

NOTICE OF SPECIAL MEETING


Pursuant to Section 54956 of the Government Code of the State of California, a Special meeting of the **Community Development Agency** is hereby called for:

Date/Time: **Wednesday, November 3, 2010, 6:50 p.m.**
(or as soon thereafter as possible)

Location: **Council Chambers, City Hall**
333 Civic Center Plaza, Tracy

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Community Development Agency on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

1. Call to Order
2. Roll Call
3. Items from the Audience - *In accordance with Procedures for Preparation, Posting and Distribution of Agendas and the Conduct of Public Meetings, adopted by Resolution 2008-140 any item not on the agenda brought up by the public at a meeting, shall be automatically referred to staff. If staff is not able to resolve the matter satisfactorily, the member of the public may request an Agency Member to sponsor the item for discussion at a future meeting.*
4. Approval of Minutes
5. APPROVE THE EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT BY AND BETWEEN THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF TRACY AND J.S. KENDALL CONSTRUCTION, INC. AND AUTHORIZE THE EXECUTIVE DIRECTOR TO SIGN THE AGREEMENT ON BEHALF OF THE AGENCY
6. Adjournment



Chairperson

October 28, 2010

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

Any materials distributed to the majority of the Community Development Agency regarding any item on this agenda will be made available for public inspection in the City Clerk's office located at 333 Civic Center Plaza, Tracy, during normal business hours.

June 15, 2010, 6:15 p.m.

Council Chambers, 333 Civic Center Plaza

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

1. Chairman Ives called the meeting to order at 6:15 p.m.
2. Roll call found Agency Members Abercrombie, Maciel, Tolbert, Tucker, and Chairman Ives present.
3. Items from the Audience – None
4. Approval of Minutes – It was moved by Agency Member Abercrombie and seconded by Agency Member Maciel to adopt the special meeting minutes of June 1, 2010. Voice vote found all in favor; passed and so ordered.
5. DISCUSSION AND DIRECTION REGARDING THE INITIAL DESIGN CONCEPT ALTERNATIVES FOR THE DOWNTOWN PLAZA - Scott Claar, Associate Planner, presented the staff report. The Draft Downtown Specific Plan includes construction of a Downtown Plaza in the vicinity of Sixth Street and Central Avenue to help revitalize the Downtown. The plaza is envisioned to serve as the community's primary gathering place, tying together the new Tracy Transit Station with Downtown retail shops and future residential development in the Bowtie area. The plaza would be a catalyst for attracting private investment to the Downtown shopping district and the Bowtie area.

In January 2010, the Community Development Agency (CDA) approved Amendment 5 to the Professional Services Agreement with Freedman Tung & Sasaki (FTS), authorizing FTS to proceed with the design of the Downtown Plaza. The scope of work includes one Community Workshop and two meetings with the CDA. At the Community Workshop held on April 22, 2010, the public was presented with the initial design concept alternatives. FTS shared comments from the Community Workshop during their presentation. The next step will be for FTS to refine the plaza design through the design development phase and bring back the final conceptual design at a later date.

There is no impact to the General Fund. Design of the Downtown Plaza is funded by a grant of \$190,000, awarded to the City in October 2008 through the Measure K Smart Growth Incentive Program, and a previous appropriation of \$310,000 in CDA funds, CIP 78117. Currently, there are no funds identified for construction. However, staff is exploring opportunities for additional grant funds that could be used for construction of the plaza.

Mr. Claar introduced Gregory Tung, Principal, and Trent Greenan, Senior Associate, of FTS who used a power point to present the initial design concepts and the three options for the Downtown Plaza.

Mr. Tung stated the concept includes erecting a structure to accommodate food service or other activities, together with a large green open space for family gatherings. An interactive water feature is included with a "slow" street to allow cars to cruise by slowly.

Mr. Tung added abundant trees are essential for shade, together with shade structures which could eventually be removed. A pavilion is planned for shade and food service, and for the community to just hang out. A seating area could be removed to allow for alternative options. Pedestrian friendly marked crosswalks would be included and store owners would be given the option to choose between parking and outdoor dining space in front of stores.

At the end of the presentation Mr. Tung requested the CDA select their preferred alternatives for the plaza layout, the pavilion, an interactive fountain, and a landmark feature.

Agency Member Maciel inquired how many parking spaces would be lost in the process of constructing the plaza. Mr. Tung responded significantly less than would be available at the Transit Station. Agency Member Maciel pointed out there was an apartment complex at end of the street and added he was concerned with the west bound traffic and children using the water feature. Mr. Tung responded one-way traffic would help, and the presence of children in the area could be controlled by when the water feature is in operation. Agency Member Maciel pointed out that the existing mature trees obliterate the historic buildings downtown.

Agency Member Tucker was concerned with the streets on either side of the plaza and stated she was unable to determine the pedestrian area from the roadway. Mr. Tung responded there are ways to alleviate concerns regarding the roadways and described a number of different options which could be incorporated into the design. First Street in Livermore had similar issues with their downtown area which had been resolved by using asphalt for the street, a combination pedestrian/parking material and then the sidewalk.

Mayor Ives stated he was concerned with traffic capacity on Central and Sixth and wondered if traffic volume had been studied. Mayor Ives added he was in favor of the roundabout and one-way streets. Andrew Malik, Director of Development and Engineering Services, stated the roundabout had been recommended by Ripon Bhatia, Traffic Engineer, and Kul Sharma, City Engineer, as a way to help traffic move through the area.

Mayor Ives asked how many people attended the Community Workshop on April 22, and if the participants had similar concerns. Mr. Tung responded approximately 25 people attended the workshop. There was general support for the concepts presented although there were similar concerns regarding parking.

Robert Tanner, 1371 Rusher Street pointed out that there are 14-15 cars parked overnight at the apartment complex. The Moose Lodge meets nightly and has various events. Mr. Tanner inquired If parking in the area is removed would residents and businesses be able to use the transit station for parking. Mr. Tanner also mentioned the high speed rail which eventually would need downtown parking and suggested alternative parking space be considered.

Dale Cose, 17 East Sixth Street, stated his family owns property in the area. Mr. Cose supported the general concept of the project but added it needed a little more work. Mr. Cose added he would be pleased to trade the parking to allow restaurants to use the

space. Mr. Cose indicated he had requested the large trees be removed since they are at least 25 years old.

Following a brief discussion concept 2 was chosen for the plaza layout and the pavilion, and concept 1 was chosen for the interactive fountain. Agency Members agreed the decision regarding a landmark feature would be made at a future meeting.

6. ADJOURNMENT - It was moved by Agency Member Abercrombie and seconded by Agency Member Maciel to adjourn. Voice vote found all in favor; passed, and so ordered. Time: 6:59 p.m.

The above agenda was posted at the Tracy City Hall on June 10, 2010. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

Attest:

City Clerk

CDA AGENDA ITEM 5

REQUEST

APPROVE THE EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT BY AND BETWEEN THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF TRACY AND J.S. KENDALL CONSTRUCTION, INC. AND AUTHORIZE THE EXECUTIVE DIRECTOR TO SIGN THE AGREEMENT ON BEHALF OF THE AGENCY

EXECUTIVE SUMMARY

The Community Development Agency of the City of Tracy (the "Agency") is the fee owner of the parcel located adjacent to Texas Roadhouse (the "Site"). J.S. Kendall Construction, Inc., a Nevada Corporation (the "Developer") is interested in developing the Site. Staff recommends that the Agency Board approve an Exclusive Negotiating Rights Agreement (the "Agreement") to provide the parameters for good faith negotiations for a period of six months.

DISCUSSION

The Agency owns the Site and staff has been unsuccessful in its marketing efforts over the years. Prior to the recession, an interested party indicated that the impact fees were too expensive to develop the site. Since the recession, there has been little interest in the Site.

The Developer approached the City staff and indicated a desire to market the Site to an appropriate tenant to develop the Site. The attached Agreement has been prepared to provide the parameters for a six month negotiating period. During that time, if the Developer is successful in getting a signed Letter of Interest (the "LOI") from a tenant that is acceptable to the Agency, then a Disposition and Development Agreement (the "DDA") will be prepared for Agency Board consideration. One of the pre-closing terms of the DDA will be that the Developer needs to obtain a signed lease agreement from the tenant that signed the LOI prior to closing. The Agreement does provide a provision for a four month extension period if the Developer is making sufficient progress in negotiation of a LOI or lease agreement with a desired tenant.

It has been Agency Board policy to require financial consideration for agreeing to enter into any type of exclusive negotiating rights agreement. However, in this particular case, staff is recommending that the Agency Board accept non-monetary consideration. Staff has been unsuccessful in closing a deal or even getting close to closing a deal on the Site. Essentially, the Developer will use its broker and connections to try to find a tenant. Due to the lack of interest in the Site, the benefit of having the Site professionally marketed outweighs the potential opportunity cost of having the Site tied up during the exclusive negotiating period.

STRATEGIC PLAN

This agenda item relates to the Economic Development Strategic Plan Goal 1: Increase the employment base and sales tax in Tracy.

FISCAL IMPACT

There is no fiscal impact associated with this action.

RECOMMENDATION

Staff recommends that the Agency approve the Agreement by and between the Agency and Developer and authorize the Executive Director to sign the Agreement on behalf of the Agency.

Prepared by: Ursula Luna-Reynosa, Economic Development Director

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

Attachment: Exclusive Negotiating Rights Agreement

CDA RESOLUTION _____

APPROVING AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT BY AND BETWEEN THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF TRACY AND J.S. KENDALL CONSTRUCTION, INC. AND AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN THE AGREEMENT ON BEHALF OF THE AGENCY

WHEREAS, the City Council (the "City Council") of the City of Tracy (the "City") has adopted and amended, from time to time, the Community Development Plan (the "Redevelopment Plan") City of Tracy Community Development Project Area (the "Project Area"); and

WHEREAS, the Redevelopment Agency of the City of Tracy (the "Agency") is engaged in activities necessary to execute and implement the Redevelopment Plan for the Project Area; and

WHEREAS, in furtherance of the objectives of the California Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) (the "Law"), the Agency and J.S. Kendall Construction, Inc., (the "Developer") desire to enter into an Exclusive Negotiating Rights Agreement (the "Agreement") to negotiate in good faith terms to a Disposition and Development Agreement.

NOW, THEREFORE, BE IT RESOLVED That the Agency approves, by resolution;

- 1. That the Agency approves the Agreement.
- 2. That the Executive Director is hereby authorized and directed to sign the Agreement on behalf of the Agency.
- 3. That this Resolution shall take effect immediately upon its adoption.

* * * * *

The foregoing Resolution _____ was adopted by the Agency on the 3rd day of November 2010, by the following vote:

AYES: AGENCY MEMBERS:
 NOES: AGENCY MEMBERS:
 ABSENT: AGENCY MEMBERS:
 ABSTAIN: AGENCY MEMBERS:

CHAIRPERSON

ATTEST:

SECRETARY

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
(Naglee Road Site)

This Exclusive Negotiating Rights Agreement (the "Agreement") is entered into as of _____, 2010 by and between the Community Development Agency of the City of Tracy, a public body, corporate and politic (the "Agency"), and J.S. Kendall Construction, Inc., a Nevada Corporation (the "Developer"), with reference to the following facts:

Recitals

A. The Agency is responsible for the implementation of the City of Tracy Community Development Project Area Plan, adopted by the City Council of the City of Tracy (the "Redevelopment Plan"). The Redevelopment Plan affects and controls the development and use of all real property located within the City of Tracy Community Development Project Area within Tracy, California, as more particularly described and set forth in the Redevelopment Plan (the "Project Area"), consistent with the policies and standards of the General Plan of the City of Tracy (the "City"). The goals for the Redevelopment Plan include alleviation of blighting conditions and the stimulation of economic development activities in the Project Area.

B. Pursuant to the Redevelopment Plan the Agency has designated a portion of the Project Area, as mapped in Exhibit A attached to this Agreement and incorporated herein by this reference, to be the site (the "Site") for an approximately 4,000 square foot commercial development project (the "Project"), and has selected the Developer as the developer with which to negotiate terms for development of the Project. The Agency currently owns the Site.

C. The purpose of this Agreement is to establish procedures and standards for the negotiation by the Agency and the Developer of a Disposition and Development Agreement (the "DDA") for disposition of the Site and development of the Project. As more fully set forth in Section 4.1, this Agreement in itself does not obligate the Agency to convey the Site or any portion thereof to the Developer, nor does it grant the Developer the right to develop the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

ARTICLE 1
EXCLUSIVE NEGOTIATING RIGHT

Section 1.1 Good Faith Negotiations. The Agency and the Developer shall negotiate diligently and in good faith, during the Negotiating Period described in Section 1.2, the terms of a DDA for the disposition of the Site and the development of the Project on the Site. During

the Negotiating Period, the parties shall use good faith efforts to accomplish the respective tasks outlined in Article 3 to facilitate the negotiation of a mutually satisfactory DDA.

Among the issues to be addressed in the negotiations are land disposition and method and land price for the Site, physical and land title conditions of the Site, the development schedule for the Project, financing of the Project development, use of the Project, marketing and management of the Project, design and aesthetic considerations of the Project, and the provision of public improvements related to the Project.

Section 1.2 Negotiating Period. The negotiating period under this Agreement (the "Negotiating Period") shall commence as of the date of this Agreement and terminate one hundred eighty (180) calendar days from the date of this Agreement. The Negotiating Period may be extended on the Agency's behalf for up to an additional one hundred twenty (120) days by written notice to the Developer from the Agency Executive Director, if in the Agency Executive Director's judgment, Developer has made sufficient progress in meeting the requirements of Section 3.2.

If a DDA has not been executed by the Agency and Developer by the expiration of the Negotiating Period, then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement except as set forth in Section 4.5. If a DDA is executed by the Agency and Developer, then upon such execution this Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed DDA.

Section 1.3 Exclusive Negotiations. Subject to Section 4.14, during the Negotiating Period the Agency shall not negotiate with any entity, other than the Developer, regarding development of the Site or any portion thereof, or solicit or entertain bids or proposals to do so. This provision shall not preclude the Agency from providing copies of documents or information related to the Site in response to a request under the California Public Records Act or other applicable statutory provisions.

ARTICLE 2 THE DEVELOPER

Section 2.1 Identification of Developer Representatives. The Developer, its address, and its authorized representatives to negotiate the DDA with the Agency are as follows:

J. S. Kendall Construction, Inc.
1470 Maria Lane, Suite 101
Walnut Creek, CA 94596

Representatives: Jeffrey S. Kendall

Section 2.2 Development Entity. The Developer shall make full disclosure to the Agency of all information pertinent to the ownership, control and financial capacity of the development entity that is proposed to serve as developer under the DDA.

ARTICLE 3
NEGOTIATION/PRE-CONSTRUCTION TASKS

Section 3.1 Overview. During the Negotiating Period, the parties shall use reasonable good faith efforts to accomplish the pre-construction tasks set forth in this Article 3 and to accomplish the negotiation of a mutually acceptable DDA. To facilitate negotiation of the DDA, the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 3 in a timeframe that will support achievement of these goals.

Section 3.2 Letter of Intent; Lease as Condition to Conveyance. The Developer intends to enter into a long term lease of the Site with a retail or other commercial tenant who will operate the Project. During the Negotiating Period, the Developer shall make good faith efforts to enter into a letter of intent for the long-term lease of the Site with a retail or commercial tenant who will operate the Project in a manner that is consistent with and furthers the purpose of the Redevelopment Plan (the "Letter of Intent"). The retail or commercial tenant entering into the Letter of Intent with Developer shall have demonstrated experience in operating well-maintained and successful business establishments similar to the business that will be operated on the Site (the "Tenant"). An executed Letter of Intent, with terms that are consistent with this Agreement and otherwise acceptable to the Agency, shall be a condition precedent to the Agency entering into any DDA with Developer. The Agency and Developer agree that any DDA will require the Developer to enter into a lease with Tenant, which lease shall be in a form acceptable to the Agency, concurrent with Developer's acquisition of the Site from the Agency.

Section 3.3 Reports. The Developer shall provide the Agency with copies of all reports, studies, analyses, and similar documents, prepared or commissioned by the Developer with respect to this Agreement, the Site and the Project, promptly upon their completion. The Agency shall provide the Developer with copies of all reports, studies, analyses, and similar documents prepared or commissioned by the Agency or within the Agency's possession or control with respect to this Agreement, the Site and the Project, promptly upon their completion; provided, however, that in no event shall the Agency be obligated to provide Developer with documentation or materials that are subject to attorney-client privilege or otherwise confidential. The Developer acknowledges that the Agency will need sufficient, detailed information about the proposed Project (including, without limitation the financial information described in Section 3.8) to make informed decisions about the content and approval of the DDA. Nothing in this Section 3.3 obligates the Agency to undertake any studies or analyses.

Section 3.4 Planning Approvals. The Developer acknowledges that the Project requires approvals and entitlements from the City (the "Planning Approvals"). During the Negotiating Period, the Developer shall submit site plans and designs for the Project and architectural designs for all buildings within the Project to the Agency and the appropriate City departments for their informal review. The Developer understands that a formal application for the Planning Approvals would not occur until after the execution of a DDA, and that such application for and issuance of the Planning Approvals will be a pre-disposition condition under any DDA, in addition to other pre-disposition conditions.

Section 3.5 Environmental Review. The Developer shall prepare at its sole cost, and submit to the Agency such plans, specifications, drawings, and other information, as specified by the Agency, that are reasonably necessary to perform the environmental review process required by CEQA for the Project, and the Developer shall prepare, at its sole cost, all environmental documentation required by CEQA. The Agency shall assist and cooperate with the Developer in the Developer's compliance with this Section 3.5.

Section 3.6 Utilities. The Developer shall consult with the utility companies serving the area of Site to determine if existing utility facilities require expansion, relocation or underground installation in connection with development of the Project. The Agency shall assist and cooperate with the Developer in such consultations.

Section 3.7 Purchase Price for the Site. The Agency and the Developer shall seek to agree upon the purchase price for the Site, and the nature, timing and cost of other Agency and/or City assistance to the Project, if any. The proposed purchase price shall be subject to confirmation and refinement pursuant to the formal reuse appraisal and the noticed hearing and Agency Council finding process to be conducted in accordance with Health and Safety Code Section 33433, as further described in Section 3.9 below.

Section 3.8 Financial Proforma Analysis. Within ninety (90) days after the date of this Agreement, the Developer shall provide the Agency with a detailed financial proforma for the Project containing, among other matters typically contained in such proformas, a detailed development cost budget and a detailed operating income and expense estimate (excluding confidential or proprietary information). The financial proforma will be used to evidence the financial feasibility of the Project.

Section 3.9 Section 33433 Report. The Agency shall prepare the necessary documentation pursuant to Section 33433(a)(2)(B) of the California Health and Safety Code (the "Section 33433 Report") to be submitted to the Agency Board and the City Council of the City in conjunction with the Agency's and the City's consideration of any DDA that results from negotiations pursuant to this Agreement. The Section 33433 Report shall contain the estimated value of the Site determined at its highest and best use under the Redevelopment Plan and the estimated value of the Site determined at the use and with the conditions, covenants and development costs required pursuant to the proposed DDA.

Section 3.10 Progress Reports. Upon reasonable notice, as from time to time requested by the Agency, the Developer shall make oral or written progress reports advising the Agency on studies being made and matters being evaluated by the Developer with respect to this Agreement and the Project.

ARTICLE 4 GENERAL PROVISIONS

Section 4.1 Limitation on Effect of Agreement. This Agreement (and any extension of the Negotiating Period) shall not obligate either the Agency or the Developer to enter into a DDA or to enter into any particular DDA. By execution of this Agreement, the Agency is not committing itself to or agreeing to undertake disposition or exercise of control over any Site or any portion of the Site. By execution of this Agreement, the Agency is not committing itself to

or agreeing to finance any portion of the Site or Project. Execution of this Agreement by the Agency is merely an agreement to conduct a period of negotiations in accordance with the terms hereof, reserving for subsequent Agency and City Council action the final discretion and approval regarding the execution of a DDA and all proceedings and decisions in connection therewith. Any DDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such DDA has been considered and approved by the Agency and, if required by law, the City Council of the City, following conduct of all legally required procedures, including without limitation, all required environmental review processes and all other applicable governmental approvals, and executed by duly authorized representatives of the Agency and the Developer. Until and unless a DDA is signed by the Developer, approved by the Agency Board, and executed by the Agency, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on either party to enter into or support entering into a DDA or be used as evidence of any oral or implied agreement by either party to enter into any other legally binding document. As such, the Agency retains absolute discretion before action on a DDA by the Agency Board or City Council (if required by law) to (i) subject to the agreement of the parties, make such modifications to the DDA and Project as may be necessary to mitigate significant environmental impacts or as may otherwise be necessary or appropriate, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided or (iv) determine not to proceed with the Project.

Section 4.2 Notices. Formal notices, demands and communications between the Agency and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, with signature required, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

Agency: Community Development Agency of the
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Attn: Executive Director

Developer: J. S. Kendall Construction, Inc.
1470 Maria Lane, Suite 101
Walnut Creek, CA 94596
Attn: Jeffery S. Kendall

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 4.3 Waiver of Lis Pendens. It is expressly understood and agreed by the parties that no lis pendens shall be filed against the Site, or any portion of the Site, with respect to this Agreement or any dispute or act arising from it.

Section 4.4 Costs and Expenses. Each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each party's obligations under this Agreement.

Section 4.5 No Commissions. The Agency shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any DDA that may result from this Agreement. The Agency represents that it has engaged no broker, agent or finder in connection with this transaction, and the Developer shall defend and hold the Agency harmless from any claims by any broker, agent or finder retained by the Developer.

Section 4.6 Default and Remedies.

(a) Default. Failure by either party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured thirty (30) days after receipt by the defaulting party of such notice, the non-defaulting party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by the Agency, the Developer's sole remedy shall be to terminate this Agreement. Following such termination, neither party shall have any further right, remedy or obligation under this Agreement; provided, however, that the Developer's obligation to turn over work pursuant to Section 3.3, and the Developer's indemnification obligation pursuant to Section 4.5 shall survive such termination.

In the event of an uncured default by Developer, the Agency's sole remedy shall be to terminate this Agreement. Following such termination, neither party shall have any right, remedy or obligation under this Agreement; provided, however, that the Developer's obligation to turn over work pursuant to Section 3.3, and the Developer's indemnification obligation pursuant to Section 4.5 survive such termination.

Except as expressly provided above, neither party shall have any liability to the other for damages or otherwise for any default, nor shall either party have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims they may otherwise have at law or in equity.

Section 4.7 Assignment. The Developer may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the Agency, which consent shall be granted or withheld in the Agency's sole discretion, and any such attempted transfer or assignment without the prior written consent of Agency shall be void. The Agency hereby consents to the Developer's assignment of this Agreement to a California limited liability company that is wholly owned and controlled by Developer. The Agency also consents to the Developer's assignment of this Agreement to a California limited liability company in which Developer wholly controls the limited liability company and is the managing member of such limited liability company; provided that any transfer of control to another member of such limited liability company must be approved in advance by the Agency. Any assignment of this Agreement shall not be valid unless the assignee expressly assumes Developer's rights and obligations under this Agreement pursuant to an assignment agreement approved in advance by the Agency.

Section 4.8 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the Agency and the Developer and no other person shall have any right of action under or by reason of this Agreement.

Section 4.9 Attorneys' Fees. The prevailing party in any action to enforce this Agreement shall be entitled to recover attorneys' fees and costs from the other party.

Section 4.10 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in San Joaquin County, California.

Section 4.11 Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matters of this Agreement.

Section 4.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 4.13 Authority to Execute: The undersigned represent and warrant they are each duly authorized to execute this Agreement on behalf of the respective party and to take the actions necessary to perform hereunder without the need to seek further authorization from the entity each represents.

Section 4.13 Disposition and Development Agreement. Developer acknowledges and agrees that the Agency intends to record, against title to the Site, that certain Disposition and Development Agreement between the Agency and Armadillo Realty LLC ("Armadillo") dated April 19th 2005 (the "DDA"). Any development on the Site shall be subject to the terms and conditions of the DDA, as it may be amended.

Section 4.14 Dispute Related to Site. The Developer acknowledges and agrees that the Site is currently subject to a dispute between Armadillo and the City (the "Dispute"). Developer further acknowledges and agrees that the City and Agency will continue to negotiate with Armadillo, and other persons or entities interested or involved in the Dispute, about the Site in order to resolve the Dispute. Nothing in this Agreement shall in any way be deemed to limit the City's or Agency's ability to negotiate or take other action (including but not limited to the filing

of a lawsuit) to resolve the Dispute ("Resolution"). Nothing in this Agreement shall be deemed to limit the City's or Agency's ability to restrict, modify or encumber the Site in connection with the Dispute or any Resolution. The Developer's rights under this Agreement shall be subject to the Agency's and City's actions related to the Dispute and any Resolution. The Developer shall have no right to approve or limit any Resolution or any action taken by the City or Agency in connection with the Dispute. Developer understands and agrees that the Resolution may affect the Site in one or more ways including but not limited to: a modification of the legal description of the Site, a reduction in the size of the site, and restrictions on the use of the Site.

Section 4.15 Developer's Right to Terminate. Upon City Council approval of the Resolution, or in the event the City or Agency files a lawsuit in connection with the Dispute, the Developer may terminate this Agreement by providing written notice to the Agency.

WHEREFORE, the parties have executed this Agreement on or as of the date first above written.

AGENCY:

Community Development Agency of the City Tracy, a public body, corporate and politic

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:
GOLDFARB & LIPMAN

By: _____
Heather Gould
Agency Special Counsel

DEVELOPER:

J. S. Kendall Construction Inc., a Nevada Corporation



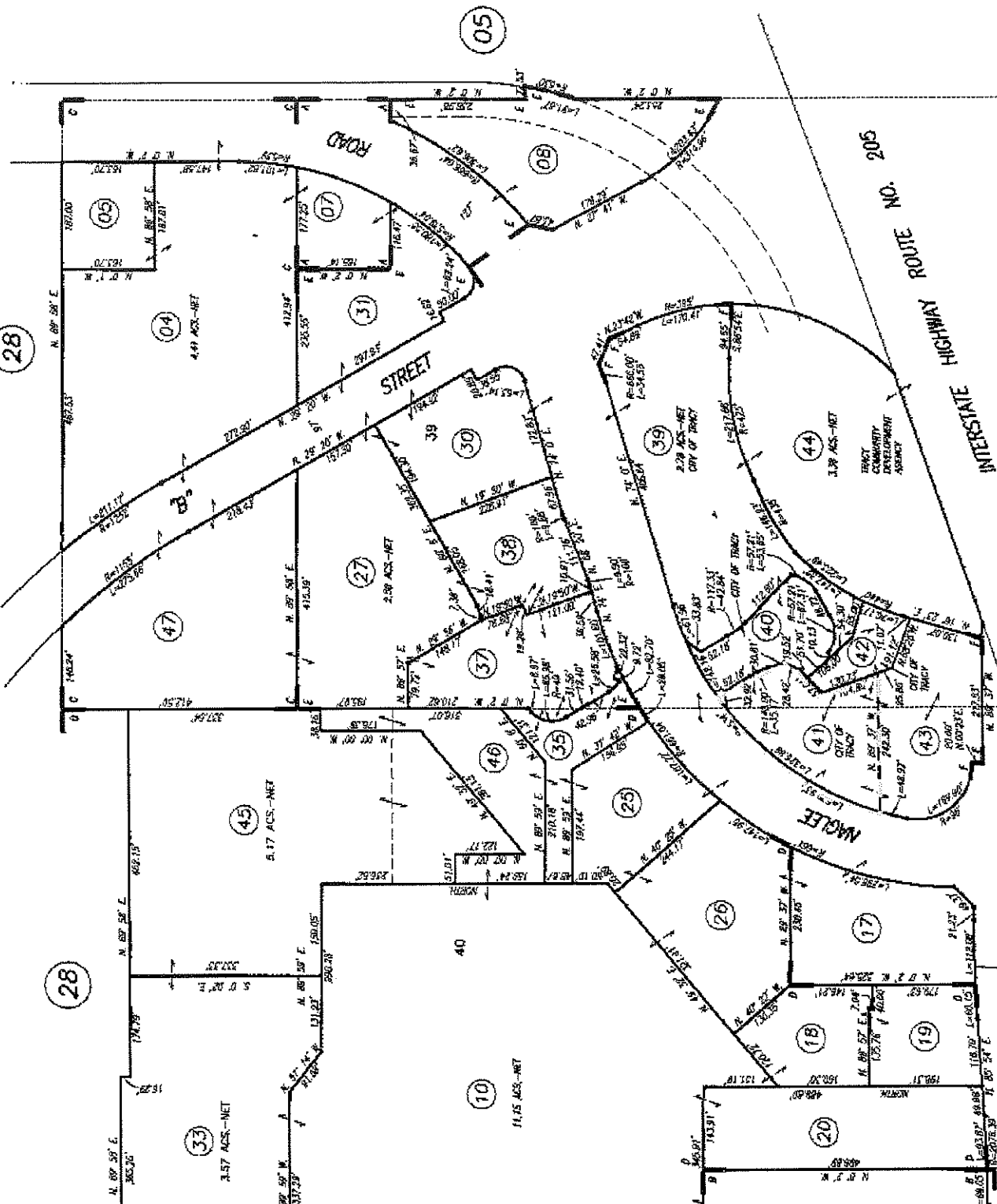
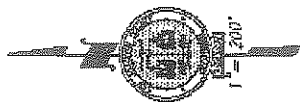
president

Exhibit A

POR. NAGLEE BURK TRACT

THIS MAP IS FOR ASSESSMENT USE ONLY

212-29



- A - R. S. Bk. 19 Pg. 122
- B - P. M. Bk. 08 Pg. 047
- C - P. M. Bk. 21 Pg. 025
- D - P. M. Bk. 22 Pg. 044
- E - P. M. Bk. 22 Pg. 076
- F - P. M. Bk. 23 Pg. 125

HIGHEST A.P.N. - ISSUED		YEAR PAR. # PAR. # PAR. #	
03-04	21	32	34
04-05	38		
05-06	38		
06-07	44	46	
07-08	47		

CITY OF TRACY