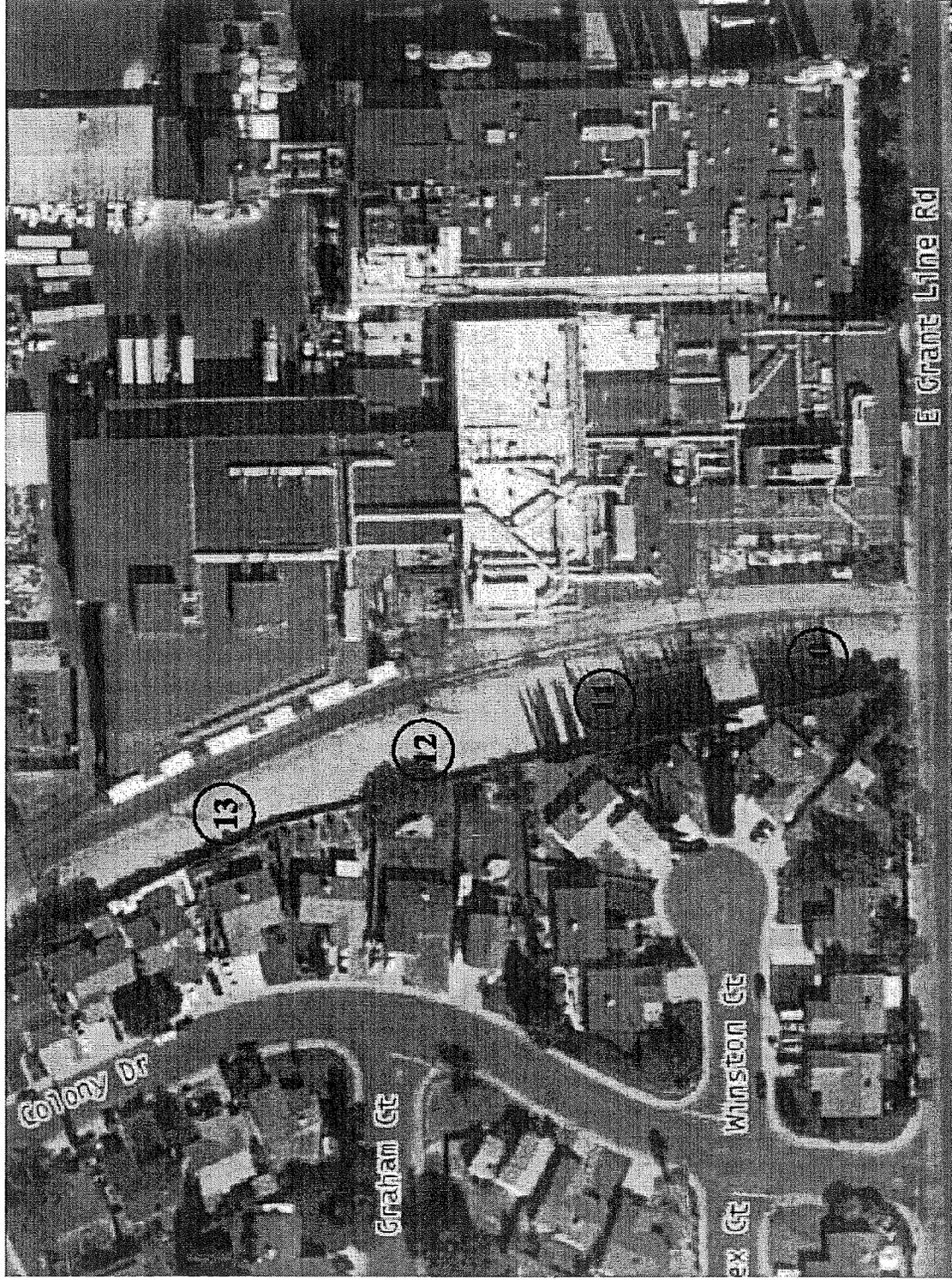
City of Tracy CUP 15-98-CUP imposed conditions of approval for the plant expansion. With respect to noise, the Planning Commission Conditions of Approval required that a noise survey be undertaken at a later date to verify consistency with the 1994 Noise Ordinance Exemption. The 1994 Noise Ordinance Exemption allowed the plant to generate noise levels not to exceed an hourly energy average (L_{eq}) of 67 dBA at the boundary of residential properties located to the west of the plant.

NOISE MONITORING SURVEY

The noise monitoring survey was conducted during the morning of March 11, 2010 at the four (4) locations noted on Figure 1. The monitoring sites were located at the same locations as monitored by BBA for the above-referenced 1999 noise study. The sites are described as Sites 10-13 in order to be consistent with the 1999 BBA study. Noise monitoring was conducted simultaneously at the four sites using automated sound level meters. A BBA staff member was present throughout the noise monitoring period to note the various noise sources that contribute to measured sound levels at each site.

Noise monitoring equipment consisted of Larson-Davis Laboratories (LDL) Model 820 sound level analyzers equipped with Bruel & Kjaer (B&K) Type 4176 ½" microphones. The instruments were placed on tripods at approximately five (5) feet above the ground with the microphones facing the plant noise sources. Additional noise measurements were conducted using an LDL Model 824 sound level analyzer equipped with an LDL Type 2541 microphone to obtain sound level frequency (spectral) data for each site. Instrumentation was calibrated prior to use with a B&K Type 4230 acoustical calibrator to ensure the accuracy of the measurements. All equipment utilized for the survey complies with applicable specifications of the American National Standards Institute (ANSI) for Type 1 sound measurement systems.

FIGURE 1: NOISE MONITORING SITES



It was noted at the time of the survey that there are a number of noise sources that affect the noise monitoring sites to greater or lesser degrees. Those sources include mobile and stationary equipment at the Leprino plant, refrigerated railcars located on a siding next to the Leprino plant, another food processing plant located on the south side of Grantline Road, roadway traffic on Grantline Road, occasional aircraft over-flights and occasional barking dogs.

Noise monitoring was begun at approximately 10:00 a.m. At that time, three (3) refrigerated railcars were positioned on the siding next to the plant. The car-mounted refrigeration units were *not* yet running, affording the opportunity to measure plant-related noise levels without contributions from the railcars. The refrigeration units were started at approximately 10:30 a.m. and noise measurements were repeated while the units were running. According to Leprino representatives, the refrigeration units were running at the normal setting while the noise measurements were conducted.

Noise measurements were conducted for 30-minute sample periods. A sample interval of 30 minutes was determined to be sufficient for documentation of plant-related energy average noise levels since the noise levels produced by the plant and refrigerated railcars are constant with little variation.

Table I provides a summary of measured noise levels at the four monitoring sites. Shown are the overall ranges of measured noise levels, energy average (L_{eq}) noise level from all sources, and estimated L_{eq} attributable to the Leprino plant. It is important to note that measured L_{eq} values include contributions from *all* sources of noise affecting the sites. Since the L_{eq} is an energy-based noise metric, it can be significantly affected by intermittent noise events that may or may not be related to the plant. This includes roadway traffic, aircraft over-flights and barking dogs. The determination of energy average noise levels attributable to the Leprino plant was based on BBA's field observations and analysis of noise monitoring data.

<p style="text-align: center;">TABLE I SUMMARY OF NOISE MONITORING DATA LEPRINO FOODS NOISE SURVEY MARCH 11, 2010</p>						
Site	Sound Level, dBA					
	Without Refrigeration Units			With Refrigeration Units		
	Range	Leq (all)	Leq (Leprino)	Range	Leq (all)	Leq (Leprino)
10	58-71	62.2	<60	60-69	63.2	<60
11	60-67	62.0	60-61	61-66	63.4	61-62
12	62-69	63.3	62-63	63-70	65.8	64-65
13	56-65	59.8	58-59	64-68	66.4	65-66

Source: Brown-Buntin Associates, Inc.

Table I shows that energy average noise levels produced by the Leprino plant were in the range of 58-63 dBA at the monitoring sites *without* the railcar-mounted refrigeration units in operation. With

the refrigeration units in full and continuous operation, energy average noise levels produced by the plant were in the range of 60-66 dBA at the monitoring sites. The dominant noise sources at Site 10 were traffic on Grantline Road and operations at the plant on the south side of Grantline Road, and *not* the Leprino plant.

Appendix B includes time histories at each site for sample periods while the railcar-mounted refrigeration units were in full operation. The time histories clearly show variations in noise levels over time during the sample periods due to roadway traffic or other sources. Appendix C includes graphs showing the frequency content of measured noise levels during a representative portion of the sample periods at each site while the refrigeration units were in operation.

CONCLUSIONS

Noise monitoring conducted by BBA on March 11, 2010 documented that energy average (L_{eq}) noise levels generated by the Leprino plant were in the range of 60-66 dBA at the four (4) pre-determined monitoring sites near the residential boundary to the west of the plant with refrigerated railcars in full and continuous operation. Such levels do not exceed the 67 dBA standard of the 1994 Noise Ordinance Exemption. According to Leprino Foods, the plant and refrigerated railcars were in full and continuous operation during the period of time that the above-stated levels were measured.

The findings and conclusions of this noise monitoring survey are based upon the best information known to Brown-Buntin Associates, Inc. (BBA) at the time the survey was completed concerning plant operations and resulting noise levels. Any significant future changes in plant equipment, refrigerated railcar technology, noise regulations or other factors beyond BBA's control may result in long-term noise results different from those described by this report.

Respectfully submitted,



Robert E. Brown
President

REB:dm

APPENDIX A

ACOUSTICAL TERMINOLOGY

AMBIENT NOISE LEVEL: The composite of noise from all sources near and far. In this context, the ambient noise level constitutes the normal or existing level of environmental noise at a given location.

CNEL: Community Noise Equivalent Level. The average equivalent sound level during a 24-hour day, obtained after addition of approximately five decibels to sound levels in the evening from 7:00 p.m. to 10:00 p.m. and ten decibels to sound levels in the night before 7:00 a.m. and after 10:00 p.m.

DECIBEL, dB: A unit for describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

DNL/ L_{dn} : Day/Night Average Sound Level. The average equivalent sound level during a 24-hour day, obtained after addition of ten decibels to sound levels in the night after 10:00 p.m. and before 7:00 a.m.

L_{eq} : Equivalent Sound Level. The sound level containing the same total energy as a time varying signal over a given sample period. L_{eq} is typically computed over 1, 8 and 24-hour sample periods.

NOTE: The CNEL and DNL represent daily levels of noise exposure averaged on an annual basis, while L_{eq} represents the average noise exposure for a shorter time period, typically one hour.

L_{max} : The maximum noise level recorded during a noise event.

L_n : The sound level exceeded "n" percent of the time during a sample interval (L_{90} , L_{50} , L_{10} , etc.). For example, L_{10} equals the level exceeded 10 percent of the time.

ACOUSTICAL TERMINOLOGY

NOISE EXPOSURE CONTOURS:

Lines drawn about a noise source indicating constant levels of noise exposure. CNEL and DNL contours are frequently utilized to describe community exposure to noise.

NOISE LEVEL REDUCTION (NLR):

The noise reduction between indoor and outdoor environments or between two rooms that is the numerical difference, in decibels, of the average sound pressure levels in those areas or rooms. A measurement of "noise level reduction" combines the effect of the transmission loss performance of the structure plus the effect of acoustic absorption present in the receiving room.

SEL or SENEL:

Sound Exposure Level or Single Event Noise Exposure Level. The level of noise accumulated during a single noise event, such as an aircraft overflight, with reference to a duration of one second. More specifically, it is the time-integrated A-weighted squared sound pressure for a stated time interval or event, based on a reference pressure of 20 micropascals and a reference duration of one second.

SOUND LEVEL:

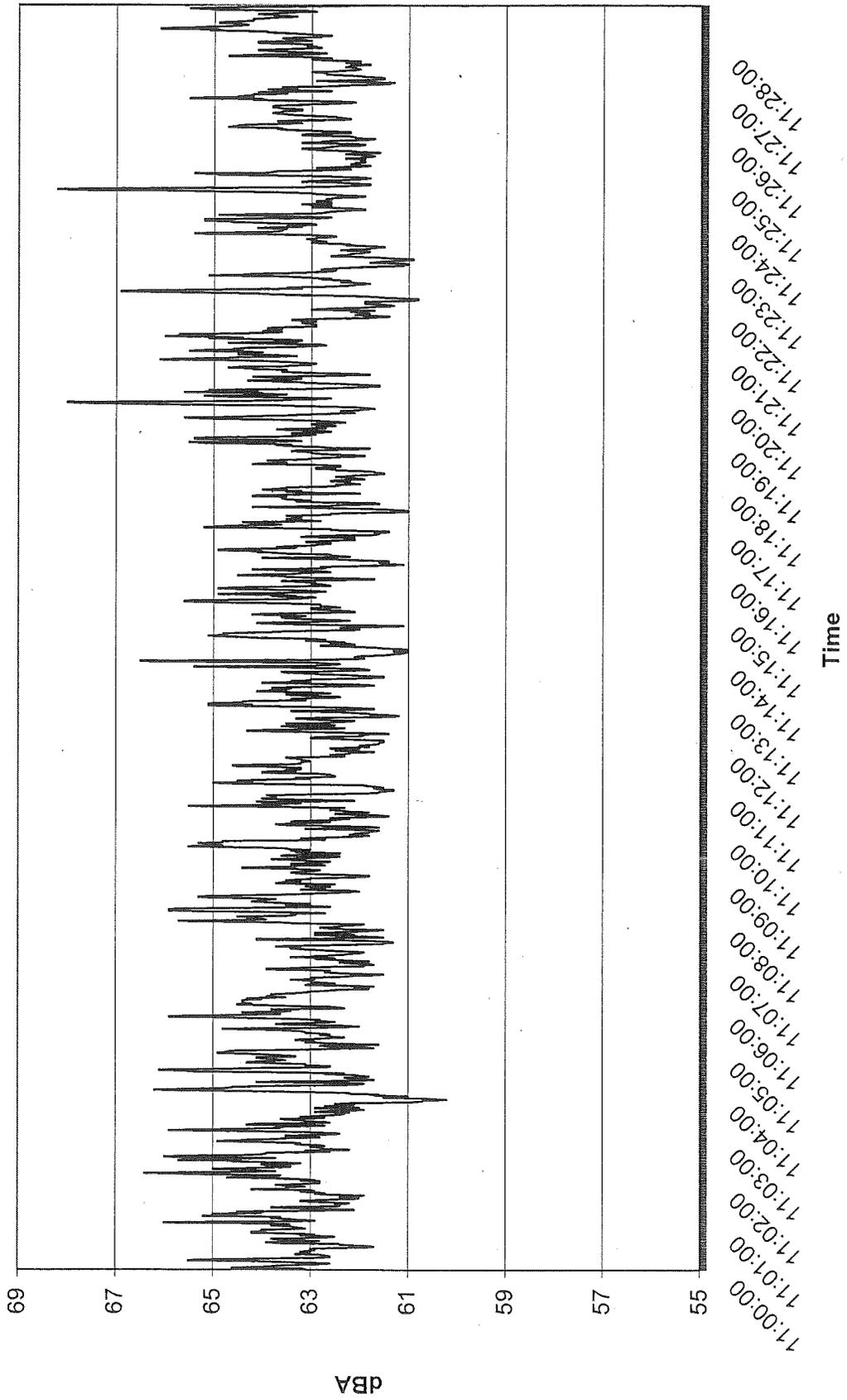
The sound pressure level in decibels as measured on a sound level meter using the A-weighting filter network. The A-weighting filter de-emphasizes the very low and very high frequency components of the sound in a manner similar to the response of the human ear and gives good correlation with subjective reactions to noise.

SOUND TRANSMISSION CLASS (STC):

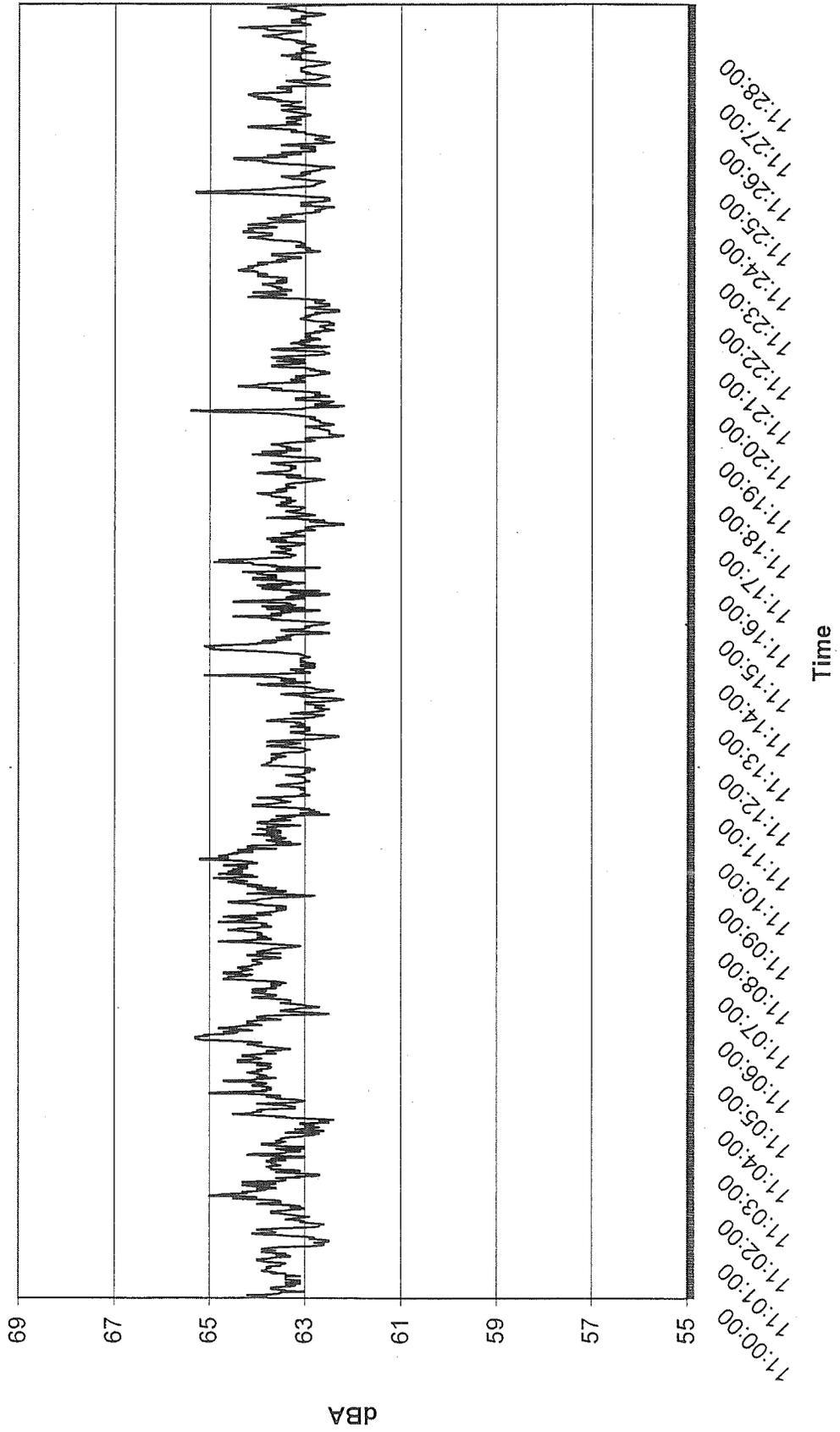
The single-number rating of sound transmission loss for a construction element (window, door, etc.) over a frequency range where speech intelligibility largely occurs.

APPENDIX B
TIME HISTORIES

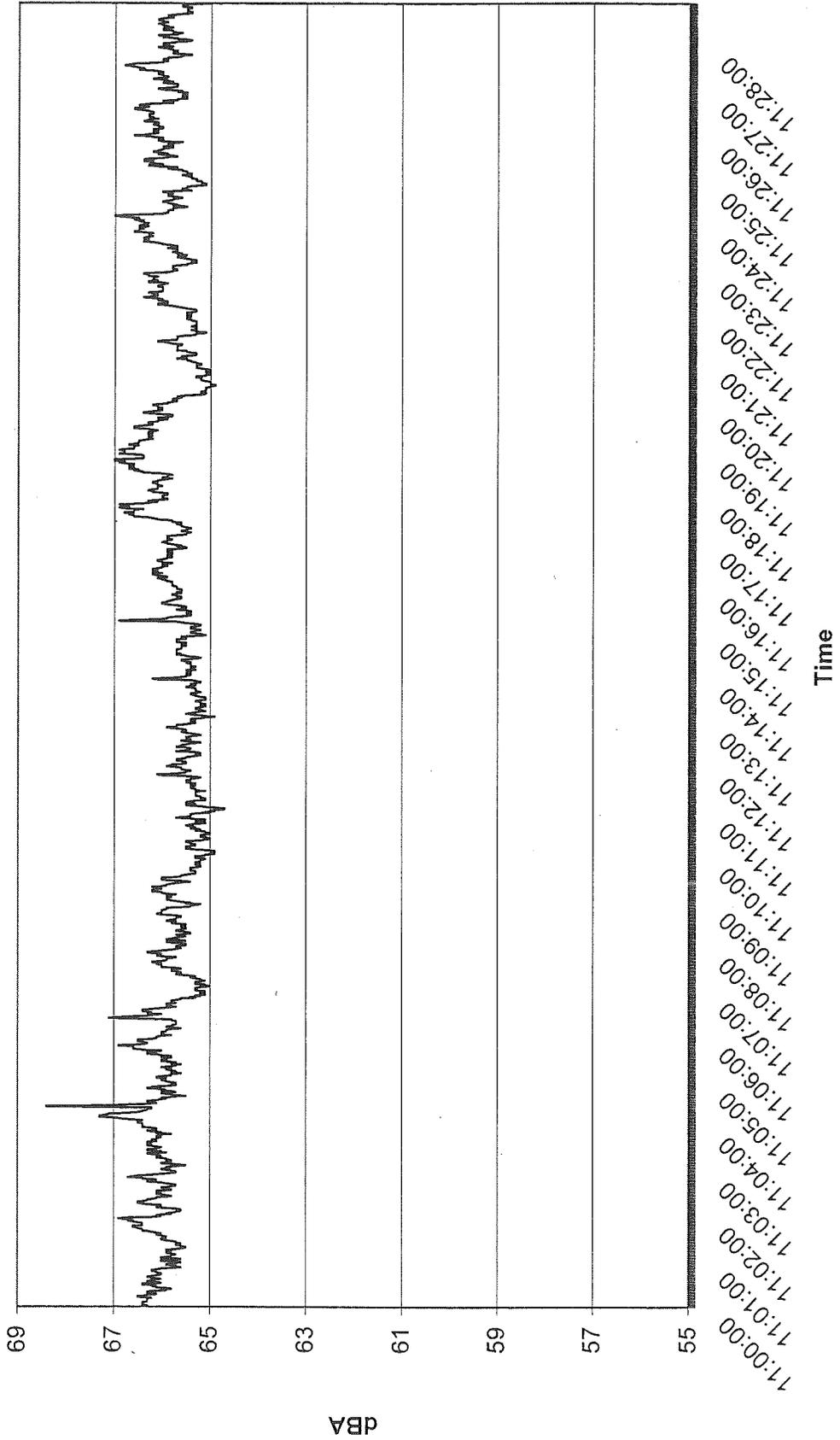
Site 10 Time History



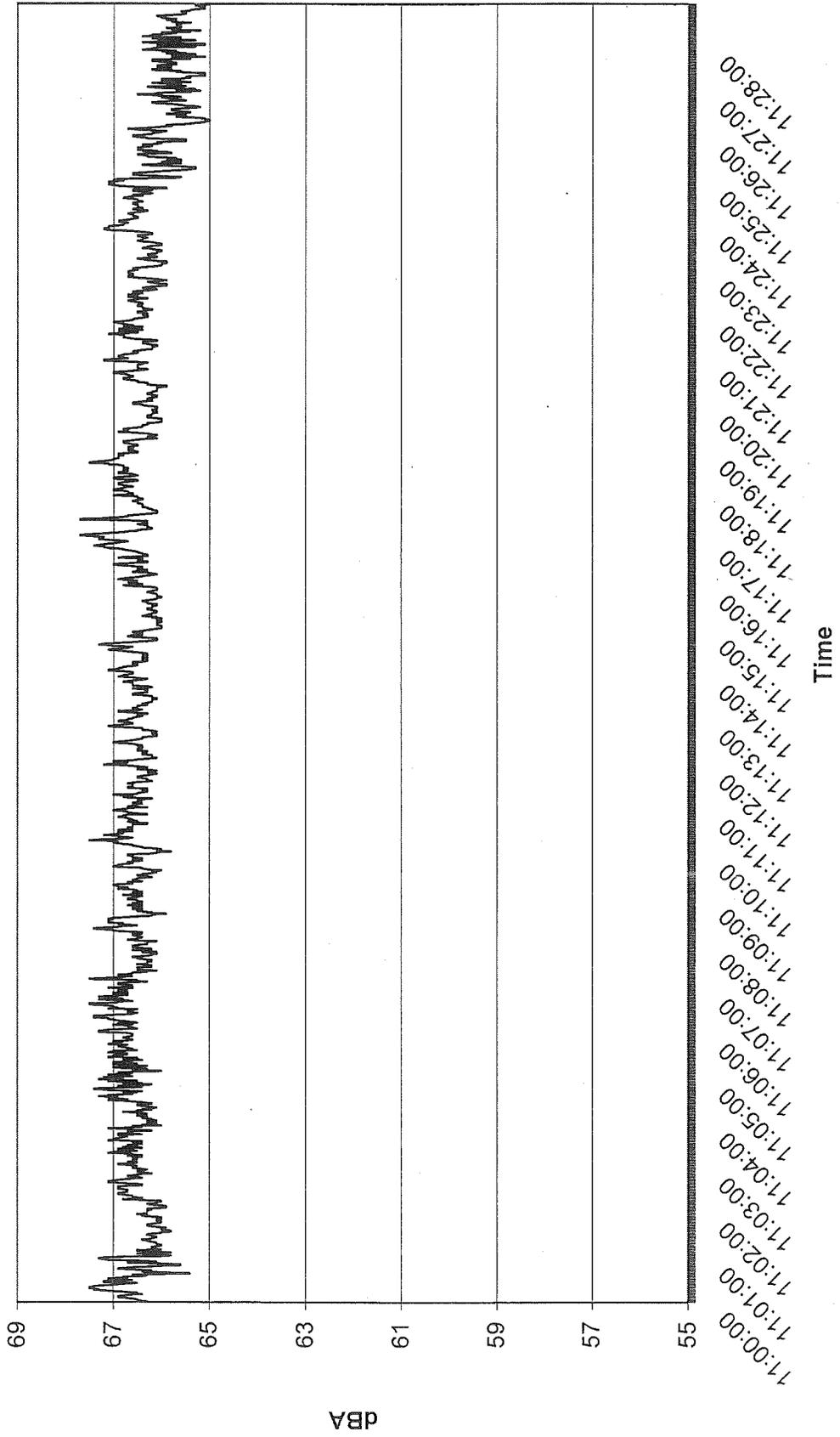
Site 11 Time History



Site 12 Time History

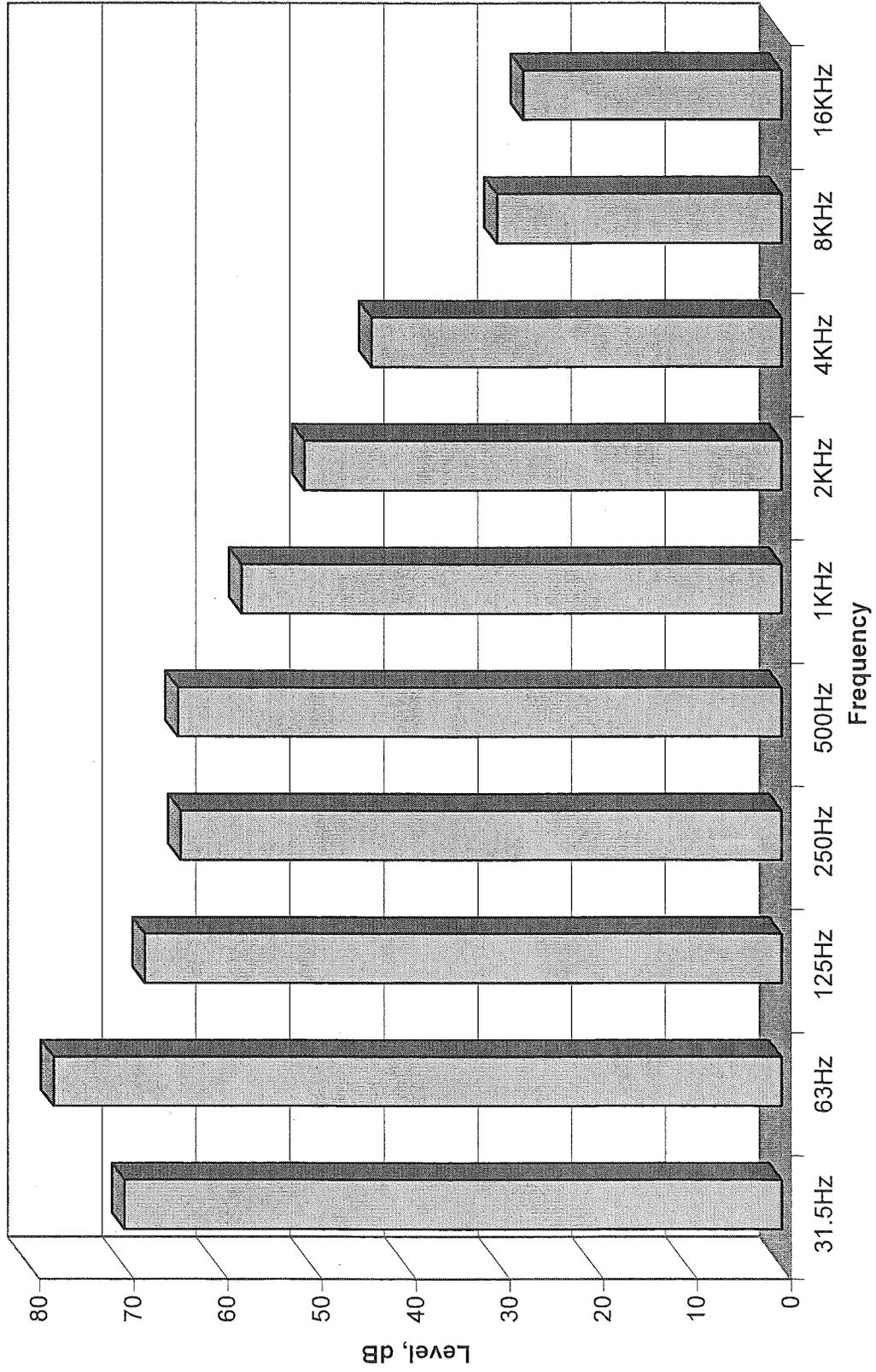


Site 13 Time History

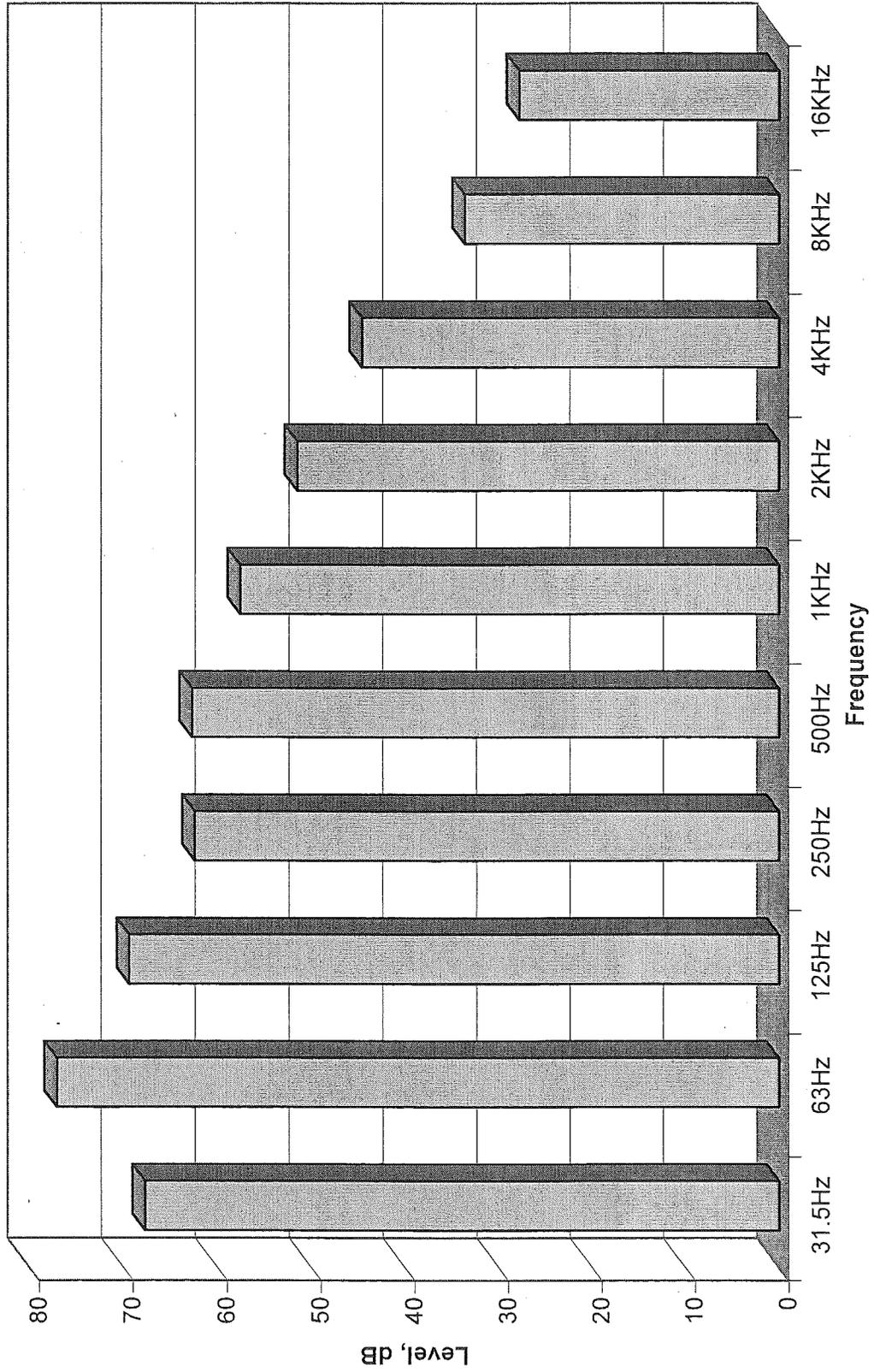


APPENDIX C
NOISE FREQUENCY GRAPHS

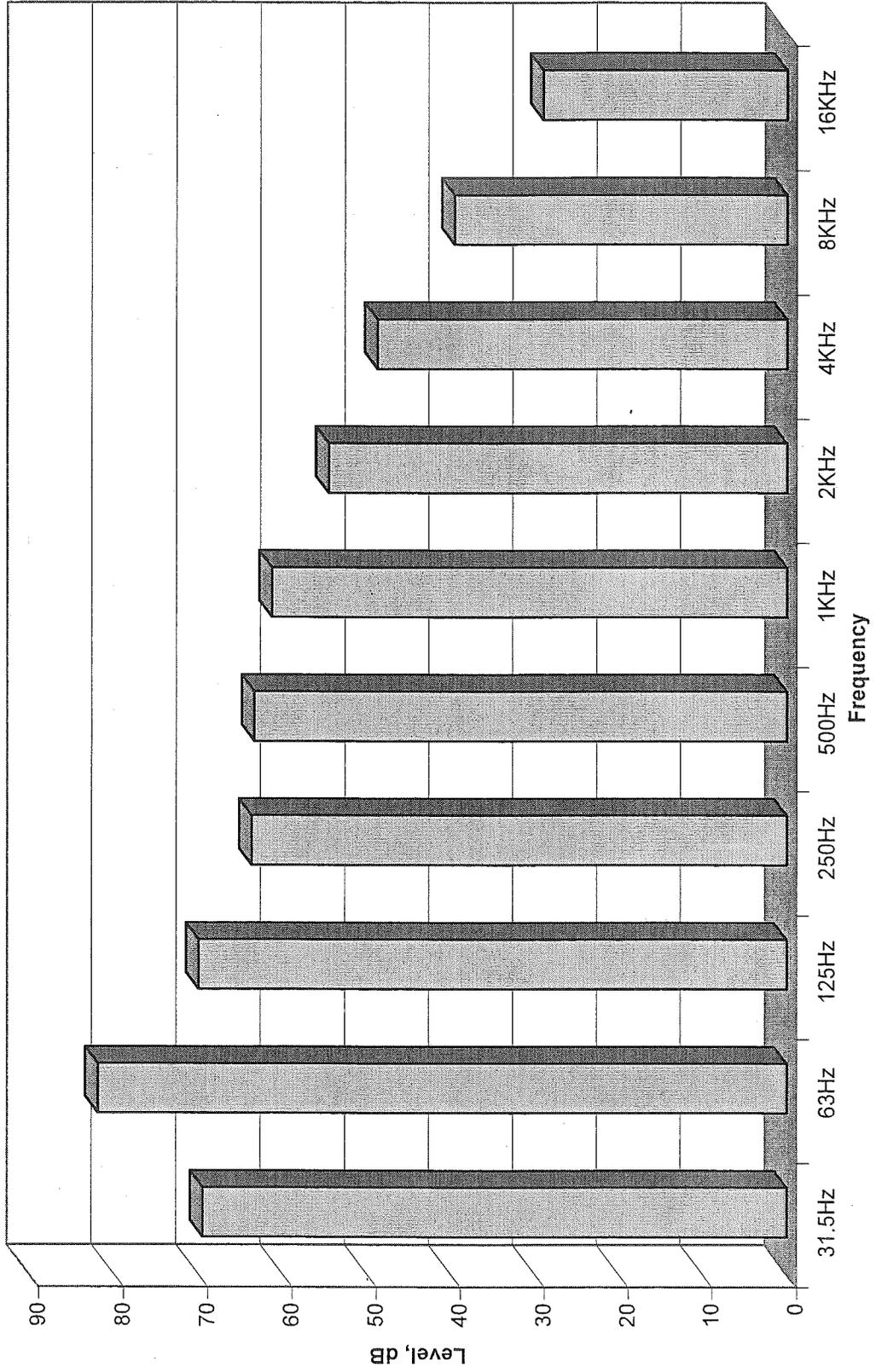
Site 10



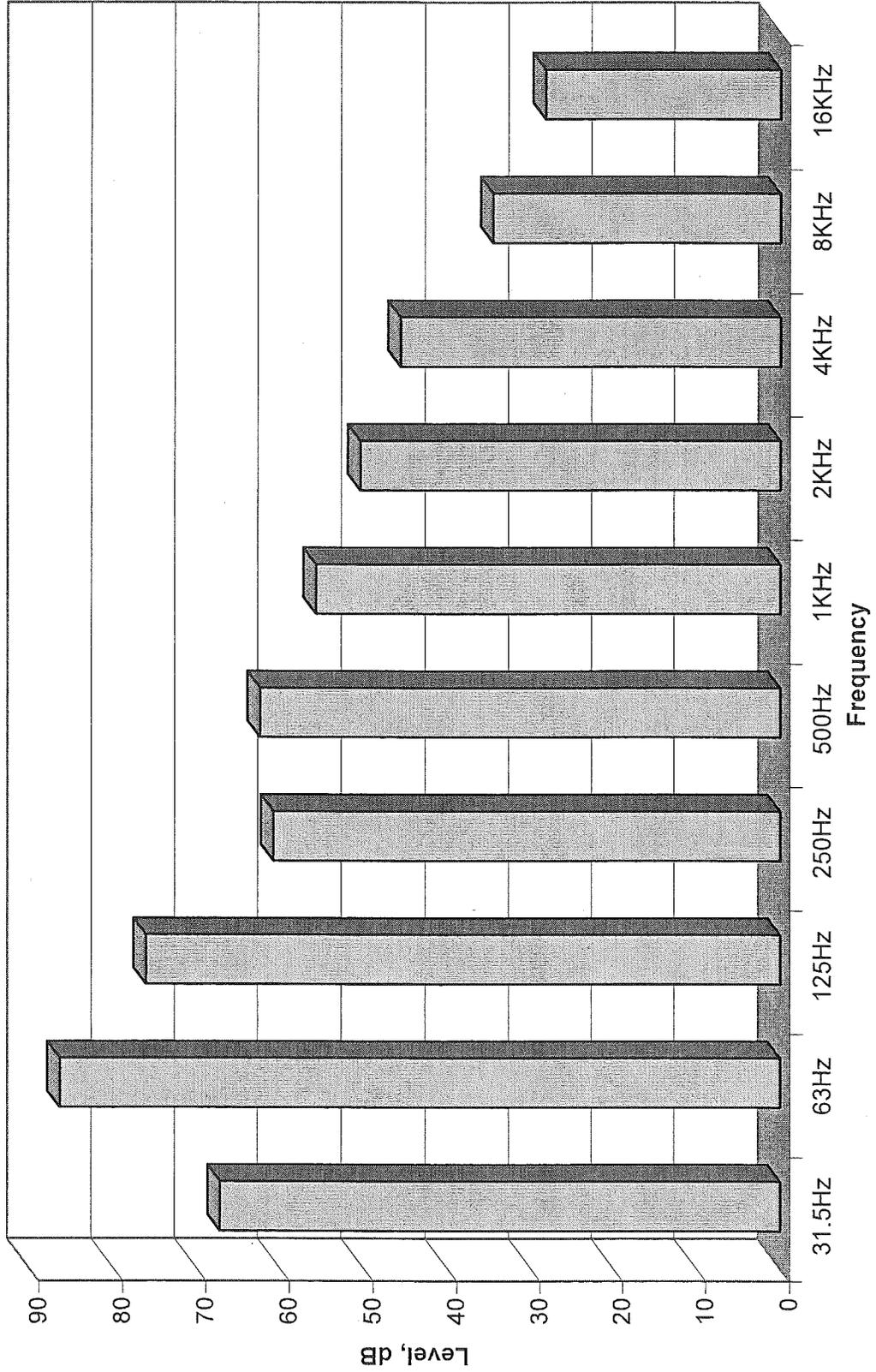
Site 11



Site 12



Site 13





April 1, 2010.

Mr. Alan Bell
Development & Engineering Services Department
CITY OF TRACY
333 Civic Center Plaza
Tracy, California 95376

Dear Mr. Bell:

This letter is intended to clarify the noise monitoring procedures and findings reported by Brown-Buntin Associates, Inc. (BBA) in the Noise Survey Report for Leprino Foods dated March 18, 2010.

Noise monitoring was conducted on March 11, 2010. Noise monitoring was conducted at the four (4) reference noise monitoring sites utilized by BBA in 1999. The purpose of the noise measurements was to determine hourly energy average sound levels (L_{eq}) produced by the plant at the sites. The L_{eq} is defined as the sound level containing the same total energy as a time varying signal over a given sample period. For noise sources that produce relatively constant noise levels with little variation over time, the L_{eq} may be accurately measured during a period of time shorter than one hour.

The March 11, 2010 noise measurements were conducted for 30 minutes before railcar-mounted refrigeration units were started and for 30 minutes while the refrigeration cars were running. According to Leprino representatives, all normal plant-related equipment was in full and constant operation during both sample periods. Since the refrigeration units had just been started, the units ran constantly during the second 30-minute sample period. It is our understanding that the units may cycle on and off *after* the desired temperature within the railcars has been achieved.

It is BBA's opinion that the 30-minute sample periods were sufficient for accurately determining the L_{eq} produced by the plant and refrigerated railcars. Extending the sample period to an hour would not have changed the findings of the study unless changes in equipment operations occurred during the sample period. Since the refrigeration units ran constantly during the second 30-minute sample period, and did not cycle on and off, measured L_{eq} values may represent a worst-case condition.

It was noted at the time of the measurements that railcars were positioned on the siding next to Leprino Foods so that refrigeration units were located behind acoustic screens that have been constructed along the rail siding. According to Leprino representatives, the railcars were in the normal position relative to the screens. A photo of Monitor 13 is attached to this letter showing the location of the railcars during the study.

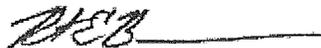
Mr. Alan Bell
CITY OF TRACY
April 1, 2010
Page 2

In conclusion, noise monitoring conducted by BBA on March 11, 2010 documented that hourly energy average (L_{eq}) noise levels generated by the Leprino plant were in the range of 60-66 dBA at the four (4) pre-determined monitoring sites near the residential boundary to the west of the plant *while refrigerated railcars are in full and continuous operation*. Hourly L_{eq} values could be lower if the refrigeration units cycle on and off over the sample period. The noise levels measured at the time of the study do not exceed the 67 dBA standard of the 1994 Noise Ordinance Exemption.

Please do not hesitate to contact me at (559) 627-4923 or rbrown@brown-buntin.com if you have any questions or require additional information.

Sincerely,

BROWN-BUNTIN ASSOCIATES, INC.



Robert E. Brown
President

REB:dm

Attachment: Photo

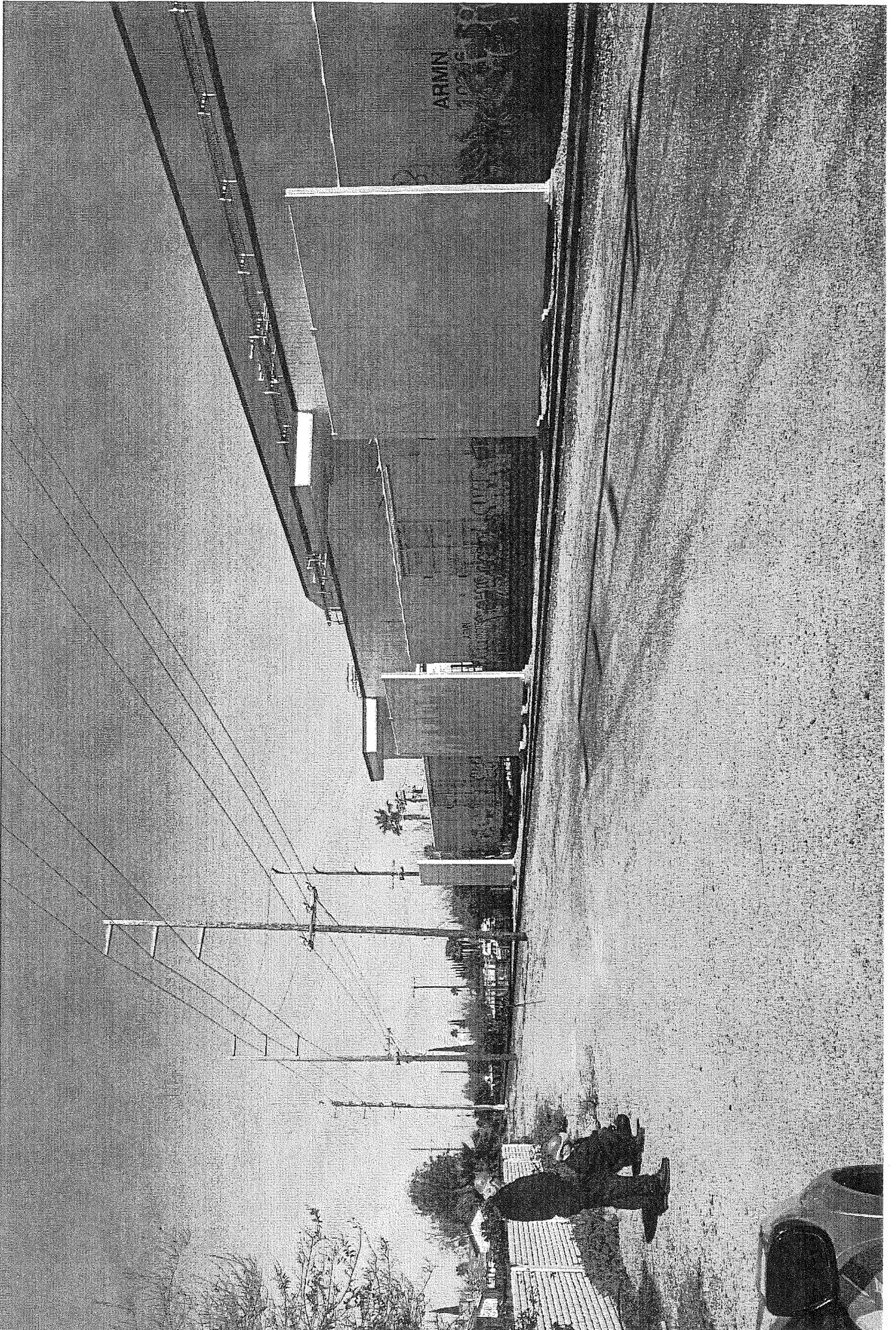
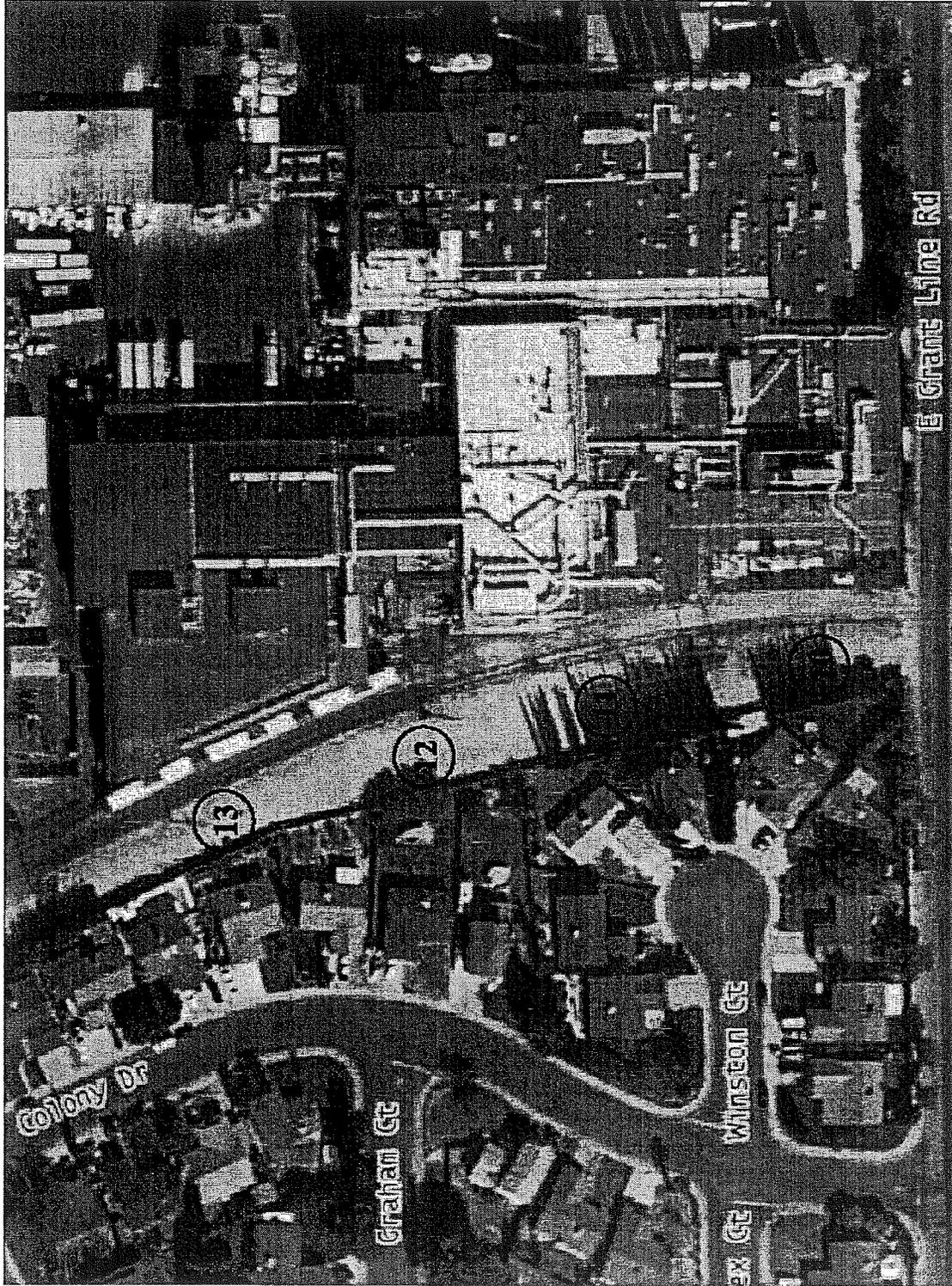


FIGURE 1: NOISE MONITORING SITES





April 1, 2010.

Mr. Alan Bell
Development & Engineering Services Department
CITY OF TRACY
333 Civic Center Plaza
Tracy, California 95376

Dear Mr. Bell:

This letter is intended to clarify the noise monitoring procedures and findings reported by Brown-Buntin Associates, Inc. (BBA) in the Noise Survey Report for Leprino Foods dated March 18, 2010.

Noise monitoring was conducted on March 11, 2010. Noise monitoring was conducted at the four (4) reference noise monitoring sites utilized by BBA in 1999. The purpose of the noise measurements was to determine hourly energy average sound levels (L_{eq}) produced by the plant at the sites. The L_{eq} is defined as the sound level containing the same total energy as a time varying signal over a given sample period. For noise sources that produce relatively constant noise levels with little variation over time, the L_{eq} may be accurately measured during a period of time shorter than one hour.

The March 11, 2010 noise measurements were conducted for 30 minutes before railcar-mounted refrigeration units were started and for 30 minutes while the refrigeration cars were running. According to Leprino representatives, all normal plant-related equipment was in full and constant operation during both sample periods. Since the refrigeration units had just been started, the units ran constantly during the second 30-minute sample period. It is our understanding that the units may cycle on and off *after* the desired temperature within the railcars has been achieved.

It is BBA's opinion that the 30-minute sample periods were sufficient for accurately determining the L_{eq} produced by the plant and refrigerated railcars. Extending the sample period to an hour would not have changed the findings of the study unless changes in equipment operations occurred during the sample period. Since the refrigeration units ran constantly during the second 30-minute sample period, and did not cycle on and off, measured L_{eq} values may represent a worst-case condition.

It was noted at the time of the measurements that railcars were positioned on the siding next to Leprino Foods so that refrigeration units were located behind acoustic screens that have been constructed along the rail siding. According to Leprino representatives, the railcars were in the normal position relative to the screens. A photo of Monitor 13 is attached to this letter showing the location of the railcars during the study.

June 21, 2011

AGENDA ITEM _____

REQUEST**FOLLOW-UP REPORT ON PREVIOUS COUNCIL DIRECTION FOR ADDITIONAL NOISE MEASUREMENTS FROM THE LEPRINO FOODS PLANT LOCATED AT 2401 N. MACARTHUR DRIVE**EXECUTIVE SUMMARY

As requested by City Council, Brown-Buntin Associates, Inc., (BBA) conducted additional noise measurements near the Leprino Foods plant. This report is a summary of findings and conclusion.

DISCUSSION

This report is a follow up to City Council's direction relative to noise complaints received from Brian Van Lehn and Leanne Van Lehn regarding the Leprino Foods processing plant at 2401 N. MacArthur Drive.

At its January 18, 2011 meeting, City Council accepted a proposal by Brown Buntin Associates (BBA) for additional noise measurements west of the Leprino Foods plant and adjacent to the residential area. This proposal includes noise readings at two outdoor locations and two indoor locations. The two outdoor locations indicated on Attachment A are adjacent to Site 13 and next to the Van Lehn's residence (Site 10A). The two indoor locations were the master bedroom and the second bedroom of the home located at 540 Winston Court, immediately west of the railroad siding at Leprino Foods where refrigeration railroad cars are stationed.

The noise readings were conducted on May 4, 2011, beginning at approximately 8:00 p.m. City staff worked with Union Pacific Railroad to have railcars brought onto the Leprino site with the refrigeration units all facing south at the request of the Van Lehn's, thereby creating a scenario with respect to the impact of the noise on the adjoining and affected residential properties. Leprino Foods was in full operation during the reading with all three railcar refrigeration units running continuously during the reading period.

The attached report outlines the measurement data obtained at Sites 10A and 13. The following information summarizes the readings obtained by BBA:

- Site 10A was calculated at 63.0 dBa
- Sound levels at Site 13 were calculated at 65.9 dBa
- Master bedroom sound level was calculated at 37.4 dBa
- Second bedroom sound level was calculated at 38.0 dBa

The report submitted by BBA establishes that noise levels from Leprino Foods are consistent with the measurements taken by City staff and other previous noise consultants. The noise readings conducted on May 4, 2011, approach but do not exceed the maximum allowable noise decibel level of 67dBa.

While not required, the BBA report further identifies potential mitigation measures that could be implemented to further reduce noise levels at or within homes adjacent to the

railroad property immediately west of Leprino Foods. These potential noise reduction measurements include:

- Noise barriers and/or extending the sound walls at the residential property lines.

Engineer's estimate of the cost and materials for constructing a new sound wall (approximately 851 lineal feet along the western residential property line of the Leprino Facility) is within the range of \$110,630 and \$144,670, depending on the type of material used (i.e., precast concrete wall or masonry block wall).

- Adding additional panels to fill the gaps between the existing absorbtic treatments on the walls recently installed by Leprino Foods.

Engineer's estimate for filling these gaps between the existing sound barriers is approximately \$238,388.75 (111.5 feet aggregate at a cost of \$1,504.03 per lineal foot).

- Residential Sound Attenuation. Reduction of noise within residential structures would require modifications to individual homes, such as replacing windows and doors with acoustically rated products.

The estimated cost of window and door replacements is estimated at \$19,000 (20 windows @ \$500 = \$10,000; 19 sliding glass doors @ \$1,000 = \$19,000, excluding labor costs). The cost for installing the windows and doors is estimated at \$11,600 (20 windows @ \$200 = \$4,000; 19 sliding glass doors @ \$400 = \$7,600). This estimate depends on whether the residence is a stucco or sided structure. Ten parcels were taken into consideration for this calculation from Grant Line Road continuing north along the railroad tracks, two houses past the last rail car.

STRATEGIC PLAN

This agenda item does not directly relate to the City Council's seven strategic plans.

FISCAL IMPACT

The BBA report was prepared at Council's request during its meeting on January 18, 2011 at a cost of \$10,000 (Resolution No 2011-018). Should Council direct staff to pursue any of the noise projects outlined, there would be an impact to the General Fund in an equal to the engineer's estimate.

RECOMMENDATION

Noise measurements taken by BBA found noise levels from Leprino Food's processing plant at 2401 N. MacArthur Drive consistent with staff's previous noise readings that the Leprino Foods plant does not exceed the 67 dBa level approved by the City of Tracy's Exemption granted to Leprino Foods in 1994.

The City of Tracy is under no obligation to implement a solution nor to adopt any of the noise reduction options outlined by BBA; conversely, information in the report satisfies adjacent homeowners' request for a reading by a professional acoustical engineer along

with a comprehensive description of the noise levels and actions necessary to reduce the level of sound from the Leprino Foods plant.

Staff recommends City Council accept BBA's report as complete and that no further action be taken with regards to noise reduction options contained in the report.

Prepared by: Ana Contreras, Community Preservation Manager

Reviewed by: Andrew Malik, Development & Engineering Services Director

Approved by: Leon Churchill, Jr., City Manager

Attachment - Noise Analysis by BBA



June 9, 2011

Mr. Alan Bell, Senior Planner
CITY OF TRACY
Development & Engineering Services Department
333 Civic Center Plaza
Tracy, CA 95376

RE: NOISE MEASUREMENTS ON MAY 4, 2011 AT LEPRINO FOODS, TRACY

Dear Mr. Bell:

As requested by the City of Tracy, Brown-Buntin Associates, Inc. (BBA) conducted additional noise monitoring west of the Leprino Foods plant in Tracy on the evening of May 4, 2011. Following is a summary of our findings and conclusions.

Noise measurements were conducted at two (2) outdoor locations and two (2) indoor locations starting about 8:00 p.m. The outdoor locations were two of the same (or close to the same) locations previously used for noise monitoring. They are numbered Sites 10A and 13. Site 10A is located about 50 feet north of the location that has been noted as Site 10 in previous studies. The two indoor locations were the master bedroom and second bedroom of the home located at 540 Winston Court. The home is located immediately to the west of outdoor Site 10A. Outdoor Site 13 is located immediately west of the railroad siding at Leprino Foods where refrigerated railcars are parked for product loading. The noise measurement sites are shown on Attachment A.

Prior to the May 4, 2011 noise measurements, the City of Tracy worked with Leprino Foods and the Union Pacific Railroad (UPRR) to ensure that the noise measurements represented a worst-case condition with respect to refrigerated railcar operations as reported by nearby residents. This included orienting the railcars so that the refrigeration units were all on the south ends of the cars and making sure that all car refrigeration units were in full and continuous operation during the measurements. BBA and city staff confirmed that there were three (3) refrigerated railcars parked on the siding, the cars were oriented with the refrigeration units facing south and all car refrigeration units were running continuously during the measurements.

Noise monitoring equipment consisted of Larson-Davis Laboratories (LDL) Model 820 and 824 sound level meters equipped with Bruel & Kjaer (B&K) Model 4175 and LDL Model 2541 ½" microphones, respectively. The instrumentation complies with applicable requirements of the American National Standards Institute (ANSI) for Type 1 (precision) sound level meters. The meters were calibrated prior to use with B&K Model 4230 and LDL Model CA250 acoustic calibrators to ensure the accuracy of the measurements.

The LDL Model 820s were installed at sites 10A and 13, and ran continuously between 8:00 and 8:30 p.m. The monitors recorded noise levels from all sources affecting the sites, including the three (3) refrigerated railcars on the Leprino Foods siding, fans and other stationary equipment at the Leprino Foods plant, stationary equipment at the Mars Pet Care processing plant located on the south side of Grant Line Road and traffic on Grant Line Road. The dominant source of noise at Site 13 was clearly the refrigerated railcars. Measured noise levels at Site 10A and inside the home at 540 Winston Court were influenced by noise from *all* sources noted above.

Noise measurement data obtained at Sites 10A and 13 were analyzed to determine the noise levels attributable to the Leprino Foods operation. It was determined that the equivalent energy sound level (L_{eq}) at Site 13 was 66.3 dBA. This level was generated by the refrigerated railcars with a small contribution from other stationary equipment at the Leprino Foods plant. The measured L_{eq} at Site 10A was 63.5 dBA. Noise from the railcars parked at Leprino Foods was clearly audible at Site 10A, but the L_{eq} was also influenced by noise from traffic on Grant Line Road and stationary equipment at the Mars Pet Care processing plant located on the south side of that roadway.

The LDL Model 824 was used to collect spectral (frequency content) data at all of the sites and to measure overall A-weighted L_{eq} values within the home at 540 Winston Court. During those measurements, care was taken to avoid contributions from traffic noise to the greatest possible extent. However, noise levels measured at Site 10A and within the home included noise generated by stationary equipment at the Mars Pet Care processing plant. Attachment B summarizes the spectral content of measured noise levels at Sites 10A and 13. Attachment B shows that the spectral content of noise at the two sites was similar. The primary difference is that sound at the 63 Hz octave band was notably higher at Site 13 than at Site 10A due to its close proximity to the refrigerated railcars.

Attachment C compares the spectral content of noise levels measured at Site 10A and the indoor sites within the home at 540 Winston Court. Site 10A is shown for comparison to the indoor levels because it was located just east of the backyard of the house. Attachment C shows that there were relatively small differences between measured levels outside and inside the house at sound frequencies of 63 Hz and below. This is because typical home construction is more effective in attenuating higher frequency sounds than low frequency sounds. This has the effect of making lower frequency sounds more noticeable inside the home than outside the home.

Octave band frequency sound levels shown in Attachments B and C are *not* A-weighted. A-weighting de-emphasizes the very low and very high frequencies of sound in a manner similar to the human ear. Most community noise standards, including those applied by the City of Tracy, utilize A-weighting as it provides a high degree of correlation with human annoyance and health effects. Overall measured A-weighted L_{eq} values at the outdoor locations, including sound at all frequencies, were 63.0 dBA at Site 10A and 65.9 dBA at Site 13. Overall measured A-weighted L_{eq} values at the indoor locations were 37.4 dBA in the master bedroom and 38.0 dBA in the second bedroom. As previously stated, sound levels measured at Site 10A and within the home

at 540 Winston Court included noise from the Leprino Foods plant *and* the Mars Pet Care processing plant.

With respect to measured indoor noise levels, most community noise standards, including the City of Tracy Noise Element of the General, apply an interior noise level standard of 45 dBA using the Day-Night Average Level (DNL) noise metric. The DNL is the time-weighted energy average A-weighted sound level for a 24-hour day, determined after applying a penalty of 10 dB to sound levels occurring between the hours of 10:00 p.m. and 7:00 a.m. The DNL noise metric was developed by the U.S. Environmental Protection Agency in the 1970s, and has been universally accepted as a suitable metric for describing cumulative noise exposure over time for noise compatibility planning purposes. The 45 dBA DNL standard represents a reasonable compromise between commerce and livability, and is utilized by the Federal Aviation Administration (FAA), U.S. Department of Housing and Urban Development (HUD) and State of California Noise Insulation Standards (CCR Title 24) to define acceptable interior noise exposure.

In order to calculate the DNL, it is necessary to make assumptions about the duration of the noise of concern and the time of day that the noise occurs. If it is assumed that the above-described measured indoor sound levels are constant 24 hours per day, the calculated DNL values would be 43.8 dBA in the master bedroom and 44.4 dBA in the second bedroom. Such levels include noise from the Leprino Foods plant and the Mars Pet Care processing plant, but *not* noise from traffic on Grant Line Road. Calculated DNL values are considered worst-case estimates since refrigerated railcars on the Leprino Foods plant siding do not produce noise constantly, 24 hours per day.

If additional reductions in noise exposure at or within homes near the Leprino Foods plant are desired, there are three generalized approaches that could be considered. Those are: 1) reducing noise at the source, 2) reducing noise at the path of transmission, and 3) reducing noise at the receiver. It is unknown to BBA what measures have been taken by Leprino Foods up to this point to minimize noise levels produced by the individual noise-producing components of the plant. Leprino Foods most likely has no control over the selection of individual refrigerated railcars placed on its siding by the UPRR.

In this instance, control of noise at the path of transmission means using noise barriers (sound walls) between the source and receiver. Sound walls of a given height are most effective when placed either close to the source or close to the receiver. Sound walls are also most effective when there are no gaps or other openings in the wall. Leprino Foods has constructed sound walls between the railcar siding and homes to the west. The sound walls are positioned so that the ends of the railcars that contain refrigeration equipment may be placed directly behind the walls. Additionally, the sound walls have absorptive treatments on the insides of the walls facing the railcars to minimize reflected sound. However, the gaps between the sound walls somewhat reduce the overall effectiveness of the walls. There may be specific reasons why there needs to be gaps between the walls, but those reasons are not known to BBA.

It is estimated that noise levels produced by refrigerated railcars could be further reduced at residential properties to the west by extending the lengths of the sound walls to the maximum practical extent. Further reductions in the noise levels produced by the railcars in the range of 2-5 dB are possible, depending upon the extent of the wall extensions and the locations of specific receptors to the west. A three (3) dB reduction in noise would be noticeable to nearby residents. A five (5) dB reduction would be clearly noticeable in subjective terms.

It is also possible to construct a higher sound wall along the west side of the railroad right-of-way. This could reduce noise levels from *all* Leprino Foods operations, and not just the refrigerated railcars. It is estimated that a minimum sound wall height of 10 feet would be required to achieve a noticeable change (at least 3 dB) within individual backyards and interior living spaces. The costs of sound walls would be dependent on the materials selected for construction, the heights of the walls and the types of footings required.

Reduction of noise at the receiver would, in this case, require modifications to individual homes to increase the outdoor-to-indoor noise level reduction (NLR) performance of the homes. Since the weakest acoustical link is usually the windows and doors, the greatest improvement in NLR performance would be realized by replacing windows and doors facing the Leprino Foods (and Mars Pet Care processing) plants with acoustically rated assemblies. The cost of acoustically rated window and door assemblies could be expected to be in the range of \$500-\$1,000 per individual window or door, *not including labor*. If window/door replacements are to be considered, the minimum laboratory-tested STC ratings should be 40 for windows and solid exterior doors and 35 for sliding glass doors.

In summary, noise levels measured on the evening of May 4, 2011 represent a worst-case condition as described by local residents to the west of the Leprino Foods plant. There were three (3) refrigerated railcars parked on the plant siding, and all of the cars were oriented so the refrigeration units were located on the south ends of the cars. The refrigeration units were observed to be operating continuously during the noise measurement period. Measured noise levels were found to be consistent with those measured previously by BBA and others. Equivalent energy sound levels (L_{eq}) produced by Leprino Foods at the outdoor measurement sites approach but do not exceed the City of Tracy L_{eq} exterior property line standard of 67 dBA.

It is unknown to BBA if additional reductions to the noise produced by stationary equipment at the Leprino Foods plant are feasible. However, additional reductions in refrigerated railcar noise levels could be achieved by extending the length of existing sound walls between the railcar siding and homes to the west. Additional reductions in noise exposure from all Leprino Foods plant operations could be achieved by re-constructing the sound wall along the western boundary of the railroad right-of-way or by replacing existing windows and doors facing the plant.

Mr. Alan Bell, Senior Planner
CITY OF TRACY
Development & Engineering Services Department
June 9, 2011
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Please do not hesitate to contact me at (559) 627-4923 or rbrown@brown-buntin.com if there are questions or you would like additional information.

Sincerely,

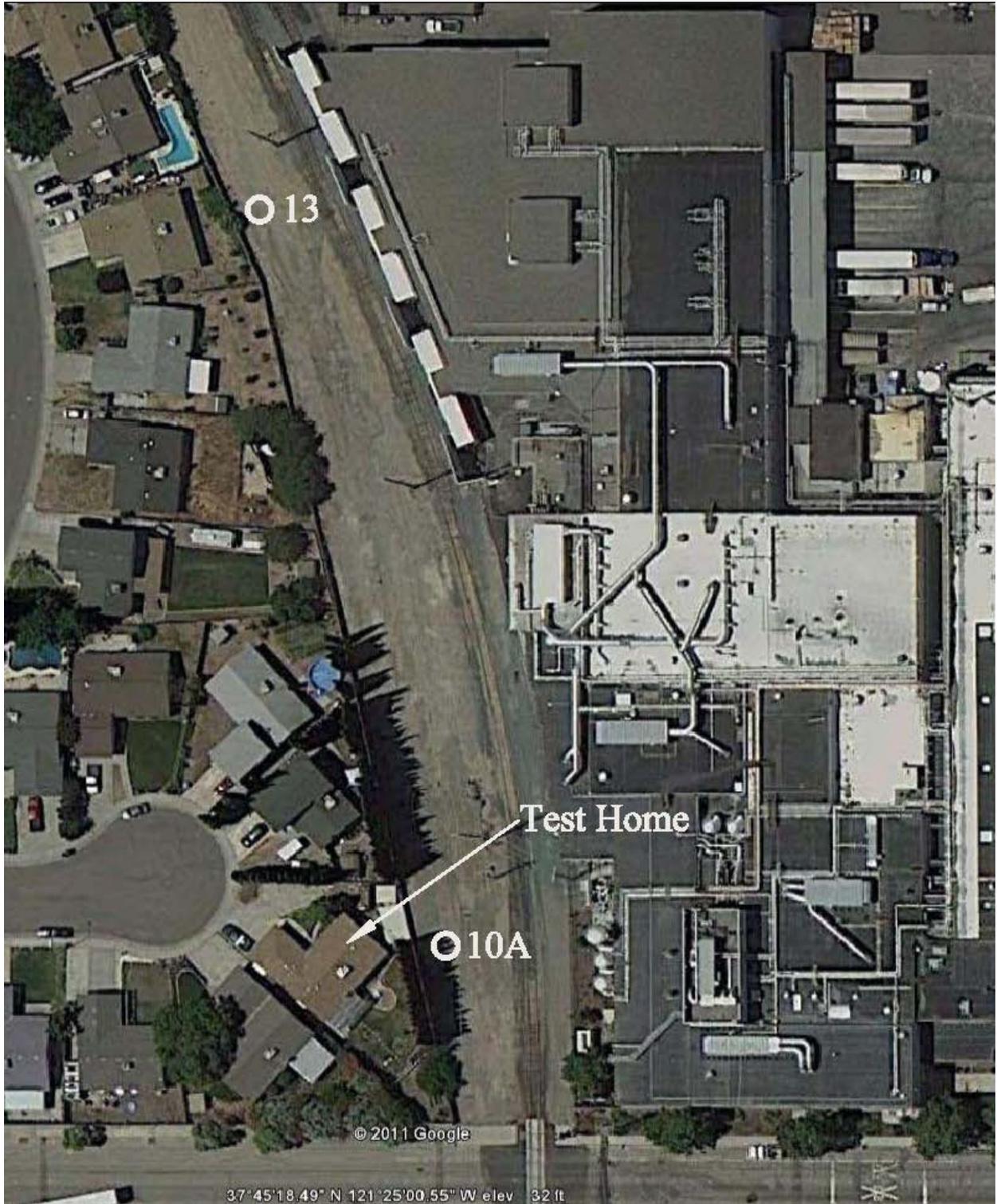
BROWN-BUNTIN ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read "REB", followed by a horizontal line extending to the right.

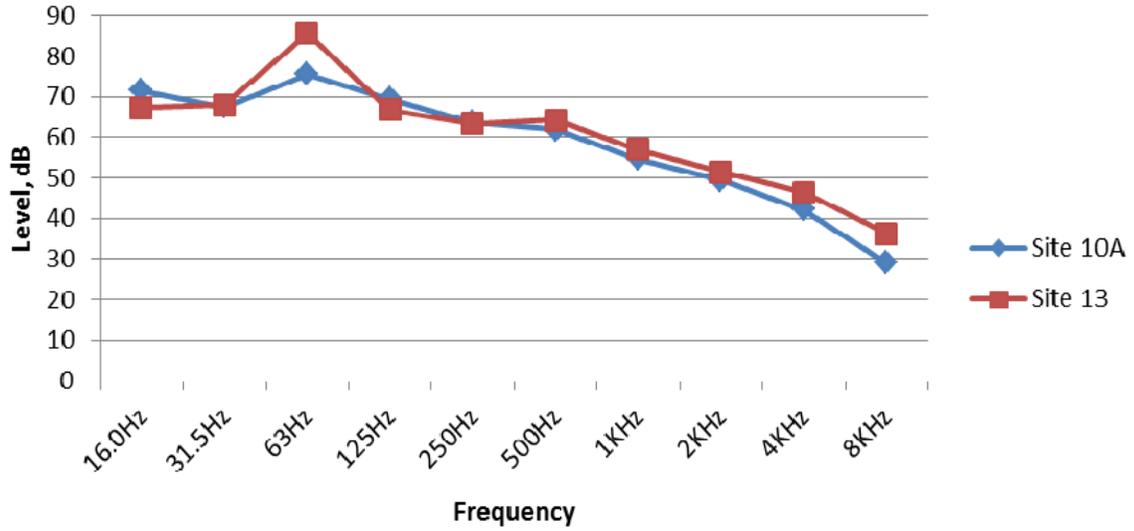
Robert E. Brown
President

REB:reb
Attachments

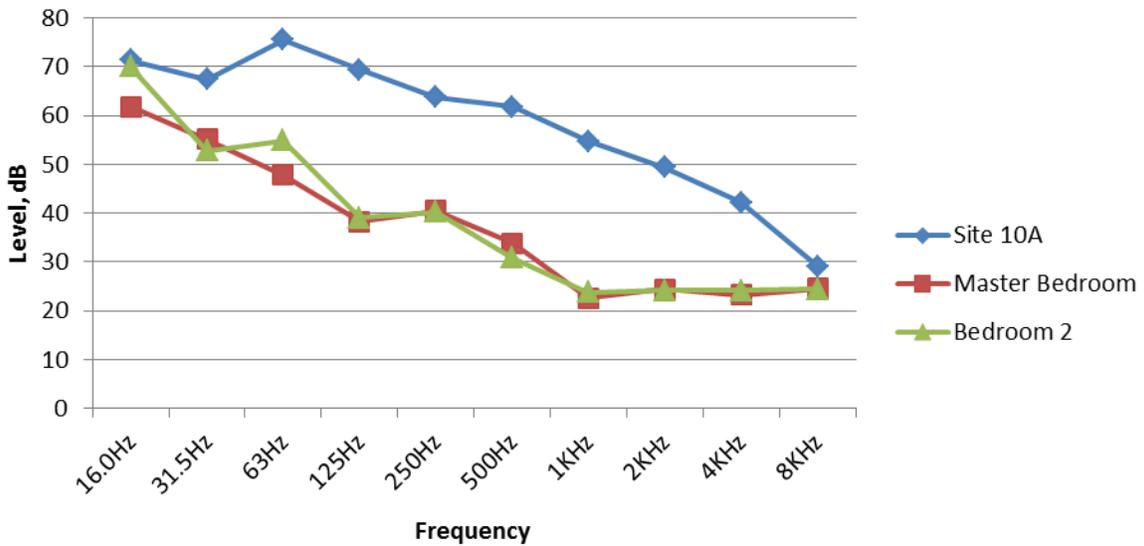
Attachment A: Noise Monitoring Site Locations



**Attachment B
Noise Level Spectra: Sites 10A and 13
May 4, 2011**



**Attachment C
Noise Level Spectra: Site 10A vs Indoor Sites
May 4, 2011**



March 4, 2014

AGENDA ITEM 9.A

REQUEST

DETERMINE WHETHER TO DIRECT STAFF TO PLACE AN ITEM ON A FUTURE COUNCIL AGENDA REGARDING OPTIONS TO ADDRESS INFRASTRUCTURE ISSUES IN THE MOUNT OSO, C STREET, AND MOUNT DIABLO AREA

EXECUTIVE SUMMARY

Determine whether to direct staff to place an item on a future agenda regarding options to address infrastructure issues in the Mount Oso, C Street, and Mount Diablo area.

DISCUSSION

At the City Council meeting held on February 18, 2014, Council Member Young referenced the various code enforcement, public works and infrastructure issues Lisa De Pasquale's raised at a previous Council meeting and stated she would like to sponsor an agenda item related to the infrastructure issues in that area. Councilmember Young would like Council to consider a future Council agenda regarding options to address infrastructure issues in the Mount Oso, C Street, and Mount Diablo area.

The purpose of this agenda item is to provide an opportunity for Council to discuss whether staff time and City resources should be devoted to placing an item on a future agenda to consider Council Member Young's request. Approval of Council Member Young's request would result in an agenda item placed in a future Council meeting allowing Council to discuss the item and determine any action related to the item.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact with Council's discussion of this item.

RECOMMENDATION

It is recommended that the City Council determine whether to direct staff to place an item on a future Council agenda regarding options to address infrastructure issues in the Mount Oso, C Street, and Mount Diablo area.

Prepared by: Sandra Edwards, City Clerk

Reviewed by: Maria A. Hurtado, Assistant City Manager

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

March 4, 2014

AGENDA ITEM 9.B

REQUEST

DETERMINE WHETHER TO DIRECT STAFF TO PLACE AN ITEM ON A FUTURE COUNCIL AGENDA TO DISCUSS HOW BEST TO RESPOND TO ITEMS FROM THE AUDIENCE

EXECUTIVE SUMMARY

Determine whether to direct staff to place an item on a future agenda to discuss how best to respond to items from the audience.

DISCUSSION

At the City Council meeting held on February 18, 2014, Council Member Maciel requested that Council consider placing an item on the agenda to discuss how best to respond to items from the audience when inaccurate information is presented by members of the public and additional factual information can provide further clarity. If Council or staff does not have the factual information readily available, Council can discuss a practice that provides flexibility to bring the factual information back at a future Council meeting.

The purpose of this agenda item is to provide an opportunity for Council to discuss whether staff time and City resources should be devoted to placing an item on a future agenda to consider Council Member Maciel's request. Approval of Council Member Maciel's request would result in an agenda item placed in a future Council meeting allowing Council to discuss the item and determine any action related to the item.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact with Council's discussion of this item.

RECOMMENDATION

It is recommended that the City Council determine whether to direct staff to place an item on a future Council agenda to discuss how best to respond to items from the audience.

Prepared by: Sandra Edwards, City Clerk

Reviewed by: Maria A. Hurtado, Assistant City Manager

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

AGENDA ITEM 9.C

REQUEST

APPOINT APPLICANTS TO THE MEASURE E RESIDENTS' OVERSIGHT COMMITTEE

EXECUTIVE SUMMARY

There are currently three vacancies due to term expirations on the Measure E Residents' Oversight Committee. A recruitment was conducted and appointments need to be made.

DISCUSSION

There are currently three vacancies on the Measure E Resident's Oversight Committee due to term expirations. To fill the vacancies, the City Clerk's office opened a recruitment on January 6, 2014, during which time no applications were received. As stated in Resolution 2004-152, in the event there are not two or more applicants than vacancies, the filing deadline will be extended. The recruitment was extended and closed on February 11, 2014. The City Clerk's office received a total of five applications during the recruitment period.

On February 25, 2014, a Council subcommittee consisting of Council Member Young and Council Member Rickman interviewed the applicants. In accordance with Resolution 2004-152, the Council subcommittee will recommend applicants for appointment to serve three year terms, which will begin on March 2, 2014, and end on March 1, 2017.

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That Council approves the subcommittee's recommendation and appoints three applicants to the Measure E Resident's Oversight Committee to serve three year terms which will expire on March 1, 2017.

Prepared by: Adrienne Richardson, Deputy City Clerk

Reviewed by: Sandra Edwards, City Clerk
Maria A. Hurtado, Assistant City Manager

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

AGENDA ITEM 9.D

REQUEST

APPOINTMENT OF CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANTS FOR VACANCIES ON THE PLANNING COMMISSION

EXECUTIVE SUMMARY

Request appointment of subcommittee to interview applicants to fill upcoming vacancies on the Planning Commission.

DISCUSSION

On March 31, 2014, terms will expire for three of the Planning Commissioners. The upcoming vacancies have been advertised and the recruitment closed on February 24, 2014. The City Clerk's office received 14 applications. An eligibility list was established during the previous recruitment, but has since expired.

In accordance with Resolution 2004-152, a two-member subcommittee needs to be appointed to interview the applicants and make a recommendation to the full Council.

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That Council appoint a two-member subcommittee to interview applicants to fill three upcoming term expirations on the Planning Commission.

Prepared by: Adrienne Richardson, Deputy City Clerk

Reviewed by: Sandra Edwards, City Clerk
Maria A. Hurtado, Assistant City Manager

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